

**Tennessee Local Development Authority
Tennessee Transportation State Infrastructure
Fund
Policy & Guidance for Borrowers**

Table of Contents

Introduction	4
Definitions	4
Determination of Financial Eligibility	6
Determination of Financing Terms	7
Execution of Financing Agreement and Closing Documents	7
Management of the Loan	8
Records of the Authority	9
Issuance of Additional Debt	9
Encumbrance of State-shared Taxes	9
Federal or Other Assistance for the Qualified Project	9
Requests to Issue General Obligation Debt.....	10
Requests to Issue Revenue Debt.....	10
Approval for the Issuance of Refunding Debt.....	10
Lien Position	11
Requests from UDs, Systems, or Municipalities to Modify Lien Position.....	11
Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position	12
Consent to Modify Lien Position	12
Report on Debt Obligation	13
Disclosure.....	13
Filing of Annual Audit Report	14
Adoption of Policy and Guidance	15

Tennessee Local Development Authority

Tennessee Transportation State Infrastructure Fund

Policy & Guidance for Borrowers

Introduction

The Tennessee General Assembly passed legislation in 2009 that enacted the Tennessee Transportation State Infrastructure Fund Act (“Act”). The Act created the Tennessee transportation state infrastructure fund (“SIF”). The SIF is a revolving loan program administered through the Tennessee Local Development Authority that assists government units with low-interest loans for the construction of qualified transportation projects. The purpose of this Policy and Guidance is to provide guidance to SIF borrowers.

The Tennessee Local Development Authority (“TLDA”), in consultation with the Tennessee Department of Transportation (“TDOT”), has previously established policies and other guidance to assist SIF program borrowers. TLDA and TDOT have conducted a review of these documents with regard to their clarity and efficacy for program borrowers, alignment with program goals, and compliance with program requirements. This resulting Policy and Guidance supersedes any policy or guidance previously approved by the TLDA.

Definitions

For purposes of this Policy and Guidance, terms defined in Tenn. Code Ann. Title 4, Chapter 31, Part 12, shall have the same meaning as defined in those parts unless the context otherwise requires. Any subsequent amendment to definitions in those parts or statutes cited in the definitions below is hereby incorporated by this Policy and Guidance.

“Act” refers to the Tennessee Transportation State Infrastructure Fund Act which is codified in Tenn. Code Ann. Title 4, Chapter 31, Part 12.

“Authority” means the Tennessee Local Development Authority.

“Department of Transportation” or “Department” means the Tennessee Department of Transportation and its successors.

“Eligible costs” means, as applied to a qualified project to be financed with federal funds, the costs that are permitted under applicable federal laws, requirements, procedures and guidelines. As applied to all other qualified projects, “eligible costs” includes the costs of preliminary engineering, traffic and revenue studies, environmental studies, right-of-way acquisition, legal and financial services associated with the development of the qualified project, construction, construction management, facilities and other costs necessary for the qualified project. “Eligible costs” also includes project monitoring costs incurred by the department of transportation, as provided in § 4-31-1205(d).

“Eligible project” means:

- a. A transportation infrastructure project, including streets, highways, bridges, tunnels and any related roadway facilities;
- b. Intelligent transportation systems;
- c. Air transport and airport facilities;
- d. Railways and rail facilities;
- e. Port facilities;
- f. Mass transit systems or transit capital projects;
- g. Parking facilities; and
- h. Pedestrian or bicycle facilities that provide public benefits by enhancing mobility or safety, promoting economic development or increasing the quality of life and general welfare of the public.

There may be included as part of any “eligible project” all improvements, including equipment, necessary to the full utilization of the project, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive and air transportation, transportation facilities incidental to the project and the dredging and improving of harbors and waterways.

“Financing agreement” means any agreement entered into between the authority and a qualified borrower pertaining to a loan entered into under the Act.

“Fund” or “SIF” means the Tennessee transportation state infrastructure fund.

“Government unit” means a county, incorporated town or city, metropolitan government, state agency, or instrumentality, authority or agency of government created by any one (1) or more of the listed entities or by an act of the general assembly, including combinations of two (2) or more of these entities, acting jointly to construct, own or operate a qualified project, or any other state authority, board, commission, agency or department that may construct, own or operate a qualified project.

“Loan” means an obligation subject to repayment that is provided by the fund to a qualified borrower for all or part of the eligible costs of a qualified project. A loan may be disbursed in anticipation of reimbursement for or direct payment of the eligible costs of a qualified project.

“Loan term” means the number of years over which the loan is to be amortized. This period shall not exceed the useful life of the project as assessed by the Department.

“Project revenues” or “revenues” mean all rates, rents, fees, assessments, charges and other receipts derived or to be derived by a qualified borrower from a qualified project or otherwise made available, including, but not limited to, tax revenues, and, as provided in the applicable financing agreement, derived from any system of which the qualified project is a part or from any other revenue producing

facility under the ownership or control of the qualified borrower, including, without limitation, proceeds of grants, gifts, appropriations, investment earnings, proceeds of insurance or condemnation and proceeds from the sale or other disposition of property and from any other source as may be provided by the qualified borrower.

“Qualified borrower” means any governmental unit authorized to construct, operate, or own a qualified project that has the means necessary to repay a loan from the fund, as determined by the Department and the Authority.

“Qualified project” means an eligible project that has been recommended by the department of transportation to receive a loan from the fund to defray an eligible cost.

“Security” means that which is determined by the authority to be acceptable to secure a loan to a qualified borrower under the Act and includes, but is not limited to, project revenues, ad valorem taxes, state-shared taxes, letters of credit and bond insurance.

“State-shared taxes” means taxes imposed and collected by the state pursuant to law and allocated by law to local government units, whether allocated for a particular purpose or for the general use of such local government units, pursuant to Tenn. Code Ann. § 4-31-102.

Determination of Financial Eligibility

Applications for projects to be considered for a Loan from the SIF shall be sent to the Department for evaluation. The Department shall review the application and shall determine if it is an Eligible Project and, if so, whether to recommend the project to the Authority. The Department’s evaluation shall include a determination of the applicant’s financial ability to repay a Loan. Preference may be given to Eligible Projects that have financial support in addition to any Loan that may be received from the Fund. The Department’s recommendation shall provide the expected useful life of the project.

Upon notification from the Department that a qualified project is being recommended for a loan from the fund, the Authority shall determine the term for the loan. The loan Term shall be established at a five, ten, fifteen, or twenty-year term, provided the loan term does not exceed the useful life of the project as recommended by the Department.

The Authority shall establish the interest rate to be charged to the qualified borrower based on the market interest rates on the date the loan is recommended by the Department. The interest rate shall be set at 50 percent of the current market rate (defined as the MMDGO yield published in the *Bond Buyer*) for the term of the loan.

Based upon the loan term and the interest rate as determined above, the Authority shall calculate an estimated maximum annual debt service amount. The qualified borrower may demonstrate such security by:

- a. Pledging security interests in project revenues and any revenues from any other revenue producing facilities from which the qualified borrower derives project revenues to secure its obligations as provided in the Act;

- b. Pledging its state-shared taxes;
- c. Pledging the full faith and credit and unlimited taxing power, if any, of the qualified borrower as to all taxable property of the qualified borrower to the punctual payment of the loan; and
- d. Pledging any other security determined by the authority to be acceptable to secure a loan under the Act.

Subsequent revisions to the project application which result in an updated recommendation by the Department shall cause the interest rate to be reset to the date of such updated recommendation of the qualified project.

Determination of Financing Terms

The Authority shall provide to the qualified borrower an example repayment schedule based upon the loan term and interest rate as determined with its approved Financing Agreement. Such schedule should set forth the approved loan amount; interest rate; loan term; and anticipated monthly debt service, total interest, and total debt service (based upon the approved loan amount).

The financing agreement shall include provisions for the payment of interest on the outstanding balance of the loan during the construction period.

The financing agreement shall also include provisions for the payment of an administrative fee of 12 basis points (or 0.12%), calculated on the outstanding balance of the loan. Such payments shall begin during the construction period and continue over the life of the loan (as demonstrated by the inclusion of such fees in the calculation of the borrower repayment schedule.)

The financing agreement shall allow for the prepayment of all or any portion of the loan at any time without penalty.

The financing agreement shall also grant the borrower the ability to reduce its loan amount, should the project be completed with less than the approved amount of the loan having been disbursed.

Execution of Financing Agreement and Closing Documents

Upon determination that the qualified borrower has demonstrated adequate security to repay the loan, the Authority shall distribute to the borrower a copy of the financing agreement to be executed by the qualified borrower.

In addition to the financing agreement, prior to the Authority's consideration for approval of the loan, the qualified borrower shall have furnished to the Authority, in form and substance satisfactory to the Authority the following documents required for closing:

- a. A copy of the resolution/ordinance passed by the government unit authorizing the government unit to enter into the loan agreement as well as a notarized certificate of the borrower certifying:

- 1) that the government unit has been duly created and is validly existing subdivision of Tennessee;
 - 2) that the authorizing resolution/ordinance has not been amended, modified, supplemented, or rescinded; and
 - 3) that the government unit understands that each request for reimbursement of expenditures submitted during the loan period constitutes a reaffirmation by the government unit as to the continuing truth and completeness of the statements and representations contained in the financing agreement.
- b. A representation of the government unit as to its state-shared taxes received and any prior pledges against such; and
- c. An opinion of borrower's counsel to the effect that:
- 1) the borrower has been duly created and is validly existing and has full power and authority (under its Charter and By-Laws or general law, if applicable, and other applicable statutes) to enter into and carry out the terms of the loan agreement;
 - 2) the loan agreement is duly executed and constitutes a valid and binding contract of the borrower, enforceable in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, reorganization, insolvency, moratorium, or similar laws affecting the enforcement of creditors' rights generally;
 - 3) the loan agreement is not in conflict in any material way with any contracts or ordinances of the borrower; and
 - 4) there is no litigation materially adversely affecting the agreement or the financial condition of the borrower.

All such closing documents as outlined above shall be properly executed by the borrower prior to the approval of any loan.

Management of the Loan

No requests from the borrower for reimbursement shall be accepted prior to the approval of the loan. After the approval of the loan, the Authority shall notify the borrower via a letter of the loan's approval and shall provide a copy of the fully executed, countersigned financing agreement.

Requests from the borrower for reimbursement of expenditures for the qualified project shall be submitted to the Department for review. Upon notification from the Department of the amount of eligible costs to be reimbursed, the Authority shall disburse such amount to the borrower. Such amounts which represent reimbursement for monitoring costs incurred by the Department shall be submitted on a separate invoice and shall likewise be paid to the Department.

The Authority shall notify the qualified borrower of the monthly amount of interest to be paid subsequent to each disbursement of loan funds.

No more than 90% of the approved loan amount shall be disbursed prior to the receipt of a certificate of completion from the qualified borrower. The borrower shall certify that the construction of the project has been completed. Once the Department has received the certificate of completion and determined, by means of its monitoring of the project, that the project is in proper operation and approved, the Department shall notify the Authority. At that time, reimbursements for the remaining 10% of the loan may be processed. Provided however, that the reimbursement is for planning or replanning and design, reimbursements for the full amount of planning, replanning or design may be disbursed prior to completion of construction.

At such time that all funds have been disbursed, the Authority shall establish a schedule for the repayment of the loan in compliance with the terms set forth in the financing agreement and in accordance with "Determination of Financing Terms" above. Such schedule shall set forth the dates and amounts for the submission of payments to the Authority.

If the Department shall, through its monitoring, determine that the project is complete prior to the expenditure of 90% of the funds, the Department shall notify the Authority and the Authority shall establish a schedule for the repayment of the loan at the reduced amount.

Repayments of loan principal and payments of interest shall be properly accounted for and recorded by the Authority. All such amounts shall remain a part of the fund.

Records of the Authority

For each approved loan, the Authority shall maintain copies of the project loan application submitted to the Department, the Department's recommendation letter, the fully executed financing agreement and all related closing documents.

The Authority shall maintain financial records adequate to prepare annual financial statements for the fund and shall prepare such statements at each fiscal year end.

The Authority shall maintain records sufficient to determine that the borrower is making the payments provided for on the repayment schedule and to provide the borrower with the balance of the loan as may be requested from time to time.

Issuance of Additional Debt

Encumbrance of State-shared Taxes

If the Borrower is entering into any additional debt that is to be secured by a pledge of state-shared taxes, the Borrower must notify the TLDA prior to the issuance of any such new debt. Such request should be submitted at least 45 days in advance of the proposed sale date of such debt or as soon as possible.

Federal or Other Assistance for the Qualified Project

If the Borrower is seeking any additional federal or state assistance for the project to be financed by the SIF loan, the Borrower must notify the Department.

Requests to Issue General Obligation Debt

Borrowers are not required to seek approval from, or provide notification to, the TLDA to issue general obligation debt unless the general obligation debt is also secured by a pledge of revenues which has specifically been pledged to the SIF loan with a security lien on parity with or senior to the SIF loan.

Requests to Issue Revenue Debt

Borrowers are not required to seek approval from, or provide notification to, the TLDA to issue revenue debt that will be secured by a source of revenue other than the revenues that may be pledged to its SIF loan. If the revenue debt is to be secured by the revenues securing the SIF loan, but the borrower is not requesting a parity or senior lien position of the debt to be issued, the borrower must only provide a written notification to the TLDA at least 45 days prior to the sale of the debt. No approval is required from the TLDA, and the notice must include a statement that the borrower acknowledges that the debt will be issued subordinate to its outstanding SIF loan(s). If a borrower seeks a parity or senior lien position for the revenue debt (new money or refunding), the Borrower must submit a written request for approval from the TLDA to modify the SRF program's lien position at least 45 days prior to the sale date of any revenue debt (new money or refunding). (See sections titled Lien Position Please refer to section titled Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position for information used to analyze requests.

Note that:

To recognize the time sensitivity in issuing refunding debt, if the additional revenue debt is being issued to refund previously outstanding debt, a Borrower may seek approval from the Vice- Chairman of the TLDA, as outlined below in the section titled Approval for the Issuance of Refunding Debt.

Borrowers are required by state law and the loan agreement to file an annual audit report with the Comptroller of the Treasury. (See section titled Filing of Annual Audit Report.)

Borrowers should always consult bond or disclosure counsel when issuing revenue debt to obtain advice on the appropriate disclosure to be made in offering documents concerning the lien position of the SRF program.

Approval for the Issuance of Refunding Debt

The issuance of refunding debt usually progresses through an accelerated timetable to take advantage of market conditions to achieve certain savings. In the event that a meeting of the TLDA cannot be scheduled during this timeframe, the Vice-Chairman of the TLDA is authorized to approve the issuance of refunding debt by a Borrower under the following conditions:

- a. The refunding does not extend the life of the debt;
- b. The refunding debt is structured to generate debt service savings of at least 3 percent net present value savings of the refunded debt;
- c. Documentation is provided to the Vice-Chairman, in the form of a projected savings report

certified by a financial advisor or underwriter, demonstrating such savings can be achieved;

- d. The refunding debt will be issued subordinate to SRF debt or the lien position of the existing SRF debt will remain the same or be improved.
- e. Staff has analyzed the transaction and has concluded that any prerequisites for TLDA approval of the issuance of additional debt have been met; and,
- f. The Borrower agrees to provide a final savings report to the Vice-Chairman, that shows the actual savings achieved by the refunding.

A written request must be submitted to the TLDA at the same time that the plan of finance for the issuance of refunding debt is submitted to the Director of the Division of Local Government Finance pursuant to Tenn. Code Ann. § 7-82-501. The Vice-Chairman will report any such approvals at the next meeting of the TLDA. At that time, or as soon as it is available, the Vice-Chairman will provide the final savings report to all members of the TLDA for review. Please refer to section titled Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position for information used to analyze requests.

Note: If the refunding debt will be issued to extinguish all SRF debt and the Borrower will have no other SRF Loan authorizations upon which funds can be drawn, then the Borrower should provide written notification to the TLDA of its intent to payoff its SRF Loans in full. The repayment should occur simultaneously with the issuance/closing of the bonds.

Lien Position

Requests from UDs, Systems, or Municipalities to Modify Lien Position

Generally, lien position, or lien priority, is determined by the effective date the debt. The date of any SRF Loan shall be the date that the TLDA approves the loan request (as evidenced on the SRF Loan agreement).

Following the general rule of lien priority, a new SRF Loan would be issued with a subordinate lien position to a lien position of existing debt. Likewise, any debt issued after the approval of a SRF Loan would be subordinate to the SRF Loan. However, a Borrower may request a modification of such standard lien position. For example, a Borrower may have outstanding debt in the capital markets and plans to obtain a SRF Loan. The TLDA would consider a request to issue a new SRF Loan on parity with such existing debt. In another instance, a Borrower with an existing SRF Loan agreement plans to issue additional debt in the capital market. If a Borrower requests a modification of the TLDA's lien position to the new debt, the TLDA will only consider a modification upon demonstration from a Borrower of good cause, sufficient resources to repay the SRF Loan, and ability to satisfy any other such requirements as set forth by the TLDA at the time of the request. The TLDA must give careful consideration to a request for subordination of the lien position of the SRF debt to a Borrower's debt because it poses more risk to the SRF Loan program than a request for parity lien. The TLDA may approve a request for subordination under limited circumstances if a Borrower demonstrates a substantial need, meets all requirements set forth by the TLDA, and the TLDA deems such request to be in the best interest of the Borrower and the users of the UD, System, or Municipal system.

Written requests to modify a SRF program lien position must be submitted for approval by the TLDA prior to the issuance of any such debt (new money or refunding). In order to allow adequate time for such consideration, all written requests should be submitted to the TLDA at least 45 days prior (or as soon as possible) to the anticipated sale date of such new debt. (See section Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position)

Factors to be Considered for a Request to Issue Additional Debt and/or Modify Lien Position

The TLDA will analyze several factors, as appropriate, when considering requests to issue additional debt and to modify the SRF program’s lien position. These factors shall include but are not limited to:

- a. The Borrower’s compliance with the covenants and representations set forth in its SRF Loan agreement ;
- b. The Borrower’s amount of authorized and outstanding SRF program debt;
- c. Borrower’s history of timely SRF Loan repayments;
- d. Borrower’s timely filing of financial statements with the Division of Local Government Audit, Tennessee Comptroller of the Treasury (See section titled Filing of Annual Audit Report);
- e. Amount and purpose of proposed debt issuance;
- f. Borrower’s credit rating (if applicable);
- g. Borrower’s current and pro-forma (projected) debt service coverage;
- h. Borrower’s amount of unobligated state-shared taxes (if applicable);
- i. Percentage of the system’s total revenues generated by its largest user(s);
- j. The lien position of existing SRF debt; and
- k. The impact the health, safety, and well-being of the citizens of the state of Tennessee.

Consent to Modify Lien Position

Any consent by the TLDA to modify its SRF program lien position applies only to revenues pledged to serve the SRF Loan. Consent to modify the SRF lien position does not affect any pledge of state-shared taxes or any rights to security deposits held by the TLDA (if applicable).

Consent of the TLDA to modify the SRF program’s lien position is subject to the condition that the documentation authorizing the new debt: 1) clearly states that debtholders have no rights to any security deposits required by, and securing, the SRF Loan agreement(s) and 2) does not provide debtholders acceleration rights that are superior to, or more generous than, those provided under the SRF Loan agreement(s). Neither the TLDA nor the TDEC shall have any rights to any debt service

reserve fund established in favor of the new debt.

The Borrower will be responsible for ensuring completeness and accuracy of all documents. The TLDA makes no representation that the issuance of additional debt by the Borrower complies with all applicable laws, or that such issuance is in the best interest of the Borrower. The TLDA is not a municipal financial advisor and offers no financial advice to Borrowers concerning such requests.

Report on Debt Obligation

A Report on Debt Obligation (the “Report”) must be prepared for all debt obligations issued or entered into by any public entity and filed with its governing body with a copy sent to the Comptroller of the Treasury, Division of Local Government Finance. The purpose of the Report is to provide clear and concise information on the debt to members of the governing or legislative body that authorized and is responsible for the debt issued.

A Government Unit that applies for a SIF Loan but is not in compliance with this law should file the Report as soon as possible and provide notification of filing to the SIF Loan program to proceed with its loan application. Furthermore, a Report is required to be filed once a SIF Loan has been approved by the TLDA and the agreement has been executed by the borrower.

Instructions on how to file the Report can be found on the website of the Tennessee Comptroller of the Treasury by navigating to the Local Government Finance section of the page under the Office Functions and then browsing to the Debt subheading.

Disclosure

The Electronic Municipal Market Access (EMMA) website was created by the Municipal Rulemaking Securities Board (MSRB) to provide municipal market information, such as official statements, continuing disclosure documents, advanced refunding documents, and trade data for all municipal securities in the United States. All Government Unit issuers are required to perform continuing disclosure undertakings related to Securities and Exchange Commission Rule 15c2-12 via EMMA.

Government Units that issue municipal securities on or after February 27, 2019, should be aware that the Securities and Exchange Commission (SEC) adopted amendments to Rule 15c2-12 of the Securities Exchange Act that require reporting on material financial obligations that could impact an issuer’s financial condition or security holder’s rights. The amendments add two events to the list of events that must be included in any continuing disclosure agreement that is entered into after the compliance date:

- a. Incurrence of a financial obligation of the issuer or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a financial obligation of the issuer or obligated person, any of which affect security holders, if material; and

- b. Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the issuer or obligated person, any of which reflect financial difficulties. A Government Unit may need to disclose information concerning its SIF Loan on the MSRB's EMMA website. The Government Unit should consult with bond and/or disclosure counsel to determine the appropriate disclosures. More information about EMMA can be found on the MSRB's website.

Filing of Annual Audit Report

Tennessee state law¹ requires local governments to file an annual audit report with the Office of the Comptroller of the Treasury. Furthermore, SIF program Borrowers agree to make such annual filing as a condition of the loan agreement. Failure to file such report in compliance with statutory or contractual requirements may cause a delay in the approval process for SIF funding, and in certain cases may result in disapproval. SIF Loan applicants and Borrowers that have not met the filing deadline, or anticipate a delay, should provide written notification to the TLDA prior to the applicable deadline and provide the reason for the delinquent filing and the expected filing date.

A Borrower may be required to disclose audited financial information pursuant to federal law or other contractual agreements, including, but not limited to, the Federal Single Audit Act and the Securities and Exchange Commission's Rule 15c2-12 for continuing disclosure. Other such requirements do not supersede a Borrower's audit filing responsibility under Tennessee state law or covenants contained in the SIF Loan agreement. Also, a Borrower's notification to the TLDA of a delinquent filing does not relieve it of any responsibilities related to other state contracts or contracts with federal or other agencies. The Borrower should notify other interested parties of a delinquent filing, including, but not limited to, lenders, grantors, bond counsel, regulatory boards, and federal or other state agencies and should contact other parties to determine if any additional action is necessary pursuant to other agreements.

¹ Tenn. Code Ann. §§ 6-56-105, 9-3-212, and 4-3-304(4)

Adoption of Policy and Guidance

The Authority adopted this Policy and Guidance at its publicly held meeting on _____, effective _____.

Vice Chair

Tennessee Local Development Authority