TIFIA

Program Guide

Transportation Infrastructure Finance and Innovation Act

November 2011

Contacting the TIFIA Joint Program Office

You are free to write, fax, phone or e-mail any member of the TIFIA staff. General contact information for the program is as follows:

Innovative Program Delivery Office
TIFIA Joint Program Office (HITJ)
US Department of Transportation
1200 New Jersey Avenue, SE
Room E64-301
Washington, DC 20590
Fax: (202) 366-2908
TIFIACredit@dot.gov

The staff for the TIFIA program includes:

Name	Mailing Address	Phone/Fax	E-mail
Duane Callender *Director*	See above Room E64-302	Phone: (202) 366-9644	duane.callender@dot.gov
Oscar Bedolla *Financial Analyst*	See above Room E64-412	Phone: (202) 366-0368	oscar.bedolla@dot.gov
Donny Hamilton *Financial Analyst*	See above Room E64-460	Phone: (202) 366-1167	donny.hamilton@dot.gov
Jorianne Jernberg *Financial Analyst*	See above Room E64-454	Phone: (202) 366-0459	jorianne.jernberg@dot.gov
Cheryl E. Jones *Senior Project Finance Advisor*	See above Room E64-125	Phone: (518) 325-5020 Fax: (518) 325-6544	cheryl.jones@dot.gov
Rupinder Kaur *Financial Analyst*	See above Room E64-414	Phone: (202) 366-4816	rupinder.kaur@dot.gov
Mark Polston *TIFIA Program Counsel*	See above Room E84-125	Phone: (202) 366-0844 Fax: (202) 366-1380	mark.polston@dot.gov
Suzanne Sale *Senior Financial Advisor*	Arizona Division 4000 North Central Avenue Suite 1500 Phoenix, Arizona 85012-1906	Phone: (602) 382-8987 Fax: (602) 382-8998	suzanne.sale@dot.gov
Dina Shaher *Financial Policy Advisor*	See above Room E64-458	Phone: (202) 366-6055	dina.shaher@dot.gov

Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1-800-877-8339. Additional information, including the most recent edition of the program guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

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Chapter 1: Introduction to TIFIA

The Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) established a Federal credit program (referenced hereafter as the TIFIA program) for eligible transportation projects of national or regional significance under which the U.S. Department of Transportation (DOT) may provide three forms of credit assistance – secured (direct) loans, loan guarantees, and standby lines of credit. The program's fundamental goal is to leverage Federal funds by attracting substantial private and other non-Federal co-investment in critical improvements to the nation's surface transportation system. The DOT awards credit assistance to eligible applicants, which include state departments of transportation, transit operators, special authorities, local governments, and private entities.

This program guide, written for prospective TIFIA applicants, describes how the DOT administers the TIFIA program. This chapter introduces the program's objectives and provides an overview of how the program operates. Chapter 2 details the required terms for individual credit instruments and describes how these instruments are funded. Chapter 3 describes the eligibility requirements concerning types of projects, activities, cost limits, and applicants. Chapter 4 describes the process by which applicants may apply for TIFIA assistance. Chapter 5 describes the evaluation and selection process that the DOT uses to determine who receives credit assistance. Chapter 6 discusses the contractual documents, prerequisites for executing such documents, and the ongoing monitoring requirements. Chapter 7 discusses special issues related to loan guarantees.

Electronic copies of this program guide and enclosed application materials can be found on the TIFIA web site located at http://www.fhwa.dot.gov/ipd/tifia, as can additional information regarding the TIFIA program.

Legislative Reference

The TIFIA statute was enacted as part of f the Transportation Equity Act for the 21st Century (TEA 21, Public Law 105-178, §§1501-04), as amended by the TEA 21 Restoration Act (Title IX of Public Law 105-206) and the Safe, Accountable, Flexible, Effective Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59). The substance of the legislation is codified within sections 601 through 609 of title 23 of the United States Code (23 U.S.C. §§601-609), with supporting regulations appearing in part 80 of title 49 of the Code of Federal Regulations (49 CFR 80). These documents may be referenced in Appendix B of this program guide and can be found online at http://www.fhwa.dot.gov/ipd/tifia/legislation_regulations/index.htm.

Policy Considerations

The public policy underlying the TIFIA credit program asserts that the Federal Government can perform a constructive role in supplementing, but not supplanting, existing capital finance markets for large transportation infrastructure projects. Section 1502 of TEA 21 states that "…a Federal credit program for projects of national significance can complement existing funding resources by filling market gaps, thereby leveraging substantial private co-investment." Because the TIFIA program offers credit assistance, rather than grant funding,

its potential users are infrastructure projects capable of pledging revenue streams generated through user charges or other dedicated funding sources.

Identifying a constructive role for Federal credit assistance begins with the acknowledgement that, compared to most investors, the Federal Government's naturally long-term investment horizon means it can more readily absorb the relatively short-term risks of project financings. Absent typical capital market investor concerns regarding timing of payments and financial liquidity, the Federal Government can become the "patient investor" whose long-term view of asset returns enables the project's non-Federal financial partners to meet their investment goals, allowing the borrower to complete a favorable financing package.

Funding Levels

Through SAFETEA-LU, Congress authorized $122 million for each Federal fiscal year from 2005 through 2009. As of the publication date of this program guide, short-term extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through fiscal year 2009; TIFIA has received an equivalent amount of budget authority in each extension, as in prior years. These funds pay the subsidy cost to the Federal Government of providing credit assistance, and are available until expended by the DOT or reprogrammed by Congress. Based on experience, this funding amount can support more than $1 billion of average annual credit assistance.

Program Administration

Implementation of the TIFIA program is the responsibility of the Secretary of Transportation. A 13-member DOT Credit Council provides policy direction and makes recommendations to the Secretary regarding the selection of projects for credit assistance. Credit Council members include six representatives from the Office of the Secretary of Transportation (OST): the Deputy Secretary of Transportation (Chair), the Assistant Secretary for Budget and Programs (Vice-Chair), the Under Secretary of Transportation for Policy, the General Counsel, the Assistant Secretary for Transportation Policy, and the Director of the Office of Small and Disadvantaged Business Utilization. The Administrators of the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), and the Maritime Administration (MARAD) also sit on the DOT Credit Council. Additionally, at-large members to the DOT Credit Council (DOT employees designated by the Secretary of Transportation) comprise the other three members.

Staff support to the DOT Credit Council is provided by the TIFIA Joint Program Office (TIFIA JPO), which coordinates and manages the day-to-day responsibilities of implementing the program. Recognizing the crosscutting and multi-modal nature of the program, the TIFIA JPO regularly relies on the staff of the DOT's operating agencies and secretarial offices to assist with TIFIA implementation.

Implementation Process

All TIFIA assistance will be awarded based on a project's merits and its satisfaction of TIFIA statutory requirements. The DOT has suspended the program's open application process and has returned to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against program objectives. When funding is available, the DOT will issue a Notice of Funding Availability (NOFA) in the Federal Register to outline the deadlines for applicants each fiscal year. The implementation process generally includes the following steps, detailed further in the following sections of this program guide:

1. Letter of Interest. Each potential applicant must submit a detailed Letter of Interest using the form provided in Appendix C (a downloadable version is available on the TIFIA web site) by the deadline set in the NOFA. The Letter of Interest form has been expanded to allow applicants to describe the project, detail how the TIFIA statutory selection criteria are met, and outline the proposed financial plan, including the requested credit assistance. Applicants should submit this form electronically via email at TIFIACredit@dot.gov. The DOT will review this preliminary submission to determine whether the project meets the basic requirements for TIFIA participation and will contact the applicant subsequently to review the project's eligibility and readiness to apply for program assistance.

2. Application. After concluding its review of the Letters of Interest, the DOT will invite complete applications for selected projects. An applicant may submit an application only after the TIFIA JPO confirms the project's basic eligibility and readiness. Upon receiving such notification from the DOT, the applicant may submit its application package with all required materials. The DOT will not review incomplete applications or applications for projects that do not satisfy TIFIA requirements.

3. Project Presentation. Each applicant whose submission passes an initial screening for completeness and compliance will be invited to make an oral presentation to the DOT on behalf of the project. The DOT will provide guidance regarding the structure and content of the presentation at the time of the invitation.

4. Project Evaluation. Based upon the written application, the oral presentation, and any supplemental submission of information, DOT staff will prepare a project evaluation and recommendation for the DOT Credit Council.

5. Project Selection. The DOT Credit Council, in turn, provides a recommendation to the Secretary of Transportation, who makes the final determination regarding project selection. The DOT will not obligate funds for a project that does not satisfy basic criteria such as obtaining environmental clearances.

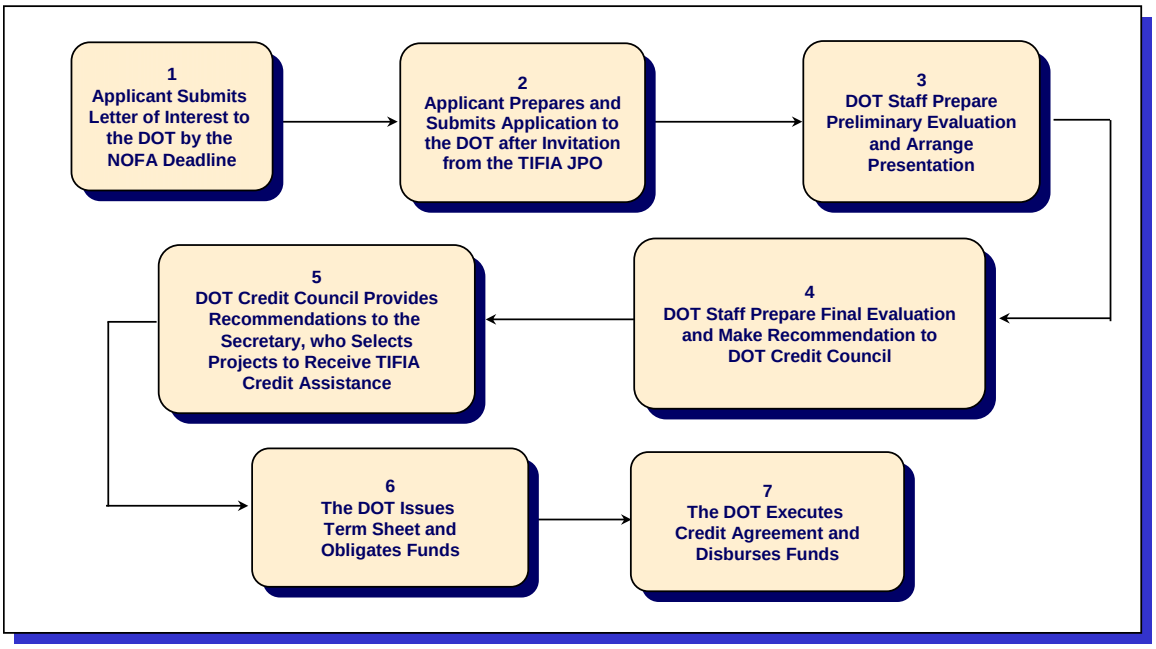
6. Term Sheet Issuance and Funding Obligation. For each approved project, the DOT will issue a term sheet setting forth the basic terms and conditions of TIFIA credit assistance.

7. Credit Agreement and Disbursements. The credit agreement is the definitive agreement between the DOT and the borrower, specifying all terms and conditions of the TIFIA

credit assistance and authorizing disbursement of funds. Prior to execution of the credit agreement, the borrower must satisfy all program requirements – including receipt of an investment grade rating on the project's debt obligations senior to TIFIA and a rating on the TIFIA credit instrument itself. For all credit assistance, the DOT will disburse funds only to reimburse eligible project costs.

Exhibit 1-A shows each of these seven steps as a flow chart.

Exhibit 1-A: Selection and Funding of TIFIA Projects



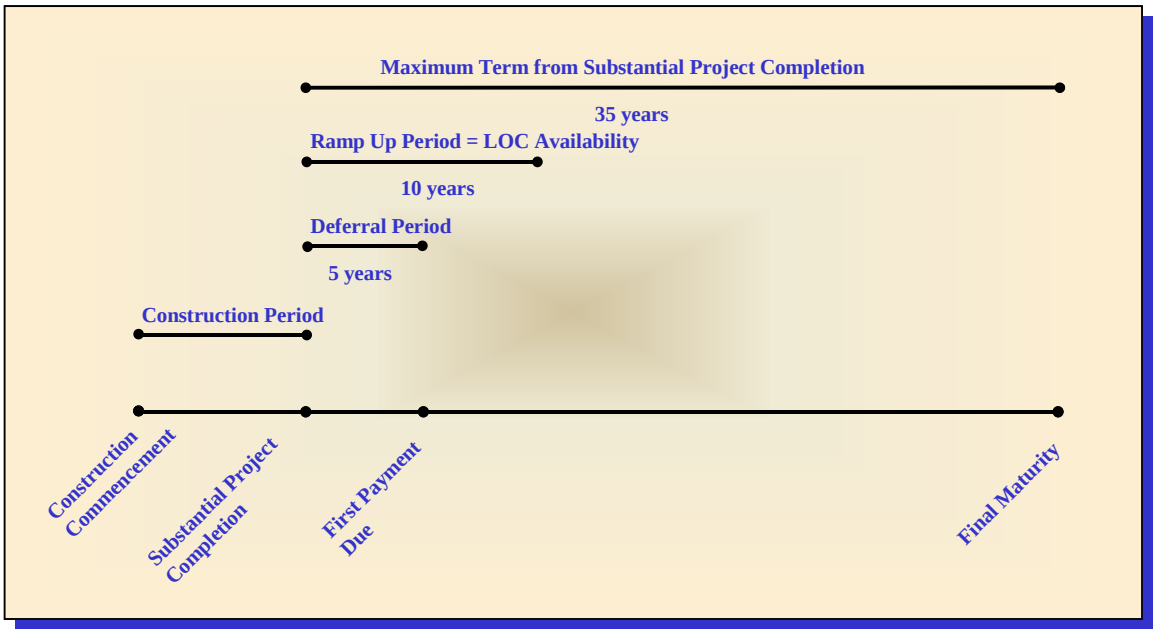
Chapter 2: Terms and Funding of Credit Instruments

The TIFIA credit program's secured (direct) loans, loan guarantees, and standby lines of credit may offer more flexible repayment terms and more favorable interest rates compared to other lenders. This chapter summarizes the terms that apply generally to TIFIA credit assistance and describes the major features of each credit instrument. A section on loan repayment and prepayment structuring provides information on financing structures and related repayment issues that may arise during negotiations. The chapter also provides an explanation of the funding controls that govern the amount of credit assistance available under the TIFIA program.

Section 2-1
Summary of Basic Terms for TIFIA Credit Assistance

Certain features of TIFIA credit assistance are the same regardless of whether the credit instrument is a secured loan, loan guarantee, or line of credit. For example, the maximum maturity of all TIFIA credit instruments is 35 years after a project's substantial completion. The DOT, at its discretion, has the ability to defer the first TIFIA payment until five years after substantial completion, depending on the needs of the project. Exhibit 2-A provides an illustrative TIFIA repayment structure for any of the three credit instruments.

Exhibit 2-A: Illustrative TIFIA Repayment Structure as Permitted by Statute



It is anticipated that, in many cases, the TIFIA credit instrument will be junior (*i.e.*, subordinate) to the project's capital markets or commercial bank debt in the priority of its lien on the project's cash flow. However, in the event of bankruptcy, insolvency, or liquidation, the DOT is required by statute to have a parity lien with respect to other creditors. The credit agreement will clearly specify the DOT's interest in the pledged security relative to other creditors.

The TIFIA statute places two other important limits on the Government's exposure to credit risk. First, TIFIA assistance must not exceed 33 percent of reasonably anticipated eligible project costs. This is to ensure that the DOT shares the credit risk with other participants. Second, the applicant must obtain an investment-grade rating (Baa3/BBB-or higher) on the senior debt obligations and a rating on the TIFIA credit instrument, both from a Nationally Recognized Statistical Rating Organization (NRSRO), in order to execute a TIFIA credit agreement. If TIFIA is the senior and/or only debt in the project, then its ratings must be investment grade. Chapter 3 provides further details on eligible project costs and credit ratings.

Section 2-2
TIFIA Credit Instruments

A summary of the main features of TIFIA secured loans, loan guarantees, and lines of credit follows. These features are established by statute. This section also addresses the rules that govern the setting of interest rates, disbursement of funds, and repayment of the TIFIA debt.

Secured Loans (23 U.S.C. §603)

A TIFIA secured loan is a debt obligation involving the DOT as the lender and a non-Federal entity as the borrower. Actual terms and conditions will be negotiated between the DOT and the borrower, but the general characteristics include:

- Use of Proceeds. The proceeds of a secured loan must be used either to finance eligible project costs or to refinance interim construction financing of eligible project costs. In the latter case, the DOT loan may refinance existing debt no later than one year following substantial completion of the project.[1]

- Amount. The principal amount of a secured loan (in combination with other TIFIA credit assistance, if any) may not exceed 33 percent of the reasonably anticipated eligible project costs. The TIFIA loan must be secured by the same revenues pledged to the senior debt. If the TIFIA credit is rated below investment grade, the amount of the TIFIA loan may not exceed the amount of the senior debt.

- Interest Rate. The interest rate on a secured loan will be equal to or greater than the yield on U.S. Treasury securities of comparable maturity on the date of execution of the credit agreement. The DOT identifies the Treasury rates through use of the daily rate tables published by the Bureau of the Public Debt for the State and Local Government Series (SLGS) investments. Adding one basis point to the SLGS rates produces the estimated average yields on comparable Treasury securities. The SLGS tables can be found on-line at https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm. The daily TIFIA

[1] The SAFETEA-LU provides broad authority to use TIFIA proceeds to refinance long-term project obligations if such refinancing results in "additional funding capacity for the completion, enhancement or expansion" of a project otherwise eligible for TIFIA. The DOT will define the parameters of this authority in a future rule-making. Please contact the TIFIA JPO if you have questions.

interest rate can be found on the TIFIA web site at http://www.fhwa.dot.gov/ipd/tifia. Interest accrual on TIFIA proceeds begins immediately upon disbursement of funds to the borrower.

- Timing of Disbursements. The DOT will disburse funds as often as monthly, on a reimbursement basis, as costs are incurred for eligible project purposes. The credit agreement will specify a draw schedule, which may be amended if necessary.

- Maturity. The final maturity date of a secured loan must be no later than 35 years after the date of substantial completion of the project.

- Repayment Terms. Scheduled repayments must commence no later than five years after the date of substantial completion of the project. Level debt service is not required for project financings where pledged revenues are projected to increase over time. Debt service payments typically are scheduled semi-annually.

- Deferrals. In the event revenues are insufficient to meet scheduled TIFIA loan payments, the DOT, at its sole discretion, may allow payment deferrals. Any such deferrals shall be contingent on the project's meeting criteria established by the Secretary, including standards for reasonable assurance of repayment. There can be no assurance the Secretary will exercise this authority, however, so borrowers should negotiate a debt service schedule they are confident they can meet.

- Prepayment Conditions. A secured loan may be prepaid in whole or in part at any time without penalty.

- DOT Lien Priority. The TIFIA lien on project revenues can be subordinated to those of senior lenders except in the event of bankruptcy, insolvency, or liquidation of the obligor. In such an instance, the TIFIA lien would rise to parity with senior creditors. This provision can be effected through a master trust agreement, an inter-creditor agreement, or other agreement entered into at the time of execution of the secured loan.

Loan Guarantees (23 U.S.C. § 603(e))

A TIFIA loan guarantee is a pledge by the DOT to pay a third-party lender all or part of the debt service on a borrower's debt obligation. The DOT will seek to recover from the borrower all funds paid to the guaranteed lender, pursuant to a reimbursement agreement executed simultaneously with the loan guarantee.

By statute (23 U.S.C. §601(a)(4)), the guaranteed lender must be a "non-Federal qualified institutional buyer" as defined in 17 CFR §230.144A(a) , including qualified retirement plans and governmental plans. Prospective applicants and lenders should contact the DOT with any questions about what constitutes a "non-Federal qualified institutional buyer."

The DOT may give preference to applications for loan guarantees rather than other forms of credit assistance. This preference is consistent with Federal policy that, when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy deeper than can be

provided by a loan guarantee. Applicants requesting only a direct loan and/or a line of credit are required to specify the project's financial structure if the TIFIA credit assistance was instead in the form of a loan guarantee, including the amount of guaranteed loan assistance that would be required.

Characteristics of a guaranteed loan include:

- Use of Proceeds. The proceeds of a guaranteed loan must be used either to finance eligible project costs or to refinance interim construction financing of eligible project costs.[2] In the latter case, the guaranteed loan may refinance existing debt no later than one year following substantial completion of the project.

- Amount. The principal amount of a DOT loan guarantee, in combination with any other TIFIA credit assistance, may not exceed 33 percent of the reasonably anticipated eligible project costs.

- Interest Rate. The interest rate on a guaranteed loan will be negotiated between the guaranteed lender and the borrower, subject to consent from the DOT. Interest payments on a guaranteed loan are subject to Federal income taxation.

- Maturity. The final maturity date of the guaranteed loan must be no later than 35 years after the date of substantial completion of the project.

- Repayment Terms. Scheduled repayments to the guaranteed lender must commence no later than five years after the date of substantial completion of the project. Level debt service is not required for project financings where the pledged revenues are projected to increase over time.

- Deferrals. In the event that revenues are insufficient to meet scheduled loan payments, the DOT may consent to payment deferrals and a rescheduling of the guaranteed debt service. Approval of any such payment deferrals shall be contingent on the project's meeting criteria established by the Secretary, including standards for reasonable assurance of repayment. There can be no assurance the Secretary will exercise this authority, however, so borrowers should negotiate a debt service schedule they are confident they can meet.

- Prepayment Conditions. The prepayment features on a guaranteed loan will be negotiated between the guaranteed lender and the borrower, subject to the consent of the DOT.

- Default Feature. In the event of an uncured borrower payment default, the guaranteed lender will receive payment from the DOT for the guaranteed payment due. The DOT will seek recovery from the borrower of all funds advanced, pursuant to a reimbursement agreement executed simultaneously with the loan guarantee.

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[2] See footnote #1. Please contact the TIFIA JPO if you have questions.

- DOT Lien Priority. The TIFIA lien on project revenues can be subordinated to those of senior lenders except in the event of bankruptcy, insolvency, or liquidation of the obligor. In such an instance, the TIFIA lien would rise to parity with senior creditors. This provision can be effected through a master trust agreement, an inter-creditor agreement, or other agreement entered into at the time of execution of the secured loan. In the event of a draw on the DOT guarantee, the guaranteed lender remains in senior position if not repaid in full, and the DOT loan for the amount of all such draws becomes a junior lien.

Lines of Credit (23 U.S.C. §604)

A TIFIA line of credit provides a contingent loan that may be drawn upon after substantial completion of the project to supplement project revenues during the first 10 years of the project's operations. The DOT will disburse funds only under certain conditions, which will be specified in the credit agreement.

Characteristics of a line of credit include:

- Use of Proceeds. The proceeds from a draw on a line of credit may be used only to pay debt service on project obligations (other than a TIFIA credit instrument) issued to finance reasonably anticipated eligible project costs, extraordinary repair and replacement costs, operation and maintenance expenses, and/or costs associated with Federal or state environmental restrictions arising after the transaction closed.

- Amount. The total principal amount of a line of credit, in combination with any other TIFIA credit assistance, may not exceed 33 percent of the reasonably anticipated eligible project costs.

- Condition Precedent for Draws. A draw may be made only if revenues from the project are insufficient to pay the costs enumerated above in "Use of Proceeds." Reserve funds need not be tapped prior to a TIFIA draw.

- Availability. A line of credit may be available for a period of 10 years following substantial completion of the project.

- Interest Rate. The interest rate on a secured loan resulting from a draw on a line of credit will be equal to or greater than the yield on a 30-year U.S. Treasury security on the date of the execution of the line of credit agreement. The DOT identifies the Treasury rates through use of the daily rate tables published by the Bureau of the Public Debt for the State and Local Government Series investments. Adding one basis point to the SLGS rates produces the estimated average yields on comparable Treasury securities. The SLGS tables can be found on-line at The SLGS tables can be found on-line at https://www.treasurydirect.gov/GA-SL/SLGS/selectSLGSDate.htm. The daily TIFIA interest rate can be found on the TIFIA web site at http://www.fhwa.dot.gov/ipd/tifia. Interest accrual on TIFIA proceeds begins immediately upon disbursement of funds to the borrower.

- Maturity. The final maturity date of a secured loan resulting from a draw on a line of credit must be no later than 35 years after the date of substantial completion of the project.

- Repayment Terms. Scheduled repayments of a draw on a line of credit must commence no later than five years after the end of the 10-year period of availability and be fully repaid no later than 25 years after the end of the 10-year period of availability. Level debt service is not required. Debt service payments should be scheduled semi-annually.

- Prepayment Conditions. A secured loan resulting from a draw on a line of credit may be prepaid in whole or in part at any time without penalty.

- DOT Lien Priority. The TIFIA lien on project revenues may be subordinated to those of senior lenders except in the event of bankruptcy, insolvency, or liquidation of the obligor. In such an instance, the TIFIA lien would rise to parity with senior creditors. This provision can be effected through a master trust agreement, an inter-creditor agreement, or other agreement entered into at the time of execution of the secured loan.

Section 2-3
Loan Repayment and Prepayment Structuring

The TIFIA statute gives the DOT discretion to defer the commencement of debt service repayments for up to five years after substantial completion. The DOT also has the flexibility to structure a debt service schedule so that repayment is aligned with projected cash flows. This may include deferring partial interest and principal repayments beyond the five-year post-construction period as needed.

1. Scheduled TIFIA Debt Service. Projects are not entitled to debt service deferral. In the exercise of its discretion, the DOT evaluates the economics of each project to determine an appropriate repayment schedule. Factors in this assessment include:

    - *Availability of revenues for debt service*. Some projects are not true "project financings," but rely on tax or other revenues, which may be available for debt service even before the project is completed. In such cases, the DOT is likely to require commencement of debt service upon substantial completion, although DOT may require commencement of debt service during construction for a project not financed with user revenues. Projects most likely to be allowed significant interest deferral and heavy backloading of principal are those where project revenues support the financing and borrowers anticipate a long ramp-up period.

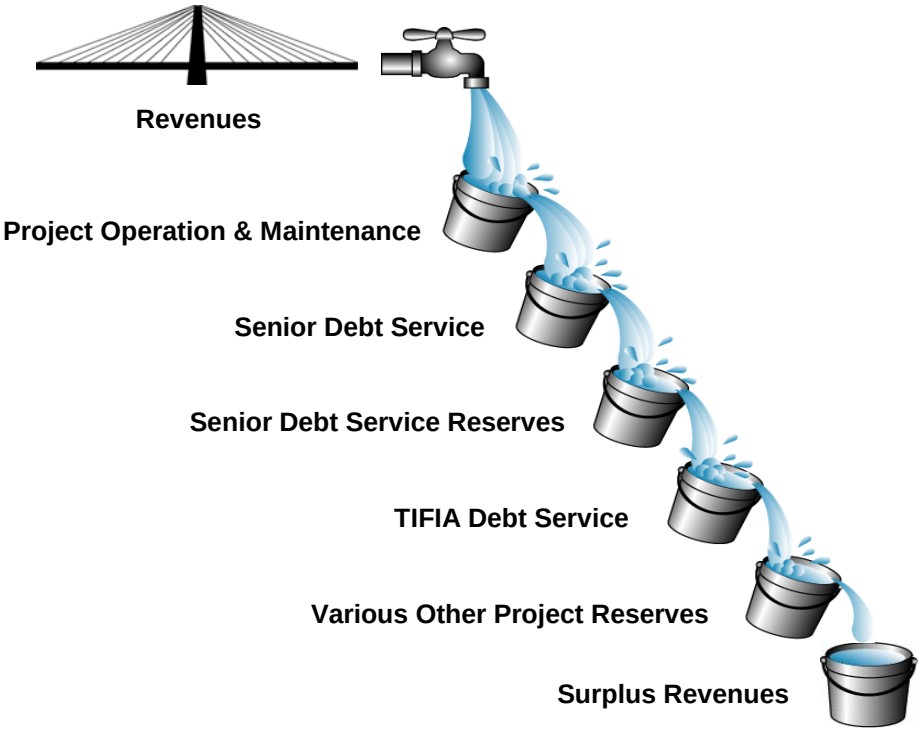
    - *Amortization of senior debt*. When the financial plan includes other debt senior to TIFIA, the DOT expects that the capitalized interest period for the senior debt is likely to end before the capitalized interest period for the TIFIA loan. Thus, the DOT may agree to continue deferring an appropriate amount of its loan interest to ensure that revenue is adequate to pay full interest on the senior debt. However, the DOT will not increase its investment in a project by deferring interest when other creditors are withdrawing their investment. Therefore, DOT's policy is not to permit any amortization of senior debt while TIFIA interest is being deferred.

- *Returns on equity*. Just as the DOT will defer commencement of its return on investment in favor of senior debt, so equity investors, who will be subordinate to TIFIA, must defer commencement of their return. The DOT will not permit any distribution to equity until all currently accruing TIFIA interest is paid. The DOT will negotiate, on a project-by-project basis, the priority and relationship of TIFIA repayment and equity payouts.

2. Prepayment and Refinancing. Although TIFIA provides long-term financing, the DOT does not intend that TIFIA become part of a project's permanent capital structure where a strong revenue stream and vigorous project economics permit prepayment or substitution of the TIFIA credit instrument. The DOT will negotiate a debt service schedule that provides a high probability of repayment and avoidance of default. In return, the DOT typically requires that excess revenues – not needed for project purposes – be applied to prepayment of the TIFIA loan. The DOT also will seek to structure the financing in a way that encourages borrowers to replace the TIFIA loan with capital markets debt at such time as project economics support refinancing.

Exhibit 2-B shows a typical flow of funds for a project that includes both senior and subordinate TIFIA debt. The chart demonstrates how senior debt service (as well as reserve accounts for the benefit of senior bondholders) generally accumulates revenues ahead of TIFIA debt service.

Exhibit 2-B: Example of Project Flow of Funds



Section 2-4
Taxation Issues

With regard to the TIFIA program, the TEA 21 Conference Report states:

> "The Conference recognizes that the Congress enacted the Deficit Reduction Act of 1984 provision prohibiting the combination of Federal guarantees with tax-exempt debt, because of concerns that such a double-subsidy could result in the creation of a 'AAA' rated security superior to U.S. Treasury obligations. Accordingly, any project loan backed by a loan guarantee as provided in TIFIA must be issued on a taxable basis….
>
> "...The Conferees are aware that present Federal income tax law prohibits the use of direct or indirect Federal guarantees in combination with tax-exempt debt (section 149(b) of the Internal Revenue Code of 1986). The TIFIA provisions of the conference agreement do not override or otherwise modify this provision of the Code."

The DOT urges all applicants, and particularly those intending to use tax-exempt bonds in connection with TIFIA loans or lines of credit, to consult with the Internal Revenue Service, the Department of the Treasury, or their bond counsel.

Section 2-5
TIFIA Program Funding

The TIFIA program is governed by the Federal Credit Reform Act of 1990 (FCRA), which requires the DOT to establish a capital reserve, or "subsidy amount," to cover expected credit losses before it can provide TIFIA credit assistance. Congress places limits on the annual subsidy amount available. Through SAFETEA-LU, Congress authorized $122 million for each Federal fiscal year from 2005 through 2009. As of the publication date of this program guide, short-term extensions of the surface transportation reauthorization act have been enacted continuing highway programs that were authorized through fiscal year 2009; TIFIA has received an equivalent amount of budget authority in each extension, as in prior years. Based on experience, this funding amount can support more than $1 billion of average annual credit assistance.

The amount of TIFIA budget authority available in a given year is subject to several factors, as described below.

- Federal-aid Highway Obligation Limitation. This obligation limitation pertains to most of the programs funded from the Federal Highway Trust Fund (including the TIFIA program) and is determined through the appropriations process each year. As with appropriations processes for other Federal programs, this limitation typically reduces the total funds available for obligation in the year ahead. A typical limitation reduces obligation authority between 10 percent and 15 percent.

- Program Administration Expenses. The TIFIA statute authorizes the DOT to use up to $2,200,000 of authorized budget authority annually to administer the TIFIA program. In

addition, the statute authorizes the DOT to collect and spend fees to cover expenses related to reviewing, negotiating, and servicing credit agreements.

- Future-year Reservations. As discussed later in Chapter 6, the DOT may in rare circumstances make future-year contingent commitments of budget authority. To ensure that additional projects have access to the program in future years, the DOT will not reserve more than 25 percent of the amount of budget authority authorized for a single fiscal year.

- Carry-over Resources. Any budget authority made available but not consumed in previous fiscal years may carry over and increase the amount of budget authority available in a given fiscal year.

Chapter 3: Eligibility Requirements

The TIFIA statute sets forth several prerequisites for an award of credit assistance. This chapter describes the types of projects, costs, applicants, regulatory, and statutory requirements upon which TIFIA assistance is conditioned.

Section 3-1
Eligible Projects and Costs

Highway, transit, passenger rail, certain freight facilities, and certain port projects may receive credit assistance through the TIFIA program.

- Eligible highway facilities include interstates, state highways, bridges, toll roads, international bridges or tunnels, and any other type of facility eligible for grant assistance under title 23, the highways title of the U.S. Code (23 U.S.C.). This also includes a category specifically permitted under the TIFIA statute, *i.e.*, a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible (23 U.S.C. §601(a)(8)(B)).

- Eligible transit projects include the design and construction of stations, track, and other transit-related infrastructure, purchase of transit vehicles, and any other type of project that is eligible for grant assistance under the transit title, chapter 53 of 49 U.S.C. Additionally, intercity bus vehicles and facilities are eligible to receive TIFIA assistance.

- Rail projects involving the design and construction of intercity passenger rail facilities or the procurement of intercity passenger rail vehicles are eligible for TIFIA assistance.

- Public freight rail facilities, private facilities providing public benefit for highway users, intermodal freight transfer facilities, projects that provide access to such facilities, and service improvements (including capital investments for intelligent transportation systems) at such facilities, are also eligible for TIFIA assistance. In addition, a logical series of such projects with the common objective of improving the flow of goods can be combined in order to reach the minimum cost threshold for eligibility.

- Projects located within the boundary of a port terminal are also eligible to receive TIFIA assistance, so long as the project is limited to only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

Finally, surface transportation projects principally involving the installation of intelligent transportation systems are eligible for TIFIA assistance.

Federal credit assistance provided under TIFIA is available to cover only eligible project costs. A calculation of total eligible project costs is important to determine whether the project meets the eligibility test for minimum project size and whether the credit request does not exceed 33 percent of reasonably anticipated eligible project costs, as required by statute.

The TIFIA statute, codified at 23 U.S.C. §601, defines eligible project costs as those expenses associated with the following:

- Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;

- Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

- Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Capitalized interest on TIFIA credit assistance may not be included as an eligible project cost.

Also, TIFIA administrative charges, such as application fees, transaction fees, loan servicing fees, and credit monitoring fees will not be considered among the eligible project costs. In all cases, eligible project costs should be calculated and presented on a cash basis (that is, as year-of-expenditure dollars) with the year of planned expenditure clearly identified.

In determining eligible project costs, the following two clarifications should be considered:

- Acquisition of Real Property. While acquisition of real property is eligible for TIFIA reimbursement, such property must be physically and functionally related to the transportation project. If excess land surrounding the project's immediate right-of-way is acquired for development, the cost of this real property may not be included among eligible project costs. The acquisition of real property must be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (see page 3-5).

- Costs Incurred Prior to Application. It is permissible for an applicant to incur costs prior to submitting an application for TIFIA credit assistance. However, these costs may be considered eligible project costs for TIFIA purposes only upon approval from the DOT. Generally, such costs will be confined to development phase or right-of-way acquisition expenses incurred within three years of the date of application. This eligibility determination will be made on a case-by-case basis, depending on the nature and timing of the costs.

Section 3-2
Government Requirements

The TIFIA statute requires all projects receiving TIFIA assistance to comply with 23 U.S.C. (for highway projects) and chapter 53 of 49 U.S.C. (for transit projects), as applicable. In addition, all projects receiving TIFIA assistance must comply with generally applicable Federal laws and regulations, including title VI of the Civil Rights Act of 1964, the National Environmental Policy Act of 1969, and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Some of the key Federal Government requirements related to TIFIA credit assistance are listed below. In addition, applicants seeking TIFIA credit assistance are advised to contact the TIFIA JPO as well as the relevant modal agencies (FHWA, FRA, FTA, and MARAD) for further information on these and other Federal laws and regulations that may apply.

Title 23 – Highway Projects

Title 23 of the U.S. Code and related implementing regulations in title 23 of the Code of Federal Regulations set forth the rules that govern the design, construction, and operation of federally assisted highway infrastructure. These rules cover a broad range of activities. The following bullet points provide an example of some of the relevant regulations:

- Design. Part 625 of 23 CFR requires that all federally assisted roads, highways, and bridges (*i.e.*, "Federal-aid projects") adhere to minimum design standards and specifications. Generally speaking, the regulations refer all applicants for Federal-aid projects to the relevant standards and specifications published by the American Association of State Highway and Transportation Officials.

- Procurement. Part 172 of 23 CFR prescribes policies and procedures related to procurement of engineering and design related services. Part 636 of 23 CFR describes FHWA policies and procedures relating to design-build projects financed under title 23. Part 635 of 23 CFR covers many topics related to purchasing materials and procuring construction services. For example, §635.107 requires the applicant to affirmatively encourage disadvantaged business enterprise participation in the highway construction program. Section 635.410 ("Buy America") limits the amount of foreign-produced steel and iron that may be used on Federal-aid projects.

- Construction. Part 633 Subpart A relates to required contract provisions for Federal-aid construction contracts. Part 635 contains construction and maintenance procedures and includes a number of labor and employment rules that apply to employees working on a Federal-aid construction project. For example, the minimum wage rates that the Secretary of Labor determines to be prevailing for the same type of work on similar construction in the same locality must be part of the construction contract. Labor rules also state that no construction work may be performed by convict labor unless the convicts are on parole, supervised release, or probation.

Title 49 – Transit Projects

As with title 23, title 49 of the U.S.C. and related regulations in 49 CFR ("Transportation") concern a wide range of activities. Chapter 53 of 49 U.S.C. and related regulations, address mass transit. For example, drug and alcohol rules specific to FTA-funded projects appear at 49 CFR §655 In other cases, the regulations appearing in 49 CFR apply common types of rules specifically to transit-oriented concerns, such as the procurement of buses and rail cars. For example, the "Buy America" regulations, described above, appear also at 49 CFR 661, and provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA, or the product is subject to a general waiver. The FTA has

published a best practices manual on transit procurement regulations. This manual can be found on-line at: http://www.fta.dot.gov/fta/library/admin/BPPM/appA1.html.

Some regulations that implement chapter 53 of 49 U.S.C. do not necessarily appear within 49 CFR. As a prime example, the Department of Labor (DOL) promulgates regulations to implement 49 U.S.C. §5333(b). (Formerly at §13(c) of chapter 53 of 49 U.S.C., these DOL regulations are now found at 29 CFR 215.) In general, §5333(b) provides that, as a condition for financial assistance from FTA in financing mass transportation systems, fair and equitable arrangements must be made, as determined by the DOL, to protect certain rights of employees affected by such assistance. These rights include: the preservation of rights, privileges, and benefits under existing collective bargaining agreements; the continuation of collective bargaining rights; the protection of individual employees against a worsening of their employment positions; assurances of employment to employees of acquired mass transportation systems; priority of re-employment; and paid training or retraining. No TIFIA credit agreement for a transit project shall be executed until a labor certification has been issued for that project.

The preceding examples illustrate the types of regulations that implement chapter 53 of 49 U.S.C. and thus apply to all federally assisted transit projects, including those receiving credit assistance under the TIFIA program. For transit projects, all regulatory requirements of chapter 53 are contained in a standard compliance agreement that is attached to and incorporated in the TIFIA credit agreement.

Projects receiving TIFIA assistance also must comply with the provisions of 49 U.S.C. §5333(a). Commonly referred to as "Davis-Bacon," this citation concerns labor protections ensuring that all labor contracts executed by the applicant adhere to prevailing wage rates as determined by the Secretary of Labor.

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 states that no person in the Unites States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance. Companion legislation extends these protections such that no person shall be subjected to discrimination on the basis of sex, age, or disability. As applied to transportation programs, regulations to implement this statute appear at 49 CFR 21.

National Environmental Policy Act of 1969 (NEPA)

To comply with NEPA, each proposed TIFIA project must be evaluated to determine its impact on the environment. DOT will not obligate funds for a project until it has received a final agency decision, including (if necessary) a Record of Decision (ROD). The three scenarios for addressing NEPA requirements are outlined below.

- Categorical Exclusion. Some projects, such as minor widening, rehabilitation, safety upgrading, or bus replacements, do not individually or cumulatively affect the environment significantly. These projects are termed Categorical Exclusions, and thus

are exempt from the requirement to prepare an Environmental Assessment or an Environmental Impact Statement (EIS).

- Environmental Assessment. An Environmental Assessment is usually prepared for a project that does not qualify as a Categorical Exclusion. The Environmental Assessment may reveal that the project's impacts are not significant, in which case a Finding of No Significant Impact (FONSI) is issued for the project.

- Environmental Impact Statement and Record of Decision. Assuming that a project does not qualify for a Categorical Exclusion or FONSI, the applicant is required to prepare a draft EIS. For highway projects, this is typically done in cooperation with the state department of transportation. For major investments, the draft EIS must include an analysis of various alternative solutions.

  A variety of agencies and the public at large have the opportunity to comment on the draft EIS. These comments are addressed during the preparation of the final EIS. This second iteration ensures that adequate consideration has been given to public comments and the anticipated effects of the project. Depending on the nature of the project, the FHWA, FRA, FTA, or MARAD issues a Record of Decision to signify Federal approval of the final EIS.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Construction of a surface transportation project may displace current residents or businesses. Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, every displaced resident must be offered a comparable replacement dwelling that is decent, safe, and sanitary. Additionally, relocation advisory services must be furnished and payments made to those residents who must relocate. Such payments cover moving expenses, the cost of replacement housing, and certain incidental expenses. Businesses, farms, and non-profits must also be reimbursed for moving and related expenses.

Section 3-3
Eligible Applicants

Public or private entities seeking to finance, design, construct, own, or operate an eligible surface transportation project may apply for TIFIA assistance. Examples of such entities include state departments of transportation; local governments; transit agencies; special authorities; special districts; railroad companies; and private firms or consortia that may include companies specializing in engineering, construction, materials, and/or the operation of transportation facilities.

All applicants must demonstrate relevant experience, strong qualifications, a sound project approach, and financial stability, as each of these items ultimately has bearing on the project's creditworthiness.

Applicants also must meet various Federal standards for participation in a Federal credit program. For example, applicants may not be delinquent or in default on any Federal debts.

Such requirements will be specified in the contractual documents between the DOT and each applicant.

Section 3-4
Threshold Requirements

A project's eligibility to compete for TIFIA assistance shall depend on its satisfaction of the five threshold requirements listed at U.S.C. Title 23, Chapter 6. This section details these five statutory threshold requirements.

Total Eligible Costs

The project's eligible costs, as defined under 23 U.S.C. §601, must be reasonably anticipated to total at least $50 million, or, alternatively, equal 33 1/3 percent or more of the state's Federal-aid highway apportionments for the most recently completed fiscal year, whichever is less. The DOT will revisit apportionments to states annually, to determine if any states qualify under the alternative test.

For projects that principally involve the installation of an intelligent transportation system (ITS), eligible project costs must be reasonably anticipated to total at least $15 million. This $15 million threshold applies only to projects for which the ITS component is the central feature of the project and not an ancillary component.

In all cases, the principal amount of the requested credit assistance must not exceed 33 percent of reasonably anticipated eligible project costs. Applicants should calculate and represent all costs, including both eligible project costs and the credit assistance request, on a cash (year-of-expenditure) basis.

Application Submission

Each applicant seeking TIFIA assistance must demonstrate their ability to meet the statutory eligibility criteria at the Letter of Interest stage and receive an invitation to submit a formal application to the DOT by a date certain. The DOT has reinstated the application cycle originally utilized to compete projects for limited funding. Appendix D provides a copy of the application for the current fiscal year.

Transportation Planning Process

The TIFIA statute conditions a project's receipt of TIFIA assistance on the project's satisfaction of all applicable planning and programming requirements. That generally means inclusion in both the state's long-range transportation plan and the approved State Transportation Improvement Program (STIP).

State transportation plans extend as far as 20 years into the future and are often geared to setting general priorities rather than listing individual projects. Therefore, at the time of submitting an application, each applicant must certify that the proposed project is consistent with the transportation plan(s) of the affected state(s). For projects in metropolitan areas, the

applicant must also demonstrate that the project is or can be included in the metropolitan transportation plan.

In contrast to the long-range state transportation plan, the STIP focuses on specific projects to be funded in the near term; STIPs typically look ahead no more than three years. The TIFIA statute requires that the project satisfy planning and programming requirements of §134 ("Metropolitan Planning") and §135 ("Statewide Planning") of Title 23, at such time as a TIFIA credit agreement is executed. Therefore, the applicant must demonstrate that the proposed project is part of the appropriate STIP(s) before the DOT will select the project, issue a term sheet, and obligate funds.

Dedicated Revenue Sources

The TIFIA statute states that the TIFIA credit instrument shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources that also secure the senior project obligations. (See 23 U.S.C. §§602(a)(4), 603(b)(3)(A)(i), and 604(b)(5)(A)(i).)

The DOT interprets "dedicated revenue sources" to include such levies as tolls, user fees, special assessments, tax increment financing, and any portion of a tax or fee that produces revenues that are pledged for the purpose of retiring debt on the project. The Secretary may accept general obligation pledges or corporate promissory pledges and will determine the acceptability of other pledges or forms of collateral as dedicated revenue sources on a case-by-case basis. Without exception, the Secretary will not accept a pledge of Federal funds, regardless of source, as security for the TIFIA credit instrument.

Public Approval of Privately Sponsored Projects

The final threshold requirement requires any private entity applying for TIFIA assistance to demonstrate state support for the project through the project's inclusion in the state's planning documents (the long-range plan and the STIP), as noted above.

Section 3-5
Rating Opinions

In addition to the threshold requirements described in Section 3-4, the TIFIA statute requires each applicant to provide with its application a preliminary rating opinion letter from at least one Nationally Recognized Statistical Rating Organization,[3] indicating that the project's senior obligations have the potential to achieve an investment grade rating. If the TIFIA debt is intended to be the senior debt, it must receive an investment grade rating. Projects approved for TIFIA assistance must obtain an investment grade rating on their senior debt obligations. This requirement appears at 23 U.S.C. §602(b)(2)(B.

[3] According 23 U.S.C. 601(10), "the term 'rating agency' means a credit rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization." The SEC identifies firms such as Standard and Poor's, Moody's Investor Services and Fitch Ratings.

The following discussion summarizes the DOT's use of credit rating agency analyses. Given the large size and unique structure of most TIFIA-supported projects, the DOT encourages applicants to obtain credit opinions from more than one rating agency.

The DOT's Use of Credit Ratings

Credit ratings on TIFIA-supported projects are used for three purposes.

1. Statutory Rating Requirement. By statute, a project cannot receive TIFIA assistance unless the senior debt obligations funding the project, *i.e.*, those obligations having a lien senior to that of the TIFIA credit instrument on the pledged security, achieve an investment grade rating. Therefore, even though a project may be selected for TIFIA assistance, this assistance will not be provided, that is, the DOT will not close on the credit agreement, until an investment grade rating from a major credit rating agency is assigned to the project's senior debt obligations, or the TIFIA facility itself, if there are no debt obligations senior to the TIFIA credit instrument.

2. Capital Allocation Requirement. Default risk is a key component of the DOT's assessment of expected losses related to the TIFIA program. The Federal Credit Reform Act of 1990 requires Federal agencies with credit programs to allocate capital, in the form of budget authority, to cover these expected losses. The DOT uses the TIFIA Capital Allocation Model to estimate credit exposure. The model employs such variables as the repayment structure, the drawdown assumptions, the nature of the dedicated revenues securing the TIFIA instrument, and most significantly the rating assigned to the TIFIA credit instrument. For this reason, the DOT requires the applicant to obtain a rating on the TIFIA credit instrument itself, in addition to a rating on the senior debt.

3. Annual Capital Reserve Adjustments. As part of its ongoing portfolio monitoring, the DOT is required to annually adjust, or "reestimate," its allowance for credit losses based on updated loss expectations. The DOT will incorporate information from credit surveillance reports, including changes in credit ratings, on TIFIA-supported projects in this annual reassessment process.

Preliminary Rating Opinion Letter

The DOT requires TIFIA applicants to provide a preliminary rating opinion letter. The letter must address the creditworthiness of both the senior debt obligations funding the project (*i.e.*, those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the TIFIA credit instrument. The letter must conclude that there is a reasonable probability for the senior debt obligations (or the TIFIA credit instrument if there are no debt obligations senior to the TIFIA facility) to receive an investment grade rating. This requirement applies to all TIFIA applicants, even those with current credit ratings on other debt instruments. The DOT will not consider applications that do not include a preliminary rating opinion letter. The DOT will use the preliminary rating opinion letter for two purposes.

1. Potential for Senior Obligations to Receive Investment Grade Rating. The letter must indicate that the senior obligations funding the project have the potential to receive an

investment grade rating. This preliminary assessment by the rating agencies will be based on the financing structure proposed by the applicant. The DOT will not consider projects that do not demonstrate the potential for their senior obligations to receive an investment grade rating.

2. Default Risk on Requested TIFIA Instrument. The DOT will also use the preliminary rating opinion letter to assess the project's overall economic, legal, and financial viability and the default risk on the requested TIFIA instrument. Therefore, the letter should provide a preliminary rating assessment of the financial strength of the overall project and the default risk (*i.e.,* without regard to recovery potential) of the requested TIFIA instrument

Credit Rating of Senior Obligations and TIFIA Instrument Default Risk

In addition to providing the preliminary rating opinion letter, projects selected for TIFIA assistance must receive an investment grade rating on their senior debt obligations (or the TIFIA credit instrument if there are no debt obligations senior to the TIFIA facility) and provide confirmation of the assigned rating at least two weeks prior to execution of a TIFIA credit agreement. Also, in conjunction with the rating of the senior debt obligations, applicants must obtain a credit rating on the TIFIA credit instrument.

The rating requirement offers security to the DOT only if the same repayment source is being pledged to both the senior debt obligations and the subordinate TIFIA credit instrument. In such a structure, the investment grade rating for senior debt helps the DOT evaluate its credit risk as a subordinate lender; although the TIFIA instrument itself may be sub-investment grade, the higher rating on the senior debt indicates that the project's overall risk profile is manageable. To maintain the value implied by the senior debt rating, the TIFIA debt cannot exceed the amount of the senior obligations unless the TIFIA assistance receives an investment grade rating.

Ongoing Rating Requirements

Throughout the life of the Federal credit instrument, the borrower must obtain annually, at no cost to the Federal Government, current credit evaluations of the project, the project obligations, and the Federal credit instrument. The current credit evaluations must be performed by a rating agency. By "current credit evaluation" DOT means: *(i)* in the case of a project with a published rating, either a current rating or the borrower's certification stating that the rating and outlook are unchanged from the previous year and *(ii)* in the case of a project without a published rating, a current rating of the project obligations and the Federal credit instrument.

Use of Underlying Ratings

Neither the preliminary rating opinion letter nor the credit rating should reflect the use of bond insurance or other credit enhancement that does not also secure the TIFIA instrument. The assessment of the senior obligations' investment grade potential and the TIFIA instrument's default risk should be based on the underlying ratings of debt obligations and the project's fundamentals.

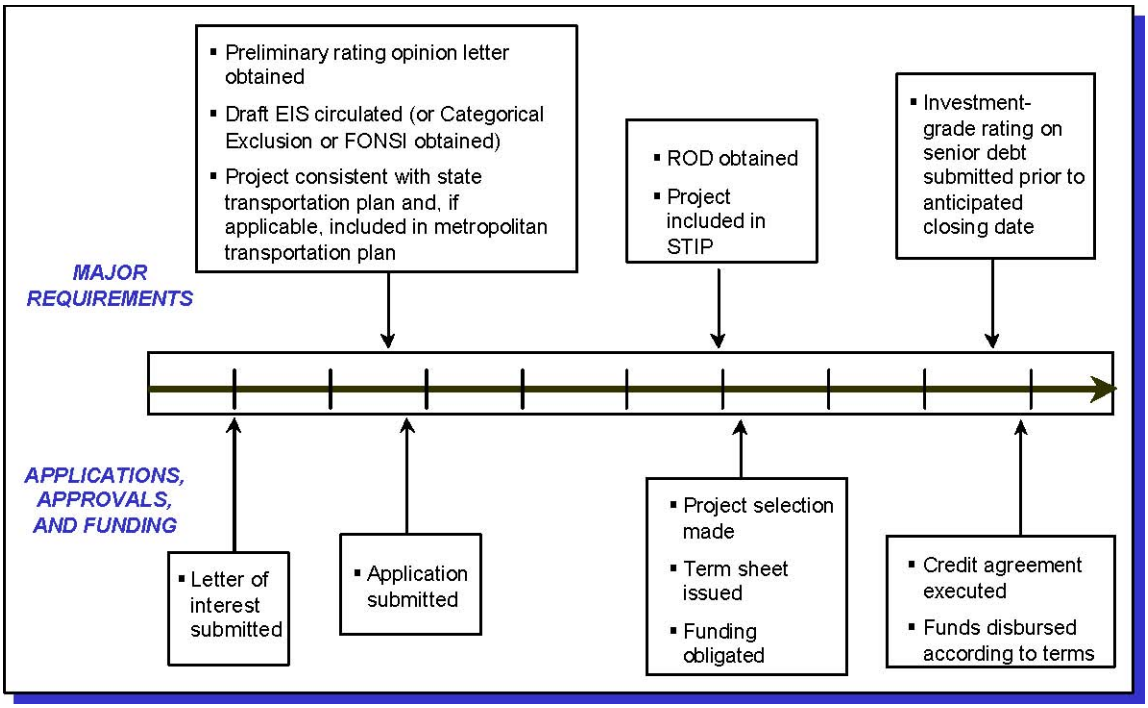
Applicant Questions about Rating Requirements

Applicants should contact the TIFIA JPO with any questions about the rating process and the requirements for a preliminary rating opinion letter, the investment grade credit rating on the senior obligations' and a rating on the TIFIA credit instrument. The major credit rating agencies will be able to answer questions concerning fees, timing of assessments, information requirements, and surveillance practices associated with obtaining preliminary opinion letters, credit ratings, periodic rating updates, and credit surveillance reports.

Section 3-6
Timing of Environmental, Planning, and Credit Documents

Requirements for environmental, planning, and credit documents correspond with the application and selection processes, which are described in Chapters 4 and 5, respectively. Exhibit 3-A provides an overview of how these requirements relate to the various stages of the application and selection processes.

Exhibit 3-A: Major Documentation Required During the Application and Selection Processes



Chapter 4: Application Process

This chapter describes the process to apply for TIFIA credit assistance. The DOT welcomes informal consultations with prospective applicants at any time. TIFIA staff contact information is on the inside front cover of this program guide.

Section 4-1
Solicitation for Applications

Because the demand for credit assistance currently exceeds budgetary resources, it is no longer feasible for the DOT to maintain, as it has since 2002, an open process whereby the TIFIA JPO accepts applications on a "first come, first serve" basis as defined by the optimal schedule of the applicant. Instead, the DOT is returning to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program objectives. When funding is available, the DOT will issue a Notice of Funding Availability in the Federal Register to outline the deadlines for applicants each fiscal year.

The NOFA will specify the due dates for both the initial Letters of Interest and the formal application packages. The NOFA will also specify the estimated amount of funding available to support the TIFIA credit instruments for the fiscal year in question, the deadline by which Letters of Interest and applications should be delivered, how the DOT will evaluate applications, and any other relevant information concerning the application process.

In addition to publication in the Federal Register, the NOFA (and other program information) will be posted on the TIFIA web site, located at: http://www.fhwa.dot.gov/ipd/tifia.

Section 4-2
Initial Submission: Letter of Interest

In response to the NOFA, an applicant should submit to the DOT a Letter of Interest, not to exceed 20 pages, excluding Appendices. The DOT template for the required Letter of Interest for the specified Federal fiscal year can be found at Appendix C. The form has been expanded to address the TIFIA selection criteria, and it identifies the specific information that must be provided to the DOT. The DOT requests that applicants submit the Letter of Interest by attaching it via email to TIFIACredit@dot.gov by the deadline specified in the NOFA.

Because there is limited funding, the DOT intends to compete projects at the Letter of Interest stage and will invited selected projects to move to the application stage. As such, it is important for applicants to demonstrate the project's ability to meet the TIFIA statutory selection criteria detailed in Chapter 5 and Appendix E. This letter also serves to familiarize the DOT with basic information relating to the project and the applicant. It also permits the DOT and the applicant to ensure that the project meets the most basic eligibility requirements for participation.

For the purpose of completing its evaluation, the TIFIA JPO staff may contact an applicant regarding specific information in the Letter of Interest.

Components

The Letter of Interest should describe the project and the proposed financial plan, identify the proposed TIFIA borrower, detail how the TIFIA statutory selection criteria are met, and discuss the benefits of the proposed project and its use of TIFIA assistance. The letter should also summarize the project's status in the environmental review process.

- Project Description. The letter should describe the project, including its location, purpose, design features, estimated capital cost, and development schedule.

- Proposed Participants. The letter should describe the proposed borrower's organizational structure, identify the entity that will serve as the applicant, list other significant members of the project team, describe the proposed borrower's relationship to subsidiaries or affiliates, if any, and provide a web site link where additional information can be found.

- Proposed Financing. The letter should include the proposed sources and uses of funds for the project and state the type and amount of credit assistance to be sought from the DOT. The discussion of proposed financing should also identify the source(s) of revenue or other security that would be pledged to the TIFIA credit instrument. Additionally, the letter should address the status of any revenue feasibility study.

- Satisfaction of TIFIA Selection Criteria. The letter should describe the potential benefits to be achieved through the use of a TIFIA credit instrument with respect to each of the TIFIA selection criteria (see Chapter 5 and Appendix E of this program guide).

- Environmental Review. The letter should summarize the status of the project's environmental review, and it should state specifically whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or whether a draft Environmental Impact Statement has been circulated.

- Other Information. The letter should include any other relevant information that could affect the development and financing of the project, such as community support, pending legislation, or litigation.

- Planning. The letter should explain whether the project is consistent with the Federally-required long range transportation plan and transportation improvement program.

- Schedule. The letter should detail the timetable for requesting TIFIA credit assistance, demonstrate that the application could be prepared within a short timeframe, and explain any potential factors that could impact the timetable.

- Contact Information. The letter should identify a key contact person with whom all communication should flow.

When preparing the Letter of Interest, applicants should utilize the format provided on the TIFIA web site. In cases where there are differences between the guidance in this document and the guidance on the web site form, the latter should dictate the applicant's response.

Considerations

In both the Letter of Interest and in the subsequent application, the applicant should propose a single financing structure representing the most likely scenario. The DOT may ask applicants to develop alternative scenarios, as necessary. Additionally, applicants may be asked to verify application information and/or provide documentation of design-build contracts, public-private venture agreements, or other information of interest.

A public agency that seeks access to TIFIA on behalf of multiple competitors for a project concession must submit the project's Letter of Interest. Although the public agency would not become the TIFIA borrower, nor even have yet identified the TIFIA applicant, it must provide information sufficient for the DOT to evaluate the project against the TIFIA program objectives. The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.

An applicant may combine more than one type of TIFIA credit assistance (secured loan, guaranteed loan, line of credit) for a single project in the same application, provided that the total amount of requested credit assistance does not exceed 33 percent of reasonably anticipated eligible project costs.

For most projects, the DOT will use an evaluation team drawn from agencies throughout the Department (*e.g.*, FHWA, FRA, FTA, MARAD, and OST). A representative from the evaluation team will notify the applicant of its eligibility to submit an application. This person will serve as the DOT's principal point of contact throughout the application process.

On the basis of the Letter of Interest, the DOT evaluation team will develop an overall score for the project and will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance) for the selected projects. As such, it is important for applicants to demonstrate the project's ability to meet the TIFIA statutory selection criteria. An invitation to submit an application for credit assistance does not guarantee the DOT's approval, which will remain subject to evaluation, based on all of the TIFIA statutory evaluation criteria (including creditworthiness and consumption of budget authority) and the successful negotiation of all terms and conditions.

Section 4-3
Application

Upon receiving the DOT's notification that the project meets the basic eligibility criteria, the applicant may submit an application by the agreed-upon deadline. The application form for the current fiscal year required to request TIFIA credit assistance appears in Appendix D of this program guide and is also available on the TIFIA web site.

Components

The TIFIA application is divided into the following sections:

- Executive Summary. The DOT has created a template for the required Executive Summary; it identifies the specific information that must be provided to the DOT,

including detailed information regarding the project's ability to meet the TIFIA statutory selection criteria. This Executive Summary must be submitted electronically by attaching it via email to TIFIACredit@dot.gov concurrently with submission of the application package in hard copy.

- Application Checklist. The second page of the application form provides a useful checklist detailing the requirements of the application submission, including the page limits for each section, the number of copies required, and the application fee amount.

- Section A. Information on where and how to contact the applicant.

- Section B. Project information, including a description of the project, the form of TIFIA credit assistance requested, cost estimates and requested credit assistance amount(s), a project schedule, information on required approvals and permits, a project management and compliance monitoring plan, and a description of project operations and maintenance.

- Section C. A narrative in which the applicant explains the extent to which the proposed project satisfies each of the eight TIFIA selection criteria (see Chapter 5 and Appendix E of this program guide).

- Section D. A detailed financial plan, including estimated project costs and activity breakdowns, sources and uses of funds, cash flow pro forma, supplementary narratives on borrowed funds and revenue sources, proposed terms for the requested TIFIA credit instrument, and risk and mitigation strategies. The applicant also must provide the DOT with executable electronic copies of all materials in this section as well as the Exhibit VII cash flow pro forma (*i.e.*, files cannot be "values" or PDF files, and all spreadsheet documents should be operational).

- Section E. Information on the applicant's organizational structure, experience, and its legal authority to carry out the activities described in the application.

- Section F. Certifications of compliance with TIFIA statutory requirements and other requirements common to all Federal credit programs.

The application form also requires an applicant to submit 12 supplementary exhibits. These exhibits include such items as a map of the project, the required preliminary rating opinion letter, revenue and cost projections, cash flow pro forma, supporting documentation regarding the applicant's legal status, and an organizational chart. Additionally, the completed application (including a computer diskette (CD) containing electronic versions of the entire application with attachments as well as separate files for Section D and Exhibit VII – but NOT in PDF or "values" format) must be submitted with the original and hard copies of the package.

Application Fee and Other Program Fees

The DOT currently requires four different fees from TIFIA participants:

(1) A non-refundable application fee, currently $50,000. For successful applicants, this fee will be credited toward final payment of the transaction fee.

(2) A transaction (credit processing) fee, typically between $300,000 and $400,000, for projects selected to receive assistance. This fee may be higher, depending on the complexity of the project's financing structure and the extent of related loan documents, such as the intercreditor agreement, compliance agreements, equity funding agreements, etc.

(3) An annual servicing fee, indexed to inflation and currently $11,500, for each credit instrument approved, due by November 15 each year.

(4) Project monitoring fees are charged to borrowers in cases where the DOT incurs costs in connection with monitoring the performance of a project, the enforcement of credit agreement provisions, amendments to the credit agreement and related documents, and other performance-related activities. The DOT will include in each credit agreement a provision requiring the borrower to reimburse the DOT for such costs.

The DOT periodically will announce in the Federal Register changes to the types and amounts of fees for applicants and program participants, and in some cases may provide more current information than this program guide. Applicants should be sure to check the Federal Register for the most current information.

The DOT will charge the borrower a credit processing fee equal to the actual costs incurred by the DOT in negotiating the credit agreement through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. This fee reimburses the Government for its out-of-pocket costs for its outside legal counsel and financial advisor in connection with negotiating and closing the credit agreement. ***The borrower is responsible for payment of this fee regardless of whether the credit agreement is executed.***

The servicing fee is set according to the DOT's out-of-pocket costs to administer the credit instruments, including accounting, collections, document maintenance, and financial reporting.

Multi-Sponsor Projects

An application for a project located in or sponsored by more than one state or other entity must be submitted to the DOT by a single state or entity. Multiple-party applicants need to designate a single borrower for purposes of applying for, receiving, and repaying TIFIA credit assistance.

Section 4-4
Schedule and Deadlines

Confirmation of the major deadlines will be provided in the NOFA for the relevant fiscal year. If current-year budget authority still remains after the initial selections, the DOT may accept a second round of applications, which would be announced through a new NOFA published in the Federal Register.

Chapter 5: Selection Process

This chapter describes the TIFIA project evaluation and selection process. After submission of the application, the major steps in that process include: an oral presentation of the project by the applicant to DOT; DOT's review of the application, including an in-depth analysis of the proposed project and financial plan, which review may include scoring the project; and DOT's determination regarding credit assistance and notification of the decision to applicant.

Section 5-1
Project Evaluation

Initial Submission of the Letter of Interest

As described in Chapter 4, each potential applicant must first submit a Letter of Interest. A DOT evaluation team will review each letter to ensure that the project satisfies the basic requirements for TIFIA eligibility and statutory evaluation criteria. Depending on the modal characteristics of the project, the DOT may establish an evaluation team representing several offices and agencies (*e.g.*, FHWA, FRA, FTA, MARAD, OST) to conduct the review.

Project Assessment

The DOT will compete projects based on the Letters of Interest submitted within each application cycle. The evaluation team will assess the strengths of the application according to the eight selection criteria specified under 23 U.S.C. §602(b)(2). The DOT has assigned specific weights to the selection criteria, as follows:

(i) Significance (20 percent): The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. This includes consideration of livability: providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness: contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety: improving the safety of U.S. transportation facilities and systems and the communities and populations they impact.

(ii) Private Participation (20 percent): The extent to which assistance would foster innovative public-private partnerships and attract private debt or equity investment.

(iii) Environment (20 percent): The extent to which the project helps maintain or protect the environment. This includes sustainability: improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems, including the use of tolling or pricing structures to reduce or manage high levels of

congestion on highway facilities and encourage the use of alternative transportation options; and the state of good repair: improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials.

(iv) Project Acceleration (12.5 percent): The likelihood that assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(v) Creditworthiness (12.5 percent): The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(vi) Use of Technology (5 percent): The extent to which the project uses new technologies, including intelligent transportation systems that enhance the efficiency of the project.

(vii) Consumption of Budget Authority (5 percent): The amount of budget authority consumed in funding the requested Federal credit instrument.

(viii) Reduced Federal Grant Assistance (5 percent): The extent to which assistance would reduce the contribution of Federal grant assistance to the project.

When evaluating the Letters of Interest, the information needed to address criterion (iv), creditworthiness, and criterion (vii), budget authority, is unlikely to be available in sufficient detail. Therefore, the DOT will not employ these two criteria when reviewing the Letters of Interest. However, the DOT will consider these criteria when reviewing project applications. Appendix E provides guidelines that the DOT currently considers in evaluating TIFIA Letters of Interest and applications according to the criteria.

Upon completion of the project assessment, the DOT evaluation team will develop an overall score for the project and will invite complete applications (including the preliminary rating opinion letter and detailed plan of finance) for the selected projects. The application due date will be established after consultation between the TIFIA JPO and the applicant.

Screening of Application

The evaluation team screens the application for completeness of information, satisfaction of the threshold requirements described in Chapter 3, as well as for project readiness. The DOT typically employs the services of an expert financial advisor to assist with financial and credit risk assessments of the project.

Upon receipt of the application, the DOT will review it with respect to a variety of major factors, including:

- Project Cost. The reasonably anticipated eligible project costs must total at least $50 million or at least one-third of the state's Federal-aid highway apportionments for the most recently completed fiscal year (whichever is less). If the project principally

involves the installation of an Intelligent Transportation System, it must cost at least $15 million.

- Rating Opinion. The application must include at least one preliminary rating opinion letter from a nationally recognized credit rating agency. This preliminary assessment of the project's proposed financing structure must indicate that the senior obligations funding the project have the potential to receive an investment grade rating.[4] The DOT will not consider projects that do not demonstrate the potential for the obligations senior to TIFIA to receive an investment grade rating. The letter also should provide a preliminary assessment of the likely rating category for the requested TIFIA instrument. In addition, the letter should provide a preliminary rating assessment of the financial strength of the overall project and the default risk (*i.e.*, without regard to recovery potential) of the requested TIFIA instrument.

- Planning Requirements. The project must be consistent with the Federally-required long-range transportation plan and must be included in the transportation improvement program.

- Credit Assistance Request. The total amount of requested TIFIA credit assistance must not exceed 33 percent of reasonably anticipated eligible project costs as discussed in Chapter 3.

- Repayment Source. Both project debt generally and TIFIA debt specifically must be repaid in whole or in part by a dedicated revenue source as discussed in Chapter 3. The DOT will require that revenues pledged to the TIFIA obligation be, except for lien position, of substantially similar credit quality to those securing the senior debt.

- Environmental Review. The applicant must have circulated a Draft EIS, unless the project has received either a FONSI or a Categorical Exclusion. The DOT will not obligate funds for a project before a ROD (if required, or the equivalent final agency decision) has been issued for that project.

- TIFIA Compliance Certifications. The applicant must certify compliance with 23 U.S.C. or relevant provisions of 49 U.S.C., as applicable. Also, the applicant must certify compliance with the National Environmental Policy Act of 1969, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and Title VI of the Civil Rights Act of 1964.

- Other Compliance Issues. The applicant must certify compliance with other application requirements shared by all Federal credit programs, such as no delinquency or default on any Federal debt or debarment from participation in any Federal programs. In addition, the applicant must provide a comprehensive project management and monitoring

[4] If there are no debt obligations senior to the TIFIA credit instrument, then the TIFIA credit instrument itself must be shown to have the potential to obtain an investment grade rating.

proposal that will assure the DOT of the applicant's ongoing compliance with all applicable Federal laws and regulations.

Oral Presentation

Following successful completion of the application screening process, the DOT will invite the applicant to make an oral presentation followed by a question and answer session. In addition to the DOT evaluation team and financial advisor, other officials, including members of the DOT Credit Council, may attend the presentation. This presentation is intended to clarify the applicant's proposed development plans for the project, including the financing structure, and to resolve other issues relating to the application. The structure and content of the presentation will be discussed with each applicant at the time of the invitation. At the presentation, the DOT may require the applicant to provide additional information, including clarifications regarding cash flows, sources and uses, or other issues.

Project Review

Because the applicant already demonstrated the projects ability to meet six of the eight statutory selection criteria at the Letter of Interest stage, the DOT will focus primarily on creditworthiness and consumption of budget authority at the application stage. However, all eight selection criteria specified above will be reassessed concurrent with the preliminary calculation of the project's subsidy cost.

Based on the financial information presented in the application and presentation (and any supplemental materials), the DOT will estimate the subsidy cost for the proposed credit assistance. This preliminary subsidy calculation, reflecting the DOT's estimated credit risk, will determine the amount of TIFIA budget authority the project would consume if selected for credit assistance.

Section 5-2
Project Recommendations

Upon completion of the project assessment described above, the DOT evaluation team will reassess the overall score for the project as a guide for determining whether to recommend an award of credit assistance.

Based on work of the evaluation team, the TIFIA staff will prepare a recommendation regarding TIFIA credit assistance and present it to the DOT Credit Council.

Section 5-3
Project Selection

The DOT Credit Council provides recommendations to the Secretary of Transportation, who will make the final determination regarding award of TIFIA assistance. Following a favorable decision and applicant notification, the TIFIA JPO will prepare a term sheet for execution with the applicant. While the term sheet demonstrates DOT's commitment to fund the project, the decision to provide financing does not mean that the DOT agrees with all

specific terms in the application. The term sheet is subject in all respects to the execution of a credit agreement on acceptable terms and conditions. Once negotiations are completed, the parties will execute a definitive credit agreement and close the transaction. These contractual documents are described in Chapter 6.

Section 5-4
Summary of the TIFIA Selection Process

Exhibit 5-A provides a summary of the TIFIA application and selection processes addressed in Chapters 4 and 5.

Exhibit 5-A: The TIFIA Selection Process

Action	Responsible Party
Solicitation for Applications	
• Submit NOFA to Federal Register.	• DOT
Initial Submission - Letter of Interest:	
• Prepare the Letter of Interest and submit it to the DOT.	• Applicant
Project Assessment:	
• Establish an evaluation team to review the project.	• DOT
• Determine whether the prospective project meets basic eligibility requirements and statutory selection criteria.	• DOT
• Score the project according to each of the relevant selection criteria.	• DOT
• Notify selected projects that have been invited to submit an application.	• DOT
• Answer questions relating to the application, as needed.	• DOT and Applicant
Application:	
• Prepare and submit the application (with the appropriate number of copies) along with the application fee.	• Applicant
• Review the application and, if it passes the initial screening for completeness and compliance, invite the applicant to make an oral presentation.	• DOT
Oral Presentation:	
• Present the proposal to the evaluation team and financial advisor, as well as representatives of the TIFIA JPO and the DOT Credit Council.	• Applicant
Project Review:	
• Based on the written application and oral presentation, reassess the project with respect to the eight selection criteria, with particular focus on creditworthiness and consumption of budget authority.	• DOT
• Calculate the credit subsidy cost estimate.	• DOT
Recommendations for DOT Credit Council and DOT Secretary:	
• Prepare and present a recommendation for each project to the DOT Credit Council.	• DOT
• Review, approve, or revise respective recommendation and forward to the DOT Secretary for final decision on approval.	• DOT Credit Council
Approval and Notifications:	
• Approve project, as appropriate, and authorize the issuance of a term sheet and the subsequent negotiation of a credit agreement.	• DOT Secretary
• Advise applicant of DOT Secretary's determination.	• DOT

Chapter 6: Transaction Documents and Ongoing Monitoring Requirements

This chapter describes the process by which the DOT will commit to provide credit assistance to a selected borrower (also termed "obligor"). The chapter also describes the two major contractual documents used for the TIFIA program: the term sheet and the credit agreement.

Each of the contractual documents is used for specific purposes as summarized in Exhibit 6-A. The term sheet establishes the DOT's legal commitment and triggers the obligation of budget authority for the project. The credit agreement is the definitive agreement between the DOT and the borrower, containing all of the terms and conditions pursuant to which the credit assistance is provided.

Exhibit 6-A: TIFIA Prerequisites

Document	Major Prerequisites
Term Sheet	• Credit Assessment: Preliminary rating opinion letter on senior debt and TIFIA credit instrument • Environmental Clearance: ROD, FONSI, or Categorical Exclusion Planning Consistency: • Compliance with applicable planning requirements.
Credit Agreement	• Credit Assessment: Investment grade credit rating on senior debt and rating on TIFIA credit instrument • Appropriate Security Features: Rate covenants, etc. • All necessary grant funds committed to the project • All non-TIFIA equity and debt agreements executed

If a TIFIA project is also financed with other DOT funds, the recipient of TIFIA credit assistance is required to comply with applicable modal project requirements and approvals as well as the TIFIA program requirements. These may include approval for innovative contracting approaches and "mega project" procedures such as submission of a financial plan and plan updates. The DOT's TIFIA process minimizes duplication of effort by borrowers, while ensuring effective oversight and monitoring of the Federal investment for projects. The applicant can choose to take advantage of the coordinated processes as long as the timing of the submission of required documents fulfills both TIFIA and other applicable Federal program requirements. The TIFIA credit agreement will specifically address financial plan requirements and monitoring procedures.

Section 6-1
Term Sheet

The term sheet is a contractual agreement between the DOT and the borrower that sets forth certain business terms and conditions of TIFIA credit assistance for the project. The DOT's issuance of this document triggers the DOT's obligation (*i.e.*, legal commitment) of budget authority.

Term Sheet Prerequisites

Before issuing a term sheet, the DOT will confirm that all prerequisites for the obligation of funds have been satisfied. As shown in Exhibits 3-A and 6-A, these prerequisites include: (*i*) submission of the preliminary rating opinion letter as part of the TIFIA application; (*ii*) the project's receipt of its ROD, FONSI, or Categorical Exclusion; and (*iii*) the project's inclusion in the approved STIP.

The term sheet obligates budget authority and binds the DOT and the borrower to the specified terms; it does not bind the DOT to details of the borrower's application. Further, the term sheet does *not* trigger a disbursement of funds to the borrower. Disbursements are made pursuant to the credit agreement, which is the definitive financing agreement between the borrower and the DOT.

Term Sheet Contents

General rules concerning the terms for secured loans, loan guarantees, and standby lines of credit appear at 23 U.S.C. 603 and 604 and are also summarized in Chapter 2. More specific terms will be determined on a project-specific basis. The DOT commitment in the term sheet is subject to subsequent negotiation of the credit agreement.

Since term sheets serve primarily as obligating instruments for TIFIA credit assistance, they include only basic terms and conditions related to the DOT's provision of credit assistance. Typically, the following will appear in every term sheet:

- Parties to the agreement (*e.g*., lender, borrower, and guaranteed lender, as applicable);
- Type(s) of credit instrument (*i.e*., secured loan, loan guarantee, or line of credit);
- Description of the project;
- Estimated total project costs and total TIFIA-eligible project costs;
- Maximum amount of TIFIA credit assistance;
- Method for establishing the interest rate;
- Estimated final maturity date;
- Source of payment and security, including lien structure and TIFIA credit instrument priority;
- Requirement to reimburse the DOT for credit processing fees;
- Conditions, if applicable, for execution of a credit agreement; and
- Covenants such as limitations on additional bonds, minimum coverage ratios, and any required reserve funds.

Term Sheet Conditions: Future-Year Commitments

For projects with extended construction periods and/or special financing needs, the Secretary may consider making future-year contingent commitments of budget authority and associated credit assistance. This might be considered, for example, if a selected project required the obligation of more TIFIA assistance than was available in the current fiscal year. In such a circumstance, the term sheet would include a provision by which the DOT would administratively reserve future year TIFIA funding for the project, upon satisfaction of specified conditions (such as project-specific milestones). Any such contingent commitments would be subject to the future availability of obligation authority. The DOT would initially administratively reserve budget authority for the project only in the current fiscal year, and would not administratively reserve budget authority in future years until the conditions of the term sheet were met and the availability of sufficient budget authority was confirmed.

To ensure additional projects' access to the program in future years, the DOT will not administratively reserve more than 25 percent of the amount of budget authority authorized for a single fiscal year.

Section 6-2
Credit Agreement

The credit agreement is the definitive agreement between the DOT and the borrower (and the guaranteed lender, if applicable). It specifies all terms and conditions of the credit assistance and authorizes the disbursement of TIFIA credit assistance to the project.

Credit Agreement Prerequisites

In order for the DOT to execute the credit agreement and disburse funds, the borrower must satisfy at a minimum any requirements set forth in the term sheet. Also, the borrower must have an investment grade rating on the senior debt obligations and a rating on the TIFIA credit instrument, as described in Chapter 3. If the TIFIA debt is intended to be the senior debt, it must receive an investment grade rating.

Prior to closing a TIFIA credit agreement, the borrower will be required to submit updates to both the financial plan and project management and monitoring plan.

The DOT reserves the right to review and, as appropriate, approve all related project documents, including, but not limited to design-build contracts, concession agreements, development agreements, financing agreements, and funding agreements with third parties.

Credit Agreement Contents

The contents of the credit agreement will include both standard provisions and transaction-specific provisions. The borrower and the DOT will execute the credit agreement for a secured loan or line of credit; the guaranteed lender, the DOT, and the borrower will execute the credit agreement for a loan guarantee. Additionally, the guaranteed lender will execute a separate loan agreement with the borrower, and the borrower will execute a borrower's certificate, compliance, and loan agreement with the DOT. Depending on the nature of the

transaction, additional documents, such as an intercreditor agreement, may also be necessary. The DOT may require the borrower to provide copies of the bond documents and other agreements material to the flow of funds or to DOT's security for its review. The DOT also will review any disclosure with respect to the TIFIA transaction, which the borrower includes in offering documents.

Generally, borrowers can expect credit agreements to include, in addition to the items listed under "Term Sheet Contents," the following:

- Security features and additional terms;
- Detailed description of pledged security (*e.g.*, rate covenants);
- Flow of funds;
- Repayment terms, including amortization schedule and final maturity;
- Representations and warranties;
- Borrower covenants;
- Annual disbursement schedule and conditions for draws;
- Financial plan requirements; and
- Monitoring and reporting requirements.

The credit agreement will also include the form of requisition for disbursements and the note form.

Section 6-3
Closing Activities

When the parties to the transaction have completed negotiations and finalized the TIFIA credit agreement and other related financing documents, the pre-closing and closing occur. This process is very similar to a bond transaction closing.

At closing, authorized representatives of the borrower, the DOT, and the guaranteed lender (if applicable) execute the legal documents. Documents requiring execution by persons not attending the closing are signed in advance. Copies of the agreements are made and distributed to the appropriate parties. The timing of the TIFIA closing is typically tied to the closing of the senior financing. The closing of the senior and TIFIA debt can be simultaneous, but the TIFIA transaction will not close until the senior documents have been finalized and execution is within a week of the TIFIA closing. Standard transaction closing documents are required, including various legal opinions. A closing memorandum is prepared describing the actions that will take place, including funds disbursement, if applicable. This memorandum sets forth in detail the time and place of the closing, conditions precedent, and the required documentation.

Following the closing, a binder is prepared which includes all the legal documents, project selection materials, and other closing documents. The TIFIA JPO uses this closing binder as the source of project information for accounting, budgeting, and program monitoring systems. Exhibit 6-B contains a sample checklist for a secured loan closing.

Exhibit 6-B: Sample Loan Closing Checklist for a Secured Loan

1. Organizational Documents of the Borrower

   If the Borrower is public entity:

   a. Approval resolutions approving project and authorizing official to execute documents

   b. Copies of enabling legislation, bylaws, minutes of meetings regarding the project

   If the Borrower is private entity:

   a. Articles of incorporation, partnership agreement or similar documents, as appropriate

   b. Good standing certificate

   c. Bylaws

   d. Incumbency certificate

   e. Resolutions authorizing officials to execute documents

2. Loan Agreement and Promissory Note
3. Inter-creditor Agreement
4. Evidence of site control
5. Evidence of project's inclusion in State Transportation Improvement Program
6. Evidence of consistency with other State or metropolitan transportation plans
7. Evidence of approval by all necessary State or local governmental entities
8. List of all required permits
9. Environmental Record of Decision, Finding of No Significant Impact or Categorical Exclusion
10. Development agreements (including design/build or concession agreements) and any other construction contracts
11. Independent Engineer's Report
12. Feasibility Study/Traffic and Revenue Study
13. Working Financial Model (not in .pdf or values format) and Financial Plan
14. Credit rating(s)
15. TIFIA Credit Agreement
16. Opinion of borrower's counsel (addressing legal authority of Borrower, execution of documents, etc.); DOT also requires 10b-5 opinions from attorneys participating in the transaction

17. Opinion of DOT's counsel (addressing DOT's authority to make loan to the borrower)
18. Development Agreement (s) or Contracts for Project (dates for start of Project, phases, and completion)
19. For Senior Project Bonds (tax-exempt or taxable bonds):
    a. Enabling legislation and other documentation of issuer of senior project bonds
    b. Borrower's resolution
    c. Trust indenture
    d. Loan agreement (if applicable)
    e. Bond purchase agreement
    f. Preliminary official statement
    g. Official statement
    h. Continuing disclosure agreement
    i. Bond insurance policy or other credit enhancement

Section 6-4
DOT Oversight and Monitoring Requirements

The DOT will periodically evaluate the credit status of all projects receiving TIFIA assistance. This periodic review has three purposes: (*i*) to provide the DOT with an oversight tool for ensuring the borrower's compliance with the provisions of the credit agreement; (*ii*) to monitor the overall status of the project; and (*iii*) to assist the DOT and the Office of Management and Budget (OMB) in identifying any changes to the credit risk posed to the Federal Government under individual credit agreements.

As part of its oversight and monitoring of TIFIA projects, the DOT will routinely update its information on credit quality, construction schedules, legal issues, revenue forecasts, financial projections, and project performance. Accordingly, borrowers will be required to covenant in the credit agreement to provide ongoing financial and project information not only during construction, but so long as any TIFIA credit instrument is outstanding and/or until any debt obligation to the Federal Government is fully repaid. Documentary evidence that may be requested for each project includes: audited financial statements, updated budget and cash flow projections, audit reports, sources and uses of funds, coverage ratios, project schedules, operating statistics, and management updates (within no more than 180 days following the recipient's fiscal year-end). In addition, the credit agreement obligates the borrower to provide the DOT with an annual update to the project's financial plan in accordance with specified requirements. Financial plans must show full funding for the project and are subject to review and approval by the relevant DOT office(s). Each borrower will be required to give notice to the DOT of material events, including litigation, which could affect project development or the credit quality of the project.

The borrower is also required to provide annually, at no cost to the Federal Government, ongoing credit evaluations of the project and all debt obligations, including the TIFIA credit

instrument. These surveillance reports must be prepared by an NRSRO throughout the life of the TIFIA credit instrument. By "current credit evaluation" DOT means: *(i)* in the case of a project with a published rating, either a current rating or the borrower's certification stating that the rating and outlook are unchanged from the previous year, and *(ii)* in the case of a project without a published rating, a current rating of the project obligations and the Federal credit instrument. The borrower must furnish the DOT with any other credit surveillance reports on the TIFIA-assisted project as soon as they are available.

The DOT's oversight and monitoring may also include site visits, periodic status meetings with the borrower, and reviews of independent engineer and/or other relevant reports. The TIFIA JPO will coordinate oversight and monitoring activities with the appropriate DOT field offices.

Each credit agreement between the DOT and a borrower will specify the types of ongoing documentation required by the DOT and the frequency of such information requests. The credit agreement will also authorize the DOT to commence increased monitoring and reporting, as may be necessary, to ensure the continued credit quality of the project and minimize the Government's risk.

Section 6-5
DOT Loan Servicing

The DOT may retain outside assistance to perform loan servicing for TIFIA credit instruments, including credit accounting, collections, maintenance of documents, and financial reporting. To offset in part the DOT's costs, a TIFIA borrower is charged an annual fee for loan servicing activities associated with each TIFIA credit instrument, which is adjusted periodically based on inflation.

The DOT will provide general payment instructions to the borrower for each credit agreement. Prior to each repayment date, the DOT's loan servicer will notify the borrower of the date and amount due in accordance with the payment schedule in the credit agreement. The loan servicer will also bill each borrower annually for servicing fees, for the DOT's account, in accordance with the provisions in the credit agreement.

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:
>
> (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.

Appendix A: Acronyms

CFR	Code of Federal Regulations
DOT	United States Department of Transportation
DOL	United States Department of Labor
EIS	Environmental Impact Statement
FCRA	Federal Credit Reform Act of 1990
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact
FRA	Federal Railroad Administration
FTA	Federal Transit Administration
ITS	Intelligent Transportation System
MARAD	Maritime Administration
NEPA	National Environmental Policy Act of 1969
NOFA	Notice of Funding Availability
NRSRO	Nationally Recognized Statistical Rating Organization
OMB	Office of Management and Budget
OST	Office of the Secretary of Transportation
ROD	Record of Decision
SAFETEA-LU	Safe, Accountable, Flexible, Effective Transportation Equity Act: A Legacy for Users
SLGS	State and Local Government Series
STIP	State Transportation Improvement Program
TEA 21	Transportation Equity Act for the 21st Century
TIFIA	Transportation Infrastructure Finance and Innovation Act of 1998
TIFIA JPO	TIFIA Joint Program Office
U.S.C.	United States Code

Appendix B: TIFIA Legislation and Regulations

This Appendix contains the following:

1) Transportation Infrastructure Finance and Innovation Act, as amended
2) Transportation Infrastructure Finance and Innovation Act Regulations

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COMPILATION OF UNITED STATE CODE, TITLE 23, CHAPTER 6

UPDATED THROUGH P.L. 109–85, APPROVED OCTOBER 4, 2005

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[TITLE 23—HIGHWAYS]

CHAPTER 6—INFRASTRUCTURE FINANCE

Sec.
601. Generally applicable provisions.
602. Determination of eligibility and project selection.
603. Secured loans.
604. Lines of credit.
605. Program administration.
606. State and local permits.
607. Regulations.
608. Funding.
609. Reports to Congress.
610. State infrastructure bank program.

§ 601. Generally applicable provisions

(a) DEFINITIONS.—In this chapter, the following definitions apply:

(1) ELIGIBLE PROJECT COSTS.—The term "eligible project costs" means amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of—

(A) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;

(B) construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(C) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

(2) FEDERAL CREDIT INSTRUMENT.—The term "Federal credit instrument" means a secured loan, loan guarantee, or line of credit authorized to be made available under this chapter with respect to a project.

(3) INVESTMENT-GRADE RATING.—The term "investment-grade rating" means a rating of BBB minus, Baa3, or higher assigned by a rating agency to project obligations.

(4) LENDER.—The term "lender" means 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—

(A) a qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986) that is a qualified institutional buyer; and

(B) a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986) that is a qualified institutional buyer.

(5) LINE OF CREDIT.—The term "line of credit" means an agreement entered into by the Secretary with an obligor under section 604 to provide a direct loan at a future date upon the occurrence of certain events.

(6) LOAN GUARANTEE.—The term "loan guarantee" means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

(7) OBLIGOR.—The term "obligor" means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

(8) PROJECT.—The term "project" means—

(A) any surface transportation project eligible for Federal assistance under this title or chapter 53 of title 49;

(B) a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(C) a project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation and components of magnetic levitation transportation systems; and

(D) a project that—

(i) is a project—

(I) for a public freight rail facility or a private facility providing public benefit for highway users;

(II) for an intermodal freight transfer facility;

(II) for an intermodal freight transfer facility;

(III) for a means of access to a facility described in subclause (I) or (II);

(IV) for a service improvement for a facility described in subclause (I) or (II) (including a capital investment for an intelligent transportation system); or

(V) that comprises a series of projects described in subclauses (I) through (IV) with the common objective of improving the flow of goods;

(ii) may involve the combining of private and public sector funds, including investment of public funds in private sector facility improvements; and

(iii) if located within the boundaries of a port terminal, includes only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.

(9) PROJECT OBLIGATION.—The term "project obligation" means any note, bond, debenture, or other debt obligation

issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

(10) RATING AGENCY.—The term "rating agency" means a credit rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

(11) SECURED LOAN.—The term "secured loan" means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 603.

(12) STATE.—The term "State" has the meaning given the term in section 101.

(13) SUBSIDY AMOUNT.—The term "subsidy amount" means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

(14) SUBSTANTIAL COMPLETION.—The term "substantial completion" means the opening of a project to vehicular or passenger traffic.

(b) TREATMENT OF CHAPTER.—For purposes of this title, this chapter shall be treated as being part of chapter 1.

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 241; renumbered Sec. 601 and amended Pub. L. 109–59, title I, Secs. 1601(a), 1602(b)(1), (5), (d), Aug. 10, 2005, 119 Stat. 1239, 1246, 1247.)

§ 602. Determination of eligibility and project selection

(a) ELIGIBILITY.—To be eligible to receive financial assistance under this chapter, a project shall meet the following criteria:

(1) INCLUSION IN TRANSPORTATION PLANS AND PROGRAMS.—The project shall satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under this chapter.

(2) APPLICATION.—A State, local government, public authority, public-private partnership, or any other legal entity undertaking the project and authorized by the Secretary, shall submit a project application to the Secretary.

(3) ELIGIBLE PROJECT COSTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), to be eligible for assistance under this chapter, a project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of—

(i) $50,000,000; or

(ii) 33⅓ percent of the amount of Federal highway assistance funds apportioned for the most recently completed fiscal year to the State in which the project is located.

(B) INTELLIGENT TRANSPORTATION SYSTEM PROJECTS.—In the case of a project principally involving the installation of an intelligent transportation system, eligible project

costs shall be reasonably anticipated to equal or exceed $15,000,000.

(4) DEDICATED REVENUE SOURCES.—The Federal credit instrument shall be repayable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the project obligations.

(5) PUBLIC SPONSORSHIP OF PRIVATE ENTITIES.—In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be publicly sponsored as provided in paragraphs (1) and (2).

(b) SELECTION AMONG ELIGIBLE PROJECTS.—

(1) ESTABLISHMENT.—The Secretary shall establish criteria for selecting among projects that meet the eligibility requirements specified in subsection (a).

(2) SELECTION CRITERIA.—

(A) IN GENERAL.—The selection criteria shall include the following:

(i) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system.

(ii) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.

(iii) The extent to which assistance under this chapter would foster innovative public-private partnerships and attract private debt or equity investment.

(iv) The likelihood that assistance under this chapter would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.

(v) The extent to which the project uses new technologies, including intelligent transportation systems, that enhance the efficiency of the project.

(vi) The amount of budget authority required to fund the Federal credit instrument made available under this chapter.

(vii) The extent to which the project helps maintain or protect the environment.

(viii) The extent to which assistance under this chapter and chapter 1 would reduce the contribution of Federal grant assistance to the project.

(B) PRELIMINARY RATING OPINION LETTER.—For purposes of subparagraph (A)(ii), the Secretary shall require each project applicant to provide a preliminary rating opinion letter from at least 1 rating agency indicating that the project's senior obligations, which may be the Federal credit instrument, have the potential to achieve an investment-grade rating.

(c) FEDERAL REQUIREMENTS.—In addition to the requirements of this title for highway projects, chapter 53 of title 49 for transit

projects, and section 5333(a) of title 49 for rail projects, the following provisions of law shall apply to funds made available under this chapter and projects assisted with the funds:

(1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(2) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 243; renumbered Sec. 602 and amended Pub. L. 109–59, title I, Secs. 1601(b), 1602(b)(2), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247.)

§ 603. Secured loans

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements with 1 or more obligors to make secured loans, the proceeds of which shall be used—

(A) to finance eligible project costs of any project selected under section 602; or

(B) to refinance interim construction financing of eligible project costs of any project selected under section 602; or

(C) to refinance long-term project obligations or Federal credit instruments if such refinancing provides additional funding capacity for the completion, enhancement, or expansion of any project that—

(i) is selected under section 602; or

(ii) otherwise meets the requirements of section 602.

(2) LIMITATION ON REFINANCING OF INTERIM CONSTRUCTION FINANCING.—A loan under paragraph (1) shall not refinance interim construction financing under paragraph (1)(B) later than 1 year after the date of substantial completion of the project.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each secured loan, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The execution of a secured loan under this section shall be contingent on the project's senior obligations receiving an investment-grade rating.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A secured loan under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNT.—The amount of the secured loan shall not exceed the lesser of 33 percent of the reasonably an-

ticipated eligible project costs or, if the secured loan does not receive an investment grade rating, the amount of the senior project obligations.

(3) PAYMENT.—The secured loan—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(4) INTEREST RATE.—The interest rate on the secured loan shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

(5) MATURITY DATE.—The final maturity date of the secured loan shall be not later than 35 years after the date of substantial completion of the project.

(6) NONSUBORDINATION.—The secured loan shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(7) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of making a secured loan under this section.

(8) NON-FEDERAL SHARE.—The proceeds of a secured loan under this chapter may be used for any non-Federal share of project costs required under this title or chapter 53 of title 49, if the loan is repayable from non-Federal funds.

(c) REPAYMENT.—

(1) SCHEDULE.—The Secretary shall establish a repayment schedule for each secured loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) COMMENCEMENT.—Scheduled loan repayments of principal or interest on a secured loan under this section shall commence not later than 5 years after the date of substantial completion of the project.

(3) DEFERRED PAYMENTS.—

(A) AUTHORIZATION.—If, at any time after the date of substantial completion of the project, the project is unable to generate sufficient revenues to pay the scheduled loan repayments of principal and interest on the secured loan, the Secretary may, subject to subparagraph (C), allow the obligor to add unpaid principal and interest to the outstanding balance of the secured loan.

(B) INTEREST.—Any payment deferred under subparagraph (A) shall—

(i) continue to accrue interest in accordance with subsection (b)(4) until fully repaid; and

(ii) be scheduled to be amortized over the remaining term of the loan.

(C) CRITERIA.—

(i) IN GENERAL.—Any payment deferral under subparagraph (A) shall be contingent on the project meeting criteria established by the Secretary.

(ii) REPAYMENT STANDARDS.—The criteria established under clause (i) shall include standards for reasonable assurance of repayment.

(4) PREPAYMENT.—

(A) USE OF EXCESS REVENUES.—Any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and secured loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the secured loan without penalty.

(B) USE OF PROCEEDS OF REFINANCING.—The secured loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

(d) SALE OF SECURED LOANS.—

(1) IN GENERAL.—Subject to paragraph (2), as soon as practicable after substantial completion of a project and after notifying the obligor, the Secretary may sell to another entity or reoffer into the capital markets a secured loan for the project if the Secretary determines that the sale or reoffering can be made on favorable terms.

(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary may not change the original terms and conditions of the secured loan without the written consent of the obligor.

(e) LOAN GUARANTEES.—

(1) IN GENERAL.—The Secretary may provide a loan guarantee to a lender in lieu of making a secured loan if the Secretary determines that the budgetary cost of the loan guarantee is substantially the same as that of a secured loan.

(2) TERMS.—The terms of a guaranteed loan shall be consistent with the terms set forth in this section for a secured loan, except that the rate on the guaranteed loan and any prepayment features shall be negotiated between the obligor and the lender, with the consent of the Secretary.

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 245; renumbered Sec. 603 and amended Pub. L. 109–59, title I, Secs. 1601(d), 1602(b)(3), (5), (d), Aug. 10, 2005, 119 Stat. 1240, 1247.)

§ 604. Lines of credit

(a) IN GENERAL.—

(1) AGREEMENTS.—Subject to paragraphs (2) through (4), the Secretary may enter into agreements to make available lines of credit to 1 or more obligors in the form of direct loans to be made by the Secretary at future dates on the occurrence of certain events for any project selected under section 602.

(2) USE OF PROCEEDS.—The proceeds of a line of credit made available under this section shall be available to pay debt service on project obligations issued to finance eligible project costs, extraordinary repair and replacement costs, oper-

ation and maintenance expenses, and costs associated with unexpected Federal or State environmental restrictions.

(3) RISK ASSESSMENT.—Before entering into an agreement under this subsection, the Secretary, in consultation with the Director of the Office of Management and Budget and each rating agency providing a preliminary rating opinion letter under section 602(b)(2)(B), shall determine an appropriate capital reserve subsidy amount for each line of credit, taking into account such letter.

(4) INVESTMENT-GRADE RATING REQUIREMENT.—The funding of a line of credit under this section shall be contingent on the project's senior obligations receiving an investment-grade rating from at least 1 rating agency.

(b) TERMS AND LIMITATIONS.—

(1) IN GENERAL.—A line of credit under this section with respect to a project shall be on such terms and conditions and contain such covenants, representations, warranties, and requirements (including requirements for audits) as the Secretary determines appropriate.

(2) MAXIMUM AMOUNTS.—The total amount of the line of credit shall not exceed 33 percent of the reasonably anticipated eligible project costs.

(3) DRAWS.—Any draw on the line of credit shall represent a direct loan and shall be made only if net revenues from the project (including capitalized interest but not including reasonably required financing reserves) are insufficient to pay the costs specified in subsection (a)(2).

(4) INTEREST RATE.—The interest rate on a direct loan resulting from a draw on the line of credit shall be not less than the yield on 30-year United States Treasury securities as of the date of execution of the line of credit agreement.

(5) SECURITY.—The line of credit—

(A) shall—

(i) be payable, in whole or in part, from tolls, user fees, or other dedicated revenue sources that also secure the senior project obligations; and

(ii) include a rate covenant, coverage requirement, or similar security feature supporting the project obligations; and

(B) may have a lien on revenues described in subparagraph (A) subject to any lien securing project obligations.

(6) PERIOD OF AVAILABILITY.—The full amount of the line of credit, to the extent not drawn upon, shall be available during the period beginning on the date of substantial completion of the project and ending not later than 10 years after that date.

(7) RIGHTS OF THIRD-PARTY CREDITORS.—

(A) AGAINST FEDERAL GOVERNMENT.—A third-party creditor of the obligor shall not have any right against the Federal Government with respect to any draw on the line of credit.

(B) ASSIGNMENT.—An obligor may assign the line of credit to 1 or more lenders or to a trustee on the lenders' behalf.

(8) NONSUBORDINATION.—A direct loan under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

(9) FEES.—The Secretary may establish fees at a level sufficient to cover all or a portion of the costs to the Federal Government of providing a line of credit under this section.

(10) RELATIONSHIP TO OTHER CREDIT INSTRUMENTS.—A project that receives a line of credit under this section also shall not receive a secured loan or loan guarantee under section 603 of an amount that, combined with the amount of the line of credit, exceeds 33 percent of eligible project costs.

(c) REPAYMENT.—

(1) TERMS AND CONDITIONS.—The Secretary shall establish repayment terms and conditions for each direct loan under this section based on the projected cash flow from project revenues and other repayment sources.

(2) TIMING.—All repayments of principal or interest on a direct loan under this section shall be scheduled to commence not later than 5 years after the end of the period of availability specified in subsection (b)(6) and to conclude, with full repayment of principal and interest, by the date that is 25 years after the end of the period of availability specified in subsection (b)(6).

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 247; renumbered Sec. 604 and amended Pub. L. 109–59, title I, Secs. 1601(e), 1602(b)(4), (d), Aug. 10, 2005, 119 Stat. 1241, 1247.)

§ 605. Program administration

(a) REQUIREMENT.—The Secretary shall establish a uniform system to service the Federal credit instruments made available under this chapter.

(b) FEES.—

(1) IN GENERAL.—The Secretary may collect and spend fees, contingent upon authority being provided in appropriations Acts, at a level that is sufficient to cover—

(A) the costs of services of expert firms retained pursuant to subsection (d); and

(B) all or a portion of the costs to the Federal Government of servicing the Federal credit instruments.

(c) SERVICER.—

(1) IN GENERAL.—The Secretary may appoint a financial entity to assist the Secretary in servicing the Federal credit instruments.

(2) DUTIES.—The servicer shall act as the agent for the Secretary.

(3) FEE.—The servicer shall receive a servicing fee, subject to approval by the Secretary.

(d) ASSISTANCE FROM EXPERT FIRMS.—The Secretary may retain the services of expert firms, including counsel, in the field of municipal and project finance to assist in the underwriting and servicing of Federal credit instruments.

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 249; renumbered Sec. 605 and amended Pub. L. 109–59, title I, Secs. 1601(f), 1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1241, 1247.)

§ 606. State and local permits

The provision of financial assistance under this chapter with respect to a project shall not—

(1) relieve any recipient of the assistance of any obligation to obtain any required State or local permit or approval with respect to the project;

(2) limit the right of any unit of State or local government to approve or regulate any rate of return on private equity invested in the project; or

(3) otherwise supersede any State or local law (including any regulation) applicable to the construction or operation of the project.

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 249; renumbered Sec. 606 and amended Pub. L. 109–59, title I, Sec. 1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1247.)

§ 607. Regulations

The Secretary may issue such regulations as the Secretary determines appropriate to carry out this chapter.

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 249; renumbered Sec. 607 and amended Pub. L. 109–59, title I, Sec. 1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1247.)

§ 608. Funding

(a) FUNDING.—

(1) IN GENERAL.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this chapter $122,000,000 for each of fiscal years 2005 through 2009.

(2) AVAILABILITY.—Amounts made available to carry out this chapter shall remain available until expended.

(3) ADMINISTRATIVE COSTS.—From funds made available to carry out this chapter, the Secretary may use, for the administration of this chapter, not more than $2,200,000 for each of fiscal years 2005 through 2009.

(b) CONTRACT AUTHORITY.—

(1) IN GENERAL.—Notwithstanding any other provision of law, approval by the Secretary of a Federal credit instrument that uses funds made available under this chapter shall impose upon the United States a contractual obligation to fund the Federal credit investment.

(2) AVAILABILITY.—Amounts authorized under this section for a fiscal year shall be available for obligation on October 1 of the fiscal year.

(Added and amended Pub. L. 105–178, title I, Sec. 1503(a), (c), June 9, 1998, 112 Stat. 249; Pub. L. 105–206, title IX, Sec. 9007(a), July 22, 1998, 112 Stat. 849; Pub. L. 108–88, Sec. 5(a)(10), Sept. 30, 2003, 117 Stat. 1115; Pub. L. 108–202, Sec. 5(a)(10), Feb. 29, 2004, 118 Stat. 481; Pub. L. 108–224, Sec. 4(a)(10), Apr. 30, 2004, 118 Stat. 629; Pub. L. 108–263, Sec. 4(a)(10), June 30, 2004, 118 Stat. 700; Pub. L. 108–280, Sec. 4(a)(10), July 30, 2004, 118 Stat. 879; Pub. L. 108–310, Sec. 5(a)(10), Sept. 30, 2004, 118 Stat. 1149; Pub. L. 109–14, Sec. 4(a)(10), May 31, 2005, 119 Stat. 327; Pub. L. 109–20, Sec. 4(a)(10), July 1, 2005, 119 Stat. 348; Pub. L.

109–35, Sec. 4(a)(10), July 20, 2005, 119 Stat. 381; Pub. L. 109–37, Sec. 4(a)(10), July 22, 2005, 119 Stat. 396; Pub. L. 109–40, Sec. 4(a)(10), July 28, 2005, 119 Stat. 413; renumbered Sec. 608 and amended Pub. L. 109–59, title I, Secs. 1601(g), 1602(b)(5), (d), Aug. 10, 2005, 119 Stat. 1242, 1247.)

§ 609. Reports to Congress

On June 1, 2006, and every 2 years thereafter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this chapter (other than section 610), including a recommendation as to whether the objectives of this chapter (other than section 610) are best served—

(1) by continuing the program under the authority of the Secretary;

(2) by establishing a Government corporation or Government-sponsored enterprise to administer the program; or

(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this chapter (other than section 610) without Federal participation.

(Added Pub. L. 105–178, title I, Sec. 1503(a), June 9, 1998, 112 Stat. 250; renumbered Sec. 609 and amended Pub. L. 109–59, title I, Sec. 1601(h), 1602(d), Aug. 10, 2005, 119 Stat. 1242, 1247.)

§ 610. 189. [1] . State infrastructure bank program

(a) DEFINITIONS.—In this section, the following definitions apply:

(1) CAPITAL PROJECT.—The term "capital project" has the meaning such term has under section 5302 of title 49.

(2) OTHER FORMS OF CREDIT ASSISTANCE.—The term "other forms of credit assistance" includes any use of funds in an infrastructure bank—

(A) to provide credit enhancements;

(B) to serve as a capital reserve for bond or debt instrument financing;

(C) to subsidize interest rates;

(D) to insure or guarantee letters of credit and credit instruments against credit risk of loss;

(E) to finance purchase and lease agreements with respect to transit projects;

(F) to provide bond or debt financing instrument security; and

(G) to provide other forms of debt financing and methods of leveraging funds that are approved by the Secretary and that relate to the project with respect to which such assistance is being provided.

(3) STATE.—The term "State" has the meaning such term has under section 401.

(4) CAPITALIZATION.—The term "capitalization" means the process used for depositing funds as initial capital into a State infrastructure bank to establish the infrastructure bank.

(5) COOPERATIVE AGREEMENT.—The term "cooperative agreement" means written consent between a State and the

[1] See Codification note below.

Secretary which sets forth the manner in which the infrastructure bank established by the State in accordance with this section will be administered.

(6) LOAN.—The term "loan" means any form of direct financial assistance from a State infrastructure bank that is required to be repaid over a period of time and that is provided to a project sponsor for all or part of the costs of the project.

(7) GUARANTEE.—The term "guarantee" means a contract entered into by a State infrastructure bank in which the bank agrees to take responsibility for all or a portion of a project sponsor's financial obligations for a project under specified conditions.

(8) INITIAL ASSISTANCE.—The term "initial assistance" means the first round of funds that are loaned or used for credit enhancement by a State infrastructure bank for projects eligible for assistance under this section.

(9) LEVERAGE.—The term "leverage" means a financial structure used to increase funds in a State infrastructure bank through the issuance of debt instruments.

(10) LEVERAGED.—The term "leveraged", as used with respect to a State infrastructure bank, means that the bank has total potential liabilities that exceed the capital of the bank.

(b) COOPERATIVE AGREEMENTS.—Subject to the provisions of this section, the Secretary may enter into cooperative agreements with States for the establishment of State infrastructure banks for making loans and providing other forms of credit assistance to public and private entities carrying out or proposing to carry out projects eligible for assistance under this section.

(c) INTERSTATE COMPACTS.—

(1) IN GENERAL.—Congress grants consent to two or more of the States, entering into a cooperative agreement under subsection (a) with the Secretary for the establishment by such States of a multistate infrastructure bank in accordance with this section, to enter into an interstate compact establishing such bank in accordance with this section.

(2) RESERVATION OF RIGHTS.—The right to alter, amend, or repeal interstate compacts entered into under this subsection is expressly reserved.

(d) FUNDING.—

(1) HIGHWAY ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank to deposit into the highway account of the bank not to exceed—

(A) 10 percent of the funds apportioned to the State for each of fiscal years 2005 through 2009 under each of sections 104(b)(1), 104(b)(3), 104(b)(4), and 144; and

(B) 10 percent of the funds allocated to the State for each of such fiscal years under section 105.

(2) TRANSIT ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under section 5307, 5309, or 5311 of title 49, to deposit into the transit

account of the bank not to exceed 10 percent of the funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under each of such sections.

(3) RAIL ACCOUNT.—Subject to subsection (j), the Secretary may permit a State entering into a cooperative agreement under this section to establish a State infrastructure bank, and any other recipient of Federal assistance under subtitle V of title 49, to deposit into the rail account of the bank funds made available to the State or other recipient in each of fiscal years 2005 through 2009 for capital projects under such subtitle.

(4) CAPITAL GRANTS.—

(A) HIGHWAY ACCOUNT.—Federal funds deposited into a highway account of a State infrastructure bank under paragraph (1) shall constitute for purposes of this section a capitalization grant for the highway account of the bank.

(B) TRANSIT ACCOUNT.—Federal funds deposited into a transit account of a State infrastructure bank under paragraph (2) shall constitute for purposes of this section a capitalization grant for the transit account of the bank.

(C) RAIL ACCOUNT.—Federal funds deposited into a rail account of a State infrastructure bank under paragraph 3 shall constitute for purposes of this section a capitalization grant for the rail account of the bank.

(5) SPECIAL RULE FOR URBANIZED AREAS OF OVER 200,000.—Funds in a State infrastructure bank that are attributed to urbanized areas of a State with urbanized populations of over 200,000 under section 133(d)(3) may be used to provide assistance with respect to a project only if the metropolitan planning organization designated for such area concurs, in writing, with the provision of such assistance.

(6) DISCONTINUANCE OF FUNDING.—If the Secretary determines that a State is not implementing the State's infrastructure bank in accordance with a cooperative agreement entered into under subsection (b), the Secretary may prohibit the State from contributing additional Federal funds to the bank.

(e) FORMS OF ASSISTANCE FROM INFRASTRUCTURE BANKS.—An infrastructure bank established under this section may make loans or provide other forms of credit assistance to a public or private entity in an amount equal to all or a part of the cost of carrying out a project eligible for assistance under this section. The amount of any loan or other form of credit assistance provided for the project may be subordinated to any other debt financing for the project. Initial assistance provided with respect to a project from Federal funds deposited into an infrastructure bank under this section may not be made in the form of a grant.

(f) ELIGIBLE PROJECTS.—Subject to subsection (e), funds in an infrastructure bank established under this section may be used only to provide assistance for projects eligible for assistance under this title and capital projects defined in section 5302 of title 49, and any other projects relating to surface transportation that the Secretary determines to be appropriate.

(g) INFRASTRUCTURE BANK REQUIREMENTS.—In order to establish an infrastructure bank under this section, the State establishing the bank shall—

(1) deposit in cash, at a minimum, into each account of the bank from non-Federal sources an amount equal to 25 percent of the amount of each capitalization grant made to the State and deposited into such account; except that, if the deposit is into the highway account of the bank and the State has a non-Federal share under section 120(b) that is less than 25 percent, the percentage to be deposited from non-Federal sources shall be the lower percentage of such grant;

(2) ensure that the bank maintains on a continuing basis an investment grade rating on its debt, or has a sufficient level of bond or debt financing instrument insurance, to maintain the viability of the bank;

(3) ensure that investment income derived from funds deposited to an account of the bank are—

(A) credited to the account;

(B) available for use in providing loans and other forms of credit assistance to projects eligible for assistance from the account; and

(C) invested in United States Treasury securities, bank deposits, or such other financing instruments as the Secretary may approve to earn interest to enhance the leveraging of projects assisted by the bank;

(4) ensure that any loan from the bank will bear interest at or below market interest rates, as determined by the State, to make the project that is the subject of the loan feasible;

(5) ensure that repayment of any loan from the bank will commence not later than 5 years after the project has been completed or, in the case of a highway project, the facility has opened to traffic, whichever is later;

(6) ensure that the term for repaying any loan will not exceed 30 years after the date of the first payment on the loan; and

(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.

(h) APPLICABILITY OF FEDERAL LAW.—

(1) IN GENERAL.—The requirements of this title and title 49 that would otherwise apply to funds made available under this title or such title and projects assisted with those funds shall apply to—

(A) funds made available under this title or such title and contributed to an infrastructure bank established under this section, including the non-Federal contribution required under subsection (g); and

(B) projects assisted by the bank through the use of the funds,

except to the extent that the Secretary determines that any requirement of such title (other than sections 113 and 114 of this title and section 5333 of title 49) is not consistent with the objectives of this section.

(2) REPAYMENTS.—The requirements of this title and title 49 shall apply to repayments from non-Federal sources to an infrastructure bank from projects assisted by the bank. Such a repayment shall be considered to be Federal funds.

(i) UNITED STATES NOT OBLIGATED.—The deposit of Federal funds into an infrastructure bank established under this section shall not be construed as a commitment, guarantee, or obligation on the part of the United States to any third party, nor shall any third party have any right against the United States for payment solely by virtue of the contribution. Any security or debt-financing instrument issued by the infrastructure bank shall expressly state that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

(j) MANAGEMENT OF FEDERAL FUNDS.—Sections 3335 and 6503 of title 31 shall not apply to funds deposited into an infrastructure bank under this section.

(k) PROGRAM ADMINISTRATION.—For each of fiscal years 2005 through 2009, 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.

(Added Pub. L. 109–59, title I, Sec. 1602(a), Aug. 10, 2005, 119 Stat. 1243.)

PART 79—MEDALS OF HONOR

Sec.
79.1 Scope.
79.3 Application.
79.5 Investigation.
79.7 Award.
79.9 Design.

AUTHORITY: 49 U.S.C. 80504.

SOURCE: 61 FR 17578, Apr. 22, 1996, unless otherwise noted.

§ 79.1 Scope.

(a) This part implements 49 U.S.C. 80504, which authorizes the President of the United States to award a bronze medal for bravery to any person who, by extreme daring, risks his/her life in trying to prevent, or to save the life of a person in, a grave accident/incident in the United States that involves an interstate rail carrier or a motor vehicle being operated on public highways.

(b) The actions for which the medal may be awarded must reflect such unusual daring and bravery that a person would not normally be expected to perform them as a regular part of his/her regular work or vocation.

§ 79.3 Application.

(a) Any person may apply for the award of the medal described in § 79.1, but only on behalf of another person, by writing to the Secretary of Transportation, Attention: Medals of Honor, within two (2) years of the action that is the subject of the application.

(b) Although no application form is required, the following information must be provided:

(1) Name, address, and telephone number of the person submitting the application.

(2) Name, address, and telephone number of the person on whose behalf the application is submitted.

(3) Date, time, place, and weather conditions of the action that is the subject of the application.

(4) Identification of rail or motor carrier involved, or of operator of motor vehicles involved.

(5) Identification of any public or private authority that investigated the accident/incident involved.

(6) Name, address, and telephone number of any witness to the action that is the subject of the application.

(7) Detailed description of the action that is the subject of the application, including why the person submitting the application thinks that the action merits the extraordinary recognition embodied in the Medal of Honor.

(c) An application and any documentary or other evidence supporting it must be supported by oath or affirmation, or by the signer's acknowledgment that a knowingly false statement is punishable as perjury.

§ 79.5 Investigation.

The Department of Transportation may make any investigation of an application that it deems appropriate, including the taking of testimony under oath or affirmation.

§ 79.7 Award.

If the Secretary of Transportation decides that it is warranted, the Secretary shall award the Medal on behalf of and in the name of the President of the United States.

§ 79.9 Design.

The Department is authorized to adopt and revise the existing designs for the award, rosette, and ribbon provided for by statute.

PART 80—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS

Sec.
80.1 Purpose.
80.3 Definitions.
80.5 Limitations on assistance.
80.7 Application process.
80.9 Federal requirements.
80.11 Investment-grade ratings.
80.13 Threshold criteria.
80.15 Selection criteria.
80.17 Fees.
80.19 Reporting requirements.
80.21 Use of administrative offset.

AUTHORITY: Secs. 1501 *et seq.*, Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 181–189 and 315; 49 CFR 1.48, 1.49, and 1.51.

SOURCE: 64 FR 29750, June 2, 1999, unless otherwise noted.

§ 80.1 Purpose.

This part implements a Federal credit assistance program for surface transportation projects.

§ 80.3 Definitions.

The following definitions apply to this part:

Administrative offset means the right of the government to apply moneys held by the government and otherwise owed to a debtor for the extinguishment of claims due the government from the debtor.

Conditional term sheet means a contractual agreement between the U.S. Department of Transportation (DOT) and the project sponsor (and the lender, if applicable) by which the DOT reserves TIFIA funding for a specific project and commits to providing Federal credit assistance to that project at a future point in time upon satisfaction of specified conditions and subject to the future availability of obligation authority. The DOT will not legally obligate budget authority until those conditions are met. Upon satisfaction of those conditions, the conditional term sheet can be amended and/or restated to trigger an obligation of funds.

Credit agreement means a contractual agreement between the DOT and the project sponsor (and the lender, if applicable) that formalizes the terms and conditions established in the term sheet (or conditional term sheet) and authorizes the execution of a secured loan, loan guarantee, or line of credit.

Eligible project costs mean amounts substantially all of which are paid by, or for the account of, an obligor in connection with a project, including the cost of:

(1) Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;

(2) Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment; and

(3) Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction.

Federal credit instrument means a secured loan, loan guarantee, or line of credit authorized to be made available under this subchapter with respect to a project.

Investment-grade rating means a rating category of BBB minus, Baa3, or higher assigned by a rating agency to project obligations offered into the capital markets.

Lender means any non-Federal qualified institutional buyer (as defined in 17 CFR 230.144A(a)), 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:

(1) A qualified retirement plan (as defined in section 4974(c) of the Internal Revenue Code of 1986, 26 U.S.C. 4974(c)) that is a qualified institutional buyer; and

(2) A governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986, 26 U.S.C. 414(d)) that is a qualified institutional buyer.

Line of credit means an agreement entered into by the Secretary with an obligor under section 184 of title 23 to provide a direct loan at a future date upon the occurrence of certain events.

Loan guarantee means any guarantee or other pledge by the Secretary to pay all or part of the principal of and interest on a loan or other debt obligation issued by an obligor and funded by a lender.

Local servicer means:

(1) A State infrastructure bank established under title 23; or

(2) A State or local government or any agency of a State or local government that is responsible for servicing a Federal credit instrument on behalf of the Secretary.

Obligor means a party primarily liable for payment of the principal of or interest on a Federal credit instrument, which party may be a corporation, partnership, joint venture, trust, or governmental entity, agency, or instrumentality.

Project means:

(1) Any surface transportation project eligible for Federal assistance under title 23 or chapter 53 of title 49;

(2) A project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible;

(3) A project for intercity passenger bus or rail facilities and vehicles, including facilities and vehicles owned by the National Railroad Passenger Corporation, and components of magnetic levitation transportation systems; and

(4) A project for publicly owned intermodal surface freight transfer facilities, other than seaports and airports, if the facilities are located on or adjacent to National Highway System routes or connections to the National Highway System.

Project obligation means any note, bond, debenture, or other debt obligation issued by an obligor in connection with the financing of a project, other than a Federal credit instrument.

Project sponsor, for the purposes of this part, means an applicant for TIFIA assistance or an obligor, as appropriate.

Rating agency means a bond rating agency identified by the Securities and Exchange Commission as a Nationally Recognized Statistical Rating Organization.

Secured loan means a direct loan or other debt obligation issued by an obligor and funded by the Secretary in connection with the financing of a project under section 183 of title 23.

State means any one of the fifty states, the District of Columbia, or Puerto Rico.

Subsidy amount means the amount of budget authority sufficient to cover the estimated long-term cost to the Federal Government of a Federal credit instrument, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays in accordance with the provisions of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*).

Substantial completion means the opening of a project to vehicular or passenger traffic or a comparable event as determined by the Secretary and specified in the credit agreement.

Term sheet means a contractual agreement between the DOT and the project sponsor (and the lender, if applicable) that sets forth the key business terms and conditions of a Federal credit instrument. Execution of this document represents a legal obligation of budget authority.

TIFIA means the Transportation Infrastructure Finance and Innovation Act of 1998, Pub. L. 105–178, 112 Stat. 107, 241 (1998).

[64 FR 29750, June 2, 1999, as amended at 65 FR 44939, July 19, 2000]

§ 80.5 Limitations on assistance.

(a) The total amount of credit assistance offered to any project under this part shall not exceed 33 percent of the anticipated eligible project costs, as measured on an aggregate cash (year-of-expenditure) basis.

(b) Costs incurred prior to a project sponsor's submission of an application for credit assistance may be considered in calculating eligible project costs only upon approval of the Secretary. In addition, applicants shall not include application charges or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among the eligible project costs.

(c) No costs financed internally or with interim funding may be refinanced under this part later than a year following substantial completion of the project.

(d)(1) Within the overall credit assistance limitation of 33 percent of eligible project costs, the Secretary may consider making future-year or multi-year contingent commitments of budget authority and associated credit assistance for projects temporarily lacking certain requirements or with extended construction periods and financing needs. The TIFIA's effectiveness in stimulating private investment in transportation infrastructure depends, in large part, on investor recognition that TIFIA credit instruments represent solid and reliable Federal commitments. Therefore, the Secretary shall make any future-year or multi-year contingent commitment of funds for a project using a conditional term sheet. The conditional term sheet will resemble the standard term sheet that enables the obligation of budget authority, but will also specify the additional actions necessary to trigger subsequent obligation(s). The conditional term sheet will include fixed dates by

which any requirements must be met in order for the reserved funding to be obligated.

(2) Upon execution of the conditional term sheet, the Secretary shall reserve budget authority attributable to the appropriate year(s). This reservation will ensure that a project with a conditional commitment will have a priority claim (along with that of any other projects receiving such contingent commitments) on budget authority becoming available in the specified year(s), provided that the project sponsor satisfies each condition outlined in the conditional term sheet. The Secretary will limit such reservations to not more than 50 percent of the budget authority becoming available in the applicable year(s). If a multi-year contingent commitment is made, each year's loan will be tied to distinct, clearly identified project segments or stages or other milestones as specified in the credit agreement.

(e) The obligor may draw upon the line of credit only if net project revenues (including, among other sources, any debt service reserve fund) are insufficient to pay costs specified in 23 U.S.C. 184(a)(2) under the line of credit, including debt service costs. Debt service costs include direct payments of principal and interest as well as reimbursements for such payments in the form of legally required deposits to a debt service reserve fund.

(f) The Secretary shall not obligate funds in favor of a project that has not received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision.

(g) The Secretary shall fund a secured loan based on the project's financing needs. The credit agreement shall include the anticipated schedule for such loan disbursements.

[64 FR 29750, June 2, 1999, as amended at 65 FR 44939, July 19, 2000]

§ 80.7 Application process.

(a) Public and private applicants for credit assistance under this part will be required to submit applications to the DOT in order to be considered for approval by the Secretary.

(b) At a minimum, such applications shall provide:

(1) Documentation sufficient to demonstrate that the project satisfies each of the threshold criteria in § 80.13 and describe the extent to which the project satisfies each of the selection criteria in § 80.15;

(2) Background information on the project for which assistance is sought, such as the project's description, status of environmental and other major governmental permits and approvals, and construction schedule;

(3) Background information on the applicant (project sponsor);

(4) Historical information, if applicable, concerning the applicant's financial condition, including, for example, independently audited financial statements and certifications concerning bankruptcies or delinquencies on other debt; and

(5) Current financial information concerning both the project and the applicant, such as sources and uses of funds for the project and a forecast of cash flows available to service all debt instruments.

(c) An application for a project located in or sponsored by more than one State or other entity shall be submitted to the DOT by just one State or entity. The sponsoring States or entities shall designate a single obligor for purposes of applying for, receiving, and repaying TIFIA credit assistance.

(d) Each fiscal year for which Federal assistance is available under this part, the DOT shall publish a FEDERAL REGISTER notice to solicit applications for credit assistance. Such notice will specify the relevant due dates, the estimated amount of funding available to support TIFIA credit instruments for the current and future fiscal years, contact name(s), and other details for that year's application submissions and funding approvals.

§ 80.9 Federal requirements.

All projects receiving credit assistance under this part shall comply with:

(a) The relevant requirements of title 23, U.S.C., for highway projects, chapter 53 of title 49, U.S.C., for transit projects, and section 5333(a) of title 49 for rail projects, as appropriate;

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*);

(c) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*);

(d) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 *et seq.*); and

(e) Other Federal and compliance requirements as may be applicable.

§ 80.11 Investment-grade ratings.

(a) At the time a project sponsor submits an application, the DOT shall require a preliminary rating opinion letter. This letter is a conditional credit assessment from a nationally recognized credit rating agency that provides a preliminary indication of the project's overall creditworthiness and that specifically addresses the potential of the project's senior debt obligations (those obligations having a lien senior to that of the TIFIA credit instrument on the pledged security) to achieve an investment-grade rating.

(b) The full funding of a secured (direct) loan, loan guarantee, or line of credit shall be contingent on the assignment of an investment-grade rating by a nationally recognized bond rating agency to all project obligations that have a lien senior to that of the Federal credit instrument on the pledged security.

(c) Neither the preliminary rating opinion letter nor the formal credit rating should reflect the effect of bond insurance, unless that insurance provides credit enhancement that secures the TIFIA obligation.

(d) The project sponsor must annually provide, at no cost to the Federal Government, ongoing credit evaluations of the project and related debt obligations, including an annual assessment of the TIFIA credit instrument. The evaluations are to be performed by a nationally recognized credit rating agency and provided to the DOT throughout the life of the TIFIA credit instrument. In addition, the project sponsor will furnish the DOT with any other credit surveillance reports on the TIFIA-assisted project as soon as they are available.

[64 FR 29750, June 2, 1999, as amended at 65 FR 44939, July 19, 2000]

§ 80.13 Threshold criteria.

(a) To be eligible to receive Federal credit assistance under this part, a project shall meet the following five threshold criteria:

(1) The project shall be consistent with the State transportation plan, if located in a metropolitan area shall be included in that area's metropolitan transportation plan, and shall appear in an approved State transportation improvement program before the DOT and the project sponsor execute a term sheet or credit agreement that results in the obligation of funds;

(2) The State, local servicer, or other entity undertaking the project shall submit a project application to the Secretary of Transportation;

(3) A project shall have eligible project costs that are reasonably anticipated to equal or exceed the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the State in which the project is located (in the case of a project principally involving the installation of Intelligent Transportation Systems (ITS), eligible project costs shall be reasonably anticipated to equal or exceed $30 million);

(4) Project financing shall be repayable, in whole or in part, from tolls, user fees or other dedicated revenue sources; and

(5) In the case of a project that is undertaken by an entity that is not a State or local government or an agency or instrumentality of a State or local government, the project that the entity is undertaking shall be included in the State transportation plan and an approved State Transportation Improvement Program as provided in paragraph (a)(1) of this section.

(b) With respect to paragraph (a)(3) of this section, for a project located in more than one State, the minimum cost threshold size shall be the lesser of $100 million or 50 percent of the amount of Federal-aid highway funds apportioned for the most recently completed fiscal year to the participating State that receives the least amount of such funds.

(c) With respect to paragraph (a)(4) of this section, the Secretary may accept general obligation pledges or general

corporate promissory pledges and will determine the acceptability of other pledges and forms of collateral as dedicated revenue sources on a case-by-case basis. The Secretary shall not accept a pledge of Federal funds, regardless of source, as security for the TIFIA credit instrument.

§ 80.15 Selection criteria.

(a) The Secretary shall assign weights as indicated to the following eight selection criteria in evaluating and selecting among eligible projects to receive credit assistance:

(1) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system (20 percent);

(2) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment (12.5 percent);

(3) The extent to which such assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(4) The likelihood that such assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (12.5 percent);

(5) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project (5 percent);

(6) The amount of budget authority required to fund the Federal credit instrument made available (5 percent);

(7) The extent to which the project helps maintain or protect the environment (20 percent); and

(8) The extent to which such assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

(b) In addition, 23 U.S.C. 182(b)(2)(B) conditions a project's approval for credit assistance on receipt of a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating.

(c) The Secretary may also give preference to applications for loan guarantees rather than other forms of Federal credit assistance. This preference is consistent with Federal policy that, when Federal credit assistance is necessary to meet a Federal objective, loan guarantees should be favored over direct loans, unless attaining the Federal objective requires a subsidy, as defined by the Federal Credit Reform Act of 1990 (2 U.S.C. 661 *et seq.*), deeper than can be provided by a loan guarantee.

[64 FR 29750, June 2, 1999, as amended at 65 FR 44940, July 19, 2000]

§ 80.17 Fees.

(a) The DOT will require a non-refundable application fee for each project applying for credit assistance under the TIFIA. The DOT may also require an additional credit processing fee for projects selected to receive TIFIA assistance. Any required application initiation or credit processing fee must be paid by the project sponsor applying for TIFIA assistance and cannot be paid by another party on behalf of the project sponsor. The proceeds of any such fees will equal a portion of the costs to the Federal Government of soliciting and evaluating applications, selecting projects to receive assistance, and negotiating credit agreements. For FY 2000, the DOT will require payment of a fee of $5,000 for each project applying for credit assistance under the TIFIA, to be submitted concurrently with the formal application. The DOT will not impose any credit processing fees for FY 2000. For each application and approval cycle in FY 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of the credit processing fee based on program implementation experience. The DOT will publish these amounts in each FEDERAL REGISTER solicitation for applications.

(b) Applicants shall not include application initiation or credit processing fees or any other expenses associated with the application process (such as fees associated with obtaining the required preliminary rating opinion letter) among eligible project costs

for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(d) The DOT will require borrowers to pay servicing fees for each credit instrument approved for funding. Separate fees may apply for each type of credit instrument (*e.g.*, a loan guarantee, a secured loan with a single disbursement, a secured loan with multiple disbursements, or a line of credit), depending on the costs of servicing the credit instrument as determined by the Secretary. Such fees will be set at a level to enable the DOT to recover all or a portion of the costs to the Federal Government of TIFIA credit instruments.

[65 FR 44940, July 19, 2000]

§ 80.19 Reporting requirements.

At a minimum, any recipient of Federal credit assistance under this part shall submit an annual project performance report and audited financial statements to the DOT within no more than 180 days following the recipient's fiscal year-end for each year during which the recipient's obligation to the Federal Government remains in effect. The DOT may conduct periodic financial and compliance audits of the recipient of credit assistance, as determined necessary by the DOT. The specific credit agreement between the recipient of credit assistance and the DOT may contain additional reporting requirements.

[65 FR 44940, July 19, 2000]

§ 80.21 Use of administrative offset.

The DOT will not apply an administrative offset to recover any losses to the Federal Government resulting from project risk the DOT has assumed under a TIFIA credit instrument. The DOT may, however, use an administrative offset in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance or wrongdoing.

[65 FR 44940, July 19, 2000]

PART 89—IMPLEMENTATION OF THE FEDERAL CLAIMS COLLECTION ACT

Subpart A—General

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AUTHORITY: Pub. L. 89–508; Pub. L. 89–365, secs. 3, 10, 11, 13(b), 31 U.S.C. 3701–3720A; Pub. L. 98–167; Pub. L. 98–369; Pub. L. 99–578; Pub. L. 101–552, 31 U.S.C. 3711(a)(2).

SOURCE: 53 FR 51238, Dec. 21, 1988, unless otherwise noted.

Subpart A—General

§ 89.1 Purpose.

This part implements the Federal Claims Collection Act of 1966, 31 U.S.C. 3701–3720 A, as amended primarily by the Debt Collection Act of 1982 (Pub. L.

Appendix C: Letter of Interest Form

This Appendix contains the TIFIA Letter of Interest form.

Fiscal Year 2012 Letter of Interest

Because demand for the Transportation Infrastructure Finance and Innovation Act (TIFIA) credit program exceeds budgetary resources, the DOT is utilizing periodic fixed-date solicitations to establish a competitive group of projects to be evaluated against the TIFIA program statute, regulation, and objectives. Applicants must prepare a Letter of Interest using the format provided below.

Letters of Interest being submitted for this funding cycle are due by 4:30 p.m. ET on December 30, 2011. Applicants that submitted Letters of Interest for a prior fiscal year must resubmit using the current form to be considered. The total narrative for this letter should not exceed 20 pages, excluding any exhibits.

Applicants for Federal credit assistance for Federal fiscal year 2012 must compete at the Letter of Interest stage to secure an invitation to submit a formal application. As such, this Letter of Interest format incorporates requirements related to satisfying project fundamentals and addressing the statutory TIFIA evaluation criteria, as detailed in the November 2011 Federal Register. Please reference this Notice of Funding Availability and the TIFIA Program Guide for guidance on the TIFIA evaluation criteria and the application process.

After concluding its review of the Letters of Interest, the DOT will invite complete applications (including the Executive Summary, preliminary rating opinion letter and detailed plan of finance). The application due date will be established after consultation between the TIFIA JPO and the applicant. By submitting this Letter of Interest, the applicant certifies that if selected to submit a formal application and enter negotiations, the applicant will pay the required fees.

If you have any questions regarding completing this form, please contact Duane Callender at (202) 366-9644. Please complete all applicable information using this Letter of Interest form and attach this request via email to TIFIACredit@dot.gov by 4:30 p.m. ET on December 30, 2011.

A) Project Description. ***Describe the project, including its location, purpose, design features, estimated capital cost, and development schedule.***

Replace and Insert Text Here (boxes will expand if filled out on computer)

B) Project Participants. ***Describe the overall organizational structure for the project. What entity (i.e., public-sector agency/authority or private-sector company) will serve as the applicant? Will the applicant and the borrower be the same entity? Who are the members of the project team?***

Name of Applicant/Borrower: Insert Text Here

Organizational Structure: Insert Text Here

Project Website or Applicant/Borrower Website: Insert Text Here
(If Websites are not available, please provide a brief description of the requesting agency or agencies)

C) Proposed Financing. Describe the plan of finance. State the proposed sources and uses of funds for the project, including the type and the amount of credit assistance sought from DOT. Identify the source(s) of revenue or other security that would be pledged to the TIFIA credit instrument. Address the status of any revenue feasibility study.

Sources and Uses of Funds:
(Insert Text Here)

Type of Credit Assistance:

Amount:

Description of Revenue Source(s) Pledged to Repayment:

D) Satisfaction of TIFIA Selection Criteria. Summarize the potential benefits to be achieved through the use of a TIFIA credit instrument with respect to the TIFIA selection criteria. A project that has a negative effect on safety or environmental sustainability needs to demonstrate significant merits in other components to be selected for funding.

Significance (also address issues related to the project's impact on: livability (providing transportation options linked with housing and commercial development to improve the economic opportunities/quality of life in U.S. communities); economic competitiveness (improving the long-term efficiency and reliability in the movement of people and goods); and safety (improving the safety of U.S. transportation facilities and systems and the communities and populations they impact.):
Insert Text Here

Private Participation:
Insert Text Here

Environment (also address issues related to sustainability (improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and reducing other transportation-related impacts on ecosystems, including the use of tolling or pricing structures to reduce or manage high levels of congestion on highway facilities and encourage the use of alternative transportation options); and state of good repair (improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials):
Insert Text Here

Project Acceleration:
Insert Text Here

Creditworthiness (to the extent information is available at this stage):
Insert Text Here

Use of Technology:
Insert Text Here

Budget Authority (to the extent information is available at this stage):
Insert Text Here

Reduced Federal Grant Assistance:
Insert Text Here

E) <u>Environmental Review.</u> Summarize the status of the project's environmental review. Specifically, discuss whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision or whether a draft Environmental Impact Statement has been circulated.

Insert Text Here

F) <u>Other Information.</u> Briefly discuss any other issues that may affect the development and financing of the project, such as community support, pending legislation or litigation.

Insert Text Here

G) Is the project consistent with the State Transportation Plan and, if applicable, the metropolitan plan?

☐ *No* ☐ *Yes* ☐ *Not applicable*

Please briefly elaborate. Insert Text Here.

H) Is the project prepared to submit an application for TIFIA assistance within a short timeframe after receiving an invitation from the TIFIA JPO? What factors could impact this timetable?

Insert Text Here

I) Please provide any additional information necessary.

Insert Text Here

J) Identify a key contact person with whom all communication should flow.

Name: (Point of Contact)
Title:
Street Address:
City/State:
Phone:
Fax:
E-mail:

K) Additional information requested.

DUNS:
Project Location:
State: *County:* *City:*
Congressional Districts Impacted by the Project:
Type of Jurisdiction (e.g., rural, urban):

Fees. The undersigned certifies that, if invited to submit a formal application, payment of a non-refundable $50,000 application fee will be made to the DOT concurrent with the application submission. For projects that enter credit negotiations, the undersigned further certifies a transaction fee will be paid at closing or, in the event no final credit agreement is reached, upon invoicing by the DOT, in the amount equal to the actual costs incurred by the DOT in procuring the assistance of outside financial advisors and legal counsel. This fee is due whether or not the loan closes.

Debarment. The undersigned certifies that it is not currently, nor has it been in the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted, or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations: 49 C.F.R. Part 29).

Default/Delinquency. The undersigned further certifies that neither it nor any of its subsidiaries or affiliates are currently in default or delinquent on any debt or loans provided or guaranteed by the Federal Government.

Signature: By submitting this Letter of Interest, the undersigned certifies that the facts stated herein are true, to the best of the applicant's knowledge and belief after due inquiry, and that the applicant has not omitted any material facts. The undersigned is an authorized representative of the applicant.

Submitted by:

Applicant/Borrower Name_____

Title_____

Organization_____

Date_____

Please attach any relevant documents (e.g., maps, organization charts, etc.).

Appendix D: TIFIA Application Materials

This Appendix contains the TIFIA application for Federal credit assistance.

UNITED STATES
DEPARTMENT OF TRANSPORTATION

Fiscal Year 2012 APPLICATION FOR FEDERAL CREDIT ASSISTANCE
Transportation Infrastructure Finance and Innovation Act

Background: This form is to be completed by eligible applicants for Federal credit assistance under the Transportation Infrastructure Finance and Innovation Act (TIFIA), as amended, invited to submit an application by U.S. Department of Transportation (DOT). The TIFIA statute is codified under 23 U.S.C. 601-609. The DOT will use the collected information to evaluate and select recipients for credit assistance as authorized under TIFIA. Applicants may be asked to provide additional supporting evidence or to quantify details during the review and negotiating process. If any information submitted, or requested to be submitted, changes after the application is submitted, the applicant will update its application.

Charge: A non-refundable $50,000 application fee must be paid to the DOT concurrent with submission of this application. The DOT no longer accepts paper checks. All payments should be made via ACH, using the following site. https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=18446839.

Format: Applications must provide all requested information and will not be reviewed if incomplete. Applications should be provided in three-hole punch binders with sections and tabs following the sequence shown in the application checklist appearing on the next page of this application form.

Submission: The Executive Summary must be submitted electronically, concurrently with submission of the hard copy included in this application form. The completed application (including a computer diskette (CD) containing electronic versions of the entire application with attachments as well as separate working files for Section D and Exhibit VII ***– but NOT in PDF or "values" format***) should be sent to the attention of Mr. Duane Callender, TIFIA Joint Program Office, Federal Highway Administration, HITJ, Room E64-301, 1200 New Jersey Avenue, SE, Washington, DC, 20590. Applicants are advised to utilize an express mail or courier delivery service to ensure delivery confirmation of the package. The application checklist appearing on the next page of this application form specifies the number of copies (plus original) required for each section. The DOT requires **one** original submission of the complete application package with all supporting exhibits and related documentation. As noted on the checklist on the following page, **11** additional hard copies of the completed application form, without attachments are required. The DOT has suspended the open application process and returned to periodic fixed-date solicitations that will establish a competitive group of projects to be evaluated against the TIFIA program statute, regulation, and objectives. The DOT will invite complete applications based on the Fiscal Year 2012 Letters of Interest submitted. The application due date will be established after consultation between the TIFIA JPO and the applicant. Please see the Fiscal Year 2012 Notice of Funding Availability published in the Federal Register in November 2011 for details.

Selection: DOT's selection of a project for participation in the TIFIA program does not imply that the DOT has approved all elements proposed in the application. For example, the DOT may require changes in the project's financial plan proposed in the application. Provision of credit assistance is subject to negotiation of a credit agreement on terms and conditions satisfactory in all respects to the DOT.

Information Requests: If an applicant desires that any information submitted in its application or any supplement thereto not be released by the DOT upon request from a member of the public or otherwise made publicly available, the applicant must so state and set forth any reasons why such information is confidential and should not be released, including particulars as to any competitive harm which would potentially result from the release of such information. The DOT will keep such information confidential to the extent permitted by law.

Warning: It is a crime to knowingly make false statements to a Federal agency. Penalties upon conviction can include a fine and imprisonment. For details, see 18 U.S.C. 1001. Misrepresentation of material facts may also be the basis for denial of financial assistance by the U.S. Department of Transportation.

APPLICATION CHECKLIST

An application must include the following items.

Item	Page Limit	Copies (Plus Original)
Executive Summary	20	Submit electronically & with application – 12
Section A: Contact Information	1	12
Section B: Project Information ___1. Project Name ___2. Location ___3. Project Cost and TIFIA Credit Assistance Request ___4. Project Description ___5. Project Schedule ___6. Permits and Approvals ___7. Project Management and Compliance Monitoring Plan ___8. Maintenance and Operations	8	12
Section C: Satisfaction of Selection Criteria ___1. National/Regional Significance ___2. Creditworthiness ___3. Private Participation ___4. Project Acceleration ___5. Use of Technologies ___6. Consumption of Budget Authority ___7. Environmental Benefits ___8. Reduced Federal Grant Assistance	15	12
Section D: Financial Plan (include executable electronic – NOT PDF – files) ___1. Estimated Project Cost ___2. Summary Table: Sources and Uses of Funds ___3. Cash Flow Pro Forma ___4. Supplementary Narrative: Other Borrowed Funds ___5. Supplementary Narrative: Revenue Sources ___6. Proposed Terms for the Requested TIFIA Credit Instrument ___7. Reasons for Selecting the Proposed Type(s) of Credit Instrument ___8. Risks and Mitigation Strategies	17	12
Section E: Applicant's Organizational Structure ___1. Background Information and Legal Authority ___2. Organization and Management ___3. Prior Experience ___4. Financial Condition ___5. Litigation and/or Conflicts	6	12
Section F: Certifications	3	12
___**Exhibit I**: Project Map		1
___**Exhibit II**: Supporting Documentation: Regional /National Significance		1
___**Exhibit III**: Preliminary Rating Opinion Letter(s)		1
___**Exhibit IV**: Supporting Documentation: Financing Documents		1
___**Exhibit V**: Supporting Documentation: Public-Private Partnerships		1
___**Exhibit VI**: Supporting Documentation: Other Anticipated Funds		1
___**Exhibit VII**: Cash Flow Pro Forma (include electronic files)		1
___**Exhibit VIII**: Supporting Documentation: Revenue and Cost Projections		1
___**Exhibit IX**: Proposed Terms for the Requested TIFIA Credit Instrument		1
___**Exhibit X**: Supporting Documentation: Legal Authority		1
___**Exhibit XI**: Organizational Chart		1
___**Exhibit XII**: Audited Financial Statements (Three Years)		1
___**Other**: Non-refundable $50,000 Application Fee		

Fiscal Year 2012 Application – Executive Summary

This section requests narrative information similar to that requested in the Letter of Interest, but it should not be a restatement of the initial submission – it must provide updated information. Total narrative for this section should not exceed 20 pages, excluding any exhibits. Applicants must prepare an Executive Summary using the following format provided below. This Executive Summary must be submitted electronically concurrently with submission of the paper copies of the application submission package. If you have any questions about completing this form, please contact Duane Callender at (202) 366-9644. Please complete all applicable information and attach this via email to TIFIACredit@dot.gov by the deadline set by the DOT.

A) General. Summarize the highlights of your project and the team, explaining key reasons this application should be selected for TIFIA credit assistance.

Replace and Insert Text Here (boxes will expand if filled out on computer)

B) Project Description. Describe the project, including its location, purpose, design features, estimated capital cost, and development schedule. Ensure that the description provides a reasonable level of detail on distinct project elements; derivation of capital costs; functional descriptions relevant to TIFIA financing; right of way acquisitions progress; potential public support; status of permits and approvals including filing dates and anticipated approvals; development plan, alternatives considered (for EIS), status and risks; number of contracts for each project element; parties to each contract. Is the project on the State Transportation Plan or the metropolitan plan, as applicable?

Replace and Insert Text Here (boxes will expand if filled out on computer)

C) Project Participants. Describe the overall organizational structure for the project. Please explain the relationship between the applicant and the borrower, if they are not the same entities. Who are the members of the project team? Please also provide sufficient detail regarding the legal structure of the project sponsor and borrower, if not the same entity, including partnership and ownership structure; project sponsor and team members' experience; project sponsor's track record of completing projects; conflicts of interest; project team members, including financial advisors and underwriters, the engineering team, legal team, and other consultants; affiliations of project team members, including other entities owning or controlling project sponsors or team members; private/public partnership; partners' incentives; risk management decision making process; identification of project team staff; likely stakeholders; and corporate guarantees of credit support.

Replace and Insert Text Here (boxes will expand if filled out on computer)

D) <u>Proposed Financing</u>. Please provide an overview and explanation of the proposed overall project financial plan, including the proposed sources and uses of project funds, types and amounts of credit assistance requested, and any collateral/security pledge, status of revenue feasibility studies and revenue projections. Additionally, outline the types of credit assistance requested; specifics on what the TIFIA credit assistance will be used to finance; risks/impact on TIFIA payback of reductions in projections; step-in rights afforded to lenders/liens on existing financing; development costs; estimated construction budget and timeline; elements of cash flow; difficulty of construction or operation; role of private companies; whether or not debt/credit is bankruptcy remote; and other important information relevant to the project financial plan.

Replace and Insert Text Here (boxes will expand if filled out on computer)

Sources and Uses of Funds (i.e., Project Budget):

Type of Credit Assistance:

Amount:

Description of Revenue Source(s) Pledged to Repayment:

E) <u>Environmental Review.</u> Summarize the status of the project's environmental review. Specifically, discuss whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or at a minimum, whether a draft Environmental Impact Statement has been circulated. Please also discuss in detail project timelines for regulatory approvals; the most current NEPA status or state/local review; what issues/risks have been identified; any existing or threatened legislation/regulation or legal litigation; current administrative or court proceedings underway; and the status of any appeals.

Replace and Insert Text Here (boxes will expand if filled out on computer)

F) Other Legal/Regulatory Ramifications. Briefly discuss any other issues that may affect the development and financing of the project, such as community support, pending legislation or litigation.

Replace and Insert Text Here (boxes will expand if filled out on computer)

G) Satisfaction of TIFIA Selection Criteria. Summarize the potential benefits to be achieved through the use of a TIFIA credit instrument with respect to the TIFIA selection criteria. A project that has a negative effect on safety or environmental sustainability needs to demonstrate significant merits in other components to be selected for funding.

Significance (also address issues related to project impact on: livability (providing transportation options linked with housing and commercial development to improve economic opportunities/quality of life in U.S. communities); economic competitiveness (improving the long-term efficiency and reliability in the movement of people and goods); and safety (improving the safety of U.S. transportation facilities and systems and the communities and populations they impact.):

Insert Text Here

Private Participation:

Insert Text Here

Environment (also address issues related to sustainability (improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and reducing other transportation-related impacts on ecosystems, including the use of tolling or pricing structures to reduce or manage high levels of congestion on highway facilities and encourage the use of alternative transportation options); and state of good repair (improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials).

Insert Text Here

Project Acceleration:

Insert Text Here

Creditworthiness:

Insert Text Here

Use of Technology:

Insert Text Here

Budget Authority:

Insert Text Here

Reduced Federal Grant Assistance:

Insert Text Here

H) Please discuss the project's readiness and timeline to proceed to financial close on the TIFIA instrument.

Replace and Insert Text Here (boxes will expand if filled out on computer)

I) Please discuss any other relevant issues that could impact the success of this project.

Replace and Insert Text Here (boxes will expand if filled out on computer)

J) Contact Information. Identify the key contact person with whom all communication should flow.

Name: (Point of Contact)
Title:
Street Address:
City/State:
Phone:
Fax:
E-mail:

K) Additional Information Requested.

DUNS:
Project Location:
State:
County:
City:
Congressional Districts Impacted by the Project:
Type of Jurisdiction (e.g., rural, urban):

SECTION A: Contact Information

Provide the following information and include this sheet as the first page of the application following the Executive Summary**.**

1. Applicant's Legal Name:

2. Other Names under Which Applicant Does Business:

3. Federal Tax Identification Number (to be used to determine whether the applicant is delinquent or in default on any Federal debt, in accordance with 31 U.S.C. 3701, et seq. and 5 U.S.C. 552a at note):

4. Business Address:

5. Mailing Address (if different from above) – include both U.S. mailing address and courier (*i.e.*, no P.O. Box) address:

6. Contact Person Name:

7. Contact Person Title:

8. Mailing Address for Contact Person (if different from above):

9. Telephone:

10. Fax:

11. E-mail:

SECTION B: Project Information

This section requests narrative information and one exhibit. The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. Total narrative supporting Section B should not exceed 8 pages, excluding the exhibit.

1. Project Name. Assign a short name to the project, for purposes of identification.

2. Location. Describe the location of the project, including major intersecting highway and rail routes, and attach a map as Exhibit I. Include the name(s) of the counties that the project will serve.

3. Project Cost and TIFIA Credit Assistance Request. Provide a cost estimate for both the entire project and the "eligible project costs" under the TIFIA program (see Chapter 3, Section 3-4, for a description of "eligible project costs"). Specify the TIFIA credit instrument(s) (*i.e.*, secured loan, loan guarantee, and/or standby line of credit) requested and the amount of TIFIA credit assistance requested for each credit instrument. The dollar amounts provided in this section must match those presented under Section D (Financial Plan).

4. Project Description. Describe the need for the project, its basic design features, and what it will accomplish. Include an assessment of the current condition of all transportation facilities relating to the project. If the project's current scope differs from what is described in its environmental documents, please explain.

5. Project Schedule. Provide a timeline that illustrates the estimated start and completion dates for each major phase or milestone of project development, construction and/or acquisition, including, for example: major investment study, Federal transportation planning requirements, preliminary engineering and environmental documentation, final design, right-of-way acquisition, construction, and vehicle acquisition. Indicate the applicant's current status on this timeline.

6. Permits and Approvals. List all major permits and approvals necessary for construction of the project and the date, or projected date, of the applicant's receipt of such permits and approvals. The list should include permits and approvals required under local, regional, state, and Federal laws and regulations. In particular, indicate when outstanding approvals by state or local government entities are expected. Also, describe the status of environmental review documents. Copies of major permits and approvals will be required upon execution of a credit agreement with the DOT.

7. Project Management and Compliance Monitoring Plan. Provide a comprehensive project management and monitoring plan that will assure the DOT of the applicant's ability to deliver the project as planned, fulfill all project commitments, and ensure compliance with all terms of the credit agreement, including all applicable regulations and provisions of law. The plan should provide: (a) information on the roles and responsibilities of all entities with decision making authority for the project; (b) status reporting processes that document not only the status but changes and potential risks; and (c) coordination processes that provide for advance notification of potential issues to all appropriate agencies and timely resolution.

8. Maintenance and Operations. Describe the maintenance and operations plan for the project.

SECTION C: Satisfaction of Selection Criteria

This section allows the applicant to describe the extent to which the project satisfies the eight selection criteria specified under 23 U.S.C. 602(b)(2). ***The applicant should provide relevant data (both qualitative and quantitative) to support its assertions and to justify the benefits to be derived from TIFIA assistance in satisfying these criteria and advancing the proposed project. A project that has a negative effect on safety or environmental sustainability needs to demonstrate significant merits in other components to be selected for funding.*** The list below should be included in the application packet with responses and supporting documents attached and numbered to correspond to the relevant item. Total narrative supporting Section C should not exceed 15 pages, excluding the four exhibits.

1. Significance. Describe the extent to which the project is nationally or regionally significant. Describe the project's ability to generate economic benefits, support international commerce, or otherwise enhance the national transportation system. Additionally, address issues related to the project's impact on the following: livability – providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.; economic competitiveness – contributing to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods; and safety – improving the safety of U.S. transportation facilities and systems and the communities and populations they impact. Supporting documentation may be attached as Exhibit II.

2. Creditworthiness. Describe the creditworthiness of the project as noted below.

   a) Provide at least one preliminary rating opinion letter, as required under 23 U.S.C. 602(b)(2)(B), as Exhibit III. This letter is a conditional credit assessment from a nationally recognized statistical rating organization (NRSRO) that must indicate the potential for the senior debt obligations funding the project to achieve an investment grade rating and also must provide a rating on the TIFIA credit instrument. (The senior debt has a lien senior to that of the TIFIA credit instrument on the pledged security; if there are no debt obligations senior to the TIFIA credit instrument, then the TIFIA credit instrument itself must be shown to have the potential to obtain an investment grade rating). This preliminary assessment by the rating agencies will be based on the financing structure proposed by the applicant. The letter should provide a preliminary rating assessment of the financial strength of the overall project and the default risk (*i.e.*, without regard to recovery potential) of the requested TIFIA instrument. This includes a demonstrated capacity to repay the federal credit assistance as well as a determination that the project has appropriate security features, such as proper coverage ratios, rate covenants and reserves as applicable.

      All applicants are required to submit a preliminary rating opinion letter. The DOT will not consider applications without such a letter.

      The preliminary rating opinion letter should not reflect the use of bond insurance or other credit enhancement that does not also secure the TIFIA instrument. The assessment of the senior obligations' investment grade potential and the TIFIA instrument's default risk should be based on the underlying ratings of debt obligations and the project's fundamentals.

   b) Provide information concerning the ability of the applicant (or any significant public or private partners that pledge to repay or provide funding) to repay all borrowed funds, including any obligations to the Federal Government. Describe the extent to which the project includes security features, such as a rate covenant and an additional bonds test, to ensure repayment of the Federal credit instrument.

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c) Provide a copy of existing financing documents, such as a trust indenture agreement, including any rating agency credit reports, for other creditors of the project or a term sheet indicating the proposed features of the anticipated financing documents, as Exhibit IV. The information should indicate the Federal credit instrument's status in relation to pledged security, coverage, and treatment under an additional bonds test. Applicants should be aware that when prior financing based on the proposed TIFIA security is already in place difficult inter-creditor issues often arise in the negotiation of the TIFIA credit instrument.

d) Provide other information to support the project's creditworthiness, such as: the project's market position; the history of user-based repayments for other obligations; the economic outlook for related commerce; qualifications of the project team; proposed risk mitigation strategies, etc. The applicant may refer to other portions of its application, as applicable.

Note that Section D of this application requests a financial plan; information furnished under this item may be cross-referenced to materials provided in Section D, and in all instances must be consistent with those materials.

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3. Private Participation. Describe the extent to which the project fosters innovative public-private partnerships and attracts debt and/or equity investment from private capital. Identify private partners and provide evidence of commitments, joint venture agreements, lease, or other supporting documents for the public-private partnerships as Exhibit V. Also, describe the extent to which the project's debt repayment depends on user charges.

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4. Project Acceleration. Estimate and explain the effect of TIFIA assistance on the project's start and completion dates, the extent to which TIFIA assistance would help the project to proceed at an earlier date than would otherwise be possible, and any effects of an accelerated project timeline (*e.g.*, reduced costs or increased benefits). Demonstrate that traditional sources of financing are not available at feasible rates, or that the costs of traditional financing would constrain their ability to deliver the project, or that delivery of this project through traditional financing approaches would constrain their ability to deliver additional components of their capital programs.

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5. Use of Technologies. Describe the extent to which the project uses innovative technologies, including intelligent transportation systems (ITS). Indicate how the use of such technologies enhances the efficiency or capacity of the project.

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6. Consumption of Budget Authority. The DOT will independently perform necessary calculations on the basis of information provided under Sections D and E of this application, below. However, the applicant may prepare a brief summary that describes how its proposal minimizes consumption of TIFIA-related budget authority and otherwise represents an efficient use of credit assistance.

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7. Environmental Benefits. Describe the extent to which the project helps maintain or protect the environment. Additionally, address issues related to the following: sustainability – improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and reducing other transportation-related impacts on ecosystems, including the use of tolling or pricing structures to reduce or manage high levels of congestion on highway facilities and encourage the use of alternative transportation options; and the state of good repair – improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials. For example, describe reductions in pollution (*e.g.*, air, water, noise, etc.) that would result from the project. Describe any mitigation efforts beyond those required by law. Describe any significant environmental challenges or risks.

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8. Reduced Federal Grant Assistance. Estimate and explain how TIFIA assistance would reduce the project's need for Federal grant assistance. Indicate the percentage of the total project costs that will be funded by Federal grants, Federal credit assistance, and other sources.

SECTION D: Financial Plan

The following items concern the project's financial plan. This section requests narrative information and four exhibits. ***Note: For the purposes of this application, applicants should propose a single financing structure, representing the scenario deemed to have the greatest likelihood of occurring. While the DOT will evaluate the proposed financial plan, DOT's selection of the project for TIFIA assistance does not imply that the DOT has approved the proposed financial; the DOT may require modifications to the financial plan after selection and before execution of the credit agreement. For the financial plan, any combination of the three types of credit assistance offered under TIFIA may be used, provided that the total TIFIA credit amount is capped at 33 percent of eligible project costs. The DOT may ask applicants to develop alternative scenarios, as necessary.***

The financial plan should be prepared in accordance with recognized financial reporting standards such as the "Guide for Prospective Financial Information" of the American Institute of Certified Public Accountants (AICPA). The narrative descriptions for the financial projections should include the sources of information for the forecasts and the methodology used for developing the forecasts. The discussion should also identify whether there has been any independent validation of the forecasts or sensitivity testing. Any documentation that provides the basis for the projected costs/revenues (*e.g.*, revenue studies, feasibility studies, economic forecasts) should be included as attachments to the plan.

The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. Items 1, 2, and 3 below must also be provided on a CD in a spreadsheet format. The DOT must be able to review and adjust the assumptions in these files; *i.e.*, PDF or "values" copies of the spreadsheet are not acceptable. Total narrative supporting Section D should not exceed 17 pages. The pro forma(s) and supporting documentation requested under items 3, 5, and 6 (Exhibits VII, VIII, and IX, respectively) do not count toward the page limit.

1. Estimated Project Cost.

   a) Provide a detailed cost estimate for the project. Distinguish between total and "eligible project costs" as defined under TIFIA; and describe any costs or activities that may not be TIFIA-eligible.

   b) For TIFIA-eligible costs, provide an activity breakdown, as applicable, for: feasibility studies, preliminary engineering, environmental assessment, right-of-way-acquisition, vehicle acquisition, construction, construction engineering and inspection, project management, contingencies, and capitalized financing costs (including reserves, capitalized interest, and capital issuance costs for other project financing). Include other cost categories as necessary.

Note: All cost estimates should be expressed on a cash (year-of-expenditure) basis and should include a narrative describing assumptions used to arrive at such estimates.

2. Summary Table: Sources and Uses of Funds.

   a) Sources should include separate line items, as applicable, for Federal grants, state grants, local grants, private investment (equity or debt); any other contributions, market value of right-of-way dedications, bond proceeds (general obligation, revenue, and others), other borrowing (specify), investment income, revenues, and Federal credit assistance proceeds. For each line item, describe the status of the source (*e.g.*, requested, committed, and received). Provide supporting documentation to evidence the status of these funds in Exhibit VI.

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b) Uses should include separate line items, as applicable, for feasibility studies, preliminary engineering, design, environmental assessment and mitigation, right-of-way-acquisition, vehicle acquisition, construction, construction engineering and inspection, insurance, project management, contingency funds, and capitalized financing costs (including debt service reserve funds, capitalized interest, and capital issuance costs for other project financing). Include other categories as necessary.

Note: Total sources and uses should be equal to one another and equal the estimated total project costs. All estimates should be expressed in year-of-expenditure dollars.

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3. Cash Flow Pro Forma. Attach the pro forma for the project as Exhibit VII. The pro forma should include both a statement of sources and uses and a projection of monthly or quarterly cash flows during the construction period and annual cash flows thereafter. All amounts should be expressed on a cash (year-of-expenditure) basis and should include a narrative describing assumptions used to arrive at such estimates. The pro forma should include:

a) Projected cash flows through such time as all project debt is repaid, including separate line items for each category of revenue (such as sales tax proceeds, fares, toll receipts) and expenditure (at a minimum, construction expenditures, operations and maintenance, contributions to reserves and capital replacement funds, debt service, repayments of the TIFIA credit instrument, and repayment of other borrowed funds, if any);

b) Estimated debt service coverage, separated into Federal, non-Federal (addressing, as applicable, senior and junior lien debt), and illustrating projected combined coverage, as applicable;

c) Amortization schedule for all project debt, separated into Federal, non-Federal (addressing, as applicable, senior- and junior-lien debt), and combined components; and

d) Anticipated repayment schedule illustrating the disbursement and repayment of the requested TIFIA credit instrument.

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4. Supplementary Narrative Information on Sources of Funds: Other Borrowed Funds.

a) Provide information on the other types of borrowing, including the form of borrowing (*e.g.*, types of bonds to be issued), the pledged security for such borrowing, its priority with respect to the security pledged to the TIFIA instrument, details on structuring, rating assumptions, and anticipated timing of receipt of such funds. Information on amortization schedules, expected interest rates, and coverage calculations should be included in the cash flow pro forma requested under item D. (3), above.

b) For bond issuances, discuss the anticipated tax-status of the bonds, whether an IRS or bond counsel opinion has been sought, and contingency plans in the event that the tax-status differs from that which is anticipated.

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5. Supplementary Narrative on Revenue Source(s).

   a) Describe all revenue sources to be used to repay project financing. Specify the nature of the revenue source (dedicated or not dedicated), the expected rate(s), the base to which such rates will be applied (*e.g.*, retail sales, average daily traffic), projected revenues from each source, and projected increases or decreases in such revenues over time.

   b) Elaborate on existing or anticipated pledges/claims on revenues and provide a brief summary of all claims on the flow of funds.

   c) Attach documentation (*e.g.*, revenue studies, feasibility studies, traffic studies, and economic forecasts) as Exhibit VIII to provide the basis for projected revenues and their respective anticipated rates of change. If independent revenue projections have not yet been obtained, state when such independent projections will be completed and identify the consultant engaged to perform the analysis.

6. Proposed Terms for the Requested TIFIA Credit Instrument. Identify the type(s) of TIFIA credit instrument being requested (secured loan, loan guarantee, standby line of credit) and, at a minimum, the following proposed terms and conditions for each proposed credit instrument: amount, origination date, final maturity date, estimated interest rate, timing of disbursements, pledged security, repayment sources, amortization schedule, and lien position. The proposed TIFIA credit facility, which must be senior or parity lien in the event of bankruptcy, liquidation or insolvency, can be subordinate as to cash flows absent such an event. The proposed terms and conditions should be submitted as Exhibit IX.

7. Reasons for Selecting the Proposed Type(s) of Credit Instrument. Describe why you are requesting the specific type(s) of TIFIA credit instrument. If you are requesting only a direct loan and/or a line of credit, specify the project's financial structure if the TIFIA credit assistance was instead in the form of a loan guarantee, including the amount of guaranteed loan assistance that would be required.

8. Risks and Mitigation Strategies. Identify risks to project completion and sufficiency of revenues. Sample risks might include cost escalation, approvals, litigation, construction schedules, ridership and traffic levels, availability of grant funding, and market access. Identify all mitigation strategies and any proposed cost-containment approaches (*e.g.*, design-build, value engineering, guaranteed maximum price and/or completion date, warranties, or other incentive/disincentive clauses).

SECTION E: Applicant's Organizational Structure

This section requests narrative information and three exhibits. The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. Total narrative supporting items for section E should not exceed 6 pages, excluding exhibits.

1. Applicant's Background Information and Legal Authority.

   a) Describe the applicant's history, ownership, and legal structure (*e.g.*, state governmental agency, local governmental agency, corporation, or partnership). Include a copy of the statutory authority under which the entity was created as part of Exhibit X, if applicable.

   b) Describe the legal authority of the applicant to carry out proposed project activities described in the application packet, including levying taxes, issuing debt, charging tolls or other fees, and/or receiving dedicated funding from another entity. Provide documentation as part of Exhibit X.

   c) Identify whether governmental entities (other than the applicant) must approve the submission of the application packet, the funding of activities, or the carrying out of activities in the application (other than permits). Provide documentation as part of Exhibit X.

2. Organization and Management.

   a) Describe the applicant's organizational structure and the applicant's relationship to any subsidiaries or affiliates. Include the legal names of key principals and staff (*e.g.*, project manager and chief financial officer) and any recent or proposed changes to the organizational structure.

   b) Provide an organizational chart as Exhibit XI, to include the major parties involved in planning, owning, financing, constructing, operating, and/or maintaining the project. Include the major service contractors that have been, or will be, retained for the project (*e.g.*, architects, developers, engineers, attorneys, financial advisors and underwriters, environmental consultants). *Note: The DOT may request additional documentation from major parties other than the applicant as part of the project evaluation and selection process.*

3. Prior Experience. Describe the applicant's prior experience as it relates to carrying out projects similar to that being proposed.

4. Financial Condition. Provide year-end audited financial statements for the past three years, as available, as Exhibit XII.

5. Litigation and/or Conflicts. Disclose any current, threatened, or pending litigation involving the applicant related to permitting, public involvement, environmental irregularities, construction defects, securities fraud, conflict of interest, failure to perform under a state or Federal contract, or other charges which may reflect on the applicant's financial position or ability to complete the project.

SECTION F: Applicant Certifications

The following items require certification by an authorized representative of the applicant requesting TIFIA assistance. The list below should be included in the application packet with responses attached and numbered to correspond to the relevant item. The DOT may require that applicants provide documentation of these certifications.

1. Federal Requirements. This project complies with, and/or will comply with, the requirements of (check all that apply):

   Title 23 of the U.S. Code, and implementing regulations in Title 23, Code of Federal Regulations._____

   Chapter 53 of title 49 of the U.S. Code _____

   Section 5333(a) of title 49 of the U.S. Code _____

   If the applicant intends to request waivers to any requirements included in the preceding citations, explain on an attached sheet.

2. National Environmental Policy Act. The project complies with, and/or will comply with, all provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

   Yes _____ No _____ If no, explain on an attached sheet.

   The project has (check all that apply):

   Yes _____ No _____ Received a Categorical Exclusion.
   Yes _____ No _____ Received a Finding of No Significant Impact (FONSI).
   Yes _____ No _____ Circulated a Draft Environmental Impact Statement.
   Yes _____ No _____ Circulated a Final Environmental Impact Statement.
   Yes _____ No _____ Received its Record of Decision. (If no, provide on an attached sheet the estimated date for receipt of the Record of Decision.)

3. Uniform Relocation. This project complies with, and/or will comply with, all provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

   Yes _____ No _____ If no, explain on an attached sheet.

4. Civil Rights. This project complies with, and/or will comply with, all provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

   Yes _____ No _____ If no, explain on an attached sheet.

5. Other Requirements as Applicable that apply to projects which receive Federal assistance such as the Federal Water Pollution Control Act as amended by the Clean Water Act (33 U.S.C. 1251 et. seq.), and the Endangered Species Act, (16 U.S.C. 1531 et. seq.). This project complies with, and/or will comply with, all other applicable provisions of Federal law.

Yes _____ No _____ If no, explain on an attached sheet.

6. State Transportation Planning and Programming Process. This project is consistent with the long-range state transportation plan(s) of the affected state(s).

   Yes _____ No _____ If no, explain on an attached sheet.

   If located in a metropolitan planning area, this project is included on the metropolitan transportation plan.

   Yes _____ No _____ If no, explain on an attached sheet.

   This project is listed within the State Transportation Improvement Program (STIP) of the affected state(s).

   Yes _____ No _____ If no, explain on an attached sheet and provide estimated date for project listing on the STIP.

7. Credit Ratings. This applicant has received preliminary rating opinion letter(s) or current credit rating(s) on the senior debt instrument, and if TIFIA is not the senior debt, on the TIFIA credit instrument, from one or more Nationally Recognized Statistical Rating Organizations. These letters or ratings are attached as Exhibit III.

8. Transaction (Credit Processing) Fees: The undersigned certifies that it will reimburse the DOT for its costs incurred in negotiating the credit agreement, irrespective of whether the credit agreement is executed.

9. Lobbying. Section 1352 of Title 31, United States Code and 49 C.F.R. §20.100, provide that none of the funds appropriated by any Act of Congress may be expended by a recipient of a contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, or an employee of a Member of Congress in connection with the award or making of a Federal contract, grant, loan, or cooperative agreement or the modification thereof. The DOT interprets this provision to include the use of appropriated funds to influence or attempt to influence the selection for a secured loan, loan guarantee, or line of credit under the TIFIA program.

   TIFIA applicants must file a declaration: (a) with the submission of an application for TIFIA assistance; (b) upon receipt of a TIFIA credit instrument (unless the information contained in the declaration accompanying the TIFIA application has not materially changed); and (c) at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any declaration previously filed in connection with the TIFIA assistance.

   A declaration filed in connection with the TIFIA assistance shall contain:

   a) The name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on behalf of the TIFIA applicant.

   b) A certification by the person making the declaration that none of the funds appropriated by any Act of Congress has been or will be expended to pay any person for influencing or attempting to influence an officer or employee of the DOT or any Federal agency, a Member of Congress, an officer or employee of Congress, or employee of a Member of Congress with regard to the TIFIA assistance.

   In addition, any person or entity that requests or receives a subcontract from a TIFIA applicant is required to file a declaration which shall contain the name of any registrant under the Lobbying Disclosure Act who has made lobbying contacts and a certification that the person or entity has not made or will not make prohibited payments.

The undersigned certifies, to the best of his or her knowledge and belief, that: (i) no federally appropriated funds have been paid or will be paid by or on behalf of the undersigned to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with an award of TIFIA assistance; *and* (ii) if non-federally appropriated funds have been or will be paid for the above purposes, the undersigned will disclose such payments through the completion and submission of Standard Form LLL ("Disclosure Form to Report Lobbying"). The applicant shall file Standard Form LLL in accordance with its instructions. Submission of this statement with the TIFIA application is a prerequisite for obtaining TIFIA assistance.

Any person who makes an expenditure of appropriated funds prohibited by 31 U.S.C. 1352(a) or fails to file the required statement or amended statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure in accordance with 31 U.S.C. 1352(c).

10. Debarment. The undersigned further certifies that it is not currently, nor has it been in the preceding three years: 1) debarred, suspended or declared ineligible from participating in any Federal program; 2) formally proposed for debarment, with a final determination still pending; 3) voluntarily excluded from participation in a Federal transaction; or 4) indicted, convicted, or had a civil judgment rendered against it for any of the offenses listed in the Regulations Governing Debarment and Suspension (Governmentwide Nonprocurement Debarment and Suspension Regulations: 49 C.F.R. Part 29.

11. Default/Delinquency. The undersigned further certifies that neither it nor any of its subsidiaries or affiliates are currently in default or delinquent on any debt or loans provided or guaranteed by the Federal Government.

Signature: By submitting this application, the undersigned certifies that the facts stated and the certifications and representations made in this application are true, to the best of the applicant's knowledge and belief after due inquiry, and that the applicant has not omitted any material facts. The undersigned is an authorized representative of the applicant.

Applicant: _____

Signed: _____

Name and Title: _____

Date: _____

END OF FORM

Appendix E: Evaluation Guidelines

The following guidelines are intended to inform participating sponsors, potential applicants, and other interested parties as to the types of considerations made by the DOT in evaluating TIFIA applications in accordance with the statutory selection criteria. These guidelines are not exhaustive, but are indicative of the factors the DOT assesses in the evaluation and selection process. Note that the applicant is encouraged to provide relevant data (both quantitative and qualitative) to support its assertions and justify the benefits to be derived from TIFIA assistance. The DOT may revise these guidelines from time to time, and will make them public to inform future applicants about the TIFIA evaluation and selection process.

Selection Criterion	Evaluation Considerations
1. Significance – 20 percent **The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system. This includes consideration of a project's impact on livability, economic competitiveness and safety.**	• What are the project's economic benefits (e.g., job creation, tax revenues, quality of life, etc.)? Do these benefits extend beyond the project's immediate geographic region? • Does the project improve livability by providing transportation options that are linked with housing and commercial development to improve the economic opportunities and quality of life for people in communities across the U.S.? • Does the project contribute to the economic competitiveness of the U.S. by improving the long-term efficiency and reliability in the movement of people and goods? • Does the project improve the safety of U.S. transportation facilities and systems and the communities and populations they impact? • Will the project support international commerce? Will failure to carry out the project hinder or continue to thwart international competitiveness? • Is the project a component of a federally recognized transportation system (e.g., the National Highway System)? If not, will it connect to such system? • Does the project help achieve safety, mobility or transportation demand goals? Does the project improve connections among the transportation modes? • What is the level of community support for the project?
2. Private Participation – 20 percent **The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment.**	• How extensive is the private equity, if any, compared to total project costs? • How extensive is the combined debt and equity investment from private capital compared to total project costs? • How extensively does project debt repayment depend on user fees? • Has the project team been structured (e.g., via a non-profit corporation or a public-private partnership) to allow a non-governmental entity to share its risks and rewards?
3. Environment – 20 percent **The extent to which the project helps maintain or protect the environment. This includes consideration of a project's impact on sustainability and the state of good repair.**	• Does the project improve energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions, and reducing other transportation-related impacts on ecosystems? • Does the project improve the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize lifecycle costs and use environmentally sustainable practices and materials? • Does the project protect the environment via reductions in pollution (e.g., air, water, noise, etc.) that would not otherwise occur without the project? • Does the project require major environmental mitigation efforts? Will the project sponsor engage in mitigation efforts beyond those required by law?

4. Project Acceleration – 12.5 percent **The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.**	• To what extent does TIFIA assistance accelerate project implementation? If the project needed to obtain a substitute funding source, to what extent would its schedule be delayed? • Can the effect of project acceleration be quantified (e.g., reduced costs or increased benefits)? • Without TIFIA assistance, would the scope of the project need to be reduced in order for the project to meet its development timeline?
5. Creditworthiness – 12.5 percent **The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment.**	• Has the project obtained an investment-grade rating on the senior debt obligations funding the project? • How convincing are the preliminary opinion letters from rating agencies indicating that the overall project and senior debt obligations have the potential to be investment grade? Do the opinion letters contain significant qualifying language? • What is the project's market position? If its revenue plan depends on fees for specified services, are these services in high demand? How extensive is the competition? • What is the likelihood that the project will repay TIFIA assistance and other debt obligations in accordance with requested financing terms? • Does the project have a history of user fee-based repayments for other obligations? • How favorable is the economic outlook for related commerce and trade? • How qualified is the project team? Is the team experienced and knowledgeable in transportation finance and development? What is the team's track record in carrying out projects of this magnitude? • Does the project team possess the necessary financial, staffing, and technical resources to successfully complete the project? • Is the proposed schedule for the project reasonable, given the scope and complexity of the project? • Does the project include cost containment and risk mitigation measures (e.g., design-build, maximum price contract, guaranteed completion date, developer incentives, project warranties, rate covenants, etc.)? • How well substantiated is the financial plan and its revenue and cost assumptions? Are the assumptions on which the plan is based well defined and reasonable?
6. Use of Technology – 5 percent **The extent to which the project uses new technologies, including intelligent transportation systems, to enhance the efficiency of the project.**	• Does the project principally involve the installation of an intelligent transportation system (ITS)? • How extensively does the project use ITS components (e.g., electronic toll collection, automatic vehicle identification, etc.)? • How extensively does the project deploy other innovative technologies (e.g., farecard systems, signal prioritization systems, train control systems, weigh-in-motion, and emission control technologies)?
7. Budget Authority – 5 percent **The amount of budget authority required to fund the TIFIA credit instrument.**	• What is the relative difference in required budget authority between this project and other projects? • What is the project's deviation from the average budget authority consumed by other projects?
8. Reduced Federal Grant Assistance – 5 percent **The extent to which TIFIA assistance would reduce the contribution of federal grant assistance.**	• Without TIFIA assistance, what is the likelihood that the project would obtain federal (including non-DOT) grants as substitutes? • Does the project meet program eligibility requirements and have political support necessary to obtain additional state- and/or locally programmed federal funds to substitute for TIFIA assistance? • Can the project sponsor demonstrate that TIFIA credit assistance will free up otherwise-expected grant monies for other investments?