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UNLOCKING DEPARTMENT OF TRANSPORTATION FINANCING FOR MORE TRANSIT-ORIENTED HOUSING DEVELOPMENT

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

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DEPARTMENT OF TRANSPORTATION

UNLOCKING DEPARTMENT OF TRANSPORTATION FINANCING FOR MORE TRANSIT–ORIENTED HOUSING DEVELOPMENT

TUESDAY, JUNE 18, 2024

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:02 a.m. in Room SD–138, Dirksen Senate Office Building, Hon. Brian Schatz (chairman) presiding.

Present: Senators Schatz, Reed, Van Hollen, and Hyde-Smith.

DEPARTMENT OF TRANSPORTATION

STATEMENT OF DR. MORTEZA FARAJIAN, EXECUTIVE DIRECTOR, BUILD AMERICA BUREAU

OPENING STATEMENT OF SENATOR BRIAN SCHATZ

Senator SCHATZ. Good morning. This hearing will come to order. And I want to thank our witnesses for being here today.

On our panel, we have Dr. Morteza Farajian, Executive Director of the Build America Bureau of the Department of Transportation; Dr. Tracy Hadden Loh, a Fellow at the Brookings Institution; and Mr. Adhi Nagraj, Chief Development Officer at McCormack Baron Salazar.

Each of our witnesses bring incredible expertise in their respective fields, and we are eager to hear your thoughts on how Congress can improve access to financing for transit-oriented development. Funding TOD is a no-brainer. When we invest in neighborhoods around public transit, we create jobs, cut traffic, and protect the environment.

And it is even more relevant today as the country grapples with a national housing shortage, and a post-pandemic reality of empty office buildings. Estimates put the national housing shortage somewhere between five- and seven million units. That leaves nearly 42 million American households cost-burdened, meaning they are spending more than 30 percent of their income on housing. And in the state of Hawaii, 30 percent sounds pretty good to most.

Skyrocketing housing costs are driving more and more people into poverty and homelessness. A lot of the problem comes down to the simple and stubborn reality that we don't build enough housing in this country.

Now, a lot of work to fix that has to start with policy reforms at the state and local level, but what the Federal Government can and should do is incentivize national action and expand access to financing opportunities for development.

We need to make it easier to build in any way that we can. Providing low-interest capital through Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation & Improvement Financing (RRIF) is one means, but for it to work and spur the kind of development that we had planned for, it needs to be easier to use.

In 2015, the FAST Act expanded the TIFIA Program to include housing projects near transit hubs. This direction from Congress was stalled by the previous administration, who neglected to address our housing crisis. But more recently, following guidance under the Biden administration, we are seeing real enthusiasm for it in states across the country. Project proposals are popping up in red states and blue states alike: Illinois, Florida, Utah, Texas, North Carolina. And the list goes on.

But we have also heard from local governments and developers that the credit rating requirements, fees, and lengthy review processes hinder them from accessing these funds for housing. And we have heard from DOT that limited funding for administration and oversight is preventing the program from reaching its full potential.

These challenges need to be addressed by Congress. We need to simplify and streamline the credit review process, and we need to get DOT the resources it needs to make the programs as successful as they can be. The information we gather here today will help us to do that, and we look forward to hearing your perspectives and ideas, on how we can strengthen the program, and help to unlock its benefits for communities nationwide.

And with that, I will turn it over to the Vice Chair, Senator Hyde-Smith, for her opening statement.

STATEMENT OF SENATOR CINDY HYDE–SMITH

Senator HYDE-SMITH. Thank you, Mr. Chairman. And welcome. Thank you all for being here at this important hearing that we are having today.

While many of the issues that we address in the T–HUD bill falls squarely within either the transportation or the housing spaces, the topic today clearly cuts across both. It is pretty interesting, and TOD is a concept that seeks to blend transportation and housing efforts through mixed-use development around access to frequent and reliable public transit. These types of projects may not be feasible for remote rural communities in Mississippi, like where I live, and across the country, but they certainly have promise and beneficial factors for populated urban areas.

For example, Jackson, Mississippi, recently received a $1 million grant from the Federal Transit Administration for TOD planning. This grant will support the One Line Project, which aims to create new multimodal infrastructure and a bus rapid transit system along a 5–Mile Corridor in our capital city. This corridor has the highest concentration of employers and educational institutions in the entire state, including Jackson State University, and the University of Mississippi Medical Center, and numerous city, county, and state government offices. And despite this density, however, only 1 percent of the residents living in that area use public transportation to commute to work, and only 2 percent walk to work, 90 percent commute to work using their personal vehicles. And we know what that does.

The City of Jackson will use the Federal TOD funds to reverse this trend, by improving accessibility and facilitating mixed-use development. In addition to the FTA programs, Congress has also supported TOD by authorizing the use of TIFIA funds for commercial and residential development and related infrastructure within a half mile of a transit facility.

Since Congress provided this new authority, however, only one TIFIA loan has been awarded to a transit-oriented development (TOD) project, which notably did not include any residential components. So I hope today's discussion will shed light on what is preventing more of these projects from moving forward. I am concerned that what we are seeing is another case of the Government being unable to get out of its own way.

Layers upon layers of Federal regulations and requirements discourage local leaders and private investors from pursuing the TOD projects that have the potential to transform so many communities. But I do look forward to hearing what Congress can do to improve the process while ensuring that housing is a focus of federally funded TOD projects.

Thank you, Mr. Chairman.

Senator SCHATZ. Thank you, Vice Chair. Are there any members wishing to make an opening statement? If not, we will start with our witnesses. And you each have five minutes for your testimony, and then we will get into our back and forth.

Dr. Farajian, please proceed with your testimony.

SUMMARY STATEMENT OF DR. MORTEZA FARAJIAN

Dr. FARAJIAN. Thank you, Chair Schatz, Ranking Member Hyde-Smith, and Members of the Subcommittee, for the opportunity to discuss the Build America Bureau's Transit-Oriented Development Financing. In my testimony today, I will highlight the Bureau's TOD authority, activities, and remaining challenges.

First, I will summarize what we do. The Build America Bureau advances and invests in America's infrastructure by lending Federal funds at below-market rates on favorable terms to qualified borrowers while protecting taxpayers, clearing roadblocks for creditworthy projects, and encouraging the use of best practices in project planning, financing, and delivery.

The Bureau has 115 TIFIA and RRIF loans and loan tranches to 71 distinct borrowers from 23 states, and the District of Columbia, that are in construction or operations, totaling just over $31 billion in credit extended. The Bureau also administers four grant programs to expand the public sector's capacity to finance and deliver infrastructure. The Regional Infrastructure Accelerator Program helps public entities develop priorities and financing strategies to accelerate projects eligible for TIFIA credit assistance.

The Thriving Communities Program provides technical assistance, planning, and capacity-building support to smaller and under-resourced communities through capacity builders— technical assistance providers that support groups of communities based on their common needs. The Bipartisan Infrastructure Law established the Rural and Tribal Assistance Pilot Program, which provides grants for preconstruction and predevelopment studies for rural and tribal communities, and the Innovative Finance and Asset Concession Program, which provides grants to public entities to facilitate and evaluate public-private partnerships.

We also offer customized direct technical assistance for projects of all sizes and project sponsors with different experience levels.

Finally, the Bureau administers allocation of private activity bonds for qualified highway or surface freight transfer facilities.

The FAST Act authorized the Bureau to finance TOD projects. TOD projects include public infrastructure and economic development projects, including affordable housing, workforce housing, and commercial development physically or functionally related to transit, passenger rail, or multimodal stations. TOD projects can transform underperforming and underutilized assets, increase transit and passenger rail ridership and revenue, facilitate office-to-residential conversion, and support affordable, equitable multimodal access to opportunities and services. I am proud to say that in April 2024, the Bureau closed USDOT's first TOD loan of up to $26.8 million for the Mount Vernon Library Commons project, now under construction in Washington State. Our financing will save that community at least $3 million compared to other financing options.

Implementing the TOD authorities Congress gave us has been incremental and steady. We published TOD guidance and a policy statement on our website. We held five webinars in the past year for more than 500 participants. We also participated in webinars with the White House and with the U.S. Department of Housing and Urban Development, and presentations at the U.S. Housing and Community Development Conference, the National Housing and Rehabilitation Association, and the Urban Land Institute.

We hosted in-person technical workshops in Austin, Kansas City, Los Angeles, Chicago, and Jacksonville. To make our financing more accessible and attractive, USDOT announced it would provide transit and TOD projects TIFIA financing for up to 49 percent of total project costs, the TIFIA statutory limit since 2012. USDOT typically limits TIFIA loans to 33 percent of project costs by policy.

Even with this progress, prospective borrowers have told us they are encountering challenges in utilizing TIFIA or RRIF for TOD projects, the most significant of which are the following. TIFIA's legislation requires an investment-grade rating. While this level of rating protects taxpayers from defaults, it can be unattainable for certain TOD projects. Typically, rating agencies do not rate real estate deals that have both construction and long-term financing elements, as this is not common practice in the market. The Bureau has consulted with rating agencies, several of whom are now developing rating approaches for TOD projects.

Second, a range of Federal requirements apply to TIFIA and RRIF borrowers, including compliance with NEPA, Buy America, Davis-Bacon wage rates, and others. Some prospective borrowers have told the Bureau they are not familiar with Federal requirements and have a learning curve in both understanding how to comply and structuring compliant projects that are financially viable.

To address this obstacle, the Bureau has had one-on-one meetings to educate potential borrowers on Federal requirements and to assist project sponsors in developing complete and quality applications.

Third, project sponsors are used to the time line commercial banks use for short-term construction loans. TIFIA and RRIF loans typically have 40-year or longer maturities, meaning they have both short-term construction risk and long- term revenue risk. This combination complicates and lengthens the underwriting process.

The Bureau has explored innovative approaches such as teaming with short-term lenders and collaborating with HUD and other Federal agencies to develop viable financing products and to streamline the process. As our program matures and we close more loans, we should be able to standardize our process and procedures, and develop template documents that could further streamline the process and reduce time lines.

In early 2021, we had no TOD projects in the Bureau's active pipeline, even though the authority had been in place since late 2015. Today, interest in the TOD pipeline is robust, with over 40 TOD projects actively engaging with the Bureau on utilizing its financing programs. We anticipate our TOD pipeline and portfolio will continue growing quickly, and welcome any opportunity to improve our programs and deliver quality experiences that achieve the intended program outcomes.

Thank you, Chairman Schatz, Ranking Member Hyde-Smith, for this opportunity. I would be happy to answer any questions you might have for us.

[The statement follows:]

PREPARED STATEMENT OF DR. MORTEZA FARAJIAN, PH.D.

Thank you, Chair Schatz, Ranking Member Hyde-Smith, and Members of the subcommittee for the opportunity to discuss Build America Bureau (Bureau) financing and transit-oriented development (TOD). In my testimony today, I will highlight the Bureau's TOD authority, activities, and remaining challenges.

First, I will summarize what we do. The Build America Bureau (also called the National Surface Transportation and Innovative Finance Bureau) advances investment in America's infrastructure by lending Federal funds at below market rates under favorable terms to qualified borrowers while protecting taxpayers; clearing roadblocks for creditworthy projects; and encouraging use of best practices in project planning, financing, and delivery.

—The Bureau currently has 115 Transportation Infrastructure Finance and Innovation Act (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) program loans and loan tranches to 71 distinct borrowers from 23 States and the District of Columbia that are in construction or operations, totaling just over $31 billion in credit extended.

—With the FY 2025 budget proposal to repurpose balances in support of the National Infrastructure Investment Grant Program, the Bureau continues to have substantial capacity for new lending: TIFIA will have over a billion in available credit subsidy budget authority, with up to 15 percent of TIFIA's annual funding available for TOD projects; RRIF has traditionally relied upon borrower-paid credit risk premiums to pay the subsidy cost of its loans, and has $35 billion in overall lending capacity.

The Bureau also administers four grant programs to expand the public sector's capacity to finance and deliver infrastructure. The Regional Infrastructure Accelerator Program helps public entities develop priorities and financing strategies to accelerate projects eligible for TIFIA credit assistance. The Thriving Communities

Program provides technical assistance, planning, and capacity building support to smaller and under-resourced communities through Capacity Builders-technical assistance providers that support groups of communities based on their common needs. The Bipartisan Infrastructure Law (BIL) established the Rural and Tribal Assistance Pilot Program, which funds pre-construction and pre-development studies for rural and Tribal communities, and the Innovative Finance and Asset Concession Program, which provides grants to public entities to facilitate and evaluate public-private partnerships. We also offer customized direct technical assistance, for projects of all sizes and project sponsors with different experience levels. Finally, the Bureau administers private activity bonds allocated by USDOT for qualified highway or surface freight transfer facilities.

The Fixing America's Surface Transportation (FAST) Act authorized the Bureau to offer TOD projects. TOD projects include public infrastructure or economic development projects (including affordable and workforce housing and commercial development) located near or physically or functionally related to transit, passenger rail, or multimodal stations. TOD projects can transform underperforming and underutilized assets, increase transit and passenger rail ridership and revenue, facilitate office-to-residential conversions, and support affordable, equitable, multimodal access to opportunities and services. I am proud to say that in April 2024, the Bureau closed USDOT's first TOD loan-up to $26.8 million for the Mount Vernon (Washington) Library Commons Project, now under construction. Our financing will save the community at least $3 million compared to other financing options.

Building and implementing the TOD authorities Congress gave us has been incremental and steady. We published TOD guidance and a policy statement on our website. We held 5 webinars in the past year for more than 500 participants. We also participated in webinars with the White House and with the U.S. Department of Housing and Urban Development (HUD) and presentations at the U.S. Housing and Community Development Conference, National Housing and Rehabilitation Association, and Urban Land Institute. We hosted in-person technical workshops in Austin, Kansas City, Los Angeles, Chicago, and Jacksonville. To make our financing more accessible and attractive, USDOT announced it would provide transit and TOD projects TIFIA financing for up to 49 percent of project costs, the TIFIA statutory limit since 2012. USDOT typically limits TIFIA loans to 33 percent of project costs by policy.

Even with this progress, prospective borrowers have communicated encountering challenges in utilizing TIFIA or RRIF for TOD projects, the most significant of which are the following:

—TIFIA's legislation requires investment grade ratings. While this level of rating protects taxpayers from defaults, it can be unattainable for certain TOD projects (e.g., those pledging project revenues as the repayment source). Typically, rating agencies do not rate real estate deals that have both construction and long-term financing elements, as these are not common practice in the market. The Bureau has consulted with rating agencies, several of whom are now developing rating approaches for TOD projects. Some rating agencies have told me they might have a hard time making the economics work to rate smaller projects. Consequently, for some small projects the cost to obtain a rating offsets the benefits TIFIA offers, making TIFIA less attractive for those projects.

—A range of Federal requirements apply to TIFIA and RRIF borrowers, including compliance with the National Environmental Policy Act (NEPA), Buy America, Davis- Bacon wage rates, and others. Some prospective borrowers have told the Bureau they are not familiar with Federal requirements and have a learning curve in both understanding how to comply and structuring compliant projects that are financially viable. To address this obstacle, the Bureau has had one-on-one meetings to educate potential borrowers on Federal requirements and to assist project sponsors in developing complete and quality applications.

—Project sponsors are used to the timeline commercial banks use for short-term construction loans. TIFIA and RRIF loans typically have 40-year or longer maturities, meaning they have both short-term construction risk and long-term revenue risk. This combination complicates-and lengthens-the underwriting process. The Bureau has explored innovative approaches, such as teaming with short-term lenders and other Federal agencies, and collaboration with HUD and other Federal agencies to develop effective products and to streamline the process. As our program matures and we close a few more TOD loans, we should be able to standardize our process and procedures and develop template documents that could further streamline the process.

In early 2021, we had no TOD projects in the Bureau's active pipeline, even though the authority had been in place since late 2015. Today, interest in the TOD pipeline is robust, with over 20 TOD projects engaging with the Bureau on utilizing its financing programs. We anticipate our TOD pipeline and portfolio will continue growing quickly and welcome any opportunity to improve our programs and deliver quality customer experiences that achieve the intended program outcomes.

Thank you, Chairman Schatz and Ranking Member Hyde-Smith. I would be happy to answer any questions you might have.

Senator SCHATZ. Thank you. Dr. Loh, please proceed with your testimony.

STATEMENT OF DR. TRACY HADDEN LOH, FELLOW, BROOKINGS INSTITUTE

Dr. LOH. Good morning, Members of the Subcommittee. And thank you for the opportunity to offer testimony as you explore the potential of applying innovative public financing tools to produce desperately needed affordable housing in ideal locations near transit.

My name is Tracy Hadden Loh, and I am a Fellow at the Brookings Institution where I study commercial real estate. I also represent the District of Columbia on the Washington Metropolitan Area Transit Authority Board.

However, what I am about to say is my own opinion and does not necessarily represent the opinions of the staff, officers, or trustees of Brookings, or those of the WMATA Board or staff.

With that out of the way, there are three reasons why the public would benefit from the real existence of a working tool for transit-oriented multifamily finance.

First, I assume that everyone here is already aware that the U.S. is in a housing crisis where we do not have enough homes in needed locations, and costs are at record highs.

The question is what to do about it. As my colleagues at Brookings have recently noted, making apartments more affordable starts with understanding the costs of building them. The 20- to 30 percent of a typical project's soft costs related to permitting and financing are directly shaped by public policy and regulation. And affordable housing projects often have higher soft costs due to the complexity of financing. So any intervention that reduces the cost of financing for affordable housing projects can directly improve their feasibility and affordability.

Second, recently new multifamily starts have collapsed due to higher interest rates and lower property values that are a factor of rising operating costs reducing net income. A major lesson that we learned from the Great Recession was that there are better economic outcomes during and after a downturn, when the government helps move capital counter-cyclically. While the Federal Housing Administration already does this through mortgage insurance, it is also hypothetically possible for the Federal Government to do this through direct finance.

Third, the case of transit-oriented development is a unique use case for the Federal role in multifamily finance that directly addresses the need to balance risk and reward in the public interest. There is a lot of Federal money invested in transit systems, and they create value in the locations they serve that is a reward to be captured, and at reduced public risk. One study found that transit-accessible multifamily properties are 58 percent less likely to default.

The U.S. Department of Transportation has over $100 billion ready for deployment at very low interest rates through the TIFIA and RRIF programs. These programs have traditionally helped finance major transportation projects.

However, as we just heard, the first real estate project to close on a TIFIA loan happened in April. This a big milestone but additional statutory, and regulatory changes, and clarifications are needed to make this financing more accessible. DOT's NEPA process is lengthy and incompatible with projects that also need to attract private equity capital in order to complete their capital stack.

That kind of project succeeds or fails based on the time it takes for a project to go from conception to occupancy and stabilization. Other agencies like HUD, Agriculture, and the EDA have NEPA processes that are more efficient. There is a need for either an interagency collaboration or a new process within the DOT.

Similarly, Buy America requirements that are impactful and make sense for billion- or trillion-dollar infrastructure projects are unnecessary deal killers on smaller-scale real estate projects. An administrative waiver or legislative action to speed up the more pressing policy priority of building housing near transit, makes sense.

Congress should also consider increasing the maximum loan-to-cost threshold for TIFIA from 49 percent to match RRIF, which already allows loans up to 75 percent loan to cost. This would reduce the burden on project sponsors to find gap financing.

Finally, TIFIA borrowers are required to have an investment-grade rating in order to receive a loan. The problem is that rating agencies don't typically even rate the debt of individual real estate projects. There are ways to work around this but streamlining would be both appropriate and better.

In terms of advice to the administration, the development of model documents, including a pro forma financial model for transit-oriented development projects, could provide more clarity than any number of webinars, workshops, or pages of guidance, and this should be an immediate priority for the Build America Bureau.

Transit-oriented development is a logical and elegant solution to multiple problems; however, significant barriers to using TIFIA and RRIF financing for real estate are real.

Here are three reasons why it makes sense to debug this now: Any countercyclical housing lending is helpful, and affordable housing near transit achieves many broadly shared policy goals. Two, some projects will never be strong candidates for conventional debt but provide significant public benefits and merit a lender of last resort. This is relevant for rural areas. The first TIFIA real estate project in Mount Vernon, Washington, is next to an Amtrak station in the county seat of a rural county that also contains three Native American reservations. That is an example of how this program matters everywhere.

Three, commercial real estate as a sector will likely see a medium-term lack of liquidity; however, the broader economic and social need for capital to flow in order to adapt the build environment to new economic and demographic realities is urgent. Available facilities should be deployed and not idled on the sidelines.

This is a time where there is a broad need for government to do more with the same level of resources and deliver positive economic, social, and environmental returns. Transit-oriented development is an opportunity to do so, which merits this committee's scrutiny.

Thank you for the opportunity to inform your considerations on this topic.

[The statement follows:]

PREPARED STATEMENT OF DR. TRACY HADDEN LOH

Good afternoon, members of the committee, and thank you for the opportunity to offer testimony as you explore the potential of applying innovative financing tools administered by the Department of Transportation's Build America Bureau to produce desperately needed affordable housing in ideal locations: near transit service.

My name is Tracy Hadden Loh, and I am a fellow with the Bass Center for Transformative Placemaking at Brookings Metro. Transformative placemaking is an integrated practice that breaks down the siloes between professional disciplines-including real estate and transportation planning-to advance local growth and development through holistic, interconnected strategies. I'm here today to share insights gleaned from our work at the Center to create new knowledge, policies, investment strategies, practices, and tools to build more great places that work for more people.

According to the Census Bureau's 2021 Rental Housing Finance Survey, the three most common sources of mortgage loans for multifamily housing are commercial banks, mortgage banks, and credit unions.[1] In that survey, these sources provided capital to an estimated 4,569 properties, while alternative sources of financing (including public options) serviced only 137 properties-a trickle next to a stream. This could be interpreted as an indication that conventional lenders have the multifamily market covered, and are multifamily builders' preferred source of capital. Is a public option needed?

The answer to this question depends on the goal that policymakers are trying to achieve. It is clear that in good times, traditional finance has learned how to invest in multifamily construction, and builders work with these capital sources. The caveat is that right now these are not the best of times. Additionally, we are not necessarily getting the most needed housing in the most needed locations. Multifamily housing production is facing challenges, and there is an opportunity to respond.

The remainder of this testimony will outline the three-part case for why the public sector should consider creating new tools for multifamily lending, especially for transit-oriented development. I will then specifically address the potential of the Build America Bureau's lending tools and how they are-and are not-suited to this use case.

The three-part case for more tools for public sector multifamily finance

First, as my colleagues at Brookings and elsewhere have recently noted, "Making apartments more affordable starts with understanding the costs of building them."[2] Recent research on the inputs to production of multifamily housing notes that while the majority (50% to 70%) of project costs are "hard costs" related to labor and materials, the 20% to 30% of a typical project's "soft costs" related to permitting and financing are of particular public sector interest because these costs are directly shaped by public policy and regulation, and "affordable housing projects often have higher soft costs due to the complexity of financing."[3] Any intervention that reduces the cost of financing for affordable housing projects can directly improve their feasibility and affordability.

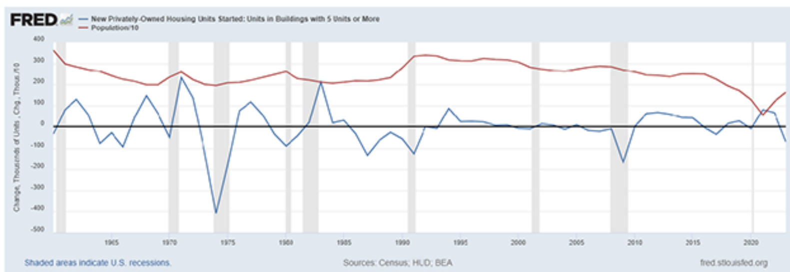
[1] U.S. Census Bureau. (2021) Rental Housing Finance Survey (RHFS). https://www.census.gov/data- tools/demo/rhfs/#/?s__tableName=TABLE5&s__moe=showmoe

[2] Hoyt, H. & Schuetz, J. (2020, May 5) Making apartments more affordable starts with understanding the costs of building them. Brookings Institution. https://www.brookings.edu/articles/making-apartments-more-affordable- starts-with-understanding-the-costs-of-building-them/

[3] Hoyt, H. & Schuetz, J. (2020, May 19) Flexible zoning and streamlined procedures can make housing more affordable. Brookings Institution. https://www.brookings.edu/articles/flexible-zoning-and-streamlined-procedures- can-make-housing-more-affordable/

Second, real estate is a cyclical industry because of its reliance on finance and, therefore, economic cycles. As shown in Figure 1, multifamily housing production has fluctuated dramatically over time-much more so than natural demand (i.e., population), with downturns in production typically coinciding with recessions.[4] However, most recently, new multifamily starts have collapsed even without a recession, due to higher interest rates and lower property values that are a factor of rising operating costs (e.g., insurance) reducing net income.[5] A major lesson learned from the Great Recession was that there are better economic outcomes during and after economic downturns, when government backing is available to help move capital counter-cyclically.[6] While the Federal Housing Administration does this through mortgage insurance, it is also hypothetically possible for the Federal Government to do this through direct finance. However, any potential change to the Federal role in multifamily finance should be carefully considered to avoid exposing the public to unbearable costs and/or risk.[7]

Figure 1. US multifamily housing production and population trends



Third, the case of transit-oriented development is a unique use case for a Federal role in multifamily finance that directly addresses the need to balance risk and reward in the public interest in multifamily lending. As the literal book on transit-oriented development notes, a "strong real-estate market 'floats all boats, but when the tide goes out it is the boats in the best position relative to transit that continue to float."[8] This assertion, reported to researchers in a qualitative interview, is consistent with the findings of studies testing relationships between location affordability (i.e., lower transportation costs from transit access) and foreclosure outcomes after the Great Recession, for both single-family and multifamily properties.[9] While the evidence indicates transit-oriented development has lower foreclosure risks, some transit- oriented development projects also have higher risks related to the complexity of executing mixed-use projects or those that involve joint development with a transit authority and higher hard costs related to infrastructure that make them unattractive to conventional lenders and in need of alternative financing.[10]

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[4] Figure 1 can also be accessed online at https://fred.stlouisfed.org/graph/?g=1ohWg.

[5] Goodman, L., et al. (2023, November 30). Housing Finance: At a Glance Monthly Chartbook, November 2023. Urban Institute. https://www.urban.org/research/publication/housing-finance-glance-monthly-chartbook- november-2023

[6] Passmore, W., & Sherlund, S. M. (2018). The FHA and the GSEs as Countercyclical Tools in the Mortgage Markets. Federal Reserve Bank of New York Economic Policy Review, 24(3) https://www.newyorkfed.org/medialibrary/media/research/epr/2018/EPR__2018__fha-and-gses__passmore.pdf?sc__lang=en ; Young, S.D., Browne, E.K. & Moroz, P.C. (2021). The Countercyclical Nature of the Federal Housing Administration in Multifamily Finance. Cityscape: A Journal of Policy Development and Research, 23(1), 319–338. https://www.huduser.gov/portal/periodicals/cityscpe/vol23num1/ch15.pdf

[7] Congressional Budget Office. (2015). The Federal Role in the Financing of Multifamily Rental Properties. https://www.cbo.gov/publication/51006

[8] Cervero, R., et al. (2004). Transit-Oriented Development in the United States: Experiences, Challenges, and Prospects. Transit Cooperative Research Program. https://nap.nationalacademies.org/catalog/23360/transit- oriented-development-in-the-united-States-experiences-challenges-and-prospects

[9] Wang, K. & Immergluck, D. (2019). Neighborhood Affordability and Housing Market Resilience. Journal of the American Planning Association. 18(5). https://doi.org/10.1080/01944363.2019.1647793

[10] Venner, M. & Ecola, L. (2007). Financing Transit-Oriented Development: Understanding and Overcoming Obstacles. National Academies of Science: Transportation Research Board. 1996(1). https://doi.org/10.3141/1996- 03

Over the past three decades, the Federal Government has spent an average of about $14 billion each year on transit.[11] Mass transit and rail are both cumulatively and currently the third- largest category of public spending on infrastructure, after highways and water.[12] Given the magnitude of this investment, there is a clear public interest in maximizing the utility and performance of the resulting assets, and land use is key factor in transit ridership trends.[13] Locations proximate to transit are also ideal for lower-income households who need affordable housing, because these locations also reduce their transportation cost burden.[14]

The current applicability and challenges of Build America Bureau lending tools

The U.S. Department of Transportation (DOT) has over $100 billion ready for deployment at very low interest rates through the Transportation Infrastructure Finance and Innovation Act (TIFIA) and the Railroad Rehabilitation and Improvement Financing (RRIF) program.[15] These programs have traditionally helped finance major transportation projects, such as constructing roads, bridges, and tracks. Both the 2015 Fixing America's Surface Transportation (FAST) Act and the 2021 Infrastructure Investment and Jobs Act contained reforms intended to make it easier for transit-oriented development to leverage TIFIA and RRIF. Since 2021, the DOT has also made administrative changes to the program to facilitate deployment.

The first real estate project to close on a TIFIA loan happened last month (May 2024).[16] This is because the Biden administration has prioritized figuring out administrative issues with the programs and providing technical assistance to potential users. However, additional statutory and regulatory changes and clarifications are needed to make this resource more accessible:

—Because TIFIA and RRIF were originally intended for transit, rail, and roadway projects, there remains a requirement that projects undergo a review for environmental impact. That doesn't make sense for infill real estate development. Projects are likely eligible for a categorical exclusion under the National Environmental Policy Act (NEPA), but it's a time-consuming, bureaucratic headache for public-private investments that succeed or fail based on the time it takes for a project to go from conception to occupancy and stabilization. Other agencies-such as the Department of Housing and Urban Development, Department of Agriculture, and Economic Development Administration- have NEPA processes that are much more efficient. There is a need for resources to support either an interagency collaboration or a new process within the DOT.

—Similarly, "Buy America" requirements that are impactful and make sense for billion- or trillion-dollar infrastructure projects are unnecessary deal-killers on smaller-scale real estate projects. An administrative waiver to speed up the more pressing policy priority of building housing near transit makes sense.

—Congress should consider increasing the maximum loan-to-cost (L2C) threshold for TIFIA from 49% to match the RRIF program, which allows loans up to 75% L2C for transit- oriented development and 100% L2C for public infrastructure. This would reduce the burden on project sponsors to find gap financing from other sources, which for some projects will make the difference between feasibility and impossibility. It is also more consistent with typical real estate practice, in which most real estate developments borrow 60% to 70% of their project costs from commercial lenders and secure the remaining 30% to 40% from private equity (at a much higher cost).

—TIFIA borrowers are required to have an investment grade rating in order to receive a loan. That's unrealistic for a tool intended to encourage transit-ori-

[11] Congressional Budget Office. (2022, March 22). Federal Financial Support for Public Transportation. https://www.cbo.gov/publication/57636

[12] Congressional Budget Office. (2018, October 15). Public Spending on Transportation and Water Infrastructure, 1956 to 2017. https://www.cbo.gov/publication/54539

[13] Watkins, K., et al. (2022). Recent Decline in Public Transportation Ridership: Analysis, Causes, and Responses. Transit Cooperative Research Program. https://nap.nationalacademies.org/catalog/26320/recent-decline-in- public-transportation-ridership-analysis-causes-and-responses

[14] Renne, J.L, et al. (2016). The Cost and Affordability Paradox of Transit-Oriented Development: A Comparison of Housing and Transportation Costs Across Transit-Oriented Development, Hybrid and Transit-Adjacent Development Station Typologies. Housing Policy Debate, 26(4–5), 819–834. https://doi.org/10.1080/10511482.2016.1193038

[15] Build American Bureau. (n.d) Transit Oriented Development Financing Overview. [PowerPoint Slides]. U.S. Department of Transportation. https://www.transportation.gov/sites/buildamerica.dot.gov/files/2024- 01/2024__FinancingTOD.pdf

[16] McAdams, B. & Loh, T.H. (2024, May 30). How local governments can put their assets to work. Brookings Institution. https://www.brookings.edu/articles/how-local-governments-can-put-their-assets-to-work/

ented real estate development. Rating agencies don't typically even rate the debt for these types of projects. Applicants have found some workarounds, but it's another instance in which the tool needs an update to work better for this new use.

—While RRIF does not technically require an investment grade rating, the publication of guidelines for setting the RRIF credit-risk premium rate (based on a project's credit rating, collateral ratio, pre-lease or pre-sale rates, etc.) so developers can have some early expectation of the outcome of this critical step in the underwriting process could make or break the value and feasibility of RRIF as a debt source.

—The development of model documents-including a pro forma financial model-for transit-oriented development projects could provide more clarity than any number of webinars, workshops, or pages of guidance. This should be an immediate priority for the Build America Bureau.

—There are questions about whether the definitions in Chapter 53 of Title 49, which covers public transportation, authorize the Federal Transit Administration to oversee transit-oriented development projects. This could be clarified in the statute, or the Build America Bureau could be given project oversight authority for transit-oriented development.

CONCLUSION

Transit-oriented development is a logical and elegant solution to multiple problems. However, that does not mean it is easy. The barriers to using TIFIA and RIFF financing for real estate are significant, but there is new motivation to justify addressing them for several key reasons:

—Any counter-cyclical housing lending is helpful, and affordable housing near transit achieves many broadly shared policy goals (such as production, improving the efficiency of existing Federal transportation investments, and climate).

—Some projects will never be strong candidates for conventional debt, but provide significant public benefits and merit a lender of last resort. The first TIFIA real estate project-in Mount Vernon, Wash., located next to an Amtrak station in the county seat of a rural county that also contains three Native American reservations-is an example of this.

—Commercial real estate as a sector will likely see a medium-term lack of liquidity because of a confluence of factors, especially rising defaults in both office and multifamily and persistently higher interest rates. However, the broader economic and social need for capital to flow in order to adapt the built environment to new realities is urgent. Available facilities should be deployed, not idled on the sidelines.

We are in a time where there is a broad need for government to do more with the same level of resources and deliver positive economic, social, and environmental returns. Transit-oriented development is an opportunity to do so, which merits this committee's scrutiny. I thank you for the opportunity to inform your considerations on this topic.

Senator SCHATZ. Thank you, Dr. Loh.

Mr. Nagraj, please proceed with your testimony.

STATEMENT OF MR. ADHI NAGRAJ, CHIEF DEVELOPMENT OFFICER, MCCORMACK BARON SALAZAR

Mr. NAGRAJ. Great, thank you. Good morning. Thanks for having me. And it is really—I see you on TV all the time, so it is nice to see you in person. And it has been 25 years, Senator Reed, so good to see you again. It has been a while.

My name is Adhi Nagraj, and I am an attorney and the Chief Development Officer at McCormack Baron Salazar. In this capacity, I oversee affordable housing and mixed-income real estate development projects around the country. Based in St. Louis, Missouri, MBS is one of the Nation's leading developers, managers, and asset managers of economically integrated urban neighborhoods.

Since 1973, MBS has been an innovator in community development and urban revitalization, including in TIFIA-eligible transit-oriented neighborhoods. In all, we have built 22,000 high-quality affordable and mixed-income apartments for families, children, seniors, and veterans in 47 cities.

Over the past several decades, MBS has worked closely with the U.S. Department of Housing and Urban Development, other Federal agencies, senators, members of Congress, as well as state and local partners to finance our properties and keep rents affordable for our residents. The primary tool that we, and most other developers, use to finance affordable housing is the Low-Income Housing Tax Credit administered by the IRS.

Every individual project that MBS constructs is owned by a separate special purpose entity that receives an allocation of credits that it sells to private investors who secure limited partnership interests in the projects. In exchange for receiving the tax credits and other benefits, the investor provides the equity that we need to build housing.

In addition to securing equity, MBS and other affordable housing developers often take out private loans from commercial banks or the FHA to finance construction. As interest rates rise, the amount of debt any project can leverage goes down, which is why this inflationary market with high interest rates, increasing construction costs, and a soaring insurance market has been particularly challenging for the affordable housing industry.

For these reasons, we researched with enthusiasm the prospect of utilizing TIFIA or RRIF loan products, essentially low-interest 35-year fully amortizing loans to help close the gaps of our projects around the country. As a national leader in urban infill development, often at transit locations, MBS felt that our affordable housing developments in local communities would significantly benefit from this tool.

However, legislative action is needed to effectively pair TIFIA with LIHTC. Below is a summary of technical challenges and potential solutions:

One is the ratings of partnerships, so again, as has been spoken about, when developers build new buildings, we create special-purpose entities, new limited partnerships or LLCs to prevent cross-collateralization across multiple properties. And so the investment-grade requirement, when you set up a new entity it has no borrowing history, and so that makes us ineligible to use the TIFIA product.

The development community would need a legislative change to this rule in order to use TIFIA funding. One potential solution is to use the underwriting metrics from FHA or another HUD office familiar with assessing risk for affordable housing transactions in lieu of securing a specific rating for a borrower.

Two, is timing: All funding sources have to be legally bound prior to or simultaneously to closing on a TIFIA or RRIF loan. The challenge is that many state housing finance agencies require developers to secure written commitments for all funding prior to applying for tax credits and tax-exempt bonds. It creates a chicken-and-egg dynamic. We can't secure a TIFIA loan without securing tax credits, but we can't secure tax credits without securing TIFIA.

One workaround would be for DOT to underwrite specific deals and issue conditional commitments to projects that would make closings conditional upon meeting other obligations, including securing other financing. This would allow developers to use the TIFIA conditional commitment to secure credits and bonds, and then we can close on all financing simultaneously.

Two other things that I will note in my remaining time, both have been discussed a little bit, one is the role of intercreditor agreements: So as was just mentioned, TIFIA finance is up to 49 percent of your project costs, I would say in the affordable world, with restricted rents and high operating expenses, we actually don't get that close to 49 percent, because there are expensive projects that are near transit, and the NOI and debt that you can leverage is not close to 49 percent—net operating income—sorry. In the market rate world that has higher rents you do—the 49 percent does become a barrier.

We then have a gap in the financing, so we could have a TIFIA loan, project equity, and there is a gap. The gap could be filled by a commercial lender, but then we would have to negotiate intercreditor agreements between a commercial bank and the DOT in order to negotiate things like what happens upon foreclosure, refinancing, surplus cash flow, just all the risks of a commercial lender working with the Federal Government. So we would have to work through that challenge, and it would be great to have more certainty on rules around that.

The last item has to with resyndications. At the end of a 15-year tax credit compliance period in the affordable world, owners such as MBS look to resyndicate or rehabilitate the properties; that is where the investor exits the partnership. We can bring on a new investor, source new equity to rehabilitate the properties, and there is no guidance and regulations around TIFIA, about what to do in year 15 when you want to resyndicate and bring in a new investor.

In conclusion, the TIFIA program could be a valuable tool to accelerate the production of affordable housing apartments across the country at transit stations, meeting DOT's GHG reduction goals. However, the challenges outlined above would need to be addressed before the affordable housing community could utilize the program and better incorporate it into the existing array of financing tools, especially including the Low-Income Housing Tax Credit. Thank you.

[The statement follows:]

PREPARED STATEMENT OF MR. ADHI NAGRAJ

My name is Adhi Nagraj, I am the Chief Development Officer at McCormack Baron Salazar (MBS). In this capacity I oversee affordable housing real estate development projects across the country. Based in St. Louis, Missouri, MBS is one of the Nation's leading developers, managers and asset managers of economically integrated urban neighborhoods. Since 1973, MBS has been an innovator in community development and urban revitalization in 47 cities, having built more than 22,000 high-quality affordable and mixed-income apartments for families, children, seniors and veterans.

As Congress and the Administration have appropriately prioritized infrastructure investment in the post-pandemic era, it is important to keep affordable housing in that conversation. The U.S. has a shortage of 7.3 million rental homes affordable and available to renters with extremely low incomes, according to the National Low Income Housing Coalition. In fact, no state has an adequate supply of affordable rental housing for the lowest-income renters. Housing insecurity negatively impacts job retention, academic performance, and mental and physical health, including the spread of Covid-19 among essential employees just a few years ago. Housing is infrastructure.

As you may know, housing policy in recent decades has moved away from 100% government supported model that isolated economically vulnerable residents to a more resilient mixed- finance, mixed- income model that brings together public, private and philanthropic interests to strengthen communities and uplift households. Putting the financial pieces together for development and sustaining the community once built is as much art as science. And economic fluctuations add great stress to the model.

Over the past several decades, MBS has worked closely with the U.S. Department of Housing and Urban Development, other Federal agencies, Senators and Members of Congress, as well as with State and local partners, to finance our properties and keep rents affordable for our residents. The primary tool that MBS and most other developers use to finance affordable housing is the Low-Income Housing Tax Credit, administered by the Internal Revenue Service. Every individual project that MBS constructs is owned by a separate special purpose entity that receives an allocation of credits that it sells to a private investor who secures limited partnership interests in the project. In exchange for receiving the tax credits and other tax benefits, the investor provides the equity needed to construct the building.

In addition to securing equity, MBS and other affordable housing developers often take out private loans from commercial banks to finance construction. As interest rates rise, the amount of debt that any project can leverage goes down, which is why this inflationary market with high interest rates—compounded by increasing construction and labor costs and a soaring property insurance market—has been particularly challenging for the affordable housing industry.

For these reasons we researched with enthusiasm the prospect of utilizing the TIFIA or RRIF loan products—essentially low interest 35-year fully amortizing loans—to help close the gaps of our projects around the country. As a national leader in urban infill development, often at transit locations, MBS felt that our affordable developments and local communities would significantly benefit from this financing tool.

However, our research found that TIFIA didn't pair well with the Low Income Housing Tax Credit program due to incompatible rules at DOT and IRS. Legislative action is needed to effectively pair TIFIA with LIHTC.

Below is a summary of technical challenges with potential solutions:

RATINGS OF PARTNERSHIP

Under TIFIA rules, borrowers need to have an investment-grade rating. However, in the LIHTC industry, developers create special purpose entities that own individual affordable housing projects and have no borrowing history, therefore making them incapable of securing investment-grade credit ratings. Under the RRIF program the rating doesn't have to be any specific grade so this is less of an issue, but RRIF has a much narrower geographic focus and therefore fewer projects qualify. The development community would need a legislative change to this rule in order to use TIFIA funding. One potential solution is to use underwriting metrics from FHA or another HUD office familiar with assessing risk for affordable housing transactions in lieu of securing a specific rating.

TIMING

All funding sources have to be legally binding prior or simultaneously to closing on TIFIA/RRIF loans. The challenge is that many state housing finance agencies require that developers secure written commitments for all funding prior to applying for tax credits. It creates a chicken-and- egg dynamic—we cannot secure a TIFIA loan without securing tax credits, yet we cannot secure tax credits without securing a TIFIA loan. One work around would be for DOT to underwrite specific deals and issue "conditional commitments" to projects that would make closings conditioned upon meeting other obligations, including securing all other financing. That would allow developers to use the TIFIA conditional commitment to secure tax credit and close on all financing simultaneously.

INTERCREDITOR AGREEMENTS

The restrictive RRIF program finances up to 75% of eligible costs, and the TIFIA program finances 49% of eligible project costs. Under RRIF, developers can raise the capital stack 75/25 debt to equity. However, since TIFIA can only provide a loan equal to 49% of project costs, projects often need another lender to help finance the transaction. There's a high likelihood that incorporating a commercial lender into the capital stack will create problems, given the need to negotiate intercreditor agreements between DOT and the subordinate lender, negotiating for example events of default, split of surplus cash, and foreclosure. Additionally, commercial lenders will not be able to meet the DOT maturity terms which means the commercial banks will have a shorter term, and a repayment schedule or residual refinancing risk needs to be negotiated. Refinancing the subordinate loan in the middle of term of the senior DOT lender creates refinancing risk due to interest rate uncertainty.

YEAR 15—RESYNDICATIONS

At the end of the 15-year tax credit compliance period, owners such as MBS often look to resyndicate properties. During this process, developers secure new tax credits, sell them to a new limited partner, and generate additional tax credit equity needed to pay for the costs to rehabilitate the property and extend the term of affordability. However, the TIFIA rules don't explicitly allow for a refinancing during the 35-year loan term, which would need to be addressed given the frequency and need for properties to be resyndicated after the compliance period ends.

CONCLUSION

The TIFIA program could be a valuable tool to accelerate the production of affordable housing units across the country. However, the challenges outlined above would need to be addressed before the affordable housing development community could utilize this tool and better incorporate it into the existing array of financing tools, including and especially the Low-Income Housing Tax Credit program.

If you have any questions, please email me at adhi.nagraj@mccormackbaron.com, or call me at 510–289–1502.

Sincerely, Adhi Nagraj
Chief Development Officer
McCormack Baron Salazar

Senator SCHATZ. I want to thank all of our testifiers, really good input here. And I am probably going to do a second round. But I want to sort out of all the recommendations that you are making, what can be done administratively, and what can—even in that category, what would require a rule change rather than just a process change, and then what needs a statutory change?

So, Dr. Farajian, I think you are up to explain which ones of these recommendations need a legislative action, and which ones are kind of on the administration? On the investment-grade rating requirement that is statutory; am I right about that?

Dr. FARAJIAN. Yes.

Senator SCHATZ. Okay. So that is on us. It sounds like, although NEPA, Buy America, and Davis-Bacon are clearly statutory, there is some administrative flexibility to at least make it work better. Am I getting that right?

Dr. FARAJIAN. That is correct.

Senator SCHATZ. Okay. And tell me about the amortization period under a TIFIA loan, we were talking earlier, it is 30 years, or it may be up to 40, or how does this work?

Dr. FARAJIAN. It is typically 30- or 35 years, in addition to the construction period that could add up to 40 years, for example, if you apply 5 years for construction.

Senator SCHATZ. Do you mean after the completion of construction, so that the loan period starts when the construction is complete?

Dr. FARAJIAN. Yes. So we don't count the construction years. If you count 5 years of construction, 35 years of the loan payment period, 40 years total amortization.

Senator SCHATZ. And Dr. Loh, you were saying that is a problem?

Dr. LOH. It is only attractive to some kinds of developers. You know, I would say for some developers, being able to amortize over a longer time period is really attractive. So for example, for the public sector who is probably going to get involved in a lot of these kinds of projects anyway in order to credit enhance them and meet that requirement. But in conventional commercial real estate, typically projects refinanced at the end of the construction period, and then they are looking for a ten-year loan.

Senator SCHATZ. And I am just picturing a capital stack that includes like a 30- to 35-year amortization period, and then the remaining, say, 51 percent that is at a ten-year amortization period; can that even function? Can you sort of refinance the TIFIA loan and consolidate after the project is built? Does this work?

Dr. LOH. Yeah, I think TIFIA loans can be refinanced anytime.

Senator SCHATZ. Okay.

Dr. FARAJIAN. They can be refinanced without any penalty. So that is one of the flexibilities we provide. And also, we are flexible in terms of the term. Some borrowers want a 10-year loan or a 15-year loan.

Senator SCHATZ. Got it. Okay. Not a problem for us to solve. Template documents sound very smart. Can you please report back to the committee about that? The loan-to-cost threshold, is that also statutory?

Dr. LOH. Yes, that is statutory. And I think that, you know, what I am proposing here is just to synchronize TIFIA and RRIF. You know, why favor projects that happen to be near a railroad station as opposed to a light rail station? I think in a normal person's mind, they think that these are rail stations.

Senator SCHATZ. I am the T–HUD Chair, and I am not sure I could describe the difference between the two of those things. Can we go back to sort of how difficult the investment-grade rating requirement is, Mr. Nagraj? Just talk to me about how that basically doesn't work in the marketplace.

Mr. NAGRAJ. Sure, it doesn't work. So you know, if we are looking to develop 100 units of affordable housing or mixed-income housing somewhere in the city, we would set up a new limited partnership. We would source debt and equity, hire the architects, do the environmental testing, all the work that we need to do. That entity has no, you know, 10- 20-year borrowing history. It is a new special purpose entity that was set up just to own and operate one building.

So it becomes a non-starter. And we do that purposely because we don't want to cross-collateralize 100 units here, with 100 units in Baltimore, and then all of a sudden to make each other at risk. So we very purposefully set up special-purpose entities to individually own, when we do that, of course, there is this inability to have any kind of investment grade.

Senator SCHATZ. So basically, the only way you can do this is if you are big enough to already be investment grade and you are doing a number of projects, or you are a county?

Mr. NAGRAJ. That is right. And I again think about the FHA model of, when we propose a project to FHA, they say, hey, what are your costs? What are your streams of rents? Are your rents supportable? Is your debt supportable? You know, kind of prove to us that this project can operate successfully long term. They don't look at the borrowing history of the borrower; they look at the validity and the viability of the actual project.

Senator SCHATZ. And that is to say nothing about the sort of administrative burden, time, and money it takes to actually get your credit assessed even if you could, because this requirement, which sort of exists for counties, you know, by the way, on the tribal side, this is also a problem because some tribes, you know, go to Wall Street and make their pitch and get their, you know, A-minus or B-plus credit rating or AA credit rating, but a lot of them are too small to go in and do that kind of analysis and demonstrate that kind of creditworthiness. So this is like, you know, in multiple ways not working.

Dr. Loh, you were going to say something?

Dr. LOH. Yeah, I mean, this is about protecting the public from risk which, as a taxpayer, I am in favor of, but, you know, the question is: how much risk? If a trillion-dollar infrastructure project defaulted, that does feel like that would be kind of bad. But these real estate projects are much smaller, and requiring an investment-grade rating is like crushing an ant with a boulder in terms of, like, congratulations, the ant is dead, the public is protected from risk. But you could have gotten it with something much smaller and more practical.

Senator SCHATZ. Or just like normal underwriting?

Dr. LOH. Correct.

Senator SCHATZ. Okay. And that is the point I think you are—yes.

Dr. LOH. Yes. I am not proposing, do not vet these projects, and do not protect the public from risk. Instead, underwrite the way that all other real estate is underwritten?

Senator SCHATZ. Right. Which is, you look at the project and see whether it makes any sense. What about this requirement that the TIFIA money be sort of the last dollar in?

Dr. Farajian, is that something you can fix, or is this all going to end up being on us to pass a new bill that includes all these technical fixes? But I am trying to sort out which of these things you think the Department could fix without our intervention?

Dr. FARAJIAN. The requirement that we have is to make sure that at the time that we close a loan, the project is fully funded. So there are no more gaps in the project. Because there have been cases in the past that we would underwrite a loan, we would approve the loan, the project would start construction, but there is still a gap, and the project cannot be completed. But that doesn't mean that we would like to be the last dollar spent on the project. We can be the first dollar spent on the project. By the time that we close a loan, we would must see the project fully funded.

Senator SCHATZ. Right. But if those requirements exist for other parts of the capital stack, then aren't we actually stuck?

Dr. FARAJIAN. We can actually work with them to close simultaneously. So we work with other lenders to close at the same time, to make sure that they know that our loan is being closed, and we know that their loan is being closed.

Senator SCHATZ. Vice Chair Hyde-Smith.

Senator HYDE-SMITH. Thank you, Mr. Chairman. As I noted in my opening remarks, the TOD has not gained nearly as much traction in rural areas but has seen growth in larger, more urban population centers as a means of creating connected communities. But my first question for all three of you, the panel, is kind of twofold. What unique challenges do less densely populated areas face when considering a TOD project? And how can the Federal Government assist small or midsize communities in ensuring that the benefits of TOD are not just constrained to urban areas? And I will start with whomever.

Mr. NAGRAJ. Thank you for the questions. Those are real challenges. On the first question around unique challenges to less densely populated areas, infrastructure costs are significant. So when we are building in more remote locations around the country, just the trenching, the power, the water, all the costs that are not going to yield an immediate return on your investment because you have got to do a high amount of infrastructure before you can go vertical.

So essentially, finding a subsidy, or finding some source to pay for that infrastructure cost, because essentially as we build around the country, and in Huntsville, Alabama, or Winston-Salem, North Carolina, we are creating new roads, and streets, and utilities that didn't exist anymore. So finding a source to help finance that would be critical, and because only once we do that can we go vertical. So I think that would be a critical piece.

Senator HYDE-SMITH. Very good.

Dr. LOH. I would just like to jump in and add that, you know, what rural communities want is to be connected, you know, connected to their larger regional economies and to the national economy. They don't want to have to leave and go somewhere else in order to be connected. And part of maintaining, for example, you know, rail service at smaller stations in more rural areas is to do this kind of place-making, real estate land development around the station in order to make sure that the station has demand, and remains a vibrant anchor that can justify the rail service that preserves connections between communities that have historically been connected.

Senator HYDE-SMITH. Thank you. Very logical.

Dr. FARAJIAN. Thank you for that question, Senator. A couple of issues that I hear from rural communities I can quickly summarize for you. One is, we have a program called the Rural Project Initiative, under which we cut the interest rate from Treasury rate, which is the regular rate that we charge, to half of Treasury rate. That is very popular with a lot of rural communities. We have financed many projects since 2019 when we rolled out of that initiative.

We have ten projects right now in our Rural Project Initiative pipeline, four of them being TOD. The biggest challenge that I am hearing from them is a legislative requirement that those projects to receive half Treasury rate, those projects need to cost less than $100 million. And $100 million years ago would have been a substantial amount of money for a lot of these projects. Today, a lot of these projects are hitting that threshold. That is a big challenge for them.

The other challenge is we can waive the requirement for them to reimburse the Bureau's advisor cost, and we pay for those advisor fees out of our TIFIA subsidy budget that we receive, but as long as the projects cost less than $75 million. That is another challenge, that a lot of these rural communities, they have to pay upfront for the Bureau's advisor fees that, unfortunately, we cannot pay for, even though we have the budget for it, because of that [$75 million total project cost] limitation.

The third challenge is having capacity at the local level to comply with Federal requirements, for example understand how to go through NEPA process, understand how to go through underwriting process. We have a couple of technical assistance programs to help those projects; Innovative Finance and Asset Concession Program I mentioned earlier, Thriving Communities, Regional Infrastructure Accelerator Program.

The experience has been very good. We are working with a lot of rural communities, but of course, there is more need out there than what we have so far met. So we will be happy to expand those programs and work with more communities to build more capacity at the local level.

Senator HYDE-SMITH. Very, very helpful.

Mr. NAGRAJ. Excuse me?

Senator HYDE-SMITH. My next question is that—oh. I am sorry?

Mr. NAGRAJ. Could I make one more? Sorry, to interrupt you.

Senator HYDE-SMITH. Absolutely.

Mr. NAGRAJ. Just one more point on this, that I am reflecting back on some projects we are looking at in Missouri, and other kind of lower, lower-dense communities, and that is, I think it is worth revisiting the transit requirements and specifically what we are seeing is this — the term "intercity bus", and some of the requirements that we have, they have kind of curious definitions. And I know this is a little bit in the weeds, but it is super important. And I think it prevents projects from either qualifying or not.

The definition around intercity bus includes bus routes where 50 percent or more of the passengers do not make a same-day return trip, which is curious, if we are trying to promote TOD and greenhouse gas reduction, the fact that we are trying to incentivize people not making a return trip is, I think, too restrictive. And when we look at the definition of bus rapid transit, fixed-route bus systems that operate at least 50 percent of the service on a fixed guideway, so requiring a fixed guideway or a separated lane, when I think about a lot of rural communities, it is just intercity buses, I think if we eased up on those definitions, it would open up the door for a lot more eligible projects.

Senator HYDE-SMITH. Thank you, Mr. Chairman. I am over my time.

Senator SCHATZ. Senator Reed.

Senator REED. Well, thank you very much for your excellent testimony. And Dr. Farajian, thank you for coming up to Rhode Island, meeting with state leaders, and talking about how we can really get moving on this project. And I have to commend Dr. Loh, and Mr. Nagraj, for the wisdom of going to Brown University. It has eminently been demonstrated here today. You are well educated.

It strikes me, Dr. Farajian, that HUD has been in the business of housing, affordable housing, for a long time, the FHA. Are we trying to coordinate and essentially make your regulations look a lot like their regulations? I know there are some exceptions, but is that an ongoing project?

Dr. FARAJIAN. Thanks for that question, Senator. Yes, we have been talking to HUD, working with HUD, trying to learn from them. As you said, they have a lot of experience in this field, it is new for us. We are trying to learn as much as we can. There are differences in terms of legislations we have, in terms of regulations we have, and then some of our policies and regulations were not developed or drafted for TOD, and we need to go back and revise them. So we are going through that process now.

Senator REED. Yeah, it seems that we have a responsibility, just a general sort of macro view and we are talking about housing here, we are not really talking about developing transportation facilities; that they have to be there, so this should be about housing. And if we simplify it to make it look just like, or as close as we can, to FHA policy, et cetera, I think we will be in a much better position; is that fair?

Dr. FARAJIAN. Yes, I agree with you on that. And we are doing our best, to the extent possible, to be close as the process proceeds.

Senator REED. And we have to do our best too.

Dr. Loh, your comments, and then Mr. Nagraj; do you have any comments?

Dr. LOH. Yeah. I mean, I am certainly in agreement. I think that HUD does have a ton of experience at protecting the public interest while at the same time helping these projects actually happen.

Senator REED. Thank you.

Mr. NAGRAJ. Yeah, I was going to say that FHA has a lot of sophisticated staff who are used to underwriting these projects. FHA also works with servicers, kind of third-party companies opposed to FHA staff working with a hundred or more, hundreds of developers and developments around the country, they contract with individual companies and then the contractors' contract with us, so it reduces the administrative burden.

Senator REED. Right. And there is an outreach program essentially, so that some developers might not be aware of that, because there is a transit facility nearby they could participate in this, but with that outreach, they would. One other issue I think, Mr.—excuse me——

Mr. NAGRAJ. That is all right. It happens all the time; Nagraj.

Senator REED. Can I call you Adhi, [Aad-hi]?

Mr. NAGRAJ. Adhi.

Senator REED. The reason we know each other from 25 years is he was in the city here in Providence, Rhode Island, so we are all pals. Should we put some emphasis or incentives for affordable housing? Right now there is nothing in there, so essentially someone could come into you and say: I want to build luxury apartments $1.5 million until you get to the top floors. And you would say, okay, well, let us go. Should we have some affordable housing emphasis, either incentives or rules?

Mr. NAGRAJ. I certainly think so. I think so. According to the National Low Income Housing Coalition we have a shortage of over 7 million homes for low-income people. Low-income housing impacts job retention, academic performance, mental health, physical health so I think we have to have those kinds of incentives.

There have been studies in California with all the TODs around there that low-income people near transit have higher transit usage than wealthy people, market rate people, and it is because market rate people have a lot more options between private cars, and Uber, and Lyft, than do low-income people. So I think we can enhance our GHG reduction goals by including some affordability requirement on these developments.

Senator REED. And your comments, this is a presumption, I don't know, but in rural areas you would more likely not find luxury—I mean, rural-rural areas luxury apartments. That is the place where you would probably have a real demand for affordable housing; is that accurate?

Mr. NAGRAJ. That is right. We work in a lot of communities where there is need for housing but the incomes just haven't caught up with the need, and so those are communities, especially where we need to support the middle-class jobs, the lower-class jobs, and people who do need to commute a long way to their employers. So I think it is critically important there.

Senator REED. Very good.

Dr. LOH. Can I add just a little bit to this?

Senator REED. Yes, ma'am, please.

Dr. LOH. So what I would encourage the subcommittee to consider, is just given that this program has had trouble achieving escape velocity in producing any housing, that just be careful about making it more complicated, to making the projects that would use the source of financing more complex. That said, I do think there clearly is a special case for more generous terms for projects that include affordable housing.

But I have heard a lot of creative ideas about how the Build America Bureau is thinking about being more generous, you know, like for example, reducing the rate below the Treasury rate for certain kinds of projects. If the subcommittee will consider increasing the loan-to-cost ratio for TIFIA, perhaps that could be tied to increase affordability.

Senator REED. No, I concur, a simplification, that is why I am suggesting we look at what HUD does. It has been in the field a long time. And we try to be just like that so it is simpler for the developer. And also the Buy American versions, the chairman mentioned, probably and you commented probably not necessary given the type of construction we are doing, and the cost we have to maintain, so, "Keep it simple, stupid", is my rule. Thank you.

Mr. NAGRAJ. And Senator, if I may add? I would just like to continue on that thought, that the rural project initiative that I mentioned earlier have a Treasury rate that has been very successful. It is for a policy that Congress deemed necessary, and we have a lot of interest in it. A similar model can be used for other type of policies that Congress wants to promote.

Senator REED. Thank you very much for that. Thank you. Thank you, Mr. Chairman.

Senator SCHATZ. Senator Hyde-Smith.

Senator HYDE-SMITH. I just have one more that I am going to do it the same way. The TOD projects are primarily driven by the local entities due to the need for land zoning and things like that. But the success of combining TOD and affordable housing is dependent on these local relationships. And how can transit agencies better partner with housing authorities, developers, and other stakeholders at the local level to increase the supply of affordable housing? How can we improve that?

Dr. FARAJIAN. I can go first. Well, thanks for that question, Senator. And thanks to all the good work that members of the subcommittee and committee put into passing the Bipartisan Infrastructure Law. We have got a couple of very effective tools that I mentioned in my testimony, one of them being the Innovative Finance and Asset Concession Grant Program, which right now we are evaluating the applications that we have received.

It allows us to provide funding to transit agencies, or other public project owners, project sponsors, like municipalities and DOTs, that own assets that are underutilized but have potential for better utilization.

The goal is to scan those assets, screen them, identify the ones that have potential for further development, create a database of those assets, and share them database with public and private companies that could then create partnerships with public entities and develop them. Most of those assets, by default, are going to be located around transit stations, because those assets that need to be scanned under the program to be eligible for TIFIA financing.

So we saw a lot of interest. I am very optimistic about the program. Of course, it is new, we are just establishing it, we are rolling it out, but we saw significant interest. In the discussions that we have had with many transit agencies, they have highlighted to me that while they have assets, many agencies don't know where those assets are, and what is the true value of those assets, what can be done. So hopefully through this program, we will be able to unlock value from some of those assets.

Senator HYDE-SMITH. Thank you.

Dr. LOH. I will just pile on there and say that transit agencies, systematically, are underfunded to achieve their core mission of delivering transit service. And so it is really difficult for them to think even bigger than that core mission and get at this integration between land use and transportation, even though commonsense indicates, man, these transit agencies have all these really valuable assets, why don't they just develop them?

You know, this is a capacity issue regarding achieving their core mission. And so any way to uniquely support additional capacity, especially bringing expertise and capacity from the private sector, which does the vast majority of real estate in the United States, to these kinds of public assets, is the solution that we need right now.

Otherwise, you know I think that the challenge of transit-oriented development is that costs are systematically higher. The infrastructure costs are higher because a lot of this land is needed to continue serving a transit purpose, even as it also makes sense for it to serve a housing purpose. And so that systematically makes the projects more expensive.

There is pressure on these projects to include significant ability because we know that is who needs to live near transit the most. But once again, all that does is increase the gap between feasibility and the project's cost.

So anything that the Federal Government can do in order to provide both the capacity and the resources to close that gap, I believe that the public will be more than paid back any broad public benefits that will come from better integrating land use and transportation in terms of changes to travel behavior and strengthening housing markets.

Senator HYDE-SMITH. Okay.

Mr. NAGRAJ. If I could just add one more thing. Just a concrete example, in the Bay Area, the Bay Area Rapid Transit BART System, secured a large planning grant to look at all their stations and look to see what are financially feasible TODs that they could have at their individual stations and what should the affordability requirements be,

Frankly, a really difficult thing is, what to do with the parking lots, because people do get upset if they lose their parking, and how to finance replacement parking. And so they secured a large planning grant and that it was transit and planners working together, because I agree at a lot of these transportation organizations, keeping their transit systems alive, especially right now, is our primary challenge, and it is a daunting 25-hour task and the partnership work.

But as we worked around the country, when you talked about partnership with agencies right here, or close to here in Baltimore, at Perkins Homes, in Atlanta, in Syracuse, all these are communities where housing authorities and cities are working together to plan communities to accommodate the divergent needs of a community, because no community has is a monolith.

But they are able to spend time on the planning, and the outreach in order to make sure that the agencies and the people are on board, so that we can, we can build up. And because of the challenges that Dr. Loh just talked about, that is where feel like, if we could unlock the TIFIA financing scheme it could help overcome a lot of these challenges on TOD that we don't face in projects that are not near transit.

Senator HYDE-SMITH. Thank you all. Thank you, Mr. Chairman.

Senator SCHATZ. Senator Van Hollen.

Senator VAN HOLLEN. Thank you Chairman Schatz, Ranking Member Hyde-Smith.

Thank all of you for your testimony. I have been trying to keep one ear on your testimony on C-Span before I got here, but I apologize if I sort of retread territory you have already covered.

But in my State of Maryland, the Maryland Department of Transportation has a growing interest in pursuing TOD projects, generally, and it is reviewing opportunities for TOD at current and future stations along existing and future transit corridors, including the future West Baltimore Redline Station in Maryland. We are trying to revive the Red Line in Baltimore, and that recently received a TOD Planning Grant.

So Dr. Farajian, as Maryland, and Maryland DOT specifically, evaluates these TOD opportunities, what should we be factoring into the decision process when considering whether it is a good TIFIA candidate or not? And what is the benefit to Maryland for using the TIFIA Program for financing these projects, versus the private market or other existing state financing options?

Dr. FARAJIAN. Thank you for that question, Senator. Maryland is not unfamiliar with our programs. We have closed a couple of loans in Maryland before. I believe on Purple Line, we have two loans right now, the initial loan and the subsequent loan we provided, as well as a couple of other projects. We have worked with Maryland DOT closely, we are actually in discussions with them on various issues, we will be more than happy to work with them.

My recommendation to them is to come to us and talk to us about those projects as early as possible. I have experts that will be able to walk them through some of the requirements, and make sure that they don't do anything on those projects that would preclude them from being eligible for TOD loans.

I mentioned earlier we have a couple of grant programs that I am not sure if Maryland has applied to the Innovative Finance and Asset Concession Grant Program that we are evaluating now, but the new round of course is going to go out as soon as we get the fiscal year 2025 budget approved. I would definitely suggest to them if they haven't applied, to apply for that. And we work with many counties, including Montgomery County.

We just gave them a grant to establish what we call a Regional Infrastructure Accelerator in Montgomery County. We will be more than happy to work with them, because as you mentioned, there are a lot of opportunities in Maryland, a lot of good projects. And my staff and I would be happy to meet with anyone that you think would like to discuss any of these opportunities in more detail.

Senator VAN HOLLEN. I appreciate that, and they may well be listening. We will look forward to putting that you two in touch. As you say, I mean, Maryland has used TIFIA loans before the Purple Line you mentioned. I don't believe MDOT has used a TIFIA loan in connection with the TOD before. This is a more innovative new approach, and that is why we look forward to, you know, meeting to get a better sense.

And I guess partly because this is a newer idea, it is an undersubscribed program, which means there is a lot of opportunity here for those who are sort of paying attention.

But what can Congress do to better help communities, states, and Montgomery County, other counties in Maryland, other places around the country, learn more about and access the TIFIA Program at the Build America Bureau? So how can we make this more attractive to transit agencies?

Dr. FARAJIAN. There are a couple of factors that we can propose. Some of those factors require legislative change, especially related to TOD projects. I believe the number one factor that everyone here agrees is the rating requirement that is preventing a lot of projects to be eligible for TIFIA loans; that is a legislative requirement.

For smaller projects, sometimes the size limit of the project can make them not feasible because some of the fees are fixed fees; for example, conducting a NEPA study, whether a project is a $50 million project or a $500 million project. For some of those projects, providing more incentives and initiatives through Congress that would be helpful for them; being able to waive, for example, their fees, or being able to provide lower interest rate to some of those projects.

We do provide a lot of technical assistance that has been very successful at the Bureau. Our TOD project pipeline has grown significantly. The overall pipeline for Bureau has grown significantly, from almost $4 billion back in 2019, now we are at about $40 billion today. But we will continue the outreach, we will continue capacity building at local level.

The other thing that I can tell you is what we are doing now at DOT is to make sure that we streamline our process, procedures, and everything that we can do internally to make sure that this new program, TOD, can fit within the broader programs that we have that were initially develop for highway, transit, or rail projects, not necessarily vertical development. That is an ongoing battle, ongoing process, so we need to go back and change some of the regulations and policies that have been in place for quite a long time to make sure that they are not putting additional burden on some of these TOD projects.

Senator VAN HOLLEN. Well, thank you for that, and I think we can sort of break these barriers and impediments into sort of two categories, well maybe three: One, is just getting more information out about these; two, is streamlining the process internally, but then you mentioned some of the legislative barriers that require the new laws, for example, with the rating systems.

So if I could just ask our other two witnesses to comment on some of those suggestions for streamlining and improving this program and whether you have any additional thoughts as we move forward?

Dr. LOH. Thank you, Senator. You know, I think this is the right question to ask. Requirements that make sense for billion- and trillion-dollar infrastructure projects should apply to those, do not necessarily translate to real estate projects that are much smaller but are a critical piece of those billion- and trillion-dollar infrastructure projects being successful, right? The Purple Line doesn't work if it is a Purple Line to nowhere.

Senator VAN HOLLEN. Right.

Dr. LOH. And we want every station to be somewhere, and it is always possible, of course, technically possible, to comply with Federal requirements, but if that results in projects where the percent of the project costs that his lawyer is getting paid is as big as the percent of project costs that is low-income households having somewhere to live, that also has great transportation that, while great for lawyers, is unfortunate for the public.

And so rightsizing the Federal administrative requirements on these projects is something that I think, ultimately, does serve the public interest and does not expose the public to more risk.

And so, Buy America is a great example of that in the context of real estate. We want this to be great housing, right? Really good quality, built to contemporary building standards, but the kinds of heating and cooling systems that are used in the best quality LEED buildings now are only manufactured abroad.

We aren't at the point where we have created a market for that in the United States. When we are ready, and that can happen, that will be great, but trying to force it to happen, trying to move the market one individual transit-oriented development project at a time, that doesn't work, and it doesn't scale the same way that it does work when you put those kinds of market-moving policies into a trillion-dollar infrastructure project.

Senator VAN HOLLEN. Thank you. I know, Mr. Chairman if you can keep it really short, your response.

Mr. NAGRAJ. Sure. I will keep it really short.

Senator VAN HOLLEN. Thank you.

Mr. NAGRAJ. McCormack Baron Salazar is working at Perkins Homes, just next to Downtown Baltimore, Fells Point, 800 units of mixed-income housing with the city, and the housing authority, and the state. And so we are in the middle of redeveloping the public housing, and what we are seeing with this densification is area median incomes are rising, it is kind of what we want in redeveloping a very distressed, low-income community, and the need for mobility is increasing.

So we are seeing, as we are kind of creating a new little mini-city in this otherwise disinvested neighborhood, the needs of the residents are growing. They need to be more mobile. I hope people see it as a false choice between transit and housing. The more housing we build at transit stations, the more it is going to increase ridership, and the more fare revenue is going to increase from the transit stations.

So we do feel like this is synchronous. We talked earlier about the transit usage of low-income folks being higher than those with means because low-income folks don't have a ton of options, unlike folks who own cars, and Lyft, and Uber everywhere.

So we think that that synergy is really important, and are hopeful that we can work this out because that spread on loans is massive between a TIFIA loan and a conventional loan. It can yield millions of dollars of savings, and that savings, while we don't want it to go to the lawyers, and no offense to the lawyers, could expedite the acceleration of new housing being built.

Senator VAN HOLLEN. Well, thank you. Thank you for mentioning Perkins Homes. I am glad you are working on that project. And really thank all of you. It has been very informative.

Mr. NAGRAJ. Thank you.

Senator VAN HOLLEN. Thank you.

Senator SCHATZ. Thank you, Senator Van Hollen.

To close, you know, I think over the next year or so, I think the economy is doing fine. I think the real estate economy is not doing fine because of the interest rate environment. And I think this is the exact right time to start deploying these TIFIA loans for housing, because they are countercyclical, because of the spread between a commercially available loan and a TIFIA loan is massive at this point.

And so our timing, although it is arguably 9 years delayed, some of this, you could be subject to criticism. Some of this was the previous administration sandbagging the Federal Law, but it is just worth pointing out that it is sort of go-time.

And so along those lines, HUD has standard underwriting procedures. Dr. Farajian, why wouldn't we just sort of borrow those as opposed to reinventing the wheel here?

Dr. FARAJIAN. Thanks for that question, Senator. You are absolutely right. They do have underwriting procedures, we have been talking to them. There are some administrative challenges in terms of borrowing everything that they have, or even having access to everything that they have. We are working through some of those challenges, two different agencies, different processes and procedures. We are working with them, as I mentioned earlier, we are collaborating with them, but we have got to be mindful of some of those challenges that have slowed us down.

Senator SCHATZ. I am not sure what you are talking about. It sounds like you are getting resistance, but I can't tell whether it is sort of interagency cultural resistance or like an actual problem.

Dr. FARAJIAN. It is just when two agencies are trying to make two programs that are different and separate from each other, work, and get together and make things work; there is a need to have an interagency agreement, there is a need to get the lawyers involved and make sure that the information that is being shared is all being shared in the right way, in the formal way. So there are steps that we need to go through—when we are trying to go through this.

Senator SCHATZ. Sure. But we are not talking about private information; we are talking about a sort of template for analyzing whether something is a viable project. And I have a hard time believing, since you are in the Federal Government, and so is the other agency, that I get that you need to work it out, but you know, I will follow up through staff and directly with both Secretaries, but I just don't want us to get stuck.

And I know how hard some of this stuff is, but not for good reasons. There may be good reasons that some of this HUD stuff doesn't work at DOT fine, but underwriting procedures, you don't make them up, they are not like boutique-ey little things where you say: Well, this is how I do it, you know, from the transportation perspective.

Evaluating the viability of a project is a thing that people do, and mostly those things ought to rhyme. My understanding is a bunch of these projects potentially have an FHA portion of their capital stack, and potentially a TIFIA portion of their capital stack. I am getting nods, correct?

Dr. FARAJIAN. Yes.

Senator SCHATZ. Okay. So if that is true, and something comes in through FHA and Ginnie Mae, hasn't the Federal Government established its creditworthiness, on the creditworthiness of the project? And do we need DOT to do its own analysis and require somebody to go to S&P, or Moody's, or whomever? Or can the fact that something has moved through this other Federal process and we have decided that is basically investment grade, some of the lowest risk stuff around, why wouldn't that suffice in terms of meeting the statutory requirement?

Dr. FARAJIAN. Well, the statute is very clear on requiring the borrowers to have the rating agencies to rate the TIFIA loan, so that is why we have to require it.

Senator SCHATZ. Do you agree with that, Mr. Nagraj?

Mr. NAGRAJ. I agree.

Senator SCHATZ. I think overheard that you are.

Mr. NAGRAJ. I agree that the statute says it. I do, as you are talking, you know, as a practitioner, I feel like there is kind of a small idea, and then a big idea. Maybe the solution was somewhere in the middle. The small idea is kind of coordination with a different department using, as you said, the same set of Regs and documents, and pro formas, and one set of lawyers.

The big idea that I brainstormed was, you know, if there is a joint, you know, TOD office and there are folks from HUD, FHA, and DOT that are all kind of—and not to create a different bureaucracy, but I think it would kind of accelerate and create a super agency that could be the coordinating entity that developers and developments around the country work with.

That for me is a bigger idea. It is a bit of consolidation, or kind of a super agency. But somewhere, whether it is kind of mere coordination or the creation of a joint TOD office, I think there has to be one set of docs, one set of Regs, so that we are not getting underwritten several times by different public agencies.

Senator SCHATZ. I am 100 percent sure I can't pass a super agency in this Congress, so let us go for a working group. In all seriousness; I think we don't need a new statute, and a new architecture, and a new law, we could just start working together better, and certainly both Secretaries could say: You guys are going to work together, and here is the team. It can be informal, it can be a task force by memorandum, whatever, but I like the idea.

And I am not quite satisfied, Dr. Farajian, that we couldn't meet the requirements if another executive agency is evaluating this, and determining its creditworthiness, so I am not a lawyer, but I think we should try to put our heads together and figure out if there is a work around here, especially in the short run.

Dr. FARAJIAN. Senator, I will take that back, and have the lawyers look at that.

Senator SCHATZ. Okay. And if they have a bad answer, don't give it back to me. And certainly don't put it in writing. I am just kidding.

But look, I'm thinking about legislative intent, right, we are saying the Congress said: Oh, and make sure this stuff is creditworthy. I am not sure we are opining about the particular mechanisms. Now, sometimes the plain language of the statute doesn't give us a lot of room to maneuver, but sometimes it does.

And so I just think we need to press on this, especially even if we were able to make some of these changes, we still have to work them up and go through the legislative process. It could be, optimistically, 5 months, it could be, you know, pessimistically, way more than that.

So we have got to work on parallel tracks to fix some of this stuff administratively. You know, I hope for the best and plan for the worst.

The final question I have is just on the pipeline. You said there are, I guess, 20–23 projects in the current pipeline; is that correct?

Dr. FARAJIAN. It is changing every day, and it depends on the definition of "pipeline". We have received 48 letters of interest.

Senator SCHATZ. Okay. So that is actually what I was going to ask because, like, you know, I deal with the great people at the Hawaii Housing Finance Development Corporation, and sometimes they have a spreadsheet that is like: Look, 28,000 units, right. And then you kind of go like: Well, where are they? Do they have their entitlements? Do they have their commercial loan? Do they have a site control? Do they have all the rest of it?

And so, what you are saying is the pipeline could be very early: Hey, we would like to learn about this, or it could be relatively far along. Is that the way I should understand this?

Dr. FARAJIAN. The 48 projects have submitted letters of interest, which is the first step to start our process.

Senator SCHATZ. Okay.

Dr. FARAJIAN. They are a little bit more developed than some of the other projects that have just talked to us and said that we have an idea. So we have many more projects that have talked to us. They said, we have an idea, but they have not submitted anything in writing yet.

Senator SCHATZ. How many are close to being consummated?

Dr. FARAJIAN. Twenty-four out of those 48, we have assigned what we call “project development leads”. These are individuals within Build America Bureau, a single point of contact, who is working with them very closely.

Senator SCHATZ. So they are case managed sort of one by one?

Dr. FARAJIAN. Yes, one by one, to help them, as I mentioned earlier, to maneuver through some of those challenges that we know exist for those projects.

Senator SCHATZ. So let us just talk about throughput, so it is 48, or it is 20-something, or whatever; by the end of the year, what is an optimistic number of projects that will have gone through this pipeline and all the way to getting a loan?

Dr. FARAJIAN. So we just closed one deal. We have two other projects in credit worthiness right now, that we are actively underwriting loans for them. It is hard to say whether they close a loan or not, because the ball is sometimes in their court, and making sure that they can get things done on their side. But I believe one of them, which is a housing project, has a very, very high chance of closing at this point.

Senator SCHATZ. So I guess my question is, I am asking you for your intuition. And if I were you, I would be a little nervous about supposing what might happen, but I am going to press you a little bit. It seems to me that you are optimistic that this thing has been delayed, pretty much intentionally in the previous administration, and then you have your normal, kind of like, Federal Government getting the wheels turning.

And now we are at a point where this thing may be nonlinear in its growth. Is that what you are anticipating? Like, if we come back six, or eight, or twelve months from now, do you think you are going to have some more success to report?

Dr. FARAJIAN. Yes, Senator. I think the first few deals will be very difficult to close because we have a lot of challenges that we need to work through. But once we have a few of those deals through the process, once we have answered a lot of questions that we are already working on, I think the process is going to become much simpler next year for a lot of these deals to go through the process.

Senator SCHATZ. Okay. And we are going to continue to track this, but I would like you to convey both to your department, and also we will convey it to HUD and to the White House, that this is something we are watching and that sometimes you pass a law, and it just sort of self-executes, right?

Sometimes you have to do the do, and you have a lot of work to accomplish. If there is a place for this committee to nudge the bureaucracy along, if there are things that we can do to provide top cover or momentum, we want to do that.

I mean, this is a highly technical space, and yet we had pretty good participation in this hearing. And usually, if it is something that requires a deep level of technical expertise, members find another place to be. But we are really interested in this, and so I want you to know we are going to be tracking this, and we are available for small favors that are in the four corners of the statute.

So I want to thank all of the testifiers for being here sorry, I am going into my closing script. I am going to make it up.

ADDITIONAL COMMITTEE QUESTIONS

The record will remain open for the next two weeks so that any member can submit questions for the record.

SUBCOMMITTEE RECESS

Senator SCHATZ. Thank you for your time and testimony.

[Whereupon, at 11:14 a.m., Tuesday, June 18, 2024, the hearing was adjourned, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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