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

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October 30, 2008

The Honorable Mary Peters
Secretary
United States Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary Peters:

It has come to my attention that the Department of Transportation ("DOT") is considering adopting a final rule that will jeopardize the Railroad Rehabilitation and Improvement Financing ("RRIF") program. *See* 73 Federal Register 32515. Under the RRIF program, DOT provides loans and loan guarantees to States, local governments, government-sponsored authorities, rail freight shippers, and railroads, particularly short-line and regional railroads, to improve and rehabilitate railroad track, bridges, and facilities. ***I am very concerned that DOT's rule will seriously undercut the RRIF program and railroad infrastructure investment and further weaken the construction sector of the U.S. economy. I urge you to suspend action on the rulemaking.***

Adequate investment in passenger and freight railroad infrastructure is critical to our nation's economic growth, our competitiveness in the world marketplace, and the quality of life in our communities. Despite the importance of railroad infrastructure investments, many of our nation's infrastructure needs are going unmet. In 2007, the Passenger Rail Working Group for the National Surface Transportation Policy and Revenue Study Commission reported that the total capital cost estimate of re-establishing the national intercity passenger rail network between now and 2050 is $357.2 billion (or $8.1 billion annually). Similarly, DOT estimates that the demand for freight rail transportation alone will increase 88 percent by 2035. Recent studies show that an investment of $148 billion for infrastructure expansion over the next 28 years is required to meet the Department's forecast 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.

At the same time, unemployment in the construction sector is skyrocketing. The unemployment rate in the construction sector is 9.9 percent and almost ***one million*** construction workers are currently unemployed and looking for work – a 60 percent increase over the past year. In addition, the construction market is shrinking dramatically. According to a McGraw-Hill Construction report released last week, the value of new construction projects will fall to $515 billion next year, down seven percent from this year, and 25 percent below its peak of $690 billion in 2006.[1] In addition, according to the report, States are suffering lower tax revenue, and financing for projects has become prohibitively expensive or unavailable at any cost as banks restrict lending. The result is the biggest sustained decline in construction in at least ***four decades***.

I am very concerned that DOT's proposed rule regarding the RRIF program will undercut the program and further weaken the construction sector of the U.S. economy. Pursuant to the Notice of Proposed Rulemaking ("NPRM") issued on June 9, 2008, DOT proposes to require RRIF applicants to meet the new, additional criteria which are not required by law, including:

- Require an equity contribution of between 20 and 30 percent depending on the amount of the direct loan or loan guarantee;

- Cap the cumulative outstanding balance of loans and loan guarantees to a single borrower to $500 million; and

- Require applicants to obtain a credit rating or assessment if the application for financial assistance is in excess of $250 million.

These requirements are largely reflective of the so-called "reforms" that were included in legislation that the Bush administration submitted to Congress on August 7, 2007. The administration's proposal, entitled the "Rail Rehabilitation and Improvement Financing Reform Act", similarly proposed to require borrowers to contribute at least 20 percent of the total project cost and cap the amount of loans and loan guarantees to a single borrower. The Committee on Transportation and Infrastructure did not adopt this proposal. However, it appears that the administration is now attempting to circumvent Congress by implementing these changes through the regulatory process.

The administration states that the purpose of the NPRM is to ensure the long-term sustainability of the program and reduce the risk of default for applicants and the Federal Government. However, according to the Federal Railroad Administration, no recipients of the 21 RRIF loans or loan guarantees that have been issued to date have defaulted on any loans or are delinquent in making payments. In fact, recipients have repaid two loans in full. In addition, under current regulations, the government requires the payment of a credit risk premium, which is held by the government for the life of the loan and which is designed to equal the government's risk of default. The amount of the credit risk premium is determined by the Secretary based on the credit risk and anticipated recovery in the event of default, including the recovery of collateral. Various factors are taken into consideration when determining the amount of the credit risk premium, including the credit rating, if available, business risk, industry outlook, market position, management and financial policies, capital expenditures, operating efficiency, financial risk, profitability, liquidity, financial strength, size, level of capital expenditures, project risk, potential for improving revenues,

[1] This forecast is based on McGraw-Hill's tracking of new construction projects, including the issuance of building permits.

profitability and cash flow, reliance on third parties, potential recovery in the event of default, the nature of the applicant's assets, and liquidation value of the collateral offered.

Further, the RRIF application process requires a thorough examination of the applicant's business and financial performance – past, present, and future. In fact, the statute prohibits the Secretary from making a direct loan or loan guarantee unless the Secretary has made a finding in writing that, among other things, ensures that the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government. In the decision letter not to approve the Dakota, Minnesota & Eastern Railroad's ("DM&E") application for a $2.33 billion loan under the RRIF program, dated February 26, 2007, Federal Railroad Administrator Boardman stated that the loan to DM&E would pose "too high a risk concerning whether the obligation can reasonably be repaid, using an appropriate combination of credit risk premiums and collateral offered by the applicant to protect the Federal Government." Denial of the DM&E's application shows that the administration currently has the ability to protect the Federal Government from risky loans. There is no need to institute the new requirements of the NPRM, which could prevent loans which meet the statutory standard that "the obligation can reasonably be repaid…." *See* Railroad Revitalization Act of 1976, section 502(g). 45 U.S.C. 822.

I believe that this is just another Bush administration effort to derail the RRIF program. The RRIF program is a key resource to enable States, local governments, government-sponsored authorities, rail freight shippers, and railroads to make much-needed rail infrastructure investments. Again, I urge you to suspend action on this rulemaking. These issues are best addressed by Congress.

Thank you for your consideration.

Sincerely,

James L. Oberstar

James L. Oberstar, M.C.
Chairman

Corrine Brown

Corrine Brown, M.C.
Chairwoman
Subcommittee on Railroads, Pipelines, and Hazardous Materials