

State Infrastructure Bank (SIB) Pilot Programs: Guidance



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1 Background and Purpose

Background

Two State Infrastructure Bank (SIB) pilot programs currently exist. The first pilot program was authorized by the National Highway System Designation Act of 1995 (NHS Act), section 350 (enacted November 28, 1995). The second pilot program was authorized by the Transportation Equity Act for the 21st Century (TEA-21), section 1511 (enacted June 9, 1998). Thirty-one States (including Puerto Rico) established NHS Act SIBs and two additional States established TEA-21 SIBs (see Table 1). No additional States may establish SIB pilot programs. Congress in 2005 authorized a permanent SIB program that is codified in 23 U.S.C. 610.

Table 1. SIB Pilot Programs and Federal Capitalization

	State	Year(s) of Federal Capitalization	Amount of Federal Capitalization
TEA-21 SIBs			
1	Florida	1996, 1997, 1998, 1999, 2003	\$101,065,437
2	Missouri	1996, 1997, 1999	\$48,410,000
NHS Act SIBs			
1	Alaska	1997	\$2,490,000
2	Arizona	1996 and 1997	\$46,185,974
3	Arkansas	1997	\$1,500,000
4	California	1996	\$3,000,000
5	Colorado	1997	\$1,500,000
6	Delaware	1997	\$4,800,000
7	Indiana	1997	\$3,390,000
8	Iowa	1997	\$1,500,000
9	Maine	1997	\$2,540,000
10	Michigan	1997	\$11,050,000
11	Minnesota	1997 & 1999	\$35,069,200
12	Nebraska	1997	\$2,830,000
13	New Mexico	1997	\$12,071,948
14	New York	1997	\$12,000,000
15	North Carolina	1997	\$1,260,000
16	North Dakota	1997	\$2,540,000
17	Ohio	1996 & 1997	\$87,000,000
18	Oregon	1996 & 1997	\$14,483,000
19	Pennsylvania	1997	\$17,390,000
20	Puerto Rico	1997 & 1998	\$12,008,588
21	Rhode Island	1997	\$1,500,000
22	South Carolina	1997	\$3,000,000
23	South Dakota	1997	\$11,152,719
24	Tennessee	1997	\$1,500,000
25	Texas	1996 & 1997	\$171,288,804
26	Utah	1997	\$2,310,000
27	Vermont	1997	\$2,060,000
28	Virginia	1996 & 1997	\$18,000,000
29	Washington	1997	\$1,500,000
30	Wisconsin	1997	\$1,500,000
31	Wyoming	1997	\$23,541,942
			Total: \$661,437,612

Source: FMIS, March 31, 2011.

States participating in the SIB pilot programs have executed cooperative agreements with the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), as applicable, establishing the basic requirements of the SIB. The cooperative agreement outlines the structure of the SIB, including the administering agency, financial assistance policies, accounting and audit procedures, and sanctions and compliance.

Federal funding for the NHS Act SIB pilot programs was limited to funds authorized in fiscal years 1996 and 1997, including \$150 million from the General Fund of the U.S. Treasury. No additional Federal funds are available to capitalize NHS Act SIB pilot programs. Federal funding for the TEA-21 SIB pilot programs was limited to funds authorized by TEA-21 as well as the funds eligible for the NHS Act SIB pilot programs. According to FHWA reports, about \$661 million in Federal funding from fiscal years 1996 through 2003 was provided to capitalize the pilot program SIBs. No additional Federal funds are available to capitalize either of the SIB pilot programs.

States wishing to establish a new SIB or expand their SIB using Federal funds may do so in accordance with the provisions of 23 U.S.C. 610.

These Stewardship Practices only apply to SIB accounts capitalized with Federal-aid highway funds. SIB accounts receiving Federal transit funds are subject to FTA procedures.

SIB pilot programs may offer highway and transit capital project sponsors the following forms of assistance, which are broadly defined:

Loans:

- ▶ For all or part of a project's cost
- ▶ With flexible terms
- ▶ At or below market interest rates
- ▶ May be subordinated
- ▶ Short-term construction or long-term debt financing

Credit Enhancement:

- ▶ Capital reserves and other security for bond or debt instrument financing
- ▶ Letters of credit (direct pay or stand-by)
- ▶ Lines of credit
- ▶ Bond insurance and loan guarantees
- ▶ Finance purchase and lease agreements with respect to transit projects

TEA-21 SIB pilot programs also may assist railroad projects if 49 U.S.C. Subtitle V funds were used to capitalize the bank. Despite the ability to offer other forms of credit enhancement, SIB pilot programs have provided direct loans almost exclusively.

Purpose of this Document

FHWA's Office of Innovative Program Delivery (OIPD) is responsible for ensuring that the SIB pilot programs and other related innovative revenue and credit programs are effectively administered, and for providing technical assistance to the States and FHWA Division Offices with respect to these programs. This document provides a summary discussion of stewardship practices for managing the SIB pilot programs. The

practices included in this document are based on legislative requirements, existing SIB Guidance, and a survey conducted of all FHWA Division Offices regarding program use by the States.

This document includes examples of best practices related to the SIB pilot programs identified in a 2011 review of the program, along with some tools that may aid FHWA Division Offices and the States in carrying out their stewardship responsibilities.

2 SIB Pilot Programs Guidance

The Division Office in each State with a SIB pilot program carries out certain stewardship and oversight functions related to the SIB pilot programs to ensure the State is complying with the statutorily required cooperative agreement and the policies and procedures relating to the SIB pilot program. It is considered a best practice to address any material changes to a SIB pilot program via an addendum to the cooperative agreement jointly approved by the FHWA Division Office and the State. Provided below is a summary of stewardship and oversight practices for NHS Act SIB pilot programs and TEA-21 SIB pilot programs.

Receipt and Review of Annual Report

In accordance with the SIB Guidance, each SIB pilot program submits an Annual Report to the FHWA Division Office no later than 90 days after the end of each Federal fiscal year. This report provides a history of the SIB activity as well as a more detailed update regarding the activity of the immediately preceding year. To aid in the conformity of these annual reports, the OIPD has prepared an electronic spreadsheet that States may use as an alternative and streamlined means of satisfying the annual reporting requirement. Appendix A provides a suggested format for the report that can be completed electronically via a spreadsheet provided by FHWA.

Review of SIB Pilot Program Compliance with Federal Requirements

The FHWA Division Office oversight of a SIB pilot program includes a variety of items related to Federal regulations and requirements. Additional detail on the SIB pilot program requirements can be found in the SIB Guidance, Section 350 of the NHS Act, and Section 1511 of TEA-21. The FHWA Division Office should monitor compliance with the following requirements of Section 350 of the NHS Act and Section 1511 of TEA-21 as a best practice:

- ▶ **Use of appropriate fiscal controls and accounting procedures.** Each SIB pilot program is required to establish fiscal controls and accounting procedures sufficient to ensure proper accounting for payments received and disbursements made through the SIB, and to provide SIB fund balances at the beginning and end of the accounting period. The SIB is subject to the single audit requirements established by the Office of Management and Budget Circular A-133.
- ▶ **Proper investment of SIB fund balances and reinvestment of interest on SIB fund balances to the account in which it was earned.** Funds held in SIB accounts are invested in U.S. Treasury securities or other financing instruments that the State currently uses for its own funds to earn interest. If a State chooses to use an investment instrument that it does not currently use for its own State funds, the State seeks approval from FHWA. The interest earned on funds deposited into the SIB is credited to the account in which it was earned.
- ▶ **Proper records retention.** The State retains project files relating to the SIB pilot program until all financial assistance has been repaid and necessary audits have been performed. Retention and disposition of SIB files is in accordance with State laws unless such period for retention conflicts with the requirement above or the three-year minimum requirement of 49 CFR 18.42 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), in which event the longer period of retention will apply.

- ▶ **Allowable levels of administrative cost expenditure.** A State may expend no more than 2 percent of the Federal funds contributed to capitalize the SIB to pay the reasonable costs of administering the bank. This limitation does not apply to non-Federal funds in the SIB.
- ▶ **Maintenance of an investment grade rating for SIBs that issue debt to increase the pool of lendable funds (a “leveraged” SIB).** A SIB that issues debt to increase its pool of lendable funds (a “leveraged” SIB) must maintain on a continuing basis an investment grade rating on its debt issuances and its ability to pay claims under credit enhancement programs of the bank. (see section 350(e) of the NHS Act; section 1511(f) of TEA-21)

If, at any time, FHWA or FTA, as applicable, determines that the State has not complied with the terms of its cooperative agreement, the requirements of the NHS Act or TEA-21, as applicable, or other Federal requirements, in accordance with existing guidance, the appropriate agency will notify the State of the non-compliance and request the State to take appropriate corrective action or submit a compliance plan to FHWA and FTA, as applicable, within 60 days.

Ensuring Project Eligibility and Compliance with Relevant Requirements

FHWA Division Office should ensure that projects receiving assistance from the SIB pilot program are eligible for such assistance and comply with Federal requirements.

Section 350 of the NHS Act requires all projects receiving assistance from an NHS Act SIB pilot program to comply with the Federal requirements that apply to projects under title 23 or title 49 (as appropriate) when the assistance is derived from: (1) the Federal funds deposited into the SIB; (2) the non-Federal matching funds; (3) all repayment amounts from Federal sources; and (4) any investment income generated from these funds. Under Section 350, repayments to an NHS Act SIB pilot program not derived from Federal funds may be treated as State funds. Projects receiving assistance from non-Federal repayments must be eligible for assistance under title 23 or title 49 but may be administered as State or local funded projects. Such projects are not subject to Federal requirements.

Section 1511 of TEA-21 requires all projects receiving assistance from a TEA-21 SIB pilot program Federal account to comply with the Federal requirements that apply to projects under title 23 or title 49 as appropriate. Therefore, Federal requirements apply to all rounds of lending by a TEA-21 SIB. States will sometimes create separate SIB accounts wholly funded with State monies. These accounts are not subject to Federal requirements.

SIB borrowers may use SIB loans to provide the local match share on a Federal-aid project. In such instances non-Federal funds will need to be used to repay the loan. This applies to both pilot programs.

If a SIB borrower intends to use Federal-aid funds to make SIB loan payments for the Federal share of a project, then the use of Federal-aid funds for debt service payments makes the borrowing a Grant Anticipation Revenue Vehicle (GARVEE) project under 23 U.S.C. 122, Payments to States for Bond and Other Debt Instrument Financing. If the project is approved as a GARVEE project, the provisions of 23 U.S.C. 115 and 122 and any related guidance will apply. Project sponsors should refer to FHWA procedures relating to GARVEE projects to determine how to obtain Federal approval for these projects. For information on GARVEEs go to:

www.fhwa.dot.gov/ipd/finance/tools_programs/federal_debt_financing/garvees/index.htm

Sale of SIB Loan Portfolio

If a State seeks to sell all or a portion of its SIB loan portfolio to a third party, the State should contact its FHWA Division Office and the OIPD for consultation and concurrence.

3 Procedures for Closing-Out NHS Act SIB Pilot Programs

A State with an NHS Act SIB pilot program may cease operation by closing the Federal highway account(s). A Federal highway account is one in which Federal capitalization funds and required State matching funds were deposited. The account maintains its Federal identity if SIB assistance is repaid with Federal funds. Summarized below is a process for a State to follow if it elects to close-out the Federal highway account(s) of its pilot program.

Closing the Federal highway account will end Federal oversight and terminate the cooperative agreement executed between FHWA and the State for its SIB pilot program. (A State, however, continues to have the option to maintain its NHS Act SIB pilot program as is and comply with all associated Federal requirements.) Close-out may be accomplished consistent with the termination requirements in 49 CFR 18.44(b) and 18.50. The State should submit a request to FHWA providing all necessary information to determine the status of the SIB pilot program funds, including the following:

- ▶ An accounting of Federal capitalization funds and State matching funds that demonstrates whether such funds were deployed to assist projects (via either loans or other credit assistance) and that distinguishes between Federal capitalization funds received from the Federal General Fund and funds received from the Highway Trust Fund as well as which capitalization funds were designated for highway, transit, or other uses.
- ▶ A proposed designation of the account balances from the following options:
 - If an amount of Federal capitalization funds and State matching funds was never used to assist projects, the following options are available to the State:
 - The State may take action to utilize the funds for eligible SIB assistance and then take the appropriate action under paragraph (b); or
 - The Federal capitalization funds must be repaid to FHWA and credited to either the Federal Highway Trust Fund or General Fund.
 - If Federal capitalization funds and State matching funds were used to assist projects, the source(s) of repayment of that assistance must be specified in the close-out request to FHWA. The following options are available to the State depending upon the source(s) of the repayment:
 - If SIB assistance has been repaid with non-Federal funds, these cash balances may now be administered as State funds subject to State requirements.
 - If SIB assistance has been repaid with Federal funds, these funds may now be administered as grant funds to support projects eligible under titles 23 or 49 as applicable. Projects assisted with these funds will be subject to Federal requirements.
- ▶ An accounting of any outstanding loans. If the SIB pilot program has outstanding loans, the State, in coordination with its FHWA Division Office, should develop a plan by which the State will account for and dispose of future repayments in accordance with the procedures above under item 2. Specifically, if SIB assistance is being repaid with Federal funds, these funds should be administered as grant funds to support projects eligible under title 23 or 49 as applicable. Projects assisted with these funds will be subject to Federal requirements.

- ▶ Any other information the FHWA Division Office, in cooperation with the State, determines is necessary and consistent with 49 CFR 18.44(b) and 18.50 to close-out the SIB.

Once the State has submitted its request to close out the NHS Act SIB's Federal highway account along with the information described above, it is considered a best practice for the following steps to be taken:

- ▶ The FHWA Division Office, with assistance from OIPD, determines that the State has satisfied the close-out requirements.
- ▶ The FHWA Division Office terminates the cooperative agreement between the State and FHWA thereby closing the NHS Act Pilot SIB.
- ▶ The State provides FHWA with a final Annual Report within 90 days after closing the SIB pilot program summarizing the activity of the SIB from inception to close-out. This report may follow the format provided in Appendix A and be completed electronically via a spreadsheet provided by FHWA.
- ▶ Record retention is governed by requirements in 49 CFR 18.42.

4 Procedures for Converting a SIB Pilot Program to a Title 23, United States Code, Section 610 SIB

A State with an NHS Act SIB pilot program or a TEA-21 SIB pilot program has the option to convert the SIB's Federal highway account(s) to a SIB administered under 23 U.S.C. 610. A Federal highway account is one in which Federal capitalization funds and required State matching funds were deposited. Summarized below is a process for a State to follow if it elects to convert the Federal highway account(s) of its pilot program. [A State wishing to convert the Federal transit account of its pilot program should contact FTA.] Completing the conversion process will result in a new cooperative agreement between FHWA and the State to govern the 23 U.S.C. SIB. A State continues to have the option to maintain its NHS Act or TEA-21 SIB pilot program as is and comply with all associated Federal requirements under those applicable provisions.

To execute the conversion of a SIB pilot program's Federal highway account, the State should submit a request to FHWA providing all necessary information to determine the status of the SIB pilot program funds, including the following:

- ▶ A statement that the State wishes to convert the Pilot SIB to a title 23 SIB subject to Federal requirements. Note that if a State chooses to convert its Pilot SIB account(s) to a title 23 SIB, the transferred funds will not constitute a capitalization grant under 23 U.S.C. 610 (d)(4), and will not have to be matched with State funds
- ▶ Any other information the FHWA Division Office, in cooperation with the State, determines is necessary to the conversion process.

Once the State has submitted its request to convert the Pilot SIB's Federal highway account, best practices that foster a seamless transition include the following steps:

1. The FHWA Division Office, with assistance from OIPD, determines that the State has satisfied the conversion requirements.
2. The FHWA Division Office terminates the Pilot SIB cooperative agreement between the State and FHWA thereby closing the Pilot SIB.
3. The State provides FHWA with a final Annual Report within 90 days after converting the Pilot SIB summarizing the activity of the Pilot SIB from inception to conversion. This report may follow the format provided in Appendix A and be completed electronically via a spreadsheet provided by FHWA.
4. The State and FHWA develop a cooperative agreement for the 23 U.S.C. 610 SIB and ensure that the structure of the new 23 U.S.C. 610 SIB is consistent with 23 U.S.C. 610 provisions.

Appendix A: Annual Report Format

A suggested format for an annual report is provided below which may be submitted via an electronic spreadsheet. The electronic spreadsheet provided by OIPD will include some pre-populated data on the SIB, but would be subject to review and correction by the Division Office.

State Infrastructure Bank Annual Report

[As of September 30, XXXX]

Instructions

- 1) Please verify data for your SIB. Provide corrections and updates where data is inaccurate.
- 2) For each data item, please note the source from which you obtained the information.
- 3) For questions, please contact the Office of Innovative Program Delivery.

Contact Information

1	State	
2	SIB Administering Entity (State DOT or Other Entity, as applicable)	
3	Contact Name	
4	Contact Phone	
5	Contact Email	

Capitalization		Data Source	Federal Highway Account	Federal Transit Account	Federal Rail Account	All Other (non-Federal) Accounts	Total All Accounts (calculated)
6	What is the total amount of Federal grant capitalization funding?						
7	What is the total amount of State capitalization funding from current revenues/reserves (not borrowed)?						
8	What is the total amount of State capitalization funding from borrowed funds (bond proceeds)?						
9	What is the total amount of other sources (non-state or Federal) capitalization funding?						
	Total Capitalization Funding (calculated)						

Respond to the following questions, if SIB has borrowed funds (issued bonds) for capitalization:

10	Was the underlying (uninsured) credit rating at time of all bond issuances investment grade (BBB or higher)?		
11	What was the outstanding principal balance on all bonds issued for SIB capitalization at end of recently completed FFY?		

State Infrastructure Bank Annual Report

Disbursed and Committed Loans			Federal Highway Account	Federal Transit Account	Federal Rail Account	All Other (non-Federal) Accounts	Total All Accounts (calculated)
12	What is the total number of loans disbursed since SIB inception to end of recently completed FFY?						
13	What is the total number of loans committed but not yet disbursed at end of recently completed FFY?						
14	What is the total dollar amount of loans disbursed since SIB inception to end of recently completed FFY?						
15	What is the total dollar amount of loans committed but not yet disbursed at end of recently completed FFY?						

Loan Repayments			Federal Highway Account	Federal Transit Account	Federal Rail Account	All Other (non-Federal) Accounts	Total All Accounts (calculated)
16	What is the total number of loans fully repaid since SIB inception to end of recently completed FFY?						
17	What is the total dollar amount of principal (not including interest) repayments since SIB inception to end of recently completed FFY?						
18	Have there been any late payments or loan defaults?						

Outstanding Loans			Federal Highway Account	Federal Transit Account	Federal Rail Account	All Other (non-Federal) Accounts	Total All Accounts (calculated)
19	What is the total number of loans outstanding at end of recently completed FFY?						
20	What is the total dollar amount of loans outstanding at end of recently completed FFY?						
21	What is the latest final maturity of all outstanding loans?						

Available Funds			Federal Highway Account	Federal Transit Account	Federal Rail Account	All Other (non-Federal) Accounts	Total All Accounts (calculated)
22	What is the total dollar amount of SIB funds that are available to lend at end of recently completed FFY?						

State Infrastructure Bank Annual Report

Project Costs Assisted		Federal Highway Account	Federal Transit Account	Federal Rail Account	All Other (non-Federal) Accounts	Total All Accounts (calculated)
23	What is the total cost of all projects that have received SIB loans since SIB inception to end of recently completed FFY?					
24	What is the total cost of all projects that have received other forms of SIB assistance (loan guarantees, capital reserves, letter of credit, line of credit, other) since SIB inception to end of recently completed FFY?					

ANNUAL REPORT COMMENT

FHWA has long required the States to submit annual reports on their SIBs. Both the NHS Act and TEA-21 authorized the Secretary to require “other reports.” SAFETEA-LU specifically requires an annual report. The following references apply:

- ▶ **NHS ACT:** (8) require the bank to make an annual report to the Secretary on its status no later than September 30, 1996, and September 30, 1997, and to make such other reports as the Secretary may require by guidelines.
 - **FHWA GUIDELINES:** The State must submit an Annual Report to the FHWA Regional Administrator and make the report available to recipients of SIB financial assistance no later than 90 days after the end of the Federal fiscal year. This report will identify recipients of financial assistance, amounts of financial assistance, financial assistance interest and repayment terms, and project categories, with emphasis on how the State has met the goals set forth in its application and the financial condition of the highway and transit accounts and any repayment accounts.
- ▶ **TEA-21:** (G) require the bank to make a biennial report to the Secretary and to make such other reports as the Secretary may require in guidelines.
 - **FHWA GUIDELINES:** The State must submit an annual report to the FHWA, FTA and/or FRA Administrators no later than 90 days after the end of the Federal fiscal year. This report must identify the recipients of financial assistance, describe the projects financed, and show the amounts of financial assistance, interest rates, and repayment terms. The State should include financial statements showing the financial condition of the SIB.
- ▶ **SAFETEA-LU (23 USC 610):** (7) require the bank to make an annual report to the Secretary on its status no later than September 30 of each year and such other reports as the Secretary may require under guidelines issued to carry out this section.

ADMINISTRATION COSTS

Both the NHS Act and TEA-21 specifically refer to 2% of Federal funds. After questions were raised regarding the language in the NHS Act, FHWA inserted clarifying language in TEA-21 to make it clear that the 2% did not apply to State funds. If a State has spent more than 2% of State funds on administration, it would be difficult at this time to undo that. Note the following references:

- ▶ **NHS ACT:** (j) PROGRAM ADMINISTRATION- For each of fiscal years 1996 and 1997, a State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank.
 - **GUIDANCE:** Up to two percent of the Federal funds deposited into the SIB can be used to administer the SIB.
- ▶ **TEA-21:** (l) PROGRAM ADMINISTRATION.—(1) IN GENERAL.—A State may expend not to exceed 2 percent of the Federal funds contributed to an infrastructure bank established by the State under this section to pay the reasonable costs of administering the bank. (2) NON-FEDERAL FUNDS.—The limitation described in paragraph (1) shall not apply to non-Federal funds.
 - **GUIDANCE:** Up to two percent of the Federal funds deposited into the SIB can be used to administer the SIB. This limitation does not apply to non-Federal funds in the SIB. In managing the SIB program, the State is not required to account for Federal SIB program administration separate from overall SIB administration.