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://tifia.fhwa.dot.gov, 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.

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 generating their own revenue streams 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. 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 $2 billion of average annual credit assistance.

Program Administration

Implementation of the TIFIA program is the responsibility of the Secretary of Transportation. A nine-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 five representatives from the Office of the Secretary of Transportation (OST): the Assistant Secretary for Budget and Programs, 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) comprise the other four 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 implementation process 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). The Letter of Interest will describe the project 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. An applicant may submit an application only after the DOT 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 yet to 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 senior debt obligations and a rating on the TIFIA credit instrument. For secured loans, 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