

TAX INCREMENT FINANCING GUARANTEE

Program Guidelines | December 2017



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Section I – Statement of Purpose

The Tax Increment Financing Guarantee Program (the “program”) is designed to promote and stimulate the general economic welfare of various regions and communities in the Commonwealth of Pennsylvania and assist in the development, redevelopment and revitalization of brownfield and greenfield sites through the use of Tax Increment Financing (TIF) in accordance with the Tax Increment Financing Act of July 11, 1990, as amended, 53 P.S. §6930.1 et seq. (the “TIF Act”).

The program is part of an effort by the Commonwealth Financing Authority (“CFA”) and the Department of Community and Economic Development (“DCED”) to provide credit enhancement for TIF projects to improve market access and lower capital costs through the use of guarantees to issuers of bonds or other indebtedness (“TIF Debt Obligations”).

Section II – Eligibility Criteria

A. Eligible Applicants

Any issuer of TIF Debt Obligations for a project located within a municipality, other than a city of the first or second-class, may apply to the Tax Increment Financing Guarantee Program. Eligible issuers under the TIF Act include all municipal authorities, industrial and commercial development authorities, and redevelopment authorities including boroughs, townships, towns, counties and home rule municipalities.

B. Eligible Projects

To be eligible to receive a guarantee, a project must meet at a minimum the following criteria:

1. The project must be located within a TIF district and must meet all of the requirements imposed by the Tax Act. The project may include the cost of publicly-owned infrastructure located outside of the TIF district which directly benefits the project.
2. The project must be for the:
 - a. redevelopment, reuse or revitalization of previously developed land, including previously mined areas; or
 - b. development of undeveloped land which may be the subject of future development pursuant to any existing comprehensive municipal plan and is zoned for that development at the time of application.
3. The project must be the intended recipient of the proceeds of the TIF Debt Obligations.
4. The project must demonstrate its ability to comply with all the requirements of the TIF Act prior to the issuance of the TIF Debt Obligations .
5. All applicants must demonstrate that the tax increment to be realized as a result of the TIF project will be sufficient to offset the amount of debt service to be incurred.

Section III – Guarantee

- A. Guarantees are available for projects that meet the above eligibility criteria. The maximum amount that the CFA will pay under its guarantee is \$5,000,000, inclusive of principal and interest. Guarantee amounts will be determined by the scope of the project, the estimated projections of future tax revenues to be generated by the project, the estimated financing cost savings realized through the provision of a guarantee, and the ability of the CFA to assume the rights to security provided to the holders of the TIF project debt in the event of a default.
- B. The CFA guarantee will not guarantee completion of a project. Unless the project documents include enforceable covenants on the part of the project developer to commence and complete the project described in the tax increment plan within a specified time, backed by a completion bond or other adequate security, the CFA guarantee will not be effective until the project that is expected to generate the tax increments is completed.
- C. If a project is approved for a guarantee, the CFA will execute a guarantee agreement in favor of the issuing authority and the holder or holders of the TIF Debt Obligations, and will negotiate the terms of the security and the circumstances under which the guarantee may be called. In all cases, funds supporting the guarantee will remain under the custody and control of the CFA until such time as a call is made, and then the CFA will have a reasonable time within which to ascertain the amount of the outstanding debt and to provide the funds to satisfy its guarantee obligation.
- D. In no case will the CFA guarantee payment of municipal or tax liens levied against a project or the occupant of a facility located on a project site.

Section IV – Payment of Claims

An issuer may submit a claim form to the CFA in the event tax collections are insufficient to satisfy debt service requirements. The issuer shall provide the CFA written notice that expected tax collections are insufficient to satisfy debt service requirements at least 60 days before the relevant debt service payment date so that the guarantee can be activated to avoid a payment default. Any recovery of funds made after any payment made under the guarantee shall be paid to the CFA. Before approving payment on a claim, the CFA shall evaluate the claim to determine if:

- 1. The guarantee payment shall be for the benefit of the bondholders or the holders of the debt (lender) issued and not for the issuer.
- 2. In the event a claim for payment is submitted under the guarantee agreement, the CFA may assume all rights and privileges previously belonging to the bondholders of the debt (assuming bondholders are satisfied) and may renegotiate the terms of repayment of the debt assumed by the CFA under terms the CFA deems appropriate.
- 3. The CFA shall have the power and authority to renegotiate the terms of repayment as may be appropriate in order to have the amount of the guarantee repaid with or without interest as the CFA deems appropriate.

Section V – Program Requirements

A. Project Plan

1. A project plan shall be prepared for each tax increment financing district that includes the following:
 - a. A statement listing the kind, number and location of all proposed public works or improvements within the district.
 - b. An economic feasibility study of the project and the fiscal effects on the municipal tax base prepared by an independent market analyst. The economic feasibility study must demonstrate that the incremental tax revenues to be realized from the project will be sufficient to offset the amount of debt service to be paid by the issuer. Indications of economic viability will preferably include sales, pre-sales, signed leases, letters-of-intent and other such commitments for the project. The feasibility study shall identify realistic and verifiable sources of funds to complete the project such that sufficient debt and equity to complete at least 85% of the project that is required to support the TIF Debt Obligations be in place prior to closing on the TIF financing.
 - c. A detailed list of estimated project costs.
 - d. A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred. The financing documents must include deadlines for the completion of the project and the disbursement of TIF financing proceeds.
 - e. A map showing existing uses and conditions of real property in the district.
 - f. A map showing proposed improvements and uses therein.
 - g. Proposed changes of any zoning ordinance, master plan, map, building code or ordinance.
 - h. A list of estimated non-project costs.
 - i. A statement of a proposed method for the relocation of families, persons and businesses, if any, to be temporarily or permanently displaced from housing or commercial facilities in the project area by implementation of the plan, if applicable.
2. **Developer Credentials.** The developer whether it be the issuing authority or a private developer, should have experience and have an organization capable of successfully completing the development as evidenced by having successfully completed other developments of similar size and complexity. The developer should be financially stable, with a history of honoring its obligations, no defaults or bankruptcy history. In addition, the developer shall demonstrate sufficient liquidity from its balance sheet or from lines of credit, an amount equal to cover at least one year of interest expense on the TIF Debt Obligations following the capitalized interest period.
3. **Governmental Approvals.** Prior to closing on the TIF financing, all necessary governmental approvals must be in place or obtainable without discretion to develop a sufficient portion of the project such that appropriate level of debt service coverage is satisfied. There shall be no liens or litigation against the project as set forth in the project plan, either directly or indirectly, or pending or proposed legislation that could adversely affect the ability to adjust the tax rates or collection procedures or develop the project. Land use plans, zoning, or other covenants must be in place for all parcels within the TIF district or adjacent to the TIF district to preclude uses that are not compatible with other uses in the TIF district.

4. **Contractor Credentials.** A reputable contractor shall commit to a Guaranteed Maximum Price construction contract and shall provide a payment and performance bond for the construction of the project being financed by the TIF Debt Obligations, as well as for the project as a whole, if appropriate. The Guaranteed Maximum Price nature of the contract and the payment and performance bond may be waived if the developer has a net worth that is at least two times (including liquid net worth of at least one times) the sum of the amount of the construction contract in question plus the amount of any other construction contracts for which developer is responsible that are not backed by a Guaranteed Maximum Price Contract and a payment and performance bond. The payment and performance bond requirement can be waived if the contractor commits to a Guaranteed Maximum Price contract and either meets the net worth standards contained in the prior sentence or provides a letter of credit in an amount equal to at least 25% of the amount of the contract.
5. **Debt Service Reserve Fund.** The TIF Debt Obligations shall be structured with a debt service reserve fund equal to the lesser of maximum annual debt service or 10% of the amount of debt outstanding. This fund shall be invested in a guaranteed investment contract or collateralized repurchase agreement with a provider rated at least AA by Standard & Poor's or Aa by Moody's.
6. **Capitalized Interest.** The TIF Debt Obligations shall fund capitalized interest, or other escrowed funding sources or lines of credit must be identified, in an amount sufficient to satisfy principal and interest requirements until such time that the incremental taxes on the developed property provide for at least 50% of net debt service, up to the maximum amount permitted by law. In addition, the developer should demonstrate sufficient liquidity from its balance sheet or from lines of credit in an amount equal to cover at least one year of interest.
7. **Continuing Disclosure.** Disclosure commitments shall meet the requirements of the TIF Act and Rule 15(c)2-12 promulgated by the Securities and Exchange Commission even if the TIF Debt Obligations are exempt from such disclosures as may be the case if bonds are sold in denominations greater than \$100,000.00 or for other reasons. During the development period, the developer shall, on a quarterly basis or more frequently as determined by the issuing authority, provide the issuing authority and the CFA with disclosure statements that discuss construction activity, development, financial status, and sales and rental levels.
8. **Acceleration.** The TIF Debt Obligations shall not be subject to acceleration as a result of a default unless payment of the obligation is possible due to the acceleration of assessments under the NID Act for an event of default outstanding for more than one year.

B. Limitations

1. The maximum guarantee amount per project under the TIF Guarantee Loan Program is five million dollars (\$5,000,000).
2. The project documents must require that disbursement of proceeds of the guaranteed TIF Debt Obligation must be matched by private investment in the project on a dollar-for-dollar basis.
3. No more than two percent (2.00%) of the proceeds of the guaranteed TIF Debt Obligation, up to a maximum of \$100,000, may be used to pay for the following costs:
 - (a) Refinancing costs, including all costs of issuance of tax increment bonds or notes, all interest paid to holders of evidences of indebtedness issued to pay for project costs, and any premium paid over the principal amount thereof because of the redemption of such obligations prior to maturity.

- (b) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the authority of real property within a tax increment district for consideration which is less than its cost to the authority.
 - (c) Professional service costs, including those costs incurred for architectural, planning, engineering and legal advice and services.
 - (d) Administrative costs, including reasonable charges for the time spent by employees of a municipality or an authority in connection with the implementation of a project plan.
 - (e) Relocation costs.
 - (f) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of tax increment districts and the implementation of project plans.
 - (g) Costs which are found to be necessary or convenient to the creation of tax increment districts or the implementation of project plans, or for the reimbursement of prior expenditures made for any of the costs under this definition.
4. Unless in circumstances of foreclosure, default, or violation of project financing agreements the CFA may not approve an application if the CFA would be required to operate, service, or maintain the project under the lease or other agreement.

C. Reporting

The issuing authority shall report annually on the status of the project, including the amount of the annual debt service and the annual value of the incremental tax revenues.

D. Nondiscrimination

No assistance is awarded to an applicant under this program unless the applicant and project user certify to the CFA that the applicant and project user shall not discriminate against any employee or against any person seeking employment by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act, which prohibits discrimination on the basis of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, or in violation of any applicable federal laws. All contracts for work to be paid with loan funds benefitting from Tax Increment Financing Guarantee Program assistance must contain the commonwealth's official nondiscrimination clause.

E. Project Records

The applicant must maintain full and accurate records with respect to the project and must ensure adequate control over the related parties in the project. The CFA may require access to such records, as well as the ability to inspect all work, invoices, materials, and other relevant records at reasonable times and places. Upon request of the CFA, the applicant must furnish all data, reports, contracts, documents, and other information relevant to the project.

Section VI – Application Process

A. Application Procedures

To apply for a loan guarantee under the Tax Increment Financing Guarantee Program, the eligible applicant must submit 15 copies of the Single Application for Assistance (the "application") and supplemental information (refer to Appendix I) to the CFA. The application can also be submitted online by accessing www.esa.dced.state.pa.us. The supplemental information to the application will need to be mailed to the CFA if the application is completed online, or if the supplemental information is in electronic format, it can be e-mailed to ra-dcedbonds@pa.gov. Please be sure to reference the identification number for the application submitted online if e-mailing supplemental information.

B. Application Evaluation

Upon receipt of the complete application, the CFA will review the application in the order it was received from the applicant. For an application to be considered for approval the applicant must show the following:

1. That the project is consistent with the comprehensive plan where the project is located, and the project is intended to redevelop, reuse or revitalize previously developed land, including mined areas, or that the project develop underdeveloped land which is permitted as the subject of future development consistent with an existing comprehensive county or municipal plan and was zoned for such development at the time of application.
2. That the proposed collateral, including the revenue to be realized as a result of the project, is sufficient to repay the loan.
3. That the project complies with all the requirements of the TIF Act.
4. That at the time of the bond issue or borrowing, the issuer complied with all criteria as established by the CFA.

An eligible project will receive priority consideration if:

1. It is located in an area with a particular need for economic development, as shown by high unemployment, declining population, a significant inventory of brownfields or vacant housing, low to moderate household income or other indicators established by the CFA.
2. It is located in an urban or core community and the project will redevelop a site that is not currently utilized.
3. It is identified for priority investment in a local or regional economic development plan or strategy that is consistent with a county comprehensive plan.
4. The business or private developer proposes to create a significant number of permanent full-time jobs at the site within three years following project completion. Estimates regarding construction jobs may also be considered in evaluating an application.
5. There is a high level of local support for the project as evidenced by resolutions from municipalities supporting the project and the presence of local matching funds for the project.

C. Application Approval

1. The CFA will formally notify the applicant of its decision to approve or reject an application within thirty (30) days of receipt of a complete application.
2. Upon approval of an application by the CFA, a commitment letter will be issued to the applicant explaining the terms and conditions of the guarantee. The commitment letter must be signed and returned to the CFA together with a commitment fee of two-tenths of one percent (.002) of the guarantee amount within 60 days of the date of the commitment letter or the offer may be withdrawn by the CFA.
3. Following the acceptance of the offer by the applicant, an agreement will be drafted and submitted to the applicant for signature. The agreement will set forth the circumstances and procedure governing a call on the guarantee.

D. Technical Assistance

For technical assistance and information on how to establish a TIF district, appropriate uses of TIF financing and other TIF related questions, interested municipalities, economic development organizations and others should contact the Center for Local Government Services (see Section VII).

Programmatical technical assistance will be provided by the Center for Private Financing (see Section VII).

Section VII – Program Inquiries

A. Program inquiries should be directed to:

Department of Community and Economic Development
Center for Private Financing
The Tax Increment Financing Guarantee Program
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Telephone: (717) 783-1109
E-Mail: ra-deedpf@pa.gov

B. Technical Assistance inquiries should be directed to:

Department of Community and Economic Development
Governor's Center for Local Government Services
The Tax Increment Financing Guarantee Program
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Telephone: (717) 787-8169
E-Mail: ra-deedpf@pa.gov

Guidelines can be accessed online at www.dced.pa.gov.

Appendix I

Supplemental Information for the Single Application for Assistance

In addition to completing the Single Application for Assistance, please include the following items when applying for a guarantee:

- Exhibit 1:** Provide a description of the project which discusses all of the following: the specific location of the site and site characteristics such as the useable acreage and buildable square footage of the site; any characteristics of the area in which the site is located that demonstrate a need for economic development; whether the proposed development of the site is consistent with an existing municipal comprehensive plan; the historical and proposed use of the site; the specific infrastructure and site development activities proposed for the site; the experience of the developer, including a discussion of previous projects completed; the estimated start and end dates of construction; the existence or absence of already prepared sites within the county; whether the site has been identified as a priority investment in a local or regional economic development plan or strategy; and the potential employment opportunities to be realized as a result of the project.
- Exhibit 2:** A copy of the Project Plan which includes the information outlined in Section-V(A) of these guidelines.
- Exhibit 3:** The most recent financial statements of the project developer which includes balance sheets, income statements, and notes to financials.
- Exhibit 4:** A statement from the issuer's solicitor stating that the proposed project will be in compliance with the requirements of the Tax Increment Financing Act.
- Exhibit 5:** A letter from the appropriate planning agency certifying that the proposed project is in compliance with the comprehensive land use plans and zoning and subdivision ordinances.
- Exhibit 6:** A resolution duly adopted by the issuer's board formally requesting the guarantee, designating an official to execute all documents, and identifying the amount of the guarantee requested.
- Exhibit 7:** A copy of the issuer's most recent year-end audit.