A National Infrastructure Reinvestment Corporation:

A Proposed Refinement of the "Bank" Concept to Optimize Economic Benefits and Leverage Federal Investment

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Two bills have been introduced in Congress to establish a national infrastructure financing entity: the National Infrastructure Bank Act of 2007 (S. 1926, "Dodd-Hagel") and the Build America Bonds Act of 2007 (S. 2021, "Wyden-Thune"). These bills have engendered a fair amount of commentary.

This article describes several concerns about the pending bills; compares the provisions of the two pending bills and USDOT's existing federal credit assistance program for surface transportation (TIFIA); and suggests an approach targeted to achieve the maximum infrastructure value, the most job creation and the largest economic impact from the federal investment.

Executive Summary

Allow us to highlight the following considerations in developing a national infrastructure financing entity:

Scope: Current Congressional infrastructure bank legislation proposes to make grants and loans to an extremely broad range of infrastructure, including transportation facilities not covered by the TIFIA program, and non-transportation projects such as public housing, water and wastewater. Given the limited size of the proposed program relative to the nation's total infrastructure needs, assistance should be targeted to large transportation projects of true national or regional significance (broad public benefits) that are also too big to be funded by a single state, region or locality.

Funding: Proposals to fund the entity through federal level bonding program secured by loans made by the entity should be re-examined, particularly in the light of the recent collapse of other federally-sponsored financing intermediaries, Fannie Mae and Freddie Mac. While use of a special-purpose borrowing program backed by the full faith and credit of the U.S. government has also been proposed, critics note that would be less liquid and more expensive than the Treasury's general borrowing program.

Form of Investment: Providing new federal apportionment to the states through grants would maximize flexibility to expend funds on their highest, ready—to go priorities, but such form of federal investment would achieve the least amount of leverage and permanent economic value. The entity should give priority to providing loans or other forms of credit assistance to projects that leverage federal contributions with private and/or state or local investments.

Build on Existing Programs: To provide greater leverage than grants and avoid redundant credit assistance from existing federal and private sources, the new entity should incorporate, build on and improve the existing TIFIA program, including:

- Increasing from 33% to 80% the amount of project costs the Corporation may cover with financial assistance.
- While continuing to require project borrowers to reimburse the Corporation out of revenues dedicated to the project, allow project borrowers to apply for previously unavailable assistance to (a) get the project through environmental clearance; and (b) close the gap between allocated tax revenues on the one hand and investment-grade debt and existing TIFIA credit on the other.
- Remove restrictions that inhibit other public and private investment in the project, so as to maximize the leverage that new Corporation assistance provides. Limiting the outlay of federal funds to "investment grade" or "creditworthy" projects (i.e. loans) of the type that "banks" typically make would restrict eligible projects to those that already obtain loans from private commercial lenders.
- Recycle repayments into further investments.

Discussion

Purpose: *Leveraging Federal Investment to Maximize Economic Benefits*

Any new national financing entity that includes transportation as part of its core mission should be structured to address the true financial market gaps and provide benefits beyond those currently available through existing programs.

Proponents of infrastructure bank proposals appeared to contemplate that leverage would come from the federal entity's issuing of debt secured by its own investments, similar to other federal financial intermediaries such as Fannie May and Freddie Mac.

A federal credit assistance program for surface transportation already exists, however. Since 1998, the US DOT has had the power to provide loans, loan guarantees and letters of credit to eligible transportation projects of national and regional significance under the TIFIA program. TIFIA has proven to be of significant value and offers a form of credit that supplements that available from private lenders. To date the TIFIA program has provided credit assistance of more than $4.8 billion for projects involving a total of $18.6 billion in total investment, all subject to agreements requiring repayment out of dedicated revenue streams.

Currently, however, the program has more demand for credit than it has capacity to provide, due to a recent Congressional budget rescission. Plus, existing statutory restrictions severely limit the overall infrastructure investment, leverage, job creation and economic growth it could achieve.

The most effective way that a federal financing entity could leverage a limited amount of federal funds would be to provide debt and quasi-equity investments in revenue-producing projects in a manner that supports further significant investment by the private market and other public entities. An expanded federal credit program that builds on and expands TIFIA-type funding may best meet the nation's goals.

Forms of Financial Support

Dodd-Hagel contemplates that that the new financing entity would provide loans and credit support, similar to what is authorized under TIFIA. Both Dodd-Hagel and Weyden Thune also provide for grants. With $6 billion a year of funding, the new Infrastructure Corporation could fully fund the level of applications that TIFIA is currently attracting, which exceed its current budgetary authority. It could enhance the TIFIA-type credit support it provides for major projects through larger loans (up to 80% of project costs) and by providing more flexible payment features.

Repealing the "springing lien" requirement in TIFIA would provide a stronger level of credit support. In addition, by advancing funds pursuant to a reimbursement agreement to pay for early development costs, including financial feasibility studies, preliminary design and environmental clearance, TIFIA could fill an important gap in project finance plans, while still preservng an obligation to repay if the project proves feasible and reaches full project financing.

As with TIFIA, it should be authorized to provide financing support to both private and public entities in order to leverage private investment in eligible projects.

Structure and Funding of the Entity

Dodd-Hagel and Weyden-Thune both contemplate the creation of an independent "bank" or corporation that would facilitate funding through the special-purpose borrowing. The Dodd-Hagel bank would be managed by a Board of Directors with five members appointed by the President, with the advice and consent of the Senate.

The National Infrastructure Bank in Dodd-Hagel would issue $60 billion in long-term bonds, either general purpose bonds presumably resulting in a general obligation of the U.S. to repay bond principal if there were no dedicated repayment sources, or project-based infrastructure bonds—presumably with project-based revenue streams that could be used to repay the bond principal and interest.

Weyden-Thune would create a non-federal multi-state entity consisting of two or more State Infrastructure Banks. Senators Weyden and Thune propose raising $50 billion for transportation infrastructure through a one-time bonding program. In lieu of interest, bond holders would receive tax credits.

Without such bonding, an expanded federal project financing function could be integrated and structured as a logical extension of current US DOT innovative finance programs, including TIFIA, PABs and SIBs. There may, however, be real benefit to housing the program, perhaps together with the other financing programs, in an organization that has adequate financial and managerial resources, appropriate programmatic flexibility, and, perhaps most importantly, the appropriate level of organizational independence.

Rather than provide redundant assistance (including grants, loans, and guarantees), the new entity should incorporate the existing relevant programs and modify them as appropriate. This might entail relocating the TIFIA credit program from the US DOT to the new entity and enhancing its financing tools, as described below. The responsibility for allocating highway / intermodal private activity

bond issuance authority and recapitalizing the state infrastructure banks also could be relocated to the new entity. The new entity could be given the responsibility for allocating tax credit bond issuance authority, should Congress authorize that form of tax subsidy to assist state and local sponsors.

Unlike the current TIFIA program, and more similar to the "bank" proposals, repayments of loans by the new entity should remain in the entity and be made available to fund additional projects.

In order to justify the creation of a new special-purpose entity, the case must be made that it would somehow be more effective in delivering financial subsidies. It might be argued that a new, separate entity with a narrow mission focused on project finance would be more businesslike and efficient in allocating resources and accelerating investments. It also might be easier to create a special conduit for federal funds with a new entity. This could be accomplished, for example, by either identifying new revenue sources to fund the entity's activities or creating a new category of discretionary spending from existing General Fund or Highway Trust Fund sources. A new special-purpose entity also might be given special budgetary treatment, operating rules, and regulatory oversight that some policy makers believe would enable it to be more effective than existing bureaucracies.

Eligible Projects

Projects eligible for TIFIA assistance include those eligible for Title 23 and certain title 49 grants, as well as intermodal projects, including ports. Dodd-Hagel would expand the categories of eligible projects to include public housing and water and wastewater projects. Weyden-Thune includes ports, railroads and inland waterways. Neither Congressional proposal includes airports or the air traffic control system. In determining the scope of the program, consideration should be given to the limited amount of funds made available and whether other categories of projects, for example public housing, might be more ably administered by an agency with specific expertise in that industry.

Consideration should be given to the size of projects being financed. Dodd-Hagel references projects of "regional or national significance" where the federal investment would equal or exceed $75 million. The TIFIA program requires total project costs in excess of $50 million for most projects, and $15 million for ITS projects, but does not set a floor on the size of the federal investment.

Project Selection Criteria

Under TIFIA, eligible projects must be nationally or regionally significant in terms of generating economic benefits, as well as supporting international commerce or otherwise enhancing the national transportation system. Additional non-credit criteria include: (i) the extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment, (ii) the likelihood that assistance would enable the project to proceed at an earlier date than otherwise, (iii) the extent to which the project uses new technologies, and (iv) the extent to which the project helps maintain or protect the environment.

Dodd-Hagel also cites environmental benefits, urban land use (smart growth), project benefits vs. costs, the extent of private participation and modal and geographic balance. Note also that Weyden-Thune allocates at least 1% of the total program to each state.

Conclusion

The general concept of the creation of a "national infrastructure bank" has attracted broad bipartisan support and has the potential to play a powerful role in addressing the nation's unmet infrastructure needs while providing new jobs and economic stimulus. The concept should be modified to insure that it provides a financial tool that is not readily available in the existing capital markets, while building on the success of existing federal credit programs. In this way, an infusion of $60 billion in federal funds can leverage many times that amount in total project investment.

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