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DEPARTMENT OF TRANSPORTATION

Office of the Secretary of Transportation

Notice of Funding Opportunity for Letters of Interest for the RRIF Express Pilot Program under the Railroad Rehabilitation & Improvement Financing Program

AGENCIES: Office of the Secretary of Transportation, U.S. Department of Transportation (DOT).

ACTION: Notice of funding opportunity.

SUMMARY: This notice establishes a pilot Railroad Rehabilitation and Improvement Financing (“RRIF”) Express Program (“RRIF Express”) aimed at increasing access to the RRIF program by short line and regional railroads. The RRIF Express Program will be administered by the DOT’s National Surface Transportation and Innovative Finance Bureau (the “Build America Bureau” or “Bureau”). The overall RRIF program finances development of railroad infrastructure, and is authorized to have up to \$35 billion in outstanding principal amounts from direct loans and loan guarantees at any one time.

The 2018 Consolidated Appropriations Act¹ appropriated \$25 million in budget authority to the DOT to cover the cost to the Federal Government (“the Government”) of RRIF credit assistance (Credit Risk Premium (“CRP”) Assistance or “CRP Assistance”). Additionally, the 2016 Consolidated Appropriations Act² and the 2018 Consolidated Appropriations Act³ provided

¹ Pub. L. 115-141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

² Pub. L. 114-113, div. L, tit. I, §152, 129 Stat. 2242, 2856.

³ Pub. L. 115-141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

\$1.96 million and \$350,000, respectively (of which approximately \$1 million remains available), to the DOT to fund certain expenses incurred by prospective RRIF borrowers in preparation of their applications for RRIF credit assistance (this approximately \$1 million assistance, collectively, “Cost Assistance”). Using existing authorities and these new budget authorities, the DOT has established the RRIF Express Program.

Subject to the availability of funds, applicants accepted into the RRIF Express Program may benefit from two types of financial assistance: (a) Cost Assistance **up to \$100,000** per application to pay for a portion of the Bureau’s advisor expenses borne by applicants; and (b) for those applicants that ultimately receive RRIF credit assistance, CRP Assistance **up to 5% of the final RRIF loan amount** to offset the CRP paid by the borrower. Any costs beyond \$100,000 and any CRP beyond 5% would be paid by the prospective RRIF borrower. These funds will be made available to benefit applicants accepted into the RRIF Express Program on a first come, first served basis until each source of funding is expended or this notice is superseded by a new Notice of Funding Opportunity. Letters of Interest will be accepted in the order received and will be allocated cost assistance based on the date of acceptance into the pilot program. CRP assistance will be allocated in the order of financial close. For more information about potential financial assistance for RRIF Express applicants, see Supplementary Information: Section II. Funding of CRP and Cost Assistance.

This notice solicits Letters of Interest from prospective RRIF borrowers seeking acceptance into the RRIF Express Program, establishes eligibility criteria and describes the process that prospective borrowers must follow when submitting Letters of Interest.

DATES: Letters of Interest from prospective RRIF borrowers for the RRIF Express Program must be submitted during the following submission window: From [Date 30 days after FR publication] to [Date 120 days after FR publication].

Prospective RRIF borrowers that have previously submitted a Letter of Interest but that also seek acceptance into the RRIF Express Program should resubmit a Letter of Interest during the submission window above and follow the instructions below.

Irrespective of the above, the Bureau continues to accept Letters of Interest on a rolling basis from any prospective RRIF borrower interested in receiving RRIF credit assistance *only* (i.e., without participation in the RRIF Express Program).

ADDRESSES: Applicants to the RRIF Express Program **must** use the latest version of the Letter of Interest form available on the Build America Bureau website: <https://www.transportation.gov/content/build-america-bureau> (including applicants who have previously submitted Letters of Interest and who are now seeking participation in the RRIF Express Program). Letters of Interest must be submitted to the Build America Bureau via e-mail at: RRIFexpress@dot.gov using the following subject line: “Letter of Interest for RRIF Express Program.” Submitters should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. **Only Letters of Interest received via e-mail at the above email address with the subject line listed above shall be deemed properly filed.**

FOR FURTHER INFORMATION CONTACT: For further information regarding this notice please contact William Resch via e-mail at william.resch@dot.gov or via telephone at 202-366-2300. A TDD is available at 202-366-3993.

SUPPLEMENTARY INFORMATION:

RRIF Express pilot program information, including any additional resources, terms, conditions and requirements when they become available, can be found on the Build America Bureau website at: <https://www.transportation.gov/buildamerica/rrif-express>. For further information about the overall RRIF program in general, including details about the types of credit assistance available, eligibility requirements and the creditworthiness review process, please refer to the *Build America Bureau Credit Programs Guide* (“*Programs Guide*”), available on the Build America Bureau website: <https://www.transportation.gov/buildamerica/programs-services/tifia/program-guide>.

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I. Background

The Transportation Equity Act for the 21st Century,⁴ established the RRIF program, authorizing the DOT to provide credit assistance in the form of direct loans and loan guarantees to public and private applicants for eligible railroad projects. The RRIF program is a DOT program and final approval of credit assistance is reserved for the Secretary of the DOT. The 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users,⁵ the

⁴ Public Law 105-178, §7203, 112 Stat. 107, 471.

⁵ Pub. L. 109-59, §9003, 119 Stat. 1144, 1921.

Rail Safety Improvement Act of 2008;⁶ and the 2015 Fixing America’s Surface Transportation Act⁷ (the “FAST Act”) each made a number of changes to the RRIF program. In addition, the FAST Act authorized the creation of the Bureau to consolidate administration of certain DOT credit and grant programs, including the RRIF program.

II. Funding of CRP Assistance and Cost Assistance

Through the RRIF program, the DOT is authorized to have, at any one time, up to \$35 billion in unpaid principal amounts of obligations under direct loans and loan guarantees to finance development of railroad infrastructure.

CRP Assistance

Prior to the 2018 Consolidated Appropriations Act, the RRIF program did not have an appropriation of budget authority to pay the cost to the Government of providing RRIF credit assistance. As a result, the RRIF borrower or a third party was required to bear this cost through the payment of a CRP. The 2018 Consolidated Appropriations Act⁸ provided \$25 million to the DOT to cover the cost to the Government of RRIF credit assistance. The DOT will use this funding to pay or offset the CRP (up to 5% of the RRIF loan amount) payable by participants in the RRIF Express Program, until this funding is expended or this notice is superseded by a new Notice of Funding Opportunity.

Cost Assistance

As described in the *Programs Guide*, RRIF borrowers are required to pay (or reimburse the DOT) for costs incurred by the Bureau in connection with the review of Letters of Interest

⁶ Pub. L. 110-432, §701(e), 122 Stat. 4848, 4906.

⁷ Pub. L. 114-94, Subtitle F, 129 Stat. 1312, 1693.

⁸ Pub. L. 115-141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

and applications for RRIF credit assistance. The 2016 Consolidated Appropriations Act⁹ and the 2018 Consolidated Appropriations Act¹⁰ collectively provided \$2.31 million to the DOT to be used to fund expenses incurred by prospective RRIF borrowers in preparation to apply for RRIF credit assistance. A portion of these funds have already been allocated for prior RRIF projects. The DOT is reserving approximately \$1 million of remaining funds from these appropriations to offset the cost of DOT advisors (up to \$100,000 per application) that would be payable by participants in the RRIF Express Program, until this funding is expended or this notice is superseded by a new Notice of Funding Opportunity.

III. Eligibility Requirements for RRIF Credit Assistance

The RRIF statute and implementing rules set forth eligibility requirements for applicants and projects. These requirements as well as other applicable federal requirements are described in detail in the *Programs Guide* and apply to **all** applicants and projects, including those seeking acceptance into the RRIF Express Program. In addition, for prospective borrowers seeking RRIF Express Program benefits, the requirements set forth in section IV (Eligibility Criteria for the RRIF Express Program) of this notice also apply.

IV. Eligibility Criteria for the RRIF Express Program

The DOT has identified the following strategic objectives for the RRIF Express Program: encouraging increased utilization of RRIF credit assistance by Class II and Class III railroads; reducing transaction costs for Class II and Class III railroads; and streamlining the underwriting process for Class II and Class III railroads. These priorities are reflected in the eligibility criteria below. Generally, projects most suitable for the RRIF Express Program are rail

⁹ Pub. L. 114-113, div. L, tit. I, §152, 129 Stat. 2242, 2856.

¹⁰ Pub. L. 115-141, div. L, tit. I, H.R. 1625 at 646 (as enrolled Mar. 23, 2018).

line modernization projects where the borrower has a well-documented financial history and easily identified revenue stream(s) for loan repayment.

To differentiate among Letters of Interest received for projects under this notice of funding opportunity, the DOT will consider whether the project satisfies the following eligibility criteria as demonstrated by the Letter of Interest:

(i) *Applicant*: The applicant must be a Class II railroad, a Class III railroad, or a joint venture with a Class II or III railroad.

(ii) *Project Size*: The project must have eligible project costs of \$50 million or less.

(iii) *Project Scope*: The project scope, as described in Section B4 of the Letter of Interest, must be limited to the activities below:

(a) Track improvement predominantly within existing railroad right-of-way, including stabilizing embankments, installing or reinstalling track, re-grading, replacing rail, ties, slabs and ballast, installing, maintaining, or restoring drainage ditches, cleaning ballast, constructing minor curve realignments, improving or replacing interlockings, improving grade crossings and warning devices, and the installation of ancillary equipment such as for communication, signals and train control;

(b) Bridge rehabilitation, including reconstruction or replacement, the rehabilitation of the rail elements of docks or piers for the purposes of intermodal transfers, and the construction of bridges, culverts, or grade separation projects that are predominantly within existing right-of-way and that do not involve extensive in-water construction activities, such as projects replacing bridge components including stringers, caps, piles, or decks, the

construction of roadway overpasses to replace at-grade crossings, construction or reconstruction of approaches or embankments to bridges, or construction or replacement of short span bridges;

(c) Rolling stock acquisition including locomotives, passenger coaches, freight cars, trainsets, and construction, maintenance or inspection equipment;

(d) Planning and design related to the project activities included under items (a)-(c) above;

(e) Refinancing of non-federal debt (incurred at least three years prior to [DATE OF PUBLICATION OF THIS NOTICE] and for the purpose of one or more of the activities listed in 45 USC 822(b)(1)(A) or (C). Refinancing is limited to up to 40% of the final RRIF loan amount. Letters of Interest including refinancing must demonstrate with specificity in Section D5 how the refinancing would improve the creditworthiness of the applicant and document how such improvement would facilitate the activities referenced in items (a)-(c) above and would increase the applicant's ability to repay a RRIF loan and the overall financial health of the applicant.

(iv) *Applicant Financial History and Projections:* Attachment D-1 of the Letter of Interest must include audited financial statements (by a qualified third party, e.g., a certified public accountant) for the consecutive five years preceding the year of application and that have no significant unresolved findings. Attachment D-1 must also include five years of prospective financial projections (pro-forma).

(v) *Collateral:* If collateral will be pledged for the RRIF loan, Section D9 of the Letter of Interest must be supported with an independent appraisal of the collateral that must

have been completed within the past 12 months preceding submission of an LOI. Section D9 of the Letter of Interest must demonstrate that the collateral will be unencumbered at time of closing, including a description of any lien release process that would occur prior to closing on the RRIF loan to render currently pledged collateral unencumbered.

(vi) *Environmental Clearance:* Section B6 and Attachment B-6 of the Letter of Interest must demonstrate that either NEPA review is complete or the project qualifies for a Categorical Exclusion under NEPA, in which case Attachment B-6 must include a completed Federal Railroad Administration Categorical Exclusion worksheet with its Letter of Interest. For projects involving replacement of existing railroad bridges, supporting documentation must be provided that assesses the eligibility of the bridge for listing in the National Register of Historic Places and addressing compliance with Section 106 of the National Historic Preservation Act.

(vii) *Domestic Preference:* Section B4(a) of the Letter of Interest must demonstrate that the steel, iron, and manufactured goods used in the project will be produced in the United States in accordance with the Federal Railroad Administration “RRIF Buy America” policy, which follows 49 U.S.C. 24405(a). Projects that require a waiver are not eligible for the RRIF Express Program, however, prospective borrowers can seek a loan from the overall RRIF program for projects that require a waiver.

(viii) *Project Readiness:* Section B4(c) of the Letter of Interest must demonstrate the prospective borrower’s ability to commence the contracting process for construction of the project (e.g., issuance of a final RFP) by not later than 90 days after the date on which a RRIF credit instrument is obligated for the project.

V. Letter of Interest Process and Review and Next Steps

A. *Submission of Letters of Interest*

All prospective borrowers seeking acceptance into the RRIF Express Program should submit a Letter of Interest following the instructions described in this notice of funding opportunity. The Letter of Interest should be annotated with “RRIF EXPRESS” immediately following the Applicant Name in the Summary Information section on page one of the Letter of Interest. The Letter of Interest must, among other things:

- (i) Describe the project and its components, location, and purpose in Section B, and include as Attachment B-2 the project budget organized according to construction elements from preliminary engineering estimates, and including costs as appropriate for property, vehicles, professional services, allocated and unallocated contingency, and finance charges;
- (ii) Outline the proposed financial plan in Section C, and include the financial model, that addresses such aspects as model assumptions, annual cash flows, balance sheets, income statements and repayment schedules for the duration of the loan, as well as coverage ratios and debt metrics. The model should allow reviewers the flexibility to evaluate scenarios in the native spreadsheet (Microsoft Excel, or equivalent) format and be included in the application as Attachment C-1;
- (iii) Provide information regarding satisfaction of other statutory eligibility requirements of the RRIF credit program; and
- (iv) Provide information regarding satisfaction of the RRIF Express Program eligibility criteria (as described in Section IV above).

Prospective RRIF Express borrowers should describe in Letter of Interest Section D8 if

the project will (1) decrease transportation costs and improve access, especially for rural communities or communities in Opportunity Zones,¹¹ through reliable and timely access to employment centers and job opportunities; (2) improve long-term efficiency, reliability or costs in the movement of workers or goods; (3) increase the economic productivity of land, capital, or labor, including assets in Opportunity Zones; (4) result in long-term job creation and other economic opportunities; or (5) help the United States compete in a global economy by facilitating efficient and reliable freight movement. Projects that bridge gaps in service in rural areas, and projects that attract private economic development, all support local or regional economic competitiveness.

Letters of Interest must be submitted using the latest form on the Build America Bureau website: <https://www.transportation.gov/content/build-america-bureau>. Other RRIF Express pilot program information including any additional terms, conditions, and requirements can be found on the Build America Bureau website at: <https://www.transportation.gov/buildamerica/rrif-express>. The Bureau may contact a prospective borrower for clarification of specific information included in the Letter of Interest. The Bureau will review all Letters of Interest properly filed and received in the submission time window provided herein.

B. Review and Evaluation

Each Letter of Interest that is properly filed and received will be evaluated for completeness and eligibility for the RRIF Express Program using the criteria in this notice. This initial step of the review process will include (1) an evaluation as to whether the proposed project and applicant satisfy RRIF statutory eligibility requirements, and (2) an evaluation as to whether the proposed project and applicant satisfy the RRIF Express Program eligibility criteria.

¹¹ See <https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx> for more information on Opportunity Zones.

The Letters of Interest determined to be eligible for the RRIF Express Program will then be advanced to the Bureau's creditworthiness review process, which is an in-depth creditworthiness review of the project sponsor and the revenue stream proposed to repay the RRIF credit assistance as described in the *Programs Guide*. The Secretary reserves the right to limit the number of applications from a single entity or subordinates of a single parent or holding company. Prospective RRIF borrowers whose RRIF Express Program Letters of Interest are determined to be ineligible, but whose projects are otherwise statutorily eligible for standard RRIF credit assistance, have the option to be considered under the overall RRIF program.

Issued in Washington, DC, on November 12, 2019:

Elaine L. Chao,

Secretary of Transportation

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