



U.S. Department of Transportation  
Docket Operations, M-30, Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20950

**Agency Name: Office of the Secretary of Transportation**  
**Docket Name: Letters of Interest for Credit Assistance Under the Transportation Infrastructure Finance and Innovation Act (TIFIA) Program**  
**Docket Number: DOT-OST-2016-0032**  
**Date: April 11, 2016**

Rails-to-Trails Conservancy (RTC) would like to thank the U.S. Department of Transportation (USDOT) Office of the Secretary for the opportunity to comment on the Department of Transportation's implementation of amendments to the Transportation Innovation Financing and Investment Act (TIFIA) under the Fixing America's Surface Transportation (FAST) Act. TIFIA has long been a way to stretch limited federal dollars and encourage private investment in our nation's infrastructure through innovative methods. However, it has not previously been accessible to active transportation (trail, pedestrian and bicycle) projects, which rarely meet a \$50 million cost threshold and for which high transaction costs of TIFIA financing can be a prohibitive barrier.

RTC helped to secure changes in the FAST Act to make TIFIA more accessible to build networks of active transportation infrastructure. We appreciate Congress' foresight in making TIFIA amenable to smaller projects involving local governments (and transit-oriented development) by lowering the threshold, making it easier to bundle related project segments, streamlining the process, providing fee waivers and capitalizing state infrastructure banks to make loans for rural projects.

We are eager to assist USDOT to implement these changes in a manner that will enable applicants to use TIFIA to complete active transportation networks. We appreciate USDOT's interest in using TIFIA to support a diverse array of transportation projects and timely issuance of the Notice of Funding Availability with this opportunity to comment on key implementation issues. We commend USDOT for collecting comments in a manner that will inform the forthcoming update of the TIFIA program guide.

Our comments draw lessons from our work helping local governments to develop trail systems connecting people to key destinations. We look forward to working with USDOT to develop streamlined delivery systems—such as our idea below for a “Turbo Tax”-style questionnaire to

simplify the application process-- and to build awareness among potential project sponsors regarding opportunities to use TIFIA.

**I. TIFIA as a tool for active transportation networks: opportunities to improve TIFIA by fulfilling FAST Act reforms**

Prior to the FAST Act, the minimum cost threshold for the TIFIA program, as well as the transaction costs involved with applying for TIFIA financing, made the program impractical for active transportation projects. The NOFA affirms the promise of the FAST Act to make TIFIA more accessible for local governments and smaller projects, including active transportation networks, but to fulfill the intention of the reforms additional clarity is needed.

Since only one active transportation project received TIFIA financing prior to the FAST Act, and the reforms were intended to make the program more accessible to such smaller projects, any guidance, including the revised Program Guide, should explicitly list trail and active transportation networks as eligible projects for which TIFIA financing may be available. The NOFA broadly refers to surface transportation projects that are eligible for Federal assistance under title 23 or title 49 of the U.S. Code, but does not mention active transportation projects specifically even though every other mode of transportation eligible is explicitly mentioned.

Reforms in the new law will make TIFIA more accessible by ensuring that the cost of applying for TIFIA financing is reduced. For example, the \$2 million to be set aside to cover application costs, for projects with a total cost of \$75 million or less, will remove a significant barrier for small project applicants. RTC appreciates that USDOT clarified in the NOFA that applicants can declare need for this assistance in their letter of interest and receive an answer before having to expend resources, and that the funds may be used to cover the cost of financial and legal advisors necessary to complete a creditworthiness review. The costs of such consultants are a primary impediment to small project applicants. We also look forward to further guidance in the TIFIA Program Guide. We suggest that USDOT include criteria or principles for prioritizing the funds to be used in lieu of third-party costs if they become oversubscribed. In particular, we suggest establishing an inverse relationship between total project size and award of these funds such that the smallest projects receive the surest and greatest consideration. This would be a sensible way to fulfill the intent of limiting costs for those least able to afford the transaction costs of applying for TIFIA funding.

USDOT's decision to conduct a rolling application process will allow local governments to take the time to obtain guidance and expertise needed to provide a thorough Letter of Interest. Additionally, USDOT's willingness to work with applicants to provide information to establish eligibility will also help encourage local governments to apply. However, local governments may more readily see opportunities to use TIFIA if USDOT were to list additional examples of revenue sources that may be used to repay financing for active transportation projects, such as income tax revenue and private funds not necessarily collected by the government.

Further, the NOFA appropriately illuminates the FAST Act's provision allowing use of a master credit agreement for a program of projects or a project for which adequate funding is not available to fund TIFIA credit assistance in the fiscal year in which the application is approved.

Clarifying options for bundling of projects is an important topic for guidance, especially for applicants planning active transportation networks where the minimum project size is achieved for a suite of related infrastructure connections. Please consider opportunities to provide flexibility in meeting the requirements for each individual project and indicate where the application process and/or implementation could proceed at different rates for different projects.

## **II. Response to USDOT Requests in the NOFA for Feedback on Streamlining Application Process and State Infrastructure Banks**

In addition to opening the process for submitting letters of interest for TIFIA financing, the recent notice from USDOT requests input on a few key changes to the TIFIA program included in the FAST Act. Particularly, USDOT requests feedback regarding two issues that are important for ensuring that the program is accessible to local governments working on completing their active transportation networks – the streamlined application process and the use of TIFIA to capitalize state infrastructure banks. These provisions put an elevated priority on reducing transaction and application costs as much as possible, including making the program user-friendly for applicants with limited resources and those applying for smaller projects where transaction costs could outweigh the benefits of participation.

### **a. Establishing a streamlined application process**

Currently, project sponsors typically hire a team of financial and legal experts to put together the information necessary to apply for TIFIA financing. The more those costs can be reduced, the more likely local governments will find it advantageous to apply for TIFIA financing. A streamlined application process, with fewer steps and simpler template documents to facilitate agreements between lenders and borrowers, would help achieve this.

The Build America Transportation Investment Center (BATIC) will play a key role in assisting local governments in assessing their eligibility for TIFIA projects and pulling together the information necessary to apply for TIFIA financing. BATIC serves as the single point of contact and coordination for states, municipalities and project sponsors looking to apply for federal transportation credit programs. Currently, TIFIA applicants undergo two subsequent review processes – a preliminary review following the submission of a letter of interest to determine creditworthiness, and then a review of the application itself. BATIC could reduce the burden of the creditworthiness process by working with applicants to help assess the creditworthiness of both the project and the applicant and pull together needed information on the front end, then utilize that information to process the application.

BATIC could then assist local governments pursuing TIFIA financing for smaller projects to file an application through a shorter process. Smaller projects are less complicated and involve fewer parties and funding sources and create less risk for lenders, and therefore do not need to provide as many assurances. Such projects could go through a shorter application process, a type of Form 1040EZ for TIFIA applications. A shorter application could limit questions to basic criteria about whether the project is eligible for TIFIA financing, has in place other funding sources to cover the estimated total cost of the project, and to ensure that the applicant has sufficient resources available for cost overruns and insurance to cover the cost if the project fails. USDOT could also

spell out the application process better in a simplified TIFIA Program Guide, with easy-to-find and relevant checklists and timelines, catered to projects of different sizes. This information is currently available, but could be made easier to find and understand.

In order to provide a more user-friendly process for applicants with the least capacity to navigate the process, much less seek tailored arrangements, RTC asks that USDOT develop an online questionnaire-based application process for projects under \$75 million. Like “Turbo Tax”, the questions would cover all the information USDOT needs to evaluate the project, including project details and creditworthiness. USDOT could then autofill an application form based on the answers to the questions and adjust the standard term agreement based upon the information provided. For example, an applicant could be asked common sense questions such as “will your project rely on traffic volumes to determine the flow of revenue to pay back the loan?” If the answer to the question is no, the system would remove any reference to a traffic and revenue study requirement from the TIFIA application and the loan agreement. Information given at the pre-application step could automatically carry through each stage of the process, thereby eliminating any redundancies.

With BATIC available to answer any questions that arise during the application process, this more limited application process could reduce the amount of help needed by attorneys and financial experts, thereby limiting transaction costs and stretching TIFIA funds reserved for covering third-party costs.

#### b. State Infrastructure Banks

RTC appreciates the clarification provided in the NOFA regarding the use of TIFIA financing to capitalize state infrastructure banks (SIBs) to use for financing rural projects. Specifically, requiring the SIB, rather than individual subsidiary projects, to be responsible for all stages and requirements of the standard TIFIA process will enable the SIBs to make TIFIA financing more readily available to rural projects, overcoming the organizational problem of there being too many affected jurisdictions and consolidating the transaction costs with the SIB. Spelling out in the new Program Guide how the SIB option will function will provide helpful clarity.

RTC reached out to some SIB administrators to gain perspective on implementation steps that would make capitalization of SIBs to support small, rural projects a practical option. One SIB indicated a strong preference for state funding over federal funding due to a perception that federalized projects are inflexible or expensive to deliver, but also signaled open-mindedness to work with USDOT to explore ways to streamline delivery of federal projects.

SIBs and potential project applicants need clarity about how the new legislative definition of “rural” will be interpreted. USDOT should clarify how it will handle projects that cover both rural and urban areas, as do many trails. At a minimum, the portions of mixed geography projects located outside of urban areas should clearly be eligible to apply for SIB financing acquired through TIFIA. Are any urban portions also eligible if they are part of a network that is largely rural? Further, will urban portions of a project or network be relevant to determining whether a project (or program of projects) meets overall minimum or maximum cost thresholds?

Because rural projects often involve many local jurisdictions (and sometimes multiple states), coordination among affected jurisdictions is critical to success. Guidance about best practices or roles and responsibilities for coordinating among governments could help. For example, will the SIB coordinate with local jurisdictions directly or provide financing to a separate coordinating agency? There may not be one right answer to these questions, but expert assistance from USDOT in sharing knowledge and establishing reasonable default processes could create efficiencies and lower barriers to entry. Additionally, measures taken to streamline the application process (similar to those discussed above) also should be considered in the SIB context.

Also, while the FAST Act makes a clear commitment to supporting rural projects of significance, SIBs have, in the past, focused on large metropolitan areas. The structures set up by these SIBs have historically focused on the needs and requirements of projects in large metropolitan areas, and might discourage applications from rural projects. USDOT could engage in an education campaign so that states understand opportunities to use SIBs for rural projects and the role that SIBs play in leveraging limited funds to address priority infrastructure needs

### **III. Conclusion**

RTC appreciates the opportunity to comment on the Notice of Funding Availability regarding the TIFIA program, including key changes in response to the FAST Act such as capitalizing state infrastructure banks and streamlining the application process. We look forward to continuing our work with USDOT to ensure that TIFIA is accessible and affordable to local governments and other applicants seeking to finance completion of their trail and active transportation networks. These steps will help ensure that TIFIA is an effective way to stretch limited federal dollars for a broader array of critical transportation projects. Please contact us at 202-331-9696 to discuss any of our recommendations or comments.

Sincerely,

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