

Chapter 3: Eligibility Requirements

NOTE: The content of this Program Guide does not have the force and effect of law and is not meant to bind the public in any way. This content is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

The TIFIA and RRIF statutes set forth several prerequisites for an award of credit assistance. This chapter describes the types of projects, costs, applicants, regulatory, and statutory requirements upon which TIFIA and RRIF credit assistance is conditioned.

Section 3-1

Eligible TIFIA Projects and Costs

Eligible Projects

Highway, transit, passenger rail, certain freight facilities, certain port projects, rural infrastructure projects, transit-oriented development projects, and SIB rural projects funds may receive credit assistance through the TIFIA Program.

- Eligible highway facilities include interstates, state highways, bridges, toll roads, international bridges or tunnels, and any other type of facility eligible for grant assistance under Title 23, the highways title of the U.S. Code (23 U.S.C.).^[95] This also includes a category specifically permitted under the TIFIA statute, i.e., a project for an international bridge or tunnel for which an international entity authorized under Federal or State law is responsible.^[96]
- Eligible transit projects include the design and construction of stations, track, and other transit-related infrastructure, purchase of transit vehicles, and any other type of project that is eligible for grant assistance under the transit title of the U.S. Code (Chapter 53 of Title 49 of the U.S. Code), including the installation of positive train control systems.^[97] Additionally, intercity bus vehicles and facilities are eligible to receive TIFIA credit assistance.^[98]
- Rail projects involving the design and construction of intercity passenger rail facilities or the procurement of intercity passenger rail vehicles are eligible for TIFIA credit assistance.^[99]
- Public freight rail facilities, private facilities providing public benefit for highway users by way of direct freight interchange between highway and rail carriers, intermodal freight transfer facilities, projects that provide access to such facilities, and service improvements (including capital investments for intelligent transportation systems) at such facilities, are also eligible for TIFIA credit assistance.^[100] In addition, a logical series of such projects with the common objective of improving the flow of goods can be combined.^[101]
- Projects located within the boundary of a port terminal are also eligible to receive TIFIA credit assistance, so long as the project is limited to only such surface transportation infrastructure modifications as are necessary to facilitate direct intermodal interchange, transfer, and access into and out of the port.^[102]

- Eligible projects also include related transportation improvement projects grouped together in order to reach the minimum cost threshold for eligibility, so long as the individual components are eligible and the related projects are secured by a common pledge.^[103]
- Rural Project Assistance: The TIFIA statute provides two different forms of assistance to rural infrastructure projects. The FAST Act expanded TIFIA eligibility to include capitalization of rural projects funds within SIBs, and it continued the DOT's ability to offer reduced interest rates to Rural Project^[104]:
 - The definition of rural infrastructure projects was narrowed under the FAST Act. As amended, the definition of a rural infrastructure project is a surface transportation infrastructure project located outside of an urbanized area with a population greater than 150,000 individuals, as determined by the Bureau of the Census.^[105]
 - In addition, the FAST Act expanded TIFIA eligibility to enable the use of TIFIA credit assistance to capitalize a rural projects fund established by a SIB for the purpose of making loans to sponsors of rural infrastructure projects.^[106] Prior to the FAST Act, SIBs were permitted to use Federal-aid funds to capitalize a highway, a transit, and a rail account within the SIB. The funds in those accounts could then be used to make loans to eligible highway, transit, and rail projects, respectively. The FAST Act permits SIBs to establish a fourth account (a rural projects fund) that can be capitalized by a TIFIA direct loan.^[107] The SIB must use the funds in its rural projects fund to make loans for projects meeting the rural infrastructure project definition set forth above.^[108] The maximum principal amount of a TIFIA direct loan to capitalize a rural projects fund within a SIB is \$100 million and the minimum principal amount is \$10 million.^[109] A TIFIA loan capitalizing a rural projects fund within a SIB must mature not later than 35 years after the date on which the secured loan is obligated.^[110] Loans made by SIBs from a rural projects fund must comply with certain specific requirements, as set forth in section 610 of Title 23 U.S. Code^[111], including: (i) the SIB loan cannot exceed 80% of the cost of carrying out the project;^[112] (ii) the SIB loan must bear interest at or below the interest rate on the TIFIA loan used to capitalize the rural projects fund;^[113] (iii) repayment of the SIB loan must commence not later than 5 years after completion of the project;^[114] and (iv) the term of the SIB loan cannot exceed 30 years after the date of the first payment on the loan.^[115]
 - As much as 10 percent of the TIFIA Program's budget authority can be set aside to fund the subsidy cost of secured loans for Rural Projects at a reduced interest rate equal to one-half of the Treasury Rate (see Section 2-2 for additional information regarding the calculation of interest rates on TIFIA direct loans).^[116] The reduced interest rate is only available in any fiscal year to the extent sufficient funds are available in the set-aside for that fiscal year.^[117] Any amounts set aside in a fiscal year to fund the subsidy cost of TIFIA direct loans to Rural Projects at the reduced interest rate that have not been obligated by June 1 of such fiscal year must be made available to fund projects not receiving the reduced interest rate to the extent sufficient funds are not otherwise available.^[118]
- The FAST Act expanded eligibility to include projects to improve or construct public infrastructure that are located within walking distance of, and accessible to, a fixed guideway transit facility, passenger rail station, intercity bus station, or intermodal facility, including a transportation, public utility, or capital project described in 49 U.S.C. §5302(3)(G)(v), and related infrastructure (collectively, Transit-Oriented Development Projects or TOD Projects).^[119] 49 U.S.C. §5302(3)(G)(v) sets forth a list of specific elements that would generally be included in a TOD Project once the DOT has determined a TOD Project is eligible. Subject to project-specific review, eligible elements could include: property acquisition; demolition of

existing structures; site preparation; utilities; building foundations; walkways; pedestrian and bicycle access to a public transportation facility; construction, renovation, and improvement of intercity bus and intercity rail stations and terminals; renovation and improvement of historic transportation facilities; open space; safety and security equipment and facilities; facilities that incorporate community services such as daycare or health care; a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall; and construction of space for commercial uses.^[120] The DOT may also fund “related infrastructure;” however, the DOT will prioritize the use of TIFIA funds for TOD projects that are significantly integrated into the related transportation facility.

In reviewing Letters of Interest for TOD Projects, the DOT may prioritize TOD Projects based on:

(i) the TOD Project’s distance from the transportation facility. This analysis may also include consideration of the distance pedestrians in the area of the TOD Project typically walk to access transportation facilities; and

(ii) the nexus between the proposed TOD Project and the transportation facility. In conducting this analysis, the DOT will consider the functional or physical relationship of the proposed TOD Project to the transportation facility. If the TOD Project is not physically connected to the transportation facility, the DOT may consider the extent of the functional relationship between the two, such as the extent to which the TOD Project enhances the use of, connectivity with, or access to the transportation facility.

Eligible Costs

TIFIA credit assistance is available to cover only eligible project costs.^[121] calculation of total eligible project costs is important to determine whether the project meets the eligibility test for minimum project size (as discussed in more detail in Section 3-7 below)^[122] and whether the credit request does not exceed applicable thresholds of reasonably anticipated eligible project costs (as discussed in more detail in Sections 2-2 and 3-7),^[123] as required by statute.

The TIFIA statute, codified at 23 U.S.C. §§601-610, defines eligible project costs as those expenses associated with the following:

- Development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other pre-construction activities;^[124]
- Construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment;^[125]
- Capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction; and^[126]
- Capitalizing a rural projects fund.^[127]

Capitalized interest on TIFIA credit assistance may not be included as an eligible project cost.

Also, TIFIA administrative charges, such as application fees, transaction fees, loan servicing fees, credit monitoring fees, and the charges associated with obtaining the required preliminary rating opinion letter, will not be considered among the eligible project costs.^[128] In all cases, eligible project costs should be calculated and presented on a cash basis (that is, as year-of-expenditure dollars) with the year of planned expenditure clearly identified.^[129]

In determining eligible project costs, the following two clarifications should be considered:

- **Acquisition of Real Property.** While acquisition of real property is eligible for TIFIA reimbursement, such property must be physically and functionally related to the project. If excess land surrounding the project's immediate right-of-way is acquired for development, the cost of this real property may not be included among eligible project costs. The acquisition of real property must be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (see page 3-6).^[130]
- **Costs Incurred Prior to Application.** It is permissible for an applicant to incur costs prior to submitting an application for TIFIA credit assistance. However, these costs may be considered eligible project costs for TIFIA purposes only upon approval from the DOT.^[131] Generally, such costs will be confined to development phase or right-of-way acquisition expenses. This eligibility determination will be made on a case-by-case basis, depending on the nature and timing of the costs. Project sponsors that intend to request the inclusion of such costs as eligible project costs are encouraged to provide the DOT with supporting materials and information for such costs as early as possible to provide adequate time for DOT staff to review and make a determination as to eligibility.

Section 3-2

Eligible RRIF Projects and Costs

Eligible Projects

RRIF credit assistance may be available to:

- Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs. Note that this category of eligible activities includes the installation of positive train control systems;^[132]
- Develop or establish new intermodal or railroad facilities;^[133]
- Reimburse planning and design expenses relating to activities listed above;^[134]
- Refinance outstanding debt incurred for the purposes listed above;^[135] and
- Finance transit-oriented development, as described in more detail below.^[136]

RRIF Transit-Oriented Development:

In addition to the activities described above, the FAST Act expanded eligible purposes to include financing economic development, including commercial and residential development, and related infrastructure and activities, that (i) incorporate private investment, (ii) is physically or functionally related to a passenger rail station or multimodal station that includes rail service, (iii) has a high probability of the applicant commencing the contracting process for construction not later than 90 days after the date on which the RRIF loan or loan guarantee is obligated, and (iv) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs (Transit-Oriented Development Projects or TOD Projects).^[137] Note that RRIF credit assistance for TOD Projects is only available until December 4, 2019.^[138] Sponsors of TOD Projects are therefore encouraged to begin working with the Bureau as early as possible to ensure adequate time to prepare a RRIF Draft Application, Application, and enable the Bureau to evaluate the TOD Project's satisfaction of the eligibility criteria discussed above and elsewhere in this Chapter 3, including creditworthiness and compliance with Federal requirements.

Eligibility Criteria:

In reviewing Pre-Applications for TOD Projects, the DOT will evaluate TOD Projects for satisfaction of the above criteria, as further described below, and may prioritize projects based on:

- (i) Economic Development, Including Commercial and Residential Development, and Related Infrastructure and Activities: The extent to which the TOD Project will anchor transformative, positive, and long-lasting changes that will result in increased investment in the economic competitiveness of the neighborhood and region; increased transportation choices to decrease household and/or business transportation costs and provide other benefits; improved transportation access to employment centers, educational opportunities, and essential services, particularly for disadvantaged communities, which include low income populations, minority populations, older adults, and persons with disabilities; provide affordable housing; and support walkable communities, and improved quality of life. This also includes a consideration of whether the TOD Project targets Federal funding toward existing communities; reduces our dependence on oil; improves air quality, and promotes public health; and expands location- and energy-efficient housing choice.
 - (ii) Private Investment: The extent to which the TOD Project incorporates private investment into the overall economic development in and around the TOD Project and the related station.
- To the extent the sources of funding for the TOD Project do not include private equity, the DOT will consider how and to what extent private investment is incorporated into the overall plans for the economic development of which the TOD Project is a part to determine satisfaction of this criterion.

- (iii) Physical or Functional Relationship: The nexus between the proposed TOD Project and the station. In conducting its analysis of the nexus between the TOD Project and the station, the DOT will consider the functional or physical relationship of the proposed TOD Project to the station. If the TOD Project is not physically connected to the station, the DOT will consider the extent of the functional relationship between the two, such as the distance between the TOD Project and the station, and the extent to which the TOD Project enhances the use of, connectivity with, or access to the station.
- In considering the distance between the TOD Project and the station, the DOT may consider the distance pedestrians and cyclists in the area of the TOD Project typically traverse to access transportation facilities.
- (iv) Project Readiness: The project sponsor must demonstrate that the construction contracting process for the TOD project can commence no more than 90 days after the execution of a RRIF credit instrument.
- (v) Reduction in Other Federal Assistance: The project sponsor must demonstrate that the TOD Project is highly likely to reduce the related station's or service's need for financial assistance under any other Federal program.
- As part of this demonstration, the project sponsor should describe how and to what extent the completion of the TOD Project will benefit the rail station or service such that the station's or service's need for Federal financial assistance will be demonstrably reduced.

The RRIF Program is generally focused on financing new or improved railroad infrastructure. The DOT prioritizes projects that provide public benefits, including benefits to public safety, the environment, economic development, and rail or rail-related intermodal service.^[139] All projects, including new construction, purchase of new or existing goods, and refinancing of existing debt, are subject to the DOT's Buy America policy for RRIF projects as described in Section 3-4. Financial assistance under the RRIF Program cannot be used for railroad operating expenses.

Section 3-3

Federal Requirements

Generally Applicable Requirements: RRIF and TIFIA

There are several common Federal statutes and regulations that apply to all projects receiving DOT credit assistance, whether TIFIA or RRIF. In addition, certain laws and regulations apply to specific types of projects, such as highway, transit, or rail projects. Applicants seeking DOT credit assistance must comply with all applicable modal and Federal laws and regulations. We encourage project sponsors to coordinate with the Bureau (BuildAmerica@dot.gov), which can facilitate discussions with the relevant modal staff, early in their planning process to ensure

satisfaction of all Federal requirements. This Section discusses some of the key Federal requirements that apply to projects receiving DOT credit assistance.

National Environmental Policy Act of 1969 (NEPA)

To comply with NEPA,^[140] each proposed project receiving credit assistance must be evaluated to determine its impact on the environment. The DOT will not obligate funds for a project until it has received a final agency decision, including (if necessary) a Record of Decision (ROD).^[141] The three scenarios for addressing NEPA requirements are outlined below.

- Categorical Exclusion. Some projects, such as minor widening, rehabilitation, safety upgrading, or bus replacements, do not individually or cumulatively affect the environment significantly. These projects are termed Categorical Exclusions, and thus are exempt from the requirement to prepare an Environmental Assessment or an Environmental Impact Statement (EIS).
- Environmental Assessment. An Environmental Assessment is usually prepared for a project that does not qualify as a Categorical Exclusion. The Environmental Assessment may reveal that the project's impacts are not significant, in which case a Finding of No Significant Impact (FONSI) is issued for the project.
- Environmental Impact Statement and Record of Decision. Assuming that a project does not qualify for a Categorical Exclusion or FONSI, the project sponsor is required to prepare a draft EIS. For major investments, the draft EIS must include an analysis of various alternative solutions. A variety of agencies and the public at large have the opportunity to comment on the draft EIS. These comments are addressed during the preparation of the final EIS. This second iteration ensures that adequate consideration has been given to public comments and the anticipated effects of the project. Depending on the nature of the project, the FHWA, FRA, FTA, or MARAD issues a Record of Decision to signify Federal approval of the final EIS.

We encourage project sponsors to coordinate with the Bureau early in their planning process to ensure full compliance with and satisfaction of all NEPA requirements. The Bureau can facilitate discussions with relevant modal agencies to answer any questions about the NEPA process.

To ensure project readiness to receive credit assistance and appropriately deploy DOT resources, an applicant must have circulated a draft EIS at the time it submits an application, unless the project has received either a FONSI or a Categorical Exclusion.

Buy America Requirements

This Program Guide collectively refers to domestic steel, iron and manufactured products content requirements for projects receiving DOT credit assistance as "Buy America" requirements. Buy America provisions were established pursuant to Section 165 of the [Surface Transportation Assistance Act](#), of 1982 to ensure that transportation infrastructure projects are built with American-made products.^[142] Since 1982, the Buy America requirements that apply to highway, transit, rail, and other projects have been further developed pursuant to implementing legislation and regulation on a modal level:

- **Highway Projects:** For highway and other projects eligible for TIFIA credit assistance under Title 23, the relevant Buy America provisions can be found at 23 U.S.C. §313 and 23 C.F.R. Part 635. Additional information can be found at <https://www.fhwa.dot.gov/construction/cqit/buyam.cfm>.
- **Transit Projects:** For transit and other projects eligible for TIFIA credit assistance under Chapter 53 of Title 49, the relevant Buy America provisions can be found at 49 U.S.C. §5323(j) and 49 C.F.R. §661. Additional information can be found at <https://www.transit.dot.gov/regulations-and-guidance/buy-america/buy-america>.
- **Rail Projects:** For rail projects eligible for TIFIA and RRIF credit assistance pursuant to the TIFIA and RRIF statutes, the DOT expects recipients of TIFIA and RRIF credit assistance to comply with the domestic steel, iron, and other manufactured products content requirements that apply to FRA passenger rail grant programs. These requirements are described in 49 U.S.C. §24405(a). Additional information can be found at <http://www.fra.dot.gov/Page/P0185>.
- **All Other Projects:** As with other project types, the DOT expects recipients of TIFIA and RRIF credit assistance to comply with the domestic steel, iron, and other manufactured products content requirements of the applicable modal agency by law or policy.

For additional information regarding the DOT's Buy America program, as well as specific information regarding project types not described above, please contact the Bureau at BuildAmerica@dot.gov.

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Project construction may displace current residents or businesses. Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970,^[143] every displaced resident must be offered a comparable replacement dwelling that is decent, safe, and sanitary. Additionally, relocation advisory services must be furnished and payments made to those residents who must relocate. Such payments cover moving expenses, the cost of replacement housing, and certain incidental expenses. Businesses, farms, and non-profits must also be reimbursed for moving and related expenses.

Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 states that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the recipient receives Federal assistance.^[144] Companion legislation extends these protections such that no person shall be subjected to discrimination on the basis of sex, age, or disability. As applied to transportation programs, regulations to implement this statute appear at 49 C.F.R. Part 21.

Prevailing Wage and Employee Protection Requirements

Projects receiving RRIF credit assistance and transit projects receiving TIFIA credit assistance must comply with specific prevailing wage and employee protection requirements.

- **Prevailing Wage Requirements:**

- The RRIF statute requires all recipients of RRIF credit assistance to comply with the prevailing wage requirements applicable to Amtrak pursuant to 49 U.S.C. §24312 in the same manner Amtrak is required to comply with such standards for construction work financed under an arrangement made with a rail carrier or regional transportation authority under 49 U.S.C. §24308(a).^[145]
- 23 U.S.C. §113 and 49 U.S.C. §5333(a) implement Davis-Bacon prevailing wage protections for highway and transit projects, respectively, receiving Federal financial assistance. Pursuant to the implementation of Davis-Bacon for highway and transit projects, the DOT must ensure that all labor contracts executed by project sponsors adhere to prevailing wage rates as determined by the Secretary of Labor before credit assistance can be obligated.
- **Employee Protection:**
- The RRIF statute requires all recipients of RRIF credit assistance to comply with the requirements to ensure adequate arrangements exist to protect the interests of railroad employees who may be adversely affected by projects for which RRIF financing is utilized.^[146]
- 49 U.S.C. §5333(b) requires the DOT to receive certification from the Department of Labor that protective arrangements are in place to protect the interests of mass transit employees, including that protective arrangements are in place to provide for the preservation of rights and benefits of mass transit employees and the protection of individual employees against a worsening of their positions in relation to their employment, before credit assistance can be obligated for a project. As such, prior to receipt of TIFIA credit assistance for a transit project, the DOT must have received this certification from the Department of Labor.

Program-Specific Requirements: TIFIA

In addition to the generally applicable requirements described above, TIFIA projects are subject to certain modal requirements depending on the project type (i.e., highway, transit, or rail projects). Some of the key modal requirements related to typical TIFIA projects are listed below.

Title 23 – Highway Projects

Title 23 of the U.S. Code and related implementing regulations in Title 23 of the Code of Federal Regulations set forth the rules that govern the design, construction, and operation of federally assisted highway infrastructure projects, including projects financed with TIFIA credit assistance. These rules cover a broad range of activities. The following bullet points provide an example of some of the relevant regulations:

- **Design.** Part 625 of 23 C.F.R. requires that all federally assisted roads, highways, and bridges adhere to minimum design standards and specifications. Generally speaking, the regulations refer all sponsors of projects eligible under Title 23 for Federal assistance, whether grant or credit assistance, to the relevant standards and specifications published by the American Association of State Highway and Transportation Officials.
- **Procurement.** Part 172 of 23 C.F.R. prescribes policies and procedures related to procurement of engineering and design related services. Part 636 of 23 C.F.R. describes FHWA policies and procedures relating to design-build projects financed under Title 23. Part 635 of 23 C.F.R. covers many topics related to purchasing materials and procuring construction services. For

example, Section 635.107 requires the applicant to affirmatively encourage disadvantaged business enterprise participation in the highway construction program. Section 635.410 (part of FHWA's Buy America implementing regulations) limits the amount of foreign-produced steel and iron that may be used on Federal-aid projects.

- **Construction.** Part 633 Subpart A relates to required contract provisions for Federal-aid construction contracts. Part 635 contains construction and maintenance procedures and includes a number of labor and employment rules that apply to employees working on a Federal-aid construction project. For example, the minimum wage rates that the Secretary of Labor determines to be prevailing for the same type of work on similar construction in the same locality must be part of the construction contract. Labor rules also state that no construction work may be performed by convict labor unless the convicts are on parole, supervised release, or probation.

Title 49 – Transit and Public Transportation Projects

As with Title 23, Title 49 of the U.S. Code and related regulations in Title 49 of the C.F.R. concern a wide range of activities. Just as all highway projects must comply with all Federal laws and related regulations detailed in Title 23, all transit projects must comply with Chapter 53 of Title 49 and related regulations. For example, drug and alcohol rules specific to FTA-funded projects appear at 49 C.F.R. §655. In other cases, the regulations appearing in 49 C.F.R. apply common types of rules specifically to transit-oriented concerns, such as the procurement of buses and rail cars. For example, FTA's Buy America implementing regulations appear at 49 C.F.R. §661 and provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by the FTA, or the product is subject to a general waiver. The FTA has published a best practices manual on transit procurement regulations. This manual can be found on-line at: <https://www.transit.dot.gov/funding/procurement/best-practices-procurement-manual>.

The regulations that implement Chapter 53 of Title 49 apply to all Federally-assisted transit projects, including those receiving credit assistance under the TIFIA Program.

Program-Specific Requirements: RRIF

In addition to the generally applicable requirements described above (including the specific prevailing wage and labor protection requirements set forth in the RRIF statute), the rail safety standards set forth in 49 C.F.R. §§209-244 detail minimum safety requirements for railroad track that is part of the general railroad system of transportation. The RRIF regulations also require specific maintenance standards where RRIF credit assistance was used for track, roadbed, equipment, or facilities.^[147]

Section 3-4

Eligible Applicants

Both the TIFIA and RRIF statutes specify types of entities that are eligible to apply for credit assistance. This section describes the types of entities that are eligible to apply under both Credit Programs.

Eligible Applicants: TIFIA

Public or private entities seeking to finance, design, construct, own, or operate an eligible surface transportation project may apply for TIFIA credit assistance. Examples of such entities include state departments of transportation; local governments; transit agencies; special authorities; special districts; railroad companies; and private firms or consortia that may include companies specializing in engineering, construction, materials, and/or the operation of transportation facilities.^[148]

All applicants must demonstrate relevant experience, strong qualifications, a sound project approach, and financial stability, as each of these items ultimately has a bearing on the project's creditworthiness.

Applicants also must meet various Federal standards for participation in a Federal credit program as well as modal-specific requirements, among other factors, to receive TIFIA credit assistance.^[149] For example, applicants may not be delinquent or in default on any Federal debts.^[150] Such requirements will be specified in the contractual documents between the DOT and each applicant.

In the context of a public-private partnership, where multiple bidders may be competing for a concession such that the obligor has not yet been identified, the procuring agency must submit the project's Letter of Interest on behalf of the eventual obligor.^[151] The DOT will not consider Letters of Interest from entities that have not obtained rights to develop the project.^[152] However, the DOT is able to work with the procuring agency to better facilitate the integration of the TIFIA application process into the public-private partnership procurement. In this context, the DOT may negotiate a preliminary indicative term sheet with the procuring agency that sets forth the general intent of the DOT, which the procuring agency may provide to potential bidders. An indicative term sheet will assist private bidders in understanding certain basic terms and conditions for TIFIA credit assistance and will help to reduce any delays in the application process and ultimate negotiation of a credit agreement. Prior to awarding credit assistance to the selected bidder, the private entity must demonstrate state support for the project through the project's inclusion in the state's planning documents (the long-range plan and the STIP), as noted in Section 3-5 below.

Eligible Applicants: RRIF

To be eligible to receive RRIF credit assistance, a project sponsor must be an eligible applicant.^[153] Entities that are eligible to receive RRIF credit assistance include:

- State and local governments;

- Interstate compacts consented to by Congress under Section 410(a) of the Amtrak Reform and Accountability Act of 1997;^[154]
- Government sponsored authorities and corporations;
- Railroads;^[155]
- Limited option freight shippers that own or operate a plant or other facility (solely for the purpose of constructing a rail connection between a plant or facility and a railroad); and
- Joint ventures that include at least one of the above entities.

The FAST Act expanded the last category of eligible applicants listed above, that of joint ventures. Previously, an eligible joint venture needed to include at least one railroad. Under the expanded FAST Act language, a joint venture shall include any of the other categories of eligible applicants (Eligible Applicants)^[156]. A joint venture is an agreement between at least one Eligible Applicant and one or more other entities with the shared goal of accomplishing the project receiving the RRIF loan. The agreement between the parties shall be memorialized in a contract, a memorandum of understanding, or other arrangement that describes the mutual consideration exchanged in order to accomplish the project. To the extent that the joint venture includes any entity that is not an Eligible Applicant, the parties to the joint venture must be able to demonstrate (i) that all parties have made (or will make) a meaningful contribution to (or for) the project and (ii) the benefit to all parties of the project.

- An example of an eligible joint venture in the context of a RRIF TOD project is as follows:
 - Joint venture parties:
 - A private entity undertaking a TOD Project to be constructed adjacent to a multimodal station that included rail service, and
 - The railroad providing rail services to that station.
 - Railroad contribution: railroad owns the parcel of land needed to construct the TOD Project and sells that parcel to the private sponsor.
 - Railroad benefit: Railroad will receive a portion of the annual lease revenues derived from the TOD Project upon completion.

Section 3-5

Threshold Requirements

A project's eligibility to apply for TIFIA and RRIF credit assistance depends on its satisfaction of certain additional requirements beyond project and applicant eligibility. This section details these statutory threshold requirements to eligibility.

Total Eligible Costs

The two Credit Programs have different cost threshold requirements: the TIFIA Program has specific total eligible cost threshold requirements, whereas the RRIF Program does not have such requirements.

TIFIA Program

With certain exceptions noted below, the project's eligible costs, as defined under 23 U.S.C. §601(a)(2), must be reasonably anticipated to be at least (i) \$50 million or (ii) 33 1/3 percent or more of the state's Federal-aid highway apportionments for the most recently completed fiscal year, whichever is less.^[157] The DOT will revisit apportionments to states annually, to determine if any states qualify under the alternative test.

The FAST Act set a lower eligible cost threshold for intelligent transportation system projects, TOD Projects, Rural Projects, and local infrastructure projects.

- For projects that principally involve the installation of an intelligent transportation system (ITS), eligible project costs must be reasonably anticipated to total at least \$15 million. This \$15 million threshold applies only to projects for which the ITS component is the central feature of the project and not an ancillary component.^[158]
- For TOD Projects^[159] and local infrastructure projects, eligible project costs must be reasonably anticipated to total at least \$10 million.^[160] Local infrastructure projects are projects (i) for which the sponsor is a local government or instrumentality or public authority, (ii) that are located on a facility owned by a local government, and (iii) for which a local government is substantially involved in its development, in the determination of the Secretary.^[161]
- For Rural Projects,^[162] eligible project costs must be reasonably anticipated to total at least \$10 million but not exceed \$100 million.^[163]

In addition, eligible costs include costs for related improvement projects grouped together to meet the eligible cost threshold, so long as the individual components are eligible and the related projects are secured by a common pledge.^[164]

In all cases, the principal amount of the requested credit assistance is limited to 49 percent of reasonably anticipated eligible project costs for a TIFIA secured loan or loan guarantee and 33 percent for a TIFIA standby line of credit.^[165] Applicants should calculate and represent all costs, including both eligible project costs and the credit assistance request, on a cash (year-of-expenditure) basis.^[166]

RRIF Program

The RRIF Program does not have minimum project cost thresholds, however, as noted in Chapter 2 above, The principal amount of RRIF credit assistance may not exceed available statutory authority. In addition, credit assistance for RRIF TOD Projects is limited to 75 percent of total project costs.^[167]

Creditworthiness and Dedicated Revenue Source

All RRIF and TIFIA projects must satisfy the DOT's creditworthiness requirements. The DOT will review the project's plan of finance, financial model, and feasibility of the anticipated pledged revenue or, in the case of RRIF loans where the proposed collateral is other than a dedicated revenue stream, the sufficiency of such other pledged collateral. In order for a project

to satisfy the creditworthiness evaluation, the DOT must determine with a reasonable degree of confidence that the credit assistance is able to be repaid. However, as far as pledged collateral and a dedicated revenue source, the TIFIA and RRIF statutes differ. The TIFIA statute requires a dedicated pledged revenue source for repayment of TIFIA credit assistance. The RRIF statute does not require collateral, however, the calculation of the CRP is affected by any collateral, such as a dedicated revenue source, pledged in repayment of the RRIF credit assistance. The DOT interprets “dedicated revenue sources” to include such levies as tolls, user fees, special assessments, tax increment financing, and any portion of a tax or fee that produces revenues that are pledged for the purpose of retiring debt on the project. The Secretary may accept general obligation pledges or corporate promissory pledges and will determine the acceptability of other pledges or forms of collateral as dedicated revenue sources on a case-by-case basis. Without exception, the Secretary will not accept a pledge of Federal funds, regardless of source, as security for a credit instrument.

TIFIA Program

The TIFIA statute requires that TIFIA credit instruments are repayable, in whole or in part, from tolls, user fees, payments owing to the borrower under a public-private partnership, or other dedicated revenue sources that also secure the senior project obligations.^[168] For a TIFIA direct loan to capitalize a rural projects fund within a SIB, the DOT may consider dedicated revenue sources available to the SIB, including repayments from the SIB’s loans for rural infrastructure projects.^[169] In addition, the TIFIA statute requires all projects to satisfy applicable creditworthiness standards.^[170] See Section 5-1 for additional discussion of the creditworthiness evaluation process.

RRIF Program

While the RRIF Program cannot require a borrower to provide collateral, any collateral pledged to the repayment of the RRIF credit instrument will be relevant to the calculation of the CRP.^[171] In addition, as part of the DOT’s creditworthiness assessment of a project and an applicant prior to awarding credit assistance, the DOT must have made a determination that the credit assistance can reasonably be repaid, which determination can be based on the value of any collateral pledged.^[172]

Project Readiness

Because credit assistance cannot be awarded until a project has received a final NEPA determination (as described above in Section 3-3), all applicants for credit assistance must demonstrate in the Letter of Interest/Draft Application that the project for which credit assistance is being sought is reasonably likely to have completed the NEPA process prior to the anticipated financial closing date. In addition, all applicants for TIFIA credit assistance (other than in connection with projects to capitalize a rural projects fund within a SIB) must demonstrate that the construction contracting process for the project can commence no more than 90 days after the execution of a TIFIA credit instrument.^[173]

Advancement of DOT Policy Goals

In addition to the evaluation criteria set forth above with respect to both RRIF and TIFIA projects, both statutes sets forth certain additional evaluation criteria with respect to DOT policy goals.

TIFIA Program

For all TIFIA projects, including the capitalization of a rural projects fund in a SIB (with the exception noted below), the DOT must make a determination that Federal credit assistance would satisfy the following statutory mandates:

- *Foster Partnerships that Attract Public and Private Investment to the Project:* The extent to which assistance would foster innovative public-private partnerships and attract debt and/or equity investment from private capital.^[174]
- *Ability to Proceed at an Earlier Date or Reduced Lifecycle Costs (Including Debt Service Costs):* The likelihood that assistance would enable the project to proceed at an earlier date than the project would otherwise be possible.^[175] This includes documenting how the applicant has been unable to obtain credit assistance from private sources on reasonable terms. In addition, the applicant may describe how the costs of traditional financing would constrain their ability to deliver the project, or that delivery of this project through traditional financing approaches would constrain their ability to deliver additional components of their capital programs.
- *Reduces Contribution of Federal Grant Assistance for the Project:* The extent to which assistance would reduce the contribution of Federal grant assistance to the project.^[176]

RRIF Program

The RRIF statute specifies certain policy criteria for consideration in evaluating potential RRIF projects.^[177] The DOT will give priority to projects that:

- *Enhance public safety, including projects for the installation of a positive train control system (as defined in section 20157(i) of title 49):* This is DOT's highest programmatic priority. The DOT will prioritize projects that ensure safe and efficient transportation choices. The DOT's goal is to improve public health and safety by reducing transportation-related fatalities and injuries and improving the safety experience for all transportation system users, including passengers, employees, pedestrians, and motorists.
- *Enhance the environment:* The DOT will prioritize projects that promote environmental sustainability of transportation through investments that focus on energy efficiency and environmental quality, including investments that reduce carbon emissions and protect the human and natural environment.
- *Promote economic development and Enable United States companies to be more competitive in international markets:* The DOT will prioritize projects that build a foundation for economic competitiveness and target its investments in projects that serve the travelling public and freight movement to bring lasting economic and social benefit to the Nation. Note that this criteria is directly related to the Buy America discussion set forth in Section 3-3 above.
- *Are endorsed by the plans prepared under section 135 of title 23 or chapter 227 of title 49 by the State or States in which the projects are located:* Similar to the planning and programming requirements applicable to all TIFIA projects, as discussed below in Program-Specific Threshold Requirements: TIFIA sub-part of this Section, the DOT will give priority to projects requesting

RRIF credit assistance that are incorporated in the applicable statewide planning documents. See the discussion below regarding the TIFIA planning and programming requirements for additional information on these documents.

- *Improve railroad stations and passenger facilities and increase transit-oriented development:* The DOT will prioritize projects that incorporate eligible transit-oriented development elements and that improve railroad stations and passenger facilities.
- *Preserve or enhance rail or intermodal service to small communities or rural areas and Enhance service and capacity in the national rail system:* The DOT will prioritize projects that support the development of interconnected, livable communities and that provide transportation choices and improve the quality of life for all Americans.
- *Materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system:* The DOT will prioritize projects promoting a state of good repair for transportation assets to ensure a reliable and safe rail system.

These criteria are described in more detail in the Federal Register *Notice Regarding Consideration and Processing of Applications for the Financial Assistance Under the RRIF Program*.^[178]

Program-Specific Threshold Requirements: TIFIA

The TIFIA statute conditions a project's receipt of TIFIA credit assistance on the project's satisfaction of all applicable planning and programming requirements.^[179] That generally means inclusion in both the state's long-range transportation plan and the approved State Transportation Improvement Program (STIP).^[180]

State transportation plans extend as far as 20 years into the future and are often geared to setting general priorities rather than listing individual projects. Therefore, at the time of submitting an application, each applicant must certify that the proposed project is consistent with the transportation plan(s) of the affected state(s). For projects in metropolitan areas, the applicant must also demonstrate that the project is or can be included in the metropolitan transportation plan.^[181]

In contrast to the long-range state transportation plan, the STIP focuses on specific projects to be funded in the near term; STIPs typically look ahead no more than three years. The TIFIA statute requires that the project satisfy planning and programming requirements of Section 134 (Metropolitan Planning) and Section 135 (Statewide Planning) of Title 23, at such time as a TIFIA credit agreement is executed.^[182] Therefore, the applicant must demonstrate that the proposed project is part of the appropriate STIP(s) which reflects the requested TIFIA credit assistance amount programmed in the Federal fiscal year of expected financial close before the DOT will issue a term sheet and obligate funds.^[183]

Program-Specific Threshold Requirements: RRIF

The RRIF statute sets forth certain additional prerequisites to receipt of RRIF credit assistance. Those are as follows:

- The RRIF credit assistance is justified by present and probable future demand for rail services or intermodal facilities;^[184] and
- The applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the RRIF credit assistance will be economically and efficiently utilized.^[185]

Invitation to Submit Application

Each potential applicant seeking DOT credit assistance must demonstrate its ability to meet the statutory eligibility requirements, including an in-depth review of a project's creditworthiness, at the Letter of Interest/Draft Application stage. A project sponsor may only submit an application once a determination of eligibility, including a satisfactory review of a project's creditworthiness, is made and the project sponsor has received an invitation from the DOT to submit a formal application. A downloadable version of the TIFIA and RRIF application forms can be found on the Bureau website at <https://www.transportation.gov/buildamerica>.

Section 3-6

Rating Opinions

The RRIF and TIFIA Programs differ in their requirements with respect to credit ratings. The TIFIA statute requires project sponsors to submit both a preliminary indicative rating letter in connection with the submission of a Letter of Interest and two ratings letters prior to closing on a TIFIA credit instrument. RRIF applicants are not required to obtain a credit rating in order to apply for RRIF credit assistance, though a potential RRIF applicant may submit a recent investment-grade credit rating to be used by the DOT in its determination of the CRP for RRIF credit assistance.^[186] This Section describes the credit rating requirements applicable to projects seeking TIFIA credit assistance.

Preliminary Rating Opinion Letter

Each potential applicant for TIFIA credit assistance must provide a preliminary rating opinion letter from at least one Credit Rating Agency^[187] indicating that the project's senior obligations (which may include the TIFIA credit instrument) have the potential to achieve an investment grade rating and providing a preliminary rating opinion on the TIFIA credit instrument and provides rating rationales for both preliminary ratings.^[188] Before the DOT completes its review of a Letter of Interest and renders a determination of eligibility, the DOT will request that a project sponsor provide this preliminary rating opinion letter.

The preliminary rating opinion letter must address the creditworthiness of both the senior debt obligations funding the project (i.e., those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the TIFIA credit instrument. The letter must conclude that there is a reasonable probability for the senior debt obligations (or the TIFIA credit instrument if there are no debt obligations senior to the TIFIA facility) to receive an investment grade rating.^[189] This requirement applies to all potential TIFIA applicants, even those with current credit ratings on other debt instruments. The DOT will not complete its review of a TIFIA Letter of Interest and make a determination of eligibility until a project sponsor has provided a preliminary rating opinion letter. As part of the DOT's review, the DOT will also request that the TIFIA applicant provide copies of all documents submitted to the Credit Rating Agency in connection with the preliminary rating process. The DOT will use the preliminary rating opinion letter for two purposes.

1. Potential for Senior Obligations to Receive Investment Grade Rating. The letter must indicate that the senior obligations funding the project have the potential to receive an investment grade rating. This preliminary assessment by the Credit Rating Agencies will be based on the financing structure proposed by the applicant. The DOT will not consider projects that do not demonstrate the potential for their senior obligations to receive an investment grade rating.
2. Default Risk. The DOT will also use the preliminary rating opinion letter to assess the project's overall economic, legal, and financial viability and the default risk on the requested TIFIA instrument and on any senior project obligations. Therefore, the letter should provide a preliminary rating and rating analysis of the financial strength of the overall project and the default risk (i.e., without regard to recovery potential) of the requested TIFIA credit instrument and the project's senior debt.

Pre-Closing Rating Opinion Letters

Prior to execution of a TIFIA credit instrument, the senior debt obligations for each project receiving TIFIA credit assistance must obtain investment grade ratings from at least two Credit Rating Agencies and the TIFIA credit instrument must obtain ratings from at least two Credit Rating Agencies unless the total amount of the debt is less than \$75 million, in which case only one investment grade rating on the senior debt obligations and one rating on the TIFIA credit instrument are required.^[190] The TIFIA debt cannot exceed the amount of the senior obligations unless the TIFIA credit assistance receives two investment grade ratings.^[191] If the TIFIA credit instrument is proposed as the senior debt, then it must receive two investment grade ratings, unless the total amount of the debt is less than \$75 million, in which case only one investment grade rating is required.^[192] The applicant must provide confirmation of the assigned ratings at least two weeks prior to execution of a TIFIA credit instrument.^[193]

The rating requirement offers security to the DOT only if the same repayment source is being pledged to both the senior debt obligations and the subordinate TIFIA credit instrument. In such a structure, the investment grade ratings for senior debt helps the DOT evaluate its credit risk as a subordinate lender. To maintain the value implied by the senior debt rating, the TIFIA debt

cannot exceed the amount of the senior obligations unless the TIFIA credit instrument receives two investment grade ratings.^[194]

Both the preliminary rating opinion letter and the final credit ratings must be based on the contemplated tenor of both the project's senior debt obligations and the TIFIA credit instrument.

The DOT's Use of Credit Ratings

Credit ratings on TIFIA-supported projects are used for three purposes:

1. **Statutory Rating Requirement.** By statute, a project cannot receive TIFIA credit assistance unless the senior debt obligations funding the project, i.e., those obligations having a lien senior to that of the TIFIA credit instrument on the pledged security, receive investment grade ratings from at least two Credit Rating Agencies, as discussed above. Therefore, even though a project may be selected for TIFIA credit assistance, this credit assistance will not be provided (i.e., the DOT will not close on the credit agreement) until two Credit Rating Agencies assign an investment grade rating to the project's senior debt obligations, or the TIFIA facility itself if there are no debt obligations senior to the TIFIA credit instrument.
2. **Capital Allocation Requirement.** Default risk is a key component of the DOT's assessment of expected losses related to the TIFIA Program. The Federal Credit Reform Act of 1990 requires Federal agencies with credit programs to allocate capital, in the form of budget authority, to cover these expected losses.^[195] The DOT uses the TIFIA Capital Allocation Model to estimate credit exposure. The model employs such variables as the repayment structure, the drawdown assumptions, the nature of the dedicated revenues securing the TIFIA credit instrument, and the ratings assigned to the TIFIA credit instrument.
3. **Annual Capital Reserve Adjustments.** As part of its ongoing portfolio monitoring, the DOT is required to annually adjust, or "reestimate," its allowance for credit losses based on updated loss expectations.^[196] The DOT will incorporate information from credit surveillance reports, including changes in credit ratings, on TIFIA-supported projects in this annual reassessment process.

Ongoing Rating Requirements

Throughout the life of the TIFIA credit instrument, the borrower must obtain annually, at no cost to the Federal Government, current credit evaluations of the project, the project obligations, and the TIFIA credit instrument.^[197] The current credit evaluations must be performed by a Credit Rating Agency.^[198] By "current credit evaluation," the DOT means: (i) in the case of a project with a published rating, either a current rating or the borrower's certification stating that the rating and outlook are unchanged from the previous year, and (ii) in the case of a project without a published rating, a current rating of the project obligations and the TIFIA credit instrument.

Use of Underlying Ratings

Neither the preliminary rating opinion letter nor the credit ratings should reflect the use of bond insurance or other credit enhancement that does not also secure the TIFIA credit instrument.^[199] The assessment of the senior obligations' investment grade potential and the default risk for the TIFIA credit instrument and the senior obligations should be based on the underlying ratings of the unenhanced debt obligations and the project's fundamentals.

Applicant Questions about Rating Requirements

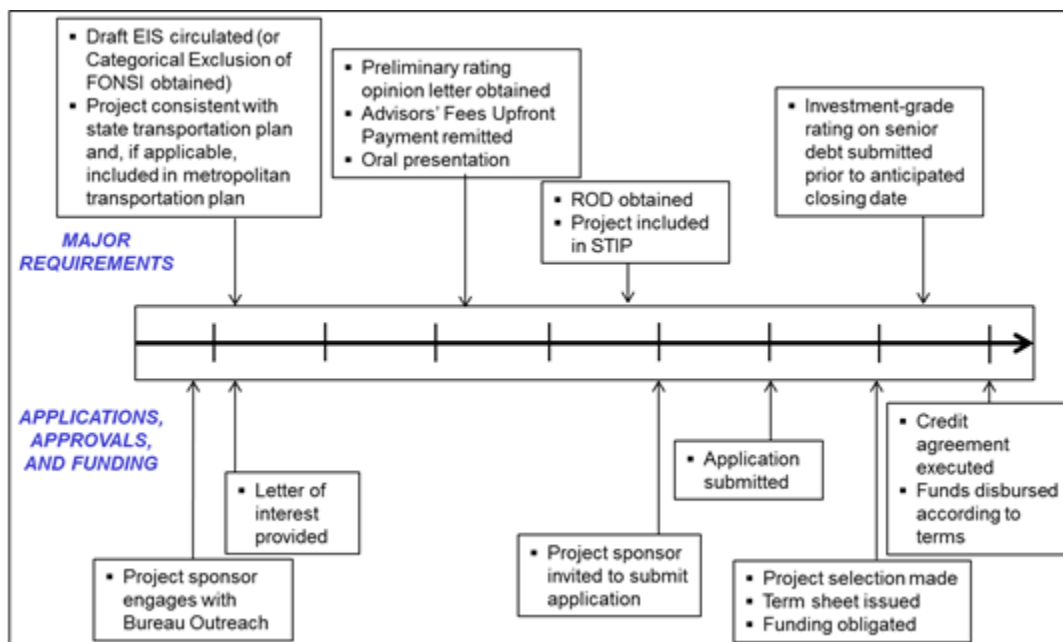
Applicants should contact the Bureau with any questions about the rating process and the requirements for a preliminary rating opinion letter, two investment grade credit ratings on the senior obligations' and two ratings on the TIFIA credit instrument. The Credit Rating Agencies will be able to answer questions concerning fees, timing of assessments, information requirements, and surveillance practices associated with obtaining preliminary rating opinion letters, credit ratings, periodic rating updates, and credit surveillance reports.

Section 3-7

Timing of Environmental, Planning, and Credit Documents

Requirements for environmental, planning, and credit documents correspond with the application and selection processes, which are described in Chapters 4 and 5, respectively. Exhibit 3-A provides an overview of how these requirements relate to the various stages of the application and selection processes.

Exhibit 3-A: Major Documentation Required During the Application and Selection Processes



Text of Exhibit 3-A

- Major Requirements - Draft EIS circulated (or Categorical Exclusion of FONSI obtained)
- Major Requirements - Project consistent with state transportation plan and, if applicable, included in metropolitan transportation plan
- Applications, Approvals, and Funding - Project sponsor engages with Bureau Outreach
- Applications, Approvals, and Funding - Letter of interest provided
- Major Requirements - Preliminary rating opinion letter obtained
- Major Requirements - Advisors' Fees Upfront Payment remitted
- Major Requirements - Oral presentation
- Major Requirements - ROD obtained
- Major Requirements - Project included in STIP
- Applications, Approvals, and Funding - Project sponsor invited to submit application
- Applications, Approvals, and Funding - Application submitted
- Applications, Approvals, and Funding - Project selection made
- Applications, Approvals, and Funding - Term sheet issued
- Applications, Approvals, and Funding - Funding obligated
- Major Requirements - Investment-grade rating on senior debt submitted prior to anticipated closing date
- Applications, Approvals, and Funding - Credit agreement executed
- Applications, Approvals, and Funding - Funds disbursed according to terms

[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 to 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).