February 27, 2015

Fiscal 2016 Federal Budget Spells Out Obama Administration Proposals for Infrastructure Bonds

As indicated in our January 20, 2015, Client Alert entitled "Obama Administration Announces Proposal for Qualified Public Infrastructure Bonds," the Obama Administration previously announced in general terms its Fiscal Year 2016 budget plans with respect to the maintenance and improvement of U.S. public infrastructure. With the release this month of the proposed Fiscal Year 2016 Budget, the Administration provided further detail regarding its proposals to spur investment in, and improvement of, U.S. public infrastructure, as described below.

The Qualified Public Infrastructure Bond ("QPIB") program would create a new category of tax-exempt private activity bonds for the financing of governmentally owned infrastructure facilities available for general public use. Eligible facilities would include airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities and qualified highway or surface freight transfer facilities. The existing authority for the issuance of qualified private activity bonds for the categories of facilities that would be financeable with QPIBs would be eliminated, other than the authority for qualified highway or surface freight transfer facilities. That authority would continue to be available for such highway or surface freight transfer facilities up to the existing $15 billion bond volume authorization and, if approved, the proposed additional $4 billion authorization under the Administration's prior fiscal year Budget proposal, notwithstanding the availability of QPIBs for such facilities. The QPIB proposal would also expand the safe harbor for governmentally owned facilities that are leased to or subject to concession agreements or management agreements, creating a more flexible platform for the financing of public-private partnership projects. The QPIB proposal would be effective for bonds issued beginning in 2016.

A new permanent America Fast Forward Bond ("AFFB") program is proposed as a financing option in addition to, but not in lieu of, traditional tax-exempt bonds. Like Build America Bonds, AFFBs would be conventional taxable bonds issued by state and local governments for which the federal government would make direct payments (effectively, refundable tax credits) to such governmental issuers. The proposed interest subsidy rate would be 28%, which the Administration's Budget characterizes as "revenue neutral" in comparison to deemed federal tax losses from traditional tax-exempt bonds. The Administration proposes making AFFBs available for uses beyond those of the former Build America Bond Program to include, among other governmental and private activity bond purposes, the same purposes for which QPIBs, as described above, may be issued. It is uncertain whether Congress would be willing to fund the refundable tax credits (which represent a direct cash outlay by the Treasury) proposed in connection with the AFFB program. In addition, the risk of sequestration could blunt the practical effectiveness of AFFBs as a financing tool given the current political environment and the uncertainty potential sequestration of refundable tax credits creates for issuers and investors.

In tandem, these proposals represent a positive development for the infrastructure finance community. While the enactment of any proposal in the form presently described in the Budget is uncertain, these budget proposals merit watching by the infrastructure finance community as Congress debates and considers these and other infrastructure financing proposals.

For More Information

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