Public Finance Update:
Infrastructure Investment and Jobs Act

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (the "IIJA" or "Act"). The IIJA authorizes approximately $1.2 trillion in total spending, including $550 billion in new investments for roads and bridges, transit, clean energy infrastructure, ports, airports, the electric grid, water systems, and broadband. In addition, the Act provides for increased use of private activity bonds ("PABs") and streamlines existing federal infrastructure loan programs, as further summarized below.

Private Activity Bonds

The Act adds two new categories of projects eligible to be financed through the issuance of tax-exempt PABs, and expands capacity for the issuance of PABs for highway and surface freight transportation facility projects.

Broadband Projects. The IIJA expands the federal tax code's list of eligible, tax-exempt PABs to include bonds issued for broadband deployment projects in areas where a majority of households currently lack broadband access. The Act further provides that, for PABs financing private broadband projects, 75% of the bonds' par value will be exempt from state volume caps on the amount of PABs that may be issued each year. Government-owned projects will be entirely exempt from volume cap requirements.

Carbon Dioxide Capture Facilities. The IIJA also adds carbon capture facilities to the list of eligible, tax-exempt PABs. Such facilities include direct air capture facilities as well as qualifying carbon capture equipment installed in industrial carbon dioxide facilities. For this category of PABs, 75% of the bonds' par value will be exempt from state volume caps. The Act also clarifies that the sale of carbon dioxide produced by a qualified, government-owned carbon dioxide capture facility will not constitute private business use for purposes of the federal tax code.

Highway and Surface Freight Transportation Facilities. The IIJA raises the current nationwide volume cap on tax-exempt highway and surface freight transportation facility bonds from $15 billion to $30 billion.

Federal infrastructure loan programs

The Act also updates the federal government's Transportation Infrastructure Finance and Innovation Act ("TIFIA") and Water Infrastructure Finance and Innovation Act ("WIFIA") loan programs.

TIFIA. The IIJA includes several changes to the existing TIFIA loan program designed to streamline and increase program use. These changes include:

- Adding eligibility for public infrastructure projects near transportation facilities, airport-related projects, and projects to acquire plant and wildlife habitats for environmental mitigation purposes;

- Raising the threshold for requiring loan applicants to obtain two ratings agency opinions (as opposed to one) from $75,000,000 to $150,000,000;
- Requiring, to the maximum extent practicable, that the Secretary of Transportation provide each applicant with a specific estimate of the timeline for the approval or disapproval of a loan application, and that the Secretary complete such review within 150 days of the applicant's submission of a letter of interest; and
- Removing the requirement that government borrowers use excess revenues to prepay TIFIA loans, as long as the borrower instead uses the revenues for eligible surface transportation projects.

WIFIA. The IIJA reauthorizes the WIFIA loan program through 2026 at the current funding level of $50 million per year, and requires the EPA Administrator to develop and implement an outreach plan to promote the program in small and rural communities. In addition, the Act revises the program to require loan applicants to obtain only one final agency rating letter as opposed to two.

If you have any questions regarding the above provisions of the Act, or grant funding for state and municipal entities provided under the Act, please contact:

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