TRANSPORTATION FINANCE BANK
REVOLVING LOAN PROGRAM GUIDELINES

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CALIFORNIA TRANSPORTATION COMMISSION
CALIFORNIA DEPARTMENT OF TRANSPORTATION

GUIDELINES FOR THE TRANSPORTATION FINANCE BANK REVOLVING LOAN PROGRAM

1. INTRODUCTION

The Transportation Finance Bank (TFB) Revolving Loan Program was implemented by the California Transportation Commission (Commission) and the California Department of Transportation (Department) to provide flexible, short-term financing to public entities and public/private partnerships for the purpose of accelerating the delivery of transportation projects in California.

2. BACKGROUND

Authority

The National Highway System Designation Act of 1995 (Act) authorized the creation of a State Infrastructure Bank (SIB) pilot program to provide loans and other credit assistance to public and private entities to carry out highway construction and transit capital projects eligible for assistance under Section 350 of the Act. The U.S. Department of Transportation (USDOT) selected California, as one of ten states, to participate in the program.

The Department entered into an agreement with the Federal Highway Administration and the Federal Transit Administration, to establish the SIB, and $3 million was appropriated by the USDOT for capitalization of the bank. California Government Code, Section 64000, amended by chapter 805 of the statutes of 2002 (AB 2996, Oropeza) authorized these guidelines and state participation in the program. These guidelines describe the policies and procedures for the approval and administration of TFB loans.

Funding Availability

While the USDOT authorized $3 million for capitalization of California's SIB, Section 350(e)(1) of the Act also requires the State to provide a non-federal match. Therefore, the approximate Federal contribution will be 88.53% and the State contribution will be 11.47% of the principal amount to be financed. The State contribution will come from local funds or State funds that are otherwise appropriated for projects. As loans are repaid, funds will be recycled to support new loans, and the Bank's loan capacity will increase with deposits of new capital generated from interest and fees earned on the loans.

Administration

Under the TFB Revolving Loan Program, the Department is responsible for accepting and evaluating applications, making loan recommendations to the Commission, and acting as the contact source for information on the program. The Commission approves the guidelines and loan application and agreement package, makes decisions regarding loan approval, and provides program oversight.

The Department may develop and maintain additional internal administrative procedures necessary to carry out the legislative intent of this program, and the Commission may revise the guidelines and loan documents, including the application, as deemed necessary.

3. ELIGIBILITY

Eligible Borrowers

Loans are available to local public entities and public/private partnerships. Any regional transportation planning agency or county transportation commission (the regional agency for that county's submission to the State Transportation Improvement Program (STIP)) may apply for a loan. Additionally, recipients of fuel tax revenue monies are eligible for a TFB loan. Local entities that do not meet the above criteria and private entities interested in obtaining a loan under this program must apply jointly with the regional agency to the STIP for that county.

Eligible Projects

Highway construction projects must be eligible for assistance under Title 23, United States Code (USC) and transit capital projects must meet the requirements of Section 5302 of Title 49, USC. Additionally, revenues from certain motor vehicle fuel taxes that may be designated to meet the State's matching share requirement will be subject to the limitations imposed by Article XIX of the California State Constitution when loaned to project sponsors for the purpose of funding transit capital projects.

Additionally, projects must be included in a Federal State Transportation Improvement Program (FSTIP) and must comply with all other Federal requirements, including National Environmental Policy Act, Americans with Disabilities Act, and Davis-Bacon Act requirements, as appropriate.

Eligible Costs

Loans are available for any phase of an eligible project, but funding will be provided only for authorized expenditures incurred after the loan has been approved by the Commission. Borrowers will not be reimbursed for project costs incurred prior to loan approval. If it is determined that loan proceeds have been utilized for costs incurred prior to loan approval, immediate repayment of the total outstanding principal and interest will be required, and a penalty charge will be assessed on the outstanding principal and interest balance on the loan equivalent to the Prime Rate + 5% (the rate is determined and fixed at the time of declaration) retroactive to the date the loan was approved. In the event of non-compliance with repayment requirements, the borrower's loan collateral which is the pledge of county shares will be used to secure loan repayment and any penalty as specified above.

4. APPLICATION PROCESS AND REQUIREMENTS

Loan Application

An application for a loan must be submitted to the Department utilizing the *Transportation Finance Bank Revolving Loan Application and Agreement* form. Four original copies of the application package, including all required approvals and information, must be mailed to the address in Section 7 of these guidelines.

Financial Feasibility

Applicants must submit a financial plan that includes the estimated total project cost, a summary of the sources and uses of funds, the proposed source and timing of repayment of the principal and interest on the loan, a projected drawdown schedule, assumptions made in developing the plan, and a list of the persons and entities responsible for preparation of the plan. The applicant must also submit copies of its current budget, consolidated audited financial statements for the three most recent years, the most recent consolidated year-to-date interim financial statements, independent audit reports, and potential legal claims and/or liabilities pending that may impact the applicant's ability to repay a loan.

The financial plan must contain sufficient information to assess the credit quality of the applicant, and demonstrate that the applicant is capable of repaying the loan within the terms specified in the loan agreement.

Loan Terms

To allow the greatest flexibility for the borrower, loan terms will be established on a project-specific basis; however, the interest rate will be set on the date of Commission loan approval at 1% below the three-month Treasury Bill Average Auction rate. However, the minimum interest rate shall not be less than 1%. The loan amount must be a minimum of $300 thousand with a maximum of $1 million and it must be fully repaid in cash. The current funding capacity of the TFB is $3 million. As the funding capacity of the TFB increases, the Commission may revise the minimum and maximum loan amount in the guidelines. The maximum loan term is six (6) years. Repayment must begin no later than one year from the date of project completion and final payment must be received by the Department within six years from the date of Commission loan approval. Repayment terms will be incorporated into the Loan Application and Agreement. It should be noted that there is no penalty for prepayment of principal and/or interest on the loan.

Loan Fees

A loan application fee, set at 1/2 of 1% of the total amount requested, is payable upon submittal of an application. This fee reimburses the State for expenses incurred by financial and legal staff and independent financial advisors in processing the application. If a loan is approved at an amount higher or lower than the amount initially requested, the difference will be refunded to the applicant if the fee is overpaid, or it will be built into the loan amount or paid separately at loan closing if the fee is underpaid. If a loan application is not selected, the loan application fee will be returned to the applicant.

Collateral Requirements

In order to ensure adequate security for a loan, the borrower and regional agency must agree to provide collateral in the form of a pledge of county share allocations. In the event of default on a loan, the regional agency for that county's submission to the STIP, shall submit a STIP amendment to receive a STIP allocation to ensure the repayment of the loan funds. The regional agency may be required to reprioritize projects on the current STIP to ensure repayment in an expeditious manner. The transfer shall be made within the time frame as specified in the STIP allocation. However, interest will continue to accrue on any loan that is in default, up to the date the county share reduction is actually made, and the principal, accrued interest, and penalties are paid. An amount equivalent to the remaining loan balance plus all accrued interest and penalties shall be deducted from the STIP county share of the affected county or counties pursuant to Sections 14524 and 14525 and transferred from the State Highway Account to the TFB. In addition, the defaulting regional agency shall be ineligible to participate in the TFB Revolving Loan Program for a period of five years from the date of final repayment.

The governing body for the regional agency, as applicant or co-applicant, must voice its approval, by resolution or other instrument, of the loan for the purpose and terms stated in the Loan Application and Agreement. The governing body must show in the resolution, or other instrument, that it recognizes that county share allocations provide the sole source of loan collateral in the case of default on the loan. The governing body must also indicate in the document that, in the judgement of the regional agency, the financial plan completed for the project and included in the application is sound. A copy of the approving resolution, or other instrument, must be submitted with the application.

It is the intent of the Commission and the Department to work with the borrower to resolve problems with respect to late loan payments instead of declaring immediate default. However, the Commission and the Department have the responsibility of securing the TFB from improper use or fiscal irresponsibility and will exercise the right, as necessary, to enforce repayment of the loan as specified in the Loan Application and Agreement. The Department will notify the borrower in writing of its intention to declare default on a loan and to apply a penalty charge on the outstanding principal and interest balance on the loan equivalent to the Prime Rate + 5% (the rate is determined and fixed at the time of declaration) retroactive to the date the loan was approved. This will be effective on the fifth working day after the date of notification of default.

Other Requirements

In order to be eligible for a TFB loan, other requirements must be met. These include, but are not limited to, the following:

- The project must be included in a FSTIP before a loan can be approved;
- The borrower will be solely responsible for ensuring that the project is in compliance with all applicable federal, state, and local laws, rules, regulations, and/or policies. (Such applicable laws, rules, regulations and/or policies include, but are not limited to Title 23, Title 49, National Environmental Policy Act, Americans with Disabilities Act, Davis-Bacon Act, 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, OMB A-87, Cost Principles for State and Local Governments, and all contract provisions governing the project); and
- The borrower must demonstrate that the project has a high probability of resulting in a completed facility.

In addition to the above requirements, the Department may request that the applicant provide supplemental information in support of detail included in the application package to fully evaluate the applicant's ability to meet the requirements of the program and the project's financial feasibility.

5. PROJECT SELECTION AND LOAN APPROVAL PROCESS

Application Deadline

The initial deadline for accepting loan applications will be a 60-day period beginning on the date of Commission approval and adoption of the TFB Revolving Loan Program, TFB Guidelines, and Loan Application and Agreement Package. The Loan Application and Agreement Package should be mailed (Postal Service, FedEx, or other courier service) to the Department and postmarked or hand delivered to the Department, Division of Innovative Finance by the deadline. Applications received by the initial deadline will be given priority over applications received after the deadline. If the total amount of the loan applications received by the initial deadline exceed the capacity of the loan program, the following four criteria, in sequential order, will be used to determine the order in which the loan applications will be considered.

A. Rural counties will have priority over urban counties

B. Partial programmed ** vs unprogrammed vs programmed projects
   - A partial programmed project will have priority over an unprogrammed project
   - An unprogrammed project will have priority over a programmed project

C. A higher priority will be given to a project that is closest to completion

D. A less populated county will have priority over a more populated county

** partial programmed refers to projects that have been programmed for some but not all of the components

In the event program capacity would be exceeded if an application were approved, the next selected application would be given priority; however, the Department may first negotiate with an applicant for a reduced loan amount.

After the initial deadline, applications will be accepted by the Department at any time that loan funds are available as determined by the date and order received. In the event program capacity would be exceeded if an application were approved, the next application received by the Department will be given priority; however, the Department may first negotiate with an applicant for a reduced loan amount whenever an application exceeds available funds. Applicants are encouraged to contact the Department's Innovative Finance Division in Sacramento to determine the availability of loans before submitting an application.

While the Department will evaluate each application in the order received, a project must meet the following minimum threshold criteria:

- the need for, or public benefit of, the project must be clearly identified;
- the project must be financially feasible and the applicant must demonstrate the ability to repay the loan; and
- the proposed project must meet all applicable Federal, State and local requirements.

Additionally, the TFB must have the funding capacity to participate in the project.

The Department will submit the loan application and agreement package and its recommendation for action, at the earliest possible Commission meeting, but no later than 90 days after the Department receives a completed application package except for the first round of funding which will be 90 days from the date of the initial deadline. The meeting schedule can be found on the Commission's web site at the following address: http://www.dot.ca.gov/hq/transprog/ctcliaison.htm.

Upon assurance by the Department that all loan requirements have been met and that the borrower has the apparent resources and capability of repaying the loan, the Commission will take action on the loan application. Accordingly, the Department shall execute the loan agreement approved by the Commission.

Loan Disbursement

Loan proceeds will generally be disbursed on a reimbursement basis as project expenses are incurred, and will be based on (1) the cash flow needs of the project as defined by the borrower and approved by the Commission in the Loan Application and Agreement package, and (2) the borrower's submittal of a disbursement request accompanied by supporting documentation, such as actual invoices. Actual expenditures may be reimbursed on a lump-sum basis, for example, as may be necessary for a transit capital acquisition, or in accordance with a mutually-agreed upon drawdown schedule, as may be needed for phased highway construction projects. In the event that disbursements are made according to a drawdown schedule, the projected need for future disbursements will be re-evaluated annually by Department staff to ensure the most efficient use of TFB monies, prior to the actual disbursement of funds. The re-evaluation of the expenditure plan will be based on information provided by the borrower in accordance with annual reporting requirements. (See Section 6 of these guidelines for further detail regarding annual progress reports.)

While Department staff may approve an interim request for revision of the drawdown schedule, a minimum of 60 days' prior written notification, to allow for sufficient processing time, will generally be required.

The Commission and the Department reserve the right to disburse loan proceeds in advance of actual expenditures being incurred, for example, where it is demonstrated that it is more effective or efficient to the TFB, or the project being financed, to provide for lump sum disbursement. Authorization of this advance disbursement will be contingent upon the cash flow needs of the Department's TFB-related accounts. Borrowers of "advanced" loans must certify that there is no intent to create an arbitrage situation by investing loan proceeds at a higher yield than the interest rate payable on the loan.

6. REPORTING, ACCOUNTING, AND AUDITING REQUIREMENTS

Following the award of a loan, and until it is repaid in full, a borrower must submit annual progress reports to the Department's Innovative Finance Division staff and the Department Project Manager responsible for the project. These reports should include information regarding the status of the project, percentage of project completed, percentage of contract time lapsed vs. percentage funded to date, explanation of any delays in implementation and how the borrower will reach the completion goal, revised project schedules (if applicable), a list of expenditures at a level consistent with loan application detail, beginning and ending loan fund balances, interest earned to date on any loan proceeds advanced to the project, and the amount and percent of funds contributed to the project from other sources during that period.

In the event loan proceeds are advanced, these funds may not be commingled with the borrower's own funds and must be maintained in a separate account held by a FICA-insured financial institution.

Borrowers must maintain separate financial accounts for the project in accordance with generally-accepted accounting principles. The borrower's accounting system and records must properly accumulate and segregate incurred project costs and matching funds by line item (i.e., sources and uses) for the project, must enable the determination of incurred costs at interim points of completion, and must provide support for loan amounts expended and project costs incurred. All accounting records and other supporting documents of the borrower related to the project shall be maintained for a minimum of three years from the date of final payment of the loan as specified under the standard provisions of the loan agreement, or three years from the date of project completion, whichever is longer. Such records shall be open to inspection and audit by representatives of the State of California and the United States (U.S.) Government, as a project expense chargeable to the loan. Copies, thereof, will be furnished by the borrower upon receipt of any request made by the State of California, the U.S. Government, or their agents.

A breach of the reporting, accounting, and/or auditing requirements specified in these guidelines could result in the department's notification to the borrower that immediate repayment and to apply a penalty charge on the outstanding principal and interest balance on the loan equivalent to the Prime Rate + 5% (the rate is determined and fixed at the time of declaration) retroactive to the date the loan was approved. In the event of non-compliance with repayment requirements, the borrower's loan collateral which is the pledge of county shares will be used to secure loan repayment and any penalty as specified above.

7. APPLICATION SUBMITTAL/PROGRAM INFORMATION

Four original copies of the TFB Loan Application and Agreement, and all applicable attachments, should be mailed to:

California Department of Transportation
Division of Innovative Finance
Transportation Finance Bank Revolving Loan Program
1120 N Street, MS-6
Sacramento, CA 95814
Attention: Finance Manager (Loan Programs)

Questions related to the TFB Program should be directed to the Finance Manager (Loan Programs) at the following numbers:

Phone: (916) 324-7624 FAX: (916) 324-7708