

March 28, 2022

The Honorable Mitchell J. Landrieu  
Senior Advisor and Infrastructure Coordinator  
The White House  
1600 Pennsylvania Ave, NW  
Washington, DC 20500

Dear Mr. Landrieu:

The Bipartisan Policy Center offers congratulations on the passage of the Infrastructure Investment and Jobs Act, legislation that will strengthen communities, bolster our global competitiveness, and make needed investments in our country's infrastructure. We also appreciate your recent remarks to BPC, the National Association of Counties, and the National League of Cities, sharing your vision for IIJA's implementation and discussing your commitment to build the strong intergovernmental partnerships necessary for its success. As you continue working to implement this transformational, bipartisan legislation, we encourage you to adopt policies that will maximize complementary investment by the private sector.

BPC has done extensive research on strategies to increase private investment in public infrastructure, including our comprehensive report "[Bridging the Gap Together: A New Model to Modernize U.S. Infrastructure](#)." In December 2021, BPC hosted a private roundtable of infrastructure and financial experts to discuss these strategies in the context of the IIJA. Their recommendations informed the development of this letter.

It is important to understand that even the IIJA's historic funding level will not be enough to fully meet our nation's infrastructure needs. The American Society of Civil Engineers estimates that [\\$2.59 trillion](#) above planned investments will be needed over the next 10 years to bring our infrastructure up to a state of good repair. The IIJA provides \$550 billion in new federal funding, which, while welcome, still leaves a significant funding gap. We cannot expect state and local coffers to fill the remaining gap alone; private investment will be essential.

The private sector is not only a source of financing; in fact, private partners bring much more to the table than just capital. Because they work on projects across the country, and often around the world, private companies have expertise in cutting edge technology and innovative construction methods. They can help public agencies manage risk and deliver projects more quickly and cost effectively. The private sector can also bring long-term value and thinking to the management of projects, beyond the upfront costs of construction. These attributes—technological expertise, risk sharing, efficient delivery, and effective management—make public-private partnerships (P3s) a valuable tool in building smarter, cleaner infrastructure.

To better integrate public-private partnerships into the landscape of U.S. infrastructure, BPC offers the following recommendations for implementation of the IIJA. Overall, federal agencies should focus on

clarity and flexibility: providing clear guidance to state and local infrastructure agencies while at the same time allowing them the flexibility needed to work with private sector partners to deliver needed projects.

### **Recommendations for Competitive Grant Programs**

With \$200 billion available for competitive grants, the criteria used to evaluate applications will be critical to determining which projects move forward. BPC recommends that, to the extent possible within statutory guidelines, grant programs be designed to deliver priority outcomes, such as long-term maintenance, innovative technology, and affordability, and to encourage collaboration with the private sector.

- 1) Long-term maintenance. The federal government should use the new grant programs in the IIJA to break the cycle of deferred maintenance that has led to crumbling roads, bridges, and water systems. Evaluation criteria for these programs should reward applicants who can demonstrate a commitment to maintenance and repair throughout a project's full lifecycle. This is a common benefit of P3s; unlike conventional projects where repair funds may or may not be forthcoming in public budgets, P3s often contractually obligate the private partner to maintain the project in a state of good repair. Given the amount of infrastructure expected to be built using IIJA funding, locking in state-of-good-repair requirements at the outset will help to prevent infrastructure crises down the road.
- 2) Innovative technology. The new research programs in the IIJA, such as ARPA-I and water technology grants, are important vehicles to spur new partnerships with the private sector to develop and deploy new technologies, conduct real-world tests, and pursue regulatory approvals to allow infrastructure owners to deploy these new technologies with confidence. The U.S. Department of Transportation has already recognized the value of public-private partnerships in delivering these results: USDOT's [Innovation Principles](#) commit the department to "embrace public private partnerships that share risk, foster purpose-driven innovation and protect the interests of the public, workers, and communities." Other agencies implementing the IIJA should follow suit. However, without additional incentives, state and local governments may avoid incorporating the latest technologies into infrastructure projects due to lack of expertise, risk aversion, or upfront cost—barriers that partnerships with the private sector can help to overcome. For the IIJA to meet the administration's goal of not merely building back, but building back better, evaluation criteria should reward project sponsors for incorporating the latest technologies, particularly those that will yield cleaner, smarter, safer, and more resilient infrastructure.
- 3) Affordability. The goal of providing underserved communities with affordable access to safe and high-performing infrastructure is a goal reflected across programs in the IIJA. Despite concerns over fees, tolls, and other revenue options commonly used to repay a private partner in a P3 contract, well-structured P3s can enhance long-term affordability for infrastructure users. For example, [P3s in the water sector](#) have helped struggling drinking water and wastewater systems contractually transfer system operating risks, improve service at lower cost and secure needed capital improvements for aging infrastructure. With their economies of scale, up-to-date technologies, and efficient practices, private companies can bring savings in long-term operation and maintenance that ultimately help relieve the burden on infrastructure users. To the extent that affordability is considered in the evaluation of project proposals under the IIJA, agencies

should not look simply at whether fees or tolls are proposed, but rather at user costs over the asset's full lifecycle, in relation to the benefits received.

### **Cross-cutting Recommendations**

Though they represent a significant investment, competitive programs are only a fraction of the funding available in the IJJA. Federal agencies should work proactively with state and local governments to ensure that all projects, not just those funded with competitive grants, meet high standards for future performance. The IJJA contains resources for technical assistance and new guidance on project development that should be leveraged to improve project decision-making across the board. When fully implemented, these resources should enable public agencies to develop a project pipeline, i.e., a set of projects which are expected to be available for private investment in the future. Lack of such a pipeline is currently one of the biggest barriers to increasing private investment in U.S. infrastructure. The IJJA has the potential to turn this situation around, using the programs and tools described below.

- 1) Technical assistance. One of the biggest barriers to partnering with the private sector is lack of capacity at state and local agencies, particularly in smaller communities and rural areas. Though project pre-development may not be as exciting as a groundbreaking or project opening, decisions made in pre-development determine critical features like scope, budget, and delivery method, all of which influence the ultimate success of the project. Federal agencies can drive better outcomes by helping state and local agencies navigate these difficult issues, and the IJJA provides new resources for that purpose. USDOT's Build America Bureau is directed to provide additional support to rural communities for project planning and development, including identifying opportunities for private financing and project bundling. BPC recommends that federal agencies prioritize these technical assistance programs for early implementation so that states and localities can use the lessons learned throughout the remaining years of the IJJA.
- 2) Value-for-money analysis. Value-for-money (VfM) analysis looks at the life-cycle costs of a project under various delivery approaches to determine which approach would deliver the best value to the public agency over the full life of the asset. The IJJA requires that any transportation project proposed to be delivered as a P3 must have had a VfM or a similar comparative analysis done, as must any project over \$750 million seeking financing from the Transportation Infrastructure Finance and Innovation Act or Railroad Rehabilitation and Improvement Financing programs. To ensure that all projects are making the most cost-effective use of federal funds, federal agencies should encourage recipients of federal funds to conduct a VfM or comparable analysis for all major projects. Greater use of VfM analysis will encourage state and local agencies to consider alternative delivery approaches throughout their programs, leading to additional efficiencies. USDOT's Build America Bureau has extensive resources available on how to conduct VfM analysis, and federal agencies should be prepared to work with state and local agencies to build their capacity to complete meaningful studies without unduly delaying projects.
- 3) Asset Concession and Innovative Finance Program. The IJJA provides \$20 million annually to USDOT for grants to states, localities, and tribal governments to build organizational capacity or retain expert services to identify, analyze, and plan potential P3 projects. This program has the potential to significantly enhance the ability of public sector agencies to partner effectively with the private sector. In developing guidance for this program, USDOT should encourage public agencies to seek support as early in the project development stage as possible. The earlier the

private sector is brought into project discussions, the better the outcome will be. Regarding expert services, BPC recommends that USDOT develop a pool of on-call expert advisors who have been vetted, meet certain professional criteria, and can be tapped as needed to provide assistance to public agencies.

- 4) Permitting process improvements and authorities. Permitting risk (i.e., the risk that a project will be delayed during the permitting and environmental review process) has been a significant barrier to the entry of private capital into public infrastructure. In recent years, finding ways to fast-track federal permitting and environmental reviews, while upholding longstanding environmental protections, has been a key bipartisan objective. The IIJA continued in this spirit by (1) creating the Interagency Infrastructure Permitting Improvement Center within USDOT, tasked with improving interagency coordination on environmental reviews and permits to expedite major transportation projects; (2) permanently authorizing the Federal Permitting Improvement Steering Council and further empowering it to serve as a federal center for excellence on permitting and hub for interagency coordination; (3) expanding use of the online [Permitting Dashboard](#); and (4) codifying “One Federal Decision.” The administration can save time and money, attract private capital, and advance its decarbonization objectives by judiciously aligning these new procedures with previous permitting initiatives, guidance, and regulatory rulemakings; prioritizing full transparency with the public; providing needed training, support, and resources to agency staff to ensure new procedures are successfully implemented; and ensuring, in all actions, that opportunities for public engagement are not jeopardized or overlooked.

The IIJA offers an unprecedented opportunity to improve the way infrastructure projects are developed, funded, and delivered and to bring the U.S. into the global infrastructure marketplace. The IIJA can also be the catalyst for advancing inclusion for small and disadvantaged businesses, not only among construction companies and materials suppliers, but also in the financial sector. With the right outreach and support, the IIJA will enable many more small, minority, veteran, and women-owned firms as well as firms owned by individuals with disabilities to scale up their participation in infrastructure delivery and finance.

Federal agencies must seize this opportunity by actively embracing partnerships with the private sector and encouraging recipients of new funding to do the same. The historic level of funding in the IIJA should not obscure the fact that the public sector cannot meet the nation’s infrastructure needs alone. Following these recommendations will incentivize state and local agencies to work with the private sector and give them the knowledge they need to do so effectively.

BPC stands ready to support the administration in these efforts. We intend to work with partners across all levels of government to raise awareness of the necessity for the public and private sector to work together as the IIJA is implemented. Such partnerships will help deliver on the promise of the IIJA to build the infrastructure America needs to meet our future challenges. Thank you for all that you are doing to advance this important goal.

Sincerely,

Michele Nellenbach  
Vice President of Strategic Initiatives  
Bipartisan Policy Center

Andy Winkler  
Director, Housing and Infrastructure Project  
Bipartisan Policy Center

Cc: The Honorable Tom Vilsack, Secretary, U. S. Department of Agriculture  
The Honorable Gina Raimondo, Secretary, U.S. Department of Commerce  
The Honorable Pete Buttigieg, Secretary, U.S. Department of Transportation  
The Honorable Jennifer Granholm, Secretary, U.S. Department of Energy  
The Honorable Deb Haaland, Secretary, U.S. Department of the Interior  
The Honorable Michael Regan, Administrator, Environmental Protection Agency  
The Honorable Deanne Criswell, Administrator, Federal Emergency Management Agency  
Lieutenant General Scott Spellmon, Chief of Engineers and Commanding General, U.S. Army  
Corps of Engineers