

MEETING MINUTES

Title	Rail Committee Meeting – Draft Unapproved
Location	City Hall Auditorium
Date	March 6

Time Meeting Called To Order	8:30
Members Present	J. Minkarah, D. Kelly, C. Seidel, S. Michon, P. Patti and T Cummings
Guests or Others Participating	N. Gualco, T. Giancola and Komba Lamina

General Meeting Highlights/Notes/Brief Description of Meeting

<ul style="list-style-type: none"> • The committee will simplify and focus on two areas over the next 6-9 months: <ul style="list-style-type: none"> ○ Outreach and coalition building with local constituents and interests (e.g. city residents, business community, neighboring communities, other regional/local groups, etc) ○ Awareness and monitoring of NHDOT PDP activities and related policy (local, state, federal legislation) • At our next meeting (Fri, April 3) we will brainstorm and list our ideas and actions to try in these two focus areas, prioritize those we should tackle first, and then build work plans • Please come to the next meeting with some initial ideas and actions to add to the brainstorming session • Nik will take the lead to create a work plan template that we can consider to help organize our work plans • Dates for our next meetings (April 3, May 1, June 5, July 3, Aug 7, Sep 4, Oct 2, Nov 6, Dec 4). We will hold the meetings in the City Hall Auditorium from 8:30-9:30 am going forward. • Attached is the synopsis of the Invest in American Railroads Act that Tom Giancola from US Rep Kuster’s office discussed.
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Any Final Decisions Made

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Motion To Adjourn By	D. Kelly
Time	9:35AM
Next Meeting	April 3 rd

What to be ready when DOT ready

Long Game + Complex

What's in our control (+ mandate)

Where can we add value

FOCUS

Accountability - System to track ^{Program mgmt}

Where can we see progress

Where can we work together

Coordinated w/ DOT

Cataloguing our work

Relationships

Communication

Monitor ^{+ awareness} w/ DOT + legisla

Stretch + building interest, momentum,

work w/ DOT (when ready)

What

how

who

when

tracking



CONGRESSWOMAN

ANN MCLANE KUSTER

Invest in American Railroads Act

Background: Congress created the Railroad Rehabilitation and Improvement Financing (RRIF) program in 1998 to support the development of passenger and short line railroads. Under this program, the Department of Transportation is authorized to issue \$35 billion to public or private entities to rehabilitate or build new track, bridges, rail yards, and other support structures. These loans feature low interest rates and terms up to 35 years. The program is badly underutilized. Since 2000, U.S. DOT has only made \$8.2 billion in loans, less than 24% of the capacity authorized by Congress.

The Problem: In order to offset the risk of a project defaulting on a RRIF loan, U.S. DOT charges borrowers a credit risk premium. Premiums charged have been as high as 18 percent of the value of the loan. Borrowers do not know what these premiums will cost until the tail end of an extremely lengthy review process, when they will have invested heavily in application fees and compliance costs, time and effort. This uncertainty has sharply reduced the appeal of RRIF for states, local governments or private business, including smaller short line and regional railroads.

There are other challenges with RRIF. The present maximum 35-year term available does not come close to matching the true economic lifespans of many types of rail assets that RRIF can finance. These assets, such as bridges and tunnels, can last more than a century. There also has been uncertainty about whether existing federal infrastructure grant programs can be leveraged in conjunction with RRIF.

The Invest in American Railroads Act addresses the major challenge associated with the RRIF credit risk premium by authorizing U.S. DOT to cover the cost of up to \$300 million of RRIF credit risk premiums annually. This will enable states, local governments, and private groups to find RRIF a viable option to upgrade their existing rail infrastructure and develop new lines and rail facilities. Precedent exists; Congress has already authorized U.S. DOT to provide \$300 million annually in credit risk premiums for Transportation Finance and Innovation Act (TIFIA) projects, which are largely used to develop new roads. This legislation extends that federal investment precedent to the full range of rail investments through RRIF.

This legislation also makes significant improvements to RRIF by:

- Setting aside \$100 million in credit risk premiums exclusively for passenger rail projects.
- Extending the potential term of RRIF loans from 35 to 50 years to better align financing term with the lifespan of the very long-lived assets built or rehabilitated using this program and providing recipients with more flexible financing options.
- Verifying that funds from a RRIF loan —when that loan will be repaid from a non-federal source—shall be considered eligible non-federal matching funds for the FTA's Capital Investment Grants program and other U.S. DOT infrastructure grant programs.

Invest in American Railroads Act

Section 2, Payment of Credit Risk Premiums (CRP) for Loans and Loan Guarantees:

U.S. Department of Transportation (DOT) charges a fee to borrowers to protect them against the risk of default on the loan: the credit risk premium, or CRP. Railroad Rehabilitation and Improvement Financing (RRIF) premiums have been as high as over 18%. There is no cap on the CRP, and it is not known until the end of an expensive and lengthy loan application process. The uncertainty around the CRP discourages many potentially viable borrowers from approaching the program. This legislation authorizes DOT to pay \$300 million in credit risk premiums annually to unlock new investments through RRIF.

Precedent exists; Congress has already authorized U.S. DOT to provide \$300 million annually in credit risk premiums for Transportation Finance and Innovation Act (TIFIA) projects, which are largely used to develop new roads. DOT estimates that, in the case of the similar TIFIA program, each dollar of credit risk charge support enables ten dollars in federal loan funds that further leverages another thirty dollars in non-federal investment in infrastructure.

Section 3, Increasing Federal Support for Freight Rail:

RRIF was designed to support the development and rehabilitation of Class II and III freight and passenger rail lines. Today it is common for these short line and regional railroads to use various business structures to hold their railroad operations. This occurs even for very small businesses. In these scenarios, under current law, the holding entities of a railroad cannot take the loan directly even when that would be optimal for both the borrower and lender. This can necessitate complex intra-company agreements to support RRIF and further serves to discourage use of the program by its intended railroad beneficiaries. This section enables Class II and III railroads to take a RRIF loan at the parent entity level.

Section 4, Expanding Uses of RRIF:

Building and maintaining rail lines requires many different types of large infrastructure investments, including very long-lived assets such as bridges and tunnels. Financing of such infrastructure is a particularly important concern for Class II and III railroads that have taken custody of such assets in the multi-decade long process of spin offs of low density lines by the large freight railroads. These are assets that were originally built by much bigger rail companies in the late 19th and through the 20th centuries. But now many are held by small railroads and are reaching the end of their useful lives. These small businesses have a critical need for affordable financing options to rehabilitate these legacy rail assets. This section elaborates the list of examples in law of eligible types of rail investments to specifically incorporate these, making it clear that such investments are important policy targets for the program.

Section 5, Eligibility:

Rail projects can have complex business and financial structures, particularly in the case of innovative financing and project delivery cases. In these the rail assets financed may have multiple users besides the borrower. This section provides an elaboration of the general terminology on the Department's consideration of cash flows from user fees available for repayment of RRIF. It highlights consideration of pledges of certain common types of cash flows generated by different arrangements for access by users to rail infrastructure assets. It also directs

consideration of the importance of impacts on such cash flows of traffic forecasts, including potential for modal diversion to the new or improved rail assets, when those forecasts are founded on regionally developed and accepted transportation models.

Section 6, Collateral and Appraisal Standards:

DOT values any collateral pledged by an entity applying for a RRIF loan to determine how this impacts the credit risk profile of the loan, and, accordingly, the impact on the credit risk premium charged to the borrower. Historically DOT has been restricted to only consider net liquidation value of tangible assets. This can dramatically undervalue the value of collateral and restricts the range of collateral that can be offered. It also serves to potentially encourage the government to pursue a liquidation in a default scenario, a breakup of the railroad, which can conflict with other transportation policy goals like preserving and enhancing rail service. This section grants DOT greater flexibility in assessing the value of collateral pledged by borrowers. DOT will be enabled to consider both tangible and certain intangible assets pledged as collateral, and to consider valuation approaches including market value and market value of a going concern when considering a recovery scenario and calculating credit risk.

This section also requires DOT to take a more considered approach to the evaluation of appraisals of collateral performed by applicants or third parties, taking into account accepted industry standards and practices for appraisals. This will serve to better protect the interests of both the government and the borrower.

Section 7, Repayment of RRIF Loans:

Many of the investments that a RRIF loan can finance are very long lived. Major rail capital items like tunnels, bridges and rail yards can have useful economic lives of over a century. From a borrower's perspective it would be ideal to have the flexibility to finance at terms that match the operational life of the asset being financed, if such a scenario supports their strategic financial goals.

This section enables RRIF loans to be made for terms matching the lesser of 50 years or the expected economic life of the financed assets. This would enable borrowers to amortize financing costs over a period closer to the true depreciable lifespan of the capital assets being built or improved. This could reduce the overall cost of the capital structure of a given project, improve the financial strength of the borrower, and reduce credit risk to the lender

Section 8, Leveraging Existing Federal Infrastructure Programs:

Many federal grant programs, such as FTA's Capital Investment Grant program, require that proposed New Starts projects be supported by an acceptable degree of local financial commitment. There has been debate between borrowers and the Administration that funds from RRIF loans are not eligible to be used as matching funds for federal grant-funded projects. This section states that any proportion of a RRIF loan secured with repayment by non-federal sources shall be counted as part of the Local Financial Commitment for other federal programs, such as New Starts. Because a RRIF loan will be repaid in full by non-federal funds, there should not be any confusion among policymakers that RRIF counts as an eligible local contribution to a project under other federal programs.

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(Original Signature of Member)

116TH CONGRESS
1ST SESSION

H. R. _____

To amend the Railroad Revitalization and Regulatory Reform Act of 1976 to provide for the Secretary to pay certain credit risk premiums for loan or loan guarantees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Ms. KUSTER of New Hampshire introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Railroad Revitalization and Regulatory Reform Act of 1976 to provide for the Secretary to pay certain credit risk premiums for loan or loan guarantees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Invest in American
5 Railroads Act”.

1 **SEC. 2. PAYMENT OF CREDIT RISK PREMIUMS FOR LOANS**
2 **AND LOAN GUARANTEES.**

3 Section 502(f)(4) of the Railroad Revitalization and
4 Regulatory Reform Act of 1976 (45 U.S.C. 822(f)(4)) is
5 amended—

6 (1) by striking “Credit risk premiums” and in-
7 serting the following:

8 “(A) TIMING OF PAYMENT.—Credit risk
9 premiums”; and

10 (2) by adding at the end the following:

11 “(B) PAYMENT OF CREDIT RISK PRE-
12 MIUMS.—

13 “(i) IN GENERAL.—In granting assist-
14 ance under this section, the Secretary may
15 pay credit risk premiums required under
16 paragraph (3), in whole or in part, with re-
17 spect to a loan or loan guarantee.

18 “(ii) SET-ASIDE.—Of the amounts
19 made available to carry out this paragraph,
20 at least \$100,000,000 shall be used for
21 passenger rail projects for a fiscal year.
22 Any amounts not obligated in a fiscal year
23 shall be made available for any project re-
24 ceiving assistance under this section.

25 “(iii) AUTHORIZATION OF APPROPRIA-
26 TION.—There are authorized to be appro-

1 pried \$300,000,000 for each of fiscal
2 years 2021 through 2026 to carry out this
3 subparagraph, to remain available until ex-
4 pended.”.

5 **SEC. 3. INCREASING FEDERAL SUPPORT FOR FREIGHT**
6 **RAIL.**

7 Section 502(a) of the Railroad Revitalization and
8 Regulatory Reform Act of 1976 (45 U.S.C. 822(a)) is
9 amended—

10 (1) in paragraph (5), by striking “and” at the
11 end;

12 (2) in paragraph (6), by striking the period and
13 inserting “; and”; and

14 (3) by adding at the end the following:

15 “(7) a private entity with controlling ownership
16 in one or more freight railroads other than Class I
17 carriers.”.

18 **SEC. 4. EXPANDING USES FOR RIFF.**

19 Section 502(b)(1) of the Railroad Revitalization and
20 Regulatory Reform Act of 1976 (45 U.S.C. 822(b)(1)) is
21 amended—

22 (1) by striking subparagraph (A) and inserting
23 the following:

24 “(A) acquire, improve, or rehabilitate
25 intermodal or rail equipment or facilities, in-

1 cluding track, components of track, civil works
2 such as cuts and fills, stations, tunnels, bridges,
3 yards, buildings, and shops, and costs related to
4 these activities, including pre-construction
5 costs;” and

6 (2) by striking subparagraph (D) and inserting
7 the following:

8 “(D) reimburse planning, permitting, and
9 design expenses relating to activities described
10 in subparagraph (A) or (C); or”.

11 **SEC. 5. ELIGIBILITY.**

12 Section 502(f)(3) of the Railroad Revitalization and
13 Regulatory Reform Act of 1976 (45 U.S.C. 822(f)(3)) is
14 amended—

15 (1) by amending clause (ii) of subparagraph
16 (B) to read as follows:

17 “(ii) user fees, including operating or
18 tenant charges, facility rents or other fees
19 paid by transportation service providers or
20 operators for access to or use of infrastruc-
21 ture including but not limited to rail lines,
22 bridges tunnels, yards or stations; or” and

23 (2) by adding at the end the following:

24 “(D) A projection of freight or passenger
25 demand for the project based on regionally de-

1 veloped economic forecasts, including projec-
2 tions of any modal diversion resulting from the
3 project.”.

4 **SEC. 6. COLLATERAL AND APPRAISAL STANDARDS.**

5 Section 502(f) of the Railroad Revitalization and
6 Regulatory Reform Act of 1976 (45 U.S.C. 822(f)) is
7 amended—

8 (1) in paragraph (3), by striking “tangible
9 asset” and inserting “collateral described in para-
10 graph (5)”; and

11 (2) by adding at the end the following:

12 “(5) COLLATERAL.—

13 “(A) TYPES OF COLLATERAL.—An appli-
14 cant or infrastructure partner may propose tan-
15 gible and intangible assets as collateral, exclu-
16 sive of goodwill. The Secretary shall evaluate
17 each such asset and—

18 “(i) shall accept a net liquidation
19 value of collateral; and

20 “(ii) shall consider and may accept—

21 “(I) the market value of collat-
22 eral; or

23 “(II) in the case of a blanket
24 pledge or assignment of an entire op-
25 erating asset or basket of assets as

1 collateral, the net liquidation value,
2 the market value of assets, or, the
3 market value of the going concern,
4 considering—

5 “(aa) inclusion in the pledge
6 of all the assets necessary for
7 independent operational utility of
8 the collateral, including tangible
9 assets such as real property,
10 track and structure, equipment
11 and rolling stock, stations, sys-
12 tems and maintenance facilities
13 and intangible assets such as
14 long-term shipping agreements,
15 easements, leases and access
16 rights such as for trackage and
17 haulage;

18 “(bb) interchange commit-
19 ments; and

20 “(cc) the value of the asset
21 as determined through the cost
22 or market approaches, or the
23 market value of the going con-
24 cern, with the latter considering
25 discounted cash flows for a pe-

1 riod not to exceed the term of the
2 direct loan or loan guarantee.

3 “(B) APPRAISAL STANDARDS.—In evalua-
4 tion of appraisals of collateral under subpara-
5 graph (A), the Secretary shall consider—

6 “(i) adherence to the substance and
7 principles of the Uniform Standards of
8 Professional Appraisal Practice, as devel-
9 oped by the Appraisal Standards Board of
10 the Appraisal Foundation;

11 “(ii) performance of the appraisal by
12 licensed or certified appraisers as may be
13 required by the State of jurisdiction for the
14 type of asset being appraised; and

15 “(iii) the qualifications of the apprais-
16 ers to value the type of collateral offered.”.

17 **SEC. 7. REPAYMENT OF RRIF LOANS.**

18 Section 502(g)(1) of the Railroad Revitalization and
19 Regulatory Reform Act of 1976 (45 U.S.C. 822(g)(1)) is
20 amended—

21 (1) in subparagraph (A) by striking “35” and
22 inserting “50”; and

23 (2) by amending subparagraph (B) to read as
24 follows:

1 “(B) the estimated useful life of the rail
2 equipment or facilities to be acquired, rehabili-
3 tated, improved, developed, or established, in-
4 cluding civil works such as cuts and fills,
5 bridges, tunnels, yards, buildings and other
6 long-lived assets.”.

7 **SEC. 8. LEVERAGING EXISTING FEDERAL INFRASTRUC-**
8 **TURE PROGRAMS.**

9 Section 502 of the Railroad Revitalization and Regu-
10 latory Reform Act of 1976 (45 U.S.C. 822) is amended
11 by adding at the end the following:

12 “(n) NON-FEDERAL SHARE.—The proceeds of a se-
13 cured loan under this title, if such loan is repayable from
14 non-Federal funds, shall not be considered Federal funds.
15 Such loan funds shall be accepted for payment of the non-
16 Federal share of project costs under law, including for any
17 projects receiving funding under title 23 or 49 of the
18 United States Code.”.