

December 8, 2020

**ACTION MEMORANDUM TO THE SECRETARY**

**From:** Morteza Farajian  
Executive Director, Build America Bureau  
6-0797

**Through:** Finch Fulton  
Deputy Assistant Secretary for Transportation Policy  
6-8186

John Kramer  
Assistant Secretary for Budget and Programs/Chief Financial Officer  
6-8512

**Prepared by:** Roger Bohnert  
Director, Office of Outreach, Build America Bureau  
6-0720

**Subject:** Build America Bureau - Implementation of Statutory Mandates Report to Congress

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**ACTION REQUIRED**

The Build America Bureau (Bureau) requests that the Secretary approve Implementation of Statutory Mandates report to Congress.

**STATEMENT OF LATENESS**

The Bureau initially thought another report previously fulfilled this requirement. This report is still required, and, thus, submitted now for review.

**SUMMARY**

The Fixing America Surface Transportation Act (FAST Act) includes 53 specific actions and responsibilities related to:

- Creating the Bureau within the Department and establishing operating procedures;
- Consolidating administration of the Department's credit assistance and private activity bonds programs and streamlining the programs' approval processes;

- Developing and promoting best practices for innovative financing mechanisms and public-private partnerships; and
- Expediting environmental reviews and permitting processes.

The Department and Bureau have completed and implemented 45 of 53 tasks (85 percent). 34 of these (65 percent of the total) are ongoing responsibilities, such as working with Departmental offices and operating administrations, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships. 11 of the statutory tasks (21 percent) are discrete actions that the Bureau has completed and require no further action. The Bureau has work underway to address and implement the seven remaining tasks (15 percent).

## BACKGROUND

This document responds to the U.S. Senate Committee on Appropriations September 2019 Senate Report (S. Rep. 116-109) request that the Bureau report on its plans and activities to implement statutory objectives and performance metrics to assess the Bureau's progress. Specifically, this report describes the Bureau's implementation of the 50 tasks enacted in the FAST Act and codified in section 116, title 49, United States Code. The report also describes key performance indicators to measure progress towards accomplishing the Bureau's mission.

## RECOMMENDATION

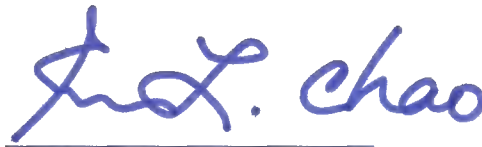
The Bureau recommends that the Secretary approve the Implementation of Statutory Mandates report to Congress.

### Attachments:

- Letters to House and Senate Committees on Appropriations
- Report to Congress, Build America Bureau Implementation of Statutory Mandates
- Public Law

The Secretary

APPROVED:

  
\_\_\_\_\_

DISAPPROVED:

\_\_\_\_\_

COMMENTS:

\_\_\_\_\_

DATE:

12-14-2020



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Richard C. Shelby  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Vice Chairman of the Senate Committee on Appropriations; the Chairman and Ranking Member of the House Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; and the Chairman and Ranking Member of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies.

Sincerely,

A handwritten signature in blue ink that reads 'Elaine L. Chao'.

Elaine L. Chao

Enclosure



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Patrick J. Leahy  
Vice Chairman  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Senator Leahy:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Chairman of the Senate Committee on Appropriations; the Chairman and Ranking Member of the House Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; and the Chairman and Ranking Member of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies.

Sincerely,

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Elaine L. Chao

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THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Susan M. Collins  
Chairman, Subcommittee on Transportation,  
Housing and Urban Development, and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Madam Chairman:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; the Chairman and Vice Chairman of the Senate Committee on Appropriations; the Chairwoman and Ranking Member of the House Committee on Appropriations; and the Chairman and Ranking Member of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies.

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Elaine L. Chao

Enclosure



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Jack Reed  
Ranking Member, Subcommittee on Transportation,  
Housing and Urban Development, and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Senator Reed:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Chairman of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; the Chairman and Vice Chairman of the Senate Committee on Appropriations; the Chairwoman and Ranking Member of the House Committee on Appropriations; and the Chairman and Ranking Member of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies.

Sincerely,

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Elaine L. Chao

Enclosure



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Nita M. Lowey  
Chairwoman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Chairwoman:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

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Sincerely,

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Elaine L. Chao

Enclosure



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Congresswoman Granger:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Chairwoman of the House Committee on Appropriations; the Chairman and Vice Chairman of the Senate Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; and the Chairman and Ranking Member of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies.

Sincerely,

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Elaine L. Chao

Enclosure





THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable David E. Price  
Chairman, Subcommittee on Transportation, and  
Housing and Urban Development and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Ranking Member of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies; the Chairman and Vice Chairman of the Senate Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; and the Chairwoman and Ranking Member of the House Committee on Appropriations.

Sincerely,

A handwritten signature in blue ink that reads 'Elaine L. Chao'.

Elaine L. Chao

Enclosure



THE SECRETARY OF TRANSPORTATION  
WASHINGTON, DC 20590

December 14, 2020

The Honorable Mario Diaz-Balart  
Ranking Member, Subcommittee on Transportation, and  
Housing and Urban Development and Related Agencies  
Committee on Appropriations  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Diaz-Balart:

The Senate Report 116-109 accompanying Public Law (P.L.) 116-94, the Further Consolidated Appropriations Act, 2020 requested that the U.S. Department of Transportation provide an implementation plan for how the Build America Bureau (Bureau) plans to meet its objectives as required under 49 U.S.C. § 116(d)(5), including performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives. The enclosed report responds to this request.

A similar letter has been sent to the Chairman of the House Subcommittee on Transportation, and Housing and Urban Development, and Related Agencies; the Chairman and Vice Chairman of the Senate Committee on Appropriations; the Chairman and Ranking Member of the Senate Subcommittee on Transportation, Housing and Urban Development, and Related Agencies; and the Chairwoman and Ranking Member of the House Committee on Appropriations.

Sincerely,

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Elaine L. Chao

Enclosure



U.S. Department of Transportation

**Report to Congress:**  
Build America Bureau Implementation of  
Statutory Mandates

**Senate Report 116-109, Departments of Transportation and  
Housing and Urban Development, and Related Agencies  
Appropriations Bill, 2020**

# Build America Bureau Implementation of Statutory Mandates

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# Build America Bureau Implementation of Statutory Mandates

## Legislative Direction

Source: Senate Report 116-109, Departments of Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill, 2020

*Build America Implementation Plan.—The Committee directs the Department to compile an implementation plan for how it plans to meet its objectives as required under 49 U.S.C. 116(d)(5) within 180 days of enactment of this act. This report should include performance indicators to assess the Bureau’s progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives.*

## Introduction

This document responds to the U.S. Senate Committee on Appropriations request that the Build America Bureau<sup>1</sup> report on its plans and activities to implement statutory objectives and performance metrics to assess the Bureau’s progress.<sup>2</sup> Specifically, this report describes the Bureau’s implementation of the more than 50 tasks enacted in the Fixing America’s Surface Transportation Act (FAST Act, the Act)<sup>3</sup> and codified in section 116 of title 49, United States Code. The report also describes key performance indicators to measure progress towards accomplishing the Bureau’s mission.

[Appendix 1](#) to this report enumerates the tasks and indicates the implementation status of each task. [Appendix 2](#) provides targets by which the Bureau expects attainment of the tasks now in progress. [Appendix 3](#) lists abbreviations, acronyms, and phrases used in this report.

## Build America Bureau

Reporting to the Under Secretary of Transportation for Policy of the U.S. Department of Transportation, the Bureau administers the Department’s credit assistance and private activity bond programs, develops initiatives and policies to facilitate public and private financing mechanisms and alternative investments, and analyzes the cost effectiveness of new and alternative approaches to project planning, financing, delivery, and monitoring. The Bureau draws upon expertise and resources throughout the Department to serve as the single point of contact and coordination for states, municipalities, and other project sponsors exploring public-private partnerships (P3) and seeking Federal credit assistance. The Bureau provides technical assistance and seeks to streamline credit opportunities, including the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and Railroad Rehabilitation and Improvement Financing (RRIF) programs, by helping sponsors navigate and accelerate federal permitting, regulatory, and procedural requirements. The Bureau seeks to serve its customers and Federal taxpayers by four guiding principles:

- Mobilizing available financial resources for high impact transportation projects in the United States;
- Identifying and encouraging innovative best practices in project planning, financing, delivery, and monitoring;

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<sup>1</sup> By statute, the National Surface Transportation and Innovative Finance Bureau.

<sup>2</sup> U.S. Senate Committee on Appropriations, S. Rept. 116-109, page 18, September 19, 2019.

<sup>3</sup> Public Law 114-94, December 4, 2015.

## Build America Bureau Implementation of Statutory Mandates

- Clearing roadblocks to provide credit and grants more quickly and transparently, with a streamlined user interface and less uncertainty, complexity, and cost for clients; and
- Ensuring the protection of public resources through efficient leveraging of taxpayer money and the development of a creditworthy portfolio of projects.

### FAST Act Statutory Tasks

The FAST Act includes 53 specific actions and responsibilities related to:

- Creating the Bureau within the Department and establishing operating procedures;
- Consolidating administration of the Department’s credit assistance and private activity bonds programs and streamlining the programs’ approval processes;
- Developing and promoting best practices for innovative financing mechanisms and P3s; and
- Expediting environmental reviews and permitting processes.<sup>4</sup>

Implementation Status *	Number of Tasks	Percentage of Total
<b>Total</b>	<b>53</b>	<b>100%</b>
Complete	45	85%
In progress	8	15%

\* as of November 5, 2020

### Complete Tasks

The Department and Bureau have completed and implemented 45 of 53 tasks (85 percent). Thirty-four of these (65 percent of the total) are ongoing responsibilities, such as working with Departmental offices and operating administrations, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and P3s.<sup>5</sup> For example, to share innovative financing best practices and case studies, the Bureau and the Federal Highway Administration (FHWA) established the Build America Transportation Investment Center Institute (BATIC) through a cooperative agreement with the Association of American State Highway and Transportation Officials (AASHTO). BATIC provides meetings, peer exchanges, expert panel sessions, webinars, and workshops to help its member State Departments of Transportation and local partner agencies to:

- *Understand project innovative finance tools available to all types of projects.*
- *Create a sound environment for partnership among project delivery stakeholders.*

<sup>4</sup> The total excludes one task not applicable to the Bureau. 49 U.S.C. §116(d)(6)(B) directs the Comptroller General to review the Bureau Executive Director’s compliance with certain statutory provisions.

<sup>5</sup> 49 U.S.C. §116(e)(2)(A, B, C).

## Build America Bureau Implementation of Statutory Mandates

- *Assess projects for potential delivery via P3s, and if suitable, empower the delivery of projects under this approach.*<sup>6</sup>

Regarding best practices for accurate and reliable assumptions to analyze P3 procurements,<sup>7</sup> the Bureau and FHWA engaged a University of Maryland research center to study delivery models of past projects, including design-bid-build, design-build, and design-build-finance-operate-maintain. Also, the Bureau and FHWA have engaged outside consultants to develop the *P3 Toolkit*, including value-for-money analysis techniques.<sup>8</sup> The tool helps project sponsors determine the benefits of using a P3 project delivery arrangement compared to a traditional public alternative. Similarly, the Bureau and FHWA worked with a private consultant and a consortium of university research centers to develop the *alternative contracting model* tool to help project sponsors analyze the most cost-efficient project delivery method for a certain project. Both tools are available to project sponsors through the FHWA website and Bureau- and FHWA-provided training.

Another ongoing Bureau line of effort is supporting project sponsors through technical assistance regarding compliance with the National Environmental Policy Act of 1969 and relevant Federal environmental permits.<sup>9</sup> For example, the Bureau facilitated communications on a Maritime Administration major infrastructure project and these communications among the lead agency, cooperating and participating agencies, and project sponsor ensured all project stakeholders had reasonable expectations about the process, deliverables, and schedule. In addition, a Bureau environmental protection specialist serves as the point of contact and manager for this project's inclusion on the Federal Permitting Dashboard to increase transparency and accountability to the public.

Eleven of the statutory tasks (21 percent) are discrete actions the Bureau has completed and require no further action. For example, the Bureau sent Congress the requested report on application processes and administrative and legislative actions that would improve efficiency; and implementation of the administrative actions.<sup>10</sup> Other complete tasks include establishment of the Bureau and appointment of an executive director.<sup>11</sup>

### Tasks in Progress

The Bureau expects to finish by March 30, 2021, (fiscal year 2021, second quarter) work now underway to address and implement the eight (15 percent) remaining tasks ([Appendix 2](#)). For example, the Bureau is revising its operating procedures and developing related guidance to require that project sponsors complete a value for money analysis before transitioning into the Bureau's creditworthiness phase.<sup>12</sup> In addition, the Bureau is developing procurement benchmarks by analyzing the database the University of Maryland developed under contract with the Bureau and FHWA.<sup>13</sup> The benchmarks will establish maximum thresholds for acceptable project cost and schedule increases and uniform methods for measuring such increases over the

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<sup>6</sup> <http://www.financingtransportation.org> accessed on May 13, 2020.

<sup>7</sup> 49 U.S.C. §116(e)(2)(D)(i)(I).

<sup>8</sup> 49 U.S.C. §116(e)(2)(D)(iii).

<sup>9</sup> 49 U.S.C. §116(f)(3).

<sup>10</sup> 49 U.S.C. §116(d)(5).

<sup>11</sup> 49 U.S.C. §116(a, b, c).

<sup>12</sup> 49 U.S.C. §116(e)(3)(A)(i).

<sup>13</sup> 49 U.S.C. §116(g)(1 and 2).

## Build America Bureau Implementation of Statutory Mandates

project life cycle. Different project procurement types, including design-bid-build, design-build, and public-private partnerships, will have different benchmarks, as appropriate.

### Performance Indicators

To measure progress in carrying out its mission, the Bureau identified and will track the following performance indicators related to its four guiding principles.

<i>Guiding Principle</i>	<i>Indicator</i>
Mobilizing available financial resources for high-impact transportation projects in the United States	1. Number, value, and average value of loans closed
Identifying and encouraging innovative best practices in project planning, financing, delivery, and monitoring	2. Workshops and brainstorming sessions delivered 3. First-time state and municipal borrowers added to the Bureau project pipeline
Clearing roadblocks to provide credit and grants more quickly and transparently, with a streamlined user-interface and less uncertainty, complexity, and cost for clients	4. Percentage of loan portfolio processed on expedited timelines
Ensuring the protection of public resources through efficient leveraging of taxpayer money and the development of a credit-worthy portfolio of projects	5. TIFIA and RRIF loans repaid on time or early 6. TIFIA and RRIF loans in default

### Conclusions and Next Steps

The Bureau has become a well-established and productive unit within the Department and among infrastructure development and financing stakeholders and has received praise of the President of the United States, U.S. Secretary of Transportation, and others. It is advancing more than \$50 billion of projects that will modernize and rehabilitate critical transportation assets. The Bureau has completed and is fully implementing 85 percent of its statutory tasks with work underway to address the remaining ones. The Bureau will continue to pursue its mission by working through these mandates, supporting project sponsors, and protecting the public interest.



Build America Bureau Implementation of Statutory Mandates

Appendix 1: Implementation Status of FAST Act Mandates Regarding the Build America Bureau<sup>14</sup>

<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
● Complete, ○ Complete/Ongoing, ⊙ In progress	
Status	Provision
●	(a) ESTABLISHMENT.—The Secretary of Transportation shall establish a National Surface Transportation and Innovative Finance Bureau in the Department. (b) PURPOSES.—The purposes of the Bureau shall be— (1) to provide assistance and communicate best practices and financing and funding opportunities to eligible entities for the programs referred to in subsection (d)(1); (2) to administer the application processes for programs within the Department in accordance with subsection (d); (3) to promote innovative financing best practices in accordance with subsection (e); (4) to reduce uncertainty and delays with respect to environmental reviews and permitting in accordance with subsection (f); and (5) to reduce costs and risks to taxpayers in project delivery and procurement in accordance with subsection (g).
●	(c) EXECUTIVE DIRECTOR.— (1) APPOINTMENT.—The Bureau shall be headed by an Executive Director, who shall be appointed in the competitive service by the Secretary, with the approval of the President.
○	(2) DUTIES.—The Executive Director shall— (A) report to the Under Secretary of Transportation for Policy;
○	(B) be responsible for the management and oversight of the daily activities, decisions, operations, and personnel of the Bureau;
○	(C) support the Council on Credit and Finance established under section 117 in accordance with this section; and
○	(D) carry out such additional duties as the Secretary may prescribe.
	(d) ADMINISTRATION OF CERTAIN APPLICATION PROCESSES.— (1) IN GENERAL.—The Bureau shall administer the application processes for the following programs:
●	(A) The infrastructure finance programs authorized under chapter 6 of title 23.
●	(B) The railroad rehabilitation and improvement financing program authorized under sections 501 through 503 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821–823).
●	(C) Amount allocations authorized under section 142(m) of the Internal Revenue Code of 1986.

<sup>14</sup> As of November 5, 2020.

Build America Bureau Implementation of Statutory Mandates

<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
● Complete, ○ Complete/Ongoing, ◎ In progress	
<b>Status</b>	<b>Provision</b>
●	(D) The nationally significant freight and highway projects program under section 117 of title 23. <sup>15</sup>
○	(2) CONGRESSIONAL NOTIFICATION.—The Executive Director shall ensure that the congressional notification requirements for each program referred to in paragraph (1) are followed in accordance with the statutory provisions applicable to the program.
○	(3) REPORTS.—The Executive Director shall ensure that the reporting requirements for each program referred to in paragraph (1) are followed in accordance with the statutory provisions applicable to the program.
○	(4) COORDINATION.—In administering the application processes for the programs referred to in paragraph (1), the Executive Director shall coordinate with appropriate officials in the Department and its modal administrations responsible for administering such programs.
●	(5) STREAMLINING APPROVAL PROCESSES.—Not later than 1 year after the date of enactment of this section, the Executive Director shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Environment and Public Works of the Senate a report that— (A) evaluates the application processes for the programs referred to in paragraph (1); (B) identifies administrative and legislative actions that would improve the efficiency of the application processes without diminishing Federal oversight; and (C) describes how the Executive Director will implement administrative actions identified under subparagraph (B) that do not require an Act of Congress.
	(6) PROCEDURES AND TRANSPARENCY.— (A) PROCEDURES.—With respect to the programs referred to in paragraph (1), the Executive Director shall—
●	(i) establish procedures for analyzing and evaluating applications and for utilizing the recommendations of the Council on Credit and Finance;
●	(ii) establish procedures for addressing late-arriving applications, as applicable, and communicating the Bureau’s decisions for accepting or rejecting late applications to the applicant and the public; <sup>16</sup> and
○	(iii) document major decisions in the application evaluation process through a decision memorandum or similar mechanism that provides a clear rationale for such decisions.

<sup>15</sup> The Undersecretary for Policy presently administers this program through the Assistant Secretary for Transportation Policy.

<sup>16</sup> The Undersecretary for Policy presently administers this provision through the Assistant Secretary for Transportation Policy.

Build America Bureau Implementation of Statutory Mandates

<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
● Complete, ○ Complete/Ongoing, ◎ In progress	
<b>Status</b>	<b>Provision</b>
<i>n.a</i> <sup>17</sup>	<p>(B) REVIEW.—</p> <p>(i) IN GENERAL.—The Comptroller General of the United States shall review the compliance of the Executive Director with the requirements of this paragraph.</p> <p>(ii) RECOMMENDATIONS.—The Comptroller General may make recommendations to the Executive Director in order to improve compliance with the requirements of this paragraph.</p> <p>(iii) REPORT.—Not later than 3 years after the date of enactment of this section, the Comptroller General shall submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Commerce, Science, and Transportation of the Senate a report on the results of the review conducted under clause (i), including findings and recommendations for improvement.</p>
○	<p>(e) INNOVATIVE FINANCING BEST PRACTICES.—</p> <p>(1) IN GENERAL.—The Bureau shall work with the modal administrations within the Department, eligible entities, and other public and private interests to develop and promote best practices for innovative financing and public-private partnerships.</p>
○	<p>(2) ACTIVITIES.—The Bureau shall carry out paragraph (1)—</p> <p>(A) by making Federal credit assistance programs more accessible to eligible recipients;</p>
○	<p>(B) by providing advice and expertise to eligible entities that seek to leverage public and private funding;</p>
○	<p>(C) by sharing innovative financing best practices and case studies from eligible entities with other eligible entities that are interested in utilizing innovative financing methods; and</p>
○	<p>(D) by developing and monitoring—</p> <p>(i) best practices with respect to standardized State public-private partnership authorities and practices, including best practices related to—</p>
○	<p>(I) accurate and reliable assumptions for analyzing public-private partnership procurements;</p>
○	<p>(II) procedures for the handling of unsolicited bids;</p>
○	<p>(III) policies with respect to noncompete clauses; and</p>
○	<p>(IV) other significant terms of public-private partnership procurements, as determined appropriate by the Bureau;</p>
○	<p>(ii) standard contracts for the most common types of public-private partnerships for transportation facilities; and</p>

<sup>17</sup> GAO, *Surface Transportation: Action Needed to Guide Implementation of Build America Bureau and Improve Application Process*, GAO-19-279, March 2019.

## Build America Bureau Implementation of Statutory Mandates

<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
● Complete, ○ Complete/Ongoing, ⊙ In progress	
<b>Status</b>	<b>Provision</b>
○	(iii) analytical tools and other techniques to aid eligible entities in determining the appropriate project delivery model, including a value for money analysis.
	(3) TRANSPARENCY.—The Bureau shall— (A) ensure the transparency of a project receiving credit assistance under a program referred to in subsection (d)(1) and procured as a public-private partnership by—
⊙	(i) requiring the sponsor of the project to undergo a value for money analysis or a comparable analysis prior to deciding to advance the project as a public-private partnership;
⊙	(ii) requiring the analysis required under subparagraph (A), and other key terms of the relevant public-private partnership agreement, to be made publicly available by the project sponsor at an appropriate time;
⊙	(iii) not later than 3 years after the date of completion of the project, requiring the sponsor of the project to conduct a review regarding whether the private partner is meeting the terms of the relevant public-private partnership agreement; and
○	(iv) providing a publicly available summary of the total level of Federal assistance in such project; and
⊙	(B) develop guidance to implement this paragraph that takes into consideration variations in State and local laws and requirements related to public-private partnerships.
○	(4) SUPPORT TO PROJECT SPONSORS.—At the request of an eligible entity, the Bureau shall provide technical assistance to the eligible entity regarding proposed public-private partnership agreements for transportation facilities, including assistance in performing a value for money analysis or comparable analysis.
○	(f) ENVIRONMENTAL REVIEW AND PERMITTING.— (1) IN GENERAL.—The Bureau shall take actions that are appropriate and consistent with the Department’s goals and policies to improve the delivery timelines for projects carried out under the programs referred to in subsection (d)(1).
	(2) ACTIVITIES.—The Bureau shall carry out paragraph (1)—
●	(A) by serving as the Department’s liaison to the Council on Environmental Quality;
○	(B) by coordinating efforts to improve the efficiency and effectiveness of the environmental review and permitting process;
○	(C) by providing technical assistance and training to field and headquarters staff of Federal agencies on policy changes and innovative approaches to the delivery of projects; and

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<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
● Complete, ○ Complete/Ongoing, ⊙ In progress	
<b>Status</b>	<b>Provision</b>
○	(D) by identifying, developing, and tracking metrics for permit reviews and decisions by Federal agencies for projects under the National Environmental Policy Act of 1969.
○	(3) SUPPORT TO PROJECT SPONSORS.—At the request of an eligible entity that is carrying out a project under a program referred to in subsection (d)(1), the Bureau, in coordination with the appropriate modal administrations within the Department, shall provide technical assistance with regard to the compliance of the project with the requirements of the National Environmental Policy Act 1969 and relevant Federal environmental permits.
⊙	(g) PROJECT PROCUREMENT.— (1) IN GENERAL.—The Bureau shall promote best practices in procurement for a project receiving assistance under a program referred to in subsection (d)(1) by developing, in coordination with modal administrations within the Department as appropriate, procurement benchmarks in order to ensure accountable expenditure of Federal assistance over the life cycle of the project.
⊙	(2) PROCUREMENT BENCHMARKS.—To the maximum extent practicable, the procurement benchmarks developed under paragraph (1) shall— (A) establish maximum thresholds for acceptable project cost increases and delays in project delivery;
⊙	(B) establish uniform methods for States to measure cost and delivery changes over the life cycle of a project; and
⊙	(C) be tailored, as necessary, to various types of project procurements, including design-bid-build, design-build, and public-private partnerships.
○	(3) DATA COLLECTION.—The Bureau shall— (A) collect information related to procurement benchmarks developed under paragraph (1), including project specific information detailed under paragraph (2); and
○	(B) provide on a publicly accessible Internet Web site of the Department a report on the information collected under subparagraph (A).
○	(h) ELIMINATION AND CONSOLIDATION OF DUPLICATIVE OFFICES.— (1) ELIMINATION OF OFFICES.—The Secretary may eliminate any office within the Department if the Secretary determines that— (A) the purposes of the office are duplicative of the purposes of the Bureau; and (B) the elimination of the office does not adversely affect the obligations of the Secretary under any Federal law.
○	(2) CONSOLIDATION OF OFFICES AND OFFICE FUNCTIONS.—The Secretary may consolidate any office or office function within the Department into the Bureau that the Secretary determines has duties, responsibilities, resources, or expertise that support the purposes of the Bureau.

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<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
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<b>Status</b>	<b>Provision</b>
○	(3) STAFFING AND BUDGETARY RESOURCES.— (A) IN GENERAL.—The Secretary shall ensure that the Bureau is adequately staffed and funded.
○	(B) STAFFING.—The Secretary may transfer to the Bureau a position within the Department from any office that is eliminated or consolidated under this subsection if the Secretary determines that the position is necessary to carry out the purposes of the Bureau.
○	(C) SAVINGS PROVISION.—If the Secretary transfers a position to the Bureau under subparagraph (B), the Secretary, in coordination with the appropriate modal administration, shall ensure that the transfer of the position does not adversely affect the obligations of the modal administration under any Federal law.
○	(D) BUDGETARY RESOURCES.— (i) TRANSFER OF FUNDS FROM ELIMINATED OR CONSOLIDATED OFFICES.—The Secretary may transfer to the Bureau funds allocated to any office or office function that is eliminated or consolidated under this subsection to carry out the purposes of the Bureau. Any such funds or limitation of obligations or portions thereof transferred to the Bureau may be transferred back to and merged with the original account.
○	(ii) TRANSFER OF FUNDS ALLOCATED TO ADMINISTRATIVE COSTS.—The Secretary may transfer to the Bureau funds allocated to the administrative costs of processing applications for the programs referred to in subsection (d)(1). Any such funds or limitation of obligations or portions thereof transferred to the Bureau may be transferred back to and merged with the original account.
●	(4) NOTIFICATION.—Not later than 90 days after the date of enactment of this section, and every 90 days thereafter, the Secretary shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Commerce, Science, and Transportation of the Senate of— (A) the offices eliminated under paragraph (1) and the rationale for elimination of the offices; (B) the offices and office functions consolidated under paragraph (2) and the rationale for consolidation of the offices and office functions; (C) the actions taken under paragraph (3) and the rationale for taking such actions; and (D) any additional legislative actions that may be needed.

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<b>49 U.S.C. § 116. National Surface Transportation and Innovative Finance Bureau</b>	
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<b>Status</b>	<b>Provision</b>
	<p>(i) SAVINGS PROVISIONS.—</p> <p>(1) LAWS AND REGULATIONS.—Nothing in this section may be construed to change a law or regulation with respect to a program referred to in subsection (d)(1).</p> <p>(2) RESPONSIBILITIES.—Nothing in this section may be construed to abrogate the responsibilities of an agency, operating administration, or office within the Department otherwise charged by a law or regulation with other aspects of program administration, oversight, or project approval or implementation for the programs and projects subject to this section.</p> <p>(3) APPLICABILITY.—Nothing in this section may be construed to affect any pending application under 1 or more of the programs referred to in subsection (d)(1) that was received by the Secretary on or before the date of enactment of this section.</p>
	<p>(j) DEFINITIONS.—In this section, the following definitions apply:</p> <p>(1) BUREAU.—The term “Bureau” means the National Surface Transportation and Innovative Finance Bureau of the Department.</p> <p>(2) DEPARTMENT.—The term “Department” means the Department of Transportation.</p> <p>(3) ELIGIBLE ENTITY.—The term “eligible entity” means an eligible applicant receiving financial or credit assistance under 1 or more of the programs referred to in subsection (d)(1).</p>
	<p>(4) EXECUTIVE DIRECTOR.—The term “Executive Director” means the Executive Director of the Bureau.</p> <p>(5) MULTIMODAL PROJECT.—The term “multimodal project” means a project involving the participation of more than 1 modal administration or secretarial office within the Department.</p> <p>(6) PROJECT.—The term “project” means a highway project, public transportation capital project, freight or passenger rail project, or multimodal project.</p>

Build America Bureau Implementation of Statutory Mandates

Appendix 2: Attainment Targets for Tasks in Progress

49 U.S.C. § 116 Provision	Attainment Target
<p>(e) INNOVATIVE FINANCING BEST PRACTICES.—</p> <p>(3) TRANSPARENCY.—The Bureau shall—</p> <p>(A) ensure the transparency of a project receiving credit assistance under a program referred to in subsection (d)(1) and procured as a public-private partnership by—</p> <p>(i) requiring the sponsor of the project to undergo a value for money analysis or a comparable analysis prior to deciding to advance the project as a public-private partnership;</p> <p>(ii) requiring the analysis required under subparagraph (A), and other key terms of the relevant public-private partnership agreement, to be made publicly available by the project sponsor at an appropriate time;</p> <p>(iii) not later than 3 years after the date of completion of the project, requiring the sponsor of the project to conduct a review regarding whether the private partner is meeting the terms of the relevant public-private partnership agreement; and</p> <p>(B) develop guidance to implement this paragraph that takes into consideration variations in State and local laws and requirements related to public-private partnerships.</p>	<p>FY 2021 Q3: The Bureau is updating its operating procedures to address these provisions.</p>
<p>(g) PROJECT PROCUREMENT.—</p> <p>(1) IN GENERAL.—The Bureau shall promote best practices in procurement for a project receiving assistance under a program referred to in subsection (d)(1) by developing, in coordination with modal administrations within the Department as appropriate, procurement benchmarks in order to ensure accountable expenditure of Federal assistance over the life cycle of the project.</p> <p>(2) PROCUREMENT BENCHMARKS.—To the maximum extent practicable, the procurement benchmarks developed under paragraph (1) shall—</p> <p>(A) establish maximum thresholds for acceptable project cost increases and delays in project delivery;</p> <p>(B) establish uniform methods for States to measure cost and delivery changes over the life cycle of a project; and</p> <p>(C) be tailored, as necessary, to various types of project procurements, including design-bid-build, design-build, and public-private partnerships.</p>	<p>FY 2021 Q2: The Bureau is analyzing data to establish benchmarks. The Bureau with FHWA contracted with the University of Maryland to develop a data base of recently completed major projects.</p>



## Build America Bureau Implementation of Statutory Mandates

### Appendix 3: Abbreviations, Acronyms, and Phrases Used in This Report

AASHTO	Association of American State Highway and Transportation Officials
BATIC	Build America Transportation Investment Center Institute
Bureau	Build America Bureau / National Surface Transportation and Innovative Finance Bureau
Department	U.S. Department of Transportation
FAST Act	Fixing America's Surface Transportation Act, P.L. 114-94
FHWA	Federal Highway Administration
FY	Fiscal Year
GAO	U.S. Government Accountability Office
P3	Public-Private Partnership
PAB	Private Activity Bond
RRIF	Railroad Rehabilitation and Improvement Financing Program, 45 U.S.C. §822
TIFIA	Transportation Infrastructure Finance and Innovation Act of 1998, P.L. 105-178
U.S.C.	United States Code

tation projects, which is \$100,000,000 more than the fiscal year 2019 enacted level and equal to the budget request. Of the total amount provided, \$15,000,000 is available for planning grants.

The National Infrastructure Investments program has become integral to the economic success of communities throughout the country for the last 10 years. The outcome oriented selection criteria that includes state of good repair, economic competitiveness, quality of life, environmental sustainability, safety, innovation, and partnership nurtures stronger applications and results in successful multimodal projects. For these reasons, the Committee continues to direct the Secretary to award grants and credit assistance using the 2017 Notice of Funding Opportunity selection criteria that stakeholders have relied upon in previous rounds.

*Geographic Distribution.*—The Committee continues to believe that our Federal infrastructure programs must benefit communities across the country. The Committee continues to require the Secretary to award grants and credit assistance in a manner that ensures an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities.

NATIONAL SURFACE TRANSPORTATION AND INNOVATIVE FINANCE  
BUREAU

Appropriations, 2019 .....	\$5,000,000
Budget estimate, 2020 .....	4,000,000
Committee Recommendation .....	5,000,000

PROGRAM DESCRIPTION

The National Surface Transportation and Innovative Finance Bureau [Bureau] will administer and coordinate or consolidate aspects of the Department's existing surface transportation innovative finance programs as authorized in section 9001 of the FAST Act, contingent upon advance approval by the Committee.

COMMITTEE RECOMMENDATION

The Committee recommends \$5,000,000 to establish and fulfill the duties of the Bureau, as authorized in section 9001 of the FAST Act, which is \$1,000,000 more than the budget request and equal to the fiscal year 2019 enacted level.

*Consultation with Noncontiguous States.*—The Bureau and the Office of the Assistant Secretary for Aviation and International Affairs shall consult with noncontiguous States to review regulatory, financing, and other obstacles to new investment in cross border rail, road and associated transportation infrastructure and provide recommendations for reforms to Congress.

*Build America Implementation Plan.*—The Committee directs the Department to compile an implementation plan for how it plans to meet its objectives as required under 49 U.S.C. 116(d)(5) within 180 days of enactment of this act. This report should include performance indicators to assess the Bureau's progress toward meeting its guiding principles or mission to determine whether the Bureau is meeting its statutory objectives.

*Financing for Transportation Oriented Development [TOD].*—The Committee recognizes the potential of TOD to facilitate economic