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USDOT eases access to federal transit-oriented development financing

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TIFIA and RRIF funds can now be used more easily to finance real estate development near qualifying transit stations.

What's the impact?

- By removing the credit risk premium requirement, USDOT eliminated an obstacle that deterred many borrowers.
- TOD projects must meet specific eligibility criteria to qualify for financing options.
- Private developers can seize opportunities created by the substantial advantages of RRIF and TIFIA financing compared to the commercial alternatives.

The Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act (IIJA)) modified the existing Railroad Rehabilitation and Improvement Financing (RRIF) and Transportation Infrastructure Finance and Innovation Act (TIFIA) programs to make it easier for qualifying Transit-Oriented Development (TOD) projects to access financing under the programs, including private real estate developments.

Traditionally these key programs have helped fund major transportation projects across the US, such as roads, bridges, stations, and rail tracks. Changes under the IIJA's meant that TIFIA and RRIF funds can now be used more easily to finance real estate development near qualifying transit stations.

In May 2024 the U.S. Department of Transportation (USDOT) announced its first such TOD loan, under the TIFIA program, for the Mount Vernon Library Commons Project in Washington State. The project is a multi-use building that will include a public library, community center, meeting rooms, commercial kitchen, parking garage, public restrooms, STEM center, computing space, and electric vehicle charging stations. The project is a short walk from Skagit Station, the county's multimodal transportation center.

Key change to RRIF program

On May 24, 2024, the USDOT released its final rule amending the RRIF and TIFIA programs in implementation of the IIJA. The rule takes effect on June 24, 2024. Prior to this rule, in the absence of appropriated budget authority to cover the cost of a RRIF loan (including for TOD projects), the borrower was required to pay this cost (the credit risk premium) upfront and prior to disbursement of the loan. This greatly increased the upfront cost of RRIF borrowing, and was an obstacle to many borrowers under the program.

The new rule eliminates the credit risk premium. Instead, a RRIF loan will now be charged an interest rate spread over the whole life of the loan (with no related upfront payment). This change makes RRIF loans (including for TOD projects) significantly more attractive to potential developers.

What types of TOD projects are eligible for RRIF loans?

The purpose of a RRIF TOD loan is to "finance economic development, including commercial and residential development, and related infrastructure and activities" that:

- incorporates private investment of greater than 20% of total project costs;
- is physically connected to, or is within 0.5 mile of, a fixed guideway transit station, an intercity bus station, a passenger rail station, or multimodal station, provided that the location includes service by a railroad;
- demonstrates the ability of the applicant to commence the construction contracting procurement process not later than 90 days after loan award; and
- demonstrates the ability to generate new revenue for the relevant passenger rail station or service by increasing ridership, increasing tenant lease payments, or carrying out other activities that generate revenue exceeding costs.

To be eligible, a RRIF TOD project must be an "economic development" *and* meet all four of the above statutory eligibility criteria. The project does not need to include any rail or station infrastructure. It need only be physically connected to, or within 0.5 mile of, a qualifying station. USDOT's Build America Bureau has indicated that for rail stations under the RRIF program, only freight rail and intercity or commuter passenger rail stations are relevant (not shorter journey rail services such as subways).

USDOT defines "fixed guideway transit" as meaning "a public transportation service that uses and occupies a separate right-of-way or rail for the exclusive use of public transportation; or a fixed catenary system over roadway useable by other forms of transportation." As examples of "fixed guideway transit", USDOT cites:

- all rail modes, including light rail and commuter rail;
- inclined plane, cable car, monorail, or automated guideway;
- bus rapid transit and trolleybus; and
- aerial tramway and ferryboat (but generally excluding intercity ferryboat services).

Thus, eligible transit stations under the RRIF TOD program extend far beyond rail stations. As discussed below, the TIFIA TOD program is more limited in this regard.

The RRIF loan can finance up to 75% of the total eligible project costs. If the project includes housing, the RRIF TOD program does not require that any of it be affordable housing. RRIF TOD projects are not subject to either a minimum or maximum cost threshold.

WHO CAN BE A RRIF TOD BORROWER?

Unlike the TIFIA TOD program, a private developer can only access a RRIF TOD loan if it is in a joint venture that includes a governmental entity.[1]

According to the Build America Bureau's Credit Program Guide, the agreement between the parties can be memorialized in a contract, a memorandum of understanding, or other arrangement that describes the mutual consideration exchanged in order to accomplish the project. 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 in the project.

WHAT IS AN "ECONOMIC DEVELOPMENT"?

"Economic development" under the RRIF TOD program includes private real estate development projects that "enhance the economic vitality and competitiveness of the surrounding neighborhood and region, and provide new spaces and opportunities for commercial activity

[1] 49 U.S. Code § 22402(a)(5).

and housing." This is not limited to residential projects, but could encompass industrial projects, entertainment and recreational project, academic facilities and healthcare facilities, among others. Eligible projects are not limited to new construction: conversions and rehabilitation of existing buildings and facilities may also be eligible.

What types of TOD projects are eligible for TIFIA loans?

For private developers, an eligible for TIFIA TOD loan project must be both (a) "a project to improve or construct public infrastructure" **and** (b) "a project for economic development, including commercial and residential development, and related infrastructure and activities":

- that incorporates private investment;
- that is physically or functionally related to a passenger rail station or multimodal station that includes rail service;
- for which the project sponsor has a high probability of commencing the procurement contracting process for construction not later than 90 days after the date on which credit assistance under the TIFIA program is provided for the project; and
- that 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.

An "economic development" project under the TIFIA TOD program is the same as under the RRIF TOD (described above). Unlike the RRIF TOD program, and eligible TIFIA TOD project must include the improvement or construction of "public infrastructure." However, public infrastructure is widely construed to include utility connections, roads, sidewalks, parks, plazas, and transit access improvements that are open to the public or serve a public purpose. If this "public infrastructure" requirement, and other program requirements, are satisfied the TIFIA TOD loan can also cover the commercial and residential aspect of the development.

Whereas the RRIF TOD program takes account of not just rail stations but also, among other things, bus rapid transit station and local commuter ferryboat service, the TIFIA TOD program requires proximity to a "passenger rail station or multimodal station that includes rail service…."

Like the RRIF TOD program, if the project includes housing, the TIFIA TOD program does not require that any of it be affordable housing. Unlike the RRIF TOD program, the TIFIA TOD program does not specify a minimum percentage of private investment. However, a TIFIA TOD loan can only finance up to 49% of the total eligible project costs (as smaller amount than under the RRIF TOD program). TIFIA TOD projects are subject to a minimum of $10 million cost threshold, but there is no maximum cost threshold.

A TIFIA TOD loan must receive an investment grade ratings. There is no comparable requirement under the RRIF TOD program.

WHO CAN BE A TIFIA TOD BORROWER?

A private developer can access a TIFIA TOD loan directly without being in a joint venture that includes a governmental entity.

Seize opportunities under the RRIF TIFIA programs

The IIJA made it significantly easier for private developers to access financing under the RRIF TIFIA programs for qualifying TOD projects. By eliminating the upfront payment of the "credit risk premium," USDOT has made the RRIF TOD program even more attractive. Although only one relevant TOD loan has been made to date, USDOT is actively considering other applications, including at least one involving a private developer. Given the substantial advantages of RRIF and TIFIA financing compared to the commercial alternatives available to private developers, there are likely many more such projects to come.

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