

DEPARTMENT OF TRANSPORTATION

Transportation Commission

RULES AND REGULATIONS BY THE COLORADO DEPARTMENT OF TRANSPORTATION FOR THE COLORADO STATE INFRASTRUCTURE BANK

2 CCR 605-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Chapter 1: General Provisions

1.1 Statutory Authority

The statutory authority for the Transportation Commission of Colorado (Commission) to adopt these rules is found in section 43-1-113.5(3), C.R.S.

1.2 Purpose

The purpose of these rules is to define eligibility requirements, prescribe the application and selection processes, and to detail certain terms for securing Financial Assistance, for public Transportation Projects within the State, from the CO SIB.

1.3 Applicability

These rules shall be applicable to any public or private Project Sponsor of public Transportation Projects within the State.

Chapter 2: Definitions

The following definitions shall apply to terms used in the Rules.

- 2.1 "CAB" means the Colorado Aeronautical Board, a statutorily created board appointed by the Governor and approved by the Senate.
- 2.2 "CO SIB" means the Colorado State Infrastructure Bank.
- 2.3 "Commission" means the transportation commission of Colorado – the State's transportation decision-making body.
- 2.4 "Default" means the condition of a loan where the recipient has failed to meet a contractual obligation and failed to cure within thirty (30) days, including but not limited to: failure to make the loan payment; failure to use loan proceeds for stated purpose; failure to submit progress reports.
- 2.5 "Department" means the Colorado Department of Transportation.
- 2.6 "Federal-aid program" means any funds authorized by the United States Congress to assist states in providing for transportation.
- 2.7 "Financial Assistance" means a loan or any credit assistance that the COSIB is authorized to offer.

- 2.8 “Interest Rate” means the semi-annual interest rate approved by the Commission.
- 2.9 “OFMB” means the Colorado Department of Transportation’s Office of Financial Management and Budget.
- 2.10 “Political Subdivision” means a county, municipality, Service Authority, or special district authorized to enter into intergovernmental agreements pursuant to § 29-1-203(2), C.R.S.
- 2.11 “Project Sponsor” means the entity or organization that is requesting Financial Assistance.
- 2.12 “Public-Private Initiative” means a nontraditional arrangement between the Department and one or more private or public entities as defined in §43-1-1201(3), C.R.S.
- 2.13 “Review Committee” or “Committee” means the SIB loan review committee as described in Rule 4.4.1) herein.
- 2.14 “State” means the state of Colorado.
- 2.15 “State Agency” means every entity in the executive branch of the State’s government including boards, commissions, departments, divisions, and offices.
- 2.16 “TIP/STIP” means the metropolitan planning organization’s multiyear Transportation Improvement Program/Statewide Transportation Improvement Program.
- 2.17 “Transportation Project” means the planned undertaking of an endeavor for the purpose of conveying passengers or goods.

Chapter 3: Eligibility Requirements for Financial Assistance

3.1 Eligible Project Sponsors

Entities eligible to receive Financial Assistance from the CO SIB shall include public entities such as Political Subdivisions and State Agencies. Also, private companies and non-profit organizations shall be eligible either with a local government partner, or under the authority of a Public-Private Initiative.

3.2 Eligible projects

- 3.2.1 Only qualified projects shall be eligible for Financial Assistance. Qualified projects shall include any Commission-authorized project, right-of-way acquisition, federal-aid project, maintenance project, or safety project.
- 3.2.2 Commission-authorized projects – Any public or private Transportation Project as authorized by the Commission including, but not limited to planning, environmental impact studies, feasibility studies, engineering, construction, reconstruction, resurfacing, restoring, rehabilitation, or replacement of a public or private transportation facility within the State.
- 3.2.3 Right-of-way acquisitions – The acquisition of real or personal property, or interests therein, for a public or private transportation facility within the State.
- 3.2.4 Federal projects – Any highway, transit, aviation, rail, or other Transportation Project within the State that is eligible for financing or Financial Assistance under State or federal law.

3.2.5 Maintenance projects – The maintenance, repair, improvement, or construction of any public or private highway, road, street, parkway, transit, aviation, or rail project within the State.

3.2.6 Safety Projects – The acquisition, improvement, or construction of rights-of-way, bridges, tunnels, railroad-highway crossings, drainage structures, signs, guardrails, or protective structures within this State.

3.3 Ineligible Projects

Qualified projects shall not include transportation facilities and other Transportation Projects that are restricted to private use.

Chapter 4: Disbursement of Moneys

4.1 Application process

4.1.1 All applications shall be submitted to the Department. The application shall be completed as described in the application package. If the application received by the Department is incomplete, it shall be rejected and not considered for Financial Assistance until completed.

4.1.2 Application package – The application package shall contain instructions and guidelines for completing the application and such package shall be available upon request. The Project Sponsor shall be responsible for requesting an application package from the Department.

4.2 Project Evaluation

The evaluation shall identify how the project will benefit from Financial Assistance and the capability of the Project Sponsor to meet the terms for debt repayment. The Review Committee shall evaluate the projects, and provide documentation and a recommendation regarding each project to the Commission or the CAB for aviation projects.

4.3 Evaluation Criteria. Project evaluations shall be accomplished by incorporating a rating scheme across specific criteria as described below:

4.3.1 Project Type – Project Sponsors shall identify the type of project (road and highway, transit, aviation, and rail). This shall allow the commission to promote its objectives regarding types of Transportation Projects assisted by the CO SIB.

4.3.2 Public/Private Partnerships – Project Sponsors shall indicate whether it is a public or private entity. An evaluation on the basis of public/private partnerships shall allow the CO SIB to facilitate Transportation Projects that promote public purposes and feature some private financing.

4.3.3 Financial Need – Project Sponsors shall submit financial and technical information as requested in the application to help identify how sponsored Transportation Projects would benefit financially from CO SIB Financial Assistance.

4.3.4 Repayment Source – The Project Sponsor shall present a statement of revenue sources for the purpose of paying back loans, e.g., fees, HUTF revenues, local option sales taxes, passenger facility charges, and general fund property taxes. This criterion shall allow the sponsor to demonstrate its ability to repay the loan.

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- 4.3.5 Security Provisions – The Project Sponsor shall be required to identify security provisions, e.g., HUTF revenues, property, bank reserves. This criterion shall allow a measure of the Project Sponsor’s potential to secure the loan.
 - 4.3.6 Financial Ratios – Project Sponsors shall provide the appropriate information requested in the application regarding its current financial condition and substantiating documentation on the total cost of the project including additional funding sources that the sponsor may intend to use to complete the project. This criterion shall demonstrate the Project Sponsor’s commitment to its project and validate the cost of the project.
 - 4.3.7 Term of Financial Obligation –The Project Sponsor shall indicate how long it needs to repay the loan up to ten years. This criterion shall illustrate the length of the CO SIB’s financial obligation to a Project Sponsor’s Transportation Project, which is important to replenishing the Colorado State Infrastructure Bank’s capital to accommodate future Financial Assistance to subsequent applicants.
 - 4.3.8 Project Viability – Project Sponsors shall reveal any other options for funding the project. This criterion shall provide a measure of a project’s viability without Financial Assistance from the CO SIB.
 - 4.3.9 Project Benefits – Project Sponsors shall be required to briefly describe the benefits of its Transportation Project. As a counterpoint, Project Sponsors shall also be required to describe the likely negative effects of NOT receiving Financial Assistance from the CO SIB. This criterion shall identify benefits gained, from the Transportation Project receiving Financial Assistance, to the transportation system.
 - 4.3.10 Project Planning – In order to demonstrate local commitment as part of a fiscally constrained plan, Project Sponsors shall indicate if their project is in the TIP/STIP, eligible to be amended into the TIP/STIP, in another approved transportation planning document, or not in any plan.
- 4.4 Review Committee
- 4.4.1 The Review Committee shall consist of the following: one member of the Transportation Commission (or the CAB for aviation projects) who will chair the Review Committee; the regional transportation director from the appropriate engineering region or the divisional director from the aeronautics division, or transit and rail division as appropriate; the CDOT chief financial officer or manager of OFMB, and the CO SIB Manager.
 - 4.4.2 Duties of the Committee
- The Review Committee shall evaluate loan applications based upon the responses to the criteria described in Rule 4.3 herein; examine loan documentation including the sponsor’s financial statements to assure that a pending loan meets CO SIB rules standards and statutory guidelines; review the planning and engineering aspects of the loan project. Also, develop procedures for executing loan contracts and, as required, review and, if appropriate recommend amending the terms of already executed loan contracts, periodically review maturing loans and progress reports, and in case of Default, decide what collection efforts should be taken to restore past-due loans and other nonperforming loans to satisfactory condition.

4.4.3 Evaluations from the Committee

The Review Committee shall submit its recommendation and final evaluation to the OFMB. Regardless of the merits of the project or its total cost, the Committee shall not recommend to the Commission or the CAB that it lend an applicant an amount that it considers beyond the applicant's capacity to repay even if it means the project cannot go forward at that time.

4.5 Funding Procedure

The OFMB shall present the Review Committee's recommendation and evaluation to the Commission or the CAB for action, and the Commission or the CAB shall approve the requested amount or recommend a different maximum level of Financial Assistance for the project.

4.6 Loan Agreement

4.6.1 The OFMB shall negotiate the terms of a loan agreement with the approved Project Sponsor.

4.6.2 Fiduciary provisions – Unless specifically exempted by the Commission or the CAB, loan agreements for construction will specify that the funds will be disbursed in their entirety to a third party fiduciary or escrow agent with which the Project Sponsor has entered into an agreement. It shall be the responsibility of the CO SIB Manager to validate requests for construction draws by the contractor and to provide periodic advances of fund to the contractor, as authorized by the terms of the construction contract. The third party administrator of the loan shall also provide periodic progress reports to the Committee. In instances where the loan is for the purchase of real property unrelated to a construction project or for the purchase of equipment, the third party will disburse the funds upon presentation of the requisite documentation demonstrating that the property or equipment procured is that for which the loan was approved and that the amounts paid match those presented in the loan application.

4.6.3 Ongoing interest – The loan agreement shall specify that the Department retains a collateral interest in the item(s) procured with the loan proceeds and that the sponsor may not sell the items procured until such time as payment in full is made upon the loan.

Chapter 5: Interest Rates and Fees

5.1 Interest earnings and/or origination fees are required to re-capitalize the CO SIB and to offset a portion of the cost of its administration. There shall be no interest-free loans. However, interest payments may be delayed for up to two years, and all accrued interest can be capitalized into the principal outstanding balance. In addition, an origination fee to partially offset the cost of administering the CO SIB may be assessed. If such fee is assessed, the calculated amount can be added to principal to be repaid according to the agreed upon amortization schedule.

5.2 Interest Rate –The Interest Rate for loans from the CO SIB shall be established and adopted by the resolution of the Commission not later than June 30 of each year for loans applied for during the ensuing months of July; August; September; October; November; December. An Interest Rate shall be established and adopted by resolution of the Commission not later than December 31 of each year for loans originating during the ensuing months of January; February; March; April; May; June.

- 5.3 Origination Fee – Pursuant to § 43-1-113.5(7), C.R.S., a fee may be charged to reimburse the Department for reasonable expenses incurred while administering the CO SIB. Not later the June 30 of each year, the Commission shall determine whether or not to assess an origination fee for the ensuing fiscal year. If assessed, the origination fee schedule shall be as follows: a maximum of one percent for loan proceeds up to \$1 million, three-quarters of a percent for loan proceeds over \$1 million and up to \$2.5 million, one-half percent on the amount of loan proceeds over \$2.5 million and up to \$5 million, and one-quarter percent on the amount of loan proceeds over \$5 million.

Chapter 6: Repayment of Loans

6.1 Loan Amortization

Financial Assistance in the form of a loan shall be amortized and simple interest shall be applied to the outstanding principal of each loan. An amortization schedule shall be attached to the loan agreement between the Department and the Project Sponsor.

6.2 Payback Period

The payback period for Financial Assistance shall be not more than ten years. The term of a loan requested by a Project Sponsor shall be one of the criteria used for evaluation.

6.3 Remedies in case of Default

- 6.3.1 If a recipient of Financial Assistance from the CO SIB fails to meet any of the terms or conditions of the loan agreement and fails to cure within thirty (30) days, the recipient shall be in Default, as defined in Rule 2.4. The Department shall notify the recipient of the condition. If the recipient fails to cure within thirty (30) days thereof, the Department may declare the entire principal amount of the loan then outstanding immediately due and payable, and bring a right of action against such recipient in district court to seek any applicable legal or equitable remedy, including reasonable attorney fees.

6.3.2 Default on loan repayment

If the recipient does not make a scheduled payment and fails to cure within thirty (30) days, the Department may assess a late charge penalty or initiate debt collection efforts to recover the amounts due.

Chapter 7: Declaratory Orders

- 7.1 The Transportation Commission and the Department may entertain, at their sole discretion, petitions for declaratory orders pursuant to § 24-4-105(11), C.R.S. relating to the CO SIB.

Editor's Notes

History

Entire rule eff. 11/30/2009.

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