

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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October 19, 2005

[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) 33 $\frac{1}{3}$ 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-

anticipated 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;

§ 80.5

(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

49 CFR Subtitle A (10-1-05 Edition)

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.*);

§ 80.11

(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]

49 CFR Subtitle A (10-1-05 Edition)

§ 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

Office of the Secretary of Transportation

§ 80.17

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

§ 80.19

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

49 CFR Subtitle A (10-1-05 Edition)

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

Sec.

- 89.1 Purpose.
- 89.3 Applicability.
- 89.5 Delegations of authority.
- 89.7 Exceptions to delegated authority.
- 89.9 Redelegation.
- 89.11 Standards for exercise of delegated authority.
- 89.13 Documentary evidence of compromise.
- 89.15 Regulations, reports, and supporting documentation.

Subpart B—Collection of Claims

- 89.21 Administrative collection.
- 89.23 Interest, late payment penalties, and collection charges.
- 89.25 Collection by administrative offset.
- 89.27 Referral for litigation.
- 89.29 Disclosure to commercial credit bureaus and consumer reporting agencies.
- 89.31 Use of professional debt collection agencies.
- 89.33 [Reserved]

Subpart C—Referral of Debts to IRS for Tax Refund Offset

- 89.37 Applicability and scope.
- 89.39 Administrative charges.
- 89.41 Notice requirement before offset.
- 89.43 Review within the Department.
- 89.45 Department determination.
- 89.47 Stay of offset.

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.

