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U.S. Department of Transportation
Docket Operations
M–30, West Building Ground Floor, Room W12–140
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Docket No. DOT-OST–2024–0006

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents a $79 billion industry that directly employs 430,000 people and supports millions of private-sector jobs. We greatly appreciate the ongoing dialogue between APTA and the U.S. Department of Transportation (DOT) regarding implementation of the Infrastructure Investment and Jobs Act (IIJA), including changes to DOT's critical innovative finance programs. We also appreciate the opportunity to offer comments on the Amendment to the Railroad Rehabilitation and Financing Program and Transportation Infrastructure Finance and Innovation Act Program Regulations Notice of Proposed Rulemaking (RRIF and TIFIA NPRM) published in the *Federal Register* on January 25, 2024, at 89 FR 4880.

RRIF and TIFIA direct loans, loan guarantees, and credit assistance are vital innovative finance tools that help public transit agencies and passenger railroads build critical public transportation projects across the country. In Fiscal Year 2024 alone, there are five public transit, passenger rail, and transit-oriented development projects in the RRIF and TIFIA project pipelines applying for loans totaling almost $12 billion.

Having discussed the proposed amendments with APTA's diverse membership, including many members who have firsthand experience with both the RRIF and TIFIA programs, APTA submits comments to the enumerated list of issues in the RRIF and TIFIA NPRM. We also look forward to working with you as DOT makes further revisions to the RRIF and TIFIA programs in subsequent rulemakings.

A. Interest Rate Setting for TIFIA and RRIF Obligations With a Long Tenor

The IIJA amends both the TIFIA Act and the RRIF Act to allow obligations with long tenors. APTA strongly supports these statutory changes and is greatly encouraged by DOT's efforts to implement them. APTA supports DOT's proposed rule to set interest rates for loans and loan guarantees with specific basis point adjustments for maturities of U.S. Treasury securities beyond existing time periods (e.g., 30-40 years). As DOT implements this change, APTA encourages the Department to increase transparency regarding the programs, including the decision-making process regarding awards. Potential applicants will need to clearly understand the specific criteria for DOT's determination of whether a project qualifies for long-tenor obligations. In addition, we encourage DOT to authorize project sponsors to repay long-tenor loans with the same flexibility currently offered under these programs.

B. Interest Rate Spread on RRIF Direct Loans and Loan Guarantees With a Positive CRP

The IIJA amends the RRIF Act to require DOT to return Credit Risk Premiums (CRP) (and interest accrued) following the full repayment of a RRIF loan. APTA strongly supports this provision, and we appreciate DOT seeking to address this issue. However, due to the complexity of this issue and the potential consequences of the proposed rule, APTA urges DOT to delay any consideration of this provision in this tranche of proposed amendments for the following reasons.

First, APTA members are concerned that DOT's proposal to add a credit spread to the interest rate charged on a RRIF direct loan or loan guarantee would actively prevent project sponsors from applying for RRIF loans. It would increase the cost of RRIF loans, limiting demand for an important public transportation financing tool that has long had workability issues. Moreover, DOT's extremely limited discussion of its proposal and reasoning does not provide enough information for project sponsors to understand the impact of the proposal on their ability to apply for RRIF loans (including any specific discussion of the expected credit spread) and does not provide time to consider other alternatives to solve the issue of repayment of CRPs.

Second, APTA cautions that the proposed rule appears to function as an end-run around Congressional intent in the IIJA. DOT's proposal essentially collects a separate subsidy by relabeling it "additional interest", which removes the Department's statutory obligation to repay it. Congressional intent for the repayment of the CRP subsidy is clear: "The Secretary shall return credit risk premiums paid, and interest accrued on such premiums, to the original source when all obligations of a loan or loan guarantee have been satisfied."[1] Clearly, Congress was aware of issues in the repayment of CRPs, but also believed DOT was obligated to repay them. Accordingly, APTA believes that the proposed rule on CRP repayment contravenes Congressional intent.

For these reasons, APTA urges DOT to delay any consideration of this provision in this tranche of proposed amendments and recommends several options to ensure DOT's ability to fully repay CRPs owed to borrowers. The IIJA authorizes $50 million per fiscal year for credit assistance

[1] *See* 49 USC § 22402(f)(7).

under the RRIF program.[2] APTA urges DOT to seek a specific appropriation for RRIF credit assistance as part of the President's FY 2025 Budget request. Alternatively, DOT should seek authority to use unobligated TIFIA funds to provide the credit risk for RRIF projects if DOT determines that such action will not impede its ability to issue TIFIA loans, loan guarantees, and credit assistance in a given fiscal year. According to DOT, as of February 11, 2024, TIFIA held $665 million in unobligated funds.[3] With access to even a fraction of this funding, DOT would be able to provide the credit risk for RRIF projects now and in the future, which would help reduce the Federal Highway Administration's August Redistribution challenges while addressing Congress' intent for DOT to repay the CRP. APTA stands ready to work with you to pursue these alternatives.

To better understand the implications of the various options available to solve the CRP repayment issue, APTA strongly urges DOT to delay consideration of this issue to a subsequent rulemaking. We are hopeful that DOT would work with APTA and other partners in the near term to develop solutions that support our shared objective of using these vital RRIF resources to help public transit agencies and passenger railroads build critical public transportation projects.

C. Inclusion in Transportation Plans and Programs

In its proposed rule, DOT states: "The Bureau proposes to amend the TIFIA Rule to reflect the current statutory requirements of 23 U.S.C. 602(A)(3)."[4] APTA supports the objective to revise TIFIA regulations to comply with the transportation planning requirements of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU). However, we do not believe that the proposed rule accomplishes this objective. The proposed rule eliminates the outdated regulations of § 80.13, but it does not include SAFETEA-LU's planning requirements. APTA urges DOT to amend the proposed rule to include the TIFIA Act provision that requires projects to "satisfy the applicable planning and programming requirements of section 134 and 135 at such time as an agreement to make available a Federal credit interest is entered into under the TIFIA program."[5] The rule should also ensure that this provision is implemented in a manner that recognizes the unique characteristics of transit-oriented development projects eligible under the TIFIA Act.

Summary

In summary, APTA appreciates this opportunity to provide comments on the RRIF and TIFIA NPRM, and developed these comments by working with a diverse group of members who have firsthand experience working with the RRIF and TIFIA programs. We strongly support the IIJA and these vital innovative finance tools.

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[2] Public Law 117–58,P.L. 117-58, § 21301(g); 49 USC § 22406 (a)(1).
[3] *See* DOT, Financial Summary as of February 11, 2024.
[4] DOT, Amendment to the Railroad Rehabilitation and Improvement Financing Program and Transportation Infrastructure Finance and Innovation Act Program Regulations, 89 Fed. Reg. 4880, 4882 (January 25, 2024).
[5] 23 USC § 602(a)(3).

APTA supports DOT's proposal regarding interest rate setting for TIFIA and RRIF obligations with a long tenor. Second, due to the complexity of the CRP issue and the potential consequences of the proposed rule, we urge DOT to delay any consideration of this provision to a subsequent rulemaking. Finally, APTA supports the objective to revise TIFIA regulations to comply with the transportation planning requirements of SAFETEA–LU, but we do not believe that the proposed rule accomplishes this objective. We urge DOT to amend the proposed rule to specifically include the transportation planning requirements while recognizing the unique characteristics of transit-oriented development projects eligible under the TIFIA Act.

If you have any questions regarding this letter, please contact Ward McCarragher, APTA Vice President, Government Affairs and Advocacy, at wmccarragher@apta.com.

Thank you for your consideration and we look forward to continuing to work with on efforts to implement the IIJA, including changes to DOT's critical innovative finance programs.

Sincerely,

Paul P. Skoutelas

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President and CEO