

**Calendar No. 516**

116TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
116-255 }

TOD ADVANCEMENT ACT OF 2019

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2805



AUGUST 12, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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### TOD ADVANCEMENT ACT OF 2019

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Mr. WICKER, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### R E P O R T

[To accompany S. 2805]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2805) to improve transit-oriented development financing, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

#### PURPOSE OF THE BILL

This legislation is intended to improve transit-oriented development financing under the Railroad Rehabilitation and Improvement Financing (RRIF) program by extending the sunset on the eligibility for transit-oriented development (TOD), clarifying the eligibility requirements for such loans, and increasing transparency with respect to the evaluation of applications for such loans.

#### BACKGROUND AND NEEDS

The RRIF program offers long-term, low-cost loans to railroad operators to finance improvements to infrastructure and equipment.<sup>1</sup> Under the RRIF program, loans may be used to: (1) acquire, improve, or rehabilitate intermodal or rail equipment or facilities; (2) develop or establish new intermodal or railroad facilities; (3) reimburse planning and design expenses relating to these activities; (4) refinance certain outstanding debt; and (5) finance certain transit-oriented development. The Build America Bureau, which is within

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<sup>1</sup> 45 U.S.C. 822.

the U.S. Department of Transportation (DOT), administers the RRIF program and, through it, may provide up to \$35 billion in direct loans and loan guarantees.<sup>2</sup> Of this amount, \$7 billion is set aside to provide loans to short line railroads.<sup>3</sup>

The Transportation Equity Act for the 21st Century<sup>4</sup> created the RRIF program, replacing a prior railroad loan program established in 1976.<sup>5</sup> Congress subsequently amended the RRIF program through the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users,<sup>6</sup> the Rail Safety Improvement Act of 2008,<sup>7</sup> and the Fixing America's Surface Transportation (FAST) Act.<sup>8</sup>

In the FAST Act, Congress created an eligibility for RRIF loans to finance transit-oriented development with a sunset on the eligibility of December 4, 2019.<sup>9</sup><sup>10</sup> To qualify for a RRIF TOD loan, an applicant seeking to finance economic development and related infrastructure and activities must show that the project: (1) incorporates private investment; (2) is physically and functionally related to a passenger rail station or multimodal station that includes rail service; (3) has a high probability of the applicant commencing the contracting process for construction not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project; and (4) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs.<sup>11</sup>

To address the sunset on the RRIF TOD eligibility, the bill would extend the TOD eligibility until December 4, 2021. The Consolidated Appropriations Act of 2020<sup>12</sup> extended the provision until September 30, 2020. S. 2805 would further extend the sunset until December 4, 2021, in order to provide additional certainty for the program and potential applicants. The bill also would clarify the existing eligibility by requiring that the project: (1) incorporates private investment of greater than 20 percent of the total project cost; (2) is physically connected to, or is within ½ mile walking distance from, a passenger rail station or multimodal station that includes rail service; (3) has a certification that the contracting process for construction will commence not later than 90 days after the date on which the direct loan or loan guarantee is obligated; and

<sup>2</sup> Congress created the Build America Bureau in section 9001 of the Fixing America's Surface Transportation Act (Pub. L. 114–94) and directed the Bureau to administer various infrastructure financing programs, including RRIF. See 49 U.S.C. 116(d).

<sup>3</sup> Short line railroads refer to class II and class III carriers, which are defined based on annual revenue of the carrier. See 49 CFR 1201.1–1. Class II carriers are defined as having annual carrier operating revenues of less than \$250 million but in excess of \$20 million. Class III carriers are defined as carriers having annual carrier operating revenues of \$20 million or less.

<sup>4</sup> Pub. L. 105–178.

<sup>5</sup> David Randall Peterman, *The Railroad Rehabilitation and Improvement Financing (RRIF) Program*, Congressional Research Service, Jan. 31, 2018 (<https://crsreports.congress.gov/product/pdf/R/R44028/7>) (accessed Apr. 22, 2020).

<sup>6</sup> Pub. L. 109–59.

<sup>7</sup> Pub. L. 110–432.

<sup>8</sup> Pub. L. 114–94.

<sup>9</sup> The FAST Act also eliminated the requirement that borrowers' credit risk premiums be refunded. Unlike the Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which provides credit assistance for transportation projects of regional and national significance, the RRIF program does not cover the cost of credit premiums for loan recipients.

<sup>10</sup> 45 U.S.C. 822(b)(1)(E) and (b)(3).

<sup>11</sup> 45 U.S.C. 822(b)(1)(E).

<sup>12</sup> Pub. L. 116–94.

(4) demonstrates the ability to generate new financial assistance. Finally, the bill would provide additional transparency around the process for approving or denying requests for RRIF TOD loans.

#### SUMMARY OF PROVISIONS

If enacted, S. 2805 would do the following:

- Extend the sunset for financing RRIF loans to improve transit-oriented development until December 4, 2021.
- Clarify the eligibility requirements for RRIF loans to improve transit-oriented development.
- Increase transparency with respect to RRIF TOD loans by requiring the DOT to provide Congress with a semi-annual report on the evaluation of applications for such loans.

#### LEGISLATIVE HISTORY

S. 2805 was introduced on November 6, 2019, by Senator Wicker (for himself and Senator Duckworth) and was referred to the Committee on Commerce, Science, and Transportation of the Senate. Senators Collins, Markey, Reed, and King are additional cosponsors. On November 13, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 2805 reported favorably with an amendment.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

<b>S. 2805, TOD Advancement Act of 2019</b>			
<b>As ordered reported by the Senate Committee on Commerce, Science, and Transportation on November 13, 2019</b>			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	*
Statutory pay-as-you-go procedures apply?	No	<b>Mandate Effects</b>	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

\* = between zero and \$500,000.

S. 2805 would authorize the Department of Transportation (DOT) to provide loans and loan guarantees under the Railroad Rehabilitation and Improvement Financing program (RRIF) for certain economic development projects tangentially related to passenger rail services for an additional two years through December 4, 2021. The bill also would require DOT to report to the Congress

semiannually on the number of applications received and the number of loans issued for such economic development projects.

Using information from DOT on the number of RRIF applications received for such economic development projects in recent years, CBO estimates that implementing S. 2805 would cost less than \$500,000 over the 2020–2024 period. Any such spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Robert Reese. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

S. 2805, as reported, would not create any new programs or impose any new regulatory requirements and therefore would not subject any individuals or businesses to new regulations.

##### ECONOMIC IMPACT

S. 2805, as reported, is not expected to have a negative impact on the Nation’s economy.

##### PRIVACY

S. 2805, as reported, is not expected to have an adverse impact on the personal privacy of individuals.

##### PAPERWORK

S. 2805, as reported, would not significantly affect the paperwork requirements for the DOT because it only incrementally adjusts existing RRIF reporting requirements.

##### CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

##### SECTION-BY-SECTION ANALYSIS

###### *Section 1. Short title*

This section would provide that the bill may be cited as the “TOD Advancement Act of 2019”.

###### *Section 2. Extension of transit-oriented development loan and loan guarantee authority*

This section would amend section 502(b)(3) of the Railroad Revitalization and Regulatory Reform Act of 1976 to extend the sunset on the RRIF TOD eligibility to December 4, 2021.

*Section 3. Eligible purposes*

This section would amend section 502(b)(1)(E) of the Railroad Revitalization and Regulatory Reform Act of 1976 to clarify the eligibility requirements for the RRIF TOD program.

*Section 4. Semi-annual report on transit-oriented development eligibility*

This section would require reporting to Congress on the number of applications submitted for RRIF TOD loans, the number of RRIF TOD loans provided, and, for each application, the reasons for providing or declining to provide the requested RRIF TOD loan.

## CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

## RAILROAD REVITALIZATION AND REGULATORY REFORM ACT OF 1976

[45 U.S.C. 822(1)(E)–(b)(3)]

**SEC. 502. DIRECT LOANS AND LOAN GUARANTEES.**

(a) \* \* \*

(b) ELIGIBLE PURPOSES.—

(1) IN GENERAL.—Direct loans and loan guarantees under this section shall be used to—

(A) \* \* \*

(B) \* \* \*

(C) \* \* \*

(D) \* \* \*

**[(E) finance economic development, including commercial and residential development, and related infrastructure and activities, that—**

**[(i) incorporates private investment;**

**[(ii) is physically or functionally related to a passenger rail station or multimodal station that includes rail service;**

**[(iii) has a high probability of the applicant commencing the contracting process for construction not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project under this title; and**

**[(iv) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs.]**

*(E) finance economic development, including commercial and residential development, and related infrastructure and activities, that—*

*(i) incorporates private investment of greater than 20 percent of total project costs;*

*(ii) is physically connected to, or is within 1/2 mile walking distance from, a passenger rail station or multimodal station that includes rail service;*

*(iii) has a certification from the applicant that the contracting process for construction will commence not later than 90 days after the date on which the direct loan or loan guarantee is obligated for the project under this subchapter; and*

*(iv) demonstrates the ability to generate new financial assistance for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenues in excess of costs.*

(2) \* \* \*

(3) SUNSET.—The Secretary may provide a direct loan or loan guarantee under this section for a project described in paragraph (1)(E) until ~~September 30, 2020~~ *December 4, 2021*.

\* \* \* \* \*

