



Innovative Program Delivery

Transportation Infrastructure Finance and Innovation Act (TIFIA) Credit Program and Civil Rights Requirements

Civil Rights Symposium
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What is TIFIA?

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- Transportation Infrastructure Finance and Innovation Act (1998), further amended in subsequent legislation, including MAP-21
- TIFIA finances Eligible Project Costs through:
 - Direct secured loans
 - Loan guarantees
 - Lines of credit





TIFIA Process

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- Letter of interest
- Application
- Due diligence
- Negotiation
- Closing
- Oversight and Monitoring





TIFIA Due Diligence: Identifying Risks

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- Credit diligence is conducted by the TIFIA Joint Program Office (JPO) staff with assistance from outside financial advisors
- Project-related diligence for TIFIA-financed highway projects is done collaboratively by the TIFIA JPO and the applicable DOT modal administration
- Legal diligence done by DOT attorneys with support from outside legal counsel for transaction-related issues (Federal requirements diligence is done in-house)





TIFIA Due Diligence: Identifying Risks

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Examples of due diligence issues:

- Litigation
- Project funding
- Local issues (e.g. opposition to tolling)
- NEPA
- Buy America
- Civil rights





TIFIA Negotiation and Closing

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- Negotiate terms that mitigate risks
- TIFIA closing essentially establishes a deadline to resolve project issues
 - Obligation of loan funds creates an inherent risk to the Government
 - Legal risk:
 - Resolving project issues mitigates risk to the Government
 - TIFIA loan documents require resolution of issues





TIFIA Closing

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- Financial market reliance issues/market risk
 - TIFIA often closes loans with senior bank or bond debt
 - As the negotiation period draws to a close, TIFIA is expected to represent that there are no issues preventing TIFIA from closing on its loan
 - Banks and bond issuers and underwriters bind themselves legally based on TIFIA's statements





TIFIA Closing

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- Absent notification to the TIFIA borrower, the borrower may incorrectly assume that the Department “has no issues” with the project
 - For example, they may assume that the Department and its modal administration are signed off on all civil rights issues
- “Partnership” risk
- Brief case study—DBE

