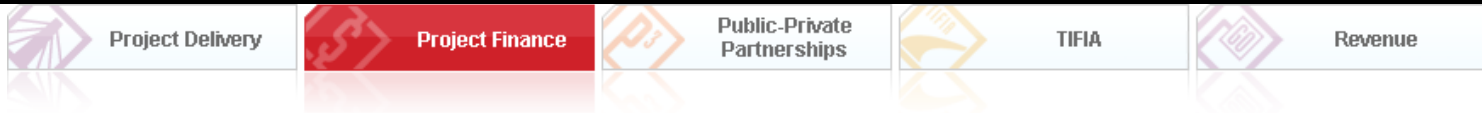




PRINT

AASHTO Center for Excellence in Project Finance

[Home](#) | [Calendar](#) | [Case Studies](#) | [Fact Sheets](#) | [Glossary](#) | [Resources](#) | [Site Directory](#)



- ▶ [Project Finance Home](#)
- ▶ [Project Finance Defined](#)
- ▶ [Tools & Programs](#)

- Federal-aid Fund Management Tools
- Federal Debt Financing Tools »
- Federal Credit Assistance Tools

▶ [Legislation](#)

- Federal-aid Fund Management Tools
- Federal Debt Financing Tools
- Federal Credit Assistance Tools

▶ [Resources](#)

- Federal-aid Fund Management Tools
- Federal Debt Financing Tools
- Federal Credit Assistance Tools
- General

▶ [Case Studies](#)

▶ [FAQs](#)

▶ [Contact Us](#)

Tools & Programs: Federal Debt Financing Tools

Private Activity Bonds (PABs)

- [Background](#)
- [Current Status](#)
- [Qualified Projects](#)
- [Expending Bond Proceeds](#)
- [Private Activity Bonds and TIFIA](#)
- [Applications for Allocations](#)
- [Review of Applications](#)
- [Request for Comments](#)
- [Private Activity Bond Resources](#)

BACKGROUND

Section 11143 of Title XI of SAFETEA-LU amends Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued. This change allows private activity on these types of projects, while maintaining the tax-exempt status of the bonds.

The law limits the total amount of such bonds to \$15 billion and directs the Secretary of Transportation to allocate this amount among qualified facilities. The \$15 billion in exempt facility bonds is not subject to the state volume caps.

Passage of the private activity bond legislation reflects the Federal Government's desire to increase private sector investment in U.S. transportation infrastructure. Providing private developers and operators with access to tax-exempt interest rates lowers the cost of capital significantly, enhancing investment prospects. Increasing the involvement of private investors in highway and freight projects generates new sources of money, ideas, and efficiency.

[back to top](#)

CURRENT STATUS

As of May 2011, PAB allocations approved by U.S. DOT total over \$5.1 billion supporting nine projects as shown in the table below. More than \$2.1 billion in PABs have been issued to date.

| Project | PAB Allocation |
|--------------|----------------|
| Bonds Issued | |

| | |
|---|-----------------|
| Capital Beltway HOT Lanes, Virginia (<i>issued 6-12-08</i>) | \$589,000,000 |
| North Tarrant Express, Texas (<i>issued 12-17-09</i>) | \$400,000,000 |
| IH-635 Managed Lanes, Texas (<i>issued 6-22-10</i>) | \$615,000,000 |
| RTD Eagle Project, Colorado (<i>issued 8-5-10</i>) | \$397,835,000 |
| CenterPoint Intermodal Center, Illinois (<i>issued 12-9-10</i>) | \$150,000,000 |
| subtotal | \$2,151,835,000 |
| Allocations | |
| Knik Arm Crossing, Alaska | \$600,000,000 |
| CenterPoint Intermodal Center, Illinois | \$1,190,000,000 |
| I-80 RailPort, Illinois | \$576,000,000 |
| Presidio Parkway, California | \$592,000,000 |
| subtotal | \$2,958,000,000 |
| Total PAB Allocations | \$5,109,835,000 |

Applications Expected in Next 12 Months

| | |
|---------------------------------------|-----------------|
| Goethals Bridge Replacement, New York | \$1,100,000,000 |
|---------------------------------------|-----------------|

[back to top](#)

QUALIFIED PROJECTS

Qualified Highway or Surface Freight Transfer Facilities include:

- Any surface transportation project which receives Federal assistance under Title 23, United States Code (as in effect on August 10, 2005, the date of the enactment of section 142(m))
- Any project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible and which receives Federal assistance under Title 23, United States Code (as so in effect)
- Any facility for the transfer of freight from truck to rail or rail to truck (including any temporary storage facilities directly related to such transfers) which receives Federal assistance under Title 23 or Title 49.

Examples of facilities for the transfer of freight from truck to rail or rail to truck include cranes, loading docks and computer-controlled equipment that are integral to such freight transfers. Examples of facilities that are not freight transfer facilities include lodging, retail, industrial or manufacturing facilities. ¹

[back to top](#)

EXPENDING BOND PROCEEDS

The legislation requires that at least 95 percent of the net proceeds of bond issues be expended for qualified highways or surface freight transfer facilities within a five-year period from the date of issue. If this does not occur, the issuer must use all unspent proceeds to redeem bonds of the issue within 90 days after the conclusion of the five-year period. Alternatively the issuer may request an extension of the five-year period if it can establish that the failure to expend the funds was due to circumstances beyond its control.

[back to top](#)

PRIVATE ACTIVITY BONDS AND TIFIA

Any surface transportation project which receives Title 23 assistance is qualified to benefit from private activity bonds. Because projects that receive TIFIA credit assistance are Title 23 projects, this means that TIFIA projects are also eligible to receive this tax-exempt bonding authority. This provision therefore extends eligibility to TIFIA-assisted public transportation, intercity bus or rail facilities and vehicles, including vehicles and facilities owned by Amtrak,

public freight rail facilities or private facilities providing public benefit for highway users, and intermodal freight transfer facilities. Together TIFIA and private activity bonds should provide substantial incentives for private equity investment in highway and freight projects.

[back to top](#)

APPLICATIONS FOR ALLOCATIONS

U.S. DOT is accepting applications from sponsors interested in receiving authority to use a portion of the \$15 billion in exempt facility. While US DOT has not specified a fixed format for bond applications, it has identified a number of pieces of information that would be helpful in facilitating its consideration of applications. These include:

1. Amount of Allocation Requested
2. Proposed Date of Bond Issuance
The approximate date when it is anticipated that the tax-exempt bonds would be issued should authority to do so be allocated by the Department.
3. Date of Inducement by the Bond Issuer
A copy of a resolution adopted in accordance with state or local law authorizing the issuance of a specific issue of obligations. The resolution may state that issuance of obligations is contingent upon receipt of an allocation from the Secretary of Transportation of a portion of the \$15,000,000,000 national limitation.
4. Draft Bond Counsel Opinion Letter
Form of Bond Counsel Opinion or date by which a draft letter will be submitted.
5. Financing/Development Team Information
The names of the issuer of the bonds, the borrower, and any other key participants in the financing, with complete contact information, including Federal taxpayer identification numbers.
6. Borrower Information
For each borrower, the official business name, ownership and legal structure (corporation, partnership, or sole proprietorship), Federal taxpayer identification number, and prior experience as it relates to carrying out projects similar to that proposed. For the purposes of this Notice, the term "borrower" includes any borrower of the bond proceeds or any other entity responsible for re-paying the bonds.
7. Project Description
Description of the project as a whole and the proposed organizational and legal structure of the project (ownership, franchise or lease arrangements, etc.). Describe the portion of the project and all capital assets to be funded with the proceeds of the exempt facility bonds. If the application is for an international bridge or tunnel under section 142(m)(1)(B), the project description should include a representation that the international entity that has responsibility for the project is authorized under Federal or state law.
8. Project Schedule
A timeline showing the estimated start and completion dates for each major phase or milestone of project development. Indicate the current status of milestones on this timeline, including all necessary permits and environmental approvals.
9. Financial Structure
A statement of anticipated sources and uses of funds for the project, including separate line items, as applicable, for proceeds of exempt facility bonds or other borrowing, federal grants, state and local grants, other credit assistance, and private investment. Provide a projected drawdown schedule for the use of funds, project revenue and expenses, and sources of security and repayment for the bonds.
10. Description of Title 23/49 funding received by the project
The date (or anticipated date) of receipt and types and amount of financial assistance.
11. Project Readiness
Description of the financing/development team's capacity to undertake this project. Discuss readiness to begin the project. List all major permits and approvals necessary for construction of the project and the date, or projected date, of the receipt of such permits or approvals. Include information on engineering work, and procurement of construction.
12. Signatures
Applications should be signed by a duly authorized representative of the proposed issuer and a duly authorized representative of each proposed borrower. Applications

may be submitted by the proposed issuer or the proposed borrower.

13. Declarations

Each application, including any supporting reports or other document, should include the following declaration signed by an individual who has personal knowledge of the relevant facts and circumstances: "Under penalties of perjury, I declare that I have examined this document and, to the best of my knowledge and belief, the document contains all the relevant facts relating to the document, and such facts are true, correct, and complete."

14. Addresses

Applications should be submitted (with 10 copies) to:
Mr. Jack Bennett
U.S. Department of Transportation
Office of the Assistant Secretary for Transportation Policy
P-20, Room 10305 E
400 7th Street S.W.
Washington , DC 20590
202-366-6222

[back to top](#)

REVIEW OF APPLICATIONS

Upon receipt, the US DOT will consider applications in light of applicable statutory requirements and the availability of tax-exempt authority for the type and location of the project for which the allocation is requested. If the Department needs additional information from an applicant, the Department will contact the applicant to arrange for the submission the required information. In making application to the Department, applicants should note that there are no specific standards, beyond those set forth in applicable laws or regulation, that apply to the consideration of the applications. The intent is to provide maximum flexibility in the Secretary's award of the \$15 billion bonding authority. The Department is particularly concerned that once it makes an allocation, tax-exempt facility bonds are issued in timely fashion. Hence, if the schedules agreed upon in the final allocation action are not met, the allocation may be withdrawn.

[back to top](#)

REQUEST FOR COMMENTS

US DOT has also invited interested parties to provide comments on how the Department should exercise the allocation authority. There is no deadline for the submission of comments, which may address both the process established for awarding the allocation authority or any other matters that commenters believe would be useful in administering this new innovative finance tool.

US DOT will be reviewing its implementation of this new provision of SAFETEA-LU on an ongoing basis to ensure that allocations are made in a fair and reasonable manner and to ensure that the authority is fully utilized and adds to the vitality of the Nation's transportation system.

Comments may be submitted through the Federal Register Docket, as described below. All comments received are also posted on the Docket.

[back to top](#)

PRIVATE ACTIVITY BOND RESOURCES

Federal Register Notice

<http://edocket.access.gpo.gov/2006/pdf/E5-8306.pdf>

View the Federal Register notice inviting comments on and applications for Authority for Tax-Exempt Financing of Highway Projects and Rail-Truck Transfer Facilities.

Federal Register Docket

<http://edocket.access.gpo.gov/2006/E5-8306.htm>

This location provides background documents and comments received on the Federal Register Notice. It is updated as new documentation and comments are received.

SAFETEA-LU Fact Sheets, Guidance, and Regulations

<http://www.fhwa.dot.gov/safetealu/reference.htm>

To view resource materials on Private Activity Bonds, use this link and navigate to the entry for Section 11143 Tax-Exempt Financing of Highway Projects and Rail-Truck Transfer Facilities. New materials are added as they become available. (As of February 2006 only the regulations themselves are available)

[back to top](#)

FOOTNOTES

The paragraph providing examples of intermodal freight transfer facilities clarifies language in the January 5, 2005, Federal Register Notice, by using the exact language in the President's Budget.

[back to top](#)