Chapter 7: Special Issues Related to Loan Guarantees

By guaranteeing a loan, the DOT promises to pay a guaranteed lender in the event that the borrower defaults on its scheduled payments of the guaranteed loan. The TIFIA statute limits the role of guaranteed lender in such transactions to certain types of "institutional buyers", essentially large and sophisticated financial institutions.

The DOT must have confidence that the guaranteed lender has entered into a reasonable loan agreement with the borrower and also is capable of fulfilling its loan servicing responsibilities. To this end, the DOT has established basic eligibility criteria to evaluate and approve guaranteed lenders prior to execution of a loan guarantee credit agreement. This chapter outlines these eligibility criteria as well as the guaranteed lender's major responsibilities.

Section 7-1
Guaranteed Lender Eligibility

The guaranteed lender and the terms of the guaranteed loan must be approved by the DOT. The DOT will evaluate prospective guaranteed lenders with respect to the following:

- The guaranteed lender must meet the definition of "lender" set forth in the initial authorizing legislation (TEA 21) for TIFIA, as amended:

  > "… any non-Federal qualified institutional buyer (as defined in section 230.144A(a) of title 17, Code of Federal Regulations (or any successor regulation), known as Rule 144A(a) of the Securities and Exchange Commission and issued under the Securities Act of 1933 (15 U.S.C. 77a et seq.)), including:
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  > (1) A qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and
  >
  > (2) A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer."

- The guaranteed lender must not be debarred or suspended from participation in any Federal program.

- The guaranteed lender must not be delinquent on any Federal debt or loan.

- The guaranteed lender must be duly organized and legally authorized to enter into the transaction.

- The guaranteed lender must demonstrate experience in originating and servicing loans for large-scale developments.

- The guaranteed lender must demonstrate that it has sufficient capital to originate the loan and disburse for its own portfolio.

- If a guaranteed lender chooses to use a subservicer, the guaranteed lender must demonstrate that the subservicer is capable of handling the servicing responsibilities under the credit agreement. (The guaranteed lender shall remain responsible to the DOT for all servicing responsibilities under the credit agreement.)

- The guaranteed lender must provide certifications as specified in the credit agreement with the DOT and must maintain lender eligibility conditions.

- The guaranteed lender must provide periodic financial information to DOT's loan servicer in accordance with requirements specified in the credit agreement.

Section 7-2
Guaranteed Lender Responsibilities

The guaranteed lender may perform the following types of activities. The DOT may request documentation demonstrating the guaranteed lender's capacity to handle such responsibilities.

- Loan file compilation and retention;

- Loan disbursement;

- Collection and accounting of all amounts due and received under the terms of the loan, including release of liens for pay-off at maturity and prepayments;

- Maintenance of reserve accounts (if applicable);

- Supervision and quality control of subservicing (if applicable);

- Negotiation and restructuring of loans - loan workouts as approved by the DOT;

- Coordination with senior lender/trustee (if applicable);

- Immediate notifications in the event of payment delinquency and/or default, other defaults under the loan guarantee, potential corrective action plans, potential workout plans, change in borrower status, change in lender status, change in project status, failure of borrower to meet terms of the loan, etc.

Section 7-3
Loan Guarantee Provisions

Requirements for the Guaranteed Lender

After the DOT has approved a guaranteed lender and a project has satisfied all conditions for TIFIA credit assistance, a credit agreement will be negotiated and signed by the borrower, the guaranteed lender, and the DOT. The DOT will monitor the borrower and the guaranteed lender according to the conditions and requirements specified in the credit agreement. The DOT may periodically perform on-site reviews of the guaranteed lender's business operations or may request audited financial statements or updated certifications from the guaranteed lender indicating that the eligibility requirements are being maintained.

If the guaranteed lender fails to meet its obligations or to maintain the eligibility requirements, the DOT will advise the guaranteed lender of corrective actions that must be performed. If these corrective actions are not performed within the specified timeframe, the DOT may require a transfer of loan servicing to another entity and/or pursue legal remedies.

Interest Rate

The interest rate on the guaranteed loan is negotiated between the guaranteed lender and the borrower, subject to the DOT's approval.

Payment Process

Under a loan guarantee, the DOT commits to pay to the guaranteed lender, upon the occurrence of a payment default by the borrower, the full amount of the defaulted payment, as specified in the credit agreement.

In the event of a payment default, the guaranteed lender will issue a notice of default to the borrower and DOT is copied. If the lender then makes a draw on the guarantee from DOT the payment initiates a loan between DOT and the borrower. So long as the borrower makes its payments to DOT on this new loan, there is no default of DOT's loan. The guaranteed lender may enter into a loan workout or similar agreement with the borrower as approved by the DOT. In the event of assignment of the guaranteed loan to the DOT, the guaranteed lender is responsible for transferring all the guaranteed loan documents to the DOT.