

# Build America Bureau Programs Guide

## Endnotes

1. Note that Title 45 of the United States Code is not positive law and citations thereto are used solely for ease of reference. For direct statutory references, please refer to the Railroad Revitalization and Regulatory Reform Act of 1976, as amended by FAST Act §§ 11601–11611.
2. Under the TIFIA Program, the capital reserve is referred to as the “credit subsidy” and under the RRIF Program it is referred to as the “credit risk premium.”
3. 2 U.S.C. §661c(b).
4. FAST Act, Pub. L. No. 114-94, §1101(a)(2), (129 Stat. 1322) (2015).
5. SAFETEA-LU, Pub. L. No. 109-59, §9003(d)(1), (119 Stat. 1921) (2005), codified at 45 U.S.C. §822(d).
6. FAST Act, Pub. L. No. 114-94, §9002(a), (129 Stat. 1618) (2015), codified at 49 U.S.C. §117.
7. 23 U.S.C. §601(a)(6) and 45 U.S.C. §823(a).
8. To be eligible for TIFIA credit assistance, the applicant must demonstrate: (a) that it satisfies (or will have satisfied at the time of obligation of Federal credit assistance) all applicable Federal requirements, including all National Environmental Policy Act requirements, and (b) a reasonable expectation that the contracting process for construction of the project can commence no later than 90 days after the date on which the TIFIA credit assistance is obligated. Note that the readiness requirement for TIFIA loans to capitalize rural projects funds is different than that for traditional construction projects. (See 23 U.S.C. §602(a)(10) for readiness requirements and §602(c) for Federal requirements.)
9. For TIFIA projects, the preliminary rating opinion letter must indicate that the senior obligations of the project have the potential to achieve an investment-grade rating and must include a preliminary rating opinion on the TIFIA credit instrument. 23 U.S.C. §602(b)(3).
10. 23 U.S.C. §605(f).
11. Consolidated Appropriations Act, 2016, Division L, §152, Pub. L. 114-113, December 18, 2015, 129 Stat. 2242, 2856 (2015).
12. Consolidated Appropriations Act, 2016, Division L, §146, Pub. L. 114-113, December 18, 2015, 129 Stat. 2242, 2853 (2015).
13. 23 U.S.C. §602(d)(1) and 45 U.S.C. §822(i)(1).
14. 23 U.S.C. §602(d)(2) and 45 U.S.C. §822(i)(3).
15. 23 U.S.C. §§603(a), (e)(2), 604(a)(2) and 45 U.S.C. §822(b).
16. Note that standby lines of credit are only available under the TIFIA Program and are not available under the RRIF Program.
17. 23 U.S.C. §§603(b)(5), (e)(2) and 604(c)(2)(B) and 45 U.S.C. §822(g)(1). Note that for TIFIA loans to capitalize rural projects funds within a state infrastructure bank (SIB), the maximum maturity for the secured loan is 35 years after the date on which the TIFIA secured loan is obligated (23 U.S.C. §603(b)(5)(B)).
18. 23 U.S.C. §603(c)(2), (c)(3), (e)(2), and 45 U.S.C. §822(j)(1). For TIFIA standby lines of credit, repayment can commence up to 15 years after substantial completion (23 U.S.C. §604(c)(2)(A)).

19. 23 U.S.C. §§603(b)(6), (e)(2), 604(b)(8), and 45 U.S.C. §822(l)(1). However, the TIFIA and RRIF nonsubordination requirements may be waived if certain specified conditions are satisfied: (i) the borrower is a public agency; (ii) the credit instrument receives a rating within the A category or higher from at least one Credit Rating Agency for RRIF credit instruments and at least two Credit Rating Agencies for TIFIA credit instruments; (iii) the credit instrument is secured and payable from pledged revenues that are not affected by project performance, such as a tax-backed revenue pledge or a system pledge; and (iv) the percentage of eligible project costs being financed by Bureau credit assistance is 33 percent or less for TIFIA credit assistance and 50 percent or less for RRIF credit assistance. However, in such cases for (x) TIFIA credit assistance, the maximum credit subsidy to be paid by the Federal Government may not be more than 10 percent of the principal amount of the TIFIA credit assistance, and the obligor is responsible to pay any remaining subsidy cost, and (y) for RRIF credit assistance, the DOT may impose limitations on the waiver of nonsubordination requirements if it determines that such limitations would be in the financial interest of the Federal Government. 23 U.S.C. §§603(b)(6)(B) and 604(b)(8)(B), and 45 U.S.C. §822(l)(2)(A).
20. 23 U.S.C. §§603(b)(2) and 604(b)(2).
21. 23 U.S.C. §602(a)(2)(A).
22. 23 U.S.C. §602(a)(2)(B).
23. 23 U.S.C. §602(a)(2)(A)(iv) and (a)(2)(B).
24. 45 U.S.C. §822(f)(4) and 49 C.F.R. §260.15(c).
25. 45 U.S.C. §822(h)(1).
26. Note that the TIFIA statute defines direct loans as “secured loans” and the RRIF statute uses the term “direct loans.” For ease of reference in this Program Guide, we use the term “direct loans.” (See 23 U.S.C. §601(a)(17) and 45 U.S.C. §821(3).)
27. 23 U.S.C. §603(a)(1).
28. 23 U.S.C. §603(a)(2).
29. 45 U.S.C. §822(b)(1).
30. 45 U.S.C. §822(d). In addition, credit assistance for RRIF TOD Projects is limited to 75 percent of total project costs.
31. 23 U.S.C. §603(b)(2)(A). Note that the maximum amount is limited to 33 percent where the nonsubordination requirement is waived, as described in footnote 17 above. Note also that the principal amount of a TIFIA direct loan to capitalize a rural projects fund within a SIB may not exceed \$100 million.
32. 23 U.S.C. §603(b)(2).
33. 23 U.S.C. §603(b)(4)(A).
34. 45 U.S.C. §822(e) and 49 C.F.R. §260.9.
35. 23 U.S.C. §603(b)(4)(B)(i).
36. 23 U.S.C. §603(b)(4)(B)(ii).
37. 23 U.S.C. §608(a)(3)(A).
38. 23 U.S.C. §603(b)(4)(B)(ii).
39. 23 U.S.C. §608(a)(3)(B).

40. 23 U.S.C. §§601(a)(8) and 603(b)(4)(C). In addition, a limited buydown is available in the event a borrower has entered into a master credit agreement and the interest rate has increased between the date on which the master credit agreement was executed and the date on which an underlying TIFIA direct loan is entered into in connection with such master credit agreement.
41. 23 U.S.C. §603(a)(1) and 45 U.S.C. §822(b)(1) and (2).
42. 45 U.S.C. §822(f)(4) and 49 C.F.R. §260.15(c).
43. 23 U.S.C. §603(b)(5) and 45 U.S.C. §822(g)(1).
44. 23 U.S.C. §603(b)(5)(B).
45. 23 U.S.C. §603(c)(2) and 45 U.S.C. §822(j)(1).
46. 23 U.S.C. §603(c)(1) and 45 U.S.C. §822(j)(1).
47. 23 U.S.C. §603(c)(3) and 45 U.S.C. §822(j)(3).
48. 23 U.S.C. §603(c)(4) and 45 U.S.C. §822(j)(4).
49. 23 U.S.C. §603(b)(6) and 45 U.S.C. §822(l).
50. 23 U.S.C. §603(b)(6)(B) and 45 U.S.C. §822(l)(2).
51. 23 U.S.C. §601(a)(5) and 45 U.S.C. §821(7).
52. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013) at Section II.B (pp. 4-5) and 49 C.F.R. §80.15(c).
53. 23 U.S.C. §603(a)(1) and (e)(2).
54. 23 U.S.C. §603(a)(2) and (e)(2).
55. 45 U.S.C. §822(b)(1).
56. 45 U.S.C. §822(d). In addition, credit assistance for RRIF TOD Projects is limited to 75 percent of total project costs.
57. 49 C.F.R. §260.51(a).
58. 23 U.S.C. §603(b)(2) and (e)(2).
59. 23 U.S.C. §603(e)(2) and 45 U.S.C. §822(e)(2).
60. 26 U.S.C. §149(b).
61. 23 U.S.C. §603(b)(5) and (e)(2); 45 U.S.C. §822(g)(1).
62. 23 U.S.C. §603(c)(2) and (e)(2); 45 U.S.C. §822(j)(1).
63. See 23 U.S.C. §603(e)(2). The RRIF Program will apply a similar requirement for prepayment arrangements to be satisfactory to the DOT.
64. 23 U.S.C. §601(a)(9) and 45 U.S.C. §823(g).
65. 23 U.S.C. §603(b)(6) and (e)(2); 45 U.S.C. §822(l).
66. 23 U.S.C. §603(b)(6)(B) and 45 U.S.C. §822(l)(2).
67. 23 U.S.C. §604(a)(1) and (b)(6).
68. 23 U.S.C. §604(a)(1) and (b)(1).
69. 23 U.S.C. §604(a)(2).
70. 23 U.S.C. §604(b)(2).
71. 23 U.S.C. §604(b)(10).
72. 23 U.S.C. §604(b)(3)(B).
73. 23 U.S.C. §604(b)(6).
74. 23 U.S.C. §604(b)(4).

- 75. 23 U.S.C. §604(c)(2)(B).
- 76. 23 U.S.C. §604(c)(2).
- 77. 23 U.S.C. §604(c)(1).
- 78. 23 U.S.C. §604(a)(4).
- 79. 23 U.S.C. §604(b)(8)(A).
- 80. 23 U.S.C. §604(b)(8)(B).
- 81. In addition, a TIFIA master credit agreement can be utilized for a single project where current-year funds have been fully obligated to other projects and the project sponsor elects to wait until the fiscal year when additional funds are available for TIFIA credit assistance. (23 U.S.C. §602(b)(2)(B))
- 82. 23 U.S.C. §603(c)(2) and (e)(2); 45 U.S.C. §822(j). Debt service payments on TIFIA direct loans issued under a TIFIA line of credit can be deferred for up to fifteen years after substantial completion. 23 U.S.C. §604(c)(2)(A).
- 83. 45 U.S.C. §822(h)(1)(C).
- 84. As noted above, under the TIFIA Program, the capital reserve is referred to as the “credit subsidy” and under the RRIF Program it is referred to as the “credit risk premium.”
- 85. 2 U.S.C. §661c(b).
- 86. FAST Act, Pub. L. No. 114-94, §1101(a)(2), (129 Stat. 1322) (2015).
- 87. 23 U.S.C. §608(a)(4).
- 88. 23 U.S.C. §608(a)(5).
- 89. 23 U.S.C. §605(b).
- 90. 23 U.S.C. §608(a)(4).
- 91. 45 U.S.C. §822(d).
- 92. However, note that for RRIF direct loans for transit oriented development projects, the DOT will require the borrower to provide a non-Federal match of not less than 25% of the eligible project costs. (45 U.S.C. §822(h)(4))
- 93. 45 U.S.C. §822(f)(3). Note that if the total amount of the RRIF direct loan or loan guarantee is greater than \$75 million, the applicant must provide an investment grade rating on the RRIF credit instrument from at least two Credit Rating Agencies for the DOT to incorporate such ratings into its calculation of the CRP (45 U.S.C. §822(f)(3)(C)).
- 94. 45 U.S.C. §822(f)(4) and 49 C.F.R. §260.15(c).
- 95. 23 U.S.C. §601(a)(12)(A).
- 96. 23 U.S.C. §601(a)(12)(B).
- 97. 23 U.S.C. §601(a)(12)(A); see also 49 U.S.C. §5302(3) for a list of capital projects, including the installation of positive train control, that are eligible for Federal funding under Chapter 53.
- 98. 23 U.S.C. §601(a)(12)(C).
- 99. 23 U.S.C. §601(a)(12)(C).
- 100. 23 U.S.C. §601(a)(12)(D)(i).
- 101. 23 U.S.C. §601(a)(12)(D)(i)(V).
- 102. 23 U.S.C. §601(a)(12)(D)(iii).
- 103. 23 U.S.C. §601(a)(12)(D)(iv).

104. As defined in Section 2-2 herein to refer to both rural infrastructure projects and projects to capitalize rural projects funds within SIBs.
105. 23 U.S.C. §601(a)(15).
106. 23 U.S.C. §601(a)(12)(F) and (a)(16).
107. 23 U.S.C. §610(d)(4).
108. 23 U.S.C. §610(e)(1)(B).
109. 23 U.S.C. §603(b)(2)(B). Note that a TIFIA direct loan can capitalize 100% of a SIB's rural projects fund; the size limitations that apply to other TIFIA direct loans (49% of eligible project costs and 80% total Federal assistance) are applied to SIB capitalization loans through 23 U.S.C. §610(e)(3)(B).
110. 23 U.S.C. §603(b)(5)(B).
111. Note that certain of these requirements differ for loans made from the SIB's other accounts (i.e., the highway, transit, or rail account). For a list of the specific requirements applicable to all SIB loans, see 23 U.S.C. §610.
112. 23 U.S.C. §610(e)(3)(B).
113. 23 U.S.C. §610(g)(4).
114. 23 U.S.C. §610(g)(5).
115. 23 U.S.C. §610(g)(6).
116. 23 U.S.C. §§603(b)(4)(B) and 608(a)(3)(A).
117. 23 U.S.C. §603(b)(4)(B)(ii).
118. 23 U.S.C. §608(a)(3)(B).
119. 23 U.S.C. §601(a)(12)(E).
120. This list specifically applies to capital projects eligible under 49 U.S.C. §5302(3)(G) and is meant for demonstrative purposes only with respect to other TOD projects. An analysis of eligibility will be required in all cases and will be based on the specific facts and circumstances of the project, including environmental approvals.
121. 23 U.S.C. §§603(a)(1)(A), 603(e)(1) and 604(a)(2).
122. 23 U.S.C. §602(a)(5).
123. 23 U.S.C. §§603(b)(2), 603(e)(2) and 604(b)(2).
124. 23 U.S.C. §601(a)(2)(A).
125. 23 U.S.C. §601(a)(2)(B).
126. 23 U.S.C. §601(a)(2)(C).
127. 23 U.S.C. §601(a)(2)(D).
128. 49 C.F.R. §§80.5(b) and 80.17(b).
129. 49 C.F.R. §80.5(a).
130. 42 U.S.C. §4601 et seq.
131. 49 C.F.R. §80.5(b).
132. 45 U.S.C. §822(b)(1)(A).
133. 45 U.S.C. §822(b)(1)(C).
134. 45 U.S.C. §822(b)(1)(D).
135. 45 U.S.C. §822(b)(1)(B).
136. 45 U.S.C. §822(b)(1)(E).

- 137. 45 U.S.C. §822(b)(1)(E).
- 138. 45 U.S.C. §822(b)(3).
- 139. See Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program, 75 Fed. Reg. 60165 (September 29, 2010).
- 140. 42 U.S.C. §4321 et seq.
- 141. 23 U.S.C. §602(c)(2).
- 142. 49 U.S.C. §5323(j).
- 143. 42 U.S.C. §4601 et seq.
- 144. 42 U.S.C. §2000d et seq.
- 145. 45 U.S.C. §822(h)(3)(A).
- 146. 45 U.S.C. §822(h)(3)(B).
- 147. 49 C.F.R. §260.39.
- 148. See 23 U.S.C. §602(a)(4).
- 149. 23 U.S.C. §602(c).
- 150. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013).
- 151. 23 U.S.C. §602(a)(1)(A), (a)(8).
- 152. 23 U.S.C. §602(a)(10).
- 153. 45 U.S.C. §822(a).
- 154. 49 U.S.C. §24101 note.
- 155. Note that the FAST Act added a definition for the term “railroad” as used in the RRIF statute. Pursuant to such amendment by the FAST Act, the term “railroad” as used in the RRIF statute has the meaning given the term “railroad carrier” in 40 U.S.C. §20102.
- 156. The list of Eligible Applicants can be found at 45 U.S.C. §822(a), items (1) – (4) and (6).
- 157. 23 U.S.C. §602(a)(5)(A).
- 158. 23 U.S.C. §602(a)(5)(B)(i).
- 159. See Section 3-1 for the definition of TIFIA TOD Projects.
- 160. 23 U.S.C. §602(a)(5)(B)(ii) and (iv).
- 161. 23 U.S.C. §602(a)(5)(B)(iv).
- 162. As defined in Section 2-2, Rural Projects include rural infrastructure projects and projects to capitalize rural projects funds within SIBs.
- 163. 23 U.S.C. §602(a)(5)(B)(iii).
- 164. 23 U.S.C. §601(a)(12)(D)(iv).
- 165. 23 U.S.C. §§603(b)(2) and 604(b)(2). As noted in Section 2-2 above, TIFIA secured loans provided to date have only covered up to 33 percent of reasonably anticipated eligible project costs. Applicants requesting assistance in excess of this amount must provide a rationale for such additional assistance.
- 166. 49 C.F.R. §80.5(a).
- 167. 45 U.S.C. §822(h)(4).
- 168. 23 U.S.C. §§602(a)(6), 603(b)(3)(A)(i), and 604(b)(5)(A)(i).
- 169. 23 U.S.C. §603(b)(3)(A)(i)(V).

- 170. 23 U.S.C. §602(a)(2).
- 171. 45 U.S.C. §822(h)(2) and (f)(2)(A) and (f)(3).
- 172. 45 U.S.C. §822(g)(4).
- 173. 23 U.S.C. §602(a)(10).
- 174. 23 U.S.C. §602(a)(9)(A).
- 175. 23 U.S.C. §602(a)(9)(B).
- 176. 23 U.S.C. §602(a)(9)(C).
- 177. 45 U.S.C. §822(c).
- 178. Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program, 75 Fed. Reg. 60165 (September 29, 2010).
- 179. 23 U.S.C. §602(a)(3).
- 180. 49 C.F.R. §80.13(a)(1).
- 181. 49 C.F.R. §§80.7(b)(1) and 80.13(a)(1).
- 182. 23 U.S.C. §602(a)(3).
- 183. 49 C.F.R. §§80.7(b)(1) and 80.13(a)(1).
- 184. 45 U.S.C. §822(g)(2).
- 185. 45 U.S.C. §822(g)(3).
- 186. 45 U.S.C. §822(f)(3). Note that if the total amount of the RRIF direct loan or loan guarantee is greater than \$75 million, the applicant must provide an investment grade rating on the RRIF credit instrument from at least two Credit Rating Agencies for the DOT to incorporate such ratings into its calculation of the CRP (45 U.S.C. §822(f)(3)(C)).
- 187. According 23 U.S.C. §601(a)(14), “the term ‘rating agency’ means a credit rating agency identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization (as that term is defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).” The complete list of nationally recognized statistical rating organizations can be found at <http://www.sec.gov/answers/nrsro.htm>.
- 188. 23 U.S.C. §602(b)(3).
- 189. 23 U.S.C. §602(b)(3).
- 190. 23 U.S.C. §602(a)(2)(A).
- 191. 23 U.S.C. §603(b)(2).
- 192. 23 U.S.C. §602(a)(2)(B).
- 193. Note that the DOT can work to accommodate, on a case-by-case basis, situations where ratings are not able to be provided two weeks prior to closing for structural or procedural reasons.
- 194. 23 U.S.C. §603(b)(2).
- 195. Note that because the RRIF Program does not currently have an appropriation, this capital allocation must be borne by the RRIF applicant, or another non-federal entity on behalf of the applicant, through the payment of the credit risk premium.
- 196. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-11, Preparation, Submission, and Execution of the Budget (2012).
- 197. 49 C.F.R. §80.11(d).
- 198. 49 C.F.R. §80.11(d).

199. 49 C.F.R. §80.11(c).
200. Note: A decision by the DOT to not enter into an emerging projects agreement with a project sponsor does not disqualify a project from ultimately receiving credit assistance from a Credit Program through the traditional application process, as described in more detail in this Program Guide.
201. See Chapter 3 for additional information regarding Credit Program eligibility criteria.
202. However, as described in Section 4-1 below, the TIFIA Program may establish a date by which Letters of Interest for Rural Projects should be submitted. The date for these submissions will be provided on the Bureau website.
203. For Letter of Interest and Application contents, see 23 U.S.C. §601(a)(6) and 49 C.F.R. §260.23-260.27, and for the streamlined application process, see 23 U.S.C. §603(f).
204. As defined in Section 2-2 herein to refer to both rural infrastructure projects and projects to capitalize rural projects funds within SIBs.
205. As noted above, 23 U.S.C. §608(a)(3)(A) limits TIFIA budget authority available for Rural Projects receiving the reduced interest rate to not more than 10 percent of the total TIFIA budget authority in any fiscal year. In addition, the TIFIA Program must make funds set aside for Rural Projects available to projects not receiving the reduced interest rate after June 1 of each fiscal year pursuant to 23 U.S.C. §608(a)(3)(B).
206. Note that, for RRIF projects, the Advisors' Fees Upfront Payment may be higher depending on the nature and complexity of the project. Project sponsors should consult with the Bureau to confirm the applicable amount of the Advisors' Fees Upfront Payment.
207. 23 U.S.C. §602(a)(1)(A), (a)(8). While the RRIF statute does not contain parallel language to the forgoing sections of the TIFIA statute, the DOT will consider requests for a similar process for RRIF projects being procured as public-private partnerships on a case-by-case basis.
208. 23 U.S.C. §601(a)(6)(A) and 49 C.F.R. §260.23(e).
209. 23 U.S.C. §601(a)(6)(B) and 49 C.F.R. §§260.23(f) and 260.25(b).
210. See 23 U.S.C. §601(a)(15).
211. As required under the TIFIA statute (23 U.S.C. §602(a)(3)) and as a priority consideration under the RRIF statute (45 U.S.C. §822(c)(5)).
212. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013).
213. 23 U.S.C. §602(d)(1) and 45 U.S.C. §822(i)(1) and (2).
214. 23 U.S.C. §602(d)(2) and 45 U.S.C. §822(i)(3). Note that for RRIF applications, this notice is provided within 60 days after a notice that the application is complete has been provided pursuant to 45 U.S.C. §822(i)(1), i.e., under the RRIF statute, the 60-day timeline is not triggered by a notice of an incomplete application, whereas under the TIFIA statute, the 60-day timeline is triggered by a notice of an incomplete application.
215. For Rural Projects, eligible project costs must be reasonably anticipated to total at least \$10 million but not exceed \$100 million (23 U.S.C. §602(a)(5)(B)(iii)). See Section 3-5 for more information about project cost threshold requirements.
216. As required under the TIFIA statute (23 U.S.C. §602(a)(3)) and as a priority consideration under the RRIF statute (45 U.S.C. §822(c)(5)).



217. The current RRIF application form requests one original, compiled copy and four (4) hard copies. The current TIFIA application form requests two (2) original, compiled copies and three (3) hard copies of just the application form, without attachments. As noted above, both application forms will be updated to reflect changes made to the TIFIA and RRIF Programs by the FAST Act and to develop one consolidated application form that can be used for TIFIA, RRIF, or joint credit assistance. Pending publication of the updated forms, applicants should continue to submit the number of original and hard copies of the application forms that are noted in the applicable form.
218. See 23 U.S.C. §§603(b)(7), (e)(2), 604(b)(9), and 605(b), and 45 U.S.C. §823(l)(1).
219. 49 C.F.R. §80.17(b). While the RRIF statute and regulations do not contain parallel language to the forgoing sections of the TIFIA statute, the DOT will apply the same principle to these charges in respect of RRIF applications, consistent with 2 C.F.R. Part 200, Subpart E.
220. Note that, for RRIF projects, the Advisors' Fees Upfront Payment may be higher depending on the nature and complexity of the project. Project sponsors should consult with the Bureau to confirm the applicable amount of the Advisors' Fees Upfront Payment.
221. 23 U.S.C. §605(f).
222. Consolidated Appropriations Act, 2016, Division L, §152, Pub. L. 114-113, December 18, 2015, 129 Stat. 2242, 2856 (2015).
223. Consolidated Appropriations Act, 2016, Division L, §146, Pub. L. 114-113, December 18, 2015, 129 Stat. 2242, 2853 (2015).
224. Note that, for RRIF projects, the Advisors' Fees Upfront Payment may be higher depending on the nature and complexity of the project. Project sponsors should consult with the Bureau to confirm the applicable amount of the Advisors' Fees Upfront Payment.
225. Projects with a straightforward capital structure and a highly rated revenue source that is not dependent upon construction or other high-value collateral and streamlined documentation will likely have lower advisor costs than projects with a complex financing structure and extensive ancillary documentation such as intercreditor or interagency agreements, compliance agreements, equity funding agreements, etc.
226. 23 U.S.C. §603(f).
227. The TIFIA loan agreement templates for P3 and public borrowers are available on the Bureau's website: <https://www.transportation.gov/buildamerica>.
228. Note that, for RRIF projects, the Advisors' Fees Upfront Payment may be higher depending on the nature and complexity of the project. Project sponsors should consult with the Bureau to confirm the applicable amount of the Advisors' Fees Upfront Payment.
229. 23 U.S.C. §603(b)(2)(A).
230. 23 U.S.C. §603(b)(9)(A).
231. 23 U.S.C. §602(a)(5)(A).
232. As required under the TIFIA statute (23 U.S.C. §602(a)(3)) and as a priority consideration under the RRIF statute (45 U.S.C. §822(c)(5)).
233. For requests for RRIF credit assistance, this review and the NEPA status review will one and the same; for requests for TIFIA credit assistance, the review team will determine whether the

project sponsor has demonstrated that the construction contracting process for the project can commence no more than 90 days after the execution of a TIFIA credit instrument.

- 234. 23 U.S.C. §602(a)(2).
- 235. 23 U.S.C. §602(a)(2)(A)(i).
- 236. 23 U.S.C. §602(a)(2)(A)(ii).
- 237. 23 U.S.C. §602(a)(2)(A)(iii).
- 238. 23 U.S.C. §602(a)(6).
- 239. As noted in Section 2-1 above, the TIFIA lien on pledged revenues can be subordinated to those of senior lenders to the project except in the event of bankruptcy, insolvency, or liquidation of the obligor. In such an instance, the TIFIA lien would be on par with the lien of the project's senior creditors. However, this provision can be waived under certain circumstances for public agency borrowers having senior bonds under preexisting indentures so long as certain conditions are met, as further discussed in Section 2-1 above.
- 240. If there are no debt obligations senior to the TIFIA credit instrument, then the TIFIA credit instrument itself must be shown to have the potential to obtain an investment grade rating. 23 U.S.C. §602(b)(3).
- 241. 23 U.S.C. §602(b)(3).
- 242. See 31 U.S.C. §3720B, 31 C.F.R. §285.13, and Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013), at Section III(A)(1)(b).
- 243. As noted in Chapter 2, since the RRIF Program does not currently have an appropriation, the cost to the government of providing financial assistance must be borne by the RRIF applicant, or another non-federal entity on behalf of the applicant, through the payment of the CRP. See Chapter 2 for additional information regarding the credit subsidy/CRP.
- 244. Note that this term sheet is a different instrument from the indicative term sheet the Bureau offers to negotiate with public sponsors conducting P3 procurements. The term sheet described above will be executed for all transactions receiving credit assistance and is necessary for the DOT to obligate funds.
- 245. 49 C.F.R. §80.11(d).
- 246. 49 C.F.R. §80.11(d).
- 247. 23 U.S.C. §605(c)(1) and 45 U.S.C. §823(l)(3) and 45 U.S.C. §823(l)(1) and (3).
- 248. 23 U.S.C. §605(b)(2) and 45 U.S.C. §823(l)(2).
- 249. 23 U.S.C. §601(a)(5) and 45 U.S.C. §821(7).
- 250. See 49 C.F.R. Subpart F, including §260.51(a) and (c) and §260.53(b) for additional information regarding the DOT's evaluation of loan guarantee requests and potential guaranteed lenders.
- 251. 23 U.S.C. §601(a)(5).
- 252. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013).
- 253. Office of Mgmt. & Budget, Exec. Office of the President, OMB Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (2013).
- 254. See 49 C.F.R. §260.51(c).
- 255. Id.

- 256. See 49 C.F.R. §260.55(d).
- 257. 23 U.S.C. §603(e)(2) and 45 U.S.C. §822(e)(2).