# Chapter 6: Recommendation for Achieving Program Objectives

> *"§189. Report to Congress*
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> *"Not later than 4 years after the date of enactment of this subchapter, the Secretary shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this subchapter, including a recommendation as to whether the objectives of this subchapter are best served –*
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> *"(1) by continuing the program under the authority of the Secretary;*
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> *"(2) by establishing a Government corporation or a Government-sponsored enterprise to administer the program, or*
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> *"(3) by phasing out the program and relying on the capital markets to fund the types of infrastructure investments assisted by this subchapter without Federal participation."*
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> **Transportation Equity Act for the 21st Century (TEA 21)**
> **June 9, 1998**

## 6.0 Introduction

In many ways the TIFIA credit program is still in its formative stages. Some state DOTs still need authorizing legislation to borrow from the DOT. The projects TIFIA is designed to assist typically require at least five to ten years in development. Planning approvals, environmental clearances, engineering feasibility and financial commitments must be in place before such projects get fully funded and begin construction. As of the date of this report, none of the 11 projects approved for TIFIA assistance has completed construction.[38] It will be years before most projects open and the DOT can assess its long-term program costs and other performance measures. For these reasons, the DOT believes it is premature to draw conclusions about the long-term efficacy of the TIFIA program.

The significance of reaching a conclusion, however, remains. Indeed, as stated in the Conference Report accompanying TEA 21 and TIFIA, "[a] n objective of the program is to help the financial markets develop the capability ultimately to supplant the role of the Federal Government in helping finance the costs of large projects of national significance." As long as the Federal Government continues to provide credit assistance directly to such projects, it can choose different institutional approaches for administering the program. Each approach, including phase out, has implications regarding the extent of the TIFIA financing niche, Federal policy control, budget mechanics and risk exposure.

## 6.1 Continuing the Program Under the Authority of the Secretary

As described in Chapter Two, the DOT administers the TIFIA program under the policy guidance of a Credit Council consisting of operating agency administrators and senior officials from the Office of the Secretary. The TIFIA Joint Program Office manages the day-to-day operations of the program. As a Federal agency program, TIFIA is subject to Executive and Congressional oversight.

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[38] As an example of the gestation period for a major project, the Alameda Corridor, which received a $400 million Federal loan in 1997, opened for revenue service on April 15, 2002 – on time and within budget. The project first appeared in regional planning documents in 1982.

In addition, the TIFIA program is subject to the provisions of the Federal Credit Reform Act of 1990 (FCRA). Under FCRA, the Congress directly controls the amount of assistance provided by determining the level of funding necessary to support the program's credit activities. Although the creditworthiness of individual loans and other instruments may vary, there is direct control over the aggregate level of risk exposure to the Government. The FCRA provisions also preclude the establishment of a loan revolving fund, where repayments and fees could fund new credit instruments. Like other Federal agency credit programs, the TIFIA program lacks the authority to spend program receipts; all obligor payments are ultimately remitted to the U.S. Treasury.

## 6.2 Establishing a Government Corporation or a Government-Sponsored Enterprise to Administer the Program

A Government corporation is a special entity chartered by Congress to perform business activities typically involving fees for service. The U.S. Treasury holds most or all the corporation's stock or equity. Analogous to a state or local public authority, each corporation is established under specific authorizing legislation with provisions that may vary considerably from case to case.[39] A Government corporation usually is capitalized via a Federal appropriation. A single administrator heads some Government corporations, and others have federally appointed boards of directors.

Government corporations must submit annual budgets to Congress, but some have their own borrowing, receipts and spending authority, making them largely independent of the Federal appropriations process. All Federal credit programs, however, must follow the budgeting provisions of the FCRA. Examples of the wide range of credit-related organizations treated as Government corporations and subject to FCRA budgeting are the Commodity Credit Corporation (agricultural product loans), the Government National Mortgage Association (residential mortgages), and the Export-Import Bank (trade finance).

In the context of TIFIA's infrastructure assistance program, a Government corporation could use Federal seed capital to fund its direct loan and credit enhancement activities. Thereafter, it could be designed to operate on a self-sustaining basis, using fee income and any additional income to pay its operating expenses and fund subsequent loans and loan guarantees.

A Government sponsored enterprise (GSE) is generally a for-profit, shareholder-owned financial institution established under Federal charter, with nationwide lending authority. Even though they are independent private entities, GSEs enjoy special Federal status. They have federally-appointed representation on their boards of directors, are exempt from state and local income taxes and from securities laws administered by the Securities and Exchange Commission, and often have access to a backstop line of credit from the U.S. Treasury. They also are subject to varying degrees of Federal regulation. Because of these factors, they are perceived to benefit from an implied Federal guarantee, which facilitates their issuance of debt securities in the capital markets. Examples of GSEs are Fannie Mae and Freddie Mac (housing loans), the Farm Credit System (agricultural loans), and Sallie Mae (student loans).[40]

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[39] See. Government Corporations: Profiles of Existing Government Corporations, The General Accounting Office, December 1995.

[40] See Report of The Secretary of the Treasury on Government-Sponsored Enterprises, April 1991.

To offer TIFIA assistance through a new GSE, Congress would charter a new corporate entity to be capitalized principally by private investors. The new TIFIA GSE would seek to maximize shareholder value, consistent with its organizational charter of providing credit assistance to infrastructure projects.

Federal control over the GSE's credit activities would rest primarily through the terms of the charter. Although there would be no FCRA-mandated budget cost associated with a GSE, an implicit Federal guarantee could create credit risk to the extent the GSE pursued aggressive lending activities while maintaining inadequate reserves. And while an implicit guarantee might confer a market advantage through lower borrowing costs, those rates would still be higher than the yield on comparable U.S. Treasury securities and thus more expensive to borrowers than the current TIFIA program rates.

## 6.3 Phasing out the Program and Relying on the Capital Markets

To phase out the TIFIA program would be to acknowledge that its policy objectives have been either achieved or eclipsed by other considerations. If achieved, financially feasible transportation projects would no longer require a "patient investor" to gain access to the capital markets. Reliance on the market to finance these large and complex projects would eliminate additional Federal spending and liability as well as reduce Federal involvement in this area.

As described in Chapter Four, the TIFIA program especially benefits a niche of project financings: the user-backed start-up project lacking prior market access, where investors must absorb construction risk, performance risk and demand risk. For these projects, which under the best of circumstances would achieve a senior debt rating no better than the lowest investment grade category, the TIFIA program seems to be filling a market gap by offering attractively-priced subordinate and supplemental capital. The DOT believes there is meaningful ongoing demand from a select group of project sponsors for the types of credit assistance that the TIFIA program offers.

This assistance exists within the context of a substantial gap between the nation's need for capital investment in transportation and the level of funding available. For those major transportation projects that can leverage future revenues, the TIFIA program provides a consistent and transparent process for sponsors from around the country to obtain Federal credit assistance. In this respect, the program has helped obviate sponsors' pursuit of ad hoc legislation to fund individual projects.

Sunset of the program would eliminate additional Federal spending and liability, but would not necessarily eliminate the 35-year-plus relationships created by the initial TIFIA credit commitments. Unless the DOT could sell such loans to other investors, the job of monitoring these credits and collecting repayments would require an ongoing commitment of organizational resources.

## 6.4 Conclusion

The DOT believes that a limited number of large surface transportation projects each year will have a need for the types of credit instruments offered under TIFIA. Project sponsors and DOT staff are still learning how best to utilize this credit assistance, and Congressional guidance and dialogue during this evolutionary program period offers mutual benefits.

The current form of TIFIA administration – within a Federal agency subject to regular Government Performance and Results Act and budgetary oversight – enables policymakers to monitor program performance as staff, sponsors and the financial markets gain experience. As current TIFIA projects move into their construction, operation and repayment phases, and as additional projects obtain TIFIA assistance, policymakers will have better information on which to determine whether TIFIA should remain within the DOT, "spin off" into a Government corporation or GSE, or phase out entirely and rely on the capital markets to meet the program's objectives.