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FTA "Dear Colleague" Letter Raises Concerns Regarding Federal Share Treatment of TIFIA and RRIF Loans.

The Federal Transit Administration ("FTA") recently penned a "Dear Colleague" letter regarding the Agency's implementation of the Capital Investment Grants Program, stating that FTA will consider federal loans or financing tools in the context of all federal funding sources for a project, implying that such financing assistance will be calculated as part of a transit project's federal share. Other modal agencies consider federal loan programs, such as TIFIA or RRIF, to be part of a project's non-federal share.[1]

The letter has caused a significant amount of discussion in the industry and on Capitol Hill. Treating federal loans as part of a transit project's federal share would make it more difficult for project sponsors to meet federal-share requirements or to present a favorable benefit-cost ratio.

In response to FTA's letter, Representative Peter DeFazio (D-OR) and Delegate Eleanor Holmes Norton (D-DC), the Ranking Members of the House Transportation and Infrastructure Committee and Highways and Transit Subcommittee, respectively, sent a letter to Secretary Chao saying the policy "directly conflicts with section 603(b)(8) of title 23, United States Code, which clearly establishes TIFIA as a non-Federal share of project costs if the loan is to be repaid with non-Federal funds." House Appropriations Committee Chairman Rodney Frelinghuysen also sent a letter to Secretary Chao requesting clarification on the issue.

As we have noted often, the U.S. Department of Transportation has prioritized innovative project delivery approaches and leverage of federal funds in its administration of discretionary transportation funding programs. If FTA treats TIFIA and RRIF assistance as part of a project's federal share, this would work at cross purposes to the Department's broader efforts to promote innovative project delivery solutions, many of which rely on these low-interest federal financing tools.

[1] The Federal Highway Administration guidance on non-federal share states: "The proceeds of a secured TIFIA loan may be used for any non-Federal share of project costs required under Title 23 or Chapter 53 of Title 49, if the loan is repayable from non-Federal funds. See 23 U.S.C. 603(b)(8) on the terms and limitations of a TIFIA loan."
(https://www.fhwa.dot.gov/ipd/finance/tools_programs/federal_aid/matching_strategies/)

By Shant Boyajian on July 19, 2018

Nossaman LLP