



August 31, 2012

The Honorable Ray LaHood, Secretary  
The United States Department of Transportation  
1200 New Jersey Avenue, SE  
Docket Operations, M-30, Room W12-140  
Washington, DC 20590

Dear Mr. Secretary:

This correspondence is in reference to Docket ID DOT-OST-2012-0130.

The Transportation Transformation Group (T2) is a non-profit group built around a consensus that federal surface transportation policies demand a transformation that emphasizes congestion relief, increased safety, and the efficient movement of goods to America's transportation customers. Our members include departments of transportation of Texas, Florida, Indiana, Utah, New Hampshire, the North Texas Tollway Authority, Port of Houston, Pioneer Institute, Reason Foundation, Cintra US, Dannenbaum Engineering, HDR Engineering, Inc., Nossaman LLP, International Bridge, Tunnel and Turnpike Association, Bank of America-Merrill Lynch, Barclays Capital, Wells Fargo, Goldman, Sachs & Co., HNTB Corp., JP Morgan, Raymond James & Associates, Inc., Piper Jaffray, Morgan Stanley, Siebert Brandford & Shank and Citi.

Congress and President Barack Obama have enacted the Moving Ahead for Progress in the 21st Century Act (MAP-21), focusing policy on solutions that free state ingenuity and reduce restrictions on innovation. T2 suggests that these concepts should remain at the forefront of the U.S. Department of Transportation's efforts to implement the new law.

One of the most significant improvements made by MAP-21 to transportation innovation is by making significant improvements to the TIFIA program. Most importantly, MAP-21 authorizes the TIFIA program at \$750 million for FY 2013 and \$1 billion for FY 2014, and increases the maximum share of project costs from 33 percent to 49 percent. T2 is pleased that USDOT is moving swiftly to implement the law with a timely notice of funding availability. The announcement of funding raises issues of concern. T2 offers these comments with the belief they can outline ways to strengthen one of the USDOT's most innovative and successful programs.

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We are concerned that the notice proposes an intent for USDOT to pass judgment on whether a project has sufficient "public benefits" to produce a finding that it is "in the public interest to provide credit assistance to the proposed project." This is exactly the type of opaque, policy-driven discretionary role of the Administration that Congress intended to eliminate from the program. We suggest this portion of the notice be removed.

It appears to us that Congress intended for eligible projects to be eligible for up to 49 percent credit assistance. USDOT seems to presume to limit credit assistance to 33 percent absent showing a strong rationale why more is needed. We recommend that eligible projects be presumed to be eligible for 49 percent credit assistance without special showings.

MAP-21 provides no pre-application requirement for an indicative rating opinion before application submission, and we advise that this requirement in the notice be deleted.

It is unclear whether a project sponsor with an existing accepted letter of intent or application that wants to ask for more TIFIA support would not jeopardize its existing allocation by submitting a request for augmented support. Clarification that a request for supplemental support would not jeopardize an existing commitment would improve the notification.

USDOT's use of a beefed-up letter of intent process (including legal and financial due diligence, a preliminary rating opinion letter, and a \$100,000 non-refundable fee) prior to submitting a formal application will have the effect of discouraging use of TIFIA. As a result, we question whether the \$100,000 fee at the pre-application stage is excessive and inquire whether due diligence and a rating opinion might move alongside, instead of in advance, of submitting an application.

In the same vein, USDOT's presumption that no entity can submit an application, and that DOT has no obligation to genuinely evaluate an application unless USDOT "invites" an application submission, seems contrary to the open and welcoming process that Congress intended when drafting the MAP-21 TIFIA provisions.

In addition to these concerns, T2 seeks great clarification about application processing, such as how USDOT will process applications and move a project through the underwriting process during the pendency of a PPP procurement. T2 suggests the current practice of suspending all processing after action on a letter of interest until the private developer is selected be changed to allow the processing to continue.

It is also unclear to us how and when to effectively utilize master credit agreements. Clarification of this issue in the final notice would be helpful.

Finally, T2 is concerned that the notice includes no changes to USDOT's current practice of refusing to accept paid-in subsidies to augment depleted budget authority. We suggest these subsidies should be appropriately recognized.

T2 recommends these issues be resolved in order to move TIFIA funding forward as expeditiously as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Ned Holmes". The signature is written in a cursive style with a large, sweeping initial "N".

Ned Holmes  
Chairman, Transportation Transformation Group