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SITTING ON OUR ASSETS: REHABILITATING AND IMPROVING OUR NATION'S RAIL INFRASTRUCTURE

(112–7)

HEARING

BEFORE THE

SUBCOMMITTEE ON
RAILROADS, PIPELINES, AND
HAZARDOUS MATERIALS

OF THE

COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

FEBRUARY 17, 2011

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U.S. House of Representatives
Committee on Transportation and Infrastructure

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Washington, DC 20515

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February 14, 2011

SUMMARY OF SUBJECT MATTER

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

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

SUBJECT: **Sitting on our Assets: Rehabilitating and Improving our Nation's Rail Infrastructure**

PURPOSE OF HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Thursday, February 17, 2011, at 10:00 a.m. in 2167 Rayburn House Office Building to receive testimony on the Railroad Rehabilitation & Improvement Financing ("RRIF") program. The hearing will highlight the importance of the RRIF program in helping railroads, States and authorities, and shippers finance the development of railroad infrastructure, which creates new jobs and economic benefits; applicant experiences with the RRIF program; and ways to improve the existing RRIF program and the Department of Transportation's management of the program in the upcoming surface transportation reauthorization bill.

BACKGROUND

Effective and well-maintained passenger and freight railroad infrastructure is crucial to our nation's economic growth and global competitiveness. The U.S. 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 properties, the issuance of long-term debt, and cash on hand. Over the past 20 years, America's freight railroads have invested more than $460 billion of their own financial resources to maintain and improve rail infrastructure and equipment, an average of $23 billion a year, representing more than 40 cents out of every rail revenue dollar. States and public entities typically finance rail infrastructure projects through federal grants, direct tax revenues, selling debt in the form of bonds, and, with respect to grade crossing improvements or separations, gasoline tax-funded federal highway funds.

Description of the RRIF Program

The RRIF program provides direct, low-interest federal loans and loan guarantees to finance the development of railroad infrastructure. The RRIF program allows up to a total of $35 billion in loan authority, with $7 billion set aside for projects benefiting Class II and III freight railroads, commonly referred to as regional and short line railroads. These are small or mid-sized railroad companies that operate within a region or over a relatively short distance, with an annual operating revenue of less than $401.4 million.

Railroads, rail freight shippers, and state and local governments and government-sponsored authorities are eligible to apply for RRIF loans. The program is authorized under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976. The current RRIF program was authorized by the Transportation Equity Act for the 21st Century (TEA-21) in 1998, and has been subsequently amended under the 2005 Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU) and the Rail Safety Improvement Act of 2008 (RSIA).

Loans provided under the RRIF program 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 the purposes listed above; and (3) develop or establish new intermodal or railroad facilities. 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 cost of borrowing to the government.

RRIF loans have been used to repair and upgrade rail track and equipment, build new spur lines and add rail capacity, buy locomotives and rail cars (including passenger rail cars for Amtrak and commuter railroads), and other purposes. The Federal Railroad Administration (FRA) states they have had inquiries regarding using RRIF loans to help finance the installation of positive train control systems and high-speed rail projects. FRA conducts an average of three or four serious pre-application discussions each month with potential RRIF applicants, or 29 a year. The agency currently has 10 active loan applications under consideration. However, only an average of 3 loans are approved and executed by FRA each year.

RRIF Loan History

Since 2002, FRA has executed 28 agreements with 22 railroads and public entities for a total of $1.02 billion in loans. Three loans have been repaid in full: a 2002 loan to Amtrak for $100 million, and two loans to the Dakota, Minnesota & Eastern Railroad worth a combined $281 million. Current outstanding loans total only $430 million, although the authorized credit ceiling for the RRIF program is $35 billion. To date, no recipient of a RRIF loan or loan guarantee has defaulted on a loan or is delinquent in making payments.

The following railroads and public entities have received RRIF loans since the program was established in 1998. (Note: DOT did not finalize regulations for the RRIF program until four years after the program was created, so the first loans were not made until 2002.)

ORGANIZATION	YEAR	AMOUNT
Denver Union Station Project Authority	2010	$155.0 million
Great Lakes Central Railroad	2010	$17.0 million
Georgia & Florida Railways	2009	$8.1 million
Permian Basin Railways, Inc	2009	$64.4 million
Iowa Interstate Railroad	2008	$31.0 million
Nashville and Eastern Railroad	2007	$4.0 million
Nashville and Eastern Railroad	2007	$0.6 million
Columbia Basin Railroad	2007	$3.0 million
Great Western Railway	2007	$4.0 million
Virginia Railway Express	2007	$72.5 million
R.J. Corman Railway	2007	$11.77 million
R.J. Corman Railway	2007	$47.13 million
Dakota, Minnesota & Eastern Railroad*	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
Dakota, Minnesota & Eastern Railroad*	2003	$233 million
Amtrak*	2002	$100 million
Mount Hood Railroad	2002	$2.07 million
Total Amount of Credit Approved		**$1.024 billion**
Total Disbursed		**$844 million**
Total Principal Outstanding as of 2/1/11		**$430 million**

** Indicates loan has been repaid in full.*

RRIF Loan Structure

The DOT has three major credit programs: the FRA's RRIF loans and loan guarantees; the Federal Highway Administration's Transportation Infrastructure Finance and Innovation Act (TIFIA) loans, loan guarantees and lines of credit; and the Maritime Administration's Title XI Loan Guarantee Program. Of these three programs, only RRIF does not require appropriations of a federal subsidy amount to cover potential credit losses. (For example, the TIFIA program receives $122 million a year to cover its credit subsidy. This amount can subsidize approximately $2 billion a year in credit assistance.)

The reason that RRIF does not require federal funds to cover the loan subsidy is that applicants must pay a credit risk premium that is held by the government for the life of the loan and is designed to equate to the government's risk of default. Additionally, applicants must secure their loans with collateral whose net liquidation value is at least 100 percent of the loan amount. The statute explicitly prohibits FRA from requiring applicants to provide collateral, but if an applicant does not provide collateral, the risk of default is assumed to be much greater, and the credit risk premium is significantly increased.

The credit risk premium is expressed as a percentage of the total loan amount. If the applicant can produce collateral equal to 120 percent of the loan amount and the independent financial analyst reviewing the loan for FRA returns a positive finding on ability to repay, the credit risk premium is usually one to two percent of the total loan amount. With collateral at 80 percent of the loan value, the credit risk premium rises as high as 15 to 20 percent of the loan amount, which can discourage a potential applicant from pursuing the loan.

Loan applicants are also responsible for paying the fee for independent financial analysts retained by FRA to review the applicant's past financial performance and revenue projections for loan repayment. This fee cannot exceed one-half of one percent of the total loan amount ($250,000 for a $50 million loan).

The interest rate for RRIF loans is set at the rate of Treasury bond interest for the equivalent term as the loan repayment period. For example, a loan approved on February 10, 2011 to be repaid over five years would require a 2.4 percent interest rate; a 30-year loan approved on the same day would require 4.75 percent. These are much more favorable interest rates than most small railroads would have access to in the private sector financial market (if they could get credit at all). Borrowers can structure repayment periods for as long as 35 years, which is the same loan period limit as under the TIFIA program. Additionally, repayment of the loan may be deferred as long as five full years after the loan has been disbursed. However, no RRIF loan recipient has been granted this deferred payment option.

The RRIF Application and Review Process

According to the FRA, it takes an average of 13 and a half months to process a RRIF loan application, from the time the application is submitted to the closing date of the loan. There is a statutory deadline for considering and approving or disapproving a RRIF loan of 90 days after a complete application has been submitted. The FRA has stated that they believe the most common factors in slowing down loan evaluations and decision-making are: (1) the National

Environmental Protection Act (NEPA) process; (2) changes in project scope requested by the loan applicant; (3) limited personnel and technical sophistication on the part of short line railroads, which leads to delays in returning requested information to the RRIF program office; and (4) complexity of some of the proposed loans.

There are three entities who participate in reviewing and ultimately approving or disapproving a RRIF loan application:

1. Federal Railroad Administration (usually working with a contracted independent financial advisor)

2. The DOT Credit Council. This Council is composed of 13 members including: **the Deputy Secretary who serves as the chair**; the Assistant Secretary for Budget and Programs and Chief Financial Officer; 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; the Director of the Office of Small and Disadvantaged Business Utilization; **the Chief of Staff, Deputy Chief of Staff, and Counselor to the Secretary** (these last three are at-large members appointed by the Secretary). Credit Council members that are listed in **bold** were added in December 2009 under a secretarial order expanding the Credit Council from 9 to 13 members and naming the Deputy Secretary as chair.

3. Office of Management and Budget (OMB)

These are the major steps in the evolution of a RRIF loan:

- **Preapplication Meetings:** Potential RRIF applicants meet with FRA in advance to review the requirements for an application and the likely costs and terms of financial assistance, including compliance with NEPA, Section 4(f) of the Department of Transportation Act, and Section 106 of the National Historic Preservation Act, 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 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 preapplication meetings. FRA reviews the material submitted and identifies where additional material will be required to complete the application. When FRA deems a loan application complete, the statutory 90-day period for approval or disapproval of the RRIF loan is begun.

- **FRA's Analysis:** FRA initiates its analysis of applications once sufficient information has been submitted, and, after an initial review by the DOT Credit Council, recommends the hiring of an independent financial advisor (IFA) and identifies any issues that need to be addressed in the review of an application. FRA works with the IFA to undertake a

detailed review of the financial aspects of the proposed project including reviewing the applicant'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. 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. At some point during FRA's analysis process, the agency briefs the DOT Credit Council a second time, to update the Council on the ongoing review and analysis of the application.

Upon completion of the analysis of the application by FRA staff and the IFA, 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.

- **Final DOT Credit Council Review**: The proposed loan is presented for a third time to the DOT Credit Council. 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.

- **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, 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, OMB reviews and approves subsidy cost estimates for Federal credit programs.

- **Financing Agreement:** Assuming that the Administrator decides to provide the requested financial assistance, FRA notifies the applicant of 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). FRA and the applicant then finalize the terms of the financing agreement and all other necessary legal documents.

- **Project Implementation:** Once the agreement is signed, funding is made available to implement the project and is provided only as needed. This helps FRA assure that the project is undertaken in the most timely and cost effective manner possible. 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.

Recent Changes to RRIF Policy at DOT

On September 29, 2010, the FRA published a notice in the Federal Register regarding the consideration and processing of applications for RRIF loans. This notice was published not to reflect recent changes in law (the only amendment to the RRIF program in the 2008 Rail Safety Improvement Act was to change the maximum loan repayment term from 25 years to 35 years), but to "clarify" DOT's management of the program.

Two important changes were set out in the Federal Register notice regarding FRA's priorities in considering RRIF loan applications. First, FRA stated that, in addition to determining the financial soundness of a loan application, the agency will also perform a cost-benefit analysis to examine the public benefits derived from the loan relative to the amount of financial assistance requested. Layering on an additional analysis of the costs and benefits of a proposed RRIF loan is superfluous, given that the underlying law specifically lays out loan eligibilities and priorities, and that the financial risk to the government is so thoroughly mitigated by the credit risk premium, collateral requirement, and close scrutiny and analysis of the financial viability of the loan by FRA, the IFA, DOT Credit Council, and OMB.

Second, the notice made it clear that loans requested for the purpose of refinancing debt will not be looked upon as favorably as loans requested for direct capital improvements, and that loans requested for refinancing will be required to "demonstrate significantly more than minimal public benefit from the transaction. Circumstances .... where a public agency is acquiring a rail property for direct public benefit (e.g. use for public transportation) are more favorably considered."

These changes, as well as other priorities set forth in the guidance, go beyond the letter of the law and, in some cases, are contrary to Congressional intent. The RRIF statute is specific. "The Secretary ***shall*** provide direct loans and loan guarantees" (45 USC 822(a), emphasis added) and loans "shall be used to (A) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops; (B) refinance outstanding debt incurred for the purposes described in subparagraph (A); or (C) develop or establish new intermodal or railroad facilities." (45 USC 822(b))

Section 822(c) of title 45, United States Code lays out the priorities that FRA must consider when evaluating RRIF loan applications. Priority is to be given 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) materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system. These priorities in the law are not ranked from highest to lowest, nor do they replace the statutory eligibilities in section 822(b). However, the September 29th

guidance ranks some priorities more highly than others, reorganizes, and clarifies these priorities. Some of the clarifications in the FRA guidance actually replace clear Congressional intent with Administrative policy direction that can have the overall impact of decreasing participation in the RRIF loan program.

On October 15, 2010, Representatives Mica and Shuster wrote to DOT Secretary LaHood objecting to the RRIF policy notice. The letter notes the slow and cumbersome RRIF loan consideration and approval process, and questions why the DOT Credit Council has to review loans at three separate points during consideration of the loan application. The letter describes the RRIF program as "woefully undersubscribed" and advises FRA to "focus on making loans for any eligible purpose when the borrower is able to provide appropriate financial documentation."

INVITED WITNESSES

The Honorable John D. Porcari
Deputy Secretary
U.S. Department of Transportation

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

William A. Callison
President
Wheeling & Lake Erie Railway

John Fenton
Chief Executive Officer
Metrolink

Michael Sussman
President
Strategic Rail Finance

Thomas P. Loftus, Jr.
Chairman, Public Private Investment & Project Financing Council
American High Speed Rail Alliance
Principal, The Seneca Group LLC

SITTING ON OUR ASSETS: REHABILITATING AND IMPROVING OUR NATION'S RAIL INFRASTRUCTURE

THURSDAY, FEBRUARY 17, 2011

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

The subcommittee met, pursuant to notice, at 11:28 a.m., in room 2167, Rayburn House Office Building, Hon. Bill Shuster (Chairman of the subcommittee) presiding.

Mr. SHUSTER. The subcommittee will come to order. Thank you, Mr. Secretary, for being here with us today, and all of our other witnesses. I look forward to hearing from all of you.

This is the first subcommittee hearing—Railroads, Pipelines, and Hazardous Materials—and we have got a number of new members, and I want to quickly introduce the—or go through the list of the Members, and then, of course, introduce some of our freshmen that are here, which—I'm sure they are going to make a significant contribution to not only the full committee, but the subcommittee.

We have a vice-chair, and our new vice-chair is Tom Reed from New York, former mayor of Corning, New York. We appreciate having you here. Also, Gary Miller from California is on the subcommittee; Sam Graves from Missouri; Shelley Moore Capito from West Virginia; Jean Schmidt from Ohio; Candice Miller of Michigan; and our new freshman, our Jaime—it's Jaime Herrera Beutler, someone has got this reversed. And it is "Beutler," not—that's what I thought.

But Jaime Herrera Beutler, from Washington; Randy Hultgren, from Illinois—he is—Randy is not here; Lou Barletta from Pennsylvania, former mayor of Hazelton, Pennsylvania—Lou, good to have you here; Larry Bucshon from Indiana—Dr. Bucshon, good to have you on the committee; Billy Long from Missouri—Billy, welcome; Pat Meehan from Pennsylvania, who is not here at the moment; Richard Hanna of New York—Richard, a successful businessman, and great to have his insights on the committee; Stephen Fincher, who is not here, from—where is he from, Frog Jump, Tennessee, so—interesting place to be from; Jeff Landry from Louisiana, coastal Louisiana, and Jeff Denham, who is from California, and also he is going to—he chairs the Subcommittee on Economic Development, Public Buildings, and Emergency Management—Jeff's on the committee.

I would also like to welcome my good friend Corrine Brown, as the ranking member. We worked together for the past four years, and I look forward to continue to work closely with her on a bipartisan manner to improve rail, pipelines, and, of course, the movement of hazardous materials in the country.

The hearing today, though, is dealing with the RRIF program, the Railroad Rehabilitation and Improvement Program, known as the RRIF program, which was originally created in 1998 as a dedicated source of loan funding for railroads' infrastructure needs. It was limited to $3.5 billion in total outstanding loans. At that point the Congress recognized the need for strong freight railroad improvement program, and increased that amount to $35 billion.

We also strengthened the RRIF program in the Passenger Rail Investment and Improvement Act of 2008, by increasing the repayment period from 25 years to 35 years.

It's also important to note that in the history of the program, we have not had a single default of any of the RRIF loans, and I think there has been one payment that was delayed, and that was because of a flood or some natural disaster occurred.

Despite the efforts of the committee, the RRIF program is in serious need of improvement. Chairman Mica has indicated he is interested in pursuing improvement to a number of rail issues, and a rail title to the transportation and reauthorization bill, and addressing the issues in the RRIF program are a top priority.

Let me point out these loans cost the U.S. Government nothing. Loan applicants pay credit risk premiums, and full collateralize the loans. The cost of the RRIF program to the taxpayer, again, is zero.

However, only $400 million is currently out in loans, utilizing just a little more than 1 percent of the program's capacity. And we must improve access to this program. In 2010, the Department of Transportation approved only 2 loans in 2009—2 loans. And in 2008, only 1 loan. Despite require for Department of Transportation to consider and approve a loan application in 90 days, the average loan processing time for the FRA is 13.5 months. That needs to be improved.

Additionally, the FRA released guidance for the RRIF loan program last September that could further hinder the program. Chairman Mica and I have expressed our concerns to this new guidance last October.

I look forward to exploring the concerns of the programs with our panelists today. At a time when our Nation is doing all that it can to spur economic activity, the RRIF program stands out as a potential model for how government can encourage economic growth. Because RRIF is an innovative loan program, not a grant program where the government merely hands out cash, the private sector has the incentive to invest money in projects that will pay a financial dividend down the road.

At today's hearing I am interested in exploring ideas for improving this important program. Specifically, I am interested in ways we can reform the program to leverage Federal funding with private sector resources. I am also interested in ways that we might be able to apply the RRIF program to improve the eligibility for high-speed rail projects. To quote Chairman Mica, "We must stop sitting on our assets."

I look forward to working with the chairman and the members of the subcommittee to improve and better utilize the RRIF program, and look forward to the testimony of today's witnesses.

And I should have started out by saying I apologize for us being late, but a pesky little thing about votes we had to take, so—and I don't think—we're going to be good for votes for a couple of hours, so we should be able to move through that.

I have a—I ask unanimous consent to insert in the record a statement by Representative Petri. Without objection, so ordered.

And a statement—or testimony for the record—by the Kansas City Southern Railroad. And without objection, we will put that into the record. So ordered.

[Hon. Petri's statement is on page 60; testimony for the record by Kansas City Southern follows:]

BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

SITTING ON OUR ASSETS: REHABILITATING AND IMPROVING OUR NATION'S RAIL INFRASTRUCTURE

WRITTEN TESTIMONY OF KANSAS CITY SOUTHERN

FEBRUARY 17, 2011

BEFORE THE U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

SITTING ON OUR ASSETS: REHABILITATING AND IMPROVING OUR NATION'S RAIL INFRASTRUCTURE

FEBRUARY 17, 2011

WRITTEN TESTIMONY OF KANSAS CITY SOUTHERN

Chairman Shuster, Ranking Member Brown, and members of the Subcommittee, thank you for providing Kansas City Southern ("KCS") with the opportunity to offer written testimony in connection with today's hearing to address the rehabilitation and improvement of our nation's rail infrastructure. KCS's testimony will focus upon a critical and effective vehicle used toward the rehabilitation and improvement of our national rail system – the Railroad Rehabilitation and Improvement Financing Program ("RRIF Program"), authorized by Congress in 1998 by the Transportation Equity Act for the 21st Century ("TEA-21"), and amended in 2005 by the Safe, Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users ("SAFETEA-LU"). This hearing is quite timely, and KCS is grateful to Chairman Shuster and Ranking Member Brown for their willingness to assess the importance of the RRIF Program.

I. RRIF Is A Vitally Important Program Warranting Continued Support

The nation's railroads, large and small, face major challenges. Government has imposed upon the industry new and costly safety and security regulations. At the same time, railroads are responding to shipper service demands through expanded infrastructure and technological innovation. Railroads such as KCS are doing their best to respond to these challenges and to meet present and future demand, but railroads have only so much capital available in any given year, particularly when obligated to expend considerable capital to adhere to new safety and security requirements. Smaller railroads especially, like KCS[1], must have access to additional capital with

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[1] One only needs to look at the 2009 annual domestic revenues for the Nation's Class I carriers to understand that there is a dramatic difference between KCS (and CP) and the larger carriers:

terms that make it possible to meet these new safety and security requirements while at the same time responding to their maintenance, capacity and technological needs. This is one reason why RRIF is so important.

The RRIF Program extends financing at attractive terms for railroad construction and rehabilitation projects that aid commerce and promote the environment. Many projects that RRIF has funded are projects that might not have come about without the favorable interest rates and longer loan terms offered under the RRIF Program. For the most part, commercial lenders are not able to match the beneficial terms of RRIF program loans, and so private lending mechanisms do somewhat limit more aggressive rail infrastructure spending.

The RRIF Program is neither an earmark nor a grant program. Rather, the RRIF Program provides for the issuance of loans paid back through private sector funds. It does not add to the deficit unless there is a default, but to our knowledge, none of RRIF Program loans thus far issued have ended in default.

In KCS's experience, the RRIF Program is well-managed and is used strategically to direct funds to projects that might not otherwise be delivered. The Federal Railroad Administration ("FRA"), the modal administration that oversees the RRIF Program and other such programs has, along with the TIFIA Joint Program Office and the Innovative Program Delivery Office, been instrumental in providing needed assistance and technical advice when called upon. In short, FRA is to be commended for its oversight of the RRIF Program and for the cooperative spirit in which it has dealt with railroads seeking to obtain funding through this loan program.

The RRIF Program allows railroads to leverage capital that could not otherwise be used as efficiently, as quickly, or as easily. The program also benefits from private sector due diligence, ratings, and predictability in financing. Many of the RRIF Program-funded projects have delivered substantial economic benefit, aided the environment (by promoting or expanding the use of rail transportation), reduced rail and highway traffic congestion, enhanced rail system capacity, improved safety, and delivered service efficiencies of service benefits that would not have occurred without the availability of RRIF Program funds. Future opportunities for railroads and the government to achieve more of the same would be lost if the RRIF Program were to be discontinued.

BNSF Railway	$ 14.1 billion
Union Pacific Railroad	$ 14.1 billion
CSX Transportation, Inc.	$ 8.2 billion
Norfolk Southern Corporation	$ 7.9 billion
Canadian National Railway (U.S. Operations)	$ 1.9 billion
The Kansas City Southern Railway Company	$ 860 million
Canadian Pacific Railway (U.S. Operations)	$ 699 million

RRIF-funded projects promote the most fuel-efficient and environmentally-friendly mode of land transportation – rail. Access to RRIF Program financing at or near long-term U.S. Treasury rates, fosters rail projects that, although very beneficial, might not otherwise be financially practicable if railroads had no other option but to secure private sector funding. For these reasons, the RRIF Program is good for the nation's increasingly important rail network, our economy, and our environment. Because the RRIF Program is a catalyst for to expanded infrastructure, KCS enthusiastically supports the program, and asks that Congress continue to do so as well.

II. KCS Has Experience With And Has Benefitted From The RRIF Program

KCS is the smallest of seven Class I railroads in North America, with lines connecting Kansas City and St. Louis in the Midwest with Dallas, New Orleans, and other communities along the Gulf Coast. KCS owns The Texas Mexican Railway Company ("Tex Mex"), a Class II carrier linking the vital U.S.-Mexico gateway of Laredo with BNSF Railway (BNSF), Union Pacific Railroad Company (UP), and the KCS system. KCS is strategically positioned at the heart of the nation's rail network, and, at places, connects the two large carriers in the east (Norfolk Southern Railway and CSX Transportation) with the two large carriers in the west (BNSF and UP). Through its network and by way of strategic ventures with other carriers, KCS is a strong, although much smaller, competitor to these larger eastern and western carriers. Through its ownership of Tex Mex and of Kansas City Southern de Mexico ("KCSM"), KCS is a major factor in NAFTA-oriented trade flows.

As the smallest Class I rail system, KCS does not always find it easy to obtain the capital to undertake infrastructure improvements as it, shippers, and KCS-served communities would like. Without the RRIF Program, certain KCS infrastructure improvements would have been delayed or set aside. For example, in 2005, Tex Mex obtained a $50 million RRIF loan for major safety and infrastructure upgrades to its key NAFTA trade corridor, allowing Tex Mex to significantly improve its rail lines, improve track safety, increase operating efficiency, and expand capacity to accommodate growing NAFTA freight rail traffic demand.

Of particular note, Tex Mex's RRIF Program loan enabled it to undertake main line track improvements, including the installation of new rail, crossties, and bridges, and the construction and lengthening of sidings. It also permitted KCS to make certain yard improvements as well. A portion of the loan refinanced prior debt incurred for previous Tex Mex capital expenditures for infrastructure improvements. As indicated above, the improvements funded through a RRIF Program loan significantly enhanced safety, increased capacity, and improved transit times, thereby reducing the environmental impacts associated with providing transportation service. The significant public and private benefits resulting from the Tex Mex physical plant improvements probably would not have been achieved if not for the RRIF Program.

In view of the RRIF Program's advantages, KCS was seeking another RRIF Program loan – this one to re-finance infrastructure improvements that KCS has completed along its strategic Houston-Laredo corridor. Specifically, KCS was interested in refinancing over $170 million in private debt incurred in reactivating a long-out-of-use line between Rosenberg and Victoria, Texas. The privately-funded project eliminated KCS route circuitry, reduced operating costs, restored local rail service to several communities, and expedited the flow of international through traffic.

KCS's refinance application was done with the full cooperation of FRA staff and KCS was pleased with the information flow and attentiveness that its application received from FRA. However, on September 29, 2010, FRA issued a Federal Register Notice entitled "Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program" ("Notice"). In light of the Notice and due to changing market conditions and new safety and regulatory requirements imposed on the rail industry, KCS is now considering a refocus of the scope of its application. Instead of seeking to refinance past infrastructure improvements, KCS is exploring a RRIF loan for the financing of certain public safety projects, such as grade crossing improvements and elements needed for future positive train control, and for new environmentally friendly "green" locomotives. FRA staff has accommodated this shift in focus and is currently working with KCS on obtaining the necessary supplemental information. In light of the public safety and other public benefits that would flow from approval of such a refocused KCS's grant application, KCS believes that a loan award would be decidedly in the public interest.

To the extent future RRIF loan applications are for such public safety purposes, especially government-mandated capital obligations such as positive train control, they should be considered per se in the public interest and such applications might even be fast-tracked with additional incentives such as waiver of any credit risk premium assessment that would normally be required for an application that was not primarily for public safety purposes or to meet government-mandated capital obligations.

KCS believes that overall, the FRA's implementation of the RRIF program has been consistent with the statutory objectives, especially given the overall budget constraints and need for sign-off by other executive agencies, such as the Office of Management and Budget ("OMB").

III. The 2005 Amendments Strengthened The RRIF Program

In 2005, Congress, as part of SAFETEA-LU, passed various amendments to broaden the scope, appeal, and usage of the RRIF Program. KCS supported these amendments, because they made the program more accessible to smaller railroads, which find it more difficult to obtain capital on terms equal to those offered to larger carriers. These amendments also improved the RRIF Program's application and review

process to make them more in keeping to the program's original intent. Of particular note, section 9003 of SAFETEA-LU amended the RRIF Program to –

- Expand the types of entities eligible for RRIF Program funds, including certain types of shippers and commuter railroads;

- Give priority to projects that "enhance service and capacity in the national rail system," and "materially alleviate rail capacity problems which degrade the provision of service to shippers and would fulfill a need in the national transportation system;"

- Expand the scope of outstanding RRIF Program financial assistance from $3.5 billion to $35 billion, and increase the amount reserved exclusively for small and regional railroads from $1 billion to $7 billion (the amendments also prohibited the Secretary from placing any limit on the amount that could be used for one direct loan or guarantee);

- Clarify that the Secretary could not require an applicant to provide 100% collateral, and that any collateral provided must be valued at going concern value after giving effect to the present value of the improvement;[2]

- Specifically authorize the Secretary to allow the postponement of RRIF Program loan repayment for up to six years, thereby allowing loan applicants to begin earning benefits from the RRIF-financed improvement to facilitate loan repayment, particularly for smaller carriers making major investments;

- Eliminate the requirement that an applicant first establish its inability to obtain funding from private sources before qualifying for a RRIF loan. Today, an applicant can apply for a RRIF loan even if there may be private sector financing alternatives available (again, prior to this change, FRA required applicants to demonstrate that they had sought financing at terms equivalent to those available under the program from a commercial lending institution and had been rejected);

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[2] Before the SAFETA-LU amendments, applicants were pressured to provide collateral worth at least 100% of the loan amount. This collateral requirement was not supported by any statutory language, but was a product of program oversight by OMB, and it eliminated the usefulness of the program for most potential borrowers. Today, applicants are not required to provide any collateral, but if they do not, then the applicant will pay a higher risk premium, as would reasonably be expected by any lender. (The value of the collateral is important in the calculation of the credit risk premium, or "CRP." Usually, the higher the value of the collateral offered, the lower the CRP.) In addition, the solid evaluation processes established by the DOT Credit Council ensures that the best applicants are always selected, and ensures that risk is minimized. We know of no defaults under the current system.

- Impose a time limit on approving a complete application (FRA has 90 days after receipt of a complete application to approve or disapprove an application); and

- Clarify that FRA can use funds supplied by a RRIF Program applicants to evaluate an application, including funds to pay the costs of contractors undertaking an independent financial, engineering, and market analysis of an application (streamlining the application review process significantly).

The 2005 RRIF Program amendments made the program more accessible to smaller railroads like KCS that depend upon this federal loan program to support certain investments in rail safety, security, and capacity. Of the 2005 program improvements, KCS believes that expanding the program to $35 billion, relaxing the collateral requirements, and eliminating the prior denial of private loan financing prerequisite for a RRIF loan eligibility were the most significant. Congress should abide by the 2005 SAFETEA-LU amendments, and should perhaps consider further improvements.

IV. Congress Should Consider Further RRIF Program Improvements

Overall, KCS has been pleased with the RRIF Program. The RRIF Program initially lacked certain favorable attributes, but it has made significant progress since then – progress largely facilitated by the 2005 program improvements. Nonetheless, as much as KCS and its Texas-based subsidiary, Tex Mex, have participated in the RRIF Program to date with generally good success, we believe the program would benefit from additional improvements. As Congress takes this opportunity to assess the avenues by which federal policy can best facilitate rail infrastructure expansion and enhancement, KCS submits that the RRIF Program has delivered and can continue to deliver many rail infrastructure benefits that might not otherwise be achieved or that would be achieved at greater costs to railroads, the communities that they serve, and rail shippers. That said, however, KCS believes that certain aspects of the RRIF Program should be modified to generate maximum benefits that are in the public interest including easing of traffic congestion, improving the environment, safety, and freight traffic capacity.

Specifically, Congress should consider the following issues:

1. Accelerate RRIF Loan Environmental Review

The law provides that any "major or significant federal action" or federal discretionary decision by an agency requires that agency to comply with the National Environmental Policy Act ("NEPA"). DOT and FRA believe that a RRIF loan award qualifies as a "major or significant federal action" or discretionary federal decision triggering the need for NEPA analysis. To ease this burden, FRA has adopted categorical exclusions for certain projects that are excluded from the mandatory and costly Environmental Assessment ("EA") or Environmental Impact Statement ("EIS")

processes. But KCS submits that the scope and application of these categorical exclusions could be expanded. For example, in general, FRA maintains that any RRIF Program loan facilitating new construction, even construction projects taking place on existing railroad right-of-way and those that would replace existing infrastructure, generally require an EA or EIS. In the vast majority of cases, were it not for the proposed use of a RRIF Program loan, the loan applicant would simply have to obtain the necessary environmental permits through existing procedures without the need to undertake an EA or EIS. Thus, while FRA must process a RRIF loan application in 90 days, the EA or EIS process can take years and can cost hundreds of thousands or even millions of dollars to complete. DOT/FRA application of NEPA can therefore insert substantial delay and costs into the process, all of which thwarts the timely and cost-effective delivery of important rail transportation infrastructure.

To resolve this problem, FRA should expand the scope of its categorical exclusions so that that new infrastructure to be constructed on existing railroad rights-of-way or to replace existing infrastructure would fall within a categorical exclusion.[3] Similar issues have emerged in connection with the federal highway system where High Occupancy Vehicle lanes are converted to High Occupancy Toll lanes, without changing the "footprint" of the existing facility. In those cases, despite application of NEPA, the projects qualified for a categorical exclusion and applicants were not required to undertake an extensive and expensive EA or EIS process. .

Congress, with FRA input, should examine the impact of DOT's current interpretation of the agency's NEPA obligations on the delivery time and costs of a RRIF-financed project, and Congress should direct DOT to expand the number of projects qualifying for a categorical exclusion. Overly-expansive and unnecessary application of EA and EIS requirements undermine the very purposes of the RRIF Program and impair the railroad industry's use of this otherwise advantageous funding mechanism. Indeed, the lengthy and costly delay associated with environmental review is one of the reasons why the RRIF Program may not be as widely used as first expected. Many railroads may find that the benefits of a RRIF Program loan are outweighed by the time and expense of the NEPA process.

KCS also would recommend different levels of environmental review, depending upon the project's scope and nature. Certainly the rehabilitation of an existing rail line or the addition or extension of a passing siding should not be held to the same environmental review as the construction of new tracks into completely new areas that have never had rail service. In short, Congress should direct DOT to provide for categorical exclusions for rail construction projects that take place in existing rights-of-way or that replace existing infrastructure.

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[3] This might apply, for example, to a RRIF Program loan to intended to restore rail service on a "rail-banked" railroad right-of-way under 16 U.S.C. §1247(d).

2. Adjust Collateral Requirements

SAFETEA-LU amendments established that no RRIF Program loan applicant must supply 100% collateral, but it provided that the applicant must pay a higher CRP if it does not offer 100% collateral. In practice, however, FRA still expects collateral at least equal to the face value of the requested RRIF loan. If an applicant can prove itself capable of servicing its debt and paying the CRP, FRA should not demand any collateral – this is the intent of the SAFETEA-LU amendments. Similar federal loan programs for highway infrastructure projects do not require collateral obligations and, to date, no known defaults have occurred in highway TIFIA loans. Accordingly, Congress and FRA should reexamine the RRIF Program collateral policies, especially in light of other credit-worthiness measures available to the industry such as financial ratios, debt ratings, due diligence reviews, and Credit Council analysis.

In addition to reexamining of the policy favoring the use of 100% collateral, FRA should revisit how it values collateral. SAFETEA-LU directed FRA to move away from measuring collateral on a "net liquidation value" ("NLV") basis and embrace valuation according to a "going concern" methodology. KCS endorsed that change. That change was intended to make the RRIF Program more accessible, but it is not clear that the methodology change has yet to be fully realized.

Using NLV for collateral valuation discourages the use of RRIF funds to finance infrastructure projects (as opposed to equipment), because most infrastructure projects involve significant sunk construction costs that create substantial going concern value. It is unlikely that such infrastructure improvements would be sold in the private marketplace based merely on the component materials' NLV.

There is relatively little difference in using going concern value and NLV for RRIF Program loan requests for the purchase of equipment. RRIF funds are attractive for financing equipment, but railroads usually can obtain financing for equipment from various private sector sources more readily than they can for infrastructure projects. Because there is a well-established market for railroad equipment finance, there is little difference between going concern and NLV for railroad locomotives or rolling stock. The same cannot be said with respect to infrastructure finance.

Infrastructure projects are treated differently in the financial marketplace. Due to the fixed and often unique nature of infrastructure projects, such projects are more difficult for private lenders to understand and evaluate, and it is difficult to measure NLV. Using a going concern methodology provides a more accurate measure of the true value of the collateral and more closely aligns the RRIF Program with the evaluation techniques utilized in other sectors.

Congress should encourage DOT and FRA to implement the directives of SAFETEA-LU, and use a going concern valuation methodology when assessing the value of certain infrastructure as collateral. Use of going concern valuation would make

funds available where they are needed most, and would allow for maximum leverage and use of RRIF funds.

3. Loan Refinancing Should Be Allowed

Under the terms of the statute, RRIF Program loans are available to refinance outstanding debt incurred to acquire, improve, or rehabilitate rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops. The provision is sensible, because refinancing at RRIF Program interest rates would improve borrower cash flow, freeing up additional capital for other infrastructure investment. But, unfortunately, as the FRA's September Notice made clear, FRA, perhaps at the insistence of OMB, has issued a policy statement that disfavors refinance applications. .

As indicated earlier in KCS's testimony, KCS had pending before FRA a RRIF Program loan application which sought to refinance private debt incurred in the process of undertaking improvements to KCS's Rosenberg-Victoria main line. This recently-completed railroad infrastructure project has yielded undisputed benefits to KCS and its shippers alike, and the economic advantages that would flow from RRIF refinancing are equally undisputed. Yet, in part due to the Notice and in part due to a change in capital expenditure priorities, KCS is no longer pursuing its refinance application. KCS is instead now focusing on safety (PTC) and environmentally friendly equipment purchases. Despite this switch in emphasis, it is clear that a major obstacle between KCS and its ability to more aggressively fund other rail infrastructure projects along its system is the inability to refinance comparatively higher cost of debt when compared to a RRIF loan. A RRIF loan could, and would, bridge this gap.

Congress should examine whether DOT Credit Council and/or OMB attitudes toward using RRIF loans as a refinancing vehicle are appropriate, and if not, Congress should encourage the use of RRIF Program funds for refinancing, or allocate additional funds for refinancing purposes. Such steps would ensure that RRIF Program applicants seeking to refinance existing debt in keeping with the purpose of the RRIF Program are not turned down. It may be true that several new projects are attractive candidates for funding, but Congress should instruct RRIF Program decision-makers to weigh the important benefits that are realized when an existing project is refinanced at a lower cost, particularly where the loan applicant has committed to use the savings it would achieve through RRIF loan financing toward other transportation improvements. KCS commends the DOT Credit Council for its work in approving RRIF Program applications, but Congress and DOT should consider ways to increase the use of the RRIF Program to refinance projects originally funded by more costly private loans, especially when additional benefits would be realized thereby.

4. PTC Applications Should Receive Priority

As mentioned above, Congress should consider making RRIF loan applications that are primarily for public safety improvements or to meet government-mandated capital obligations such as positive train control, they should be considered per say in the public interest and such applications should be fast-tracked with additional incentives such as waiver of any credit risk premium assessment that would normally be required for an application that was not primarily for public safety purposes or to meet government-mandated capital obligations. This is justified due to the overwhelming public interest being served with such public safety investments and because a government-mandated investment, such as positive train control, is per se in the public interest.

In addition to the four broad concerns outlined above, there are likely other issues with the existing program that others may raise in the course of this hearing. The items covered above, however, are those that KCS believes need the most attention and warrant improvement. There are numerous ways to resolve these issues, and, toward that goal, KCS encourages frank discussion between Congress, OMB, and DOT to resolve these issues and refine RRIF Program policy. If Congress feels that KCS can help contribute to those efforts, KCS stands willing to do so.

V. THE RRIF PROGRAM SHOULD BE FULLY SUPPORTED

As noted, the RRIF Program has been a very valuable funding resource for KCS in rehabilitating vital rail capacity in south Texas along the growing NAFTA trade corridor. Without the RRIF Program, the Tex Mex system improvements would have been delayed, or perhaps never even delivered. In fact, KCS can testify that the program has provided access to funds that might otherwise have been unavailable. As a funding vehicle, the RRIF Program has accomplished its legislative purpose – to foster the rehabilitate rail lines and to provide a means to expand rail capacity where it is needed. Rail is fast growing in importance as both government and private sector planners look to rail transportation as an efficient, safe, and environmentally friendly way to move more freight, and the RRIF Program can serve as a key means to fund such expansion.

Unlike some other government funding mechanisms, the RRIF Program is not a hand-out, grant, or an earmark. The RRIF Program involves a rigorous application and approval process, and an applicant must prove its ability to pay back the loan it seeks. Accordingly, applicants bear the risk of ensuring that a RRIF loan-supported project bears the intended fruit, which motivates potential loan-seekers to advance projects that will yield solid benefits. As such, the RRIF Program ensures that government funds are directed to projects that are economically justified, and that can achieve the most transportation benefit for the buck. In our view, the RRIF Program is designed to ensure that the most cost-effective projects are considered and funded, and this is but another reason why there have been no defaults under the program.

The RRIF Program offers public benefits flowing from access to low interest financing vital to projects that might otherwise be out of reach for smaller railroads, like KCS. But the program also meets the public demand for accountability, private-sector risk and initiative, and the assurance that federal investment does not soak the American taxpayer. In short, the RRIF program is an excellent example of a government program helping to deliver new transportation infrastructure and real jobs at a time that both are so very important.

The RRIF Program, especially if further improved as set forth in this testimony and in keeping with the recommendations provided by others, will continue to help railroads take valuable steps toward meeting the transportation needs of the years ahead. With modest but important improvements, the RRIF Program can be shaped by Congress to enable railroads to fund vitally important rail transportation infrastructure, and, in so doing, produce key transportation benefits for the general public. For these reasons, KCS urges this Subcommittee to take action toward preserving, and indeed improving, the RRIF Program.

CONCLUSION

The RRIF Program has proven to be, and can continue to be, a valuable tool to achieve public benefits by harnessing private initiative with thoughtful, strategically-applied public funding. The RRIF Program promotes transportation infrastructure investment through a government loan system, not a grant. RRIF loans are repaid through private-sector debt service, resulting in significant long term fiscal savings to the government. Most importantly, the RRIF Program creates jobs now, expands our nation's infrastructure, and fosters a more efficient, safer, and environmentally friendly national transportation network. The RRIF Program is a win-win for the public and private sectors, and although the loan program has proven very successful, Congress can make the program even better going forward.

KCS appreciates this opportunity to provide written testimony, and it looks forward to working with Chairman Shuster, Ranking Member Brown, and this Subcommittee to further the objectives of the RRIF Program, and to develop the best means for funding our future rail infrastructure needs.

Mr. SHUSTER. Secretary Porcari, we're going to have him up first, by himself, and get some questions. I know you have got a very busy schedule.

So we will let him go, and then go to questions. But first—and then the remaining witnesses—we will excuse the Secretary and then have you come forward.

And with that, I yield to my good friend from Florida, Ms. Brown.

Ms. BROWN. Thank you, Chairman Shuster. It's very difficult to turn this gavel over again, but you know how things go around here.

Mr. SHUSTER. It's democracy.

Ms. BROWN. This is going to be temporary. I have been on both sides, and I think I like your side better, but we'll work on it.

Mr. SHUSTER. Which side is that, the Republican side? You could come on over if you want to.

[Laughter.]

Mr. SHUSTER. We'll make room for you.

Ms. BROWN. No, the chairman side. But I am looking forward to working with you this session to make sure that we continue to have the best freight rail in the country, and that we improve our passenger rail network in the world.

The Department of Transportation estimates that freight rail transportation demand will increase 88 percent by 2035. Recent studies show that the investment of $148 billion for rail infrastructure expansion over the next 28 years is required to meet the DOT projected demands. Without this investment, 30 percent of rail miles in primary corridors will be operating above capacity by 2035, causing severe congestion that would affect every region of the country, and potentially shifting freight to an already heavy congestion highway system.

For passenger rail, a working group for the national surface transportation policy and review study commission reported that the total capital cost estimate of establishing a national inter-city passenger rail network between now and 2050 is about $357 billion, or $8.1 billion annually.

However, the ability of railroad shippers and states to meet the rail infrastructure investment needs is becoming increasingly difficult in the current economic climate. And it nearly is impossible for anyone to get a traditional bank loan today. Congress made a big mistake when we bailed out the banks but did not stipulate that they had to lend it out. Now, instead of lending money, banks are calling in notes. The RRIF program can help railroads, shippers, and states meet their rail infrastructure investment needs. But I don't think we are taking full advantage of the program.

I meet with the railroads and others all the time, and they tell me time and time again how difficult it is, the application process, to navigate, how time consuming it is, how expensive. And, in the end, many of them tell me it's just not worth it. Well, we are working to do better, and we are doing better, and I am looking forward to hearing how much better we are doing.

The Draft Surface Transportation Authorization Act of 2009 makes significant changes in the RRIF program, which I proposed. The bill authorized the Secretary to reduce the interest to be paid

on direct loans provided to railroad, states, and local government, and eligibility for the sole purpose of installing Positive Train Control system, allowing applicants to use private insurance, in lieu of the credit risk premium, and allow applicants to pay the credit premium over the life of the loan.

The draft bill also authorizes appropriations to assist the Secretary in reducing the interest rate for loans using—for installing PTC (Positive Train Control).

I look forward to hearing from the witnesses on these proposals and other suggestions for improving the RRIF loan program.

Thank you very much. And I turn it back over to the chairman.

Mr. SHUSTER. I thank the gentlelady from Florida for her statement. And again, we're going to proceed with the Deputy Secretary, Mr. Porcari. Again, glad to have you here today.

And for those of you that don't know the Secretary—I think most people are familiar—he was a former secretary of Maryland's department of transportation, so he's somebody who's got real-world experience out there, and knows the problems and the hurdles that we face.

So, with that, Mr. Secretary, go ahead.

TESTIMONY OF JOHN D. PORCARI, DEPUTY SECRETARY, U.S. DEPARTMENT OF TRANSPORTATION

Mr. PORCARI. Thank you, Chairman Shuster, and good morning, Ranking Member Brown and members of the subcommittee.

On behalf of Secretary LaHood, I am honored to be here to talk about the RRIF program. RRIF has helped expand the Nation's freight capacity, preserve small town and rural rail connections, and improve our urban transportation capacity.

So, I would like to briefly focus my comments on three different areas: first, how RRIF has been used to increase freight capacity, improve rail connections, and generate new jobs and economic growth; second, the purpose of the RRIF notice that we published in the Federal Register on September 29th of last year; and third, the role of the Department of Transportation credit council, and the importance of innovative financing.

On item number one, the Department of Transportation has been working with freight providers to improve infrastructure, expand operations, and create jobs. Mr. Chairman, you mentioned one example, which was Iowa Northern, which received a $25 million RRIF loan to better serve ethanol producers near Fairbanks, Iowa. When the Iowa Northern railroad was severely damaged during a flood, the Department approved the railroad's request to defer loan repayments. That kept them in business, in part, because of the flexibility that we have in the RRIF program. Iowa Northern is now back on its feet, it has more than 160 miles of track and 100 employees.

But RRIF isn't only a benefit for freight; it's also helping to meet our urban mobility needs. Recently the Denver regional transportation district approached the Department about redeveloping the historic Denver Union Station, and the Department approved both a RRIF loan and a TIFIA loan together for Denver. And today, hundreds of people are at work right now on this intermodal project.

On the second point, to build on these successes the Department published guidance on the RRIF program last September for the first time. The intent was to provide transparency to the review process. We wanted to make it easier for interested parties to determine whether RRIF was the right fit for their needs. The notice does not endorse the previous administration's policy of constricting or eliminating the availability of credit through RRIF. To the contrary, we were trying to get the word out that we were back in business, and we want to promote and educate potential applicants about the RRIF process.

That brings me to my final point, which is the Department of Transportation's credit council. As it was restructured by Secretary LaHood, it also helps promote the RRIF program, and ensures consistency and predictability among the Department's credit programs. We have regular meetings of the credit council, where we peer review potential loans. By adding that kind of predictability to the process, we think it helps the timely decision-making on loan applications.

Under Secretary LaHood's leadership, the council strongly believes that credit-based financing can help address the Nation's infrastructure investment needs. We also believe, by the way, that the President's proposal for a national infrastructure bank will help promote further innovative credit-based financing. And in the current budget environment, credit programs enable the Department to leverage our dollars and finance more projects with the help of private investment.

If enacted, many of the RRIF-eligible activities will be able to compete for financing in the national infrastructure bank without paying that credit risk premium that the RRIF program currently requires.

In conclusion, credit-based financial assistance programs such as RRIF will grow in importance in the years to come. We will continue to work with the committee, with stakeholders, with industry, to ensure RRIF's future success. We share some of the frustration in marketing the program and getting the word out, and we are looking forward to collaboration and good ideas on how to do that better. And I am happy to answer any questions that the subcommittee might have.

Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you, Mr. Secretary. I guess we're going to have an opportunity to ask you a few questions, and then you're going to be replaced as we go forward with Mr. Yachmetz, who is the associate administrator for railroad policy and development, so—and if I could start off, the 13½ months that it takes, I mean, are we—are there efforts going forward to get that down to 90 days? What kind of—what can we expect to see that significantly reduced?

Mr. PORCARI. It's a fair question, Mr. Chairman. We are committed, as you know, to a 90-day process, from a completed application. And the front-end time has been the one that we really want to work on to shorten.

One of the purposes of the credit council is, rather than sequentially going back to applicants with a number of questions, to get everyone around one table, look at the application before it's actu-

ally an application, before it's formally submitted, try to understand all the nuances of it and all the variables, ask all the questions at once before a railroad, for example, puts hard money at risk through an independent financial advisor, and do that all at once.

So, we have regular meetings of the credit council to do that. We are dedicated to streamlining this process. We want to make it more consistent, predictable, and transparent.

Mr. SHUSTER. The other question that I have is that there are—some of the applicants have complained that the Department of Transportation's credit council has hijacked the RRIF process, has added to it a lot of time and effort that has slowed it down. Can I get your views on that? Are you looking at anything to try to streamline that?

Mr. PORCARI. Yes. As I mentioned, the credit council meets monthly. If the RRIF loan process is not sequenced so it fits in with the meeting schedule, we can also have meetings out of cycle—by phone, if we need to.

The credit council came about under the previous Secretary of Transportation, when some of the other department loan programs—the title 11 shipbuilding program, in particular—was in real trouble, where loans were made that, with a little more scrutiny, would have been either made differently or not at all. What we are trying to do is apply a consistent approach to evaluating these programs, so that applicants know up front whether they are likely to qualify for the program or not.

Mr. SHUSTER. Well, thank you. And one other question. And, you know, I discussed this the other day when we met, and you said in your testimony that the RRIF program can be used for passenger rail. So high-speed rail, if that were something that we were to move forward, is that—the potential is there for the northeast corridor to loan money for those—to that type of project?

Mr. PORCARI. Yes. The RRIF program can clearly be used for passenger rail. It can also be used, by the way, for Positive Train Control. It's not an application yet, but there is a very large project, DesertXpress, which will go from east of Los Angeles to Las Vegas, that we're in discussions with right now.

The credit council has looked at that and had some questions that the DesertXpress private operator is answering now. They're not yet eligible, because they need to complete their NEPA process and get Surface Transportation Board approval. Once they do that, if that goes forward, that alone would be in the $4 billion, $5 billion, or $6 billion range.

Mr. SHUSTER. Right, OK. Well, thank you. I now ask unanimous consent to put in the record Mr. Landry's statement for the record. And without objection, we will put that into the record.

And also, I should have also said that we're going to try to adhere as closely as we can to the five-minute rule, and so we make sure that the Secretary gets out on time.

So, with that, Ranking Member?

Ms. BROWN. Thank you. First of all, let me just say that I want to thank you. And you and Secretary LaHood and yourself is really one of the bright spots in the administration, as far as transportation and infrastructure. You have done a great job.

And I am just really outraged today about Florida and the governor's unwillingness to use Federal funds for the development of high-speed rail and the creation of good jobs in Florida over, what, 60,000 jobs is the project that we've been working on with—over—since the 1980s.

And I want to know, because I was on television this morning. The governor was saying that the state was at risk. Can—was there any financial risk for Florida, as far as the project is concerned?

Mr. PORCARI. Congresswoman, Secretary LaHood and I are extremely disappointed in that decision. Florida DOT did a very good job of eliminating both construction cost risk and operating cost risk in the way they structured the public/private partnership. The entire agreement was structured to eliminate any financial risk to the state. That's a fact. People are clearly entitled to their opinions about high-speed rail; they are not entitled to their own facts.

Ms. BROWN. So, the Federal Government put up, what, 90 percent of the project? And private was going to come in, it was a true public/private partnership?

Mr. PORCARI. It was a true public/private partnership. There is very strong interest from the private sector teams that clearly understood that they would have to design, build, operate, and maintain that system, and assume all financial risk. They were very willing to do that.

Ms. BROWN. Why would they be willing to do that? Because there were some questions about the ridership in this particular leg. But my understanding, it was because they wanted the Orlando to Miami leg to have the first right of refusal to participate.

Mr. PORCARI. Yes. First, for a private venture to put that kind of capital at risk, they typically do their own ridership studies, and I'm sure they convinced themselves, through their own due diligence, that it made sense. They're clearly interested in the right of first refusal, which was in the structure of the proposal for the Orlando to Miami leg, once Tampa-Orlando was built.

I can't think of a better example of a public/private partnership, where you have private capital at risk to build a project that will serve the already critical needs of Florida today, but more importantly, the even more congested Florida of the future.

Ms. BROWN. OK. You know, I understand that there was a new ridership study. Have you all gotten a copy of that? And that ridership study would show that the ridership would be an additional 15 percent?

Mr. PORCARI. We have not been given any formal copy of the updated ridership study. The state did this additional study, an investment grade ridership study. We have asked for that. It has not been provided. We have heard informally that the ridership is higher than in previous studies by about 15 percent.

Ms. BROWN. Well, I just want to thank you for your leadership. I understand that—you know, I work with Democrats and Republicans, it's very bipartisan—we've worked on this project for over 20—well, over 20, 30 years in Florida, 1980. Bob Graham put—I was on a study commission before I ever got elected, working to get high-speed rail in Florida.

Let me just ask you about the RRIF program. In 2006, President Bush proposed to eliminate the program. When Congress rejected that proposal, the Bush administration began a rulemaking to accomplish the same goal. But when President Obama took office, one of the first things he did was withdraw this ill-conceived rule.

Do you think that for some reason people don't see that that is not the administration's goal at this time, and why we don't get more applicants?

Mr. PORCARI. We are clearly frustrated that we are not successful in getting the word out as well as we should, and in trying to promote the program as much as we should.

The short line railroads, in particular, where they connect to the Class I railroads, are a critical part of economic development, in particular in the rural areas around the country. RRIF is one of the single best tools out there. And we just did a $56,000 loan, which is the smallest one we've ever done. But that grain loader in Mississippi is a very big deal for the 20 or 30 jobs that it creates. And we get that.

So, we share everybody's frustration but we are back in business on this. It is clearly creating and preserving jobs. But I don't think the word is out. And we know that we owe everyone a consistent, predictable, transparent process, so they're willing to go through that process and the time of getting a loan—especially the small railroads.

We will continue to work on that, and we look forward to working with everybody who has an interest in this.

Ms. BROWN. Thank you again for your leadership. I yield back the balance of my time.

Mr. SHUSTER. Thank you. And with that, I will recognize the vice chairman, Mr. Reed, from New York, for——

Mr. REED. Well, thank you very much, Mr. Chairman. And I would seek unanimous consent to offer my opening comments for the record. I believe we have five days.

Mr. SHUSTER. Without objection, so ordered.

Mr. REED. Thank you, Mr. Chairman. I would like to offer my comments that, first, the RRIF program, to me, seems to be an excellent program. It seems to be doing a great job when you go down into the weeds and take a look at it.

Mr. Secretary, we're going to hear from some applicants, I'm sure, later today. But from your perspective—I know we're down to 13½ months as the approval process timeline. We have a 90-day goal in the statute, is my understanding.

From the Department's point of view, what is the cause for not being able to meet that 90-day requirement in the statute?

Mr. PORCARI. Well first, to be clear, we do meet the 90-day completed application goal. But from an applicant's perspective, they really want to see it from the time they first think about a RRIF loan to when it's approved.

My observation of what has happened in the past is there has been a number of back-and-forths between the applicants sequentially asking questions.

Mr. REED. OK.

Mr. PORCARI. One of the things we're trying to do, sir, through the credit council, is think through all the potential questions and

variables up front at one time, give those to the applicant before an independent financial advisor is hired—which can be very expensive—so they can answer those questions all at once, get it into a completed application, and we can move forward.

We have been working very closely with the Office of Management and Budget, who has been very supportive on this. So I think that end of the process is squared away. I think the pre-application part of it is where we really need to work to compress the timeframe.

Mr. REED. And, Mr. Secretary, are you seeing any consistencies in applications that aren't complete, as to why they're not complete? Is there something that's routinely coming up, saying that we need additional information here, there, from the Department's point of view, that maybe we could highlight here to applicants as we go forward?

Mr. PORCARI. Some of the smaller short line railroads, for example, because they're privately owned, don't have audited financial statements. That's a requirement.

With very few exceptions, they have never been through this process before. So they are climbing a learning curve. They've only been in the commercial lending market before. So it's a brand-new process to them.

We try to tailor the amount of assistance we give them to their ability to do the application process themselves. For the $56,000 loan example I mentioned, we did the work all in-house, because if it's a $56,000 loan and you have to hire an independent financial advisor, it's not worth doing. So, we have tried to do that.

What we're searching for are ways through webinars, outreach, newsletters, any mechanism that's out there to give them a better sense of what will be required if they're thinking about a RRIF loan before they even start the process.

Mr. REED. OK, and you have those mechanisms in place? Are you moving forward with those mechanisms at the Department?

Mr. PORCARI. We are looking, actually, for ways through the American Short Line and Regional Railroad Association, or anybody else to do that.

Mr. REED. OK.

Mr. PORCARI. So we are very open to ideas and suggestions on it.

Mr. REED. OK. Because that dovetails with my next question. Because you had talked about—in your testimony about trying to do a better job promoting the program. Can you give me concrete examples of how the Department is going to promote this program into the industry?

Mr. PORCARI. One that I would like to pursue is just based on personal experience. In Maryland, with the Short Line railroads, we used them as a critical part of the state's economic development strategy. The statewide economic development people were very keyed into that. So, whether it was a grain elevator or a small manufacturer, they had their whole suite of grants, loans, loan assistance available for that. RRIF should be one of those tools that they have in their toolbox, and I know for a fact that we really haven't done everything we can to make the state economic development people aware of what's out there.

I am convinced that that also helps the Short Line railroad industry more broadly in each state, because that shows the value of that. You tend to focus on the Class I railroads. If the cargoes don't get to the Class I railroad via the short line, you haven't accomplished anything.

Mr. REED. OK. So you're going to move forward with notifying the state economic development agencies? Is that one of the promotional ideas?

Mr. PORCARI. Yes. We've talked about doing that through the National Governor's Association, through other professional organizations that might reach them more directly. And that's something that I am going to personally pursue.

Mr. REED. OK. Any other ideas to promote—the RRIF program?

Mr. PORCARI. Those are some of them. I think, again, if any other idea is out there, we want to promote it.

Mr. REED. OK. Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. Now I will recognize Mr. Barletta, if he has questions.

Mr. BARLETTA. Thank you, Mr. Chairman. How does the Department explain the priority for projects that enhance rail service to small communities and rural areas?

In a September 28, 2010, guidance, that priority has been understood as giving priority to projects "that support interconnected, livable communities." What is the connection, and how did livable communities find their way in the RRIF program?

Mr. PORCARI. In that announcement in the Federal Register, we tried to make sure that the strategic plan goals of the Department were clear. They were very congruent, they overlapped very well with the original criteria in the RRIF legislation. They're not exclusive, sir, in the sense that you need to meet all those priorities, and they're not an ordinal ranking in any way.

We believe that RRIF is one of the best tools we have for rural communities. If you look at the loan portfolio in RRIF, until the very recent past, that's typically what the loans have been.

And, in terms of livability, as part of our national outreach tour, we heard quite clearly from rural communities that livability is important to them, too. And it means, by the way, different things in different places. In the rural context, one of the issues that came up was it meant being able to age in place, having the kind of transportation facilities that would allow you to age in place in some of these communities that are losing population.

So, we have been very aggressive in making clear that any eligible RRIF application, as long as that money is going to the improvement of the railroad, is something that we would encourage.

Mr. BARLETTA. Thank you.

Mr. SHUSTER. You done, Lou? OK, that's all right. I wasn't paying attention, sorry, until the end of it. Thank you.

Mr. Bucshon, I will recognize you. And then after Mr. Bucshon, we will go to Ms. Richardson, if she wants to ask some questions. We will go to Mr. Bucshon first, then. OK, great. Mr. Bucshon?

Dr. BUCSHON. Thank you, Mr. Chairman. Just reading through the letter that was published, I mean, what I am trying to figure out is—and maybe this has been explained before—is why, all of a sudden, that the Federal Government essentially felt like they

had to add more layers of bureaucracy on top of the loan program by examining the cost benefit of a loan, I mean—and basically giving an opinion on whether you felt like it benefits the public.

A lot of us are here trying to figure out ways to take away layers of bureaucracy, and I'm trying to figure out why we're adding some in this area, especially when we're all here to promote development of rail and improvement, especially with the data that shows how we're going to be over-utilizing our current infrastructure in the future. Thank you.

Mr. PORCARI. It's a very fair question. Ironically, the purpose of the notice in the first place was to get the word out that we very much encourage RRIF loans. It was a change from the previous administration, which had actively discouraged it. In hindsight, the notice probably caused as much confusion as anything else.

But public benefit is one of the criteria that's in the original legislation. A very clear public benefit is providing a connection for goods to get from a manufacturer or an agricultural source, for example, to a Class I railroad. That is clearly a public benefit.

Dr. BUCSHON. If that was in the original, what were we doing before, before you guys have added what you have added on? What were we looking at before? I mean who was determining the public benefit and everything before the—you added another layer of bureaucracy?

Mr. PORCARI. It is not an additional layer, sir. In theory, the previous loans made by previous administrations, should have looked at the same criteria that were in the original legislation.

I can't speak for exactly how their process worked, but this is one of the better economic development tools that we have. We do understand that. And, in particular, for rural areas, where goods movement is important, it's probably the single best tool that we have. We understand that.

And want to streamline the pre-application process, because it is, by law, a 90-day process from a completed application. But what an applicant cares about is from the moment they think about a RRIF loan to the minute that they get the funding. And it's the pre-application process that we need to focus on.

Dr. BUCSHON. Could you describe to me the ways in which the previous administration actively were discouraging RRIF loans?

Mr. PORCARI. One very specific way is in the fiscal year 2006 Federal Railroad Administration budget. It says the administration proposes eliminating the program because the public policy need to subsidize private railroads is not clear. That's a pretty clear statement.

Dr. BUCSHON. Thank you. I yield back.

Mr. SHUSTER. Thank you. And I will recognize Ms. Richardson.

Ms. RICHARDSON. Thank you, Mr. Chairman. And it's always good to see you, Secretary. And thank you for your commitment to—as I say often in our committees—of getting out and seeing what's really going on where we have these projects.

My first question is a little specific to my district. We—ACTA had submitted a loan application, and I think I had shared this with your staff earlier in the week. And originally, as you know, your process, I think, speaks to about 90-day review, or something

like that. And in our process it's already taken 13 months. So, I was wondering what you were doing to look at addressing that.

And also—so, one, in terms of expediting the process; two, have you noticed any redundancies or unnecessary steps? And I think for a real solid project that has had great success, funding—you know, on time, under budget, the whole thing—it just seems like this process is a little cumbersome. What would you say to that?

Mr. PORCARI. First, I think ACTA, the Alameda Corridor project, which is a fantastic freight rail project serving the ports of LA and Long Beach with two Class I railroads, is one of the larger, more important freight rail movement projects in the country. It's an extremely complicated deal, the way it's been structured.

We are in the final processes of an $83.7 million RRIF loan for that. But going through that process, it clearly begged the question of whether the financial structure of ACTA was sustainable, over the long term. I think a financial analysis reveals that it is not.

What we are doing with this RRIF loan—which does provide short-term relief for the Alameda Corridor project—we're also making clear that we are going to need to work with them on a longer-term restructuring that—for, really, a 15- or 20-year period will put it on a sound financial footing. A year or two of reduced container movements from those ports imperils the whole economics of this, and we need to put it on a more sound footing.

Ms. RICHARDSON. OK. And then my next question is the President has already made such a commitment to I think what some of us think is a legacy in high-speed rail, and that's exciting, and it's long overdue. However, a lot in—long standing in the industry are concerned about what continual funding we can expect for the systems that we have already in place. What are your thoughts on that?

Mr. PORCARI. Well, first, just on the freight rail side, I neglected to mention before in the United States we have the world's best freight rail system. And if it wasn't here—Class I, Class II, Class III, as a system—if it wasn't here, just think about what our roads would look like, and what goods movement would cost us.

First and foremost, we want to make sure that we don't do any harm to that system and that we, in fact, improve it. On the passenger rail side, we know we're going to have 70 million more citizens in the next 25 years. We know it's 100 million in the next 40 years. If you look at the transportation system objectively, how else are we going to accommodate a portion of that growth? And that's really where the dual function of promoting freight rail and passenger rail comes together. We are convinced—and I think there is solid evidence behind the fact—we can do both, working with our private sector partners. We——

Ms. RICHARDSON. So—and I apologize, but I've only got a minute and 18 seconds—so are you saying you are equally committed to maintaining the funding options that we have available for our current systems, as well as the high-speed rail? Because I don't think they've been quite as balanced, thus far.

Mr. PORCARI. We are. And I think that if you look at the President's fiscal year 2012 budget proposal, it is solid evidence of the continued commitment for passenger rail. Not just high-speed rail,

but commuter rail, and some of the other really critical aspects of it.

Ms. RICHARDSON. OK. I am co-chair of the California high-speed rail caucus. I am supportive, but I am concerned about maintaining existing funding for our existing area.

My last question. I have got 40 seconds. If the President-proposed the national infrastructure bank becomes a reality, how do you envision the RRIF program fitting into the larger infrastructure funding program?

Mr. PORCARI. And——

Ms. RICHARDSON. Many of us have been supportive of that for quite some time.

Mr. PORCARI. The RRIF program could clearly continue. I think the national infrastructure bank would be more attractive to most applicants, because there is no credit risk premium requirement.

Ms. RICHARDSON. OK. I yield back. Thank you, Mr. Chairman.

Mr. SHUSTER. Thank you. I appreciate you adhering to the five-minute rule. We continue to move on. Mr. Long, I recognize you for five minutes.

Mr. LONG. Thank you, Mr. Chairman, and thank you, Mr. Secretary, for being here.

Mr. John Fenton of Metrolink points out in his statement a lack of coordination between the RRIF program's collateral requirements and the Federal Transit Administration policy prohibiting liens on property purchased with FTA funds.

How would you recommend addressing this problem, so that commuter railroads and other publicly funded agencies that have their assets purchased in part with Federal funds can participate in the RRIF program?

Mr. PORCARI. It's a difficult question, but a very valid one, because collateral reduces the credit risk premium for the RRIF program. I would be very happy to meet with him directly to try to do that. We're not allowed to subordinate RRIF loans to any other non-Federal debt, as well, which could also come into play here.

We're going to have to work through this on an individual case basis. Because on both sides of it, the law is clear. And if there is a way to do it at all, we would like to do that. I would like to meet with him.

Mr. LONG. I think it's a big problem. I think we need to——

Mr. PORCARI. And we have run into similar problems with combining different programs in the case of Denver Union Station, RRIF and TIFIA, neither of which can be subordinated, both of which are Federal loan programs. But we managed to work through that.

Mr. LONG. Another question. On kind of the finance angle, why does the Office of Management and Budget require that applicants' assets first be devalued to 80 percent of the fair market value for purposes of establishing the amount of collateral necessary to secure a RRIF loan? And is this an issue that could be addressed administratively?

Mr. PORCARI. My understanding is the Office of Management and Budget is looking at the ability to sell those assets if it's required in an illiquid market. It may be some of the rolling stock or fixed

assets are not necessarily easy to dispose of. And you almost certainly wouldn't get 100 cents on the dollar for doing that.

I would point out that OMB—this OMB—has been very supportive of the RRIF program, and has been working hard to actually turn the loans around quickly. So we have enjoyed a very good working relationship with them.

Mr. LONG. OK. And just kind of a statement, I guess. Mr. Barletta was asking about the guidance that—interpreted as giving projects the support, interconnected, livable communities. And in your answer to that, your—"livable community," you said, meant different things to different people. And any time something like that appears in a government program, I think it probably portends itself to problems. That's just a comment on my part.

Thank you for your time, and I yield back.

Mr. SHUSTER. I thank the gentleman. And the gentleman from Illinois, Mr. Lipinski, is recognized for five minutes.

Mr. LIPINSKI. Thank you, Mr. Chairman. I thank Chairman Shuster, Ranking Member Brown, for holding this hearing today. I think there really is very few issues more critical right now in transportation than rehabilitating and improving our Nation's rail infrastructure. It's something that a lot of people don't—the public doesn't see. And so I think there is not quite the understanding of the impact that it has.

In Chicago, we certainly do know the impact, if only for sitting there, waiting for trains to go by. But there is, I think, some sense of the Chicago being the hub of the Nation. Knowing how critical it is to our businesses, and being able to move goods efficiently and moving people efficiently, it's really critical to moving our economy forward.

I want to recognize Deputy Secretary Porcari for his leadership at the Department. I think that your experience as a state transportation secretary has served the USDOT and the Nation very well.

As we move forward now—being from Chicago, I know this very well, and know it firsthand, but I think all of us on this subcommittee know very well that Chicago is the predominant rail hub of North America at a terrible choke point. And we talk about rail investment in Chicago, and we're talking about CREATE, the public-private partnership to upgrade the region's outdated rail network with 71 individual projects, not just important to Chicago, but for the entire country.

Now, I know, Mr. Porcari, you're very familiar with CREATE and its importance. And, as we make progress on CREATE and these individual projects that are a part of CREATE, can you comment on DOT's commitment to CREATE, and what the Department is currently doing to advance the program?

Mr. PORCARI. We have a strong commitment to CREATE. It's a great example of a public-private partnership. We are taking a step back. Everybody has looked at the larger rail infrastructure issue in the greater Chicago area, and very systematically identified the highest priority for discreet projects, and attacked them, one by one.

Our commitment to that has continued. Chicago has been and will continue to be a singular rail hub because of the design of the

freight and passenger rail system in America. It was built, in large part, around Chicago.

We have clearly collectively, both on the private and public side, not invested as much as we needed to in the past. We are paying for that today, in terms of freight congestion. We know we're playing catch-up on that. But we also know that through projects like CREATE, where we're taking element after element that's a bottleneck and fixing them, that we're making real gains.

So, we're not going to be done for a long time, but we are clearly committed to doing it.

Mr. LIPINSKI. Is there anything that you can see as being done to improve the process of implementing the CREATE projects?

Mr. PORCARI. I think the partnership itself is extraordinarily effective, and has been, in structuring the sequencing and priority of what needs to be done.

In a perfect world, more investment on both the public and private side would accelerate those improvements.

Mr. LIPINSKI. I think that we all understand that there is going to be a greater emphasis in transportation infrastructure on public-private partnerships, and I think CREATE serves as a good example of how it has worked. We can always use more funding on both the public and private side.

But I think as we move CREATE forward, we can be a good example for what can be done.

Although it is always critical to point out that public funding in the public part of that is important, because it's critical to our Nation moving people and moving goods.

But as my time is running out, I just wanted to ask Mr. Porcari if, for the next few weeks, we have the opportunity to sit down and we could talk about CREATE further, and how we could continue working together to see it through.

Mr. PORCARI. I would be happy to, sir.

Mr. LIPINSKI. Thank you. I yield back.

Mr. SHUSTER. Thank the gentleman, and I recognize the gentleman from New York, Mr. Hanna, if he has any questions. Five minutes.

Mr. HANNA. Thank you. Thank you very much. Yes. Thank you for being here.

Mr. PORCARI. My pleasure.

Mr. HANNA. It seems to me your response to the 90-day requirement and the 13½-month reality is that it's, with all due respect, "It's them, not us." Does that really explain the full gap of 10 months?

Mr. PORCARI. I don't believe it's them, not us. I believe, first of all, that the distinction of 90 days from a completed application, which we have been making, is not enough. I think the pre-application part of it is clearly where, together, we need to work on it.

There have to be ways where we can make the process more simple and predictable and consistent and transparent. I think working through associations and individual short line and other railroads is probably the best way to do it. Anybody who tells you you can't re-engineer a process and make it more efficient is not looking close enough.

Mr. HANNA. So you would like to see the 90 days moved out to some different date, a number of days that makes better sense?

Mr. PORCARI. Well, sir, I think the part leading up to the 90 days is where the schedule can be compressed, and I think that's where our efforts ought to be.

Mr. HANNA. Thank you very much. I yield back.

Mr. SHUSTER. I thank the gentleman from New York. And with that—anybody on the other side? I think we got everybody.

So, with that, Mr. Secretary, we appreciate your being here today.

Mr. PORCARI. Thank you.

Mr. SHUSTER. And you will be replaced—joined at the next panel by Mr. Yachmetz.

Mr. PORCARI. Yes.

Mr. SHUSTER. And again, thank you. Thank you for being here today.

As the chairman came in and whispered in my ear, he said, "We want to make sure we work together to figure out how we make this RRIF program go forward, reducing the time it takes to loan, and let's get the money flowing, because it will be good for America."

Mr. PORCARI. We will be happy to come back to the Committee with a progress report, if you would like.

Mr. SHUSTER. Thank you very much. Thanks for being here. With that, the Secretary is leaving, and the next panel can make their way forward.

While they're making their way, I will introduce the entire panel, and then of course I will introduce each as they testify.

But we are joined today by William Callison, who is president of the Wheeling and Lake Erie Railway; John Fenton, the chief executive officer for Metrolink—and I am sure we will hear from Mr. Fenton on the issue about the RRIF with Metrolink—Michael Sussman, the president of Strategic Rail Finance, Thomas Loftus, Jr., who is the chairman of Public Private Investment and Project Financing Council, American High Speed Rail Alliance, and principal of the Seneca Group. And last, but certainly not least, General Richard Timmons.

General Timmons, it's great to have you back. I know you fought a battle for the past several months with cancer, and it's great to see you. You look like you're in good health, and you look like you're ready, willing, and able to get into the fray. So, again, welcome. It's good to see you here today.

General TIMMONS. Thank you very much, Mr. Chairman. It's good to be back.

Mr. SHUSTER. And also Mr. Yachmetz, who is here—I introduced earlier, that—he is the Federal railroad administer, or Federal administrator of the railroad policy and development for the Federal Railroad Administration. So we appreciate you joining us to be able to continue to answer some questions for us.

And with that, I will start off with General Timmons. If you're ready to go, we will hear you first.

TESTIMONY OF RICHARD F. TIMMONS, PRESIDENT, AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION; WILLIAM CALLISON, PRESIDENT, WHEELING AND LAKE ERIE RAILWAY; JOHN E. FENTON, CHIEF EXECUTIVE OFFICER, METROLINK; MICHAEL SUSSMAN, PRESIDENT, STRATEGIC RAIL FINANCE; AND THOMAS P. LOFTUS, JR., CHAIRMAN, PUBLIC PRIVATE INVESTMENT AND PROJECT FINANCING COUNCIL, AMERICAN HIGH SPEED RAIL ALLIANCE

General TIMMONS. Thank you, Mr. Chairman. And members of the Committee, it's good to be here. I appreciate the opportunity to provide my thoughts on the railroad infrastructure and improvement financing program. I am Rich Timmons, president of the American Short Line and Regional Railroad Association. We represent about 540 Class II and Class III railroads.

The short line railroad industry has been the primary user of the RRIF program: 25 of the 28 RRIF loans approved to date are short line railroads. The average short line loan is $27.8 million. And together they borrowed a total of $695.5 million over the last 10 years. These loans have helped short lines maximize capital investment through direct rehabilitation. And, in some cases, through refinancing existing debt, so as to increase cash available for additional rehabilitation.

We are particularly proud to point out that since the program's inception in 1998, not a single short line railroad has defaulted on its loan. Only one railroad has ever missed a quarterly principal and interest payment, and that was due to serious railroad watersheds caused by the 2007 floods in Iowa. That delinquency, of course, has been rectified since.

I would like to emphasize three important points about the current RRIF program, and comment briefly on the recent RRIF guidance issued by the Obama administration.

First, RRIF leverages substantial private investment in short line infrastructure. These are not grants, but loans that must be paid back in full by the railroad. They're relatively low interest rate, and the 35-year amortization period are terms short lines cannot secure in the private market and it allows short lines to undertake projects that could not have been done, or that would have been 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 frivolous or cost-ineffective projects.

Third, most short lines do not have the in-house manpower to undertake rehabilitation projects, must hire contractors and additional laborers to do the work. The FRA estimates that 50 percent of every rehab dollar goes to labor. In addition, 100 percent of the ties, and the overwhelming majority of the materials used in track rehabilitation are U.S. manufactured.

RRIF is currently authorized at $35 billion, and is yet to reach a billion in outstanding loans over the past 10 years. This is due, in part, to the slow start-up of the program, and to the lengthy delays in the approval process. Over the years, I believe the FRA has worked diligently to accelerate the process, particularly that part of the process they control.

Indeed, as I have previously acknowledged before this committee, I believe that part of the blame for this slow start may lay with the application submitted by my own short line railroads. I applaud the FRA staff for their patience and willingness to correct our shortcomings, especially in those early years. Nonetheless, I believe the FRA is understaffed to manage the RRIF program.

But it also is no secret that, since the beginning, FRA has had to deal with substantial institutional opposition to the program within other Federal agencies, and that opposition has been largely responsible for the severe under-utilization of this program. I am fearful that the pattern may be repeated.

On September 29, 2010, the administration issued a Federal Register notice concerning its priorities in granting RRIF loans. We believe the new guidelines will make it very difficult for small, private railroads to qualify for loans. And it eliminates categories of loans that are clearly eligible, under the statute.

I have attached to my testimony a copy of a letter that I sent to the USDOT detailing our difficulties with this notice. Our primary objections are as follows.

The guidance creates loan criteria that are not part of the underlying statute. The guidance claims the need to ration loans, so as not to be disruptive to the railroad economy. The railroad industry invests over $10 billion a year in capital projects. If the FRA were to double that number of loans over night, the combined total would represent just 14 percent of the industry's annual expenditures.

The guidance discriminates against refinancing as an eligible purpose, except for public agencies. This directly contradicts the statute, which makes no differentiation among eligible categories. Short lines borrowed heavily from banks to purchase and rehabilitation lines that were going to be abandoned by the Class I railroads. Refinancing this short term high interest rate of debt is very important to a short line's cash flow, and allows it to preserve cash that is much needed for rehabilitation.

The guidance establishes priority categories of politically correct RRIF projects which have nothing to do with the economic world in which short line railroads operate. The categories include enhancing commuter and inner city rail, transportation, noise reduction, reduction of waterway pollution, development of inter-connected livable communities, and reduction of highway traffic. These have nothing to do with the short line railroads.

The guidance creates a new requirement of public benefit, defining public benefit as the difference between the benefit that would be achieved by using RRIF, as opposed to using conventional financing. In the real world, the difference is that short line railroads cannot get these kind of loans from conventional financing. That was the reason the program was created in the first place, the reason why $7 billion was set aside to begin with, which is one-fifth of the revolving authorization. That amount of money is reserved solely for projects primarily benefitting freight railroads, other than the Class I carriers.

Mr. Chairman and committee, I appreciate the opportunity to appear before you today, and will be glad to address any questions that you may have at the appropriate time. Thank you very much.

Mr. SHUSTER. Thank you very much, General. And I forgot to mention that you were the president of the American Short Line and Regional Railroad Association. But I think you made that pretty clear to us. So again, thanks. Thanks for being here. It's great to see you.

General TIMMONS. My pleasure.

Mr. SHUSTER. Next up would be Mr. William Callison, who is president of the Wheeling and Lake Erie Railroads. Welcome, and you may proceed.

Mr. CALLISON. Thank you. I am Bill Callison, president of the Wheeling and Lake Erie. The Wheeling is approximately an 850-mile railroad that runs from Toledo in the west through Cleveland to Akron, Canton, crosses the Ohio River, goes through West Virginia through Pittsburgh, and on to Hagerstown, Maryland. We carry about 100,000 car loads of freight per year, the majority of which is steel-related products, aggregates, coal, chemicals, and plastics. We currently have 325 employees.

We're a successful regional railroad, but it wasn't always so. Like most short lines and regionals, we inherited the 1990 railroad that had a depleted customer base and severe deferred maintenance. Since we've purchased the railroad in 1990, we have doubled our revenues, and we have increased our employees from 245 to 325. Again, this is not atypical growth.

Virtually all of today's short line railroads operate at a profit on a P&L basis. But the issue is not just profitability. The issue really is earning enough to be able to reinvest in the infrastructure. We have track, bridges, tunnels, and other equipment that has to be maintained in order for us to continue to be able to make money.

We have to earn this money in an environment where we're serving really small customers that aren't served by the Class I's, and also directly compete with Class I's, where the margins are very thin. So—it's a very capital-intensive business, and it's very difficult to earn a profit.

The RRIF, therefore, is ideally suited to meet the challenge of upgrading the infrastructure and does so, as you know, at no cost to the Federal Government. The short lines and regionals could never secure terms as favorable as the RRIF, neither in terms of the term of the loan, at 25 years, nor the treasury rates. You would either not be able to afford it, or you would have to do your projects over a very long period of time.

The Wheeling has two RRIF loans, and I would like to describe our experience with those two RRIF loans as the good, the bad, and the ugly. The good is the result of the loans. We have a $25 million RRIF track rehabilitation loan that allowed us to take approximately 120 miles of track from 25 miles an hour with numerous 10 mile-an-hour slow orders to 40 miles an hour. That higher speed allowed us to increase our asset utilization, allowed us to turn our crews, our locomotives, and our cars much more quickly. It made us a safer, more efficient, more customer reliable railroad, and also lowered our operating costs.

We also have a $14 million loan which allowed us to purchase 150 open-top hopper cars during a very tight equipment market. While under any circumstances these loans would have been very important to the financial success of the company, but as we had

a very severe recession in 2002 and 2009, where we lost almost 50,000 car loads and $20 million in revenues, had it not been for the RRIF loans, it would have been very difficult for us to continue to operate at a profit. We were able to get through this period without laying off a single employee or missing a quarterly debt payment.

The bad was the amount of time it took to secure the loans: 18 months for the first and 10 months for the second, under a statute that requires the government, as you know, to complete it in 90 days.

The ugly was what took place at the end of the second loan. The second loan application was made in December of 2005, with the understanding that the loans would be approved within 90 days, and with the expectation that the first loan had acquainted the FRA and others with the financial stability of the company and the other financial aspects.

We placed the car order for delivery to begin in April 2006. The loan was not approved until November 2006. As a result, we had to get out a bridge loan, which incurred—a $7.7 million bridge loan, which forced us to incur $53,500 in interest. But, as damaging as that was, there was damage to the car builder, having to try to get them to hold off on the orders, and to our customers.

I have worked in the railroad now for about 30 years. I am familiar with the FRA and its people. They're both our regulators and they're our partners in certain matters, such as safety and standards. It's an agency that understands the industry and is dedicated to making it better. It is, therefore, very hard for us to understand, in general for short lines and regionals, why it is that the RRIF program has had such troubles.

I would like to address three issues. The first is that I think my colleagues and I believe that there are too many cooks in the kitchen—that is that the FRA, the credit council, and the OMB are all re-analyzing the same data. The second is that both the OMB and the credit council are outside the 90-day window. And then finally, that the FRA itself does not have adequate resources to look at the loans and get the final analysis done. We would like to have them have more resources so you're doing one-stop shopping.

In conclusion, the RRIF has the potential to enhance the safety, the efficiency, and the reliability of the regional and short line infrastructure and equipment, much to the benefit of rail customers, both large and small. With a little bit of diligence and oversight, the program's problems can and should be fixed. I appreciate the opportunity to appear before you today, and I would be very happy to answer any questions at the appropriate time.

Mr. SHUSTER. Thank you very much, Mr. Callison. I appreciate your testimony, and next recognize Mr. John Fenton, the chief executive officer of Metrolink.

Mr. Fenton, you may proceed.

Mr. FENTON. Mr. Chairman and members of the subcommittee, thank you for inviting me to testify today. My name is John Fenton, and I am CEO of the Southern California Regional Rail Authority, known as Metrolink. My comments today, along with my written submission, will hopefully help highlight barriers that

Metrolink has encountered in our efforts to apply for Federal RRIF support.

I also want to address some suggestions to improve RRIF program effectiveness for public transportation entities like Metrolink.

By way of background, Metrolink is the second largest commuter rail system by size, and the fifth largest by ridership in the U.S., serving close to 20 million people. We operate in southern California, a place notorious for traffic gridlock with more than 15 million cars vying for space on existing streets and freeways.

We at Metrolink are working hard to provide solutions to the gridlock. But to do so, we need the benefit of a comprehensive Federal finance approach to public transportation infrastructure, including an available RRIF program. Unfortunately, due to restrictions imposed by the process itself, we at Metrolink are currently unable to take advantage of the RRIF opportunity.

To illustrate, Metrolink recently contemplated applying for a $300 million RRIF loan to purchase advanced technology locomotives. Our current fleet is one of the oldest and highest-polluting in the Nation. But it didn't take long to realize that the cumbersome RRIF exercise was not a viable option for us. Some of the issues that discouraged our involvement include lack of coordinated FTA/FRA rules.

Some of Metrolink's hard assets were acquired with assistance of FTA capital funding. Property acquired with assistance of FTA funds has a condition of giving FTA rights to the property, if the property is no longer used for public transportation purposes. That situation conflicts with the condition imposed by FRA RRIF rules, which requires a first lien on hard assets. In effect, that means Metrolink cannot use an asset as collateral, because the FTA has prior rights. This eliminates our ability to use RRIF for these improvements.

The credit risk premiums, another significant challenge with the RRIF program, is the unique feature which requires credit risk premiums. In effect, the default risk cost is borne by the applicant through the payment of what is called the credit risk premium, calculated as a percentage of the amount of the loan and the risk of non-payment.

Again, this cost is a limiting factor for cash-strapped public transit agencies like Metrolink. Providing funds for RRIF loan credit risk premiums similar to the TIFIA loans would be helpful and certainly make the program more financially practical.

Another factor working against us is the requirement that each applicant pay an investigation fee to cover FRA's cost of evaluating the application, whether or not the loan is ultimately approved. These extra administrative expenses can make the loan cost prohibitive for government entities with limited resources.

The topic of RRIF loan flexibility will be addressed by my colleague on the panel, Mr. Loftus.

To maximize opportunities for transit agencies to provide solutions in their respective communities, RRIF and private-public partnerships must be built upon a comprehensive investment strategy in the transportation infrastructure. The RRIF program is a great opportunity to leverage private investment, and we should do everything we can to make it work. We encourage more flexibility

in the FRA collateral and repayment rules, as well as better interagency coordination between FTA and FRA on funding policies.

In closing, I would like to emphasize that Metrolink is more than a passenger train moving people from place to place. We are the solution for some of the major issues facing southern Californians today. Metrolink would like to work with the subcommittee to identify incentives that will encourage greater private investment and streamline processes that encourage, rather than discourage investment by public transit agencies like Metrolink.

I want to thank you for the opportunity to appear before you today, and I am happy to answer any questions that you might have.

Mr. SHUSTER. Thank you very much, Mr. Fenton. And I just want to give everybody a heads up. Mr. Fenton has to catch a 2:45 flight to make it home in time for his parents' 60th wedding anniversary.

Mr. FENTON. Sixtieth wedding anniversary.

Mr. SHUSTER. So that's fantastic. So what we will do is we will finish through the panel. But if anybody has got a specific question for Mr. Fenton, I want to try to direct them to him early, and then you get out of here when you need to go. And I would imagine about 1:15 you probably want to high-tail it out of here.

OK. So we will continue with Mr. Sussman, who is president of Strategic Rail Finance.

Mr. Sussman, please.

Mr. SUSSMAN. Good morning, Chairman Shuster, and members of the subcommittee. My name is Michael Sussman. I own Strategic Rail Finance, a company I founded 17 years ago, when I discovered that most freight railroads, for no inherent business reason, have fewer funding options than companies that are much less important to the Nation.

I have coordinated financing for rail projects in 23 states, inventing new ways to integrate private sector financing with public sector funding. This collaborative approach delivers more capital and strengthens rail projects for all stakeholders.

I have been asked by the Committee staff to provide my perspectives on the RRIF program. The RRIF program is a USDOT loan and loan guarantee program with three main attractions for the borrowers. One is the repayment term, which can be as long as 35 years. Second is its relatively low interest rate, based on treasury securities of a similar term. Most importantly, it recognizes the collateral value of track, right-of-ways, and transportation facilities, assets for which it is challenging to secure long-term financing in the private sector.

The country can enjoy a substantial return from improving the RRIF program. In spite of America's love-hate relationship with railroads, rail transportation provides many public benefits. Each train load of freight, if moved on our highways, requires a convoy of trucks 27 miles long. Since those trucks burn two to four times the amount of diesel fuel, the consequent increase in air pollution is significant. We need trucks as part of a complete transportation system, but we need increased rail transportation more than ever.

RRIF fulfills a role that is missing in the private sector. Since Federal de-regulation of railroads in 1980, the number of short line

and regional railroads has increased from 190 to 575. At the same time, banks have merged and consolidated, leaving behind the close connection between local banks and local railroads.

In spite of the long-term financial stability of rail projects, they are more challenging to finance than riskier commercial developments such as office buildings and movie theaters. So, why does this $35 billion loan program still have $34.6 billion available? And what can be done to increase the loan activity?

I will suggest four no-cost remedies, and several process improvements. Firstly, I recommend enforcing the previously-mandated 90-day timeline for the FRA to make loan decisions.

Secondly, I would like to see the OMB reverse the practice of cutting the collateral values by 20 percent when accompanied by professional appraisals. Hardly warranted when the primary assets presented in rail projects—i.e., steel, land, and rolling stock—are among the most stable collateral items we see, often appreciating in value over time.

Thirdly, it is vitally important to revisit the FRA's deprioritization of refinancing made public last September. There should be no reluctance to approve RRIF loans for refinancing, as long as it supports a comprehensive capitalization strategy for successful long-term stewardship of rail facilities.

Fourth, borrowers should be given the option of a higher interest rate in exchange for a lower credit risk premium.

There are other ways to improve the RRIF program, such as instituting a clear pathway for the program's loan guarantee function, and coordinating with state departments of transportation and local banks. I would be gratified to share these ideas with the Committee at a later date.

For now, just a brief mention of process improvements. Seeing a RRIF loan application through to completion is like raising a child. No one really talks about how damn hard it is. And, even if they do, it is harder than anyone has the capacity to imagine until they have one of their own.

What I would like to see is a less expensive, less strenuous application process for smaller RRIF loans, in support of one of its stated purposes, "preserve or enhance rail or intermodal service to small communities or rural areas."

As an addendum to my remarks, I have provided data on the outstanding repayment history of state revolving loan funds that rely on much less application information, and a relatively rapid approval process. The RRIF process needs to be more predictable and more interactive. Applicants need more coaching and support at every stage, and the application itself needs to be rewritten by writers, not financial analysts or engineers.

Many of the application questions do not clarify the level of data and detail required, and the FRA is often muted in its response to inadequate applications. This communication gap adds weeks and months to the process, often ending in frustration and withdrawn applications.

Relating to a much simpler state loan application, Kathleen Grover, former administrator of Michigan's rail loan program, said that 50 percent of the applicants in her state did not respond to requests for additional information. Railroaders are some of the hard-

est working people in industry. A successful RRIF campaign requires more determination and communication than most rail operators can muster.

If we apply our limited public resources intelligently, we can seed private sector investment to accomplish goals that neither sector can achieve on their own. The resulting innovation can provide the capital environment for railroads to substantially increase their contribution to America's economic vitality.

Thank you for this opportunity to present my views.

Mr. SHUSTER. Thank you, Mr. Sussman. Appreciate it. And next up will be Mr. Thomas Loftus, who is the chairman of public private investment and project financing council at the American High Speed Rail Alliance, and also principal at Seneca Group.

So, Mr. Loftus, please?

Mr. LOFTUS. Mr. Chairman and members of the Committee, I am Tom Loftus. I am here today representing the American High Speed Rail Alliance. I'm on the advisory board of the Alliance and, as the chairman has mentioned, I am chairman of its public private partnership and project financing council.

The membership of the alliance includes state departments of transportation, passenger rail corridors, financial organizations, the full spectrum of rail supplier companies, rail labor unions, and grass roots advocates. The Alliance's mission is to advocate for the development and implementation of high-speed passenger rail in the U.S.

I am currently a principal of the Seneca Group, a transportation consulting group located here in Washington that has worked extensively on railroad rehabilitation and financing loans. My purpose today is to propose a number of changes to the RRIF program that the American High Speed Rail Alliance believes would allow the program to better support the development of high speed rail, and help leverage the private financing that is badly needed to make high speed rail a reality in this country.

Building world class high speed rail will require a significant commitment of resources. The $8 billion provided in the 2009 stimulus package, and even the $53 billion that the President has proposed, are not sufficient to complete the job. These funds are going to have to be matched by local support and private investment.

Let me briefly describe three changes that would provide an incentive for private investment. The first proposal is to provide RRIF with a TIFIA-like Federal subsidy that allows the Secretary of Transportation to modify loan terms by deferring payments or subsidizing the interest rate. Deferring payment would allow high speed rail applicants to meet the construction and ramp up time tables of high speed rail projects, which typically run anywhere from 5 to 8 years to 10 years.

Under TIFIA, repayment can be deferred up to five years after completion of the project. The cost of this deferral is paid by annual appropriations, initially set at approximately $122 million, and supplemented in 2010 to cover additional loan activity.

We propose also that the RRIF subsidy can be used to lower the interest rate when the Secretary determines that that would make the difference in the viability of a project.

RRIF and TIFIA interest rates are set based on comparable U.S. treasuries. Today, the rate on a 35-year loan is approximately 4.7 percent. We estimate that, at today's interest rate, a $1.1 billion subsidy would support a 10-year deferral of payments, or a 3 percent interest rate on a 35-year loan of $5 billion. Put another way, one Federal dollar would leverage five dollars in loans to private entities that must be repaid.

We fully understand the need to reduce Federal spending, and we know that $1.1 billion is not pocket change. However, if the Federal Government is committed to investing in high-speed rail, would we not be better off taking a portion of the proposed $53 billion and leveraging it at 5 to 1? Given today's financial reality, this might be the only way to find the funds necessary to build high speed rail in the U.S.

Collateral is also an obstacle to the high speed rail industry. RRIF requires a first lien on hard assets equal to at least 100 percent of the value of the project. High speed rail projects will not be able to meet this requirement. We propose that FRA accept the estimated value of a future stream of taxes or fees pledged to repay the loan as collateral. In the case of a default, the government is guaranteed this stream of income to repay the loan, so it's just as protected as it would be if there were hard assets to sell to recover the loan.

Finally, we propose that development phase activities be eligible for RRIF funding. High speed rail projects, as you know, require substantial development phase activities, including planning, feasibility analysis, and environmental review. Under the current RRIF statute, it is unclear whether these are eligible costs.

Uncertain outcomes can make this first phase of the projects the hardest to fund. Knowing that a RRIF loan could reach back and pay for these costs would make it more feasible for private or local government to initially fund these costs.

High speed rail holds great promise for the American people, and high speed rail advocates are rightly passionate in promoting its substantial advantages. Congestion relief, energy conservation, cleaner air, inter-connected communities are all potential benefits. Build-out will create many thousands of jobs in providing rolling stock, signaling systems, and maintaining the infrastructure will renew critical domestic manufacturing and supply industries that we have sadly ceded to foreign countries.

We need to move forward—to move forward, we need to think about alternative ways to fund high speed rail projects. These proposals are not the total answer, but they are realistic and a cost-effective way to begin.

Thank you for your time, and I am available to answer any questions you might have.

Mr. SHUSTER. Thank you very much, Mr. Loftus. Appreciate that. And again, as I said, if anybody has any direct questions to Mr. Fenton, we want to sort of direct them to him. I know, Mr. Long, you had a question to the previous—to the Secretary about the program. I don't know if you wanted to pursue that line of questioning.

Go ahead, Mr. Long.

Mr. LONG. Thank you, Mr. Chairman. I—and I think he's taking the train to his folks' reunion, not the plane, I believe.

[Laughter.]

Mr. LONG. In your testimony, Mr. Fenton, you described a lack of coordination—I brought this up with an earlier witness—between RRIF program collateral requirements and the FTA's policy prohibiting liens on properties I discussed earlier.

Do you have a recommendation on how we can rectify that?

Mr. FENTON. Well, I think, you know, there has to be a recognition of some way that we can take those assets and use them as collateral.

Now, I appreciate the opportunity to sit down with the deputy to discuss what those options would be. But until we get that matter resolved, I mean, I am completely precluded from participating. So I would be anxious to hear what they would look at as a viable option on how we solve a very complex problem. And I just appreciate the chance that we could sit down and work together through the issue.

Mr. LONG. OK. One other question. Why would a public agency like Metrolink look to the RRIF program when you have other financing tools at your disposal, such as tax-free munis and private—that private entities can't access?

Mr. FENTON. Well, actually, I am owned by five different member agencies. I have no taxing authority. I do not have the ability to issue bonds. Up to this point, we are funded solely through our member agencies. We are dependent upon grants.

I am trying to expand my options, so we can advance some of these projects. When I look at a RRIF program, a lot of the projects we are examining would be things that would be—add some operating benefit to our organization, as well, and hopefully not be a burden from an operating expense, but actually create some enhancements.

So I am not like a lot of government agencies that would have the authority to go out and have those tools available to me at this point.

Mr. LONG. OK. And then one other quick one here, so you can get off to Reagan, but do you view RRIF as a promising financing tool for commuter railroads to pay for Positive Train Control systems?

Mr. FENTON. I think at this point it has to be, just because of the unfunded need to implement the PTC.

You know, I am fortunate that we are first out of the box with PTC. I am fully funded at this point. But many, many other transit agencies are not. And I think that RRIF has to become a part of the equation to meet that need on having money and capital available for the PTC project.

Mr. LONG. OK. Thank you. And I yield back, Mr. Chairman.

Mr. SHUSTER. Before I go to the next line of questioning, I will let Mr. Yachmetz engage in this discussion, because—if you want to go ahead and respond to some——

Mr. YACHMETZ. Yes. Actually, I would. I'm not quite familiar with what the immediate Metrolink problem is.

We have, as you noted from looking at our list of RRIF loans we have granted, funded 50 passenger coaches for Virginia Railway

Express. And when we also did the Denver Union Station project, we subordinated the RRIF program to the TIFIA program. Basically, the Secretary subordinated his right pocket to his left pocket.

And so, there is flexibility in the Department. If there is an absolute requirement to let FTA have first position on the assets, we could look at taking a second position with RRIF. So we would be very happy to try to flesh out what the specific issue is, because it may actually be something we can just take care of administratively.

Mr. SHUSTER. That would be good for Metrolink and the FRA to get together. Maybe we can resolve some of this. I would like to hear back after you've been able to discuss that and the outcome of it.

And with that, we yield to Mr. Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. And I am glad—is it Yachmetz—Mr. Yachmetz answered that question. That was one of my questions I had for you, relative to Metrolink's issue.

And I think what I would like to know—if there—if you can get back to us—if there is a—rather than solving the problem, which I hope you do, is in fact, if this is just a one offer, two offer, three offer—it's for Denver, it's for VRE, it's for Metrolink, or do you have some sort of guidance on how you approach these things? And that, I think, from our perspective—it's great to hear you solve the problem. I think, from our perspective, we would like to know if you actually have some guidance on how you make those choices.

Mr. YACHMETZ. Well, we will certainly get back to you. We have had conversations with about three or four commuter agencies, and this is the first time this issue has come up. So we will be happy to see whether there actually is an issue that we have to do a one-off, or maybe just provide some clarity in our guidance.

Mr. LARSEN. And we would also expect FTA to respond to us, as well.

So, Mr. Fenton, how is—in your view, how is the credit risk premium—how is that different than pursuing a similar loan in the private sector? At some point you have to have a risk tied to your loan.

Mr. FENTON. Well, I think it goes back to what's the capability to pay. And if you think about what we would be subjected to, which would be 1 to 3 percent of the loan, of a $300 million loan, you can see, you know, anywhere from $3 million to $9 million of cost.

Now, in a public agency, when we're sitting here trying to meet the growth needs, whether it's in infrastructure—you know, I can build a mile of railroad for $5 million. You know, technically, we're taking resources and diverting them into a credit risk premium that could be put into improving infrastructure. And, you know, since I have sat on both sides of the fence, I'm much more constrained with my ability to do creative things in the public sector at this point. And every dollar means something, especially when you face the many challenges we face in southern California.

So, when I start talking about, you know, $3 million to $9 million for a credit risk premium, I'm looking at cars, locomotives, capacity improvements, things that are sorely needed in southern California.

Mr. LARSEN. I would just say every dollar always means something. Every public dollar always means something, not just when things are good or bad.

Can you give me a view on whether or not you think we ought to—well, does Metrolink have a view on subsidizing the credit risk premium, or there is one other idea—it might even have been in your testimony—buying up the interest rate to buy down the credit risk premium?

Mr. FENTON. Well, I think the model is really the TIFIA. You know, they don't have that aspect as a part of their loan. And I think, when you start having some consistency in how public agencies are dealt with, whether it's through TIFIA or whether it's through the RRIF program, I think they should be consistent.

I think TIFIA has the right model, when it comes to the credit risk premium, and I think those dollars should be allowed to be put into viable assets, instead of something that the credit risk premium—because, you know, I feel very comfortable that we would be able to cover our payments.

Mr. LARSEN. Just finally, I am not totally familiar with the TIFIA program and how it works, perfectly, but I'm sure if we brought people in like this panel to talk about TIFIA, we could probably find our own problems there, too. So, you know, I'm pushing back very hard on this because it still—whether it's your public dollar for Metrolink, or it's a Federal taxpayer dollar, it's a taxpayer's dollar that you're asking us to begin thinking about making choices about. And there is not a lot to go around. In fact, there is negative taxpayer dollars going around—at one point $6 trillion in deficit this year alone.

So, that's why I'm pushing back very hard. And before I even jump on the TIFIA idea I would certainly be interested in seeing how well the people are participating in the TIFIA program, and see how that's going.

It might be a model that works for you, because it saves you money. And that's fine. I don't expect anyone to come up here and say that—ask us to do things that don't save you money. But by the same token, it's not necessarily—if it works somewhere else perfectly, I would be happy to look at it.

Mr. SHUSTER. Thank you, Mr. Larsen, and I think you make a very good point. As we go forward, trying to find the solution to improve the RRIF program—and there is some question as to whether the FTA will allow their—what they have loaned money on to be collateralized to the FRA, and so I'm not sure we're clear on that, and that's something we need to delve into further and get that squared away so we can move forward.

In addition to that, what was that—oh, the question on the timing of it. The Secretary said that you're within the—FRA is within the 90-day window. But my understanding of the law is that it says that it needs to be completed within 90 days. And you're completing your part, then you're kicking it over to the credit council, and it's taking longer and longer.

So, as I said, I think the law is pretty clear that it's to be a 90-day window. Is that true, what the—how I interpret the law? Do you interpret it that way? And what's the 90-day period? What do you call 90 days?

Mr. YACHMETZ. Well, 90 days, in our interpretation—and I think the statute is fairly clear—is from the date we have received a completed application until the date that the Secretary—or, in this particular case, the Administrator—makes a decision on the loan.

We frequently get incomplete applications. We frequently—less frequently, but on occasion we get applications that require reviews under the National Environmental Policy Act that need to be completed before we can deem the application complete. Because we cannot move forward with a loan or a grant, because it still falls within the jurisdiction of the National Environmental Policy Act.

So, there is an extended period of time, but I think it differs on an applicant-by-applicant basis. And that's why the Deputy Secretary was saying we need to do more outreach so we can better inform the community about what is needed for a completed application.

So, that is one of the things we will be working on.

Mr. SHUSTER. And kicking it out to the credit council and OMB outside the 90 days, again, that's—would seem to me you've got to shorten your process within your agency, so that you can still get it to the credit council within that 90-day period, wouldn't——

Mr. YACHMETZ. Well, to be clear, the credit council is within the 90-day period. And after receiving a recommendation from the credit council, the Administrator makes a decision on the loan. And the role of OMB, under the Credit Reform Act of 1990, is not to approve or disapprove the loan, but to set the credit subsidy amount, which is what becomes the credit risk premium in the RRIF program.

So, the way the RRIF statute is written now, that is outside the 90-day window.

Mr. SHUSTER. And I wanted to make clear, Mr. Fenton, you are excused whenever you need to leave, and then we're going to go back to sort of more regular order here in asking the questions.

I just wanted to follow up with that question to Mr. Callison. Again, your view is the process is way too slow, and——

Mr. CALLISON. Well, what happened in our case was simply that we thought we had FRA approval, and then it was moved to the OMB, which caused a considerable delay. And the cars were already delivered, and we still did not have approval. And all I know is, regardless of how you interpret the statute, in fact, the OMB had it, the FRA had done the approval, and we didn't have a final—didn't have final loan dispersement until some four or five months after the cars were actually delivered.

Mr. SHUSTER. Thank you. And, Ms. Richardson, if you——

Ms. RICHARDSON. Yes. Actually, Mr. Fenton, I am glad you are still here. I did have a follow-up intended question.

You heard me ask Secretary Porcari about a commitment for both high-speed rail, as well as our existing systems. Do you feel that that has been translated through the budget and through other things that you've been told, that there is a dual commitment?

Mr. FENTON. You know, I'm not as confident that that has been fully articulated. And being at Metrolink now for 10 months, I see many needs and I am concerned because we aren't the future, we're today. I mean we are providing service today.

And I think it's something that has to be kept on the front burner, that as we pursue high speed rail options, you still have to move people, you still have to provide service on a daily basis. And at this point, we are that person. And I think it's important that we continue to be kept in the forefront of making sure that we can grow to accommodate the needs of the municipalities that we serve.

Ms. RICHARDSON. And could you articulate specifically what is it that you're seeing is a concern, in terms of funding, that you feel that the duality doesn't exist? Because Mr. Porcari's staff is still here.

Mr. FENTON. Well, I mean, I guess my concern is that as we start to work through the budget and the different processes, as our needs—and, look, I'm all about competing. I understand that the dollars have to be spent wisely. And, you know, I want to make sure that, as we move forward, that we have a stake at the table, and that we look at the needs that we have, and rank those projects accordingly to what the value and the needs are of those municipalities.

And I don't know if I have seen that process yet, as things are starting to unfold. But I do think it is important that we continue to keep the local commuter agencies in the forefront, because we are providing those services today.

Ms. RICHARDSON. OK. And then finally, my question to all of you. Have any of you had an opportunity to participate in a stakeholders' advisory group or something, where it seems to me—today you have provided excellent feedback of potential suggestions to improve this program. Have you had the opportunity to communicate those to the Secretary?

Sir? Just yes or no. Have you had that——

Mr. CALLISON. No, only through the Short Line Association, to the extent that they have spoken to the administration.

Ms. RICHARDSON. OK. Sir?

General TIMMONS. No, we have not.

Ms. RICHARDSON. OK.

Mr. FENTON. No, I have not.

Ms. RICHARDSON. OK.

Mr. SUSSMAN. Only eight years ago, when there was a major revamping of the program, and there was a stakeholder outreach.

Ms. RICHARDSON. OK. Sir?

Mr. LOFTUS. I personally have not, but I believe the High Speed Alliance has.

Ms. RICHARDSON. OK. And you, sir?

Mr. YACHMETZ. We are committed to—as Deputy Secretary said, we are committed to——

Ms. RICHARDSON. I can't hear you.

Mr. YACHMETZ. As Deputy Secretary Porcari said, we are committed to increasing the outreach that the Department does on this program and our other credit programs.

Ms. RICHARDSON. OK. Might I suggest, Mr. Chairman, that we refer these excellent suggestions that our witnesses have provided us today of how to improve the program, that we would submit them to the Secretary for consideration, and to come back to the Committee on his thoughts of those recommendations.

I think the general would say often times when you're requested, a response might come—requested or directed—might often times get a stronger answer.

Mr. SHUSTER. That's a great suggestion, and we will pursue that.

Ms. RICHARDSON. Thank you, sir. I yield back the balance of my time.

Mr. SHUSTER. Thank you very much, and yield to Mr. Reed.

Mr. REED. Thank you. Thank you, Chairman. I guess the question I would ask is you're all willing to meet with the Department, I would assume, yes?

[All nod affirmatively.]

Mr. REED. Yes. And the Department is committed to doing that. Is that a yes?

Mr. YACHMETZ. That's a yes.

Mr. REED. OK, great. How are we going to accomplish that, Chairman? How are we going to get that done?

Mr. YACHMETZ. Well, the first part of this is, I think, educating the potential applicant pool of the change in approach by this administration with regard to credit policy. And we have had, actually—while we were waiting for the hearing to start, we have had a number of conversations with the Short Line Association about us going to their regional meetings, their annual meetings——

Mr. REED. Excellent.

Mr. YACHMETZ [continuing]. To start the meeting with members and prospective applicants, to walk through the process and identify what we will be looking for in a completed application, how we can help make that process not only more transparent, but easier for the relatively small, less financially sophisticated companies.

And one of the other things the Deputy Secretary said is that we are looking for other good ideas, how to get out and work with the community, because we view this as a very valuable opportunity to invest in the transportation infrastructure of this country at little or no cost to the government.

Mr. REED. Well, I appreciate it. So maybe we will have some more hearings so everybody can get in the same room and we will get some positive movement there.

One thing that concerned me, Mr. Sussman, in your testimony you focused on the application and the questions in the applications that "they do not clarify the level of data and detail required." Specifically, what in the application is of concern to you, and how can we, at the Department—or how can the Department clarify, make that—more user friendly, it sounds like——

Mr. SUSSMAN. Yes.

Mr. REED [continuing]. Is what you're looking for.

Mr. SUSSMAN. Well, for instance, there is a question that asks the applicant to describe the impact of the improvements, the funded improvements, on the safety of their operation. And that's the question. What's asked—what they want is a data-driven, specific dollars-and-cents, how is this going to be spent, how much do they spend for derailments now, what would be the projected amount that gets spent on derailments after this investment, that type of level of detail.

And the applicants, not knowing that, answer that question like an essay question.

Mr. REED. OK. That would make sense.

Mr. SUSSMAN. Yes.

Mr. REED. You have any problem with maybe a little more detail in the application?

Mr. YACHMETZ. No. And, in fact, that is one of the reasons why we feel like as if now we need to go back out and do outreach, which, quite frankly, we have not done for a decade, at least, and talk to the community and maybe walk through the application, and also see where we can make the application a little bit clearer and less onerous.

Mr. REED. Do you have any timelines as to when that would be completed by?

Mr. YACHMETZ. I believe the National Short Line meeting is in May. Our administrator has already committed to speak there, and I will probably be out there talking, as well, to the short line members.

And then, over the course of the rest of the year, there will be a number of regional meetings, which is where we will probably have a lot more of the detailed discussions.

Mr. REED. Well, I appreciate that, because this is a great program, and I think we want to expand upon it, and I think that commitment will go a long way to get more money out there into the field.

Mr. Chairman, I will yield back the balance of my time.

Thank you very much, gentlemen, I really do appreciate the input.

Mr. SHUSTER. I thank the gentleman from New York. And looking down to see if anybody has any—Mr. Hanna, I will recognize Mr. Hanna for a question.

Mr. HANNA. Mr. Loftus—thank you, Chairman—you describe, in your desire to change the definition of collateral, because you don't own 100 percent of the assets, the new assets, they're still there, they're still collaterable. But then you go on to say that the—in the event of a default, the stream of revenue from the high speed rail would serve as a collateral.

But am I missing something, or isn't it, by definition, if the stream of revenue was adequate to guarantee the loan, then the loan wouldn't default?

Mr. LOFTUS. That's correct.

Mr. HANNA. Well, then why would one lead to the other?

Mr. LOFTUS. The operation might default. So if the operation had to stop because it's not covering its costs, for example, the RRIF loan would still be secured by a separately-pledged stream of tax revenue or fee revenue. That's under a separate credit agreement with the FRA pledging that stream of cash to repay the loan.

Mr. HANNA. OK.

Mr. LOFTUS. And—if the operation wasn't meeting its operating costs, for example, and it just had to stop operating, that stream of cash would still be there to repay the loan, which is similar to what happens in any default, except in this case, because high speed rails are not constructed at the time the application is submitted and approved, there are no assets to pledge. So there are no assets to sell in event of default. And this is a proposal for a way to deal with that lack of pledgeable assets.

Mr. HANNA. But the asset is there. You still have——

Mr. LOFTUS. It will be there after four or five years, when it's constructed. And I guess you could switch over to a pledge of assets at that time. But I'm talking about when the loan is getting approved. Right now the requirement is to have collateral, hard collateral, to pledge to support the loan. And that doesn't exist in high speed rail systems.

Mr. HANNA. I see. So, rather than—you might like to see some period of time between conception and when it's built out, that associates that problem—that allows you forgiveness of that.

Mr. LOFTUS. That's not what I suggested, but that would be worth considering.

Mr. HANNA. Well, thank you.

Mr. LOFTUS. It would be more risky, I think, from the FRA's point of view. But it would be worth considering.

Mr. HANNA. Thank you. I yield back.

Mr. SHUSTER. I thank the gentleman. First question I have is to General Timmons, and then I want to come back and, Mr. Sussman and Mr. Loftus, I would like the two of you to maybe comment on each other's, because there are different solutions to the problem. So I would like to hear your assessment on each other's, and engage the rest of the panel on your ideas.

But first, to Mr.—to General Timmons, from a short line perspective, why is refinancing such an important eligibility under the RRIF program? Can you expand on that?

General TIMMONS. I can, Mr. Chairman. A sentence or two about the background of that. And as you all may or may not be aware, the purchase of those short lines and the equipment and the purchase or the loans appropriate for infrastructure upgrade are all commercial loans. And so those carry the baggage of high interest rates and relatively short term. And so, what that really does is bleed off much-needed cash that could be used for the reinvestment in the infrastructure of the small railroads.

The RRIF loan provides a relatively low-interest, long-term payback which provides a greater cash flow, and you can use that money to invest in your railroad. You say, "Why is that such a critical issue, this reinvesting?" It seems like short line railroads are continuing to reinvest.

The reality is that the rail industry itself is the most capital-intensive industry in North America. And of—within the railroad industry, the short line industry is the most capital-intensive. About 30 percent of their bottom-line revenues go into infrastructure upgrades. Why is that? Because they got old and deferred maintenance equipment from the Class I railroads who got rid of them, as a result of staggers. And so they've been in a continuous and perpetual effort to upgrade those systems.

And while that has been going on, keep in mind that the short line industry changed from 8,000 miles immediately after staggers to 50,000 miles today. And at the same time, the requirements for heavier track and heavier equipment and more substantial bridges adjusted because we put heavier cars and more robust equipment with greater load capacities.

So, this is sort of a very tightly-woven fabric, where the refinance is absolutely at the center of it.

Mr. SHUSTER. Thank you very much, General. Appreciate that. Mr. Loftus and Mr. Sussman, you both have very different views. Mr. Loftus wants to lower the interest rates and provide some government subsidies. I take it you put out they are government-backed, government-underwritten, and Mr. Sussman is talking about increasing interest rates.

So, Mr. Loftus, if you could, comment on what are the weak points in Mr. Sussman's that you think won't work and why yours will work.

Mr. LOFTUS. Well, first of all, we are talking about different sectors of the industry. Mr. Sussman, I believe, is talking about primarily short line freight roads, regional freight roads. I am talking about the high speed rail industry.

A key difference is, as we all know, high speed rail does not exist. It's an effort to get started. And the rail lines themselves have to be constructed. And during that construction period, obviously there is no revenue being generated to support repayment of the loan. And there is typically a—you know, a period of time right at the beginning, after construction, where demand for the system gets built up as people become aware of it, and they understand the benefits of it, and they start to ride.

So, it's anywhere from three to five years, I would say, until it reaches its full ridership. So the deferral would address that situation very effectively, from the Alliance's point of view. An interest rate subsidy over the length of the loan would do some of the same things. It wouldn't cover, obviously, the elimination of debt service during construction ramp-up, but it would lower the overall coast of the loan over the period of the project.

Mr. SHUSTER. So I misunderstood. I thought you were talking about financing the same way.

But, Mr. Sussman, could you expound on yours—higher interest rates——

Mr. SUSSMAN. My suggestion of an enhancement to the program would be to add an option for borrowers to agree to a higher interest rate in exchange for lowering the credit risk premium. For some applicants, that will be very attractive. For others, not. It all depends on the amount of the loan, and the rest of their financial structure.

Mr. SHUSTER. Would you see—and, as you said, it depends on the applicant. From what you've seen out there, do you think there would be a significant number that would prefer what you're proposing, or not sure, or—I mean what do you think the market is out there for your recommendation?

Mr. SUSSMAN. Yes, I think there would be considerable interest in that. Certainly the credit risk premium, which, just for reference, is typically, for the loans that have been approved so far, has been in the two, three, four percent, and that requires the applicant, for every $100 that they want to accept in a loan, they have to pay in, you know——

Mr. SHUSTER. Right.

Mr. SUSSMAN [continuing]. $2, $3, $4. So, for some——

Mr. SHUSTER. Right.

Mr. SUSSMAN [continuing]. That's another one of the hurdles——

Mr. SHUSTER. Right.

Mr. SUSSMAN [continuing]. To getting to the finish line.

Mr. SHUSTER. And the—some, I would assume, would be interested—stronger balance sheets, higher operating profits, they're not afraid to——

Mr. SUSSMAN. Yes.

Mr. SHUSTER. OK.

Mr. SUSSMAN. Yes.

Mr. SHUSTER. And, Mr. Callison, could you comment on what your thoughts are on what Mr. Sussman is presenting? Is that something you're interested in, or——

Mr. CALLISON. I think it's an interesting option, to have the ability, rather than to have a credit risk premium, to be able to pay a default rate risk in the interest rate. I think it's an interesting option.

Mr. SHUSTER. And, General Timmons, your thoughts as an industry-wide——

General TIMMONS. I think it's an option. Obviously, now, the—based on the collateral that you put forward, the less you put forward the higher your interest rate. The more you put forward, if you collateralize it at 120 percent or 130 percent, your interest rate gets pretty low.

Mr. SHUSTER. Right.

General TIMMONS. Four or five percent. So the program today has that flexibility built into it. And so, it just depends on how much you want to step forward on that amount.

Mr. SHUSTER. OK. All right. Well, anybody else want to comment?

Mr. YACHMETZ. Well, just a couple points. The whole concept of the credit risk is actually built into the Credit Reform Act of——

Mr. SHUSTER. I'm sorry, could you repeat that?

Mr. YACHMETZ. The concept of the subsidy amount, the credit risk, actually flows from the Credit Reform Act of 1990, and applies to all of the Federal Government credit programs. So, fixing this for RRIF may not be best. You may want to look at this in the context of all credit programs.

And then, another—just to point out, a number of the people here talked about the difference between TIFIA and RRIF. And one of the good things about RRIF is, in fact, the credit risk premium being able to be paid by individual companies, because that takes us out of the appropriations environment. The way TIFIA is different—because it was created under title 23——

Mr. SHUSTER. Right.

Mr. YACHMETZ [continuing]. Is there is contract authority to pay it. And in the last year or two, when the contract authority ran out, TIFIA started imitating RRIF, and letting individual companies or individual applicants actually pay the credit risk premium, rather than wait for contract authority to be available again.

Mr. SHUSTER. OK. Well, thank you very much for that. And I want to thank all of you for coming here today. Again, apologies for getting a late start. I appreciate that. And we will take Ms. Richardson's idea to pursue this further.

I have to do a UC. I think I've got to step out for a minute. Mr. Denham wants to ask a few questions. And let me do this first, it's my housekeeping. I ask unanimous consent for a statement to be

put in the record for Chairman Mica, and also to insert his October 15th and my October 15, 2010, letter to the Department of Transportation on the RRIF guidance, our concerns on that. Without objection, I want to put those both into the record.

[Hon. Mica's statement is on page 59; the letter follows:]

U.S. House of Representatives
Committee on Transportation and Infrastructure

James L. Oberstar
Chairman

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

Washington, DC 20515

John L. Mica
Ranking Republican Member

James W. Coon II, Republican Chief of Staff

October 15, 2010

The Honorable Ray LaHood
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue SE
Washington, DC 20590

Dear Secretary LaHood:

We are writing to inform you of our strong objection to the recently released "Notice of Priorities for Consideration of Applications" (the "Notice") for the Railroad Rehabilitation and Improvement Financing (RRIF) loan program. The RRIF loan program was reauthorized and strengthened in SAFETEA-LU because Congress views RRIF as an important and necessary tool for encouraging growth in the rail sector by providing a ready source of financing for rail initiatives. DOT's implementation of this program has become increasingly worrying, and the recent Notice raises new concerns for transportation leaders in Congress.

The performance of the Department of Transportation in the administration of the RRIF loan program continues to disappoint. In April of 2009, the Subcommittee on Railroads, Pipelines & Hazardous Materials conducted a hearing on the RRIF loan program after repeated complaints by applicants that the program was slow and cumbersome. FRA leaders promised to improve the administration of the program. Nearly 18 months later, RRIF continues to struggle. Only 2 RRIF loans have been made this year, despite a high level of interest in the program. In fact, we understand that DOT has introduced procedures that make acquiring a loan through RRIF even more time consuming, by requiring the Credit Council to review applications before assigning an independent financial advisor. We expect loan decisions to be made in 90 days as required by statute, and request that DOT eliminate needless bureaucratic obstacles such as this.

With regard to the Notice, we believe RRIF should be accessible to all eligible borrowers, and strongly object to any prioritization whatsoever of loan purposes by the Department of Transportation. RRIF is woefully undersubscribed with only $400 million in outstanding loans out of a $35 billion authorization. FRA should focus on making loans for any eligible purpose

when the borrower is able to provide appropriate financial documentation. We request that FRA withdraw this Notice, and cease any policy that seeks to rank or prioritize RRIF loans based on loan purpose.

We remain committed to RRIF in Congress and are hopeful that this program will grow into an important resource for major rail infrastructure projects around the nation. High-speed rail, in particular, would benefit from an accessible pool of funds that could attract capital to new projects. It is important that this program see internal reform at the DOT to ensure loans are made as expeditiously as possible for eligible projects.

We appreciate your attention to this issue, and look forward to continuing to work with you towards improving the nation's transportation system.

Sincerely,

The Honorable John L. Mica
Ranking Republican Member
Committee on Transportation &
Infrastructure

The Honorable Bill Shuster
Ranking Republican Member
Subcommittee on Railroads,
Pipelines & Hazardous Materials

Mr. SHUSTER. And with that, you will be the final questioner, if you had a couple of questions. Fine, and then you get to sit here. I have to step out and take a meeting. So thank you all very much, and Mr. Denham will finish up.

Mr. DENHAM. [presiding]. Thank you, Mr. Chairman. Thank you, Mr. Shuster.

I just have a few quick questions on—primarily on California high speed rail. Obviously, we have had a number of concerns, you're seeing a number of amendments on the floor right now addressing a variety of different topics, as it pertains to funding for high speed rail.

My biggest concern right now is the private capital that is supposed to make the entire project whole. Mr. Loftus, I wanted to specifically ask you. The question that keeps coming up is: When is enough Federal money enough? And do you expect any more state money? So, when you get those two pieces figured out, at what point does the private industry step in, and when does it become a financial—and when is there a financial incentive for a private company to actually come in and take the burden, the final burden, of this?

Mr. LOFTUS. Obviously, that's a very project-specific situation. But, in general terms, private money will come in when they believe they can earn what—the return they want to make on their money.

Mr. DENHAM. I would agree.

Mr. LOFTUS. Anyway, that's very obvious, right?

Mr. DENHAM. Yes.

Mr. LOFTUS. And the concept is, to the extent the Federal Government can remove the risk of the project by providing funds, and the private sector, in effect, tops up the required amount of funds, that will increase the returns, just by the fact that they put in less money to get the returns that the project generates.

And I can't say where that would be. I believe private sector return requirements are probably in the 14 percent range on these types of projects. And, again, it's very project-specific. Cash flow is what generates returns. So the ridership forecasts and the cost estimates, all of that will be—and the cost to construct the system, all of that will play into what the private sector perceives as the potential returns.

And to—again, to the extent that the Federal Government grants money and the RRIF loan facility is adjusted—perhaps in the ways I have suggested, or other ways—to the extent that removes risk from the project, the private sector would be more interested in stepping in and providing financing.

Mr. DENHAM. So do you have a specific modeling that would show when the risk would be low enough for private investors to step in and be profitable?

Mr. LOFTUS. Yes, we do. And I can provide that later, you know, after the meeting, or to your staff, if you like.

Mr. DENHAM. Thank you. And specifically on the California high speed rail project, what do you anticipate the Federal Government and state government are going to have to put in?

Mr. LOFTUS. I can give you an answer, but I can't say that number right now. I just don't have enough information in my head to answer that. But it will be substantial. It's a large system.

Mr. DENHAM. Yes, I understand it's going to be substantial.

You know, we took a bond—were you still there when we voted on that in the legislature? We voted on it at the legislature. At the time, $9.95 billion. We took that to the voters, we told the voters that was all that Californians were going to have to pay. You know, that was assuming that a large portion was coming from the Federal Government. But now these numbers continue to escalate.

So, my fear is, now that we're pulling communities out of thin air and putting rail stops between the first segment, that not only does the public lose interest, but more importantly, we actually run out of money and never are able to finish a project because we can't encourage private investors.

So, my concern is making sure that this model works, and we continue to move forward on a project that is not penciling out today.

Mr. LOFTUS. Right.

Mr. DENHAM. Do you have that same concern?

Mr. LOFTUS. Oh, yes. Of course. I mean, obviously, no one wants to pursue projects that don't make economic sense. And we would not suggest doing that, although we do think that Federal——

Mr. DENHAM. But that is what we are doing right now today. As other states give up money, we're trying to grab that money. And I realize that we're trying to grab that money to make the project whole, but we're doing it without understanding specifically what the model is to make it successful and complete.

Mr. LOFTUS. Well, I can—I will show you a model of a high speed system that makes sense. I will provide that to your staff.

And also, you know, historically, passenger operations of any kind, passenger rail operations of any kind, like the highways, have not covered their costs. There has always been some government subsidy involved, including on the highways. So a lot of this is sort of the unquantifiable public benefits. There is no cash benefit that you can put on the public benefit of having better transportation systems in any type of—any mode of transportation.

Freight railroads are different, because they're transporting goods that are sold, and companies need to transport those goods, so that's a very different model of transportation than passenger transportation. And I think history shows that the country has been willing to finance passenger transportation modes—again, including highways —because they believe there is an overall benefit to society, whether there is the cash return or a lack of subsidy requirement has generally been the case, and it's also generally been that the government is willing to support that.

Mr. DENHAM. And I would agree that the American public would be willing to support a project that will have the ongoing ridership numbers. Where they see the biggest need, you know, they can see the investment to put the capital forth to get the project started and actually complete.

But I believe—it's my belief—that the American people expect the ridership numbers to pencil out, so that it's not an ongoing subsidy. That would be the administration's position, as well. I mean

is that not how we're moving forward on each of these projects, is putting the assets out there, and then expecting the private companies to be able to fulfill the ridership numbers?

Mr. LOFTUS. That is the model that Florida is pursuing, even though the governor returned the funds.

Mr. DENHAM. And what different challenges are you seeing? This is high speed in general, across the Nation. What challenges would you see that would be different in, say, the northeast corridor versus California or any of the —are there different regional challenges, I guess, is my question.

Mr. LOFTUS. There are. The northeast corridor, it's an existing infrastructure, travels through very densely populated areas. So, to turn that into a true high-speed rail operation is going to be difficult, just from an engineering point of view. It can be done.

In California, they are running over, in many cases, existing freight lines. So the interaction between freight and passenger will be something that needs to be worked out. And they're also building new dedicated facilities.

Florida, I believe, is primarily, in this first leg, Tampa to Orlando, I think that's pretty much dedicated right of way. When they've moved beyond Orlando, trying to go down to Miami, then they're going to be sharing track with a freight railroad operation. So that interoperability difficulty is present there.

Mr. DENHAM. And which of those routes would be most attractive to private investors?

Mr. LOFTUS. I—right now, Florida is the only one that I am aware of that is well-enough defined for the private sector to get their hands around. And as Secretary Porcari said earlier, the private sector was ready to take on that project, including ridership risk, but the governor chose to return the funds.

Mr. DENHAM. And you have a model on all three of those projects?

Mr. LOFTUS. No.

Mr. DENHAM. Just——

Mr. LOFTUS. I have a model on a project that I will provide to your staff.

Mr. DENHAM. OK. So the project model that you have would be the same for all three?

Mr. LOFTUS. No, no, of course not. I mean the riderships are different, the cost to construct is different. The cost to operate is different. But, in concept, the ability to generate returns would be conceptually the same, yes.

Mr. DENHAM. OK, OK. But you do have three models for all three projects.

Mr. LOFTUS. No, I don't. I have one project.

Mr. DENHAM. You have——

Mr. LOFTUS. The models for those projects are proprietary, and they're not available to the Alliance.

Mr. DENHAM. Oh, OK. OK, thank you.

My final question, Mr. Yachmetz, how many grants did FRA administer before the ARRA?

Mr. YACHMETZ. You mean all kinds of grants? We—generally speaking, we had—before the Recovery Act we had two big grants, Amtrak's capital and debt service was one grant, and operating

was another grant. And then we would, on a regular basis, have 20 to 30 small grants, and 2 or 3 RRIF loans.

Mr. DENHAM. Thank you. Ms. Richardson, do you have any final questions?

Ms. RICHARDSON. Yes. Thank you, Mr. Chairman. I just wanted to follow up on a few of the questions that you asked.

Mr. Loftus, which project are you working with with high speed rail currently, that you have a model for?

Mr. LOFTUS. The DesertXpress system.

Ms. RICHARDSON. Excuse me?

Mr. LOFTUS. DesertXpress, from Victorville, California to Las Vegas, Nevada.

Ms. RICHARDSON. OK. Mr. Chairman, for the record, I think some of the answers of what Mr. Loftus provided were actually not originally within the overall scope of this committee's jurisdiction, and I—not jurisdiction, in terms of our hearing today.

And I want to thank you. It's my understanding I think earlier today you were considering an amendment on the floor and you withdrew, and I want to express gratefulness to that, because I know we do have an upcoming hearing in your area—in fact, next week—that I plan on attending.

But I would just say that I have attended, because I am one of the co-chairs of the high speed rail caucus for California, and I would welcome your involvement with that. It is a bipartisan caucus. And I think that some of the things that Mr. Loftus said—I have participated in at least three or four meetings where I have engaged with great private sector involvement, and hope to be involved with with our projects.

So, maybe after we learn from the hearing next week, we will be able to speak to the chairman, Mr. Shuster, about having a more intensive high speed rail discussion with all of the appropriate parties present, so before we make decisions of, you know, yea or nay on something, that we have everything at the table. Thank you, sir.

Mr. DENHAM. This hearing is adjourned.

[Whereupon, at 1:33 p.m., the subcommittee was adjourned.]

Rail has played an instrumental role in the history of my district. Dating back to 1849, when the Scranton brothers formed the Delaware, Lackawanna and Western Railroad creating a hub for transporting coal.

The Lackawanna & Western railroad connected the Erie Railroad to lines in New York. Their flagship train, the Phoebe Snow, provided luxury passenger service between my district and New York City. Unfortunately, since 1971 when Amtrak took over intercity rail service, the Scranton to New York service has been disconnected.

I am committed to working with local partners to such as the Pennsylvania Northeast Regional Railroad Authority partners to restore commuter rail service between Scranton and New York.

Some of the highest population growth rates in the state are found in this corridor as housing prices in the New York City market have pushed residents to ~~peripheral~~ areas in Monroe County and the Stroudsburg area. A service plan developed by New Jersey and Pennsylvania calls for nine round trips per day between Scranton and Hoboken, N.J., with connections to Manhattan.

The Lackawanna Cutoff project would have created more than 4,300 jobs and it would have enhanced connectivity between northern major economic centers and northeastern Pennsylvania markets, which is currently constrained by severe congestion.

The Lackawanna cutoff has been under active consideration for two decades.

I thank Chairman Shuster for calling this hearing and our witnesses for giving of their time to testify.

Mr. Chairman, as the Representative for Coastal Louisiana, I represent the first step or the last step of our international trade system. The six deep water ports in Coastal Louisiana transport 450 million tons of cargo every year, including 60 percent of this nation's grain exports.

To me, it doesn't matter how these 450 million tons of cargo reach my district. They come via truck, train and barge; it doesn't really matter to the dock workers in my district and the international customers we ship to it only matters that the cargo reaches its final destination on time.

However, what we do know is that no one mode of transportation can carry all of this cargo. As such, we must have an intermodal transportation system; one where cargo can be taken from a train, on to a barge and then on to an ocean-going ship seamlessly and efficiently. For this reason, I fully support Railroad Rehabilitation and Improvement Financing (or RRIF) program and the priorities for the program laid out in the authorizing legislation. This language specifically prioritizes the promotion of economic development, enhances our international competitiveness and enhances intermodal rail service.

I am also very concerned that the Federal Railroad Administration has chosen to ignore these statutory priorities and has instead chosen to promote publicly owned passenger transportation. I have nothing against passenger rail and fully support the passenger rail industries ability to seek and secure RRIF loans. However, from where I sit, I believe we must follow the law and prioritize those measures which will directly benefit those systems which directly improve our freight

transportation system and our ability to engage in international commerce.

I look forward to our the testimony from today's witness and hope they can shed some light on how we can return RRIF to a program which benefits freight rail and international competition.

Statement of Hon. John L. Mica
Chairman, Committee on Transportation and Infrastructure
"Sitting on our Assets: Rehabilitating and Improving our Nation's Rail Infrastructure"

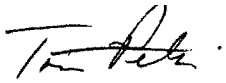
The Railroad Rehabilitation and Improvement Financing program (RRIF) authorizes Department of Transportation to lend up to $35 billion for railroad infrastructure, equipment, and facilities development.

These loans cost the U.S. government nothing – the loan applicants pay credit risk premiums and fully collateralize the loans. The cost of the RRIF program to taxpayers is exactly zero, yet only $400 million is currently out in loans, of a total $35 billion loan authority, utilizing only a little more than one percent. DOT approved only two loans in 2010, two loans in 2009, and exactly one loan in 2008.

The RRIF law requires DOT to consider and approve a loan application in 90 days, but in reality, the loan approval process drags on for more than a year. The Federal Railroad Administration says average loan processing time is 13½ months.

Additionally, the FRA released guidance for the RRIF program last September that could further slow down and restrict the RRIF program. Subcommittee Chairman Shuster and I wrote a letter to Secretary LaHood outlining our concerns with this new guidance.

We need to eliminate barriers and reform existing programs, revenue sources, and financing tools like RRIF to successfully leverage federal funding with private sector resources. RRIF can be an innovative and successful way to finance rail infrastructure projects, including high-speed rail. But we need to stop sitting on our assets and make the RRIF program more accessible, faster, and better utilized.



Statement for the Record
Representative Thomas E. Petri
February 17, 2011
Subcommittee on Railroads
"Sitting on our Assets: Rehabilitating and Improving our Nation's Rail Infrastructure"

Mr. Chairman, I appreciate your holding this important hearing on how to improve our rail infrastructure.

I have a vested interest in the Railroad Rehabilitation & Improvement Financing (RRIF) Program having been the Chairman of the Surface Transportation Subcommittee during TEA 21 when the RRIF program was established. Unfortunately, after 14 years, less than $1 billion of the authorized $35 billion is currently obligated. I commend Chairman Mica, Chairman Shuster and this committee for working to modernize the RRIF program to allow it to be as effective as possible.

Last week, an innovative proposal to utilize the RRIF program was brought to my attention. Two private companies have formed a coalition that has crafted a Passenger Station Area Oriented Development proposal which they hope to have considered in the reauthorization.

The coalition members used their engineering and property development expertise to design a plan for an organized approach to passenger rail oriented development centered on station areas. Under this plan, a private-public body, such as a Public Private Partnering Commission would provide policy guidance on best practices in station area development including the capture of increasing area values. The station area would be eligible for federal incentives, including RRIF loans, if a commitment was made to dedicate a stream of revenues from those increasing property values to the passenger rail operation in emerging high speed and regional corridors.

The Wisconsin and Ohio high speed rail programs were halted in large part because the Governors could not consent to unknown operating subsidies and maintenance costs. The proposal for organized Passenger Station Area Oriented Development could have the potential of identifying a new stream of revenues dedicated to corridor intercity passenger operations during this challenging fiscal climate.

I request that the Subcommittee include in the hearing record testimony from the Forest City/Woolpert Coalition and ask that you evaluate the proposal as we work to write a reauthorization bill. Thank you.

Rep. Tom Reed
Opening Statement: Sitting on Our Assets: Rehabilitating and Improving Our nation's Rail Infrastructure (February 17, 2011)

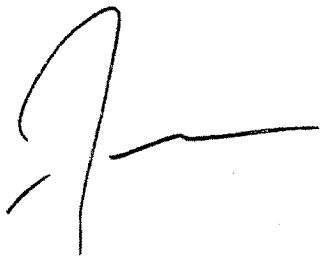
I would like to begin by stating my support for the Railroad Rehabilitation & Improvement Financing (RRIF) program. The RRIF is a useful tool for developing railroad infrastructure because it provides direct, low-interest federal loans and loan guarantees to finance the development of railroad infrastructure.

Unfortunately, this program is underutilized. While the RRIF program is authorized at $35 billion, the program has less than $1 billion in outstanding loans. I believe that the RRIF poses few risks to taxpayer dollars. In fact, RRIF loans are so secure that no recipient of a RRIF loan, or loan guarantee, has defaulted on a loan, or is delinquent in making payments. With low risk to taxpayer dollars, we need to find ways to use the additional $34 billion that is authorized under the RRIF program to rebuild our deteriorating rail infrastructure. More needs to be done to promote this program.

As Vice Chair of the Subcommittee on Railroads, Pipelines and Hazardous Materials, my goal is to develop policy that will lead to increased use of the RRIF program. To do so, I would like to see the U.S. Department of Transportation reach out to educate the railroads, rail freight shippers, state and local governments, as well as government sponsored authorities, about their eligibility for RRIF funds. I feel that one cause of underutilization of the RRIF program is that few entities understand the eligibility requirements. We need to find ways to facilitate a conversation between the U.S. Department of Transportation and the entities that needs these funds to improve our railroad infrastructure.

Secondly, it is my desire to see the U.S. Department of Transportation work with railroads, and other eligible entities, to simplify and streamline the application process. While I feel that financial viability should be a requirement for eligibility under this program, I do not support program eligibility requirements that are based on the policy goals of the Administration. We need to make sure that we make it as easy as possible to improve our railroad infrastructure while, at the same time, limiting the risk to taxpayers.

Working together, I know that we can find ways to enhance this valuable program and improve our deteriorating railroad infrastructure.



Statement of Hon. Bill Shuster
Chairman, Subcommittee on Railroads, Pipelines, and Hazardous Materials
"Sitting on our Assets: Rehabilitating and Improving our Nation's Rail Infrastructure"

The RRIF program was originally created in 1998, in TEA-21, as a dedicated source of loan funding for railroads' infrastructure needs, limited to $3.5 billion in total outstanding loans. Congress, recognizing the need for a strong freight railroad improvement program, increased that amount to $35 billion in SAFETEA-LU.

We also strengthened the RRIF program in the Passenger Rail Investment and Improvement Act of 2008 (PRIAA), by increasing the repayment period from 25 years to 35 years.

It is also important to note that in the history of the program, we have not had a single default on any of the RRIF loans.

Despite the efforts of this Committee, the RRIF program is in serious need of improvement. Chairman Mica has indicated that he is interested in pursuing improvement to a number of rail issues in a rail title to the transportation reauthorization bill, and addressing the issues in the RRIF program are a top priority.

At a time when our nation is doing all that it can to spur economic activity, the RRIF program stands out as a potential model for how government can encourage economic growth.

Because RRIF is an innovative loan program – not a grant where the government merely hands out cash – the private sector is incentivized to invest money in projects that will pay a financial dividend down the road.

At today's hearing, I am interested in exploring ideas for improving this important program. Specifically, I am interested in ways we can reform the program to

leverage federal funding with private sector resources. I am also interested in ways that we might be able to apply the RRIF program to improve the eligibility for high-speed rail projects.

I look forward to working with the Chairman and the members of the Subcommittee to improve and better utilize the RRIF program, and I look forward to the testimony from our witnesses.

Statement Of

William A. Callison

President

Wheeling & Lake Erie Railway Company

Before The

United States House Of Representatives

Committee On Transportation And Infrastructure

Subcommittee On Railroads, Pipelines And Hazardous Materials

Hearing On

Sitting On Our Assets: Rehabilitating And Improving Our Nation's Rail Infrastructure

February 17, 2011

Wheeling & Lake Erie Railway Company
100 E. First Street
Brewster, Ohio 44613
Ph: 330-767-7290

I am William Callison and serve as President of the Wheeling and Lake Erie Railroad. The Wheeling is an approximately 850 mile railroad including main line, branch line and certain operating rights. We run from Toledo and Lima, Ohio through Cleveland, Akron, and Canton, Ohio, down to Mingo Jct. on the Ohio River to Pittsburgh and Connellsville, Pennsylvania, and onto Hagerstown, Maryland. We currently ship approximately 100,000 annual carloads, the majority of which is steel products, aggregates, coal, chemicals and plastics. We currently have 325 employees.

Today the Wheeling and Lake Erie is a successful regional railroad, but it was not always so. The track was an underperforming line of the Norfolk Southern and as such received little investment under its ownership. The track was first purchased in 1990 and the new railroad has doubled its revenues in the last 15 years and has grown from 245 to 325 employees. Virtually all of today's short line railroads operate at a profit on a P&L basis. Our challenge is earning enough after operating expenses to sufficiently reinvest in our infrastructure. Railroads are one, if not the most capital intensive industries in the country. Short line railroading is even more so because we must make up for years of deferred maintenance expense. We must earn that revenue both from relatively small customers who do not ship in the large volumes enjoyed by the Class I railroads, as well as from competing with Class Is for rail traffic with large rail shippers such as Arcelor Mittal and US Steel.

The RRIF loan program is ideally suited to meet the challenge of upgrading infrastructure and does so at no cost to the federal government. It provides debt financing to short lines with long terms and relatively low interest rates that our businesses could never secure in the private market. It allows us to rehabilitate track and purchase equipment that we otherwise could not afford, or in the case of track rehabilitation would have to accomplish over a very long period of time.

The Wheeling & Lake Erie has two RRIF loans and I have been asked to appear here today to discuss those loans and the process we went through to secure them. The story of our RRIF loans can be fairly described as the good, the bad and the ugly.

The "good" is the results of those loans. We have a $25 million RRIF track rehabilitation loan that allowed us to take approximately 120 miles of track from 25 mph (with numerous 10 mph "slow orders") to 40 mph. The higher speeds allow us to turn crews, locomotives and cars much faster which makes us safer, more efficient and reliable and also lowers our operating costs. The new rail and ties makes for safer operations with substantially less chance of derailment.

We also have a $14 million loan which allowed us to purchase 150 open top hoppers during a tight equipment market. This car supply was key to allow us to fulfill several large customer contracts. Under any circumstances these loans would have been very important to the financial success of our company. As it turns out they became critically important to our ability to weather the near depression the country experienced in 2008 and 2009. During that period the railroad's carloads declined by 50,000 carloads and our annual revenues declined by $20 million. The operating costs and lower principal and interest payments made possible by these 25 year loans allowed us to get through this period without laying off a single employee or missing a single quarterly debt payment.

The "bad" was the length of time it took to secure these loans. We turned in the first loan application in January 2003 and it was not approved until July 2004, a full 18 months from start to finish. We turned in the second loan application in December 2005 and it was not approved until November 2006, a full 10 months from start to finish. This under a statute that requires the government to complete its process in 90 days. I understand the government's need to thoroughly analyze a company's financial situation and its ability to repay but I do not understand why it must take so long.

The "ugly" was what that took place at the end of the process for the second loan. The second loan application was made December 2005 with the understanding that loans were being approved within 90 days. We had placed an order for the 150 open top hoppers with expected delivery of 25 car lots to begin in April 2006. The cars were delivered on time but since the loan approval did not occur until November 2006, bridge loans for $7.7 Million had to be obtained in order to take delivery of the cars. Interest expenses totaled $53,500. Damage to our relationship to the car builder and customers resulted, including a frustrating and needless expense to WLE had the RRIF loan been approved in a timely matter.

I have worked in the railroad industry for thirty years and I am familiar with the Federal Railroad Administration and its people. They are both our regulators and can be our partners in such important areas as safety and standards. It is an agency that understands our industry and is dedicated to making it better. It is therefore very hard for me to understand why this RRIF program has such a tortured history.

Having thought about it in preparation for this hearing let me offer a number of possibilities. Clearly I think there are too many cooks in the kitchen. Once the FRA and its Independent Financial Analyst has determined that the loan meets the statutory requirements and that the collateral value is as described, there should be no reason for the Office of Management of Budget or the Credit Council to revisit the analysis process. This results in lengthy delays and involves individuals who have very little understanding of railroad operations or economics.

The period for hiring the "Independent Financial Analyst" appears from the government's perspective to sit outside the statute's 90-day requirement and I believe that interpretation has allowed them to prolong the period. Likewise, in both Republican and Democratic Administrations the OMB appears to believe that they sit completely outside the 90-day requirement. It appears the FRA itself has not been given adequate resources to process these loans. They appear to be thinly staffed and those that do work on these loans are often reassigned to other tasks deemed more pressing by whoever is in charge at the time.

In conclusion, this RRIF program has the potential to enhance the safety, efficiency and reliability of the regional and short line infrastructure and equipment, much to the benefit of many important rail customers, large and small. With a little diligence and oversight the program's problems can and should be fixed. I appreciate the opportunity to appear before you today and will be happy to answer any questions.

TESTIMONY OF MR. JOHN E. FENTON
CHIEF EXECUTIVE OFFICER
SOUTHERN CALIFORNIA REGIONAL RAILROAD AUTHORITY
(METROLINK)

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
HOUSE TRANSPORTATION AND INFRASTRUCTURE COMMITTEE

HEARING ON REHABILITATING AND IMPROVING OUR NATION'S RAIL INFRASTRUCTURE
FEBRUARY 17, 2011

Mr. Chairman and Members of the Subcommittee, thank you for inviting me to testify today. My name is John Fenton. I am Chief Executive Officer of the Southern California Regional Rail Authority, commonly known as Metrolink. I have spent nearly 30 years working both in the freight and passenger rail industries and have witnessed public transit emerge on the national agenda. Public demand for more transportation options to improve mobility and protect our environment is at an all-time high.

My testimony today will focus on the barriers that Metrolink has experienced in our efforts to apply for federal Railroad Rehabilitation and Improvement Financing (RRIF) credit support to meet our capital investment needs. My testimony will also offer proposals to make the RRIF program more effective and meet its intended goals.

METROLINK OVERVIEW

Metrolink is a Southern California commuter rail provider that operates on a 512-mile system and serves five counties, including Los Angeles, Orange, Riverside, San Bernardino and Ventura.

In addition to operating 144 daily trains with nearly one million passenger trips each month, Metrolink provides dispatching services to two freight companies (Burlington Northern Santa Fe and the Union Pacific Railroad) and three passenger rail services (Amtrak, Coaster, Metrolink) over one of the most complex multi-modal rail systems in the United States. This includes select freight traffic coming out of the ports of Long Beach and Los Angeles, two of the busiest ports in the nation.

Since my joining Metrolink in April 2010, the organization has focused on driving excellence in safety, customer service, operational efficiency, transparency and fiscal responsibility. We are on a course to reduce our operating costs and become more self-sufficient.

We have made substantial improvements, including enhancing the safety culture by bringing into the process our key stakeholders such as rail labor, elected officials, federal and state regulators and our contractor co-workers.

This year we launched our new state-of-the-art, collision absorption-equipped passenger rail cars, the safest in the nation. We have improved our equipment utilization and instituted a fuel conservation program that will reduce emissions and fuel usage this year by more than 800,000 gallons, saving taxpayers millions of dollars.

Metrolink has also made great progress with our accelerated strategy to have Positive Train Control (PTC) operational in advance of the 2015 federal deadline.

Innovative safety enhancements and environmental improvements require investment. Keeping our equipment and infrastructure in a state of good repair requires resources.

There has been much discussion about the "promise" of high-speed rail. But Southern California is facing many complex problems that require more than a glimpse into the future; these problems need answers today.

More than 60 percent of Californians reside in Southern California, with close to 20 million people living in the Los Angeles basin alone. We have more than 15 million cars on our gridlocked freeways, and it is estimated that vehicle miles will more than double from the current 22 million miles to 48 million over the next decade. Building one mile of freeway costs approximately $80 million to $100 million, whereas building one mile of rail costs approximately $5 million.

We must continually look for innovative ways to safely operate the railroad, improve the customer experience and seek the financing to build a system that meets the demands of our changing population.

As a low-cost provider, we believe Metrolink is the solution.

Metrolink is about a better quality of life, today. Yet, as an untapped resource, Metrolink is not reaching its potential to help safeguard our environment, reduce gridlock on our freeways and become a catalyst for job growth and economic investment.

RRIF PROGRAM EXPERIENCE

Through a partnership with the federal government and leveraged funding through RRIF, Metrolink can elevate our standing as a leading solutions provider for Southern California.

As an example, Metrolink recently looked into the possibility of applying for a $300 million RRIF loan to purchase Tier 4 (advanced technology) or "green" locomotives.

Metrolink's current locomotive fleet is one of the highest polluting in the nation, averaging less than Tier 1. Today, however, we can do much better.

Metrolink is now evaluating options for new advanced technology locomotives, which would ensure the most efficient and environmentally friendly passenger rail service in the state.

The environmental benefits of advanced technology locomotives would be significant. We expect an 86 percent reduction (11,000 tons) of Nitrous Oxide (NOx) and a 95 percent reduction in Particulate Matter (PM) emissions annually.

Locomotive manufacturers have indicated that the new technology could reduce fuel usage by up to 10 percent over our present equipment. In addition, if Metrolink would qualify to acquire these new locomotives under RRIF, it would protect our passengers' pocketbooks from rising gas prices.

Investment in new locomotives would allow us to increase horsepower per unit over 50 percent from 3000HP to approximately 4700 HP. Therefore, more efficient and cleaner locomotives will allow us to increase capacity (add more rail cars to the trains) and move more people. Advanced technology locomotives would reduce PM equivalent to the removal of 137,000 automobiles, and the reduction in NOx emissions would equate to the removal of 175,400 automobiles annually.

After careful investigation, Metrolink has found that we are ineligible to participate in the existing RRIF program. Some reasons might be unique to Metrolink and passenger railroads, but other major reasons involve larger issues in the RRIF program, which are shared by other rail industry witnesses today.

Prior to joining Metrolink, I served as President of one of the country's larger short line holding companies. We applied for two RRIF loans and in both cases the process took over a year and a half. In the case of the second loan the delay was so long that the rehabilitation needs changed and we had to rewrite the application to accommodate the facts on the ground. It is very difficult to run a business, be it private or public, with these kinds of delay.

From my perspective and experience in both the private and public sectors, I would like to discuss the most significant barriers with the RRIF program. I will also provide some recommendations to address some of the challenges that I believe undermine the potential of the RRIF program.

RRIF PROGRAM RECOMMENDATIONS

- Coordination with FTA Programs

For state and local public passenger authorities like Metrolink, most of our hard assets were acquired with assistance of FTA capital funds, or state or local capital funds.

Property acquired with assistance of FTA funds has a condition giving FTA rights to the property if the property is no longer used for public transportation purposes. Often state transportation capital funds have similar requirements.

For RRIF loans, the FRA requires a first lien on hard assets. The challenge arises when SCRRA cannot use an asset as collateral because the FTA has prior rights. The collateral

requirement prevents state and local rail authorities like Metrolink from utilizing the RRIF loan program.

The RRIF program is one example that highlights the disconnect between federal agencies. In practice, these barriers undermine the success of the RRIF program. Metrolink wishes to work with the committee to further address these issues. Greater flexibility by FRA in considering collateral and repayment conditions, especially for state and local government rail authorities, would make a significant difference.

- Credit Risk Premiums

Another significant challenge with the RRIF program results from the requirement for credit risk premiums.

Unlike the Transportation Innovative Financing & Improvement, or "TIFIA" loan program, the RRIF program does not provide any subsidy to cover the risk of default.

Currently, the cost of the default risk is borne by the applicant through the payment of what is called the "Credit Risk Premium." The amount of the premium is calculated as a percentage of the amount of the loan and is based on the risk of non-payment of the particular loan.

In addition, each applicant must pay an investigation fee calculated to cover the cost to the FRA of evaluating the loan application. This fee must be paid whether or not the loan is ultimately approved.

These extra costs can make the loan cost-prohibitive for government entities with limited resources. The credit risk premium is a unique feature of the RRIF statute. Providing funds for RRIF loan credit risk premiums, similar to TIFIA loans, would be helpful and certainly make the program more financially practical.

- Loan Term Flexibility

The topic of RRIF loan terms flexibility is well-addressed by my colleague on the panel, Mr. Loftus for the American High Speed Rail Alliance, who is also addressing issues from a perspective of public passenger rail. We support and endorse Mr. Loftus' comments and recommendations for the RRIF program on loan flexibility.

- Innovative Financing

Finally, I also support efforts that create opportunities for private investment. The federal government is facing unprecedented budget constraints. The traditional model for federal funding and grants is incapable of meeting the nation's deteriorating transportation infrastructure needs.

The RRIF program is a great opportunity to leverage private investment. We would like to work with the Subcommittee to identify incentives that will encourage greater private investment.

CONCLUSION

In closing, I would like to emphasize that Metrolink is more than passenger trains moving people from place to place.

We are the solution for some of the major issues facing Southern California by reducing gridlock, safeguarding our environment and providing economic investment, jobs and growth.

We provide a better quality of life.

Equally as important, Metrolink has an opportunity to set an example for commuter rail throughout America.

I want to thank you for the opportunity to appear before you today, and I am happy to answer any questions you might have.

Testimony of Mr. Tom Loftus
On Behalf of the American High Speed Rail Alliance

Before the
Subcommittee of Railroads, Pipelines, and Hazardous Materials,
U.S. House Transportation & Infrastructure Committee

Hearing on Rehabilitating and Improving our Nation's Rail Infrastructure

February 17, 2011

American High Speed Rail Alliance
2900 K Street, NW
Suite 550
Washington, DC 20007
202.777.0456
www.americanhsra.org

Testimony of Mr. Tom Loftus
On Behalf of the American High Speed Rail Alliance
Before the Subcommittee of Railroads, Pipelines, and Hazardous Materials
U.S. House Transportation & Infrastructure Committee
Hearing on Rehabilitating and Improving our Nation's Rail Infrastructure
February 17, 2011

Mr. Chairman and Members of the Committee. I am Tom Loftus and I am here today representing the American High Speed Rail Alliance. I am on the Advisory Board of the American High Speed Rail Alliance and serve as Chairman of its Public Private Partnership and Project Financing Council. The American High Speed Rail Alliance is a 501(c)(6) non-profit association whose membership includes state departments of transportation, passenger rail corridors, financial organizations, the full spectrum of rail design, engineering, construction and supplier companies, rail labor unions, and grassroots advocates. The Alliance's mission is to advocate for the development and implementation of high speed passenger rail in the United States. I am currently a Principal of the Seneca Group, which is a transportation consulting group which has worked extensively on Railroad Rehabilitation & Improvement Financing (RRIF) loans both on behalf of individual applicants and as one of a number of Independent Financial Analysts used by the Federal Railroad Administration to analyze RRIF loan applications.

My purpose this morning is to propose a number of changes to the RRIF program that the American High Speed Rail Alliance believes would allow the program to better support the development of high speed rail and help leverage the private financing that is so badly needed if we are to make high speed rail a reality in this country.

As everyone knows, building world-class high speed rail will require a very significant commitment of resources. Although it is a great deal of money, the fact is that the $8 billion provided in the 2009 stimulus package and even the $53 billion the President has recently proposed is not sufficient to fully complete the job. These funds are going to have to be matched by strong local and state support and by meaningful private investment in these projects. Let me briefly describe three changes that would provide an incentive for this private investment.

Provide TIFIA-Like Subsidies to RRIF

The first proposal is to provide RRIF with a federal subsidy that allows the Secretary of Transportation the ability to modify loan terms so as to defer payments and/or subsidize the interest rate.

Deferring debt repayment allows an applicant to realistically meet the construction and ramp-up timetables of high speed rail projects. This would be comparable to the deferral that is allowed under TIFIA. Under RRIF, the Secretary already has the authority to defer payments for up to six years from the initial loan draw, but no appropriation to support this authority has ever been made, so the repayment program has always been required to begin immediately. This immediate repayment requirement, along with the Credit Risk Premium, is the reason the RRIF program does not currently have a cost to the government. On the other hand, TIFIA provides that repayment may commence up to 5 years after the date of substantial completion of the

project. A similar provision for RRIF would provide high speed rail applicants the multi-year timeframe it would take to build the system, and the additional time any such project would need to attract the ridership necessary to repay the loan. Under the federal government's bookkeeping rules there is a cost to this deferral, which must be paid for. Under TIFIA that cost is paid for by an annual appropriation. In SAFETEA-LU that appropriation was set at approximately $122 million per year and that amount was supplemented in 2010 to cover additional TIFIA loan activity.

Under both RRIF and TIFIA the interest rate is set at the rate which a U.S. Treasury security of comparable term would earn, which today is approximately 4.7 percent. We propose that a RRIF subsidy should also be able to be used to lower this interest rate when the Secretary determines that such a reduction could make the difference in making a business plan work. While I am not privy to the scoring techniques of Congress, we believe that at today's interest rate, a $1.1 billion subsidy would support a ten year deferral or a 3% interest rate subsidy for a 35 year loan of approximately $5 billion. Put another way, one federal dollar would leverage nearly five dollars in loans to private entities that must be paid back to the government.

We fully understand and appreciate the need to reduce federal spending and we know that $1.1 billion is not pocket change. However, if the federal government is going to commit to investing in high speed rail, would we not be better off taking a portion of the proposed $53 billion, or whatever amount is going to be made available, and leveraging it at five to one? Given today's financial reality, this might be the only way we will ever find the funds necessary to build a high speed rail project.

Expand the Definition of Collateral

Typically with a RRIF loan the government requires that it has a first lien on hard assets equal to at least 100 percent of the loan value. Unlike established railroads, which have substantial track, equipment and real estate assets that have already been fully or partially paid for through years of operation, new high speed rail projects will not be able to meet this requirement. What these projects may have instead is a dedicated stream of voter approved tax or fee revenue that can be dedicated to repaying the loan. We propose requiring the FRA to estimate the projected level of income of a future stream of taxes that are pledged to repay the RRIF loan and to then accept the value of that estimated stream as collateral. In the case of a default, the government is guaranteed that stream of income to repay the loan and is thereby just as protected as it would be if the project had hard assets that could be taken up and sold for their net liquidation value.

Provide RRIF Eligibility for Development Phase Activities

High speed rail projects require substantial funding for development phase activities including planning, feasibility analysis, environmental review, permitting, and preliminary engineering and design work. It is unclear whether development phase activities are eligible costs under the current RRIF statute. Because the outcome of this work is uncertain they are the often the hardest projects to fund. Knowing that a successful RRIF loan could reach back and pay for

these costs would make it more feasible for a private entity or local unit of government to make the initial outlay of funds.

High speed rail holds great promise for the American people. It will reduce congestion on our highways and at our airports. It will contribute to energy conservation and cleaner air. It will foster more interconnected communities and serve as the foundation of increased commerce. Building the underlying infrastructure will create tens if not hundreds of thousands of jobs. Procuring the rolling stock equipment, installing the systems to run these systems, and maintaining the infrastructure will renew critical domestic manufacturing and supply industries - industries we have sadly ceded to foreign countries.

High speed rail advocates are rightly passionate in promoting these substantial advantages. But money, not passion, is what is needed to actually build a high speed rail system. We know that not all of the money needed to build a successful high speed railroad can come from the federal government. I think we also know that without some level of federal capital support, high speed rail is not going to generate the kind of returns that will attract significant private investment. It doesn't do so where it exists in other countries and there is no evidence it will do so in this country.

Therefore, to really move forward, we need to start thinking about alternative ways to realistically fund high speed rail projects. The proposals I have outlined today are not the total answer to funding high speed rail, but they are a realistic and cost effective way to begin the actual construction of high speed railroad systems.

Let me conclude by briefly summarizing the advantages of the American High Speed Rail Alliance proposal.

- The proposed subsidy allows a dollar of federal spending to leverage almost five dollars in non federal debt financing.

- Allowing for payment deferrals and interest rate subsidies allows RRIF loans to conform to the real life financial needs of the applicants.

- RRIF loans must be repaid in full, which means the diligent review process by FRA will naturally eliminate projects that are not economically realistic.

- Recognizing a future stream of local or state revenues as collateral aligns the RRIF statute with a more realistic source of repayment and modifies a collateral requirement that cannot be met by the majority of high speed rail projects

- Allowing RRIF loans to reach back and pay for developmental costs would make it more realistic for a private entity or local unit of government to make the necessary initial outlay of funds.

I appreciate the opportunity to appear before you today on behalf of the American High Speed Rail Alliance and am happy to answer any questions you might have.

Statement of
The Honorable John D. Porcari
Deputy Secretary
U.S. Department of Transportation
before the
Subcommittee on Railroads, Pipelines and Hazardous Materials
Committee on Transportation and Infrastructure
U.S. House of Representatives
February 17, 2011

Chairman Shuster, Ranking Member Brown, and members of the Subcommittee: On behalf of Secretary LaHood, I am honored to appear before you today to discuss the Railroad Rehabilitation and Improvement Financing Program (RRIF).

I would like to focus my testimony on four topics: 1) why the RRIF program is an important tool today; 2) the RRIF Notice published in the Federal Register on September 29, 2010; 3) the role of the U.S. Department of Transportation Credit Council in coordinating Departmental credit programs, including RRIF; and 4) our views on the importance of credit based financing to help fund transportation infrastructure needs.

RRIF as an important tool today

RRIF has helped expand the nation's transportation infrastructure and freight capacity, preserve small town and rural connections to the nation's rail system, and improve freight and rail mobility.

For example, the Iowa Northern Railroad was formed in 1984 to preserve freight service to the small towns and the largely agricultural area between Cedar Rapids and Manley, Iowa. Iowa Northern provides essential transportation services to ethanol producers near Fairbanks, IA and Shell Rock, IA. FRA provided a $25 million loan to Iowa Northern to purchase track and right-of-way, rehabilitate track and construct office and maintenance facilities. However, in June 2008, Iowa Northern was severely damaged during a flood. The Department approved the railroad's request to defer loan repayments, an approach that not all lenders would take, and then rolled the deferred payments into the amount owed. Today Iowa Northern consists of over 160 miles of track with 100 employees and is current on all payments. Iowa Northern is also a RRIF success story.

RRIF is also offering opportunities for meeting our urban mobility needs. The Denver Regional Transportation District (RTD) approached the Department about developing a major intermodal transportation hub at the historic Denver Union Station. After a series of discussions, the Department concluded that RTD's needs could be met with a combination of a RRIF loan and financing from the Transportation Infrastructure Finance and Innovation Act of 2008 (TIFIA). The RRIF staff led the Departmental review of the project and developed an approach to provide $300 million in financing for the project including $155 million from RRIF. Today, construction is underway and people are at

work developing a facility that will become a focal point for transit oriented development in Denver.

As you can see from these examples, RRIF offers a great deal of flexibility in meeting our rail and rail-related intermodal investment needs. That is why this Administration believes that RRIF will play a significant role in the future.

The Notice

Since the inception of the program, the Secretary of Transportation has had broad discretion in implementing RRIF. Until our notice was published last September, there had never been a clear expression by the Department as to how the Secretary would exercise that discretion. That lack of guidance has been a justifiable concern for those who may benefit from the program, in particular the small railroads which are the reason that the program exists in the first place.

In issuing the Notice, the Department for the first time provided the basis for how we would manage the program and apply standards that applicants are required to address. In providing this transparency, our goal was to make it easier and less costly for interested parties to determine whether RRIF was a good fit for their financing plans, and to lay out what they could expect from the RRIF review process.

Unfortunately, what we believed was an effort to improve the implementation of RRIF has been seen by some as an effort to continue the policy of the past Administration to eliminate or significantly constrict the availability of credit through this program. Let me say unequivocally, this is not our intent. Thus, I would like to touch upon a few misunderstandings about the Notice.

- RRIF Financing Connection to Public Benefits

The use of the fiscal resources of the U.S. Government, including the use of the Federal Government's credit, needs to be linked to a public benefit. This was recognized in the statute that created the current RRIF program which included eight priorities for RRIF financial assistance. (45 U.S.C. 822(c)). The Notice provided more information and examples of how applicants could address the long-existing statutory priorities and help better articulate how implementation of RRIF aligns with national transportation goals. Among the types of investment we specifically identified as generating public benefits were "address[ing] specific chronic safety concerns", "sustained improvement in the class of track", and "enhancements of signal and train control systems". In the latter type of investment we were expressing our view that RRIF could be of assistance in the extension of positive train control to our Nation's rail system.

The Department believes that the important transportation services provided by our Class III and Class II railroads in preserving and encouraging the use of efficient rail freight services and preserving access by small towns and rural areas to the national rail system align closely with the Department's strategic goals and the public benefits that can be

realized through the RRIF program. As we say in the Notice: "***The RRIF Program was originally established as a means to provide access to capital for critical infrastructure improvements by the Class III and Class II railroads. Although the RRIF program has changed since its creation, FRA views the original purpose as one of the highest priorities for use of RRIF financial assistance.*** (Fed. Reg./Vol. 75, No 188/Wednesday, September 29, 20190, pg 60168, emphasis added.)

- Refinancing of Debt Incurred for Eligible Purposes

The Notice recognizes that under appropriate circumstances refinancing debt can yield benefits to the public. Among these types of refinancing are those that are used to free up cash flow to undertake additional capital improvements that preserve or improve the rail service or free up cash flow to ensure continued operation of the rail service. Included within this is using the beneficial financing terms offered by RRIF to facilitate compliance by railroads with so-called "unfunded mandates" that might result from statutory or regulatory requirements.

There are, however, certain types of refinancing of existing debt that provide limited or no public benefit and are not efficient uses of Federal assistance. These include using RRIF as part of a funding scheme that would permit entities such as hedge funds to acquire railroads through a highly leveraged purchase, strip the railroad of valuable assets such as title to the railroad's right-of-way, and leave the remaining shell of a railroad shackled with the acquisition debt.

Our refinancing bottom line is that we are in favor of refinancing that yields benefits to the public commensurate with the level of financial assistance provided, and most efficiently meets policy goals. We are not interested in the use of refinancing if the purpose of Federal financial assistance is solely to enrich corporations or individuals with little or no benefit to this Nation's transportation system.

- The Number or Size of RRIF Loans

The Notice states that the Department will periodically review the volume of RRIF-funded transactions to ensure that the level of RRIF activity continues to have an impact on rail investment. It is not our goal to "ration" RRIF assistance and set limits on either the size of loans or the amount of activity in any one year, but rather to make sure that Federal assistance is targeted efficiently and effectively, without providing unnecessary subsidies or displacing private credit markets.

In the current economy as we continue our progress out of the greatest recession of our lifetimes, the Department wants to stimulate job-making positive economic activity such as investment in rail infrastructure and equipment. We see no benefit in restricting the volume of such investments. Indeed, expanded competition for labor and materials will have precisely the simulative effect that this economy needs. However, we are confident that the lingering effects of the recession will soon recede. In that future state, the Department wishes to assure that our actions do not contribute to levels of inflation that

could have the effect of curtailing investment in transportation infrastructure and the jobs that comes with that investment.

The Credit Council

The Credit Council, as restructured by Secretary LaHood, ensures that the application of credit policy among the Department's different credit programs is consistent. Through the Credit Council review, the individual modal administrations and the Secretary's office that are evaluating applications for financial assistance benefit from the diverse expertise of the leadership of the Department and its modal administrations.

In the RRIF program context, the Credit Council first reviews with FRA information gathered through preapplication discussions prior to retaining the independent financial advisor (IFA). The purpose of this is to identify any issues that the Credit Council believes need to be addressed in the review of an application so that such issues are included within the scope of the IFA's work. Prior to this requirement there have been circumstances where FRA's analysis had not included issues of interest to the Council which in turn required more analysis and delay in acting on the proposed application.

Throughout the review of an application, the FRA RRIF program regularly briefs the Credit Council working group, which is comprised of the career staff credit program managers from the Office of the Secretary and the modal administrations. This acts as a peer review of the analysis being undertaken by FRA.

Finally, when the analysis is complete, it is presented to the Credit Council for review and comment. The results of this review are provided as advice to the FRA Administrator, who has been delegated by the Secretary with responsibility for implementing the RRIF program. We have established regular schedules for Credit Council meetings and processes for preparing and submitting materials for the Credit Council review. With this predictability built into FRA's application review process, the Council's considerations helps improve timely decision making on completed applications for RRIF financial assistance.

The Use of Credit Based Financing

As RRIF has proven, Federal credit assistance can be an important tool to help address the Nation's infrastructure investment needs. Credit can leverage available Federal financial resources to meet important and essential investment needs.

President Obama's budget for Fiscal Year 2012 requests $5 billion for the National Infrastructure Bank. The National Infrastructure Bank will invest in high-value projects of regional or national significance, and marks an important departure from the Federal Government's traditional way of spending on infrastructure through mode-specific grants.

The National Infrastructure Bank would have flexibility to choose projects with demonstrable merit from around the country and provide a variety of financial products – grants, loans, or a combination – to best fit a project's needs. The National Infrastructure Bank would allow the Department to further encourage collaboration among, and co-investment by, non-Federal stakeholders, including States, municipalities, and private partners. Also, the National Infrastructure Bank may be able to provide deeper, and targeted subsidies for eligible projects where warranted based on the potential public and economic benefits of a project.

Next Steps for RRIF

The RRIF program has a strong record of success. Despite the recession every recipient of RRIF financial assistance is presently current with their payments. In addition, we have had no defaults that have required the Federal Government to assume responsibility for the loans made under this program.

RRIF offers an opportunity to facilitate investment in rail capital needs that will yield public benefits at little or no cost to the Federal Government. Since we issued the notice, we have seen interest from a wide range of eligible applicants for a wide range of projects both large and small. Many proposals, such as the Denver Union Station project that was funded through a combination of RRIF and TIFIA financing, are unusually complex and are without precedent. This reflects both a maturing program and the growing need for transportation capital investment.

We will continue our outreach and educational efforts to the RRIF stakeholder community. We will redouble our efforts to assist rail industry organizations in helping their members identify how best to work within the program requirements, particularly those members that may not be accustomed to the requirements of public sector programs.

Conclusion

In conclusion, credit-based financial assistance programs such as RRIF will play a role of growing importance as we address this Nation's transportation investment needs. I would be happy to address any questions that the Subcommittee might have.

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HOUSE T&I COMMITTEE, SUBCOMMITTEE ON RAILROADS
HEARING ON RAILROAD REHABILITATION AND INFRASTRUCTURE FINANCING
FEBRUARY 17, 2011

QUESTION FROM CONGRESSMAN BARLETTA

Question:

Completion of the Lackawanna Cutoff would enable New Jersey Transit commuter rail passengers from my district to make connections to Hoboken, NJ, and from there travel by train into Manhattan. The complete project is estimated to cost $551 million, which includes complete reconstruction of the line, including track and signal improvements to approximately 88 miles of right of way, new stations, and parking facilities.

I am concerned that the RRIF loan consideration and approval process discourages applicants from applying for loans under the program, leaving it woefully undersubscribed. Can you please give me some examples of how we can reform this program to increase participation by freight and passenger rail applicants, including commuter railroads? Is there anything specific in your recommendations for RRIF reform that would positively impact the Lackawanna Cutoff project, which will restore commuter rail service from Delaware Water Gap, Stroudsburg, and Anamolink, Pennsylvania to the New York metropolitan region?

Response:

First, with respect to ways in which FRA can reform the RRIF program to increase participation, FRA will implement an outreach program this year designed to inform potential applicants about the program. In addition to outreach efforts, FRA will continue to conduct formal preapplication meetings with potential applicants. Preapplication meetings are a critical first step in the application process, as they serve two functions: (1) During preapplication meetings, RRIF analysts provide potential applicants with a detailed description of the RRIF application process and answer any initial questions. (2) As potential applicants describe their proposed project, RRIF analysts can quickly assess whether there are specific aspects of the application process that the applicant should focus on, such as the environmental evaluation. Finally, FRA is reviewing its application process, including developing an application completion checklist, to assist potential applicants in developing the information needed for FRA to timely consider an application. Through these efforts, FRA is committed to increasing participation in the RRIF program.

Second, with regard to the potential Lackawanna Cutoff Project, the project appears to be an eligible use of RRIF financial assistance. FRA encourages any interested eligible entity, such as New Jersey Transit or the Pennsylvania Department of Transportation, to participate in a preapplication meeting. As stated, this project would restore commuter rail service from eastern Pennsylvania to the New York metropolitan region. Previous RRIF loan funds have been utilized to enhance commuter rail service. In determining which projects to fund, FRA prioritizes projects according to the priorities listed in 45 U.S.C. § 822(c) as further explained in

the Notice Regarding Consideration and Processing of Applications for Financial Assistance Under the Railroad Rehabilitation and Improvement Financing (RRIF) Program at 75 FR 60165.

Testimony of Michael Sussman, Strategic Rail Finance

Subcommittee on Railroads, Pipelines and Hazardous Materials

"Sitting on Our Assets: Rehabilitating and Improving our Nation's Rail Infrastructure."

Thursday, February 17, 2011 at 10:00 a.m. in 2167 Rayburn House Office Building

Good Morning, Chairman Shuster and Members of the Subcommittee. My name is Michael Sussman. I own Strategic Rail Finance, a company I founded seventeen years ago after I discovered that most freight railroads, for no inherent business reason, have fewer funding options than companies that are much less important to the nation. I have coordinated financing for rail projects in 23 states, inventing new ways to integrate private-sector financing with public-sector funding. This collaborative approach delivers more capital and strengthens rail projects for all stakeholders.

I have been asked by the committee staff to provide my perspectives on the Railroad Rehabilitation and Improvement Financing program, or RRIF. The RRIF program is a USDOT loan and loan guarantee program with three main attractions. One is the repayment term which can be as long as 35 years. Second, is its relatively low interest rate based on Treasury securities of a similar term. Most importantly, it recognizes the collateral value of track, right-of-ways, and transportation facilities, assets for which it is challenging to secure long-term private-sector financing.

The country can enjoy a substantial return from improving the RRIF program. In spite of America's love-hate relationship with railroads, rail transportation provides many public benefits. Each trainload of freight, if moved on our highways, requires a convoy of trucks 27 miles long. Since those trucks burn two to four times the amount of diesel fuel the consequent increase in air pollution is significant. We need trucks as part of a complete transportation system, but we need increased rail transportation more than ever.

RRIF fulfills a role that is missing in the private sector. Since federal deregulation of railroads in 1980, the number of short line and regional railroads has increased from 190 to 575. At the same time banks have merged and consolidated, leaving behind the close connection between local banks and local railroads. In spite of the long-term financial stability of rail projects, they are more challenging to finance than riskier commercial developments such as office buildings and movie theatres.

So why does this $35 billion loan program still have $34.6 billion available and what can be done to increase the loan activity? I will suggest four no-cost remedies and several process improvements.

Firstly, I recommend enforcing the previously mandated 90-day timeline for the FRA to make loan decisions.

Secondly, I would like to see the OMB reverse the practice of cutting the collateral values by 20% when accompanied by professional appraisals. Hardly warranted when the primary assets presented in rail projects, i.e., steel, land, and rolling stock are among the most stable collateral items we see, often appreciating in value over time.

Thirdly, it is vitally important to revisit the FRA's de-prioritization of refinancing made public last September. There should be no reluctance to approve RRIF funds for refinancing as long as it supports a comprehensive capitalization strategy for successful long-term stewardship of rail facilities.

Fourth, borrowers should be given the option of a higher interest rate in exchange for a lower credit risk premium.

There are other ways to improve the RRIF program such as instituting a clear pathway for the program's loan guarantee function and coordinating with state departments of transportation and local banks. I would be gratified to share these ideas with the committee at a later date.

For now, just a brief mention of process improvements.

Seeing a RRIF loan application through to completion is like raising a child. No one really talks about how damn hard it is and even if they do, it is harder than anyone has the capacity to imagine until they have one of their own.

What I would like to see is a less expensive, less strenuous application process for smaller RRIF loans in support of one of its stated purposes, "Preserve or enhance rail or intermodal service to small communities or rural areas." As an addendum to my remarks, I have provided data on the outstanding repayment history of state revolving loan funds that rely on much less application information and a relatively rapid approval process.

The RRIF process needs to be more predictable and more interactive. Applicants need more coaching and support at every stage and the application itself needs to be rewritten by writers, not financial analysts or engineers. Many of the application questions do not clarify the level of data and detail required and the FRA is often muted in its response to inadequate applications. This communication gap adds weeks and months to the process, often ending in frustration and withdrawn applications.

Relating to a much simpler state loan application, Kathleen Grover, former administrator of Michigan's rail loan program said that 50% of the applicants did not respond to requests for additional information. Railroaders are some of the hardest working people in industry. A successful RRIF campaign requires more determination and communication than most rail operators can muster.

My addendums also include a side-by-side comparison of USDOT's RRIF and TIFIA finance programs that you may find helpful during your continued analysis. For that, I thank Joe Pomponio, the former director of the RRIF program, and Bryan Grote and David Seltzer of Mercator Advisors, two of the primary developers of the TIFIA program.

If we apply our limited public resources intelligently, we can seed private-sector investment to accomplish goals that neither sector can achieve on their own. The resulting innovation can provide the capital environment for railroads to substantially increase their contribution to America's economic vitality. Thank you for this opportunity to present my views.

STATEMENT OF

RICHARD F. TIMMONS

PRESIDENT

**AMERICAN SHORT LINE &
REGIONAL RAILROAD ASSOCIATION**

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

HEARING ON

**SITTING ON OUR ASSETS: REHABILITATING AND IMPROVING OUR
NATION'S RAIL INFRASTRUCTURE**

February 17, 2011

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

Mr. Chairman 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), which represents the nation's 540 Class II and III railroads. We were very active in the initial drafting of the RRIF statute in TEA-21. Since that time our Association personnel have provided extensive assistance in preparing and helping process applications. We have a thorough working knowledge of the program's requirements, the application process and the economic and jobs benefits that result from successful loans. As such we feel we are very qualified to provide our views on the subject of today's hearing.

The short line railroad industry has been the primary user of the RRIF program. Twenty five of the 28 RRIF loans approved to date are short line railroads. The average short line loan is for $27.8 million and together they have borrowed a total of $695.5 million. The largest short line loan, $281 million for the Dakota, Minnesota & Eastern Railroad was repaid in full when the railroad was purchased by a Class I railroad. Without the DME loan in the mix the average short line loan is approximately $18 million.

These loans have helped short lines maximize capital investment through direct rehabilitation and in some cases through refinancing existing debt so as to increase cash available for additional rehabilitation. We are particularly proud to point out that since the program's inception in 1998 not a single short line railroad has defaulted on its loan. Only one railroad has ever missed a quarterly principal and interest payment and that was due to serious railroad washouts caused by the 2007 floods in Iowa. That delinquency has since been rectified.

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.

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. Our importance is not our size 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."

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 let the large Class I carriers abandon them. This decision was implemented through specific statutory and regulatory decisions that incentivized entrepreneurs to purchase and operate these lines as new locally based small businesses. Since that time 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 Florida, the home of T&I Chairman Mica and Railroad Subcommittee Ranking Member Brown, short lines operate 39 percent of the state's total railroad network. Pennsylvania, the home of Railroad Subcommittee Shuster has more short line miles and more individual short line companies than any other state in the Union and together they operate 52 percent of the state's total railroad network. There are 19 new Members of the T&I Committee and every one of you have a short line in your district.

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.

I would like to emphasize three important points about the current RRIF program and comment briefly on the recent RRIF "Guidance" issued by the Obama Administration.

First, the RRIF loan program leverages substantial private investment in short line infrastructure. These are not grants but 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.

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. 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.

Unfortunately, RRIF 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. Indeed, as I have previously acknowledged before this Committee I believe that part of the blame for the slow start up lay with inadequate applications submitted by my own short line railroads. I applaud the FRA staff for their patience and willingness to correct our shortcomings in those early years.

But it is also no secret that since the beginning FRA has had to deal with substantial institutional opposition to the program within other federal agencies and that opposition is largely responsible for the severe under-utilization of this program. I am fearful that pattern is being repeated today.

On September 29, 2010 the Administration issued a Federal Register Notice concerning its "Notice Regarding Consideration and Processing of Applications for Financial Assistance under the Railroad Rehabilitation and Improvement Financing Program (RRIF). This was not a normal "rulemaking" that requires public comment but rather "guidance" on how the Administration will prioritize and judge RRIF loan applications.

ASLRRA is in significant disagreement with this new "guidance." We believe the new guidelines will make it very difficult for small private freight railroads to qualify for loans and eliminates categories of loans that are clearly eligible under the statute.

I have attached to my testimony a copy of the ASLRRA letter to US DOT detailing our difficulties with this notice. Our primary objections are as follows.

- The guidance creates loan criteria that are not part of the underlying statute. In particular it allows FRA to select based on how closely the loan fits the "policy goals" of this Administration.

- The guidance claims the need to ration loans so as not to be disruptive to the railroad economy. The railroad industry invests <u>over $10 billion a year in capital projects</u>. If FRA were to double the number of loans <u>overnight</u> the combined total would represent just 14 percent of the railroad industry's <u>annual</u> capital expenditures.

- The guidance discriminates against refinancing as an eligible purpose except for public agencies. This directly contradicts the statute which makes no differentiation among eligible categories. Short lines borrowed heavily from banks to purchase and rehabilitate

lines that were going to be abandoned by the Class I railroads. Refinancing this short term, high interest rate debt is very important to a short line's cash flow and allows it to preserve cash that is used for much needed rehabilitation.

- The guidance establishes priority categories of "politically correct" RRIF projects which have nothing to do with the economic world in which short line railroads operate -- categories including enhancing commuter and intercity rail transportation, noise reduction, reduction of waterway pollution, development of interconnected livable communities, reduction of highway freight traffic in urban areas, and expanding access to commuter rail transportation by persons with disabilities. These may be worthwhile goals but have nothing to do with short line railroads that are preserving light density rail lines in rural and small town America.

- The guidance creates a new requirement of "public benefit." It convolutes that requirement by defining "public benefit" as the difference between the benefit that would be achieved by using RRIF as opposed to using conventional financing. In the real world the difference is that short line railroads cannot get these kinds of loans from conventional financing. That was the reason that the program was created in the first place and was the reason that the statute requires that $7 billion – one fifth of the total revolving authorization – is reserved "solely for projects primarily benefitting freight railroads other than Class I carriers. I would argue that through this "short line only" set aside, the Congress has already established the significant public benefit associated with approving short line RRIF loans.

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, has the potential to be equally valuable in saving and strengthening short line and regional railroad infrastructure today. The program's shortcoming is that it is not fully utilized.

I appreciate the opportunity to appear before you today and will be happy to answer any questions.

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