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
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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.

<u>The Notice</u>

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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