RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

(111–24)

HEARING

BEFORE THE

SUBCOMMITTEE ON

RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

APRIL 22, 2009

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

49–000 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

JAMES L. OBERSTAR, Minnesota, *Chairman*

NICK J. RAHALL, II, West Virginia, *Vice Chair*
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
ELEANOR HOLMES NORTON, District of Columbia
JERROLD NADLER, New York
CORRINE BROWN, Florida
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
GENE TAYLOR, Mississippi
ELIJAH E. CUMMINGS, Maryland
ELLEN O. TAUSCHER, California
LEONARD L. BOSWELL, Iowa
TIM HOLDEN, Pennsylvania
BRIAN BAIRD, Washington
RICK LARSEN, Washington
MICHAEL E. CAPUANO, Massachusetts
TIMOTHY H. BISHOP, New York
MICHAEL H. MICHAUD, Maine
RUSS CARNAHAN, Missouri
GRACE F. NAPOLITANO, California
DANIEL LIPINSKI, Illinois
MAZIE K. HIRONO, Hawaii
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
HEATH SHULER, North Carolina
MICHAEL A. ARCURI, New York
HARRY E. MITCHELL, Arizona
CHRISTOPHER P. CARNEY, Pennsylvania
JOHN J. HALL, New York
STEVE KAGEN, Wisconsin
STEVE COHEN, Tennessee
LAURA A. RICHARDSON, California
ALBIO SIRES, New Jersey
DONNA F. EDWARDS, Maryland
SOLOMON P. ORTIZ, Texas
PHIL HARE, Illinois
JOHN A. BOCCIERI, Ohio
MARK H. SCHAUER, Michigan
BETSY MARKEY, Colorado
PARKER GRIFFITH, Alabama
MICHAEL E. MCMAHON, New York
THOMAS S. P. PERRIELLO, Virginia
DINA TITUS, Nevada
HARRY TEAGUE, New Mexico
VACANCY

JOHN L. MICA, Florida
DON YOUNG, Alaska
THOMAS E. PETRI, Wisconsin
HOWARD COBLE, North Carolina
JOHN J. DUNCAN, JR., Tennessee
VERNON J. EHLERS, Michigan
FRANK A. LOBIONDO, New Jersey
JERRY MORAN, Kansas
GARY G. MILLER, California
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
TODD RUSSELL PLATTS, Pennsylvania
SAM GRAVES, Missouri
BILL SHUSTER, Pennsylvania
JOHN BOOZMAN, Arkansas
SHELLEY MOORE CAPITO, West Virginia
JIM GERLACH, Pennsylvania
MARIO DIAZ-BALART, Florida
CHARLES W. DENT, Pennsylvania
CONNIE MACK, Florida
LYNN A WESTMORELAND, Georgia
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
MARY FALLIN, Oklahoma
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio
BRETT GUTHRIE, Kentucky
ANH "JOSEPH" CAO, Louisiana
AARON SCHOCK, Illinois
PETE OLSON, Texas

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

CORRINE BROWN, Florida *Chairwoman*
DINA TITUS, Nevada
HARRY TEAGUE, New Mexico
NICK J. RAHALL II, West Virginia

JERROLD NADLER, New York
ELIJAH E. CUMMINGS, Maryland
GRACE F. NAPOLITANO, California
JASON ALTMIRE, Pennsylvania
TIMOTHY J. WALZ, Minnesota
MICHAEL A. ARCURI, New York
CHRISTOPHER P. CARNEY, Pennsylvania
ALBIO SIRES, New Jersey
MARK H. SCHAUER, Michigan
BETSY MARKEY, Colorado
MICHAEL E. MCMAHON, New York
THOMAS S. P. PERRIELLO, Virginia
PETER A. DEFAZIO, Oregon
JERRY F. COSTELLO, Illinois
BOB FILNER, California
EDDIE BERNICE JOHNSON, Texas
LEONARD L. BOSWELL, Iowa
RICK LARSEN, Washington
MICHAEL H. MICHAUD, Maine
DANIEL LIPINSKI, Illinois
STEVE COHEN, Tennessee
LAURA A. RICHARDSON, California
JAMES L. OBERSTAR, Minnesota
(ex officio)

BILL SHUSTER, Pennylvania
THOMAS E. PETRI, Wisconsin
JERRY MORAN, Kansas
GARY G. MILLER, California
HENRY E. BROWN, JR., South Carolina
TIMOTHY V. JOHNSON, Illinois
SAM GRAVES, Missouri
JIM GERLACH, Pennsylvania
CHARLES W. DENT, Pennsylvania
LYNN A. WESTMORELND, Georgia
JEAN SCHMIDT, Ohio
CANDICE S. MILLER, Michigan
VERN BUCHANAN, Florida
ROBERT E. LATTA, Ohio
BRETT GUTHRIE, Kentucky
AARON SCHOCK, Illinois
ANH "JOSEPH" CAO, Louisiana
PETE OLSON, Texas

CONTENTS

U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

James L. Oberstar
Chairman

David Heymsfeld, Chief of Staff
Ward W. McCarragher, Chief Counsel

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

April 20, 2009

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Staff

SUBJECT: Hearing on the "Railroad Rehabilitation & Improvement Financing Program"

PURPOSE OF HEARING

On Wednesday, April 22, 2009, at 2:00 p.m., in room 2167 of the Rayburn House Office Building, the Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet to receive testimony on the Railroad Rehabilitation and Improvement Financing (RRIF) program. The hearing will highlight the importance of the RRIF program in helping States, railroads, and shippers finance development of railroad infrastructure; applicant experiences with the RRIF program; and ways of improving the RRIF program in the upcoming surface transportation authorization bill.

BACKGROUND

Adequate investment in passenger and freight railroad infrastructure is crucial to our nation's economic growth, our global competitiveness, and the quality of life in our communities. In 2007, the Passenger Rail Working Group for the National Surface Transportation Policy and Revenue Study Commission reported that the total capital cost estimate of re-establishing the national intercity passenger rail network between now and 2050 is approximately $357.2 billion (or $8.1 billion annually). Similarly, the Department of Transportation (DOT) estimates that freight rail transportation demand will increase 88 percent by 2035. Recent studies show that an investment of $148 billion for rail infrastructure expansion over the next 28 years is required to meet the DOT's projected demand. Without this investment, 30 percent of rail miles in primary corridors will be operating above capacity by 2035, causing severe congestion that will affect every region of the country and potentially shift freight to an already heavily congested highway system.

Rail infrastructure projects are financed through a variety of means. The railroad industry typically funds projects through a combination of cash generated from operations, the sale or lease of various operating and non-operating properties, the issuance of long-term debt, and cash on hand. States finance rail infrastructure projects through Federal grants, direct tax revenues, by selling debt in the form of bonds, and, with the respect to grade crossing improvements or separations, highway user fees. However, the economic crisis has made rail infrastructure financing increasingly difficult as railroads ratchet down capital investment, states face increasing budget deficits, and banks restrict lending. For example, California faces a budget deficit of more than $41 billion. As a result, many infrastructure projects have been put on hold. In 2008, California voters approved a $9.95 billion bond measure to build a high-speed rail line running from Sacramento to San Diego. However, the California High Speed Rail Authority has halted work on the project due to the State's frozen infrastructure fund, and the bond market is so poor that the State is not selling bonds, which would generate money to build the system.

The RRIF program can help States, railroads, and shippers finance railroad infrastructure through low-interest government loans. Funding may be used to: (1) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops; (2) refinance outstanding debt incurred for acquisition, improvement, or rehabilitation of intermodal or rail equipment or facilities; and (3) develop or establish new intermodal or railroad facilities.

The Federal Railroad Administration (FRA) is required to give priority consideration to projects that: (1) enhance public safety; (2) enhance the environment; (3) promote economic development; (4) enable United States companies to be more competitive in international markets; (5) are endorsed by plans prepared under 23 U.S.C. 135 by the state or states in which they are located; (6) preserve or enhance rail or intermodal service to small communities or rural areas; (7) enhance service and capacity in the national rail system; or (8) would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

Direct loans can fund up to 100 percent of a railroad project with repayment periods of up to 35 years and interest rates equal to the government's cost of borrowing.[1]

Since 2002, the FRA has executed 23 agreements with 19 railroads for a total of $778.62 million in loans. To date, no recipient of a RRIF loan or loan guarantee has defaulted on a loan or is delinquent in making payments. Additionally, three loans have been re-paid in full: a 2002 loan to Amtrak for $100 million, and two loans to the Dakota, Minnesota & Eastern (DM&E) Railroad worth a combined $281 million.

[1] The Rail Safety Improvement Act of 2008 (P.L. 110-432) increased the repayment period from 25 to 35 years.

LIST OF APPROVED RRIF PROJECTS

ORGANIZATION	YEAR	AMOUNT
Iowa Interstate Railroad	2008	$31.0 million
Nashville and Eastern Railroad	2008	$4.6 million
Columbia Basin Railroad	2008	$3.0 million
Great Western Railway	2007	$4.0 million
Virginia Railway Express	2007	$72.5 million
R.J. Corman Railway	2007	$59 million
DM&E *	2007	$48 million
Iowa Northern Railroad	2006	$25.5 million
Wheeling & Lake Erie Railway	2006	$14 million
Iowa Interstate Railroad	2006	$9.35 million
Great Smoky Mountains Railroad	2005	$7.5 million
Riverport Railroad	2005	$5.5 million
The Montreal, Maine, & Atlantic Railway	2005	$34 million
Tex-Mex Railroad	2005	$50 million
Iowa Interstate Railroad	2005	$32.7 million
Stillwater Central Railroad	2004	$4.6 million
Wheeling & Lake Erie Railway	2004	$25 million
Arkansas & Missouri Railroad	2003	$11 million
Nashville and Western Railroad	2003	$2.3 million
DM&E*	2003	$233 million
Amtrak *	2002	$100 million
Mount Hood Railroad	2002	$2.07 million
Georgia and Florida Railroad	2009	$8.1 million
Total		**$786.72 million**

** Indicates loan has been repaid in full.*

<u>**Steps in the RRIF loan application process**</u>

According to the FRA, there are nine major steps in the evolution of a RRIF loan:

- **Pre-application Meetings:** Potential RRIF applicants typically meet with the FRA in advance to review the requirements for an application and the likely costs and terms of financial assistance, including compliance with the National Environmental Policy Act, Section 4(f) of the Department of Transportation Act, and Section 106 of the National Historic Preservation Act; the FRA's analysis of the business case for the proposed financial assistance; and the documentation that will be required for that analysis.

- **Applications:** Parties interested in seeking financial assistance from the FRA submit an application addressing the requirements of an application, as laid out in the regulations implementing the RRIF program (49 CFR 260) and augmented by pre-application meetings.

FRA reviews the material submitted and identifies where additional material will be required to complete the application.

- **FRA Analysis:** The FRA initiates its analysis of applications once sufficient information has been submitted. The FRA undertakes an independent detailed review of the financial aspects of the proposed project including reviewing the railroad's past financial performance and the basis for estimating costs (both project and future operating and capital needs) and future revenues. Where appropriate, FRA reviews the project designs to assure that the project as proposed can reliably accommodate the volume of traffic needed for the railroad to achieve its revenue projections. As with all other Federal agencies, FRA's analysis also includes the reviews necessary to comply with NEPA and related environmental laws, regulations, and orders, including where necessary, the preparation of an environmental impact statement.

  While FRA's staff possesses broad technical expertise, conducting the level of analysis required for thorough review of multiple concurrent applications requires access to greater resources, some of which are very specialized. The FRA has used two approaches to acquire the expertise necessary to supplement existing FRA staff in reviewing applications. Until SAFETEA-LU was enacted, the FRA required applicants to fund a "third party" contractor; that is, applicants paid for financial advisors who received technical direction from the FRA to undertake independent reviews of portions of the application. More recently, the FRA has used the opportunity provided in RRIF's modified statute to assess investigation charges of up to one-half of one percent of the proposed financial assistance to fund contractors working directly for the FRA to supplement FRA staff in the review of applications.

  Upon completion of the analysis of the application by FRA staff and independent contractors where needed, FRA staff develops a draft recommendation as to how to proceed with the application, i.e., whether to recommend approval, rejection, or rejection with suggestions of how a proposal might be amended and improved, so that it could move forward at a later date. FRA staff also prepares a draft calculation of the required credit risk premium using methods approved by the OMB.

- **DOT Credit Council Review:** The proposed direct loan or loan guarantee is presented to the DOT Credit Council. This Council is composed of nine members including: the Assistant Secretary for Budget and Programs who serves as the chair; the Under Secretary for Policy; the General Counsel; the Assistant Secretary for Transportation Policy; the Federal Highway Administrator; the Federal Transit Administrator; the Federal Railroad Administrator; the Maritime Administrator; and the Director of the Office of Small and Disadvantaged Business Utilization. The DOT Credit Council reviews the proposed transaction and makes a recommendation to the FRA Administrator about the project's financial viability and consistency with departmental policies, including credit policies.

- **Administrator's Decision:** The FRA staff recommendations and the Credit Council recommendations are presented to the FRA Administrator. As provided for by SAFETEA-LU, the amount of time that elapses between the completion of an application and a decision by the Administrator is 90 days or less.

- **OMB Review:** At the time the DOT Credit Council recommendations are submitted to the FRA Administrator, the FRA's estimate of the required credit risk premium is submitted to the OMB for review and concurrence, as is required under the Federal Credit Reform Act. Per its Federal Credit Reform Act responsibility for determining subsidy costs, the OMB reviews and approves subsidy cost estimates for Federal credit programs.

- **Financing Agreement:** Assuming that the Administrator decides to provide the requested financial assistance, the FRA notifies the applicant of the FRA's offer of financial assistance, and the terms under which it will be provided (the interest rate and amount of the credit risk premium). The FRA and the applicant then finalize the terms of the financing agreement and all other necessary legal documents, such as mortgages, to secure pledged collateral. Most of the terms of the agreement are standard and are available to the applicant well in advance of this point. In addition to the standard terms, there may be project specific terms, such as a commitment of improved cash flow from refinancing of an existing debt to a capital improvement program or requirements imposed on the applicant to assure the protection of environmentally sensitive sites.

- **Project Implementation:** Once the agreement is signed, funding is made available to implement the project and is provided only as needed. This helps the FRA assure that the project is undertaken in the most timely and cost effective manner possible. The FRA staff with specific expertise, such as track engineers, may monitor the progress of specific major project elements to assure they are being implemented as planned and are progressing on schedule.

- **Loan Servicing:** FRA staff monitors the repayment of the financial assistance and the continuing financial condition of applicants.

PRIOR LEGISLATIVE AND OVERSIGHT ACTIVITY

Section 7203 of the Transportation Equity Act for the 21st Century (TEA 21) (P.L. 105–178) established the RRIF program. This program revised and replaced the pre-existing railroad financing program established under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976. TEA 21 limited the aggregate unpaid principal amounts of obligations under direct loans and loan guarantees to $3.5 billion at any one time. One billion dollars of this amount was reserved solely for projects primarily benefiting short-line and regional railroads. In addition, TEA 21 allowed the DOT to accept credit risk premiums from non-Federal sources to support loans and loan guarantees made under this section. In 2000, the FRA promulgated a rule implementing the RRIF program (65 FR 41838, July 6, 2000) found in 49 CFR Part 260 ("RRIF Rule").

The Administration's implementation of the RRIF program was problematic and protracted. Following enactment of TEA 21, the Administration announced in its Fiscal Year 2000 budget proposal that (1) RRIF loan applicants would be required to document two prior rejections by private sector lenders, making RRIF the "lender of last resort"; and (2) that RRIF loans would carry interest rates that were "comparable to the private sector." On April 15, 1999, Chairman Bud Shuster, Ranking Member James L. Oberstar, Subcommittee Chairman Thomas Petri, and

Subcommittee Ranking Member Nick Rahall wrote to DOT Secretary Rodney Slater and Acting Office of Management and Budget (OMB) Director Jacob J. Lew, pointing out that the proposed "lender of last resort" requirement for RRIF "has no basis in statute" and that the market interest rate proposal "is directly contrary to the language of the statute."

Further, the DOT issued proposed RRIF regulations in 1999 that included a requirement for one prior rejection by a private sector lender, but omitted the market-rate interest requirement (64 FR 27488). In 2000, the DOT and the OMB entered into a memorandum of understanding (with no public comment and no acknowledgment in the public rulemaking docket) entitled "RRIF Administrative Procedures." The memo contained these additional RRIF loan requirements: (1) no RRIF loan may be larger than 10 percent of the annual "cohort" or risk pool of loans; (2) no loan amount may exceed 6 percent of the remaining authorization limit after prior loans; and (3) the DOT would seek to obtain for all RRIF loans collateral value to cover "100 percent of the anticipated principal and accrued interest amount of the direct loan/loan guarantee."

In July 2000, the DOT issued final RRIF regulations that included the "lender of last resort" requirement (49 CFR Part 260, 65 FR 41838). The rule did not acknowledge the additional requirements contained in the DOT-OMB memorandum of understanding. However, at a July 25, 2000 House Railroad Subcommittee hearing, then-FRA Administrator Jolene Molitoris acknowledged the existence of the DOT-OMB memorandum and stated that for guaranteed (but not direct) loans, an OMB circular directed that the Federal guarantee would be limited to 80 percent of the total loan (Committee Print 106-104, "Short Line Rail Infrastructure Needs").

To correct the problems and encourage greater utilization of the RRIF program, Section 9003 of the Safe Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) further amended and expanded the RRIF program. It increased the total authorization level from $3.5 billion to $35 billion and increased the amount that is reserved for short line and regional railroad projects from $1 billion to $7 billion. The Act allowed rail shippers and commuter railroads, for the first time, to receive RRIF loans and loan guarantees, and expanded the priorities for eligible projects to include projects that would enhance service and alleviate rail capacity problems. It prohibited the Secretary from requiring an applicant for a direct loan or loan guarantee to provide collateral, and to seek financial assistance from another source before applying for a RRIF loan. SAFETEA-LU allowed the Secretary to defer payments on a loan for up to six years, and prohibited the Secretary from establishing any limit on the amount that could be used for one direct loan or loan guarantee. It also required the Secretary to publish within 30 days of enactment in the Federal Register and on the DOT website the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications.

On September 26, 2005, following the changes made to the RRIF program under SAFETEA-LU, the DOT published a Federal Register notice providing the criteria and standards used to determine whether to approve or disapprove an application submitted under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976, as follows:

- The statutory eligibility of the applicant and the project (49 CFR 260.3, definition of applicant and 49 CFR 260.5, eligible purposes); including the present and probable demand for rail services and a reasonable likelihood that the loan will be repaid on a timely basis (49

CFR part 260, Subpart B–FRA policies and procedures for Evaluating Applications for Financial Assistance).

- The extent to which the project will enhance safety (49 CFR 260.7(a)).

- The significance of the project on a local, regional, or national level in terms of generating economic benefits and improving the railroad transportation system (49 CFR 260.7(c)).

- The improvement to the environment that is expected to result directly or indirectly by the implementation of the project (49 CFR 260.7(b)).

- The improvement in service or capacity in the railroad transportation system or the reduction in service-or capacity-related problems that is expected to result directly or indirectly from the implementation of the project (45 U.S.C. 822(c)).

Although the FRA did not remove the lender of last resort requirement (49 CFR. 260.23(o)) from its published regulations to abrogate the DOT-OMB memorandum of understanding or make other changes in regulations conforming to the 2005 amendments to the RRIF statute, at a March 15, 2006 hearing before the House Subcommittee on Railroads, Pipelines, and Hazardous Materials, Joseph Pomponio, Chief of the Freight Program Division for FRA, testified that the regulation would be removed as the "statute takes precedence over the regulations" (Committee Print 109-56, "Implementation of the Recently Expanded Railroad Infrastructure Loan Program").

On June 9, 2008, the DOT published a Notice of Proposed Rulemaking (NPRM) on the RRIF program (73 FR 32515) that would have required applicants to meet new, additional criteria that were not authorized by law, including (1) requiring an equity contribution of between 20 and 30 percent depending on the amount of the direct loan or loan guarantee; (2) capping the cumulative outstanding balance of loans and loan guarantees to a single borrower at $500 million; and (3) requiring applicants to obtain a credit rating or assessment if the application for financial assistance is in excess of $250 million. In October 2008, Chairman Oberstar and Subcommittee Chairwoman Brown wrote to then-DOT Secretary Mary Peters urging her to suspend the rulemaking due to concerns that it would seriously undercut the RRIF program and further weaken the construction sector of the U.S. economy. According to the DOT, the purpose of the NPRM was to ensure the long-term sustainability of the program and reduce the risk of default for applicants and the Federal Government. However, no recipients of RRIF loans or loan guarantees that have been issued to date have defaulted on any loans or are delinquent in making payments. In addition, under current regulations, the government requires the payment of a credit risk premium, which is held by the government for the life of the loan and is designed to equal the government's risk of default. Various factors are taken into consideration when determining the amount of the credit risk premium, including the applicant's credit rating, if available; business risk; industry outlook; market position; management and financial policies; capital expenditures; operating efficiency; financial risk; profitability; liquidity; financial strength; size; level of capital expenditures; project risk; potential for improving revenues; profitability and cash flow; reliance on third parties; potential recovery in the event of default; the nature of the applicant's assets; and liquidation value of the collateral offered.

Further, the RRIF application process requires a thorough examination of the applicant's business and financial performance – past, present, and future. In fact, the statute prohibits the

Secretary from making a direct loan or loan guarantee unless the Secretary has made a finding in writing that, among other things, ensures that the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government. In the decision not to approve the DM&E application for a $2.33 billion RRIF loan, then-FRA Administrator Joseph Boardman stated that the loan to DM&E would pose "too high a risk concerning whether the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government."

In the letter, Chairman Oberstar and Chairwoman Brown stated: "Denial of the DM&E's application shows that the administration currently has the ability to protect the Federal Government from risky loans. There is no need to institute the new requirements of the NPRM, which could prevent loans which meet the statutory standard that 'the obligation can reasonably be repaid.'"

The proposed rule was not implemented prior to the end of the Bush administration.

WITNESSES

Mr. Ken Pippin
President
Carolina Southern Railroad

Mr. Patrick Simmons
Rail Director
North Carolina Department of Transportation

Gen. Richard F. Timmons
President and Treasurer
American Short Line and Regional Railroad Association

Mr. Mark Yachmetz
Associate Administrator for Railroad Development
Federal Railroad Administration
U.S. Department of Transportation

Mr. Dale Zehner
Chief Executive Officer
Virginia Railway Express

HEARING ON RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

Wednesday, April 22, 2009

HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:00 p.m., in Room 2167, Rayburn House Office Building, the Honorable Corrine Brown [chairwoman of the Subcommittee] presiding.

Ms. BROWN OF FLORIDA. Good evening. Will the Subcommittee on Railroads, Pipelines, and Hazardous Materials come to order? The Subcommittee is meeting today to hear testimony on the Railroad Rehabilitation And Improvement Financing Program, RRIF.

It is clear that adequate investment in passenger and freight rail infrastructure is crucial to our Nation's economic growth, our global competitiveness, and the quality of life in our communities. Recent studies show that an investment of $148 billion for rail infrastructure expansion over the next 28 years is required to meet the Department of Transportation's projected demand.

Without this investment, 30 percent of rail miles in primary corridors will be operating above capacity by 2035, causing severe congestion that will affect every region of the country and potentially shift freight to an already heavily congested highway system.

However, the ability of the railroads, shippers, and States to meet those rail infrastructure investment needs is becoming increasingly difficult in the current economic climate.

According to the Association of American Railroads, U.S. railroad car-loadings are down 24.5 percent from 2008. Intermodal volume is down 21.6 percent; grain shipments are down 28 percent; coal shipments are down 10.8 percent; chemical shipments are down 22.2 percent; and automobile shipments are down 54.8 percent from last year. One railroad reports that there are more than 2,300 auto racks stored in Ohio because the auto traffic volumes are down so low. More than 37 miles of auto racks are not being used. Railroad revenues are also down. A major Class I railroad just announced that first quarter earnings have dropped from $351 million in 2008 to $246 million in 2009. They have already cut employment and more job losses are anticipated.

The RRIF program can help the railroads, shippers, and the States finance the development of railroad infrastructure during these difficult times. It can also help put people back to work. Since 2002, the Federal Railroad Administration has executed 23 agreements with 19 railroads for a total of $778.62 million in loans. To date, no recipient of a RRIF loan or loan guarantee has defaulted on a loan or is in delinquency in making payments. Additionally, three loans have been repaid in full.

While I am pleased with those numbers, I remain concerned about how the program has been implemented. In the past, the OMB has tried time and again to derail the program, which I hope will not be repeated by this Administration. What we need to do now, given the current economic climate, is see how we can encourage more uses of this effective program, and reauthorization the surface transportation program will provides us with that opportunity.

With that, I want to welcome today's panelists and thank them for joining us. I look forward to hearing their testimony. Before I yield to Mr. Shuster, I ask unanimous consent that Members be given 14 days to revise and extend their remarks, to remit and submit their additional statements and materials by Members and witnesses. Without objection, so ordered. I yield to Mr. Shuster for his opening statement.

Mr. SHUSTER. Well, I thank the Chairwoman and also want to welcome everybody to today's hearing on the Railroad Rehabilitation and Improvement Program, which of course we all know is referred to as the RRIF program.

The program, originally created in 1998 in TEA 21, is a dedicated source of loan funding for railroad's infrastructure needs. It was limited to $3.5 billion in total outstanding loans but Congress in the last highway bill recognized that we needed to increase that amount. We increased the amount to $35 billion when we passed SAFETEA-LU back a couple years ago. We also strengthened the RRIF program last year in the Amtrak and Rail Safety bill by increasing repayment periods from 25 to 35 years.

I would support further improvements to the program in the next surface reauthorization bill. That is a primary reason for holding the hearing here today. Without a doubt, the RRIF program is a top priority for this Subcommittee and we have repeatedly demonstrated Congress' intent to make this a strong program.

Unfortunately, I think it is safe to say the RRIF program has been underutilized. Since 2002, the FRA has executed 23 loan agreements for a total of $778 million. And this is just a small fraction, in fact, a little over 2 percent of the authorized amount of loans.

On the one hand, I want to commend the FRA for doing an outstanding job for selecting loan recipients. We have not had a single default on any of the RRIF loans. You as well as the railroads deserve a pat on the back for a job well done. If only our Nation's banks had a loan portfolio that looked like that, we wouldn't be in the mess we are in today.

On the other hand, I want to implore upon this Administration to make this program more accessible to borrowers. Again and again, Congress has butted heads with the Executive branch—and I am sad to say that it was a Republican Administration that we butted heads with over the past several years on the RRIF programs—but at times it appeared that the Administration had subverted the Congressional intent when implementing the program.

I am confident that we will now come together to make the RRIF program a stronger program. FRA has done, as I said, a great job in supporting it over the past decades. I hope the attitude will prevail because Congress intended for a strong and well utilized program.

I am encouraged that the rulemaking in the process last year that would have tightened the requirements on borrowers has been withdrawn. The rule would have greatly increased the degree of difficulty for railroads to obtain a loan, creating a new higher bar for qualification. The rule also introduced several other measures such as a cap on loans to individual borrowers and a public benefit requirement that would have crippled the RRIF loan program. And these were not in line with Congressional intent.

I would like to see the Department pursue policies in the opposite direction, making the program more accessible not less, and making it a more attractive financing mechanism for projects that are time sensitive or critical for the operation of a line.

At a time when our Nation is doing all it can to spur economic activity, the RRIF program stands as a potential model for how government can encourage economic growth because RRIF is an innovative loan program and not a grant program where the government simply hands out cash. The private sector has an incentive to invest money in projects that will pay a financial dividend down the road. The railroad knows the loan has to be repaid and will only pick, I believe, the most critical projects and those that make the most economic sense as opposed, I believe, to a grant program which wouldn't be as strong.

I look forward to hearing from our panelists this evening. I would like to learn more about what Congress can do to make sure this program is part of the solution to our economic crisis that we face today.

Finally, Madam Chairwoman, I would like to introduce for the record testimony submitted by the Kansas City Southern, a Class I railroad supporting the RRIF program. KCS has made some valuable recommendations in their testimony including encouraging expedited environmental review for RRIF projects and promoting RRIF loans as a means of refinancing other debt obligations. I appreciate KCS's thoughtful testimony. It will be closely considered as we work to improve the RRIF program in the next highway reauthorization bill.

So thank you very much. I yield back.

Ms. BROWN OF FLORIDA. Mr. Titus? You pass? Mr. Brown, yes sir?

Mr. BROWN OF SOUTH CAROLINA. Thank you Madam Chairwoman. I would like to welcome all the panel members here today that are going to be testifying but particularly I would like to represent one of my constituents, Ken Pippin.

Ken and his family run the Carolina Southern Railroad, a short line providing services along 95 miles of track in North and South Carolina. Ken's company ensures that communities like Conway and Myrtle Beach and major customers like the Santee-Cooper Grainger power plant and other industrial operations are connected to CSX national rail network. Without the rail service provided by Ken's train, many of these companies would either not be able to operate or would see the cost of operation significantly increased as they would be forced to ship material in and out by truck.

Ken is going to tell you all about the situation facing his rail line and how he has tried to work with the RRIF program to improve his infrastructure, some of which is over 100 years old, to ensure that his rail line is both able to meet the needs of his current customers and also open to new customers along the line. Unfortunately, it appears that Ken's railroad fell through the cracks of this program. This is most concerning considering that the RRIF loan program was tailor-made to assist systems like the Carolina Southern.

I look forward to working with the Chairwoman, the Ranking Member, and the rest of the Subcommittee to ensure that the RRIF program is structured to ensure that railroads like Carolina Southern are able to take advantage of the program as Congress intended when it was created. Thank you again for holding this hearing and I yield back.

Ms. BROWN OF FLORIDA. Mr. Sires from New Jersey?

Mr. SIRES. Thank you, Madam Chairwoman. Thank you for calling this hearing today.

Our passenger rail and freight rail infrastructure needs have received increasing attention over the last few months through the high-speed rail initiative and as we push for clean transportation alternatives for people and goods. As the country looks to rail transportation to address a number of challenges such as capacity, congestion, air quality, and safety, we must also understand the crucial investments needed in railroad infrastructure. If the proper investments are not made, the many benefits that rail transportation offers will be lost.

I thank the Chairwoman for giving us the opportunity to discuss one important tool we have in meeting the growing demands for rail infrastructure, the Railroad Rehabilitation and Improvement Financial Program. I look forward to hearing from the witnesses about their experiences and their recommendations regarding this program. Thank you Madam Chairwoman.

Ms. BROWN OF FLORIDA. Thank you. Mr. McMahon from New York?

Mr. MCMAHON. Thank you, Chairwoman Brown and Ranking Member Shuster, for having this very important hearing on our very important rail infrastructure. As we all know, rail transportation is critical to our Nation's transportation needs both for passengers and for freight. Again, thank you for holding this hearing. To our witnesses, thank you for coming and giving us your testimony and guidance.

As you may know, I represent Staten Island and Brooklyn, New York. My district is in desperate need of more mass transit. With one of the longest average commute times in the United States, many of my constituents commute for a long period of time. But a complement to that is our existing regional passenger rail line. Without that, our commutes would be much worse. It is estimated that approximately 25 to 30 percent of all rail passengers in the United States are commuters in the New York City metropolitan region. Amtrak is crucial to that. Although our region's car traffic is horrendous as it is, our highways would be in gridlock 24/7 without that passenger rail component.

But rail isn't just critical to the New York metro economy. It also helps us protect our environment. As we sit here today celebrating Earth Day, as my colleagues mentioned, we are reminded how environmentally friendly moving people and freight by rail is. So supporting our passenger rail network and our freight network are extremely important.

As we know, on the freight side we transport approximately 40 percent of our Nation's freight tonnage on the rails. That is freight that is not clogging our Nation's roads or polluting our air. As we know, we can ship one ton of freight by rail for 436 miles on one gallon of gas. We would be hard pressed to find a more energy efficient and clean way to ship goods across the country than rail. That is why this hearing is so important.

We know some of the challenges that the Railroad Rehabilitation and Improvement Financing Program has faced over the years and the efforts that have been undertaken by Congress to make this program work. But despite its tortured administrative history, since its creation through TEA 21, the RRIF has been an important program. We need to provide increased Federal investment in our Nation's rail infrastructure but we need a program that actually can get money out the door and upgrade our transportation system. I know behind your leadership, Chairwoman, we will be able to do that. Thank you again.

Ms. BROWN OF FLORIDA. Thank you. With us today is Mr. Joe Szabo, the President-nominee for the Federal Railroad Administration. Would you please just stand so we can see you. Okay, with a pretty purple tie. Thank you.

[Laughter.]

Ms. BROWN OF FLORIDA. I will first thank you panelists for being here today. Our first witness is Mr. Mark Yachmetz, Associate Administrator for Railroad Development of the Federal Railroad Administration. Next we have Mr. Patrick Simmons, Rail Director of the North Carolina Department of Transportation. We have Mr. Dale Zehner, Chief Executive Officer of the Virginia Railway Express. We have General Richard Timmons, President and Treasurer of the American Short Line and Regional Railroad Association. And last, Mr. Ken Pippin, President of the Carolina Southern Railroad.

Let me remind the witnesses that under our Committee rules oral statements must be limited to five minutes but the entire statement will appear in the record. We will also allow the entire panel to testify before questioning the witnesses. We are very pleased to have you here today. We will start with Mr. Yachmetz.

TESTIMONY OF MARK YACHMETZ, ASSOCIATE ADMINISTRATOR FOR RAILROAD DEVELOPMENT, FEDERAL RAILROAD ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION; PATRICK SIMMONS, RAIL DIRECTOR, NORTH CAROLINA DEPARTMENT OF TRANSPORTATION; DALE ZEHNER, CHIEF EXECUTIVE OFFICER, VIRGINIA RAILWAY EXPRESS; GENERAL RICHARD F. TIMMONS, PRESIDENT AND TREASURER, AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION; AND KEN PIPPIN, PRESIDENT, CAROLINA SOUTHERN RAILROAD

Mr. YACHMETZ. Chairwoman Brown, Mr. Shuster, Members of the Subcommittee, I am pleased to have this opportunity to appear before you on behalf of Secretary of Transportation Ray LaHood to update you on the status of the Railroad Rehabilitation and Improvement Financing Program, also known as RRIF.

While I have met many Members of the Subcommittee and have known most of the Subcommittee staff for years, this is the first time I have appeared before this Committee's current leadership as a witness. So, by the way of introduction, I am the Associate Administrator for Railroad Development and I have the honor to lead FRA's investment programs. Included among these programs are supporting the Secretary in his role as a member of the Amtrak Board of Directors; making operating and capital grants to Amtrak; making grants to States for rail line relocation and to the Alaska Railroad for rail line improvements; implementation of FRA's responsibilities under the Passenger Rail Investment and Improvement Act that Congress passed last year; implementation of FRA's responsibilities under the American Recovery and Reinvestment Act of 2009; and, of course, FRA's credit program responsibilities under RRIF and the Transportation Infrastructure Finance Innovation Act, also known as TIFIA.

I joined the staff of FRA in 1978 to work in the program providing credit assistance to the rail industry that was authorized by Title V of the Railroad Rehabilitation and Regulatory Reform Act of 1976. That program was the predecessor of RRIF. Thus I have been involved in some degree with FRA's credit program since just after its inception.

One note of interest is the first loan I worked on in 1978 was an application by the Boston and Maine Railroad to rebuild its line between Boston and Albany. That loan was repaid in full last week.

Touching on the highlights of the RRIF program since its inception in TEA 21, the FRA has made 23 loans for $786.72 million. We have not yet guaranteed any loans. A list of the recipients is attached to my written testimony. Three of the loans, totaling $381 million, have been repaid in full. All payments on all loans are current. There have been no defaults. There are currently three complete applications being reviewed by FRA with several additional draft applications in various stages of development. And on March 30th, 2009 the U.S. Department of Transportation published a notice in the Federal Register withdrawing a proposed rulemaking initiated by the prior Administration that would have changed RRIF policies and procedures.

Having once worked for a House Subcommittee, I appreciate the time constraints faced by the Members of this Subcommittee. Thus

I will not repeat my written testimony to afford more time for questions. I will note, however, that the rail industry appears to be affected by the same widely discussed problems in the credit markets that are affecting every other industry. Since mid-January, FRA has seen a significant increase in the number of inquiries about the RRIF program. These inquiries have covered the wide range of eligible applicants and the wide range of the eligible uses of funds. Of particular note is that we have received a number of inquiries from commuter railroads or persons representing commuter railroads which may reflect upon other challenges facing the Full Committee. These inquiries have not yet been translated into an increase in the number of pending applications. However, they may be a harbinger of increased applications later this year.

Finally, while I have the attention of persons interested in FRA's credit programs, I would like to say that we are presently recruiting a credit program manager to fill a vacancy that has resulted from a retirement. The position closes Monday. Anybody who is interested, please log onto usajobs.gov. With that, I will conclude my introductory comments and be happy to address any comments you may have.

Ms. BROWN OF FLORIDA. Mr. Simmons?

Mr. SIMMONS. Thank you, Madam Chairwoman. My name is Patrick Simmons. I am Director of the Rail Division at the North Carolina Department of Transportation. We operate what I believe to be one of the most comprehensive State rail programs in the country. We have detailed that somewhat in the written testimony.

I recall reading with interest the opportunities afforded when the Congress first authorized the RRIF program. We worked closely with our Railway Association of North Carolina to let our community of railroads know that our State was interested in partnering with them to apply for loans and that we would consider financial support of some of the analyses that are required.

To that, we have had one railroad take us up on that, the Great Smoky Mountains Railroad that operates between Dillsboro and Bryson City, North Carolina. It's a scenic and tourism railroad and is an important component of our tourism-based economy in western North Carolina. We partnered with them in the year 2000 to make a loan application. It took longer than anyone had envisioned and I think we all learned a lot of lessons from that.

It is not my point today to disparage the Federal Railroad Administration but rather to say that I think they are very capable in managing the program. I think that the Chairwoman identified some of the behind-the-scenes issues that constrain the staff's ability to do what they need to do in a timely and prudent fashion. It is obviously a program that if we can get it on good footing will be a useful tool that our industry needs very much.

Again, to reflect upon some of what Administrator Yachmetz said, we do have a number of applicants from our State, one of which is here today, the Carolina Southern Railroad. But we also were envisioning intermodal port related rail facilities, commuter rail, and—something that is a little new to my vocabulary—TIF for TOD or Tax Increment Financing for Transit Oriented Development, the revenues of which would be dedicated to repayment of potentially a RRIF loan.

Yesterday, our House of Representatives in Raleigh endorsed legislation that would authorize the Research Triangle Park—at their request—to levy a tax on themselves to be able to support this kind of repayment plan.

So I would ask that the Committee ensure that our Federal agency has the resources it needs to manage the program in a timely and responsive manner. I know the Committee will continue with its oversight of this important program. It is a much needed tool for our industry so let us be about the business of keeping it well honed and well used. Thank you, Madam Chairwoman, for the opportunity to testify today.

Ms. BROWN OF FLORIDA. Mr. Zehner?

Mr. ZEHNER. Good afternoon, Madam Chairwoman Brown, Ranking Member Shuster, and Members of the Committee. I am Dale Zehner, Chief Executive Officer of the Virginia Railway Express, a commuter railroad that operates from northern Virginia into the District of Columbia every day over the CSX and Norfolk Southern freight lines.

We received a RRIF loan of $72.5 million from FRA in July 2006 for the purchase of rail cars, passenger coaches. We have since that time purchased 60 rail cars with the funding and currently are operating 50 of those rail cars. The last 10 will be delivered in February 2010.

My assessment of the RRIF program is it was professionally managed by FRA. The FRA staff was knowledgeable and helpful through the entire process. The application process was quick and streamlined. We received a favorable response from FRA within five months of our application. I view this RRIF loan process as another important alternative to public railroad agencies' funding mechanism which is much more flexible than issuing bonds.

My suggestion for a change in the legislation to the RRIF process would be involving the credit risk premium. Determining the credit risk premium for our loan took an additional two months after the FRA recommended approval of our application. The FRA recommended that our credit risk premium be zero for us but OMB ultimately determined a rate of 1.88 percent of the borrowed amount or approximately $1.4 million for VRE.

OMB's process for determining the premium for a public agency was not clear at the time of our application. Knowing that process at the time of the application would have permitted us and the FRA to better estimate that premium. In our case, we determined that using bond insurance would have been cheaper than paying the credit risk premium but the timing did not allow us to do that.

Thus my recommendation for any change to the RRIF process would be to attempt to delineate how the credit risk premium is calculated for public funded entities as a part of the FRA evaluation. Second, provide the opportunity to the applicant to insure the total loan amount using a bond insurer, which is common in municipal bond financing, as an alternative to the credit risk premium. In our case, that would have been probably half the cost of the credit risk premium. Thank you very much for the opportunity to testify today.

Ms. BROWN OF FLORIDA. Mr. Timmons?

General TIMMONS. Madam Chairwoman and Members of the Committee, I appreciate the opportunity to provide my thoughts on the Railroad Rehabilitation and Improvement Financing Program. I am Rich Timmons, President of the American Short Line and Regional Railroad Association.

The short line railroad industry has been the primary user of the RRIF program. Twenty-one of the twenty-three loans approved to date are short line railroads and together they borrowed approximately $614 million. These loans have helped short lines maximize capital investment through direct rehabilitation loans and, in some cases, through refinancing existing debt so as to increase cash available for rehabilitation. I am proud to say that in the 10 years the RRIF loan program has been on the books, not a single short line railroad has missed a single quarterly payment on its debt.

The Transportation and Infrastructure Committee developed this program in 1998 and has improved it over the years. Perhaps most importantly, it has been steadfast in protecting the program from those in previous Administrations who would have killed it. I want to particularly recognize Congressmen Oberstar, Corrine Brown, Bill Shuster, and Jerry Moran who led the charge last year to put a stop to a set of Administration-proposed rules that could have effectively killed the program through the back door. We thank you very much for that.

The returning Members of this Committee know the short line story well and I will not repeat it here. For the new Members, let me just say that the importance of the short line industry is not in who but where we serve. America's 500 short lines operate nearly 50,000 miles of track, almost a third of the National network. For large areas of the country and particularly for small town America, short lines are the only connection to the National railroad network. For the small businesses and farmers in those areas, our ability to take a 25-car train 75 miles to the nearest Class I interchange is just as important as the Class I's ability to attach that same block of traffic to a 100-car train moving across the country. To paraphrase a popular saying, you can't get there from here without us.

There are 22 new Members on the Railroad Subcommittee and all but five of you have a short line in your district. Believe me, we are working on a plan to buy properties in those remaining five right now.

Let me emphasize three points about the current RRIF program and propose two changes that we believe will greatly enhance its economic and transportation benefits. First, RRIF loans leverage substantial private investment in short line infrastructure. The program allows short lines to undertake projects that could not have been done or would have stretched out over many years. Second, because these are loans that must be repaid and are secured by an ironclad first lien on the railroad's hard assets, RRIF loans are not being used to fund cost-ineffective projects. I know that Congress and the new Administration are keen on ensuring that all Federal monies that are being used to stimulate economic growth be spent wisely and as effectively as possible. Third, most short lines do not have in-house manpower to undertake rehabilitation projects and so must hire contractors and additional laborers to do the work.

The Federal Railroad Administration estimates that approximately 50 percent of every rehabilitation dollar is spent on labor. Most of the RRIF rehabilitation loans approved to date have individually generated over 100,000 man hours of labor to complete the projects. In addition, 100 percent of the ties and an overwhelming majority of the rest of the materials used in track rehabilitation are U.S. made.

While the short line industry has been the primary user of the RRIF program, it remains a highly underutilized program. RRIF is currently authorized at $35 billion but it has yet to reach a billion dollars in outstanding loans. This is due in part to the slow start of the program originally and to the lengthy delays in the approval process. I believe the FRA has worked diligently to accelerate the process, particularly that part of the process they are in control of.

Setting aside the delay issue, however, we believe there are two changes that would significantly increase the use of the RRIF program and that such an increase would help promote the goals of maximizing private infrastructure funding and creating immediate jobs. These are part of the three part proposal we made last year. The third change, extending the RRIF loan term from 25 to 35 years, was adopted by the Transportation and Infrastructure Committee in last year's Rail Safety legislation. Once again we are very grateful for that change.

Now we propose that Congress subsidize an interest rate reduction to 1 percent on RRIF loans. The current interest rate is approximately equivalent to the rate on a 30 year Treasury security, which today is about 3.5 percent. At today's rate, a $500 million subsidy would support approximately $1.5 billion in RRIF loans or three times the subsidy amount. So spending a Federal dollar to leverage three of private infrastructure investment seems to me to be well worth the expenditure.

We further propose that RRIF payments should be deferred in a manner comparable to the deferral that is allowed in the Transportation Infrastructure Finance and Innovation Act, TIFIA. As many of you know, TIFIA is a credit assistance program that provides low interest long term loans for large public transportation and infrastructure projects, particularly in the highway and transit areas. Under RRIF, repayment begins immediately after the loan is drawn down. TIFIA provides that repayment shall not commence later than five years after the date of substantial completion.

The current RRIF statute gives the Secretary the discretion to defer payments for up to six years. To the best of my knowledge, that provision has never been exercised and I am led to believe it is not something the Agency encourages. Part of the difficulty may be that there does not appear to be a definitive answer to the question of how the Congressional Budget Office would score such a deferral.

I would argue that since 100 percent of the deferred payments would be added to the remaining term of the loan, there is no cost to the Government. Under TIFIA this is not an issue because TIFIA receives an annual appropriation to cover any subsidy associated with the loan.

The RRIF program was modeled after a similar loan program known as Section 511 in the 1976 4R Act. It was used extensively and effectively as part of the Federal Government's efforts to save the Nation's railroads as they went into or approached bankruptcy prior to the Staggers Act. The Section 511 program was valuable in saving Class I railroad infrastructure in the 1970s and 1980s. Its successor, the RRIF program, is proving to be equally valuable in saving short line and regional railroad infrastructure today.

The program's only shortcoming is that it is not fully utilized. That shortcoming can be addressed by insisting that relevant agencies deal with applications as expeditiously as possible. It can and should further be addressed by improving the terms of the RRIF loans. The cost to the Federal Government of those improvements is very small in comparison to the benefits and, we believe, well worth the investment. I thank you very much for your time and attention. At the appropriate time, I will be happy to answer any questions you may have.

Ms. BROWN OF FLORIDA. Thank you. Mr. Pippin?

Mr. PIPPIN. Madam Chairwoman, Ranking Member Shuster, and Members of the Committee, I appreciate the opportunity to speak before you today. I thank Congressman Brown for the introduction. My name is Ken Pippin and I am the owner of a short line railroad that runs through North and South Carolina, known as the Carolina Southern.

Our line consists of approximately 100 miles of track, five historic train depots, 85 various sized bridges—the major ones crossing the Lumber, Pee Dee, and Waccamaw Rivers. We also operate a Bastille bridge spanning the Intracostal Waterway that links Myrtle Beach to the national rail network to the rest of the United States, Mexico, and Canada.

I appear before you today as the temporary custodian of a permanent and significant piece of infrastructure that for more than 125 years has provided and continues to be vital to the industries, the communities, and the citizens it serves. I consider myself, my two sons, and the dedicated employees of the railroad its temporary custodians because, regardless of ownership, this valuable rail corridor connecting the Carolinas to the rest of the world has been in place since the late 1800s. I am confident that long after I am gone, this railroad will continue to maintain the same and eventually a higher level of importance and perhaps in not the too distant future will return to carrying passengers.

Our particular railroad, originally part of the famous Atlantic Coast line, was spun off by the Class I because it could no longer financially justify the cost of maintenance versus the volume of traffic on the line. Many of the 500 plus short lines that exist today fall in that same category. If we hypothetically apply the same logic to the U.S. highway systems, then we would close or discontinue maintenance on roads that do not generate significant traffic to justify that maintenance. I don't think we would ever do that.

One of the important services that the Carolina Southern provides is being a mitigator of traffic. In the Myrtle Beach area we have about 14 million people visiting every year. All but about 900,000 come in by automobile. Our line runs parallel to the major artery that serves Myrtle Beach and we take quite a few trucks off the road with that one rail car rolling through the woods in the middle of the night. For each one of those, that is about 4.5 tractor trailers that aren't on our local highway system.

The other importance of the Carolina Southern that is significant is that we deliver coal trains to a power plant which generates electricity for Myrtle Beach and the region. Our railroad also delivers unit trains of stone for Martin Marietta which are used for road construction in the ever growing Myrtle Beach area. We move steel for Hitachi Metals, who just recently announced a $20 million expansion that is on our line. Within the past two months, a biodiesel manufacturer has located on our line. We also serve Georgia Pacific, Purdue Farms, and a number of other companies.

Our success and the success of most short lines stems from our accessibility as local people and a local company that knows each customer personally and communicates with them on a regular basis. It is not every day that a company like Martin Marietta or Hitachi Metals can come walking into an office and see the decision makers right there, ask about a particular move or rates or something that they need from a railroad standpoint and get an answer just about on the spot. The shippers and receivers really like that. That is one of the main things they like about short lines in addition to the excellent service that they get.

Our property, like many short lines, earns a profit. But we do not earn enough for the many years of deferred maintenance our lines have experienced under the former Class I owners. This brings us to the RRIF program and why we are here today.

The railroad business is a highly fixed cost business. The single most important part of our operation is our infrastructure that we operate over every day: tens of thousands of railroad ties, thousands of tons of stone, and miles of iron rail. The bare iron and the wooden railroad ties are exposed to the elements as well as to 150 ton locomotives and thousands of rail cars loaded with coal and stone running over them every day. I know this Committee understands the attention and expense required to keep the freight moving and to keep it moving safely.

In our specific case, some of the rail we operate on was manufactured in 1905. It was purchased used in 1925 and brought and installed in the area where we run. It wasn't designed to carry the type of equipment and loads we have today. We face a constant race to find funds to keep the railway up for the safety of our employees and the ability to deliver the goods that we ship. We also must meet all FRA safety standards.

In the last 15 years that we have owned this line, we have maintained an excellent record with the FRA. We want to continue that record. The average replacement cost for one mile of rail is close to $1 million. For a small company that has 97 miles of track, some of it over 100 years old, it is easy to see how the cost of maintenance and replacement can outpace our ability to keep up without assistance of some kind.

Short lines are risky businesses. We are, after all, operating in areas where Class I's could not succeed. As such, it is very difficult to find funding from traditional banking facilities. That is why the RRIF program was created and why its existence is so vital to the short line industry. It is an important financial resource that allows small railroads to obtain funds to rehabilitate track and keep these vital railways active and providing service to the communities they serve.

Without the RRIF program available to small railroads, specifically this one, there is no way to maintain this valuable infrastructure. We would like to receive an infrastructure loan fully secured at little risk to the Government that would allow for the rehabilitation of this vitally important rail network in the Carolinas.

We also feel that this program is vital to the health of the entire railroad industry and their shippers. On behalf of ourselves and other small railroads that desperately need these funds, we ask the Committee to not only continue the RRIF but to help make it more accessible to those who need it.

I went over my time. Thank you for your patience.

Ms. BROWN OF FLORIDA. Thank you, Mr. Pippin. We want to start with Mr. Yachmetz. SAFETEA-LU prohibits the Secretary from requiring that an applicant for a RRIF loan first seek financial assistance from other sources. Now, I understand that the FRA is complying with SAFETEA-LU requirements but in a hearing that the Subcommittee held on March 15th, 2006, the FRA committed in order to avoid confusion pertaining to applicants to reverse this regulation or remove the subsection. Has FRA done this? If so, when and if not, why not?

Mr. YACHMETZ. We have not done it yet. We will do it soon. It was actually going to be part of the larger rulemaking that the past Administration was pushing which, as you know since you wrote in opposition to the rule, on balance it was not a good idea to move that ahead. So now that that rule is dead, we will address it going forward in something on a stand alone basis.

Ms. BROWN OF FLORIDA. You said "soon." What does that mean?

Mr. YACHMETZ. Well, that is a good question. FRA has a number of rulemaking priorities that have come from the Rail Safety Improvement Act and the Passenger Rail Investment and Improvement Act. We will put this in with those. I would like to try to get all of my rulemaking done this year. Hopefully, we can get the resources to move that ahead. So I will take the message back to my bosses to be that you would like to get this done quickly.

Ms. BROWN OF FLORIDA. Okay. The law requires that the Secretary approve or disapprove a RRIF application in no less than 90 days after receiving a complete application. But all the witnesses here today have raised concerns about the length of the review process. Some state that it takes as much as 50 months. Why isn't FRA complying with the law? Has FRA considered anything to streamline the review process so that applications don't have to wait so long to secure a loan?

Mr. YACHMETZ. Well, many of the examples cited, including the one cited by my good friend to my left, actually happened before the 90 day requirement. Perhaps they were the motivator for the 90 day requirement.

There are a number of things that have to be done before an application is complete. Frequently, for applicants to us, this is their first time dealing with a number of Federal financial assistance programs. They are not necessarily aware of the complexity of completing the National Environmental Policy Act reviews that are required prior to an application being complete.

To the best of my knowledge, between the time we actually have a complete application and the time that the DOT Credit Council acts and then submits their recommendations to the Administrator and the Administrator makes the final decision, we have been meeting the 90 day standpoint.

There is a separate step that happens after our Administrator's approval, and that is the Office's of Management and Budget review of our estimate of the credit risk premium. That does not fall within the 90 day timeframe because that is subsequent to the Secretary's approval. So that may be one of the things that contributes to the impression that we are not meeting the 90 day timeframe.

Ms. BROWN OF FLORIDA. Well, I guess at some point I have a question for our lawyer on this issue, then. When we said 90 days, does that complete the process or does it have separate steps? I mean, I am confused. But we really need to look at how we can streamline the process and be in compliance with the law. Would any of the other participants like to respond to this question? Yes, sir.

Mr. ZEHNER. It was five months for us to get the FRA approval. The way the process is set up, we submit an application. FRA then assigns a third party financial firm to review that application. Until that review is complete and that package goes forward, I think that is when they are saying the clock starts. I think that is reasonable. That is the way the process is. I can speak only, if I was to do bond financing, it would be at least a year. I am not sure that going to a bank would be any faster than five months. So what occurred to us was reasonable.

Now I know the law is something else. If you want the FRA to do a very good look at the application before they make their determination, you have got to give them some time. Otherwise, what you are going to do is cause this process to have bad loans. So I would just make that recommendation.

Ms. BROWN OF FLORIDA. We absolutely don't want any bad loans, just more loans.

Mr. ZEHNER. Yes, and that third party examination takes about two months. They spend time with us; they spend time with our auditors. Then they make a recommendation to FRA.

Ms. BROWN OF FLORIDA. Mr. Pippin?

Mr. PIPPIN. In our case, the process was a little over 14 months. I don't know how much of that was our fault and how much of it was the Administration's fault. But it would have been nice it would have been 90 days, if everybody would have been pressed to make it within 90 days somehow.

Ms. BROWN OF FLORIDA. Yes, sir, Mr. Simmons?

Mr. SIMMONS. Thank you, Madam Chairwoman. I would just simply like to add that I think that since we started our experience, the Agency has now added a mandatory pre-application meeting which I think is very constructive. I think at that point, that is when the potential recipient of the loan could be counseled and brought into the reality of what it takes to actually pass muster with the loans.

Ms. BROWN OF FLORIDA. Did you say that happened?

Mr. SIMMONS. No. I think that occurs now, though that was not a FE

Ms. BROWN OF FLORIDA. Initially when you first started the process?

Mr. SIMMONS. Yes, ma'am. I think the most important criterion is not so much a drop dead date of 90 days but a predictable and timely process. I think any time you are in a business where you can predict an outcome or you have some security of knowing that it will take approximately this amount of time and I have to make this sort of submittal, I think that is a good way of doing business.

Ms. BROWN OF FLORIDA. Yes, sir. All right, Mr. Brown?

Mr. BROWN OF SOUTH CAROLINA. Thank you, Madam Chairwoman. Mr. Pippin, thank you for your testimony. Thank you for being here today. Your presence here at this hearing is very important since you are someone who's family business is moving freight. You make your business and family decisions with all of that in mind. Can you tell the Subcommittee about the challenges that the short line industry has seen over your years in the business?

Mr. PIPPIN. The biggest challenges are to keep this infrastructure up to par so we can operate safely and effectively. You know, there has been an increase in the sizes of the equipment and the sizes of the loads. A lot of the short lines don't have the ability to replace the infrastructure they need to replace. That is our case. You know, we replaced a lot of railroad. We have a lot of 132 pound rail but there are sections—and this loan is important to us because of those sections—where the rail is substandard. It is only 85 pound rail.

Mr. BROWN OF SOUTH CAROLINA. A further question, the work to be done on your railroad seems tailor made for assistance through the RRIF program. Why do you believe that your loan application to the Federal Railroad Administration was turned down the staff of FRA?

Mr. PIPPIN. Well, there is a map of our line available. We have a section of our track, of our 96 miles that we operate there is about a 14 mile section that is owned by the county government. It is down at the bottom of the screen in the dark black there. That is owned by the county government. The FRA felt like there was an ability there to cancel the lease we have. In essence what they said was, you know, these folks could put up a fence any time and you wouldn't be able to operate over here.

Mr. BROWN OF SOUTH CAROLINA. Mr. Yachmetz, I don't want to ask any particular questions about a loan but has the FRA ever approved and provided a loan to a short line operation or track that is leased either from a government entity or a Class I railroad?

Mr. YACHMETZ. We have approved loans to rehabilitate lines that were leased from government. It was basically, though, that the nature of the lease and the nature of the improvements were clearly laid out. The challenge with the lease with Horry County actually was that it was cancelable. It could be canceled actually fairly quickly. That was one of the issues we had with the loan, just trying to get clarification from the county that during the pendency of the loan, regarding the access to the Martin Marietta plant, that they would not exercise their ability to cancel that part of the lease.

Mr. BROWN OF SOUTH CAROLINA. I guess just looking at that map, if they cancel that loan what would they do with the track? You know, it has got to be connected to something in order to move freight. It looks like to me that the only application for that little piece of land, that short line rail, would be to connect Mr. Pippin's line to the major carrier. So I don't know what they would do with it if they would actually cancel. And if they cancel it, they would have to pay some kind of a cancellation fee, too, I believe.

Mr. YACHMETZ. Yes, well the cancellation fee unfortunately would not be enough to offset the revenue that they were going to need to pay back the loan. So again, I admit we are relatively conservative on a number of these matters. We like to try to have all the i's dotted and t's crossed before we make a loan. So this is one of several areas where we felt as if the application needed to be improved.

Mr. BROWN OF SOUTH CAROLINA. But you would agree that there wouldn't be much use for it unless they could connect it to some other shipment point?

Mr. YACHMETZ. Yes, as a stand alone railroad it doesn't have a whole lot of value. That is correct.

Mr. BROWN OF SOUTH CAROLINA. Well, let me congratulate you for your loan payback. You don't have any loan losses which is pretty unusual in the banking system which we find ourselves in today. Mr. Pippin, I have one other question. If Horry County broke the current lease and brought in another rail carrier to operate on 14 miles of your line between Waccamaw River and Myrtle Beach, who would handle getting rail traffic to and from that line?

Mr. PIPPIN. Well, no matter what happened if they got rail traffic, as you can see from the map, they would have to get it from us. You know, one of the issues with this section of track is, I was invited to come to Horry County in 1992 because of the difficulty they had trying to have two operators. Former Congressman Napier and former Secretary Burnley brought me down there to meet with the county and see what we could do to resolve this. They would always have to get their freight from us if they were going to continue to be a rail line. There would be no alternative to that. They would have to go through us. That is just a fact of the geography.

Mr. BROWN OF SOUTH CAROLINA. So if you didn't operate the whole track, the 90 something miles, and you didn't have that 12 miles or whatever, you still have the other 80 or 70.

Mr. PIPPIN. Yes, we would have the majority of the railroad. We call this the tip of the tail of the dog. Every customer is important to us but, you know, if Horry County were to cancel this lease, the penalty clause that Mark mentioned will require them to pay us about $1.2 million. I will say that in recent days we have received the letter from Horry County talking about their commitment. We have submitted that recently to the FRA for their consideration.

Mr. BROWN OF SOUTH CAROLINA. Thank you very much. Thank you, Madam Chairwoman. My time has expired.

Ms. BROWN OF FLORIDA. Yes. Mr. Yachmetz, I really think this is a situation that, just from listening to it, deserved review and for you all to take another look at this loan.

Mr. YACHMETZ. Well, we certainly will take another look at the loan. We had a post-review with the Carolina Southern. We will review again with them all of the areas of concern we had and how they can move forward.

Quite frankly, I have been in the railroad business for 31 years. People who come to work for FRA stay at FRA because there is something about the railroad industry. So it gives us little pleasure to turn down investments that we know need to be done. There is nothing to say that if we ever do reject a loan that the loan can't be reconsidered or reapplied for once conditions are made to meet the basic financial needs of the program.

Ms. BROWN OF FLORIDA. Well, yes. I agree with you. But perhaps some resolution from the county or something could give you a comfort level. I mean, they have been operating the railroad for 100 and something years. I just think it is something that we really need to take another look at.

Mr. YACHMETZ. We will get back to the railroad and we will see what we can do.

Ms. BROWN OF FLORIDA. Okay. Mr. Lipinski?

Mr. LIPINSKI. Thank you, Chairwoman and Ranking Member Shuster for holding today's hearing on the RRIF program. It is good to see Mr. Szabo here. I look forward to working with him in the future. We have a lot of things for us to get accomplished.

I certainly want to associate myself with the comments that my colleagues have said about the importance of upgrading our rail infrastructure in this country. As we are beginning consideration right now of our new surface transportation authorization, I am looking forward to a bill that improves programs like RRIF and other existing programs. I want to make sure that we have a bill that provides significant investment to meet the long term transportation needs of our country.

At the same time, the legislation that we are working on also presents us with a great opportunity to put a significant number of people back to work fixing our roads, bridges, transit, and rail and also boost America's domestic manufacturing sector.

Now, in order to boost manufacturing, I really believe that we must buy American. I think that is really crucial. Buying American keeps all the direct and indirect economic benefits of our investment here at home. It makes sure that we support the industries and workers that are essential to our long term economic success. It is good public policy and an investment in our future. Especially in today's economic times it is especially critical.

It has been the policy traditionally in the annual Transportation Appropriations Bill that there has been a provision in there that bars any agency from expending appropriated funds unless the entity agrees that it will comply with the Buy American Act. That is in the annual Transportation Appropriations Act. It says they have to comply with the Buy American Act. Now with this in mind I wanted to ask Mr. Yachmetz, does the FRA follow the Buy American Act when granting direct loans and loan guarantees under RRIF?

Mr. YACHMETZ. The Buy American Act has actually not been an issue as far as the management of the program up to now. As you said, it follows annual appropriations and expenditure of Federal funds. Arguably, these are actually expenditures of private corporation funds.

But to this point it has really never been an issue because, as General Timmons said, 21 of our 23 awards have gone to small railroads who are doing basic infrastructure, buying crossties and buying relay rail with a very heavy—over 50 percent—labor component. That would clearly meet any Buy American standard. With the equipment, the VRE equipment was an option on a larger order for metro cars in Chicago which had already met the FTA standards for Buy American. So that wasn't an issue. The only other equipment that has been acquired with loans have been also American built equipment.

Now, going forward, I will have our counsel actually review the law and find out indeed whether Buy American applies or how it applies to this program. We will report back to the Committee. If for some reason there is some ambiguity, then this might be an appropriate place for the Committee to provide us guidance in managing the program going forward.

Mr. LIPINSKI. Well, I really believe that the Buy American Act does apply here. The Congressional Budget Office does consider estimated credit subsidies and administrative costs of Federal credit programs to be expenditures. Therefore, RRIF would fit under expenditures and therefore under the Buy American Act and so would have to comply with those provisions then.

Mr. YACHMETZ. Yes. We will take a look at it. But sort of the thing that makes RRIF a little bit different than all the other programs is the credit subsidy is actually provided by a non-Federal party. Therefore, does that somehow affect the CBO decision? As I said, we will have counsel review it. We will report back to the Committee. If it is in any way ambiguous, you all can provide us guidance on how to proceed in the future.

Mr. LIPINSKI. I believe that it has not really been an issue, as you have said, because generally there has been compliance with it. But I believe that it should be a requirement. I certainly believe the FRA should make that a requirement. We need to work together on that as we move forward to make sure that this just is not something that we let go, that we do keep an eye on this and make sure that it is actually enforced, that we just don't rely on it being followed, and that it is made a requirement.

Mr. YACHMETZ. Well, I agree that clarity will make the program so much easier to manage and so I will look forward to clarifying this. I will get back to the Committee and work with you if it isn't clear.

Mr. LIPINSKI. Thank you.

Ms. BROWN OF FLORIDA. Mr. Shuster?

Mr. SHUSTER. Thank you. Mr. Yachmetz, as I said in my opening statement, I was very disappointed that the last Administration didn't embrace this program especially after the events of September. This is a way to, I believe, get credit out into the markets. The last Administration, again, did not embrace it, didn't utilize it. So to get a little clarity, I hope you can let me know, what are you hearing from the new Transportation Secretary? What are you hearing from OMB? What are you hearing from the White House on this program? Have they pushed it down to you to say, let us get some money out into the railroads so that they can build some of this important infrastructure?

Mr. YACHMETZ. Mr. Shuster, to be honest, this issue has not gone all the way to the White House and OMB yet. In part it is because neither the RRIF program nor the TIFIA program has had an application ready to go to that point where they have had to focus in on it. Quite frankly, we have all been a little bit busy implementing the Reinvestment Act. I expect over the next few weeks if not sooner, we will get some sort of discussion underway. Now that we have made our first two deadlines under the Reinvestment Act, we have a little bit of a period now to vet this thing through. Again, just like with Mr. Lipinski's answer, clarity in policy and clarity in program structure makes those of us who are charged with implementing the program, it makes our lives a lot easier.

Mr. SHUSTER. Well and again, I just understand in the new Administration there are certainly priorities but this isn't chump change. It is $35 billion. It is half or even more than half, depending upon how you look at it, of what we put out there in stimulus. You can have this money out there working for us to create jobs and build infrastructure.

I have a question for you. Do you accept applications through the RRIF program on Class I railroads? Is it accurate that you do that?

Mr. YACHMETZ. Yes. All railroads subject to FRA safety regulations are eligible applicants. There are a number of other groups of eligible applicants. So Class I's, Class II's, Class III's, commuter railroads all are eligible.

Mr. SHUSTER. So you do accept Class I applications?

Mr. YACHMETZ. Yes.

Mr. SHUSTER. What is the general view at the FRA, your position on Class I applications? Are they viewed the same as Class II and Class III or is there a different view that you take?

Mr. YACHMETZ. Well in many ways,—actually Class I's, and I know Kansas City Southern provided some testimony; we worked with one of their subsidiaries, Tex-Mex—in many ways, Class I's would be easier because they already have a credit rating. Most of the Class I's, I should say, have a credit rating with Standard and Poor's or Moody's or Fitch. So that makes our review a lot easier and a lot faster. With Mr. Pippin's railroad, we had to go out and interview shippers—we would not have to go out and interview shippers if Kansas City Southern came in for an application, as an example.

Mr. SHUSTER. The length of the process, and I guess in North Carolina, Mr. Simmons, it took you 50 months for you to get approved? Can you tell me what size was it? What amount of money were you asking for?

Mr. SIMMONS. In partnership with the Great Smoky Mountains Railway, $7.5 million was the loan facility that was requested and awarded.

Mr. SHUSTER. It took 50 months.

Mr. SIMMONS. It was soup to nuts. I think if we were to revisit that and start today, I think that would be a significant improvement over that. I don't think we would experience that again.

Mr. SHUSTER. Mr. Zehner, how much money did you request for yours?

Mr. ZEHNER. We requested $72.5 million.

Mr. SHUSTER. It took you five months?

Mr. ZEHNER. Yes, sir.

Mr. SHUSTER. It seems to me it should be just the opposite. With a larger some of money, you would do a little more due diligence. I think 50 months, for any sum of money, this seems to me to be far too long. But again, in this situation, that makes no sense to me.

Mr. YACHMETZ. I think what you are seeing, Congressman Shuster, is a maturing of the program. The Great Smoky Mountain was relatively early. Quite frankly, there was another aspect of that application that was a little out of left field. It was a tourist railroad. You know, we never really had thought that such a railroad would end up as an applicant. But more importantly, it was early in the program and the VRE reflects the guidance, the statutory requirements that came out of the SAFETEA-LU that we speed up the program. So I think that you are seeing, you know, cause and effect here.

Mr. SHUSTER. Right. Well, my time has expired. I just again, in viewing this program over the last several months, it just makes no sense to me. I hope the new person that you bring into the FRA is somebody that comes from a background with some speed and wants to move things through because there is $35 billion out there. There is not a railroad I have spoken to—Class I, II, or III—that hasn't said we can utilize a lot more money through credit or other means. So I think this program can go a long way in helping our economy and helping our infrastructure. So I would encourage you to go back and light a fire under some of those long term employees. I would ask you to take a look at Mr. Pippin's project because again it seems to me that the two ends don't meet up for me. Thank you.

Mr. OBERSTAR. Would the gentleman yield, Madam Chairwoman? The gentleman has an additional minute.

Mr. SHUSTER. Yes.

Mr. OBERSTAR. Surely it is a lack of direction, lack of understanding, lack of perhaps expertise in dealing with this issue within the FRA that led to the early delays but it is the Office of Management and Budget that drags this whole process down. Not only this, but they interceded in the Federal Transit Administration. They have interceded in the Highway Program and a whole host of other things. Right now, the new OMB that is supposed to be so forward looking and progressive, they have held up the Clean Water State Revolving Fund under the Recovery program. That is supposed to go out fast, shovel-ready. It is the OMB that is the problem. We need to have them at this table or in the woodshed.

Mr. SHUSTER. You are absolutely right. I think, the gentleman, his name was mentioned for Secretary of Transportation. They probably should have considered you to be Director of OMB and a lot more would have gotten done a lot faster in transportation.

Ms. BROWN OF FLORIDA. Mr. Carney?

Mr. CARNEY. Thank you, Madam Chairwoman. Mr. Yachmetz, I have just a quick question. Does RRIF funding, can it apply to the creation of sidings and things like that?

Mr. YACHMETZ. Yes. We can build sidings as long as the, you know, eligible applicant was one of these on long lists of railroads and public authorities. Yes, we could.

Mr. CARNEY. Great, great. General Timmons, first of all, thank you for your service. We certainly appreciate that. You mentioned in your testimony that if we were able to reduce the percent rate interest from 3.5 to 1, we would stimulate a lot more. What is a lot more in terms of infrastructure investment?

General TIMMONS. The logic, first off, behind this of course is to assuage the concerns of the Federal Railroad Administration for payback. So the issues related to the duration of time or OMB or other issues related to non-approval or delays are always tied to is there a way, can we be sure of a non-default on a payback condition. You can assure that by doing three things. I mentioned them all the testimony. You can extend the length of the loan, you can reduce the percentage, and you can change the deferral period from immediately to six years. That gives the small railroads the opportunity to get going. It ensures that there is greater likelihood of payback.

Now, without getting too far off the subject, one of the frustrations associated with this whole RRIF process is the triple safety net that is built into the legislation to ensure that there is payback. One is the collateral, which is the entire railroad. Two is the credit risk premium, which is pretty substantial. By the way, the credit risk premium is not built into the RRIF loan; that is a stand alone large piece of money on the front end that they have got to pay once the credit risk premium is identified. Three, there is a detailed evaluation of their cash flow after the project is completed to ensure that there is enough money to pay the loan off.

So when you say how many additional projects can be generated on all this, it is hard to say. I can tell you this, when we were looking at how many projects could we immediately initiate in order to capitalize on the potential for some stimulus money, we could come up with just short of $1 billion of expenditures putting probably 70,000 to 80,000 people to work. We could do that in anywhere from three to five months. If you extrapolate from that a little bit and say what if these RRIF loans were possible, how could you ramp that up, well that is a pretty good indicator.

There is not a whole lot of architectural work associated with railroads unless you are building new bridges or overpasses. The business of putting in infrastructure improvements from point A to point B is an ongoing situation in the railroad industry—big railroads, small railroads, and switching and terminal railroads—with constant plans each year to do that. So if you are investing in a segment from A to B and somebody says, well listen, here is stimulus money, here is RRIF money, all you are doing is moving the ball from B to C and from C to D without a whole lot of work associated with it. So you can put an awful lot of people to work.

This whole issue associated with what Mr. Lipinski brought up with Buy American, well, the vast majority of materials used in the railroad industry are U.S. manufactured, U.S. made. Small railroads don't have big maintenance crews built into their overhead so they are hiring contractors all over the countryside to do all that. Those contractors are buying that material for that job from

American industries and American corporations all over the place. So this is a marvelous domino effect. We have truly missed a great opportunity here both from RRIF and, from my standpoint, from the stimulus opportunity.

Mr. CARNEY. Well, we can revisit that opportunity hopefully here. No further questions; I yield back, Madam Chair.

Ms. BROWN OF FLORIDA. Mr. Timmons, you know that Mr. Oberstar put in and recommended almost $1 billion for the short line.

General TIMMONS. Indeed, I do.

Ms. BROWN OF FLORIDA. That really would have put how many people to work?

General TIMMONS. Well, $1 million probably would easily have put somewhere around 35,000 people to work.

Ms. BROWN OF FLORIDA. Ms. Titus?

Ms. TITUS. Thank you, Madam Chairwoman. I appreciate the fact that it is difficult for people who are potential applicants to sit at the table and criticize the Administration to which you will be applying for money. Nonetheless, after listening to you and also reading some of the testimony, I have heard words to describe the program like cumbersome; unprofessional; lengthy; costly; unclear; and in short, discouraging to a number of potential applicants. I think Mr. Simmons even called it a vapor program. Nobody really expects to get any money. Well, that to me becomes the worst kind of Government program because it sets up false hopes. If it is not delivering anything, it becomes symbolic rather than substantive.

You have all said, though, it should be continued. You have made some financial suggestions like lowering the interest rate and eliminating some of those triple layers of security for the Government. But you haven't been very specific about some of the procedural changes that we could make so that this wouldn't be unprofessional. Shorten the time, but what else could we do that might be not so difficult but could make a big difference in encouraging applicants?

Mr. SIMMONS. If I can speak to that, I would be pleased. I mean, this is a program of great hope. It is a program with good application across our industry. It is one that needs to overcome some of the past. I think the Agency through its leadership, with the counsel granted to the Agency by this Committee and others on how to improve the program, I think they are steadfast and they are ready to go forward. Hopefully, Mark's advertisement earlier today will result in a jim dandy candidate to help manage the program. So there is great hope and faith there. I think the Chairwoman of this Committee and the Chairman of the Full Committee pointed to kind of the hand behind curtain that has controlled the outcome. I am not a Washington insider so I don't know the solution to that. But I think that is an important part in rebuilding the credibility within our industry. I know that I will be meeting with our industry at their annual meeting in June and I will be talking about the program to talk it up. I think we can depend upon States around the country to do that and work in partnership with the railroads to say, well, we need to give this another chance. We need to give it another opportunity.

Ms. TITUS. General?

Mr. PIPPIN. Well, in our case it would have been helpful. We got a one paragraph letter. Talk about anticipation, we were very confident that we were going to get this loan and we got a letter after 14 months basically saying you are not getting the loan. Now, the issues that were raised when we asked for the meeting and went in and talked about it, we wish that they had been raised in the process. The testimony you heard about the lease situation, if we would have had an opportunity to address that and then bring in the lessor and have the FRA get a level of confidence with them, you know, maybe it would have been a different outcome. But now we are after the fact. You know, now we are 16 or 18 months later. So that part of the process would have been helpful to have that be different.

Ms. TITUS. Thank you. General?

General TIMMONS. You know, this process when it started a number of years ago, the FRA was not resourced or focused on it. There was tremendous confusion in trying to figure out how to do this. They were not staffed to do it. So it is abundantly clear that in the first four or five years there was an awful lot of confusion and misdirection. The FRA set about fixing that and they did. They reorganized, they dedicated analysts to it, and they came up with a process that is very, very deliberate and very well defined. I would give them high marks for the procedures that are in place today.

Now, one of the complexities associated with this is that railroads have believed that they could deal with this application themselves. To be blunt about it, they did a very, very shoddy job. So these applications would come to the FRA in a sore state and would be sent back for fixing. What it really requires, the complexity and the analytical dimension of this thing is so difficult that you really must hire as a small railroad outside assistance, people that really know how to do this for a living. That costs money.

So even when you get that prepared document into the FRA, the strength that they have in their analytical staff is thin. So they need more people to do that kind of work to expedite it. They have done a good job in the last two or three years in moving these things through the system.

The Chairman mentioned a few moments ago the problems associated with OMB. In my experience in watching this for about seven years at point blank range, that is where the problem rests over and over and over again. Now, I can't speak to the current leadership of the OMB and whether they are sensitive to this process or whether they are even aware of it. But the reality has been historically that trying to get it through that bottleneck was clearly the dilemma that the short line railroad industry had over and over and over again.

Now, the spillover effect of that is demoralizing. That is the right word for it because as everybody realizes how complex it is and how difficult it is and how uncertain it is, it becomes one of these initiatives that you seriously question its utility and whether you want to spend the money for the analysts, whether you want to wait all the time, and whether you want to prepare to spend the money or give up on the project. So there is a general sense that the RRIF is enormously complicated and difficult. I mean, and it is.

There only have been 20 in 10 years totally $614 million for the small railroad industry. That is 3 percent of the $35 billion that has been available all these years. So it really does need a push and a shove or I am afraid that no matter what the levels of efficiency that Mr. Yachmetz and his colleagues undertake in the FRA offices, that we will continually run into this roadblock unless that can be addressed somehow.

Ms. BROWN OF FLORIDA. Mr. Oberstar?

Mr. OBERSTAR. That was a good line of questioning from our colleague from Nevada. Thank you very much for those thoughtful questions and your good responses. Madam Chairwoman, thank you for pursuing in so persistent a fashion the issue of financing of the railroads.

Clearly had the previous Administration's proposals been implemented, the RRIF program would be in dire straits. It wouldn't have been able to make a single loan. Chairwoman Brown and I in the Minority raised issues about the way they were managing the program. Then when we won the Majority we went on the offensive and caused them to back off. But still, there are $35 billion roughly. Even with those 20 or so loans made, it is grossly inadequate to the needs for the short line railroads to invest in track, in switch, and in rail cars to get up to the 286,000 pound level that we need to be interactive with and competitive with the Class I's. But it takes money to do that.

Now, in the market today, the Class I's finance their expansion needs or their growth requirements out of accumulated capital or borrowing in the marketplace. Do you know what their interest rates are on their borrowing?

General TIMMONS. I don't know exactly, Mr. Chairman. I do know that they have jumped very dramatically. Of course, unspoken is that the Class I railroads can absorb those kinds of interest rates for short term lines of credit for a relatively brief period of time. The dilemma for small railroads is they certainly can't do that.

Mr. OBERSTAR. The reason I ask is that when in the years past, Madam Chairwoman, Mr. Brown, and other colleagues, we have raised this matter of the RRIF program with the Class I railroads they have said, you know, we can borrow at lower interest rates than the Government will charge us. Well, I don't think there is a lower rate than nearly zero, which the Treasury rate is about now. Treasury has literally no more capacity to influence the marketplace through its interest rate structuring because they have lowered it to near zero, the lowest in history. So that is about where the RRIF loan is. That is awfully good money.

General TIMMONS. It is very good money.

Mr. OBERSTAR. So what is the difference between borrowing from the Federal Railroad Administration program and borrowing in the marketplace? Is it the amount of paperwork, the dance you have to go through to comply with all of these requirements? Is that it?

General TIMMONS. You mean for the small railroads?

Mr. OBERSTAR. Yes.

General TIMMONS. The real advantage is that these lines of credit for the small railroads, and correct me if you would like, Ken, but it is my understanding that those bank loans are roughly eight years in length. And those interest rates could be anywhere from 6, 7, or 8 percent or maybe more.

Mr. OBERSTAR. But the timeline taken or required by those financial institutions and the filing requirements by the railroads, is that comparable to, greater than, less than applying to FRA for a RRIF loan?

General TIMMONS. It must be about the same. I would guess these bank loans are probably somewhere close to eight or ten months.

Mr. PIPPIN. Well, you know, it usually depends on the bank. I think, though, that one answer to your question is that the banks consider these loans to be exotic. Generally, they have no railroad loans in their portfolios. They don't understand them. But they look at them as something that is an exotic loan and if they can, especially now, they will stay away from them.

Mr. OBERSTAR. So the Federal Railroad Administration now, Mr. Yachmetz, doesn't have to go through all those hoops and steps? We need to cut out some of this paperwork. You have to show ability to repay. There are a few other things. You know, I have been around in Congress long enough that we have taken the Small Business Administration loan application from papers nearly 14 inches thick to three pages or less. Now we ought to be able to do that with the Federal Railroad Administration as well.

Mr. YACHMETZ. Well our loan application, which is on our website, is actually not that extensive. I don't think paperwork is the issue. I think that part of it is getting the financial information. If people have suggestions on how we can still get the financial information in an easier format, we are happy to deal with that.

One of the challenges that we do run into that some of our railroad applicants don't realize is that making a loan is a major Federal action under the National Environmental Policy Act. So sometimes we actually do have to do environmental assessments, findings of no significant impact, or even environmental impacts statements prior to us being able to act on a loan.

Mr. OBERSTAR. We have a finding of no significant time left on this vote. So we are going to have to leave. But you are going to continue the hearing, Madam Chairwoman?

Ms. BROWN OF FLORIDA. Yes, sir. We will be back. Just one thing is that the loan we are talking about, Mr. Pippin's loan, was denied not because of any of the financial issues but because the county government had a portion of it, 14 miles. All this to me is something that really needs to be reviewed.

Mr. OBERSTAR. We sure do.

Ms. BROWN OF FLORIDA. Yes.

Mr. OBERSTAR. Thank you.

[Recess.]

Ms. BROWN OF FLORIDA. Will the Committee officially come to order? The votes took longer than we thought but that is the excitement of being a Member of the House of Representatives. Now, Mrs. Napolitano?

Ms. NAPOLITANO. Thank you, Madam Chairwoman. Thank you for calling this hearing on railroads and continuing the issues that I have long been interested in.

To Mr. Yachmetz, the law requires the Secretary to establish a repayment schedule requiring payments to commence no later than the sixth anniversary date of the original loan dispersement. But General Timmons testified that he doesn't believe that any of the loans have included the six year grace period. Is that accurate and if not, why not?

Mr. YACHMETZ. That is accurate. The way we have managed the program to date is not to necessarily discourage the late payments. We have viewed it more as if you are borrowing money to do an investment and the revenue stream to repay the loan would not be available until the investment was complete, then we would defer it for that amount. As an example, if a railroad was going to borrow money to build a line to an ethanol plant that was under construction, we would have deferred the loan until both the line was complete and the ethanol plant was under construction. Up until this point, we have not had applications that have gone that way. Similarly, if one was trying to acquire railroad equipment and the equipment would be on order, you know, we would defer it until the equipment was delivered. But again, we haven't had applications that have dealt with projects like that.

Mrs. NAPOLITANO. But you make some of those allowances for some of those areas?

Mr. YACHMETZ. We would consider a request in that way. We have not been discouraging of requests in that way.

Mrs. NAPOLITANO. Then you would be amenable to working on those?

Mr. YACHMETZ. Yes, we would.

Mrs. NAPOLITANO. Okay. The other question, sir, would be also that General Timmons suggested Congress provide an authorization for reducing the interest rates on loans to 1 percent. The law states the Secretary must require interest to be paid on a direct loan at a rate not less than that necessary to recover the cost of making that loan. Would a 1 percent interest rate recover the Government's cost of making the loan? If so, what are your views on this proposal? Is it doable? Can you do it? Will you do it?

Mr. YACHMETZ. First off, I will preface my comments by saying they are my personal comments here. Certainly this has not been vetted to the Administration.

One of the things that makes the RRIF program a viable program with great potential, even if that potential has not yet been realized, is it does not require action by your colleagues on the Appropriations Committees for us to go ahead. If there was going to be a credit subsidy, that would require an appropriation. With the passage of the Credit Reform Act in 1990 until TEA 21, there was a loan program in place but no loans were made because Congress appropriated no credit subsidy. So if you were to go down that road, if that was the interest of the Congress to do that, I would do that as an addition to the current authority rather than as a replacement of the current authority so that we don't have to go through Appropriations and would still be able to use in the event the appropriators chose not to act in any particular year.

Right now, we actually have an issue with the TIFIA program in that the credit subsidy, the current amount has been used up and so there is a limit on how many more TIFIA loans can be done. We need to maintain that flexibility.

Mrs. NAPOLITANO. Would the number of years on that loan make a difference?

Mr. YACHMETZ. No. I really don't think that those two would have a significant change on it. Again, there is room for having maybe two different versions, two different opportunities to progress it. But I would certainly maintain the base level of the program as it is currently defined and maybe make this as an alternative approach.

Mrs. NAPOLITANO. The other question I would have is whether the current legal definition of allowable uses of funds for the Railroad Rehabilitation and Improvement Financing, the RRIF, would include Positive Train Control, the PTC? I am very concerned about the accidents that have occurred in southern California, especially. I am wondering whether that is an allowable use for them to be able to add that to their loans as promoting safety of the employees and of the passengers and of the loads or whatever happens to be on those trains?

Mr. YACHMETZ. Yes, it is. In fact, it is my understanding that the extension from 25 to 35 years had been discussed for years but actually was done in the Rail Safety Improvement Act in part because of the view that this could be a good way to address PTC.

Mrs. NAPOLITANO. Okay. But what portion of the Railroad Rehabilitation, the RRIF loan recipients are commuter versus freight?

Mr. YACHMETZ. Currently, we only have the one commuter railroad. That is VRE and that is $72 million, I believe is their amount. But I have noticed since mid-January when the number of inquiries picked up about the program that a significant percentage of those are commuter properties. To me, part of this may be a reflection of the status of the Mass Transit Account. The fact is, there are no penalties for prepaying a RRIF loan so we could conceivably be a transition program while the future of the Mass Transit Account is figured out. That may be what is behind so many of these inquiries. They haven't been reflected in applications yet. I do have one more commuter application where we are wrapping up the environmental assessment. It will be complete and we will start its financial review within the next week or two. But I expect that this may be a big line of business for us later this year.

Mrs. NAPOLITANO. Well this Subcommittee—at least I know I have—has been kind of focusing a little more on providing mass transit, being able to move people along with freight goods, simply to be able to continue getting cars off the road to clean up the environment and the exhaust that they provide. So I hope that, keeping this in mind, that we continue to, not favor necessarily, but look with some support to those agencies that are going to be providing commuter transportation.

Mr. YACHMETZ. Well, livable communities and addressing greenhouse gasses and energy efficiency are all goals of Mr. LaHood so I am sure that his views and yours align up very closely.

Mrs. NAPOLITANO. Thank you. Madam Chairwoman, I know I have overstepped my time. I have others but I will wait until the next round if you wish.

Ms. BROWN OF FLORIDA. Thank you. Mr. Zehner one more time for me what happened with the credit risk premium and how much it ended up costing you? I want Mr. Zehner to respond to it, but how do you feel that we can improve the system?

Mr. ZEHNER. Yes, ma'am. I think one of the issues we faced was we were the first public agency to come to the RRIF, to make an application. So we made the application with the FRA and it was processed in five months. They approved the loan. At that point in time, it then moved to the OMB because of the credit risk premium issue. The FRA had recommended no credit risk premium. It got into OMB and it sat there. We worked with FRA to try to get it out of there because we needed the money relatively quickly to make the purchase of equipment. Eventually, it got to the point where we couldn't get it out. At that point, we had to go to our Congressmen and Senators and ask them to intercede for us, which they did and called the Director of the OMB. Then it came out. It came out at 1.88 percent of the total amount. That is about $1.4 million. We pay on that $1.4 every time we make a draw from the FRA for money. They don't just give us all the money; we take the money as we need it. We pay that portion of that draw for the credit risk premium.

The issue I have, being a public agency and if you do debt financing, is you can insure debt financing. It is very typical in the public world. We could have insured this loan for about half the price of the credit risk premium. So we went back to the OMB. With the help of FRA we went back and asked them can we insure it. They said, well, I am not sure. It went for months. At that point in time, we had the approval so we initiated the buy of the equipment. So we didn't really need the money at that moment in time. But by the time they got back to us, it was really too late for us to do anything.

But what I would recommend, and this probably applies more to public agencies maybe than private agencies, is allow in the legislation the credit risk premium or, maybe with the approval of the FRA, allow us to insure the loan to the Federal Government with a private insurance company. It could be cheaper. It is just another option working with the FRA. The other aspect is FE

Ms. BROWN OF FLORIDA. How much more do you think it cost you since that option wasn't available?

Mr. ZEHNER. Well, I am really guessing here. We think over the course of the loan, we will pay about $1.4 million. We might have paid $700,000 up front to insure it right off the top.

Ms. BROWN OF FLORIDA. Okay.

Mr. ZEHNER. The other issue if you could do it is in the initial application process, if we knew how the OMB was going to calculate the credit risk premium, and they may know that now. Again part of that problem, I understand, was that we were a public agency and they were looking at us differently than a private firm. So if we knew that going in with the FRA, we would have an idea what the cost of that credit risk premium would be. I think that would just help us evaluate it a little bit better. I understand the need for a credit risk premium. I think that is reasonable. It just is how is it calculated and if we can get it in the up front process.

Ms. BROWN OF FLORIDA. Yes, sir. Those are some very good recommendations. Mr. Yachmetz?

Mr. YACHMETZ. Well, we worked closely with VRE. I think if the goal that we are trying to achieve, and I think is the goal, is that the Government has a high degree of confidence that we are going to be repaid, how you get there should reflect all the opportunities that are available out in the financial sector. But it is really the history of public agencies. I also do Amtrak on the side and, you know, Amtrak has done the same thing. So this was not rocket science. I think we should be looking at these things.

Ms. BROWN OF FLORIDA. We should be looking at what, sir?

Mr. YACHMETZ. At opportunities such as the equivalent of bond insurance as one option available to public agencies.

Ms. BROWN OF FLORIDA. Yes, sir. Mr. Brown, do you have any questions?

Mr. BROWN OF SOUTH CAROLINA. I have no questions

Ms. BROWN OF FLORIDA. All right. Mrs. Napolitano?

Mrs. NAPOLITANO. Yes, Madam Chairwoman. I have just a couple of wrap ups because I hear FRA making some statements that it is really OMB sometimes. The rest of you have mentioned that that as the stumbling block. But is it resources that you need for additional assistance to be able to provide more expedient assistance to these railroads to get some of the items processed faster and smoother?

Mr. YACHMETZ. With the current level of activity, I think FRA's resources are adequate. If the number of applications picks up, then we will have to deal with that issue when it comes. One of the things that you may wish to consider is the fact that we deal with a wide range of applicants. We could deal with Class I railroads like Kansas City Southern and commuter agencies and Class II railroads that all are fairly sophisticated and have internal finance departments. We also deal with railroads like Mr. Pippin's who have a person who does their books and their taxes and a bunch of other things, too. So the responsiveness to questions is really different. Is there was an interest in having us or some other entity provide some sort of assistance to put together applications on the part of the smaller railroads. So I don't think the resource issue is ours but it may be a resource issue for some of the smaller applicants.

Mrs. NAPOLITANO. But has it been a resource issue on your agency's part in the past?

Mr. YACHMETZ. Since the SAFETEA-LU amendments, no. I mean, prior to the SAFETEA-LU amendments, we could not actually use the investigation charge. That was fixed in SAFETEA-LU. So I think our resources are okay for now. Again, if we get a deluge, then I will have to revisit that answer.

Mrs. NAPOLITANO. There was some mention of a post-meeting on loan applications. Some of you have indicated that it has been helpful. Is that program being developed and put into use? What other recommendations would you suggest to make that process less cumbersome for the applicants? Maybe the applicants can join in and give some of those comments.

Mr. YACHMETZ. I think that we are the Government and we owe our customers, our citizens an explanation of what actions we take. We will do a review of every rejection. We will do a review of every award. But generally speaking, you know, when you get your award you are pretty happy and you really don't want to come in and talk about it again. We are also very receptive to suggestions to improve our program. Nothing is set in concrete, particularly now when we have new leadership coming in. If people who have had experience with us in the past and if the Committee want to make suggestions, I am sure that Mr. Szabo and we would be very happy to consider those and see if we can't improve our processes. My goal is to make the program and the process as low on the stress meter as possible for both the applicants and the agency.

Mrs. NAPOLITANO. That is your commitment?

Mr. YACHMETZ. That is my commitment.

Mrs. NAPOLITANO. Gentlemen, do you have any comments?

General TIMMONS. Ma'am, if I can make a couple of follow on comments to Mr. Yachmetz's discussion of staff requirements? As we look to the future of the Rail Safety Improvement Act and focus on tunnels, focus on bridges, and focus on a variety of things, it is pretty apparent to me that there are going to be heavy funding demands on the small railroad industry. Clearly the RRIF is one conduit for trying to get at funding to offset those needs. I would say that from an analyst standpoint, he is probably fairly shorthanded internally to take a look at these RRIF loans, just the numbers of analysts that you need. That is pretty much where the real work is done. The applications come in and once they are fine tuned, it is the analysts that are really shredding them, trying to make judgements as to the viability of that application.

The other piece gets to a budgetary aspect of the FRA where it might well be, as he mentioned a few moments ago, the larger railroads have the capacity—internally built-in staffs and finance and accounting departments—to work these problems expeditiously and respond very quickly to the questions the FRA may have. That is not the case with the small railroads. So they have no wherewithal to really rely on anybody that might focus on small railroads. So it would be great and very, very efficient if you had contractors and you had the money to hire some contractors that could focus on small railroads' needs and problems as these loans were being processed. As it is right now, there is no capacity for him to do that. If he did have some appropriation each year to hire contractors specifically for small railroad matters related to the RRIF, that would be very, very useful.

Mrs. NAPOLITANO. Any comments, sir?

Mr. YACHMETZ. We try to help. I mean, with our limited staff we try to work as much as we can with the small railroads. But there are limits to what we can do. So however we could help out, we would like to do that. As I said earlier, most people are in the railroad business because there is something special about railroads. We would like to see these railroads succeed. To the extent that we can help people develop better applications, it is a win-win for us.

Mrs. NAPOLITANO. Then what is the difference between the loans dispersed through the TIFIA and the RRIF? Is there anything Congress can do to improve that, specifically the suggestion that Mr. Timmons has indicated?

Mr. YACHMETZ. Well, I have seen the proposal and my one concern—and I don't know what the answer is, it is just a concern—is if we defer for six years and it is not linked to something happening like a plant coming online to pay back, how that will factor into the credit risk premium calculation and whether that would actually end up costing more for the loan. So certainly that is something we will take back and consider. But that is the one area that I am not sure about, whether that would increase the perception of risk and therefore the calculation of the credit risk premium.

Mrs. NAPOLITANO. Madam Chairwoman, my time is up and I am sure there are other questions that you might want to ask. But I certainly would like to have this taken into consideration with Secretary LaHood in terms of being able to address the needs of small railroads. Thank you.

Ms. BROWN OF FLORIDA. Thank you. I have just a couple of more questions. We are going to try to get out of here in the next 10 minutes at the most. The law says that FRA cannot require an applicant for a direct loan guarantee to provide collateral. The testimony from other witnesses seems to suggest that that is a requirement to provide it. Could you comment on that, Mr. Yachmetz?

Mr. YACHMETZ. It is not a requirement.

Ms. BROWN OF FLORIDA. You said it is not?

Mr. YACHMETZ. It is not a requirement and we are clear that it is not a requirement. However, the calculation of the credit risk premium, which we do the estimate but the final calculation is OMB's responsibility under the Credit Reform Act, takes into account two things: the strength of the business case and the strength of any collateral that is provided. So you don't have to provide collateral but the calculation of the credit risk premium is significantly influenced in a favorable way if collateral is provided. So that is sort of what happens and why I think people perceive that it is required because the credit risk premium goes down significantly if it is provided.

Ms. BROWN OF FLORIDA. Well, I guess if you have all the collateral, you might not need the loan.

Mr. YACHMETZ. Yes, but the fact of the matter is if the railroads have a lot of value in the asset, it is harder to get the cash out. We provide a way for them to get cash to do their necessary repairs and stuff. So I think it is just part of normal financing. If they went to a bank, a bank would look for collateral, too.

Ms. BROWN OF FLORIDA. Well, I guess my question to all of the participants is do you think the RRIF program is a valuable program? If so, how come we don't have more applicants applying for the program? We will start with Mr. Pippin because I think you have a real good story because it doesn't relate to collateral or application. It was some other factor.

Mr. PIPPIN. It was some other factor but the factors you are talking about now do play a part. I think to answer your question why aren't more, and from my standpoint, small railroads taking advantage of this program is with a bank loan you do not have a credit premium. I think a lot of the railroads wonder how they are going to come up with, if they need money to do infrastructure improvements, how are they going to come up with $300, $400, $500, and $600 thousand on a credit risk premium. Their answer is, you know, if we apply and we get down to where they say yes and we have to turn over that kind of money, that is not going to be possible. I think that is a major deterrent in the program.

From a collateral standpoint, in our case, we were fortunate enough. We have paid our acquisition debt that we took on in 1995 down to really almost nothing. So the Government would be getting almost 100 miles of railroad as collateral at about three times at least the value of the money that they were lending. So they would be pretty secured. So I am not really sure if they ask for $20 million collateral on a $6 million loan and give me $300 or $400 or $600 thousand, if that is really reasonable for a small railroad. That is my answer.

Ms. BROWN OF FLORIDA. Just one follow up question to you, Mr. Pippin. The amount of area that we are talking about was part of your denial. How much was that in comparison to the length of your railroad?

Mr. PIPPIN. Well, we have 94 miles, roughly. We own 76 miles so the remainder of that, about a little under 14 miles, was the leased portion if that is the question.

Ms. BROWN OF FLORIDA. Mr. Timmons, would you respond to my initial question?

General TIMMONS. Yes, ma'am. I can make this very condensed. One, the RRIF program has enormous unrealized potential. It is very, very valuable. We just have not been able to fully capitalize on the potential of that money that can be turned lose. Here are the reasons. I have six reasons for you: the obstinacy of the Office of Management and Budget; the extended period of time it takes to get these things approved; the technical complexity of the application, in other words you must hire some outside expert at some cost to help you with that application; the uncertainty of the end result of all of this; and then the cost of the credit risk premium, which are not borne under a bank loan, but which you must pay in addition. So those are the six things that I think are in the way. All of those have conspired with a lot of small railroad guys that just say, man, this is just too hard to work your way through and it costs money and you are not sure what you get at the other end. There is no certainty in all of this. You can spend this money and get nothing for it.

Ms. BROWN OF FLORIDA. Mr. Simmons, do you want to respond to that? Or anyone else? You don't have to if you don't want to. Yes, sir. Mr. Zehner?

Mr. ZEHNER. As a public agency, and I am a little different from the private firms here, as a public agency our cheapest form of financing is tax-free bonds, which we are capable of doing, but it is a long process, in our case a year. The RRIF for us is another alternative method to finance. It is not the cheapest but from our experience it is much faster. So depending upon the situation you are in, it has applicability to public agencies. I am not sure how many public agencies know it exists. I have talked to a few other CEOs.

Generally, most will try to go with tax-free financing because it is much cheaper.

The credit risk premium is an issue for us also. Normally a bank will put the credit risk in the rate itself. When we got our loan, it was 4.74 percent. That was the Federal Government's borrowing cost at that time, which I think was July of 2006. In other words, you could have increased that rate and put the credit risk premium in the rate. Therefore you don't have to pay it out of pocket. Generally, that is how banks do it. So that is another opportunity to help one of the problems these gentlemen have and, of course, we have, too.

But it is an important program for a public agency. Maybe it is not as important as for a private firm, but it is very, very important. It is another alternative way to do business and I think it is important to have that. VRE is the only public agency that has done it. I think others will do it. You probably are not going to have as many public agencies as private firms but it is important. It is very important.

Ms. BROWN OF FLORIDA. I guess my concern is that you said it is not cheap. We need to look at it being cost effective. We want to encourage the investment in the infrastructure.

We all love the railroad. I just returned from Europe and I mean, you know, they are really investing in their infrastructure. And they are our competitors. They are moving forward and we need to figure out how we can not be the caboose. They don't even use cabooses anymore. So you know we are all on the same page. You know, everybody in here loves the railroad. That is why we are in here. We realize the importance of moving people, goods, and services so we can compete and our people can be competitive.

We have one other question for Mr. Timmons and I am going to give it to you in writing because it is on 286 pound cars and what percentage of the fleet uses those cars. So I am just going to give you this last question in writing. Would you like to have any closing remarks?

Mr. YACHMETZ. No, I just thank you for the opportunity to be here and talk about the program. We look forward to moving forward. As I said, we don't consider ourselves sort of set in concrete or knowing all the answers. So suggestions people provide to us for improving our program within the context of our current legislative restrictions, we would be happy to receive those.

Ms. BROWN OF FLORIDA. Well, I just want you to know I do like your disposition and your personality. I am looking forward to—what is it—one team, one fighter. We are going to move this industry. Thank you.

Mr. Brown, do you want to have any closing remarks?

Mr. BROWN OF SOUTH CAROLINA. Thank you, Madam Chairwoman. I just wanted to say, too, to echo your sentiment. It has been a good discussion. I think we have been able to discover some weaknesses in the program. I hope that certainly we can come together in that one team approach and move this program forward. Thank you very much, gentlemen, for coming.

Ms. BROWN OF FLORIDA. I want to thank the witnesses for their testimony and the Members for their questions. Again, the Members of this Subcommittee may have additional questions for the witnesses. We ask you to respond to those in writing. The hearing records will be held over for 14 days for Members wishing to make additional statements or ask further questions. Unless there is further business, this Subcommittee is adjourned.

[Whereupon, at 5:08 p.m., the Subcommittee was adjourned.]

Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials

"Railroad Rehabilitation and Improvement Programs"

April 22, 2009
2:00 p.m.
2167 Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Madam Chair:

I thank you for calling today's hearing to enable us to examine the Railroad Rehabilitation and Improvement Financing (RRIF) program and how the program can be improved in the upcoming surface transportation reauthorization bill.

We are all well aware of the critical role that railroads play in our national transportation system. Railroads are a safe and environmentally friendly form of transportation for people all across the nation, and they are critical to the efficient movement of freight.

However, railroads need access to loans and loan guarantees to help them acquire or rehabilitate equipment and infrastructure, to ensure that they are positioned to carry increasing freight volumes.

Recent Department of Transportation (DOT) reports estimate that without an investment of $148 billion for rail infrastructure over the next 28 years, 30 percent of rail miles in primary corridors will be operating above capacity by 2035.

This will increase congestion on our railroads in every part of the country—and freight will likely be diverted to our already congested highways.

The RRIF program was created in TEA-21 to provide loans and loan guarantees for railroads to enable them to make critical investments in infrastructure and equipment.

Since its inception, the RRIF program has faced many challenges, thereby limiting its effectiveness. The Bush Administration embraced a number of policies that had no basis in statute and that were intended to make it extremely difficult for a railroad to obtain assistance under the RRIF program.

To help remedy this situation, a number of the harmful restrictions put in place by the Bush Administration were removed when Congress passed the SAFETEA-LU legislation. This legislation included provisions designed to ensure that the RRIF program could be implemented as intended and could finally begin to help meet the capital needs of our nation's railroads.

Congress furthered its commitment to the RRIF program by significantly expanding the loan program from $3.5 billion to $35 billion and increasing the amount that is reserved for shortline and regional railroad projects from $1 billion to $7 billion in SAFETEA-LU.

In 2008,the RRIF program came under fire again from the DOT when the agency published a Notice of Proposed Rulemaking on the RRIF program that would have required applicants to meet new criteria that were not authorized by law.

Secretary of Transportation Mary Peters claimed that these new criteria were being proposed to "ensure the long-term sustainability of the program and reduce the risk of default for applicants and the Federal Government."

In response, Chairman Oberstar and Subcommittee Chairwoman Brown wrote to Secretary Peters urging her not to continue with the Notice of Proposed Rulemaking because it would significantly weaken the both RRIF program and the country's construction industry. Needless to say, the proposed rule was not adopted.

The RRIF program has proven to be successful and worthwhile. In fact, the FRA has concluded 23 agreements with 19 railroads for a total of over $778 million since 2002. No recipient of a RRIF loan or loan guarantee has defaulted or has been delinquent in making payments. Furthermore, as a display of the successful nature of the program, three loans have been re-paid in full including a 2002 loan to Amtrak for $100 million.

Just last week, President Obama released the details of his high-speed rail initiative—a clear indicator of this Administration's commitment to the improvement and expansion of our rail network.

It is now up to the members of this Committee to continue to provide the President with the necessary tools—such as the RRIF program—and support as we continue to work towards a modern world-class rail network.

The benefits of these efforts will be numerous, including helping to stimulate the American economy.

I look forward to hearing the testimony of today's witnesses and any insight they may be able to offer.

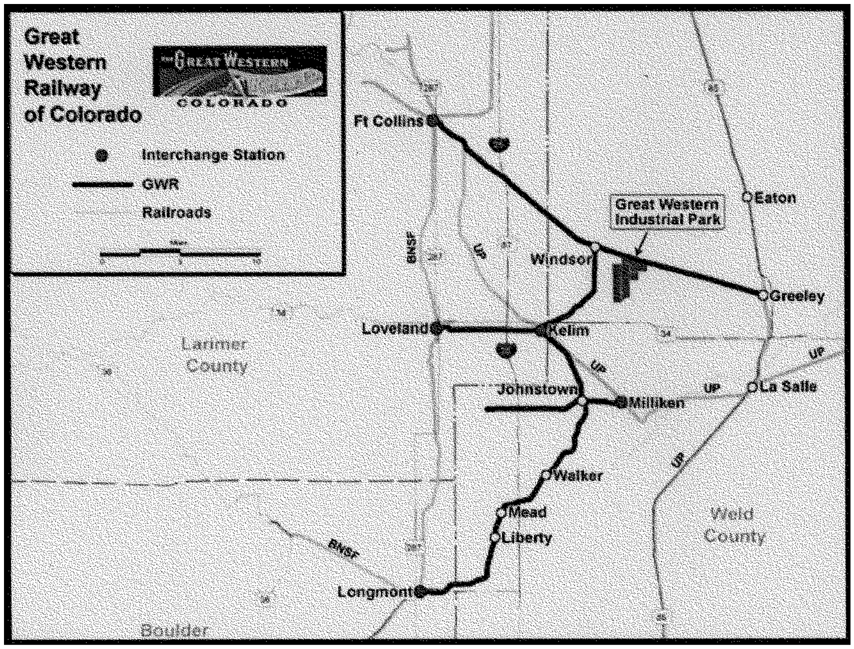
Thank you and I yield back the remainder of my time.

Congresswoman Betsy Markey
Railroads Subcommittee Hearing on Railroad Rehabilitation and Improvement Financing Program
April 22, 2009

I'd like to thank Chairwoman Brown and Ranking Member Shuster for holding this hearing. In my home state of Colorado, freight rail has been essential to our economic development. As such, the Railroad Rehabilitation and Improvement Financing program has played a significant role in the growth of rail infrastructure.

In my district, Great Western Railway of Colorado, received a $4 million loan in 2007. This shortline railroad serves 11 major towns in my district and through these funds, Great Western Railway was able to install new railroad ties and resurface the track on one of its most heavily traveled routes from Windsor to Fort Collins. This has dramatically reduced the number of derailments and created a much safer and efficient corridor for rail customers.

This improved track has enticed new customers, specifically renewable energy companies. Vestas Wind Systems recently broke ground in Windsor, Colorado. They use the rails improved by RRIF funds to ship 135 foot long wind turbines along these routes. Likewise, Front Range Energy uses these routes to receive corn and send ethanol. As such, the RRIF funds have had a positive impact on my district and I look forward to discussing the program further and looking at ways in which it may be improving in the latest surface transportation authorization bill.

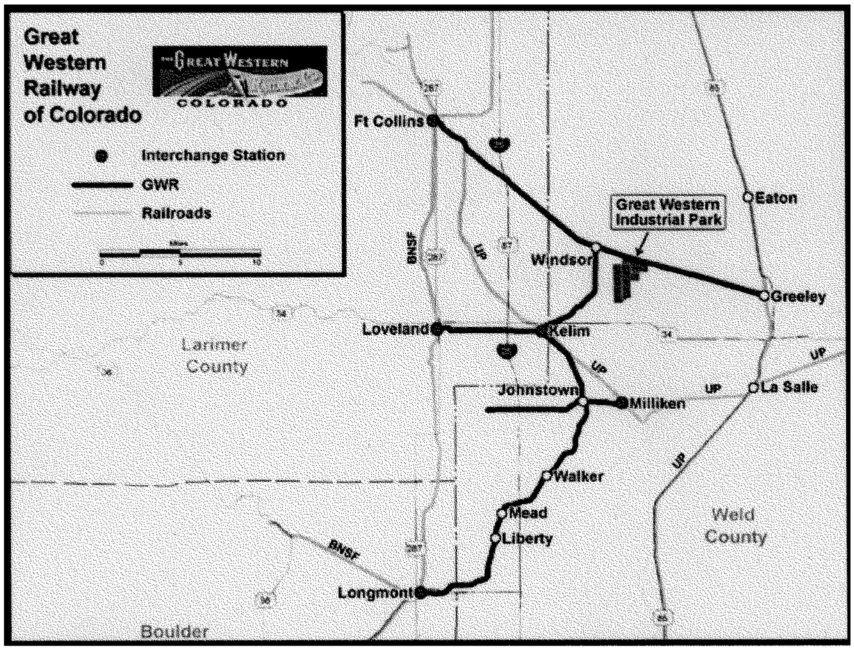

Great Western Railway of Colorado
THE GREAT WESTERN COLORADO
Interchange Station
GWR
Railroads
Ft Collins
Eaton
Great Western Industrial Park
Windsor
Greeley
Loveland
Kelim
Larimer County
Johnstown
Milliken
UP
La Salle
Walker
Mead
Liberty
Weld County
BNSF
Longmont
Boulder

Congresswoman Betsy Markey
Railroads Subcommittee Hearing on Railroad Rehabilitation and Improvement Financing Program
April 22, 2009

I'd like to thank Chairwoman Brown and Ranking Member Shuster for holding this hearing. In my home state of Colorado, freight rail has been essential to our economic development. As such, the Railroad Rehabilitation and Improvement Financing program has played a significant role in the growth of rail infrastructure.

In my district, Great Western Railway of Colorado, received a $4 million loan in 2007. This shortline railroad serves 11 major towns in my district and through these funds, Great Western Railway was able to install new railroad ties and resurface the track on one of its most heavily traveled routes from Windsor to Fort Collins. This has dramatically reduced the number of derailments and created a much safer and efficient corridor for rail customers.

This improved track has enticed new customers, specifically renewable energy companies. Vestas Wind Systems recently broke ground in Windsor, Colorado. They use the rails improved by RRIF funds to ship 135 foot long wind turbines along these routes. Likewise, Front Range Energy uses these routes to receive corn and send ethanol. As such, the RRIF funds have had a positive impact on my district and I look forward to discussing the program further and looking at ways in which it may be improving in the latest surface transportation authorization bill.


Great Western Railway of Colorado
THE GREAT WESTERN
COLORADO
Interchange Station
GWR
Railroads
Ft Collins
Great Western Industrial Park
Eaton
Windsor
Greeley
Loveland
Kelim
Larimer County
Johnstown
Milliken
La Salle
Walker
Mead
Liberty
Weld County
Longmont
Boulder
BNSF
UP

Laura Richardson 4/22/09

Congresswoman Laura Richardson
Statement at Transportation and Infrastructure Subcommittee on Railroads, Pipelines, and Hazardous Materials
Hearing on "Railroad Rehabilitation and Improvement Financing Program"

Madame Chairwoman, thank you for holding this hearing to underscore the value of the Railroad Rehabilitation and Improvement Financing (RRIF) program.

As the Representative of the 37th District of California, transportation issues and specifically rail issues are of deep importance to me. 45% of our nation's imports enter through the San Pedro Bay Port Complex and travels through my district. 40% of these goods are then transported by freight rail. The development and maintenance of rail infrastructure is essential to guarantee that these goods are transported safely to the rest of our country.

On November 4, 2008, Californians voted to approve the use of bonds to fund high speed rail. Although work has been temporarily halted due to the state budget crisis, the Obama

Administration has shown much support by designating funding for high speed rail through the American Recovery and Reinvestment Act's (ARRA) and recent high speed rail proposal. I am hopeful that California's high speed rail projects can move forward shortly and federal funding sources, such as the Railroad Rehabilitation and Improvement Financing Program (RRIF) will make this high speed rail project possible.

RRIF provides low rate loans to local governments, states, and railroads which then gives these entities the opportunity to improve rail equipment facilities. This type of federal program is greatly needed, especially during these tough financial times when other funding may be limited. Providing these loans will not only improve railroad safety, but also stimulate economic development, create employment opportunities, relieve our congested highway system, and ensure that railroads remain competitive with other modes of transportation.

The thorough RIFF application process ensures that recipients will be able to make their payments and none of the 19 recipients have ever been delinquent. Fortunately, last year's notice of proposed rulemaking, which would have required applicants to meet three additional criteria was withdrawn just last month. The Federal Railroad Administration had received 21 written comments, all of which opposed the proposed rule. Additionally, I'd like to applaud Chairwoman Brown and Chairman Oberstar for sending a letter to former Secretary Peters expressing that the proposed rule be suspended. The three proposed additional criteria are not needed because of the vigorous RRIF application process. I am looking forward to the insight of our witnesses regarding RRIF and I thank them in advance for their testimony.

Reauthorizing this year's surface transportation bill will require much collaboration and I am looking forward to having continued open dialogues and working with my colleagues on the Transportation & Infrastructure Committee.

Thank you, Madame Chairwoman.

Madame Chairwoman and Members of the Committee, I appreciate the opportunity to speak before you today. My name is Ken Pippin and I am the owner of a short line railroad located in the southeastern corner of the Carolina's known as the Carolina Southern Railroad. The line consists of approximately 100 miles of track, 5 historic train depots, bridges over the Lumber, Pee Dee, Waccamaw Rivers and a Bastille bridge spanning the Intracoastal Waterway linking Myrtle Beach to a rail network that covers the United States, Mexico and Canada.

I appear before you today as the temporary custodian of a significant piece of infrastructure that for more than 125 years has proved to and continues to be vital to the industries, communities and citizens it serves. I consider myself, my two sons and the dedicated employees of the railroad its temporary custodians because regardless of ownership, this valuable rail corridor connecting the Carolina's to the rest of the world has been in place since the late 1800's. I am confident that long after I am gone it will continue to maintain that same and even a higher level of importance. Perhaps in the not too distant future a return to carrying passengers.

Several years ago a tall sturdy white haired gentlemen approached me at a charity fund raiser I was attending at Brookgreen Gardens. He asked me if I was the local railroad man and I answered yes. He then went on to say, "The 1st time I ever rode your railroad my parents were taking me to Myrtle Beach to visit my great uncle who had lost his right arm in the 1st battle of Manassas! It is one of my favorite memories. If you ever take that train to Washington or someplace fun I'd sure like to be on it." I responded, "General Westmoreland I promise if we take that ride you will be the 1st one I call."

The most thriving cities in America have a multiple of transportation modes, good highway systems, airports, waterways and railroads. There is no argument that each of these should be maintained and enhanced.

Serving The Carolinas Since 1886
171 Highway 905 Conway, South Carolina 29526 (843) 248-8008 / FAX (843) 248-8003

Our particular railroad originally part of the famous Atlantic Coastline was spun off by the Class I railroad because they could no longer financially justify the cost of maintenance versus the rail traffic on the line. Many of the 500 plus short lines that exist today fall in this same category. If we hypothetically apply the same logic to the US highway system then we would close or discontinue maintenance on roads that do not generate sufficient traffic to justify maintaining them, even though these roads still serve and are important to the communities and businesses that they run through.

The importance of The Carolina Southern to our area is significant. We deliver unit coal trains to Santee Cooper in Conway, which generates electric power for the region. We provide unit rock trains for Martin Marietta that supply the materials for roads and concrete for construction in the ever growing area of Myrtle Beach. We export feed from farmers in North Carolina for Perdue Farms that has significant importance for our food supply. We move Steel for Hitachi Metals (who is currently undergoing a $20 million expansion on our line). They manufacture parts for medical devices and new, more energy efficient and environmental friendly power transformers. Within the past 2 months a biodiesel manufacturer has located on our line. We also move lumber for Georgia Pacific, paper to a large manufacturer for air filters that go into home HVAC systems and many more vital materials necessary to enhance growth and quality of life in our community.

When the Class I's can no longer effectively operate these line segments small companies, entrepreneurs and family owned businesses step in and bring a new energy and flexibility that our rail shippers love. But the Class I's love us too. They consider us retailers and valuable partners. The short lines account for a considerable portion of the Class I's overall business. Part of our success stems from our position as a local company that knows each customer personally and communicates with them on a regular basis.

Our property, like many short lines earns a profit, but we do not earn enough for the many years of deferred maintenance our lines have experienced under their former Class I owners.

This brings us to the Railroad Rehabilitation and Improvement Financing Program, and why we are here today. The railroad business is a highly fixed cost business. The single most important part of our operation is the infrastructure that we operate over, tens of thousands of railroad ties, thousands of tons of stone, ballast and miles of iron rail every day. The bare iron and wooden railroad ties are exposed to the elements as well as a 150 ton locomotive and railcars loaded with coal and stone running over it. I know this committee understands the attention and expense required to keep the freight moving and keep it moving safely. In our specific case some of the rail that we operate on was manufactured in 1905. It was purchased after it had been used for 20 years and laid on our line in 1925. It was designed for 40 foot boxcars with a weight of no more than 263,000 pounds and much smaller locomotives. Shippers now use 60 foot rail cars with a weight of 286,000 pounds.

We face the constant race to find funds to keep the right-a-way up for the safety of our employees and the ability to deliver the goods that we ship. We also must meet all of the FRA safety standards. In the 15 years that we have owned this line we have maintained an excellent record with the FRA. We very much want to continue that record.

The average replacement cost for 1 mile of rail is close to 1 million dollars. For a small company that has 97 miles of track some of it over 100 years old, it is easy to see how the costs of maintenance and replacement can out pace our ability to keep up without assistance of some kind.

Short lines are risky businesses. We are, after all operating in areas where the Class I's could not succeed. As such, it is very difficult to find funding from traditional banking facilities at all, let alone under the terms provided by the RRIF program. This is why the RRIF program was created and why its existence is so vital to the short line industry. It is a financial outlet that allows small railroads to obtain funds to rehabilitate track and keep these vital rights-of-ways active and providing service to the regions they serve. Unlike many programs available to industries this is not a grant, but a loan that is repaid just like any other loan. The loans are secured by the value of the railroads and their right-of-ways value. In our specific case for example our net liquidated value is 3 times greater than the loan amount we are requesting. The law requires that we pay a credit risk premium which is the government's own calculation of the risk of the loan. The collateral requirements in combination with the credit risk premium provide the government two layers of protection. I don't know of any other loan program, public or private that can say that.

Most of us are familiar with the advantage of rail, how railroads reduce highway congestion, conserve fuel, more efficiently and safely move goods and lower the cost to the taxpayer for maintaining roads and highways. What many people do not understand is that adding new right-of-way or replacing lost right-of-way is nearly impossible. With the development in the US trying to find 66 foot strip of land that extends 100 miles to build a new railroad would be an unbelievable task if it could be done at all. United States railroads are infrastructure resources that we would not be able to recreate, so we must preserve, maintain and enhance what we have.

Without the RRIF loan program available to small railroads and specifically this one there is no other way to maintain this valuable infrastructure. We would like to receive an infrastructure loan, fully secured, at little risk to the Government, that would allow for the rehabilitation of this vitally important rail network in the Carolina's.

We also feel that this program is vital to the health of the entire railroad industry and their shippers. On behalf of ourselves and other small railroads that desperately need these funds we ask the Committee to not only continue the RRIF but help make is more accessible to those who need it.

IF WE DON'T GET THE LOAN

The Carolina Southern has worked hard for 18 months in an attempt to receive a RRIF loan. The cost to our railroad of this process has reached nearly $80,000 so far. Given the length of the process we had no choice but to proceed with the track and locomotive upgrades which was the subject of the application. We have now obtained the last 2 items required by the FRA to approve the loan and hope by the time of this hearing or within a few days we will be approved and begin to receive the much needed funds.

Thank you for your attention and consideration.

Respectfully Submitted,

Ken Pippin

Ken Pippin
President

ENGINEERING DEPARTMENT
INFRASTRUCTURE &
REGULATION DIVISION

4401 Privetts Road
Conway, South Carolina 29526

Horry County
Committed to Excellence

Post Office Box 1236
Conway, SC 29528-1236

Phone: (843) 915-5160
Fax: (843) 365-2170

April 15, 2009

The Honorable Ray Lahood
United States Department of Transportation
1200 New Jersey Ave, SE
Washington, D.C. 20590

Dear Mr. Secretary,

I am writing this letter on behalf of Horry County, SC at the request of the Carolina Southern Railroad.

The Carolina Southern Railroad is currently in the process of applying for a loan from the FRA's Railroad Infrastructure Funding Program. It was explained to me that this infrastructure loan will be used for improvements throughout the entire rail line, including the 14.1 miles of track the Carolina Southern is currently operates under a long term lease from Horry County. We have a good working relationship with Carolina Southern and our intention is to protect this very valuable piece of infrastructure for rail use and service to the various important industries along the line. Horry County and Carolina Southern Railroad negotiated over a number of years a lease of the county's railroad that effectively preserves rail service over the county's rail corridor for 50 years. Viable rail service is very important to Horry County in that the transportation of freight by rail keeps the costs of goods coming into our area at a low and reasonable rate and the use of rail for freight also continues to mitigate vehicular traffic on our local roads.

We are glad to see the Carolina Southern taking proactive measures to assure the preservation of this rail line and are happy to answer any further questions that your department may have in relationship to this matter.

Sincerely,

HORRY COUNTY

Steven S. Gosnell, P.E.
Division Director
Infrastructure and Regulation Division

SSG:

C: Mr. Danny Knight, County Administrator
Senator Lindsey Graham
Congressman Henry Brown
Mr. Jason Pipen, Carolina Southern Railroad

Santee Cooper

Bill McCall, Jr.
Executive Vice President &
Chief Operating Officer

[illegible]
[illegible]
[illegible]
[illegible]
FAX [illegible]

April 3, 2009

The Honorable Ray LaHood
United States Department of Transportation
1200 New Jersey Ave, SE
Washington, D.C. 20590

Dear Mr. Secretary:

The purpose of writing you today is to express Santee Coopers strong support of the Carolina Southern Railroads request for a loan from the FRA's Railroad Infrastructure Funding Program. Since 1994, The Carolina Southern has consistently and efficiently provided excellent rail service to our Grainger Generating Plant in Conway, S.C. The proximity of this plant to the rapidly growing Myrtle Beach area is of significant importance to our present and future generating forecast.

We currently have a ten year rail services contract with the Carolina Southern for the delivery of 85 to 100 car unit trains of coal. The reliable delivery of these coal trains is vital to our operation. We are of the belief that any investment in this permanent and important piece of infrastructure will be a benefit to the citizens and industry of the region indefinitely.

Mr. Secretary, any consideration and support that you can give Carolina Southern's request would be greatly appreciated.

Sincerely,

Bill McCall, Jr.
Executive Vice President and
Chief Operating Officer

BMCjr:mtw

Len Kellermann
Director Regional & Short Line Development
CSX Transportation
500 Water St. J848
Jacksonville, FL 32202

April 2, 2009

The Honorable Corrine Brown
Subcommittee on Railroads, Pipelines, and Hazardous Materials
2167 Rayburn HOB
Washington, D.C. 20515

Dear Chairwoman Brown,

I am writing this letter in support of Mr. Ken Pippin, who will be testifying before you on April 22, 2009 regarding the Railroad Rehabilitation and Improvement Financing Program. Mr. Pippin is the owner and operator of two railroads, the Carolina Southern Railroad (CALA) and Waccamaw Coastline Railroad (WCLR), both of which connect with CSX Transportation in Mullins, SC. Mr Pippin has been a member of CSXT's Short Line Caucus (an advisory group of key leaders from the Short Line Industry) and a solid business partner of ours for over a decade.

In 2008, CSXT moved more than 7,700 carloads of business with the CALA and WCLR. Mr. Pippin and his team work diligently with CSXT to develop new rail opportunities that grows the business for both railroads. This business provides economic stimulus and generates new jobs for local communities in South Carolina, in addition to the jobs provided by the CALA and WCLR.

Mr. Pippin's railroads provide an eco-friendly and economically advantageous transportation solution for customers in the South Carolina area. The largest city served by the WCLR is Myrtle Beach, which during the 2000 census was the thirteenth fastest growing metropolitan area in the U.S. As there is no current interstate access into Myrtle Beach or the surrounding counties, both of these railroads help minimize the number of trucks on the state and local roads and bridges, providing a safer, more fuel efficient form of ground transportation.

We trust you will weigh his testimony carefully, and ultimately encourage future rail investments in South Carolina and the region in general. CSXT greatly appreciates your leadership and looks forward to continue working with you to enhance our nation's infrastructure

Yours truly,

Len Kellermann
Director Regional and Short Line Development

Cc: The Honorable Henry E. Brown, Jr

MYRTLE BEACH
REGIONAL
ECONOMIC
DEVELOPMENT

843 347 4604 office
843 347 2292 fax
800 844 4983 toll free

2431 Highway 501 East
Conway, SC 29526

March 30, 2009

Chairwoman Brown
Ranking Member Shuster
Members of the Committee on Transportation and Infrastructure
589 Ford House Office Building
Washington, D.C. 20515

Re: Railroad Infrastructure Growth

Dear Madam Chairwoman and Mr. Shuster:

Economic growth in Horry County, and our surrounding area, depends in large part on our ability to provide adequate infrastructure to meet growing demand. We believe that a satisfactory railroad system is essential to the county's development. We support the need for establishing infrastructure upgrades to railroads in both Horry County and the surrounding area.

The Carolina Southern Railroad will no doubt be a key player in meeting future needs as our county continues to experience tremendous growth. The population of Horry County has increased by an estimated 27% since the last census was taken. The Myrtle Beach-Conway-North Myrtle Beach MSA was recently ranked as twelfth in the nation as one of the "100 Fastest Growing Metropolitan Statistical Areas" (July 1, 2007 to July 1, 2008: US Census Bureau, Population Division). A stronger railroad system will be better able to address the ever-increasing freight and transportation needs of established businesses. It will also serve to help draw new businesses to the area. Economic development is fostered by the investment in modern, efficient infrastructure. The continual maintenance and upgrade of our existing rail system is critical to recruiting new industry and diversifying our economy.

Additionally, as our highway system exhibits increased congestion and warrants persistent repair, railroads offer relief. The Carolina Southern Railroad helps to keep over 200,000 tractor-trailers a year off of our local roads. This in turn contributes to smoother travel for not only our full-time residents, but also for the estimated 14 million tourists that visit each year.

It is our hope that these issues will be considered by the committee.

Sincerely,

Hugh Owens
President and CEO

PERDUE.

March 26, 2009

Mr. Jason Pippin
Vice President & General Manager
The Carolina Southern Railroad Co.
171 Hwy 905
Conway, SC 29526

Dear Jason,

Please consider this as a letter of support for the Carolina Southern Railroad's efforts to obtain public funding to upgrade the infrastructure on their line.

As you know, Perdue AgriBusiness Incorporated has operated a grain elevator located at Chadbourn, NC in Columbus County since 2003. The facility was previously operated by Southern States Cooperative.

We activated our rail switch, and thereby service, at this location in spring 2008 and we shipped 207 carloads of grain and soybeans in cy2008. We have shipped 37 cars ytd 2009. The flexible service offered by the CALA has enabled our operation to grow competitively and profitably.

The ability to ship agricultural products by rail is important to our business, and offers us an expanded market reach in a cost-competitive manner. Rail service also benefits area grain farmers through the improved efficiency of our operations.

We have found the CALA to be a good partner to work with!

Regards,

Sharon Clark

Sharon Clark
VP Transportation
Perdue AgriBusiness Incorporated

cc: Steve Schwalb, Government Relations, Perdue Inc.
Jack Kelly, Government Relations, Perdue Inc.

March 19, 2009

Carolina Southern Railroad

171 Hwy 905

Conway, SC 29526

Re: Railcar Capability Letter of Intent

Dear Mr. Pippen,

I am pleased to inform your company that Coastal Biodiesel Group, Inc. and Southeast Industrial Services Company, LLC (SISCO) will be commencing operations the week of March 23, 2009. We are actively pursuing options with GATX to clean and provide access to perform maintenance, repair and store railcars coming off lease. Your company is obviously an integral part of this scenario and we are looking to partner with Carolina Southern in this endeavor. SISCO would like to clean tank cars at our facility on 127 French Collins and have your company switch cars in and out as needed. We would like to offer our services to any customers and potential customers of Carolina Southern and/or its affiliates. SISCO has cleaned over 1000 railcars over the past 7 years and has the equipment, expertise and resources necessary to safely and properly clean most commodities transported by rail. SISCO employees are Confined Entry Trained (CSE) and certified and all entries will be properly performed and documented. Any railcars cleaned will be inspected by qualified staff and issued a Certificate of Cleanliness and documented as such. Any and all wastes will be properly characterized, packaged, labeled, manifested and transported offsite to a SCDHEC approved facility for final disposal.

SISCO would like to offer GATX the storage capabilities available through your company. We would like to maximize any available capacity on your line. Additionally, Coastal Biodiesel Group, Inc will soon be bringing in and shipping out rail cars containing used cooking oils and Biodiesel respectively. This process will take some time to ramp up but anticipate this happening very soon and possibly in conjunction with the cleaning repair operations. If in the event, there is no useable space at our facility, we could possibly need an alternate location where SISCO or GATX may gain access to rail cars to perform additional activities. Such an event would be rare and avoided if possible but would communicate any activity and request permission prior to any work commencement.

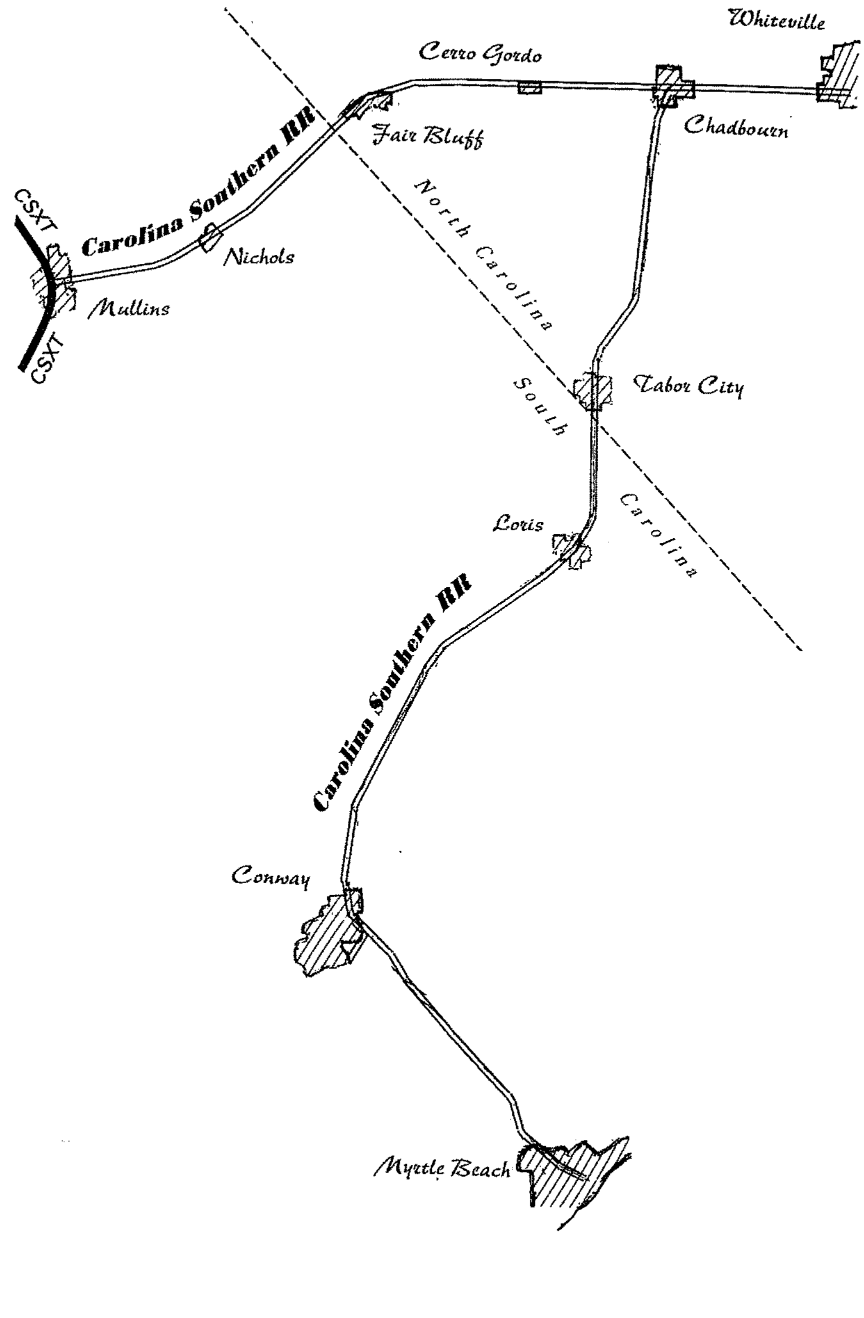
We are looking forward to working with Conway Southern Railroad and are excited about the opportunities that lay before us. Thank you in advance and please contact us for any additional information needed to start this process.

Regards,

Mark Hefner, President

Coastal Biodiesel Group/SISCO

Carolina Southern RR



WRITTEN STATEMENT OF PATRICK B. SIMMONS

Rail Division Director

North Carolina Department of Transportation

before the

U. S. House of Representatives
Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials

Hearing on

Railroad Rehabilitation and Improvement Financing Program

April 22, 2009

Written Statement of Patrick B. Simmons, U. S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads Hearing on Railroad Rehabilitation and Improvement Financing Program

Mr. Chairman, my name is Patrick Simmons. I serve as Director of the Rail Division at the North Carolina Department of Transportation. My responsibilities include development and management of passenger operations and facilities, improving highway-railroad crossing safety, conducting industry safety inspections, railroad engineering and design, development of planning and environmental documents, rail corridor preservation and economic development. Our state partners with Class I and shortline railroads through grants and tax credits to continue to improve safety and capacity as well as other rail infrastructure investments.

I read with interest the provisions in TEA-21 establishing the Railroad Rehabilitation and Improvement Financing (RRIF) program. The RRIF program can be a valuable tool to leverage needed rail infrastructure investment. We quickly distributed the program guidelines to our state's shortline industry (www.ncrailways.org) and offered to partner with them to apply for loans under the program.

Our initial proposed partnership was to grant state funds to underwrite the costs of conducting the requisite independent financial review. In 2000, the American Heritage Railways dba Great Smoky Mountain Railroad (GSMR, www.gsmr.com) agreed to partner with us.

The GSMR, formerly the Norfolk Southern Railway's Murphy Branch between Dillsboro and Murphy, N.C. was acquired by the state in 1988, and leased to a private operator. The GSMR operates between Dillsboro and Bryson City as a scenic and tourism railroad, traveling both the Nantahala and Tuckasegee river valleys and across Fontana Lake in the Great Smoky Mountains, the most visited of our national parks. The state later sold 53 miles of the Murphy Branch to GSMR continues to retain ownership of the 17 mile portion between Bryson City and Murphy for future transportation use.

The GSMR has developed into an important "anchor tenant" in the Western North Carolina travel and tourism market, attracting some 200,000 passengers annually. The state's initial investment to acquire the railroad has long since been repaid through its operation.

American Heritage Railways used its RRIF loan to refinance its stock acquisition of the GSMR, and as the GSMR outgrew its initial headquarters in Dillsboro, it also sought to develop its properties in Bryson City as a terminal with destination shopping and by providing visitors with an opportunity to view mechanical servicing operations.

In 2000, NCDOT agreed to partner with the GSMR and begin the long journey to secure a RRIF loan:

- November 2000-GSMR submitted a pre-application to the Federal Railroad Administration (FRA).

- November 2000-GSMR and NCDOT attends a pre-application meeting at the FRA in Washington D.C.

Written Statement of Patrick B. Simmons, U. S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads Hearing on Railroad Rehabilitation and Improvement Financing Program

- The primary purpose of the RRIF loan is to refinance American Heritage Railways' debt with Bank of America (BOA) used to acquire the GSMR.
- GSMR also requested loan authority to install turntables and purchase rail and ties for line improvements and radio communications system. The RRIF loan was to help the company expand operations by renovating a historic building to expand its headquarters, develop destination commerce and mechanical facilities.
- April 2003-GSMR responds to FRA's request for more information.
- FRA requires a third party independent financial review for the loan. NCDOT funds and retains a firm to perform this effort on behalf of the GSMR
- October 2003-NCDOT authorizes AECOM to proceed with an independent financial advisor report
- April 2004-AECOM financial review completed March 16, 2004 and received confirmation of delivery to FRA.
- May 2004-FRA responds to the financial review with questions and a request to provide 2003 audited financial statement, first quarter 2004 financials and passenger information.
- July 2004-NCDOT closes out agreement with AECOM and FRA agrees to have Seneca Group complete the related contract.
- January 2005-FRA formally approves a RRIF loan to GSMR.

The process took fifty (50) months and we learned many lessons during the journey:

- Initially FRA was unclear about how to process loan applications, thus the application sat in an inbox and was not reviewed.
- When the loans were reviewed it took an interminable amount of time to develop and receive any assessment.
- The length of time required to review the loan applications meant that the financial statements and projections initially submitted now required being updated and re-submitted
- The Congress, through instructions to FRA in SAFETEA-LU, directed that the agency provide a more timely review and recommendation for loan applications.
- The SAFETEA-LU instructions and changes in FRA personnel assigned to the program elevated it to a more professional level.

Written Statement of Patrick B. Simmons, U. S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads Hearing on Railroad Rehabilitation and Improvement Financing Program

The damage to the RRIF program's reputation has been significant, widespread across the railroad industry, and is a primary reason for the lack of program interest among North Carolina's railroads. The RRIF program's reputation portrays it as a vapor program—and that no one should ever expect to receive a loan. The application and approval process have proven cumbersome, lengthy, costly and seems intended to drive applicants away.

FRA program managers and the Congress both understand the need to reverse this negative reputation and re-vamp RRIF into a viable industry tool. I believe that the FRA program managers and USDOT loan review team are, when left to their own internal review processes, well-capable of professional program management within the guidelines established by the Congress. It is the external review and conflicts between the executive and legislative branches that diminishes the program's value in the market place.

In spite of the program's overshadowing negative reputation, due to FRA's efforts to streamline the RRIF there is a renewed interest among potential applicants in North Carolina. These include:

- Rail access and rail-on-dock for the new North Carolina International Terminal (NCIT).
  - The NCIT is being designed as a high-density, automated container terminal capable of serving 12,000-TEU vessels and processing an estimated two to three million transportation equivalent units (TEUs) annually.
  - The NCIT is planned as a public-private partnership, with the State Ports Authority as the lead public entity.

- Rail components for new inland ports and transload facilities in Harnett and Union counties that will serve commercial and military shipping needs.

- A second loan to GSMR to make additional rail infrastructure and equipment improvements.

- New commuter rail services in Charlotte (Metrolina) and Raleigh (Research Triangle) areas of North Carolina.
  - The Charlotte Area Transit System (CATS) will be the lead public entity for the Metrolina project.
  - Triangle Transit (TT) will be the lead public entity in development of the new regional rail service.
  - The North Carolina General Assembly now has before it legislation which would authorize local governments to hold a referendum to levy an increment on local sales taxes. The incremental levy would be dedicated for transit purposes. CATS already has in place such a levy and TT plans to recommend adoption in its three-county catchment area.

The RRIF program should be retained and improved. It can be managed as an effective public-private partnership, but only when the public adopts a responsible, professional approach to managing it. Thank you for this opportunity to present testimony.

Written Statement of Patrick B. Simmons, U. S. House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads
Hearing on Railroad Rehabilitation and Improvement Financing Program

Supplemental Information Sheet

Patrick B. Simmons
Rail Division Director
North Carolina Department of Transportation (NCDOT)
Post Office Box 25201
1 South Wilmington Street, Room 557
1553 Mail Service Center
Raleigh, North Carolina 27699-1553

(919) 733-7245 extension 263 voice, (919) 715-6580 fax

e-mail: pbsimmons@ncdot.gov
NCDOT web site: www.ncdot.gov
NCDOT-Rail Division web site: www.bytrain.org
Southeast High Speed Rail web site: www.sehsr.org
States for Passenger Rail Coalition web site: www.s4prc.org

STATEMENT OF

RICHARD F. TIMMONS

PRESIDENT

**AMERICAN SHORT LINE &
REGIONAL RAILROAD ASSOCIATION**

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE'S

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

REGARDING

THE RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

APRIL 22, 2009

**American Short Line and
Regional Railroad Association
50 F Street, N.W.
Suite 7020
Washington, DC 20001
(202) 628-4500**

Madam Chairwoman and Members of the Committee, I appreciate the opportunity to provide my thoughts on the Railroad Infrastructure and Improvement Financing Program (RRIF). I am Rich Timmons, President of the American Short Line and Regional Railroad Association (ASLRRA). ASLRRA represents the nation's 500 short line railroads.

The short line railroad industry has been the primary user of the RRIF program. Twenty one of the twenty three loans approved to date are short line railroads. These short lines have borrowed a total of approximately $614 million. These loans have provided an important tool in the building and strengthening of the short line railroad industry. They have helped short lines maximize capital investment through direct rehabilitation loans and in some cases through refinancing existing debt so as to increase cash available for rehabilitation. In a number of instances they have provided the financing necessary to start up new short line railroads and those new railroads are preserving rail service and jobs in areas no longer served by the Class I railroads.

The Transportation and Infrastructure Committee developed this program in 1998, has improved it over the years and perhaps most important, has been steadfast in protecting the program from those in previous Administrations who would have killed it. I want to particularly call out Congressmen Oberstar, Corrine Brown, Bill Shuster and Jerry Moran who led the charge last year to put a stop to a set of Administration proposed rules that could have effectively killed the program through the back door.

For the benefit of those Members that are new to this Committee, let me give a brief explanation as to why the government is in the RRIF loan business. After all, the short line industry is not the largest segment of our national transportation system, and indeed, in market share and annual revenues we may be among the smallest. Our importance is not our size or our total market share but in who and where we serve. For large areas of the country and particularly for small town America short line rail service is the only connection to the national railroad network. For the small businesses and farmers in those areas, our ability to a take a 25-car train 75 miles to the nearest Class I interchange is just as important as the Class I's ability to attach that block of traffic to a 100-car train and move it across the country. To paraphrase a popular saying, "you can't get there from here, without us."

I think it can be fairly said that today's short line industry was launched by the federal government's decision in the 1980's that it was better to save light density branch lines than to abandon them. Short lines have grown from 8,000 miles of track in 1980 to nearly 50,000 miles today. There are over 500 short lines operating in 49 states. In five states short lines operate 100 percent of the state's rail network. In 10 states they operate more than 50 percent of the railroad network and in 30 states at least one quarter of the rail network. In the Chairman's home state of Minnesota short lines operate 30 percent of the state's total network. In Florida, the home of Railroad Subcommittee Chairwoman Brown and Ranking Member Mica, short lines operate 39 percent of the state's total railroad network. There are 22 new Members on the Railroad Subcommittee and all but

5 of you have a short line in your district. We are working on a plan to buy properties in those 5.

Short lines are the "first mile-last mile" for over 14 million carloads of goods annually – nearly one out of every four carloads moving on the national rail network. This interchange with our partners, the Class I railroads, earns for those Class I railroads 18 to 20 percent of their revenues.

As you have heard many times, railroading is the single most capital intensive industry in the country. Short line railroading is even more so because these properties must make up for years of deferred maintenance experienced under their previous Class I owners, and, more recently fund the rehabilitation necessary to handle the new 286,000 pound railcars. Based on comprehensive data surveys ASLRRA has conducted since 2004, short lines invest nearly 30 percent of their annual gross revenues in track rehabilitation and maintenance. It is an enormous investment, but given the deferred maintenance and 286 issues, it is not enough. A recent Cambridge Systematics study indicated that short line railroads require an additional $13 billion to upgrade track and equipment and provide capacity for future business. This for an industry whose annual gross revenues total approximately $3 billion.

In the time I have today I would like to emphasize three important points about the current RRIF program and propose two changes that we believe will greatly enhance its economic and transportation benefits.

First, the RRIF loan program leverages substantial private investment in short line infrastructure. These are loans that must be paid back in full by the railroad. The relatively low interest rate and the 35 year amortization are terms short lines cannot secure in the private market and the program has allowed those who have taken advantage of it to undertake projects that could not have been done or that would have been stretched out over many years. I am proud to say in the ten years the RRIF loan program has been on the books, not a single short line railroad has missed a single quarterly payment on its debt. In today's world we might be one of the only groups that can say that.

Second, because these are loans that must be repaid and are secured by an ironclad first lien on the railroad's hard assets, RRIF loans are not being used to fund frivolous, cost ineffective projects. I know that Congress and the new Administration are very keen on insuring that all federal monies that are being used to stimulate economic growth be spent as wisely and effectively as possible. No small business is going to use its limited financial resources to fund a project that does not yield substantial economic benefits.

Third, most short lines do not have the in-house manpower to undertake rehabilitation projects and must hire contractors and additional laborers to do the work. The Federal Railroad Administration (FRA) estimates that approximately 50 percent of every rehabilitation dollar is spent on labor. Let me give you just a few examples. The Wheeling & Lake Erie Railroad secured a $25 million track rehabilitation loan and hired

141,000 man-hours of labor to complete the project. The Iowa Interstate Railroad secured a $21 million track rehabilitation loan and hired 100,000 man-hours of labor. The Iowa Northern Railroad secured a $22 million loan for track rehabilitation and new construction and hired 132,000 man-hours of labor. Railroad rehabilitation projects are labor intensive projects. In addition, 100 percent of the ties and the overwhelming majority of the rest of the materials used in track rehabilitation are made in the U.S.

While the short line industry has been the primary user of the RRIF program, it remains a highly underutilized program. RRIF is currently authorized at $35 billion and has yet to reach a billion in outstanding loans. This is due in part to the slow start up of the program and to the lengthy delays in the approval process. I believe that FRA has worked diligently to accelerate the process, particularly that part of the process they control. I don't think it is any secret that FRA has had to deal with substantial institutional opposition to the program within other federal agencies. Whether that opposition continues in the new Administration is an open question.

Setting aside the delay issue we believe there are two changes that would significantly increase the use of the RRIF program and that such an increase would help promote the goals of maximizing private infrastructure funding and creating immediate jobs. These are part of a three part proposal we made last year. The third change, extending the RRIF loan term from 25 years to 35 years was adopted by the Transportation & Infrastructure Committee in last year's Rail Safety legislation an we are very grateful for that change.

We propose that Congress subsidize an interest rate reduction to one percent on all RRIF loans. The current interest rate is approximately equivalent to the rate on a 30 year Treasury security, which today is approximately 3.5%. At today's rate a $500 million subsidy would support approximately $1.5 billion in RIFF loans, or three times the subsidy amount. Spending a federal dollar to leverage three additional dollars of private infrastructure investment seems to us to be well worth the expenditure.

We further propose that RRIF payments should be deferred in a manner comparable to the deferral that is allowed in the Transportation Infrastructure Finance and Innovation Act program (TIFIA). As many of you know, TIFIA is a credit assistance program that provides low interest long term loans for large public transportation infrastructure projects, particularly in the highway and transit areas. Under RRIF, repayment begins immediately after the loan is drawn down. TIFIA provides that repayment shall not commence later than 5 years after the date of substantial completion of the project. Given that the typical short line rehabilitation project takes from three to 12 months, such a provision for RRIF would provide a near six year deferral.

The current RRIF statute gives the Secretary the discretion to defer payments for up to six years. To the best of my knowledge that provision has never been exercised and I am led to believe it is not something the agency encourages the applicant to pursue. Part of the difficulty may be that there does not appear to be a definitive answer to the question of how the Congressional Budget Office (CBO) would score such a deferral. I would argue that since 100 percent of the deferred payments would be added to the remaining term of the loan beginning in year seven, there is no cost to the government. Under TIFIA this is not an issue because TIFIA receives an annual federal appropriation to cover any subsidy associated with the loan. If it is determined such a subsidy is required to secure the RRIF deferral we urge that it be provided.

The RRIF program was modeled after a very similar federal loan program known as the Section 511 loan program that was part of the 1976 4R Act. It was used extensively and effectively as part of the federal government's efforts to save the nation's railroads as they went into or approached bankruptcy prior to the Staggers Act. It was heavily used by the Class I railroads in the Midwest and is credited by many as playing an important role in saving a large portion of the nation's private freight rail network. The program was transformed into today's RRIF program, largely to make it conform to the Credit Reform Act of 1990.

The Section 511 program was successful in saving valuable Class I railroad infrastructure in the 1970's and 1980's. Its successor, the RRIF program, is proving to be equally valuable in saving short line and regional railroad infrastructure today. The program's only shortcoming is that it is not fully utilized. That shortcoming can be addressed by insisting that the relevant agencies deal with applications as expeditiously as possible. It can and should be further addressed by improving the terms of the RRIF loans. The cost to the federal government of those improvements is very small in comparison to the benefits and we believe well worth the investment.

Statement of
Mark E. Yachmetz
Associate Administrator for Railroad Development
Federal Railroad Administration
To
The Subcommittee on Railroads, Pipelines and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
April 22, 2009

Chairwoman Brown, Mr. Shuster and members of the Subcommittee: I am pleased to have this opportunity to appear before you on behalf of Secretary of Transportation Ray LaHood to update you on the status of the Railroad Rehabilitation and Improvement Financing Program, also known as RRIF.

By way of introduction, I am Mark Yachmetz, Associate Administrator for Railroad Development of the Federal Railroad Administration (FRA.) The Office of Railroad Development which I have the honor to lead is responsible for FRA's investment programs including:

- Railroad Research and Development;
- Support to the Secretary of Transportation in his role as a member of Amtrak's Board of Directors;
- Analyses in support of development of intercity passenger rail policy;
- Operating and capital grants to Amtrak;
- Grants to States for rail line relocation, grants to the Alaska Railroad for capital improvements benefitting passenger service, grants to railroads for rehabilitation and repair resulting from natural disasters, and grants for high-priority rail-related projects designated by Congress.

- Implementation of FRA's responsibilities under the Passenger Rail Investment and Improvement Act of 2008;
- Implementation of FRA's responsibilities under the American Recovery and Reinvestment Act of 2009.; and
- FRA's credit program responsibilities under RRIF and Transportation Infrastructure Finance Innovation Act (TIFIA).

I joined the staff of the FRA in 1978 to work in the program providing credit-based financial assistance to the rail industry that was authorized by Title V of the Railroad Rehabilitation and Regulatory Reform Act of 1976. That program was the predecessor to RRIF, thus I have been involved to some degree with FRA's credit-based programs since just after their inception.

Touching on the highlights of the RRIF program since its creation in the Transportation Equity Act for the 21st Century (TEA-21):

- FRA has made 22 loans totaling $786.72 million dollars. FRA has not yet guaranteed any loans. (A list of loan recipients is attached to this testimony.)
- Three of these loans, totaling $381 million dollars have been repaid in full.
- Payments on all other loans are current; there have been no defaults of RRIF loans.
- There are currently 3 complete applications being reviewed by FRA, with several additional draft applications in various stages of development.

- On March 30, 2009, the U.S. Department of Transportation published a notice in the Federal Register withdrawing a proposed rulemaking initiated in the prior administration that would have changed RRIF policies and procedures.

RRIF Program in Brief

The RRIF program was established by section 7203 of TEA-21 and amended by section 9003 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) and section 701(e) of the Rail Safety Improvement Act of 2008. Under this program the Federal Railroad Administrator is authorized to provide up to $35 billion in direct loans and loan guarantees. Of this amount, $7 billion is reserved for projects benefiting freight railroads other than Class I carriers.

Applicants

Entities eligible for this financial assistance are:

- State and local governments;
- Interstate compacts consented to by the Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101);
- Government sponsored authorities and corporations;
- Railroads (which means a rail carrier subject to Part A of subtitle IV of Title 49 U.S.C. – specifically freight railroads, intercity passenger railroads and commuter railroads that operate on the general system of railways of the U.S. and are subject to FRA's safety jurisdiction)
- Joint ventures that include at least one railroad;

- Solely for the purpose of constructing a rail connection between a plant or facility and a second rail carrier, limited option rail freight shippers that own or operate a plant or other facility that is served by no more than a single railroad.

Eligible purposes

Loans or loan guarantees provided under RRIF can be used to:

- Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops;
- Refinance outstanding debt incurred for the purposes described above; and
- Develop or establish new intermodal or railroad facilities.

Priorities for Consideration

When evaluating applications, FRA gives priority consideration to projects that:

- Enhance public safety;
- Enhance the environment;
- Promote economic development;
- Enable the United States to be more competitive in international markets;
- Are endorsed by the plans prepared under section 135 of title 23, United States Code, by the State or States in which they are located;
- Preserve or enhance rail or intermodal service to small communities or rural areas:
- Enhance service and capacity in the national system; or

- Would materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system.

Loan Terms

The maximum repayment period for direct loans or loan guarantees is 35 years or if collateral is pledged, the life of the asset whichever is less. The interest rate on direct loans is equal to the rate on Treasury securities of a similar term.

Fees

Applicants may be required to pay an investigation charge of up to one half of one percent of the principal amount of the direct loan or the portion of the loan to be guaranteed. These fees have been used only for the cost of independent financial advisors, including appraisers of collateral, related to the specific loan under consideration, and reflect actual expenses incurred for the review of the application. FRA's experience has been that investigation fees for loans ranging from $10 million to $100 million normally fall in the range of $30,000 to $60,000. For smaller proposed loans, where the cost of the consultant is greater than the maximum fee that can be charged, FRA absorbs the additional costs if the Agency's financial resources permit or undertakes the needed analysis using FRA staff.

Credit Risk Premium

The Federal Credit Reform Act of 1990, as amended, (FCRA) changed the budgetary measurement of the cost for direct loans and loan guarantees from the amount of cash flowing into or out of Treasury to the estimated long-term cost to the Government. This estimated long-term cost is referred to as the subsidy cost. FCRA requires that Federal agencies reserve this subsidy cost before entering into a new direct loans or loan guarantees. For the RRIF program, this subsidy cost can be paid for by or on behalf of applicants for credit assistance in the form of a credit risk premium.

Calculating the credit risk premium can be done in one of two ways. Where the applicant has received a recent credit rating from one or more nationally recognized rating agencies, that rating is used to estimate the credit risk. For applicants that have not received a credit rating, the credit risk is based upon an evaluation by FRA of the business risk based upon the applicant's industry outlook, market position and management financial policies; the financial risk based upon the applicant's past financial performance; the project risk; and the potential recovery in event of default, including the value of any collateral offered by the applicant. To date, the credit risk premiums charged by FRA have ranged between 0 and 6.16 -percent.

Collateral

Applicants are not required to offer collateral, but by offering collateral, an applicant may significantly enhance the strength of the RRIF credit and thus significantly reduce the required credit risk premium. As collateral, an applicant or any other party may offer anything of marketable value, not just assets related to the project under consideration. Indeed, collateral need not necessarily be related to the railroad or rail operations.

FRA is required to value collateral as a "going concern", based upon the premise that a business sold as a going concern has greater value than liquidating its component parts. The going concern valuation, however, is only relevant and thus only used when a whole business or a business unit is used as collateral. Other collateral such as a building is valued at its net liquidated value that is the value that could be received by selling the asset on the open market for its highest and best value.

The Application Process

Pre-Application

FRA encourages potential applicants to engage FRA in pre-application discussions. Such discussions help the applicant understand the application process, the issues that need to be addressed and the nature of the finance agreement that would result from a successful application. Some applicants have only one pre-application discussion. Other pre-application discussions can become quite extensive as the potential applicant refines description, scope and cost estimates of the proposed project. These differences in the length of the pre-application stage frequently reflect the wide differences in applicants. Some are public agencies or large corporations with in-house financial and engineering expertise, while others are smaller corporations that need outside help, and thus more time, in developing information necessary to support an application.

A RRIF application may be the first time an applicant has dealt with the Federal Government from a financial assistance perspective. Pre-application discussions thus also address certain requirements inherent in any Federal program, including the need for FRA to comply with National Environmental Policy Act of 1969 (NEPA) and its environmental review requirements. Because FRA does not have funds for this purpose, the financial burden of complying with NEPA falls on the applicant and NEPA clearance is a prerequisite to an application being complete. Fortunately, most RRIF projects to date have fallen under established categorical exclusions from NEPA review, have required nominal environmental reviews, or have involved projects for which NEPA documentation has been prepared for other purposes.

Application and Review

FRA's website includes the RRIF application form. Once the applicant submits a draft application, it is assigned to a staff analyst for review. Once the staff analyst is comfortable that the application is complete or nearly complete, an estimate of the investigation charge is provided the applicant. Upon receipt of these funds, FRA retains its independent financial advisor (IFA) from among a group of advisors FRA has under contract. The IFA's first task is a final review of the draft application and development of any additional materials needed to make it final. Frequently, the IFA identifies additional documents needed to support detailed financial data or supporting information for traffic and revenue projections.

Normally within 30 days of the initial filing the staff analyst, based upon her or his review and recommendations of the IFA, sends a letter to the applicant explaining the information needed to complete the application. Upon the receipt of this information from the applicant and completion of any NEPA-related documentation, the application is deemed complete. FRA sends a letter to the applicant to this effect. This initiates the statutory 90 day period for review of the application.

FRA's exercise of due diligence involving the review of the financials of the proposed project and applicant is relatively intense, with substantial work occurring over a brief period of time. In cases where applicants do not have a credit rating from one of the national rating agencies, the analyst supported by the IFA analyzes all relevant aspects of the proposed transaction. This analysis includes such activities as interviewing existing and potential shippers and independently developing projections of traffic, revenues and expenses, leading to the development of pro-forma financial statements.

During this period, FRA's staff engineers review the engineering aspects of the proposed project to develop an independent assessment of the reasonableness of cost estimates and the ability of the proposed improvements to accomplish the intended purpose. When infrastructure is involved, this includes a site inspection. The Office of Railroad Development also consults with appropriate regional officials of FRA's Office of Safety to identify any specific concerns that they might have identified in their periodic inspections of the railroad. FRA also consults with other modes of the Department if the applicant or proposed project might interface with their programs (e.g. Federal Transit Administration for commuter rail projects.)

Upon the completion of the review of the application by FRA staff supported by the IFA, a recommendation is made to FRA's Administrator by the Associate Administrator for Railroad Development for action on the application. Those the Administrator decides to advance are presented to the U.S. Department of Transportation's Credit Council (the Credit Council.) Alternatively, the Administrator may choose to deny the application at this point.

The Credit Council is an organization created by the U.S. Department of Transportation to ensure the application of consistent credit policies and management practices across all the Department's credit programs. The members of Credit Council are the Assistant Secretary for Budget and Programs/Chief Financial Officer (chair), the Under Secretary of Transportation for Policy, General Counsel, the Assistant Secretary for Transportation Policy, the Federal Railroad Administrator, the Federal Highway Administrator, the Federal Transit Administrator, the Maritime Administrator and the Director of the Small and Disadvantaged Business Utilization. The Credit Council will provide to the Federal Railroad Administrator a recommendation regarding the financial viability of a proposed project and the merits of the requested credit assistance and its consistency with Department credit policies.

After considering the recommendation of the Credit Council, the Administrator then decides whether or not to approve the loan. If the loan is approved, FRA's calculation of the credit risk premium is submitted to the Office of Management and Budget (OMB) for concurrence. While FRA develops estimates of the credit risk premium using its model, in accordance with the FCRA, OMB must agree to the final calculation of the subsidy cost and thus the credit risk premium.

Finalizing the Assistance

Once the final credit risk premium is calculated, the applicant is informed and a term sheet is sent to the borrower. The term sheet includes all of the basic information on the loan including repayment period, interest rate and credit risk premium.

Upon acceptance of the terms, closing documents are prepared and signed, the credit risk premium is paid and funds disbursed as needed. FRA then monitors implementation of the project and repayment of loans. FRA also monitors the overall financial condition of borrowers to identify any issues that could impact repayment of the loan.

Conclusion

I appreciate the opportunity to provide the Subcommittee with an update on the RRIF program. I am available to answer any questions that you might have on FRA's implementation of this program.

#

TESTIMONY BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

"STATUS OF THE RAILROAD REHABILITATION and IMPROVEMENT FINANCING PROGRAM"

APRIL 22, 2009

SUBMITTED BY
DALE ZEHNER
CHIEF EXECUTIVE OFFICER
VIRGINIA RAILWAY EXPRESS
1500 KING STREET, SUITE 202
ALEXANDRIA, VA 22314

Madam Chairwoman Brown, Ranking member Shuster and members of the Subcommittee, thank you for the opportunity to testify today before the House Railroads Subcommittee on the subject of the Railroad Rehabilitation and Improvement Financing Program.

My name is Dale Zehner. I am the Chief Executive Officer of the Virginia Railway Express (VRE), which is headquartered in Alexandria, Virginia. VRE operates throughout Northern Virginia and the District of Columbia and provides nearly 4 million passenger trips per year; making VRE the ninth largest commuter rail system in America. VRE's ridership is comprised of residents from 37 jurisdictions and 8 cities in Virginia, as well as residents of West Virginia and the District of Columbia. On a daily basis, VRE removes the equivalent of one lane of traffic from I-95 and I-66 during the peak commuting hours. So, on behalf of these passengers and our local jurisdictional owners, I appreciate the opportunity to appear before you today to discuss railroad financing and how it affects the operations and future of VRE.

Growth and the Need for Funding

VRE is a prime example of the success of passenger rail, given that the system was initially designed to carry 10,000 passenger trips a day and it now carries over 17,000 on peak days. Moreover, demand for service reaches as far as Richmond, Charlottesville, and deep into the Shenandoah Valley. As VRE struggled to meet the needs of growing ridership, we turned to less traditional ways of obtaining seating capacity; including leasing cars from Seattle and purchasing 50-year old cars from Metra in Chicago. At one point, VRE was the only commuter rail agency in America operating three types of bi-level railcars.

Despite this approach, our ultimate goal was to modernize and standardize the railcar fleet. Then, in 2005 the VRE Operations Board directed me to procure 61 new railcars, which included a base order of 11 cars with an option for 50 additional railcars.

VRE financed the base order using federal formula funds. After securing $20 million from the Commonwealth of Virginia for the 50-car option, which was projected to cost $92.5 million, VRE began looking at other financing options. We ultimately chose the Railroad Rehabilitation and Improvement Financing Program based on the program's flexibility, timing, and ease of use.

Flexibility

Simply put, the single greatest reason for using the RRIF program was flexibility. Unlike the standard tax-exempt debt issuance, FRA allows for prepayment of any amount, at any time, without penalty. At the time, this was important to VRE as we were still trying to identify funding sources and repayment options.

Timing and Ease of Use

VRE submitted an application in February, 2006. We were initially given assurances that approval could be secured by the end of April, 2006, which was when the 50-car option contract with Sumitomo Corporation was set to expire. Unfortunately, this process dragged on for several months as the FRA sought the services of a consultant to review our application. This required our Operations Board to seek an extension with the Sumitomo Corporation. By June 2006, FRA and the consultant rendered a favorable decision with the Department of Transportation's credit committee. Then, just as we thought we were posed to finalize the loan, the Office of Management and Budget (OMB) began voicing concerns over the application.

In late July 2006, after staff level resolutions failed, we sought the assistance of our Congressional delegation to prompt OMB to make a ruling. OMB subsequently required FRA to use an analysis that resulted in a "credit risk" premium of 1.88% being added to our loan. In an effort to reduce costs, we asked if bond insurance could be used. The FRA staff supported this method for VRE and other future public agency applicants but OMB required VRE to collect bids before making a determination. Unfortunately, by the time OMB did make a decision, rates had increased to the point that VRE was better off taking the original rate and paying the credit risk premium.

After going through this process, VRE would strongly recommend explicitly allowing alternatives to the credit risk premium, such as the use of bond insurance. While OMB ultimately approved this approach, VRE could not use it because of the higher prevailing rates.

Cost

The last variable that I wish to relate to the Subcommittee regarding the RRIF program is cost. Since the RRIF loan is tied to the federal government's taxable borrowing rate, the RRIF rate is always higher than the tax-exempt borrowing rate that is otherwise available to public agencies. In our case, the timing and flexibility issues outweighed this consideration. However, the credit risk premium of 1.88% further increased the cost of the loan.

We locked in our rate at 4.74% on a loan amount of up to $72.5 million, though we actually initially only borrowed $52.5 million for the 50-car option. We subsequently financed an additional 10 railcars and will draw down an additional $16 million for those cars.

One area of note in terms of total cost is that amortization doesn't begin until you initiate the first draw. Had we issued debt in the spring of 2006, we would have been paying principal and net interest on the entire amount from that point. Because of the availability of grant funds, our first draw on the RRIF loan was not until the spring of 2008.

Conclusion

While the hurdles and delays created by OMB caused difficulties and increased costs, the program did serve the needs of VRE and the citizens of the Commonwealth. The FRA staff was knowledgeable and helpful throughout the process and ongoing reporting is not onerous.

In the end, VRE was able to utilize this funding source to standardize and expand the fleet in order to better accommodate the demand for service here in our Nation's Capitol. We would certainly encourage a faster review process and flexibility for public agencies regarding allowing alternatives to the credit risk premium.

Thank you once again for allowing me to speak before you. I would be happy to answer your questions about VRE or our experience using the RRIF Program.