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Part V

Department of Transportation

**Office of the Secretary
Federal Highway Administration
Federal Railroad Administration
Federal Transit Administration**

**49 CFR Part 80
Credit Assistance for Surface
Transportation Projects; Final Rule
Applications for TIFIA Credit Assistance;
Notice**

DEPARTMENT OF TRANSPORTATION**Office of the Secretary of Transportation****49 CFR Part 80**

[OST Docket No. OST-2000-7401]

RIN 2105-AC87

Credit Assistance for Surface Transportation Projects**AGENCY:** Office of the Secretary, Department of Transportation (DOT).**ACTION:** Final rule.

SUMMARY: The Department of Transportation (DOT) continues to implement the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), under which the DOT may provide secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The DOT published original implementing regulations for the TIFIA on June 2, 1999. With this rule, the DOT revises certain of these prior regulations, as codified within 49 CFR Part 80, as follows: clarifies that funds will be disbursed based on the project's anticipated financing needs; clarifies that the borrower must obtain ongoing credit surveillance for the life of the TIFIA credit instrument; assigns specific weights to each of the eight statutory selection criteria; specifies that loan servicing fees are to be paid by the borrower; modifies the time period for audited financial statements from 120 days to within no more than 180 days; and provides that administrative offsets will be employed only in cases of fraud, misrepresentation, or criminal acts, and will not be employed as a result of revenue shortfalls.

EFFECTIVE DATE: This final rule is effective August 18, 2000.**FOR FURTHER INFORMATION CONTACT:**

FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366-0673; or Mr. Steven M. Rochlis, Office of the Chief Counsel, (202) 366-1395. *FRA:* Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493-6390; or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493-6051. *FTA:* Mr. Paul Marx, Office of Policy Development, (202) 366-1675; or Ms. Paula Schwach, Office of the Chief Counsel, (816) 523-0204. *OST:* Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366-9649; or Mr. Terence W. Carlson, Office of the General Counsel, (202) 366-9161.

Department of Transportation, 400 Seventh Street, SW, Washington, DC, 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays. Hearing-and speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:**Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets by using the universal resource locator (URL) <http://dms.dot.gov>. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help. An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the **Federal Register's** home page at <http://www.nara.gov/fedreg> and the Government Printing Office's web page at <http://www.access.gpo.gov/nara>.

Additional general information on the TIFIA program and credit assistance for surface transportation projects is available on the TIFIA web site at <http://tifa.fhwa.dot.gov>.

Background

The Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, created the TIFIA. The TIFIA, as amended by section 9007, Public Law 105-206, 112 Stat. 685, 849 and codified at 23 U.S.C. 181-189, authorizes the DOT to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Regulations governing the TIFIA program appear at 49 CFR Part 80 and provide specific guidance on the program requirements. For additional information, the TIFIA Program Guide is available from the TIFIA website (<http://tifa.fhwa.dot.gov>).

The TIFIA authorizes annual levels for both credit assistance (as measured by the principal amounts of the secured loans, guaranteed loans, or lines of credit) and subsidy amounts (i.e., the amounts of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority appropriated from the Highway Trust

Fund, other than the Mass Transit Account. Both funding (budget authority) and credit assistance authority for this program are limited, so projects seeking assistance are evaluated and selected by the DOT on a competitive basis. Following selections, term sheets are issued and credit agreements are developed through negotiations between the project sponsors and the DOT.

Total Federal credit assistance amounts authorized for the TIFIA program are \$1.8 billion in FY 2000; \$2.2 billion in FY 2001; \$2.4 billion in FY 2002; and \$2.6 billion in FY 2003. These amounts lapse if they are not awarded by the end of the fiscal year for which they are provided. To support these credit assistance amounts, the TIFIA provides budget authority to fund the required subsidy amounts of \$90 million in FY 2000; \$110 million in FY 2001; \$120 million in FY 2002; and \$130 million in FY 2003. Of these amounts, the Secretary may use up to \$2 million for each of the fiscal years for administrative expenses. Any budget authority that is not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA-21. For FY 2000, this reduction is 12.9 percent, or \$11.6 million. The credit assistance amounts authorized in the TIFIA are not subject to this annual reduction.

The DOT expects that approximately \$81 million in net budget authority will be available in FY 2000 to fund the TIFIA credit assistance program. This approximation takes into account unused FY 1999 budget authority, the reduction in FY 2000 budget authority due to the annual obligation limitation, and administrative expenses authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2000 may also be affected by credit subsidy

adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2000 is approximately \$1.673 billion, which is less than the \$1.8 billion authorization level as a result of TIFIA contingent commitments made in FY 1999. The size of the annual TIFIA program may be limited by either budget authority or credit assistance authorization, depending on the risk assessments made for individual projects selected for that fiscal year's program.

Credit Instruments

Three types of credit instruments are permitted under the TIFIA: secured (direct) loans, loan guarantees, and lines of credit, as provided for generally at 23 U.S.C. 183 and 184. More specific terms for individual projects will be determined during negotiations between the DOT and successful applicants.

Eligible Projects

Highway, rail, transit, and intermodal projects may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

Threshold Criteria

Certain threshold criteria must be met by projects seeking TIFIA assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Limitations on Assistance

The amount of credit assistance that the DOT may provide to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

Rating Opinions

A project sponsor must submit a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies with its application, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The preliminary rating opinion letter will confirm the potential for the project's senior debt obligations to achieve an investment grade rating and provide an assessment of the default risk on the requested TIFIA credit instrument. Projects selected for TIFIA credit assistance must obtain an investment grade rating on the senior debt obligations and a revised opinion of the default risk on the TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

Application Process

Detailed application information is contained in the TIFIA Program Guide and the TIFIA Application for Federal Credit Assistance, which are posted on the TIFIA web site at <http://tifa.fhwa.dot.gov> or which may be obtained through one of the DOT program contacts listed in this notice. From time to time, the TIFIA Program Guide and Application may be revised. Applicants are encouraged to refer to the TIFIA web site or to TIFIA program contacts for information regarding recent program clarifications.

Fees

The DOT requires payment of a non-refundable fee with each credit assistance application under the TIFIA. For FY 2000, the DOT will assess an application fee of \$5,000 for each project applying for credit assistance; however, there will be no additional credit processing fee for FY 2000. For fiscal years 2001 and beyond, the DOT may adjust the amount of the application fee and will determine the appropriate amount of any potential credit processing fee or any other fee based on program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

NPRM

The DOT published a notice of proposed rulemaking (NPRM) on May 30, 2000, in the **Federal Register** (65 FR 34428). Comments were filed by the Florida Department of Transportation, Scully Capital Services Inc., and the Washington State Department of Transportation. The DOT is now issuing this final rule concerning administration of the TIFIA credit assistance program. This rule reflects the DOT's consideration of the comments filed in response to the NPRM.

Discussion of Rulemaking Text

The following discussion summarizes the comments submitted to the DOT by the three commenters on the NPRM, notes where and why changes have been made to the rule, and, where relevant, states why particular recommendations or suggestions have not been incorporated into the following regulations.

Discussion of Comments and Responses by Section

Section 80.5 Limitations on Assistance

Section 80.5(g). One of the commenters voiced concern about the DOT's intent to establish the timing of loan disbursements in the credit

agreement. The commenter indicated its supposition that the motivation for the language appearing in Section 80.5(g) was to preclude cash advances to project sponsors that would subsequently bank and earn interest on the funds. The commenter suggested that the section be modified to allow for changes to project schedules after execution of the credit agreement. Further, the commenter recommended that it may be more appropriate for the credit agreement to include a tentative funding schedule, a set of conditions necessary to modify the schedule, and a review process for parties to approve modifications to the credit agreement.

DOT Response: The commenter's characterization of the primary intent of section 80.5(g)—namely, to prevent circumstances in which a sponsor would request that the DOT advance all cash up front, irrespective of the project's actual funding requirements, so that the sponsor could bank the proceeds—is accurate. To this end, the DOT drafted Section 80.5 to specify that the credit agreement shall indicate scheduled disbursements that align with the project's actual needs. Nothing in the proposed language states or implies that the schedule of disbursements appearing in the credit agreement is permanently fixed, and in practice, the DOT will implement the section much as the commenter has suggested. To underscore the flexibility necessary to respond to a particular project's funding requirements, the DOT has modified the language in this section.

Section 80.11 Investment-Grade Ratings

Section 80.11(a). One commenter stated that the DOT should not rely on a senior debt rating (as an indicator of the TIFIA instrument's credit quality) if that rating is based on a revenue source that is unrelated to or of a materially different credit quality from the revenue source that will repay the TIFIA instrument. The commenter suggested that the rule clarify whether the senior debt rating is related to (*i.e.*, based on) the source of funds that will repay the TIFIA instrument.

DOT Response: The DOT agrees with the commenter's point that an investment-grade rating on a project's senior obligations is not a meaningful indicator of a TIFIA obligation's creditworthiness if the two sets of obligations are backed by different sources of repayment. The DOT believes that the proposed language, which defines senior obligations as those which have "a lien senior to that of the TIFIA credit instrument on the pledged security," underscores this point, and

the DOT will interpret the language appearing in section 80.11(a) as such.

Section 80.11(b). Three commenters voiced concern regarding the DOT's proposal to require project sponsors to provide the DOT with an investment-grade rating not only prior to the execution and initial funding of a credit agreement but also prior to each subsequent draw on the credit instrument.

DOT Response: Upon review of statutory language appearing in the TIFIA and comments to the NPRM, the DOT concurs with the comments. Accordingly, relevant language proposed under the NPRM has been dropped, and section 80.11(b) of 49 CFR remains unchanged.

Section 80.11(d). Two commenters responded to section 80.11(d) but offered differing views. One commenter linked its approval for this section to its objection to the proposed Section 80.11(b), stating that ongoing credit surveillance would obviate the need for a project sponsor to provide a new investment grade rating prior to each disbursement of funds. This commenter also stated that project sponsors are prepared to fund on-going surveillance on an annual basis, described the practice as normal and customary, and indicated that this action would cost significantly less than updating the debt rating prior to each loan disbursement. In contrast, another commenter stated that rating agencies already monitor the creditworthiness of the issues they rate on an ongoing basis and of their own accord. In this commenter's opinion, the DOT's requirement for project sponsors to pay for this service throughout the life of a TIFIA credit agreement was unnecessary.

DOT Response: The commenters appear to have differing views on what services rating agencies provide on a fee basis. It is not the DOT's role to advise project sponsors what services ought or ought not be provided by rating agencies and at what cost. Rather, section 80.11(d) is intended to make two points: First, that recipients of TIFIA credit assistance must furnish information deriving from ongoing credit surveillance of all debt obligations (including the TIFIA instrument) throughout the life of the TIFIA instrument; and second, that this information is to be provided by the project sponsor at no cost to the Federal Government. To underscore these points and avoid any implications regarding the costs of credit surveillance services, the DOT has modified this section as follows: "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."

Section 80.15 Selection Criteria

Section 80.15. Two commenters addressed the DOT's proposed weighting of project selection criteria. Both commenters specifically suggested that the DOT reduce the proposed weight of 20 percent for the criterion concerning the extent to which the project helps maintain or protect the environment.

One commenter expressed concern that the proposed weighting of the environmental criterion unfairly favors projects that are environmental in nature, and therefore alters the ultimate purpose and goals of the TIFIA program. This commenter also drew a parallel between the criteria related to creditworthiness and environmental impacts, noting that the DOT proposed a weighting of 12.5 percent for creditworthiness given that obligations of TIFIA credit assistance are conditioned on a preliminary rating opinion letter, and that similarly, the DOT should set a lower weight for the environmental criterion given that obligations are also to be conditioned on projects having received an environmental Categorical Exclusion, Finding of No Significant Impact, or Record of Decision.

The other commenter suggested that weightings be dropped altogether, or alternatively, that the weights assigned to both creditworthiness and the use of new technologies (such as intelligent transportation systems) be elevated.

DOT Response: The DOT disagrees with the commenters and believes that the proposed weights properly reflect the program's goals, will maximize the effectiveness of the program's credit assistance, and are consistent with the DOT's overall strategic and performance goals. In special regard to the comparison between creditworthiness and environmental benefits, the DOT believes that the parallel drawn by the first commenter is not accurate. While the DOT is highly concerned with a project's capacity to repay the TIFIA instrument, the Department also recognizes that a project with very high creditworthiness is probably one that could advance without any credit

assistance whatsoever, and thus might not represent the best use of limited TIFIA funds. In contrast, projects with very high environmental benefits, balanced with other attributes, almost always represent a desirable Federal investment. The system of weights appearing in this rule affirms the DOT's view that the evaluation process should and will support projects that maintain or improve the environment.

Section 80.19 Reporting Requirements

Section 80.19. One commenter suggested that the 180-day financial reporting period is unusually long for commercial practice and renders the statement six months from the period to which it pertains.

DOT Response: While eager to gather financial information that is as current as possible, the DOT recognizes that 180 days is the reporting period recommended by the Government Finance Officers Association. To balance the desire for timely information with a recognition that some governmental borrowers have had difficulty meeting the 120-day reporting period, the DOT has modified the language in this rule to state that audited financial statements must be furnished to the DOT within no more than 180 days.

Section 80.21 Use of Administrative Offset

Section 80.21. One commenter approved the proposed clarification that administrative offsets will be employed only in cases of fraud, misrepresentation, false claims, or similar criminal acts or acts of malfeasance and wrongdoing, and will not be employed as a result of revenue shortfalls.

General Comments

One commenter requested clarification as to whether this rule applies to the applications solicited under the Notice of Funds Availability (NOFA) published in the **Federal Register** on May 10, 2000 (Vol. 65, No. 91).

DOT Response: As stated explicitly in the NOFA, "the Final Rule as published in the **Federal Register** on June 2, 1999 remains applicable to this notice [published May 10, 2000]." The DOT re-emphasizes that the modifications to the rule will apply only to future application cycles occurring after the effective date of this rule.

Executive Order 12866 (Regulatory Planning And Review) and DOT Regulatory Policies and Procedures

The DOT has determined that issuance of a rule is necessary to implement the TIFIA, and has concluded that this action does not represent a "significant regulatory action" within the meaning of DOT's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) and Executive Order 12866.

This regulation would affect only those entities that voluntarily elect to apply for TIFIA assistance and are selected to receive assistance through a Federal credit instrument. It would not impose any direct involuntary costs on non-participants.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Public Law 96-354, 5 U.S.C. 601-612) requires an assessment of the extent to which proposed rules will have an impact on small business or other small entities. Consistent with the Regulatory Flexibility Act, the DOT has evaluated the effects of this rule on small business or other small entities. The DOT hereby certifies that this action would not have significant economic impact on a substantial number of small entities because this rule simply clarifies or makes minor modifications to the TIFIA credit assistance program.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Public Law 104-4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Rather, this rule clarifies certain provisions of a Federal credit assistance program.

Executive Order 12372 (Intergovernmental Review)

Given that projects receiving assistance under the TIFIA may fall under the programmatic jurisdiction of the Federal Highway Administration, the Federal Railroad Administration, or the Federal Transit Administration, the relevant Catalog of Federal Domestic Assistance Program Numbers are: 20.205 highway planning and construction; 20.310 rail rehabilitation

and improvement; and 20.500 transit capital improvement grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

As specified under section 1503 of the TIFIA, and codified under section 182(c)(2) of title 23, U.S.C., each project obtaining assistance under this program is required to adhere to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*). This rulemaking simply proposes to clarify the procedures to apply for credit assistance and therefore, by itself, will not have any effect on the quality of the environment.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have substantial direct effect or sufficient federalism implications on States that would limit the policy-making discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The DOT has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern any environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and

Interference with Constitutionally Protected Property Rights.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document may be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 80

Credit programs—transportation, Highways and roads, Mass transit, Railroads, Investments, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, the Office of the Secretary of Transportation amends 49 CFR part 80 as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

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.

2. Amend § 80.3 by adding the definition "administrative offset" and by placing it in alphabetical order to read as follows:

§ 80.3 Definitions.

* * * * *

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.

* * * * *

3. Add § 80.5(g) to read as follows:

§ 80.5 Limitations on assistance.

* * * * *

(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.

4. In § 80.11 revise paragraph (a) and add paragraph (d) to read as follows:

§ 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.

* * * * *

(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.

* * * * *

5. Amend § 80.15 by revising paragraph (a) set forth below; by removing paragraphs (c) and (d); and by redesignating paragraph (e) as paragraph (c).

§ 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).

* * * * *

6. Revise § 80.17 to read as follows:

§ 80.17 Fees.

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

(b) Applicants shall not include application initiation or credit processing fees or any other expenses associated with the application process (such as fees associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

(c) If, in any given year, there is insufficient budget authority to fund the credit instrument for a qualified project that has been selected to receive assistance under TIFIA, the DOT and the approved applicant may agree upon

a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of the term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount referenced in § 80.5(a).

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

7. Revise § 80.19 to read as follows:

§ 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.

8. Add § 80.21 to read as follows:

§ 80.21 Use of administrative offset.

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

Issued this 14th day of July, 2000 at Washington, D.C.

Rodney E. Slater,

Secretary of Transportation.

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