STATEMENT OF

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BEFORE THE

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COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

HEARING ON

SITTING ON OUR ASSETS: REHABILITATING AND IMPROVING OUR NATION'S RAIL INFRASTRUCTURE

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Mr. Chairman and Members of the Committee, I appreciate the opportunity to provide my thoughts on the Railroad Infrastructure and Improvement Financing Program (RRIF). I am Rich Timmons, President of the American Short Line and Regional Railroad Association (ASLRRA), which represents the nation's 540 Class II and III railroads. We were very active in the initial drafting of the RRIF statute in TEA-21. Since that time our Association personnel have provided extensive assistance in preparing and helping process applications. We have a thorough working knowledge of the program's requirements, the application process and the economic and jobs benefits that result from successful loans. As such we feel we are very qualified to provide our views on the subject of today's hearing.

The short line railroad industry has been the primary user of the RRIF program. Twenty five of the 28 RRIF loans approved to date are short line railroads. The average short line loan is for $27.8 million and together they have borrowed a total of $695.5 million. The largest short line loan, $281 million for the Dakota, Minnesota & Eastern Railroad was repaid in full when the railroad was purchased by a Class I railroad. Without the DME loan in the mix the average short line loan is approximately $18 million.

These loans have helped short lines maximize capital investment through direct rehabilitation and in some cases through refinancing existing debt so as to increase cash available for additional rehabilitation. We are particularly proud to point out that since the program's inception in 1998 not a single short line railroad has defaulted on its loan. Only one railroad has ever missed a quarterly principal and interest payment and that was due to serious railroad washouts caused by the 2007 floods in Iowa. That delinquency has since been rectified.

The Transportation and Infrastructure Committee developed this program in 1998, has improved it over the years and perhaps most important, has been steadfast in protecting the program from those in previous Administrations who would have killed it.

For the benefit of those Members that are new to this Committee, let me give a brief explanation as to why the government is in the RRIF loan business. After all, the short line industry is not the largest segment of our national transportation system. Our importance is not our size but in who and where we serve. For large areas of the country and particularly for small town America short line rail service is the only connection to the national railroad network. For the small businesses and farmers in those areas, our ability to a take a 25-car train 75 miles to the nearest Class I interchange is just as important as the Class I's ability to attach that block of traffic to a 100-car train and move it across the country. To paraphrase a popular saying, "you can't get there from here, without us."

Today's short line industry was launched by the federal government's decision in the 1980's that it was better to save light density branch lines than to let the large Class I carriers abandon them. This decision was implemented through specific statutory and regulatory decisions that incentivized entrepreneurs to purchase and operate these lines as new locally based small businesses. Since that time short lines have grown from 8,000 miles of track in 1980 to nearly 50,000 miles today. There are over 500 short lines operating in 49 states. In five states short lines operate 100 percent of the state's rail network. In 10 states they operate more than 50 percent of the railroad network and in 30 states at least one quarter of the rail network. In Florida, the home of T&I Chairman Mica and Railroad Subcommittee Ranking Member Brown, short lines operate 39 percent of the state's total railroad network. Pennsylvania, the home of Railroad Subcommittee Shuster has more short line miles and more individual short line companies than any other state in the Union and together they operate 52 percent of the state's total railroad network. There are 19 new Members of the T&I Committee and every one of you have a short line in your district.

Short lines are the "first mile-last mile" for over 14 million carloads of goods annually – nearly one out of every four carloads moving on the national rail network. This interchange with our partners, the Class I railroads, earns for those Class I railroads 18 to 20 percent of their revenues.

As you have heard many times, railroading is the single most capital intensive industry in the country. Short line railroading is even more so because these properties must make up for years of deferred maintenance experienced under their previous Class I owners, and, more recently fund the rehabilitation necessary to handle the new 286,000 pound railcars. Based on comprehensive data surveys ASLRRA has conducted since 2004, short lines invest nearly 30 percent of their annual gross revenues in track rehabilitation and maintenance. It is an enormous investment, but given the deferred maintenance and 286 issues, it is not enough. A recent Cambridge Systematics study indicated that short line railroads require an additional $13 billion to upgrade track and equipment and provide capacity for future business. This for an industry whose annual gross revenues total approximately $3 billion.

I would like to emphasize three important points about the current RRIF program and comment briefly on the recent RRIF "Guidance" issued by the Obama Administration.

First, the RRIF loan program leverages substantial private investment in short line infrastructure. These are not grants but loans that must be paid back in full by the railroad. The relatively low interest rate and the 35 year amortization are terms short lines cannot secure in the private market and the program has allowed those who have taken advantage of it to undertake projects that could not have been done or that would have been stretched out over many years.

Second, because these are loans that must be repaid and are secured by an ironclad first lien on the railroad's hard assets, RRIF loans are not being used to fund frivolous, cost ineffective projects. I know that Congress and the new Administration are very keen on insuring that all federal monies that are being used to stimulate economic growth be spent as wisely and effectively as possible. No small business is going to use its limited financial resources to fund a project that does not yield substantial economic benefits.

Third, most short lines do not have the in-house manpower to undertake rehabilitation projects and must hire contractors and additional laborers to do the work. The Federal Railroad Administration (FRA) estimates that approximately 50 percent of every rehabilitation dollar is spent on labor. Let me give you just a few examples. The Wheeling & Lake Erie Railroad secured a $25 million track rehabilitation loan and hired 141,000 man-hours of labor to complete the project. The Iowa Interstate Railroad secured a $21 million track rehabilitation loan and hired 100,000 man-hours of labor. Railroad rehabilitation projects are labor intensive projects. In addition, 100 percent of the ties and the overwhelming majority of the rest of the materials used in track rehabilitation are made in the U.S.

Unfortunately, RRIF remains a highly underutilized program. RRIF is currently authorized at $35 billion and has yet to reach a billion in outstanding loans. This is due in part to the slow start up of the program and to the lengthy delays in the approval process.

I believe that FRA has worked diligently to accelerate the process, particularly that part of the process they control. Indeed, as I have previously acknowledged before this Committee I believe that part of the blame for the slow start up lay with inadequate applications submitted by my own short line railroads. I applaud the FRA staff for their patience and willingness to correct our shortcomings in those early years.

But it is also no secret that since the beginning FRA has had to deal with substantial institutional opposition to the program within other federal agencies and that opposition is largely responsible for the severe under-utilization of this program. I am fearful that pattern is being repeated today.

On September 29, 2010 the Administration issued a Federal Register Notice concerning its "Notice Regarding Consideration and Processing of Applications for Financial Assistance under the Railroad Rehabilitation and Improvement Financing Program (RRIF). This was not a normal "rulemaking" that requires public comment but rather "guidance" on how the Administration will prioritize and judge RRIF loan applications.

ASLRRA is in significant disagreement with this new "guidance." We believe the new guidelines will make it very difficult for small private freight railroads to qualify for loans and eliminates categories of loans that are clearly eligible under the statute.

I have attached to my testimony a copy of the ASLRRA letter to US DOT detailing our difficulties with this notice. Our primary objections are as follows.

- The guidance creates loan criteria that are not part of the underlying statute. In particular it allows FRA to select based on how closely the loan fits the "policy goals" of this Administration.

- The guidance claims the need to ration loans so as not to be disruptive to the railroad economy. The railroad industry invests <u>over $10 billion a year in capital projects</u>. If FRA were to double the number of loans <u>overnight</u> the combined total would represent just 14 percent of the railroad industry's <u>annual</u> capital expenditures.

- The guidance discriminates against refinancing as an eligible purpose except for public agencies. This directly contradicts the statute which makes no differentiation among eligible categories. Short lines borrowed heavily from banks to purchase and rehabilitate lines that were going to be abandoned by the Class I railroads. Refinancing this short term, high interest rate debt is very important to a short line's cash flow and allows it to preserve cash that is used for much needed rehabilitation.

- The guidance establishes priority categories of "politically correct" RRIF projects which have nothing to do with the economic world in which short line railroads operate -- categories including enhancing commuter and intercity rail transportation, noise reduction, reduction of waterway pollution, development of interconnected livable communities, reduction of highway freight traffic in urban areas, and expanding access to commuter rail transportation by persons with disabilities. These may be worthwhile goals but have nothing to do with short line railroads that are preserving light density rail lines in rural and small town America.

- The guidance creates a new requirement of "public benefit." It convolutes that requirement by defining "public benefit" as the difference between the benefit that would be achieved by using RRIF as opposed to using conventional financing. In the real world the difference is that short line railroads cannot get these kinds of loans from conventional financing. That was the reason that the program was created in the first place and was the reason that the statute <u>requires</u> that $7 billion – one fifth of the total revolving authorization – is reserved "solely for projects primarily benefitting freight railroads other than Class I carriers. I would argue that through this "short line only" set aside, the Congress has already established the significant public benefit associated with approving short line RRIF loans.

The RRIF program was modeled after a very similar federal loan program known as the Section 511 loan program that was part of the 1976 4R Act. It was used extensively and effectively as part of the federal government's efforts to save the nation's railroads as they went into or approached bankruptcy prior to the Staggers Act. It was heavily used by the Class I railroads in the Midwest and is credited by many as playing an important role in saving a large portion of the nation's private freight rail network. The program was transformed into today's RRIF program, largely to make it conform to the Credit Reform Act of 1990.

The Section 511 program was successful in saving valuable Class I railroad infrastructure in the 1970's and 1980's. Its successor, the RRIF program, has the potential to be equally valuable in saving and strengthening short line and regional railroad infrastructure today. The program's shortcoming is that it is not fully utilized.

I appreciate the opportunity to appear before you today and will be happy to answer any questions.