Federal agencies also would conduct regular audits to ensure that funds were used for eligible costs.

IV. INFRASTRUCTURE FINANCING PROGRAMS

The below infrastructure financing proposals would dedicate $20 billion of the overall amount to advance major, complex infrastructure projects by increasing the capacity of existing Federal credit programs to fund investments and by broadening the use of Private Activity Bonds (PABs).

Of the appropriated funds, $14 billion would be made available for the expansion of existing credit programs to address a broader range of infrastructure needs, giving State and local governments increased opportunity to finance large-scale infrastructure projects under terms that are more advantageous than in the financial market. All funds remaining in credit programs ten years after enactment would be diverted to the Federal capital financing fund, to allow for efficient acquisition of real property.

The budgetary cost for the expansion of PABs would be $6 billion. These provisions would provide tools and mechanisms for market participants to invest in public infrastructure.

A. Expand Transportation Infrastructure Finance and Innovation Act (TIFIA) Funding and Broaden Program Eligibility

- Additional budget authority would be made available to DOT for subsidy costs under TIFIA. Specific funds set aside from the appropriated subsidy would be appropriated to DOT, notwithstanding Section 2001 of the Fixing America's Surface Transportation Act of 2015, and would remain available until end of Fiscal Year 2028.
- ***Support airport and non-Federal waterways and ports financing options.*** TIFIA currently limits project eligibility to those that are eligible for Federal assistance through existing surface transportation programs (highway projects and transit capital projects). Port and airport infrastructure enhancement and expansion projects across the United States do not have access to the credit assistance that is available via TIFIA for other types of transportation infrastructure projects, making it more difficult for project sponsors to pursue alternative project delivery for airports and to implement critical airport infrastructure improvements. Amending the project eligibility in the TIFIA statute to enable TIFIA to offer loans and other credit assistance to non-Federal waterways and ports and airport projects (such as renovated or new passenger terminals, runways, and related facilities) would incentivize project delivery for airports and ports and would accelerate overall improvements in airport and seaport infrastructure.

B. Expand Railroad Rehabilitation and Improvement Financing (RRIF) and Broaden Program Eligibility

- ***Require public attributes for public infrastructure projects.*** In extending tax exemptions to private enterprises, tax benefits could go to purely private enterprises, which would not be beneficial to the public or a sound use of public tax benefits. Requiring public infrastructure projects to have the following public attributes would ensure the public nature of eligible infrastructure—
  - either State or local governmental ownership or private ownership under arrangements in which rates charged for services or use of projects are subject to State or local governmental regulatory or contractual control or approval; and
  - availability of projects for general public use (e.g., public roads) or provision of services to the general public (e.g., water service).

  For purposes of the governmental ownership alternative under the public attributes requirement, a new safe harbor would treat a project as governmentally owned when a State or local governmental unit leases the project to a private business provided that—
  - the term of the private lease is no longer than 95 percent (rather than 80 percent under the existing safe harbor) of the reasonably expected economic life of the project;
  - the private lessee irrevocably agrees not to take depreciation or investment tax credit with respect to the project; and
  - the private lessee has no option to purchase the project other than at fair market value.
- ***Broaden eligibility of PABs.*** Current law includes a limited list of exempt facilities eligible to be financed with tax-exempt bonds. Additionally, different categories of exempt facilities are subject to varying requirements, which restricts the usefulness of PABs. This limits the potential financing tools that can be used to facilitate performance-based infrastructure, both for a wide variety of transportation projects and other public-purpose infrastructure projects. The revised parameters would allow longer-term private leases and concession arrangements for projects financed with PABs. Amending the law (26 U.S.C. 142) to allow broader categories of public-purpose infrastructure, including reconstruction projects, to take advantage of PABs would encourage more private investment in projects that benefit the public. Allowing privately financed infrastructure projects to benefit from similar tax-exempt financing as publicly financed infrastructure projects would increase infrastructure investment. This proposal would expand and modify eligible exempt facilities for PABs to include the following public infrastructure projects.
  - Existing categories:
    - airports (existing category);
    - docks, wharves, maritime and inland waterway ports, and waterway infrastructure, including dredging and navigation improvements (expanded existing category);
    - mass commuting facilities (existing category);
    - facilities for the furnishing of water (existing category);
    - sewage facilities (existing category);
    - solid waste disposal facilities (existing category);

- Modified categories:
    - qualified surface transportation facilities, including roads, bridges, tunnels, passenger railroads, surface freight transfer facilities, and other facilities that are eligible for Federal credit assistance under title 23 or 49 (i.e., qualified projects under TIFIA) (existing category with modified description);
    - hydroelectric power generating facilities (expanded existing category beyond environmental enhancements to include new construction);
    - flood control and stormwater facilities (new category);
    - rural broadband service facilities (new category); and
    - environmental remediation costs on Brownfield and Superfund sites (new category).

- ***Eliminate the Alternative Minimum Tax preference on PABs.*** One reason why PABs have been underutilized is due to the punitive market interest rate effect of the Alternative Minimum Tax (AMT) tax preference on PABs, which adds an estimated 30-40 basis points (0.30-0.40 percent) yield premium to the borrowing rate for PABs compared to traditional governmental municipal bonds due to the more limited demand. This creates inconsistent premiums for service providers and disincentives for borrowers to use this financing mechanisms. Eliminating the AMT preference on PABs would lower borrowing costs and increase the utilization of PABs.
- ***Remove State volume caps and transportation volume caps on PABs for public purpose infrastructure projects and expand eligibility to ports and airports.*** Clean water and drinking water projects currently are subject to State volume caps for PABs, based on population. In recent years, as little as 1-1.5 percent of all exempt bonds were issued to water and wastewater projects. Exceptions from the volume cap currently are provided for other governmentally owned facilities such as airports, ports, housing, high-speed intercity rail, and solid waste disposal sites. Additionally, many performance-based infrastructure projects for transportation facilities described in 26 U.S.C. 142(m) have taken advantage of PABs, which allow private sector developers to benefit from similar tax-exempt subsidies provided to public sector borrowers. The law establishes a nationwide volume cap of $15 billion for these projects, to be allocated by the Secretary of Transportation.
    - These caps create uncertainty as to the availability of PABs in the future, as projects require long lead times for development, and no additional PABs may be issued for this type of facility once the cap has been exhausted.
    - Amending 26 U.S.C. 146 to remove the population-based volume cap applicable to PABs for public purpose infrastructure projects of the types covered by this proposal that have the requisite public attributes would level the playing field between public and private service providers.
    - Amending 26 U.S.C. 142(m) to eliminate the nationwide cap would provide certainty that PABs would be available to a project sponsor as it developed and evaluated a project's financial strategy. This provision would apply only if a State volume cap did not already apply.