

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration**

[Docket No. FMCSA–2023–0143]

**Truck Leasing Task Force (TLTF):
Notice of Rescheduled Public Meeting**

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of a rescheduled meeting of the TLTF.

SUMMARY: FMCSA announces that the public meeting of the TLTF previously scheduled for Wednesday, November 20, 2024, is rescheduled for Tuesday, December 3, 2024.

DATES: The meeting will be held on Tuesday, December 3, 2024, from 10 a.m. to 4 p.m. ET. Requests for accommodations for a disability and requests to submit written materials for consideration during the meeting must be received no later than Friday, November 22, respectively.

ADDRESSES: The meeting will be virtual for its entirety. Please register in advance of the meeting at www.fmcsa.dot.gov/tltf. A copy of the agenda for each meeting will be made available at www.fmcsa.dot.gov/tltf 1 week in advance of each meeting. Once approved, copies of the meeting minutes will be available at the website following each meeting. You may visit the TLTF website at www.fmcsa.dot.gov/tltf for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Deputy Designated Federal Officer, TLTF, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, tltf@dot.gov. Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:**I. Background**

Section 23009 of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58) requires the Federal Motor Carrier Safety Administration (FMCSA) to establish the TLTF, which was set up in accordance with the Federal Advisory Committee Act (FACA), Public Law 92–463 (1972). TLTF will examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators and trucking businesses subject to such agreements and submit a report on the task force’s identified issues and conclusions regarding truck

leasing arrangements, including recommended best practices, to the Secretary, the Secretary of Labor, and the appropriate committees of Congress. TLTF will work in coordination with the United States Department of Labor.

TLTF operates in accordance with FACA under the terms of the TLTF charter, filed February 11, 2022, and amended April 28, 2023, and renewed February 9, 2024.

II. Agenda

- The final report of the Consumer Financial Protection Bureau on its analysis of the leases submitted to FMCSA and their implications on predatory leasing of trucks to drivers of commercial motor vehicles;

- A presentation from the Drafting Subcommittee on recommendations for TLTF’s final report to FMCSA outlining its recommendations on truck leasing agreements and TLTF’s consideration of these recommendations; and

- A public comment period that will allow drivers and lessees of CMVs to share their personal experiences with leases and present any supporting information they would like to share to assist TLTF in making recommendations on such agreements.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website (www.fmcsa.dot.gov/tltf) is required by Friday, November 22, 2024.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Friday, November 22.

Oral comments from the public will be heard during the designated comment period at the discretion of the TLTF chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter will be limited to 2 minutes. Speakers may submit a written copy of their remarks for inclusion in the meeting records and for circulation to TLTF members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2024–26218 Filed 11–12–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION**Office of the Secretary**

[Docket No. DOT–OST–2024–0103]

Evaluation of the Appropriateness of Public-Private Partnership Project Delivery Including Value for Money or Comparable Analyses; Bipartisan Infrastructure Law

AGENCY: Build America Bureau, Office of the Secretary (OST), and Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Proposed guidance, request for comments.

SUMMARY: The Build America Bureau (the Bureau) and the Federal Highway Administration (FHWA) propose guidance to help the public understand statutory requirements to evaluate the appropriateness of using public-private partnerships (P3s) to deliver infrastructure projects. This proposed guidance intends to inform project sponsors of the Bureau’s implementation of the evaluation requirements when seeking Federal credit assistance through the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and the Railroad Rehabilitation and Improvement Financing (RRIF) credit assistance programs and FHWA’s implementation of the major project financial plan requirement perform detailed Value for Money (VfM) analysis. The Bureau and FHWA invite public comment on this proposed guidance. In addition to general comments, the Bureau is seeking specific feedback on the implementation of certain statutory requirements. The guidance does not contain any new criteria, does not impose any new legal requirements, and has no legal effect.

DATES: Written comments on this proposed guidance must be submitted on or before December 31, 2024 after posting. The Bureau and FHWA will consider comments received after that date to the extent possible without incurring additional expense or delay.

ADDRESSES: You may submit comments, referencing Docket ID No. DOT–OST–2024–0103 by using the Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this proposed guidance. All comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. Please

see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read the proposed guidance or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Innovative Finance Technical Assistance Team at the Build America Bureau: InnovativeFinanceTA@dot.gov, or call Jennifer Hara, Strategic Partnerships Program Manager at 202–839–0199.

SUPPLEMENTARY INFORMATION:

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1. Introduction
2. Definitions
3. Principles of P3 Analysis
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 - C. Subsequent P3 Evaluations (Stage 2)
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1. Introduction

A public-private partnership (P3) is an infrastructure project delivery method in which a public owner and project sponsor (called the public sponsor) leverages private sector resources and methods through a long-term contract that finances the project and typically includes design, construction, maintenance, and/or operations. A mutually beneficial P3 aligns public and private interests through the commercial and financial terms of a project agreement, herein referred to as the concession agreement.

Where appropriate, P3 delivery could provide more value for projects as compared to conventional public delivery. However, in some cases, P3 delivery also creates complexities and limitations for the public sponsor. Public sponsors can analyze these complexities, including project risks,

and consider how best to manage them before choosing a P3 with its long-term partnership obligations. The general term for the process of analyzing and comparing advantages and disadvantages of P3 versus conventional public delivery options is value for money analysis (VfM). The analysis demonstrates whether delivering a project using a P3 would yield more or less value to the public sponsor than the most suitable public delivery option. The analysis also documents the goals, objectives, and underlying assumptions for the project delivery. The intent of VfM is not to analyze the benefits of the project itself but to document the analysis underlying the public sponsor's chosen delivery option based on expected benefits to the public.

Federal surface transportation statutes require public sponsors to conduct a VfM or comparable analysis for certain projects, as described below and shown in Exhibit 1. A VfM or comparable analysis is required for:

- Any project type using any delivery method where the project cost is over \$750 million, the project sponsor is a public entity seeking federal credit assistance, the project is in a state with P3 laws, and the project generates revenue or user fees;
- Any surface transportation project receiving federal financial assistance under title 23, United States Code, using a P3 delivery method with a project cost over \$500 million; and
- Any project type using a P3 delivery method and seeking federal credit assistance. On November 15, 2021, the President signed the Infrastructure Investment and Jobs Act (also known as the “Bipartisan Infrastructure Law”) (IIJA or the BIL) into law.¹ Section 70701 of the BIL requires that certain projects with an estimated total cost of more than \$750,000,000 conduct a VfM analysis or comparable analysis. Additionally, section 11508 of the BIL requires that

¹ Public Law 117–58 (2021).

Major Projects² under section 106(h) of title 23, United States Code, for which the project sponsor intends to carry out the project through a P3 shall include a detailed VfM analysis or similar comparative analysis. In addition, many states' P3 laws require public sponsors to conduct due diligence analysis, such as VfM, to determine whether the P3 delivery method would provide more value and benefits to the public sponsor than other delivery methods.

This proposed guidance is not aimed at building the capacity or capability of entities to develop and deliver infrastructure projects through P3s. Entities that want to build their capacities and capabilities may access Bureau and FHWA educational and technical assistance resources.³ Through such resources, Bureau and FHWA subject matter experts are available upon request to conduct targeted workshops and provide training materials for project sponsors.

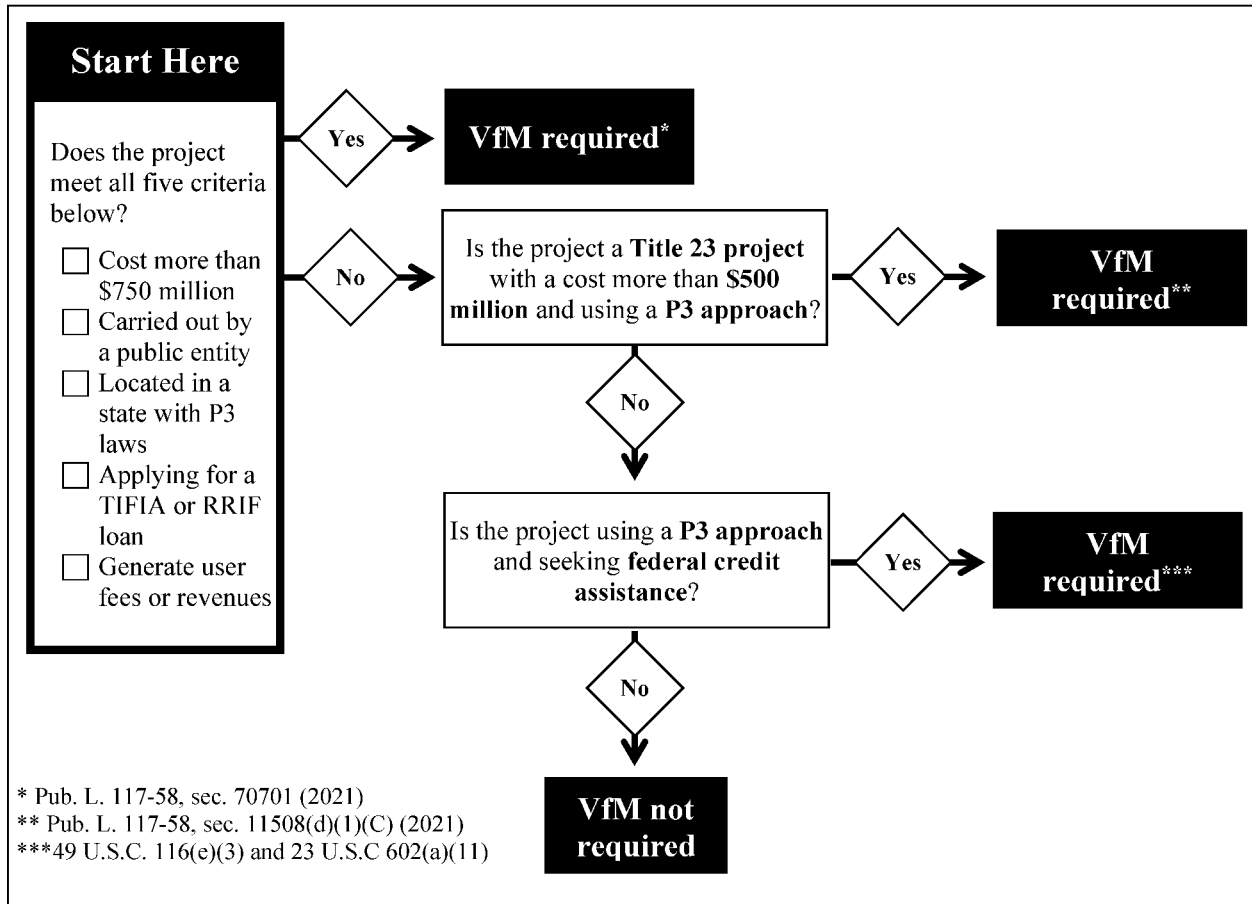
To improve readability, clarity, and brevity, this proposed guidance describes the requirements with words that might differ from statute and regulation. The proposed guidance does not contain any new criteria, does not impose any new legal requirements, and has no legal effect. The contents of this document do not have the force of law and are not meant to bind the public in any way. This document is intended only to share information with the public on existing requirements under the law or agency policies and is not intended to modify any Major Projects requirements under 23 U.S.C. 106(h). The proposed guidance only applies to Major Projects that require a VfM analysis.

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² A Major Project is a project funded with Federal financial assistance under title 23, United States Code, with a total estimated cost of \$500 million or more and such other projects as identified by the Secretary of Transportation pursuant to 23 U.S.C. 106(h).

³ <https://buildamerica.dot.gov/buildamerica/andhttps://www.fhwa.dot.gov/ipd/p3/toolkit/>.

Exhibit 1: Value for Money Guidance Use Decision Chart



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A. *Proposed Guidance Public Comments.* The goal of this guidance is to help public sponsors fulfill VfM or comparable analysis requirements for federally assisted projects where applicable. The Bureau and FHWA invite public comment on this guidance. In addition, the Bureau is asking for public input on two matters.

First, the Bureau is seeking input about applying the VfM statutory requirement for projects with costs exceeding \$750,000,000 that are “anticipated to generate user fees or other revenues that could support the capital and operating costs of such project.”⁴ In theory, the provision requires a public sponsor to conduct VfM if the project might generate a single dollar of user fees or other revenues. The statute does not specify an amount of revenue generated below which VfM is not required. The Bureau invites the public to suggest ways to apply the requirement without unduly burdening public sponsors.

The proposed methodology for VfM analyses in this guidance is useful for

Major Project financial plan requirements under section 106(h)(3)(D) as added by BIL section 11508.⁵ The proposed methodology will also be useful for Major Projects receiving title 23 assistance that are intended to be delivered as a P3. However, we note that not all of the VfM requirements in this proposed guidance apply to all Major Projects. Only those Major Projects that also meet the threshold requirements of BIL sections 11508 and 70701 and section 116(e)(3) of title 49, United States Code, would need to satisfy the VfM requirements described therein, as supplemented by this proposed guidance. For more information on FHWA’s Major Projects requirements, see FHWA’s Major Projects proposed guidance documents, available at <https://www.fhwa.dot.gov/majorprojects/>.

Second, the Bureau is asking for public input on “other information” that would be advantageous for the Secretary of Transportation to require in detailed P3 VfM evaluations. The VfM requirement in BIL section 70701 lists required elements for VfM or

comparable analysis and authorizes the Secretary to require additional information, as appropriate.⁶ Examples of additional information that could be beneficial to include as part of VfM are long-term commitments and risks the P3 agreement creates for the public sponsor, such as non-compete clauses and revenue protections that could lead to compensation from the public sponsor; and impacts of P3 delivery on business and labor, including disadvantaged business enterprises, local contractors, and public and private employees.

The Bureau asks for comments from the public to better inform its proposed guidance process. The Bureau will post these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which is available at www.dot.gov/privacy. To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is

⁴Public Law 117–58, sec. 70701(b)(3)(B) (2021).

⁵Public Law 117–58, sec. 11508(d)(1)(C) (2021).

⁶Public Law 117–58, sec. 70701(a)(5) (2021).

completely optional. The Bureau will fully consider all timely comments, whether or not commenters identify themselves. If you wish to provide comments containing proprietary or confidential information, please contact

the agency for alternate submission instructions.

2. Definitions

For purposes of this proposed guidance, the definitions in Exhibit 2

apply. If the exhibit does not specifically define a term, industry standard definitions apply.

EXHIBIT 2—DEFINITIONS OF TERMS IN THIS PROPOSED GUIDANCE

Term	Definition
Public-private partnership (P3)	A long-term arrangement between a public sponsor and a private entity for delivery of a project that includes at least the following elements: design, construction, financing, and either operations or maintenance or both of the project over a term specified in a concession agreement (as defined below).
Agreement types:	
Concession Agreement	An agreement between a public sponsor and private entity (e.g., concessionaire or developer) signed after a preferred bidder is selected or contract price is agreed upon. Other names for such agreements include P3 agreement, project agreement, project development agreement, and comprehensive project agreement. BIL section 70701(a) uses the term “Project Development Agreement,” which the Bureau interprets as a concession agreement.
Pre-development Agreement	An agreement between a public sponsor and private entity to develop and design the project further and finalize a committed proposal.
Contract types:	
Long-term Contract	A contract between a public sponsor and a private entity to deliver a project, including some or all elements for design, construction, financing, operations, and maintenance over the concession term.
Short-term Contract	A contract between a public sponsor and private entity to deliver a project that does not include operations or maintenance.
Evaluation types:	
Screening Evaluation	An evaluation that sets high-level criteria based on the public sponsor’s project goals and objectives. Before detailed project scope, cost, and schedule are available, an evaluation that compares advantages and disadvantages of all practical conventional and alternative delivery options including public-private partnership delivery. The public sponsor documents the process for selecting the preferred delivery option based on the project’s characteristics, feasibility, goals, and objectives.
Qualitative Evaluation	
Detailed Evaluation	An evaluation that compares all practical conventional and alternative delivery options to select the most suitable public delivery option and most suitable P3 delivery option and then estimates the likely quantitative outcomes of public and P3 options. Conventional VfM quantifies differences in financial outcomes to the public sponsor and evaluates other outcomes qualitatively. Detailed P3 evaluation may account for non-financial benefits such as differences in service levels for the public and costs to the public and society at large by use of benefit-cost analysis methodology. For example, if one delivery method results in an earlier start of operations than the other, the public will benefit earlier from higher service levels, which can be quantified in economic terms.
Federal financial assistance	Includes grants and loans from the Federal government to support infrastructure investment, not including private activity bond allocations and grants for technical assistance.
Major Project	A project funded with Federal financial assistance under title 23, United States Code, with a total estimated cost of \$500 million or more and such other projects as identified by the Secretary of Transportation pursuant to 23 U.S.C. 106(h).
P3 procurement types:	
Conventional P3 Procurement	Public sponsor seeks competitive, fixed price, and certain schedule bids from qualified bidders after the public sponsor completes a limited preliminary design of the project.
Progressive P3 Procurement	Through a competitive process early in project development, the public sponsor selects a qualified private entity to develop a project without a bid price.

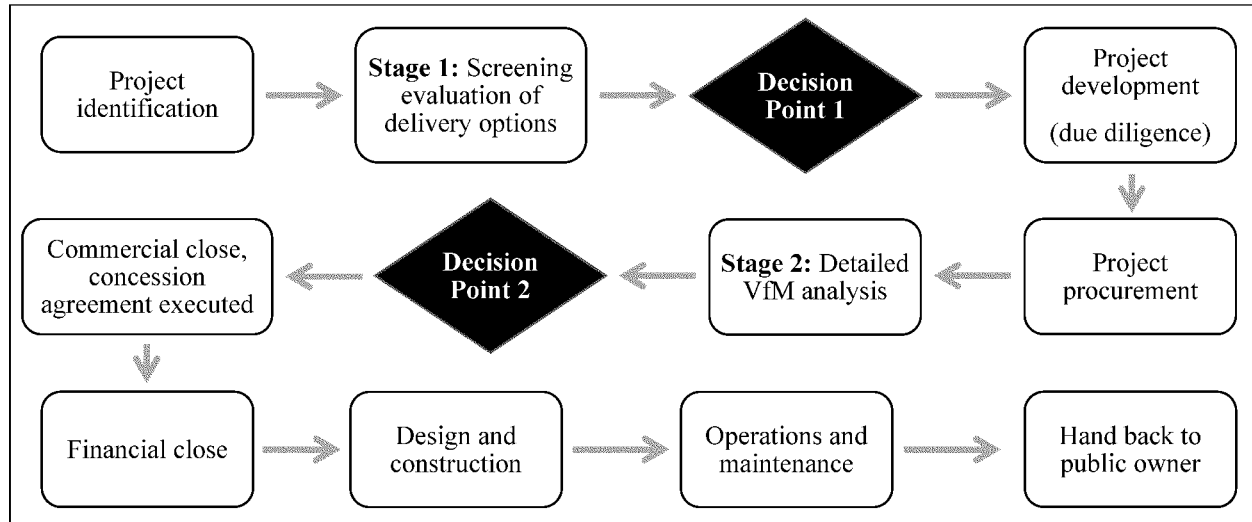
3. Principles of P3 Analysis

The appropriateness of P3 delivery as an option should be evaluated during the early phases of the project life cycle (such as project identification and delivery option screening) and as the project progresses during project development and procurement. With better and more information available later in the project life cycle, and as the

commercial and financial terms or assumptions change, the public sponsor should update the P3 evaluation by conducting detailed VfM to ensure a P3 model is still appropriate and in the public interest.

To ensure compliance with statutory VfM or comparable analysis requirements, the Bureau expects public sponsors to evaluate the appropriateness of, and value to be generated from, P3

project delivery at two decision points in the project lifecycle: (1) after project identification and before the project development phase, and (2) after the P3 procurement and before entering into a concession agreement between the public sponsor and private developer at commercial close. Exhibit 3 below shows these two decision points in a simplified P3 project lifecycle.

Exhibit 3: Illustrative P3 Project Life Cycle

The project life cycle presented in Exhibit 3 also applies to Major Projects under section 106(h) of title 23, United States Code, with an estimated total cost above \$750 million that meet the other criteria under BIL section 70701. Additionally, under BIL section 11508, the Major Project financial plan for Major Projects being carried out through a P3 must include a detailed VfM analysis or similar comparative analysis. This analysis is submitted as part of the initial financial plan, or subsequent financial plan annual update where appropriate. For requirements applicable to Major Projects that do not meet these criteria, see FHWA's Major Projects guidance documents, available at <https://www.fhwa.dot.gov/majorprojects/>.

Observing principles derived from lessons learned and best practices helps public sponsors objectively analyze the advantages and disadvantages of delivering an infrastructure project through a P3. Following these principles also helps public sponsors communicate to the public the basis of their decisions. The next paragraphs describe principles public sponsors should incorporate into their analyses to support requests for DOT federal financial assistance.

A. Establish Delivery Option Goals. VfM provides insights to support decision-making, when the public sponsor defines goals related to the delivery method. Examples of delivery goals are maximizing use of innovative approaches and technologies, preserving flexibility for future improvements, and minimizing the taxpayers' near-term financial burden in subsidizing the project. Delivery goals may be different than project goals. Whether a project is likely to achieve project goals is better

analyzed through techniques such as benefit-cost analysis or environmental or economic impact analysis, rather than VfM.

B. Identify Practical Delivery Options. After setting project delivery goals, public sponsors can then consider which delivery methods are likely to fulfill the identified goals. Sponsors can then narrow their choices by screening out impractical ones. For example, a public sponsor might have authority for some delivery methods and not others. Documenting the basis for rejecting a delivery method enhances credibility of the public sponsor's process.

C. Inform Subsequent Decisions. VfM analyzes tradeoffs between delivery options to identify the most suitable public delivery option and most suitable P3 option. The public sponsor can then determine whether the public or P3 option provides the most value relative to the established delivery option goals. The purpose of VfM is to inform selection of the project delivery method, not to justify project delivery decisions public sponsors previously made. Using VfM as intended, public sponsors will be able to show how the analysis preceded, and directly contributed to, the decision to advance the project with a P3 or other delivery approach.

D. Analytical Framework and Data. VfM involves predictions, projections, and assumptions. Public sponsors should (a) use actual, verifiable data, if possible, and (b) where predictions, projections, and assumptions are necessary, provide the methodology and basis for the inputs.

E. Transparency and Accountability. To the maximum extent practicable, public sponsors should make information available to the public,

including (a) the project's delivery goals, (b) the information used in the VfM analysis, (c) how the VfM analysis was employed in the decision-making process, and (d) the decision-makers charged with selecting the final delivery method.

4. P3 Analysis Requirements

Several provisions in the legislation established or amended statutory P3 evaluation requirements. Applicability of these requirements depends on project size, source of funding or financing, phase of the project life cycle, and other attributes. In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users defined the term major project, reduced the financial plan requirement threshold to \$500 million, and required submission of project management plans.⁷ In 2012, the Moving Ahead for Progress in the 21st Century Act established the requirement to assess the appropriateness of a P3 for delivering major projects.⁸ The 2015 FAST Act established the requirement that public sponsors receiving credit assistance from the Bureau have conducted VfM or comparable analysis before deciding to advance projects as P3s.⁹

Enacted November 15, 2021, the BIL established new, and amended prior, statutory P3 evaluation requirements.¹⁰ The BIL:

⁷ Public Law 109–59, sec. 1904(a) (2005), amending 23 U.S.C. 106(h).

⁸ Public Law 112–141, sec. 1503(a)(4)(B) (2012), amending 23 U.S.C. 106(h).

⁹ Public Law 114–94, sec. 9001(a) (2015), adding 49 U.S.C. 116(e)(3).

¹⁰ Public Law 117–58, secs. 11508 and 70701 (2021).

- establishes a P3 evaluation requirement for projects with total estimated costs of more than \$750 million. Sponsors of these projects are required to conduct VfM if they intend to seek TIFIA or RRIF credit assistance, are in a state in which there is a state law authorizing the use and implementation of P3s for transportation projects, and the project is anticipated to generate user fees or other revenues that could support

project capital and operating costs.¹¹ This provision of BIL further specifies the level of detail and specific elements to be included in this detailed P3 evaluation;¹²

- amends the requirements of section 106(h) of title 23 to require public sponsors of projects with an estimated cost of \$500 million or more, receiving title 23 assistance, and intended to be delivered as a P3, to conduct a *detailed* VfM or similar comparative analysis;¹³

- stipulates reporting and transparency requirements throughout project delivery and following key project delivery milestones;¹⁴ and
- adds VfM as a TIFIA eligibility criterion for projects to be carried out through P3s.¹⁵

Exhibit 4 summarizes the statutory requirements for projects required to conduct a VfM analysis and the expected evaluation type based on the project delivery type.

EXHIBIT 4—P3 EVALUATION REQUIREMENTS BY PROJECT AND DELIVERY TYPE

Project type	Delivery type	Required public sponsor P3 evaluation *		
		Stage 1	Stage 1A	Stage 2
All transportation projects costing more than \$750 million that generate user fees or other revenues carried out by certain public agencies in states with P3 authority, and seeking TIFIA or RRIF credit assistance ¹⁶ .	All delivery types, except progressive P3. Progressive P3	Screening	<i>n.a.</i>	Detailed.
		Screening	Qualitative	Detailed.
Title 23 projects costing \$500 million or more ¹⁷	All P3	Detailed.**		
All projects proposed for P3 delivery and seeking TIFIA or RRIF credit assistance ¹⁸ .	Conventional P3	Screening	<i>n.a.</i>	Detailed.
		Progressive P3	Qualitative	Detailed.

Notes:

* Stage 1: early in project development before starting the procurement process.
 Stage 1A: for a progressive P3, before signing a pre-development agreement.
 Stage 2: before signing a concession agreement with a private P3 entity, if a P3 delivery method is selected in Stage 1.
n.a.: not applicable.

** The Major Project financial plan for Major Projects being carried out through a P3 agreement must include a detailed VfM analysis or similar comparative analysis. This analysis is submitted as part of the initial financial plan, or subsequent financial plan annual update where appropriate. Project sponsors of Major Projects under 23 U.S.C. 106(h) should consider whether their project also meets the requirements of the other VfM requirements detailed in this guidance. If so, their projects would also be subject to the additional VfM requirements detailed in this guidance.

5. Compliance Guidelines

This section details and clarifies aspects of the P3 evaluation requirements. Public sponsors and their projects often have unique attributes and circumstances that require in-depth analysis and review that might differ from the general descriptions herein. We encourage you to discuss your projects and applicable requirements directly with the Bureau and FHWA staff. Email us at BuildAmerica@dot.gov or FHWAMajorProjects@dot.gov.

A. Early Phase P3 Evaluation (Stage 1). Outlining of strategies for the business case early in the project lifecycle, *i.e.*, project identification and screening, is critical for successful project delivery selection. During project identification and screening, public sponsors should engage relevant stakeholders through brainstorming and risk assessment workshops and may use any tool for qualitative or high-level quantitative analysis to compare the most suitable public project delivery

option and the appropriate P3 option. Project sponsors seeking credit assistance under TIFIA and RRIF for all projects procured as P3s (regardless of size) are required to complete VfM or comparable analysis prior to deciding to advance the project as a P3.¹⁹ Because the decision to advance a project as a P3 is made at Stage 1, public sponsors that anticipate either seeking TIFIA or RRIF credit assistance directly or that TIFIA or RRIF might be part of their ultimate preferred bidder's financing package, must conduct VfM at Stage 1. Information available at Stage 1 is often limited, so the Bureau anticipates VfMs conducted at this stage would comprise a screening analysis for conventional P3s and any project required to perform detailed VfM analysis under BIL Section 70701.

If the public sponsor cannot define a workable public delivery option (*e.g.*, in a transit-oriented development project for which a private entity already owns the land or has secured development rights), VfM or comparable analysis

might not be feasible. In such cases, the public sponsor can demonstrate compliance with statutory requirements by documenting before signing a concession agreement why it cannot complete a meaningful VfM or comparable analysis and why it decided to use a P3 delivery option.

B. Progressive P3 Procurement (Stage 1A). In a progressive P3 procurement, the public sponsor selects a private developer and executes a pre-development agreement to design and de-risk the project collaboratively. Then, the private developer negotiates and submits a firm price proposal for delivering the project. If the public sponsor accepts the proposal, the parties sign a concession agreement.

The Bureau expects public sponsors using a progressive P3 procurement to conduct a qualitative VfM before signing a pre-development agreement and a detailed VfM prior to signing a concession agreement. Similar to the discussion of Stage 1 above, the Bureau expects the VfM at Stage 1A will be

¹¹ Public Law 117–58, sec. 70701 (2021).
¹² Public Law 117–58, sec. 70701(a) (2021).
¹³ Public Law 117–58, sec. 11508(d)(1)(C) (2021), adding 23 U.S.C. 106(h)(3)(D).

¹⁴ Public Law 117–58, secs. 11508(b), (c), and 70701(c), (d) (2021).
¹⁵ Public Law 117–58, sec. 11508(d) (2021), adding 23 U.S.C. 602(a)(11).

¹⁶ Public Law 117–58, sec. 70701 (2021).
¹⁷ Public Law 117–58, sec. 11508(d)(1)(C) (2021).
¹⁸ 49 U.S.C. 116(e)(3) and 23 U.S.C. 602(a)(11).
¹⁹ 49 U.S.C. 116(e)(3) and 23 U.S.C. 602(a)(11).

qualitative with limited information available regarding the project. After the private developer submits a committed bid price pursuant to the pre-development agreement, the Bureau would expect the public sponsor to update and finalize the VfM based on the terms and conditions of the proposed P3 agreement. At this point, the Bureau expects the public sponsor to conduct a detailed P3 evaluation prior to signing a concession agreement.

C. Subsequent P3 Evaluations (Stage 2). The Bureau expects this Stage 2 detailed analysis to be done once the project sponsor has additional details on project cost, funding/financing, and risk allocation. However, the Bureau expects that the Stage 2 analysis would be completed before signing the concession agreement. If the Stage 1 analysis resulted in the selection of a non-P3 delivery method, a Stage 2 analysis will not be required.

The detailed Stage 2 evaluation must include:

- i. the life-cycle cost and project delivery schedule;
- ii. the costs of using public funding versus private financing for the project;
- iii. a description of the key assumptions made in developing the analysis, including—
 - a. an analysis of any Federal grants or loans and subsidies received or expected (including tax depreciation costs);
 - b. the key terms of the proposed public-private partnership agreement, if applicable (including the expected rate of return for private debt and equity), and major compensation events;
 - c. a discussion of the benefits and costs associated with the allocation of risk;
 - d. the determination of risk premiums assigned to various project delivery scenarios;
 - e. assumptions about use, demand, and any user fee revenue generated by the project; and
 - f. any externality benefits for the public generated by the project;
 - iv. a forecast of user fees and other revenues expected to be generated by the project, if applicable; and
 - v. any other information the Secretary of Transportation determines to be appropriate.²⁰

Project sponsors may choose any tool that provides analysis of items (i), (ii), and (iii), including items (iii)(a) through (f), above to meet the requirements for detailed VfM. The Bureau recommends public sponsors document the basis for the analysis, project goals and objectives, and the underlying assumptions and rationale and then make such analysis and documentation available for public review. Any enhancements or adjustments such as risk premiums should be based on

actual data, to the extent possible, and reasonably verifiable.

The Bureau strongly encourages public sponsors of P3 projects that anticipate seeking TIFIA or RRIF credit assistance to undertake both (a) a screening analysis at Stage 1 or a qualitative analysis at Stage 1A and (b) a detailed VfM or comparable analysis at Stage 2. The Bureau will evaluate the type of VfM conducted at each stage to determine whether a public sponsor has satisfied all applicable requirements. In doing so, the Bureau will seek to ensure the public sponsor used information appropriate for the stage at which the analysis was conducted and that the VfM was thorough. The Bureau therefore expects to see a bifurcated analysis as described above and that public sponsors of P3 projects seeking Bureau credit assistance²¹ conduct a detailed VfM that includes evaluation of the elements in BIL Section 70701. The Bureau is unlikely to find a public sponsor satisfied these requirements if a P3 project of any size or a project with an anticipated cost of more than \$750 million that generates user fees or other revenues in states with P3 laws did not undergo a screening VfM at Stage 1 (or qualitative VfM for a progressive P3 at Stage 1A) and a detailed VfM at Stage 2 (for projects selected for delivery as a P3 as a result of Stage 1 analysis) that evaluates the elements in BIL Section 70701.

If the public sponsor cannot define a workable public delivery option, the public sponsor can demonstrate compliance with statutory requirements by documenting before signing a concession agreement why it cannot complete a meaningful VfM or comparable analysis and why it decided to use a P3 delivery option.

D. Auditing and Public Information. Transparency is an integral part of proper public sector decision making, particularly for long term commitments. The Bureau recommends public sponsors conduct an independent audit prior to signing contracts, such as concession agreements. An entity that has no ties to the project should conduct the audit and should ensure all processes have been followed and all major risks are properly identified, documented, and shared with decision makers and stakeholders. It should also ensure all local and federal approvals needed prior to execution of the concession agreement are in place and execution of the agreement will not

impose any undisclosed major risks to the public.

In addition to the foregoing, 49 U.S.C. 116(e)(3) requires public sponsors to make the analysis and key terms of the concession agreement publicly available at an appropriate time. The Bureau believes the appropriate time is as early as possible after signing the concession agreement, subject to any statutory limitations on a public sponsor's ability to make this information public. The Bureau expects public sponsors to make the analysis and key terms of the concession agreement (for P3 projects) publicly available (including on the website of the project, for projects described in BIL Section 70701²²) shortly after commercial close and prior to financial close. The Bureau does not expect to reach financial close on TIFIA or RRIF credit assistance for P3 projects or projects with anticipated costs of more than \$750 million that generate user fees or other revenues in states with P3 laws if the requisite information has not yet been made public.

6. P3 Post-Implementation Review Requirements

The FAST Act and BIL require project sponsors to conduct post-implementation reviews of the private partners' compliance with concession agreement terms, as a condition for receiving TIFIA and RRIF credit assistance.²³ BIL directs the Secretary to require the public sponsor of title 23 P3 projects costing \$100,000,000 or more that receive federal financial assistance, including Bureau credit assistance, not later than three years after the date of opening of the project to traffic, to:

- Review the project, including the private partner's compliance with the terms of the concession agreement;
- Certify to the Secretary that the private partner is meeting terms of the concession agreement for the project or notify the Secretary about the private partner's non-compliance, including a brief description of each violation of the concession agreement; and
- Make publicly available the above certification or notification without disclosing proprietary or confidential business information.²⁴

Section 116(e)(3)(A)(iii) of title 49 establishes a similar review requirement for any P3 project receiving TIFIA or RRIF credit assistance and further requires the public sponsor to provide a publicly available summary of total

²² BIL section 70701(c) requires public sponsors to post the results of the analysis on the website of the project.

²³ 49 U.S.C. 116(e)(3)(A)(iii) and (iv) and Public Law 117–58, sec. 11508(b) (2021).

²⁴ Public Law 117–58, sec. 11508(b).

²¹ Including where the public sponsor is not itself directly seeking TIFIA or RRIF credit assistance but anticipates that its preferred bidder might do so.

²⁰ Public Law 117–58, sec. 70701(a) (2021).

federal financial assistance in the project.

To satisfy these statutory review and disclosure requirements, the Bureau will require a public sponsor to sign a direct agreement with the Bureau prior to closing on Bureau credit assistance that memorializes the public sponsor's obligation to conduct and disclose the results of such review. A public sponsor should incorporate into its concession agreement the public sponsor's obligation to evaluate the concessionaire's performance and report as the law requires. The Bureau's loan agreement with the concessionaire will reference the relevant concession agreement and applicable statutory requirements and trigger a default in the event the public sponsor does not comply with its statutory obligations.

Appendix: Statutory References to Value for Money or Comparable Analysis Bipartisan Infrastructure Law (Pub. L. 117–58, 11508)

Sec. 11508. Requirements for Transportation Projects Carried Out Through Public-Private Partnerships

(a) DEFINITIONS.—In this section:

(1) PROJECT.—The term “project” means a project (as defined in section 101 of title 23, United States Code) that—

(A) is carried out, in whole or in part, using Federal financial assistance; and

(B) has an estimated total cost of \$100,000,000 or more.

(2) PUBLIC-PRIVATE PARTNERSHIP.—The term “public-private partnership” means an agreement between a public agency and a private entity to finance, build, and maintain or operate a project.

(b) REQUIREMENTS FOR PROJECTS CARRIED OUT THROUGH PUBLIC-PRIVATE PARTNERSHIPS.—With respect to a public-private partnership, as a condition of receiving Federal financial assistance for a project, the Secretary shall require the public partner, not later than 3 years after the date of opening of the project to traffic—

(1) to conduct a review of the project, including a review of the compliance of the private partner with the terms of the public-private partnership agreement;

(2)(A) to certify to the Secretary that the private partner of the public-private partnership is meeting the terms of the public-private partnership agreement for the project; or

(B) to notify the Secretary that the private partner of the public-private partnership has not met 1 or more of the terms of the public-private partnership agreement for the project, including a brief description of each violation of the public-private partnership agreement; and

(3) to make publicly available the certification or notification, as applicable, under paragraph (2) in a form that does close any proprietary or confidential business information.

(c) NOTIFICATION.—If the Secretary provides Federal financial assistance to a

project carried out through a public-private partnership, not later than 30 days after the date on which the Federal financial assistance is first obligated, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a notification of the Federal financial assistance made available for the project.

(d) VALUE FOR MONEY ANALYSIS.—(1) PROJECT APPROVAL AND OVERSIGHT.—Section 106(h)(3) of title 23, United States Code, is amended—

(A) in subparagraph (C), by striking “and” at the end;

(B) by redesignating subparagraph (D) as subparagraph (E); and

(C) by inserting after subparagraph (C) the following: “(D) for a project in which the project sponsor intends to carry out the project through a public-private partnership agreement, shall include a detailed value for money analysis or similar comparative analysis for the project; and”.

(2) SURFACE TRANSPORTATION BLOCK GRANT PROGRAM.—Paragraph (21) of section 133(b) of title 23, United States Code (as redesignated by section 1109(a)(1)(C)), is amended by inserting “, including conducting value for money analyses or similar comparative analyses,” after “oversight”.

(3) TIFIA.—Section 602(a) of title 23, United States Code, is amended by adding at the end the following: “(11) PUBLIC-PRIVATE PARTNERSHIPS.—In the case of a project to be carried out through a public-private partnership, the public partner shall have—“(A) conducted a value for money analysis or similar comparative analysis; and “(B) determined the appropriateness of the public-private partnership agreement.”.

(e) APPLICABILITY.—This section and the amendments made by this section shall only apply to a public-private partnership agreement entered into on or after the date of enactment of this Act.

Bipartisan Infrastructure Law (Pub. L. 117–58, 70701)

Title VII—Public-Private Partnerships

Sec. 70701. Value For Money Analysis

(a) IN GENERAL.—Notwithstanding any other provision of law, in the case of a project described in subsection (b), the entity carrying out the project shall, during the planning and project development process and prior to signing any Project Development Agreement, conduct a value for money analysis or comparable analysis of the project, which shall include an evaluation of—

(1) the life-cycle cost and project delivery schedule;

(2) the costs of using public funding versus private financing for the project;

(3) a description of the key assumptions made in developing the analysis, including—

(A) an analysis of any Federal grants or loans and subsidies received or expected (including tax depreciation costs);

(B) the key terms of the proposed public-private partnership agreement, if applicable (including the expected rate of return for

private debt and equity), and major compensation events;

(C) a discussion of the benefits and costs associated with the allocation of risk;

(D) the determination of risk premiums assigned to various project delivery scenarios;

(E) assumptions about use, demand, and any user fee revenue generated by the project; and

(F) any externality benefits for the public generated by the project;

(4) a forecast of user fees and other revenues expected to be generated by the project, if applicable; and

(5) any other information the Secretary of Transportation determines to be appropriate.

(b) PROJECT DESCRIBED.—A project referred to in subsection (a) is a transportation project—

(1) with an estimated total cost of more than \$750,000,000;

(2) carried out—

(A) by a public entity that is a State, territory, Indian Tribe, unit of local government, transit agency, port authority, metropolitan planning organization, airport authority, or other political subdivision of a State or local government; and

(B) in a State in which there is in effect a State law authorizing the use and implementation of public-private partnerships for transportation projects; and

(3)(A) that intends to submit a letter of interest, or has submitted a letter of interest after the date of enactment of this Act, to be carried out with—(i) assistance under the TIFIA program under chapter 6 of title 23, United States Code; or (ii) assistance under the Railroad Rehabilitation and Improvement Financing Program of the Federal Railroad Administration established under chapter 224 of title 49, United States Code; and

(B) that is anticipated to generate user fees or other revenues that could support the capital and operating costs of such project.

(c) REPORTING REQUIREMENTS.—

(1) PROJECT REPORTS.—For each project described in subsection (b), the entity carrying out the project shall—

(A) include the results of the analysis under subsection (a) on the website of the project; and

(B) submit the results of the analysis to the Build America Bureau and the Secretary of Transportation.

(2) REPORT TO CONGRESS.—The Secretary of Transportation, in coordination with the Build America Bureau, shall, not later than 2 years after the date of enactment of this Act—

(A) compile the analyses submitted under paragraph (1)(B); and

(B) submit to Congress a report that—

(i) includes the analyses submitted under paragraph (1)(B);

(ii) describes—

(I) the use of private financing for projects described in subsection (b); and

(II) the costs and benefits of conducting a value for money analysis; and

(iii) identifies best practices for private financing of projects described in subsection (b).

(d) GUIDANCE.—The Secretary of Transportation, in coordination with the

Build America Bureau, shall issue guidance on performance benchmarks, risk premiums, and expected rates of return on private financing for projects described in subsection (b).

United States Code, Title 23, Section 106(h)

(h) Major Projects.—

(1) In general.—Notwithstanding any other provision of this section, a recipient of Federal financial assistance for a project under this title with an estimated total cost of \$500,000,000 or more, and recipients for such other projects as may be identified by the Secretary, shall submit to the Secretary for each project—

(A) a project management plan; and
(B) an annual financial plan, including a phasing plan when applicable.

(2) Project management plan.—A project management plan shall document—

(A) the procedures and processes that are in effect to provide timely information to the project decisionmakers to effectively manage the scope, costs, schedules, and quality of, and the Federal requirements applicable to, the project; and

(B) the role of the agency leadership and management team in the delivery of the project.

(3) Financial plan.—A financial plan—

(A) shall be based on detailed estimates of the cost to complete the project;

(B) shall provide for the annual submission of updates to the Secretary that are based on reasonable assumptions, as determined by the Secretary, of future increases in the cost to complete the project;

(C) may include a phasing plan that identifies fundable incremental improvements or phases that will address the purpose and the need of the project in the short term in the event there are insufficient financial resources to complete the entire project. If a phasing plan is adopted for a project pursuant to this section, the project shall be deemed to satisfy the fiscal constraint requirements in the statewide and metropolitan planning requirements in sections 134 and 135;

(D) for a project in which the project sponsor intends to carry out the project through a public-private partnership agreement, shall include a detailed value for money analysis or similar comparative analysis for the project; and

(E) shall assess the appropriateness of a public-private partnership to deliver the project.

United States Code, Title 49, Section 116(e)

(e) Innovative Financing Best Practices.—

(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.

(2) Activities.—The Bureau shall carry out paragraph (1)—

(A) by making Federal credit assistance programs more accessible to eligible recipients;

(B) by providing advice and expertise to eligible entities that seek to leverage public and private funding;

(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

(D) by developing and monitoring—

(i) best practices with respect to standardized State public-private partnership authorities and practices, including best practices related to—

(I) accurate and reliable assumptions for analyzing public-private partnership procurements;

(II) procedures for the handling of unsolicited bids;

(III) policies with respect to noncompete clauses; and

(IV) other significant terms of public-private partnership procurements, as determined appropriate by the Bureau;

(ii) standard contracts for the most common types of public-private partnerships for transportation facilities; and

(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.

Duane Callender,

Acting Executive Director, Build America Bureau.

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BILLING CODE P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

RIN 1506-AB54

Agency Information Collection Activities; Proposed Collection; Comment Request; Real Estate Reports

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for comments.

SUMMARY: FinCEN invites all interested parties to comment on the proposed information collection associated with the requirement to report information about certain residential real estate transfers, as required by the Anti-Money Laundering Regulations for Residential Real Estate Transfers final rule published on August 29, 2024. The details included in the information collection are listed below. This request for comment is made pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments are welcome and must be received on or before January 13, 2025.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov/>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN-2024-0019 and the specific Office of Management and Budget (OMB) control number 1506-0080.

- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2024-0019 and OMB control number 1506-0080.

Please submit comments by one method only. Comments will be reviewed consistent with the Paperwork Reduction Act of 1995 (PRA) and applicable OMB regulations and guidance. Comments submitted in response to this notice will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Provisions

The legislative framework generally referred to as the Bank Secrecy Act (BSA) consists of the Currency and Foreign Transactions Reporting Act of 1970, as amended by the Uniting and