

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 and U.S. Department of Transportation (the "DOT").

ACTION: Notice of funding opportunity.

SUMMARY: This Notice of Funding Opportunity (NOFO) for the RRIF Express Pilot Program expands eligibility criteria and extends the deadline for submission of Letters of Interest. The eligibility criteria in section IV. are revised to: increase the total project size limit to \$150 million, broaden project scope consistent with the RRIF statute, and expand the proportion of refinancing allowed to 75%. Prospective RRIF borrowers who have been accepted into the RRIF Express program may amend their Letters of Interest to reflect the changed criteria. Prospective RRIF borrowers who received advice from DOT on issues to address in revising and resubmitting Letters of Interest may also take advantage of the expanded criteria while also following the advice provided. All projects that were previously eligible for RRIF Express financing remain eligible under this NOFO. The original NOFO with modifications follows.

The RRIF Express Program is 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 \$1.96 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 10% of the final RRIF loan amount, not to exceed \$5 million**, to offset the CRP paid by the borrower. Any costs beyond \$100,000 and any CRP beyond the lower of 10% and \$5 million 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.

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).

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 will be accepted on rolling basis until available funding is expended or this notice is superseded by another notice.

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 following the instructions below. *Prospective RRIF borrowers who previously submitted Letters of Interest under a previous RRIF Express Notice of Funding Opportunity (published on December 13, 2019, March 16, 2020, or June 19, 2020), and whose Letters of Interest have not been returned as ineligible, do not have to re-apply, and may amend their Letter of Interest to take advantage of the revised eligibility criteria. Prospective RRIF borrowers whose Letter of Interest for RRIF Express was returned by the Bureau with advice on issues to address in resubmitting a Letter of Interest may also take advantage of the revised eligibility criteria while also following the advice provided.*

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

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

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 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 10% of the RRIF loan amount, not to exceed \$5 million) 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

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

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).

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 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

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).

below. Generally, projects most suitable for the RRIF Express Program are rail 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, a commuter railroad or a joint venture with a Class II, III, or commuter railroad.

(ii) *Project Size*: The project must have eligible project costs of \$150 million or less with no minimum amount.

(iii) *Project Scope*: The project scope, as described in Section B4 of the Letter of Interest, must be limited to the support of railroad activities that are otherwise eligible for RRIF financing and as outlined below:

- (a) Acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings, and shops, and costs related to these activities, including pre-construction costs. Note that this category of eligible activities includes the installation of positive train control systems;
- (b) Develop or establish new intermodal or railroad facilities;
- (c) Reimburse planning and design expenses relating to activities listed above;
- (d) 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 75% 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) and (b) 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 two (2) most recent consecutive years preceding the year of application and that have no significant unresolved findings (e.g. fiscal years 2018 and 2019). Interim unaudited financial statements may be submitted with a letter pledging to provide these audited statements within 60 days of submitting of the LOI and supporting materials. Failure to provide the audited financial statements within 60 days will disqualify the LOI. Applicants choosing this option must still provide unaudited financial statements for the previous five years and prospective financial projections (pro-forma) for the term of the loan.

(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 Documentation:* Section B6 and Attachment B-6 of the Letter of Interest must demonstrate that either NEPA review is complete or the project is likely to qualify for a Categorical Exclusion (CE) or Finding of No Significant Impact (FONSI) under NEPA. If a NEPA review has not been completed, Attachment B-6 must include a Federal Railroad Administration (FRA) CE worksheet with its Letter of Interest. Where appropriate, the CE

worksheet must include substantive analysis of potential impacts to environmental resources and indicate the sources of the information or data used to reach conclusions. For some project types, the CE worksheet will satisfy NEPA review and documentation requirements; however, for other project types, the CE worksheet will inform FRA with sufficient details about the project scope and potential environmental impacts to determine if an Environmental Assessment (EA) is required. The Applicant would be responsible for providing sufficient information and funding for the preparation of an EA, which would also extend the duration of project development activities. FRA may require the use of a third-party contractor consistent with 23 C.F.R. 771.109 (e) for the preparation of an EA. In the event that an EA is necessary, eligible projects must receive a FONSI to qualify for RRIF Express.

To help address compliance with Section 106 of the National Historic Preservation Act, supporting documentation must be submitted for projects involving reconstruction or replacement of existing railroad bridges, tunnels, culverts, stations, or depots that assesses the eligibility of these architectural properties for listing in the National Register of Historic Places. Supporting documentation must also be provided for projects involving ground-disturbing site preparation and construction activities in areas that have not been previously disturbed (such as by prior land development, agricultural activities, or the placement of fill), that assesses the archaeological sensitivity of the project area.

(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

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

satisfy RRIF statutory eligibility requirements, and (2) an evaluation as to whether the proposed project and applicant satisfy the RRIF Express Program eligibility criteria. In addition, the Bureau will conduct a high-level feasibility assessment of the proposed project and the applicant's plan of finance before a Letter of Interest is accepted into the RRIF Express Program and before a Letter of Interest enters the creditworthiness process. With respect to the project, factors that will be considered include, but are not limited to, (1) the completion of the project being financed is not necessary to repay the proposed RRIF loan; (2) the project budget is in year of expenditure and includes contingencies to account for potential project risks; and (3) the maturity of the proposed RRIF loan does not extend beyond the project's anticipated useful life. With respect to the applicant's plan of finance, factors that will be considered include, but are not limited to, (1) a maximum loan size that, when added to the proposed borrower's existing outstanding and undrawn available debt, does not substantially exceed an earnings before interest, taxes, depreciation, and amortization multiple that would be market appropriate in a similar circumstance, for the most recent trailing twelve month period and for any period of the applicant's forecast; and (2) consistent levels of revenue and operating profitability demonstrated by the proposed borrower over the most recent fiscal year.

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 October 22, 2020:

A handwritten signature in blue ink, reading "Elaine L. Chao". The signature is stylized, with the first name "Elaine" written in a cursive-like script and the last name "Chao" in a more straightforward, slightly cursive font. The signature is positioned above the printed name and title.

Elaine L. Chao,

Secretary of Transportation