

### § 80.13

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;

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(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).