116TH CONGRESS
2d Session

S.

To expedite transportation project delivery, facilitate infrastructure improvement, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. THUNE (for himself and Ms. HASSAN) introduced the following bill; which was read twice and referred to the Committee on ____________________

A BILL

To expedite transportation project delivery, facilitate infrastructure improvement, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Railroad Rehabilitation and Financing Innovation Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for

7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Railroad Rehabilitation and Improvement Financing Program.
Sec. 3. Conforming amendments.
Sec. 4. Transitional and savings provisions.
Sec. 5. Repeals.
SEC. 2. RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM.

(a) Amendment to Title 49, United States Code.—Part B of subtitle V of title 49, United States Code, is amended by inserting after chapter 223 the following:

"CHAPTER 224—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM"

"22401. Definitions.
"22402. Direct loans and loan guarantees.
"22403. Administration of direct loans and loan guarantees.
"22404. Employee protection.
"22405. Substantive criteria and standards.
"22406. Funding.

§ 22401. Definitions

"In this chapter:

"(1) COST.—

"(A) IN GENERAL.—The term ‘cost’ means the estimated long-term cost to the Government of a direct loan or loan guarantee, or modification of the direct loan or loan guarantee, calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.

"(B) COST OF DIRECT LOANS.—

"(i) IN GENERAL.—The cost of a direct loan shall be the net present value, at
the time when the direct loan is disbursed,

of the following estimated cash flows:

“(I) Loan disbursements.

“(II) Repayments of principal.

“(III) Payments of interest and

other payments by or to the Govern-

ment over the life of the loan.

“(ii) Calculation.—Calculation of

the cost of a direct loan shall include the
effects of changes in loan terms resulting
from the exercise by the borrower of an op-
tion included in the loan contract.

“(C) Cost of Loan Guarantee.—

“(i) In General.—The cost of a loan
guarantee shall be the net present value, at
the time when the guaranteed loan is dis-
bursed, of the following estimated cash
flows:

“(I) Payments by the Govern-

ment to cover defaults and delin-
quencies, interest subsidies, or other
payments.

“(II) Payments to the Govern-

ment, including origination and other
fees, penalties, and recoveries.
“(ii) Calculation.—Calculation of the cost of a loan guarantee shall include the effects of changes in loan terms resulting from the exercise by the guaranteed lender of an option included in the loan guarantee, or by the borrower of an option included in the guaranteed loan contract.

“(D) Cost of Modification.—The cost of a modification is the difference between the current estimate of the net present value of the remaining cash flows under the terms of a direct loan or loan guarantee contract, and the current estimate of the net present value of the remaining cash flows under the terms of the contract, as modified.

“(E) Estimation of Net Present Values; Discount Rate.—In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the cash flows of the direct loan or loan guarantee for which the estimate is being made.

“(F) Estimated Cost; Basis.—When funds are obligated for a direct loan or loan guarantee, the estimated cost shall be based on
the current assumptions, adjusted to incorporate the terms of the loan contract, for the fiscal year in which the funds are obligated.

“(2) CURRENT.—The term ‘current’ has the same meaning given the term in section 250(c)(9) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(9)).

“(3) DIRECT LOAN.—

“(A) IN GENERAL.—The term ‘direct loan’ means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of the funds.

“(B) INCLUSIONS.—The term ‘direct loan’ includes the purchase of, or participation in, a loan made by another lender and financing arrangements that defer payment for more than 90 days, including the sale of a Government asset on credit terms.

“(C) EXCLUSION.—The term ‘direct loan’ does not include the acquisition of a federally guaranteed loan in satisfaction of default claims.

“(4) DIRECT LOAN OBLIGATION.—The term ‘direct loan obligation’ means a binding agreement by
the Secretary to make a direct loan when specified conditions are fulfilled by the borrower.

“(5) INTERMODAL.—The term ‘intermodal’ means of or relating to the connection between rail service and other modes of transportation, including all parts of facilities at which the connection is made.

“(6) INVESTMENT-RATE RATING.—The term ‘investment-grade rating’ means a rating of BBB minus, Baa3, bbb minus, BBB(low), or higher assigned by a rating agency.

“(7) LOAN GUARANTEE.—The term ‘loan guarantee’ means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

“(8) LOAN GUARANTEE COMMITMENT.—The term ‘loan guarantee commitment’ means a binding agreement by the Secretary to make a loan guarantee when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.
“(9) MASTER CREDIT AGREEMENT.—The term ‘master credit agreement’ means an agreement to make 1 or more direct loans or loan guarantees at future dates for a program of related projects on terms acceptable to the Secretary.

“(10) MODIFICATION.—

“(A) IN GENERAL.—The term ‘modification’ means any Government action that alters the estimated cost of an outstanding direct loan (or direct loan obligation) or an outstanding loan guarantee (or loan guarantee commitment) from the current estimate of cash flows.

“(B) INCLUSIONS.—The term ‘modification’ includes—

“(i) the sale of loan assets, with or without recourse, and the purchase of guaranteed loans; and

“(ii) any action resulting from new legislation, or from the exercise of administrative discretion under existing law, that directly or indirectly alters the estimated cost of outstanding direct loans (or direct loan obligations) or loan guarantee (or loan guarantee commitment), such as a change in collection procedures.
“(11) Project obligation.—The term ‘project obligation’ means a note, bond, debenture, or other debt obligation issued by a borrower in connection with the financing of a project, other than a direct loan or loan guarantee under this chapter.

“(12) Railroad.—The term ‘railroad’ has the meaning given the term ‘railroad carrier’ in section 20102.

“(13) Rating agency.—The term ‘rating agency’ means a credit rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))).

“(14) Secretary.—The term ‘Secretary’ means the Secretary of Transportation.

“(15) Substantial completion.—The term ‘substantial completion’ means—

“(A) the opening of a project to passenger or freight traffic; or

“(B) a comparable event, as determined by the Secretary and specified in the terms of the direct loan or loan guarantee.
§ 22402. Direct loans and loan guarantees

(a) General Authority.—The Secretary shall provide direct loans and loan guarantees—

(1) to State and local governments;

(2) to interstate compacts consented to by Congress under section 410(a) of the Amtrak Reform and Accountability Act of 1997 (Public Law 105–134; 49 U.S.C. 24101 note);

(3) to government-sponsored authorities and corporations;

(4) to railroads;

(5) to joint ventures that include at least 1 of the entities described in paragraph (1), (2), (3), (4), or (6);

(6) to private entities with controlling ownership in 1 or more freight railroads other than Class I carriers; and

(7) solely for the purpose of constructing a rail connection between a plant or facility and a railroad, limited option freight shippers that own or operate a plant or other facility.

(b) Eligible Purposes.—

(1) In general.—Direct loans and loan guarantees provided under this section shall be used to—

(A)(i) acquire, improve, or rehabilitate intermodal or rail equipment or facilities, in-
cluding track, components of track, civil works such as cuts and fills, bridges, yards, buildings, and shops; and

“(ii) finance costs related to the activities described in clause (i), including preconstruction costs;

“(B) develop or establish new intermodal or railroad facilities;

“(C) refinance outstanding debt incurred for the purposes described in subparagraph (A) or (B);

“(D) reimburse planning, permitting, and design expenses relating to activities described in subparagraph (A) or (B); or

“(E) finance economic development, including commercial and residential development, and related infrastructure and activities that—

“(i) incorporates private investment;

“(ii) is physically or functionally related to a passenger rail station or multimodal station that includes rail service;

“(iii) has a high probability of the applicant commencing the contracting process for construction not later than 90 days
after the date on which the direct loan or loan guarantee is obligated for the project under this chapter; and

“(iv) has a high probability of reducing the need for financial assistance under any other Federal program for the relevant passenger rail station or service by increasing ridership, tenant lease payments, or other activities that generate revenue exceeding costs.

“(2) Operating Expenses Not Eligible.—

Direct loans and loan guarantees under this section shall not be used for railroad operating expenses.

“(3) Sunset.—The Secretary may provide a direct loan or loan guarantee under this section for a project described in paragraph (1)(E) only during the 4-year period beginning on December 4, 2015.

“(c) Priority Projects.—In granting applications for direct loans or guaranteed loans under this section, the Secretary shall give priority to projects that—

“(1) enhance public safety, including projects for the installation of a positive train control system (as defined in section 20157(i));

“(2) promote economic development;

“(3) enhance the environment;
“(4) enable United States companies to be more competitive in international markets;

“(5) are endorsed by the plans prepared under chapter 227 of this title or section 135 of title 23 by the State or States in which the projects are located;

“(6) improve railroad stations and passenger facilities and increase transit-oriented development;

“(7) preserve or enhance rail or intermodal service to small communities or rural areas;

“(8) enhance service and capacity in the national rail system; or

“(9)(A) would materially alleviate rail capacity problems that degrade the provision of service to shippers; and

“(B) would fulfill a need in the national transportation system.

“(d) EXTENT OF AUTHORITY.—

“(1) LIMITATION ON AGGREGATE UNPAID PRINCIPAL AMOUNTS OF OBLIGATIONS.—The aggregate unpaid principal amounts of obligations under direct loans and loan guarantees made under this section may not exceed $35,000,000,000 at any time.

“(2) MINIMUM AMOUNT FOR FREIGHT RAILROADS.—Of the amount under paragraph (1), not
less than $7,000,000,000 shall be available solely for projects primarily benefitting freight railroads other than Class I carriers.

“(3) PROPORTION OF UNUSED AMOUNT.—The Secretary shall not establish any limit on the proportion of the unused amount authorized under this subsection that may be used for 1 loan or loan guarantee.

“(e) RATES OF INTEREST.—

“(1) DIRECT LOANS.—The interest rate on a direct loan under this section shall be not less than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of execution of the loan agreement.

“(2) LOAN GUARANTEES.—The Secretary shall not make a loan guarantee under this section if the interest rate for the loan exceeds that which the Secretary determines to be reasonable, taking into consideration the prevailing interest rates and customary fees incurred under similar obligations in the private capital market.

“(f) INFRASTRUCTURE PARTNERS.—

“(1) AUTHORITY OF SECRETARY.—

“(A) IN GENERAL.—In lieu of or in combination with appropriations of budget author-
ity to cover the costs of direct loans and loan

guarantees as required under section 504(b)(1)
of the Federal Credit Reform Act of 1990 (2
U.S.C. 661c(b)(1)), including the cost of a
modification of a direct loan or loan guarantee,
the Secretary may accept on behalf of an appli-
cant for assistance under this section a commit-
ment from a non-Federal source, including a
State or local government or agency, or public
benefit corporation or public authority of a
State or local government, to fund, in whole or
in part, credit risk premiums and modification
costs with respect to the loan that is the subject
of the application or modification.

“(B) LIMITATION.—The aggregate of ap-
propriations of budget authority and credit risk
premiums described in this paragraph with re-
spect to a direct loan or loan guarantee shall
not be less than the cost of that direct loan or
loan guarantee.

“(2) CREDIT RISK PREMIUM AMOUNT.—The
Secretary shall determine the amount required for
credit risk premiums under this subsection on the
basis of—
“(A) the circumstances of the applicant, including the amount of collateral offered, if any;

“(B) the proposed schedule of loan disbursements;

“(C) historical data on the repayment history of similar borrowers;

“(D) consultation with the Congressional Budget Office; and

“(E) any other factors the Secretary considers relevant.

“(3) CREDITWORTHINESS.—Upon receipt of a proposal from an applicant for assistance under this section, the Secretary shall accept, as a basis for determining the amount of the credit risk premium under paragraph (2), in addition to the value of any collateral described in paragraph (5), any of the following:

“(A) The net present value of a future stream of State or local subsidy income or other dedicated revenues to secure the direct loan or loan guarantee.

“(B) Adequate coverage requirements to ensure repayment, on a nonrecourse basis, from
cash flows generated by the project or any other dedicated revenue source, including—

“(i) tolls;

“(ii) user fees, including operating or tenant charges, facility rents, or other fees paid by transportation service providers or operators for access to, or the use of, infrastructure, including rail lines, bridges, tunnels, yards, or stations; and

“(iii) payments owing to the obligor under a public-private partnership.

“(C) An investment-grade rating on the direct loan or loan guarantee, as applicable, unless the total amount of the direct loan or loan guarantee is greater than $150,000,000, in which case the applicant shall have an investment-grade rating from not fewer than 2 rating agencies regarding the direct loan or loan guarantee.

“(D) A projection of freight or passenger demand for the project based on regionally developed economic forecasts, including projections of any modal diversion resulting from the project.
“(4) Payment of premiums.—Credit risk premiums under this subsection shall be paid to the Secretary before the disbursement of loan amounts (and in the case of a modification, before the modification is executed), to the extent appropriations are not available to the Secretary to meet the costs of direct loans and loan guarantees, including costs of modifications of direct loans and loan guarantees.

“(5) Collateral.—

“(A) Types of collateral.—An applicant or infrastructure partner may propose tangible and intangible assets as collateral, exclusive of goodwill. The Secretary, after evaluating each such asset—

“(i) shall accept a net liquidation value of collateral; and

“(ii) shall consider and may accept—

“(I) the market value of collateral; or

“(II) in the case of a blanket pledge or assignment of an entire operating asset or basket of assets as collateral, the net liquidation value, the market value of assets, or, the
market value of the going concern, considering—

“(aa) inclusion in the pledge of all the assets necessary for independent operational utility of the collateral, including tangible assets such as real property, track and structure, equipment and rolling stock, stations, systems and maintenance facilities and intangible assets such as long-term shipping agreements, easements, leases and access rights such as for trackage and haulage;

“(bb) interchange commitments; and

“(cc) the value of the asset as determined through the cost or market approaches, or the market value of the going concern, with the latter considering discounted cash flows for a period not to exceed the term of the direct loan or loan guarantee.
“(B) APPRAISAL STANDARDS.—In evaluating appraisals of collateral under subparagraph (A), the Secretary shall consider—

“(i) adherence to the substance and principles of the Uniform Standards of Professional Appraisal Practice, as developed by the Appraisal Standards Board of the Appraisal Foundation;

“(ii) performance of the appraisal by licensed or certified appraisers as may be required by the State of jurisdiction for the type of asset being appraised; and

“(iii) the qualifications of the appraisers to value the type of collateral offered.

“(g) PREREQUISITES FOR ASSISTANCE.—The Secretary shall not make a direct loan or loan guarantee under this section unless the Secretary has made a written finding that—

“(1) repayment of the obligation is required to be made within a term of the lesser of—

“(A) 35 years after the date of substantial completion of the project; or

“(B) with regard to rail equipment or facilities with estimated useful lives that exceed the term described in subparagraph (A)—
“(i) 50 years after the date of substantial completion of the project; or

“(ii) the estimated useful life of the rail equipment or facilities to be acquired, rehabilitated, improved, developed, or established, subject to an adequate determination of long-term risk;

“(2) the direct loan or loan guarantee is justified by the present and probable future demand for rail services or intermodal facilities;

“(3) the applicant has given reasonable assurances that the facilities or equipment to be acquired, rehabilitated, improved, developed, or established with the proceeds of the obligation will be economically and efficiently utilized;

“(4) 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; and

“(5) the purposes of the direct loan or loan guarantee are consistent with subsection (b).

“(h) CONDITIONS OF ASSISTANCE.—

“(1) IN GENERAL.—The Secretary, before granting assistance under this section, shall require the applicant to agree to such terms and conditions
as are sufficient, in the judgment of the Secretary, to ensure that, as long as any principal or interest is due and payable on the obligation, the applicant, and any railroad or railroad partner for whose benefit the assistance is intended—

“(A) will not use any funds or assets from railroad or intermodal operations for purposes not related to the operations, if the use—

“(i) would impair the ability of the applicant, railroad, or railroad partner to provide rail or intermodal services in an efficient and economic manner; or

“(ii) would adversely affect the ability of the applicant, railroad, or railroad partner to perform any obligation entered into by the applicant under this section;

“(B) will, consistent with its capital resources, maintain its capital program, equipment, facilities, and operations on a continuing basis; and

“(C) will not make any discretionary dividend payments that unreasonably conflict with the purposes stated in subsection (b).

“(2) Collateral and request for Assistance from another source not required.—
“(A) Collateral.—

“(i) In General.—The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to provide collateral.

“(ii) Valuation.—Any collateral provided or enhanced after being provided shall be valued as a going concern after giving effect to the present value of improvements contemplated by the completion and operation of the project, if applicable.

“(B) Request for Assistance from Another Source.—The Secretary shall not require an applicant for a direct loan or loan guarantee under this section to have previously sought the financial assistance requested from another source.

“(3) Required Compliance.—The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

“(A) the standards of section 24312, as in effect on September 1, 2002, with respect to the project in the same manner that Amtrak is required to comply with the standards for com-
struction work financed under an agreement made under section 24308(a); and

“(B) the protective arrangements established under section 22404, with respect to employees affected by actions taken in connection with the project to be financed by the direct loan or loan guarantee.

“(4) MATCHING FUNDS.—The Secretary shall require each recipient of a direct loan or loan guarantee under this section, for a project described in subsection (b)(1)(E), to provide a non-Federal match of not less than 25 percent of the total amount expended by the recipient for the project.

“(i) APPLICATION PROCESSING PROCEDURES.—

“(1) APPLICATION STATUS NOTICES.—Not later than 30 days after the date on which the Secretary receives an application under this section, or additional information and material under paragraph (2)(B), the Secretary shall provide the applicant written notice as to whether the application is complete or incomplete.

“(2) INCOMPLETE APPLICATIONS.—If the Secretary determines that an application is incomplete, the Secretary shall—
“(A) provide the applicant with a description of all of the specific information or material that is needed to complete the application, including any information required by an independent financial analyst; and

“(B) allow the applicant to resubmit the application with the information and material described under subparagraph (A) to complete the application.

“(3) APPLICATION APPROVALS AND DISAPPROVALS.—

“(A) IN GENERAL.—Not later than 45 days after the date on which the Secretary notifies an applicant that an application is complete under paragraph (1), the Secretary shall provide the applicant written notice as to whether the Secretary has approved or disapproved the application.

“(B) ACTIONS BY THE OFFICE OF MANAGEMENT AND BUDGET.—In order to enable compliance with the time limit under subparagraph (A), the Office of Management and Budget shall take any action required with respect to the application within that 60-day period.
“(4) Streamlined application review process.—

“(A) In general.—Consistent with section 116, and not later than 180 days after date of the enactment of the Railroad Rehabilitation and Financing Innovation Act, the Secretary shall make available an expedited application process or processes at the request of applicants seeking loans or loan guarantees.

“(B) Criteria.—Applicants seeking loans and loan guarantees issued under this subsection shall—

“(i) seek a total loan or loan guarantee value not exceeding $100,000,000;

“(ii) meet eligible project purposes included in subparagraphs (A)(i), (A)(ii), and (B) of subsection (b)(1); and

“(iii) meet other criteria considered appropriate by the Secretary, in consultation with the Department of Transportation Council on Credit and Finance.

“(C) Expedited credit review.—The total time between the submission of a draft application and the approval or disapproval of a loan or loan guarantee for an applicant under
this paragraph shall not exceed 90 days. If an application review conducted under this paragraph exceeds 90 days, the Secretary shall—

“(i) provide written notice to the applicant, including a justification for the delay and updated estimate of the time needed for approval or disapproval; and

“(ii) publish the notice on the dashboard described in paragraph (5).

“(5) DASHBOARD.—The Secretary shall post, on the Department of Transportation’s internet website, a monthly report that includes, for each application—

“(A) the applicant type;

“(B) the location of the project;

“(C) a brief description of the project, including its purpose;

“(D) the requested direct loan or loan guarantee amount;

“(E) the date on which the Secretary provided application status notice under paragraph (1);

“(F) the date that the Secretary provided notice of approval or disapproval under paragraph (3); and
“(G) whether the project utilized the expedited application process under paragraph (4).

“(6) Regular creditworthiness review status reports.—

“(A) In general.—The Secretary shall provide to the applicant a regular report containing information related to the application for a loan or loan guarantee, including—

“(i) a summary of the proposed transaction, including—

“(I) the total value of the proposed loan or loan guarantee;

“(II) the name of the applicant or applicants submitting an application;

“(III) the proposed capital structure of the project to which the loan or loan guarantee would be applied, including the proposed Federal and non-Federal shares of the total project cost;

“(IV) the type of activity to receive credit assistance, including whether the project—
“(aa) is new construction or rehabilitation of existing rail equipment or facilities;

“(bb) is a refinancing an existing loan or loan guarantee;

and

“(V) if a deferred payment is proposed, the length of such deferment;

“(VI) the credit rating or ratings provided for the applicant;

“(VII) if other credit instruments are involved, the proposed subordination relationship and a description of such other credit instruments;

“(VIII) a schedule for the readiness of proposed investments for financing;

“(IX) a description of any Federal permits required, including under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and any waivers under section 5323(j) of title 49, United States Code (com-
monly referred to as the ‘Buy America Act’); and

“(X) other characteristics of the proposed activity to be financed, borrower, key agreements, or the nature of the credit that the Secretary considers to be fundamental to the credit-worthiness review;

“(ii) the status of the application in the pre-application review and selection process;

“(iii) the cumulative amounts paid by the Secretary to outside advisors related to the application, including financial and legal advisors;

“(iv) a description of the key rating factors used by the Secretary to determine credit risk, including—

“(I) the qualitative and quantitative factors used to determine risk for the proposed application;

“(II) an adjectival risk rating for each identified factor, ranked as either low, moderate, or high; and
“(v) a nonbinding estimate of the credit risk premium, which may be in the form of—

“(I) a range, based on the assessment of risk factors described in clause (iv); or

“(II) a justification for why the estimate of the credit risk premium cannot be determined based on available information; and

“(vi) a description of key information the Secretary needs from the applicant to complete the credit review process and make a final determination of the credit risk premium.

“(B) REPORT.—The Secretary shall submit the report described in subparagraph (A) not less frequently than every 45 days after the date on which the Secretary presents the first request to the applicant for funding to pay fees for advisors described in subparagraph (A)(iii).

“(C) EXCEPTION.—The report required under this paragraph shall not be applied to applications processed using the expedited credit review process under paragraph (5)(B).
“(j) Repayment Schedules.—

“(1) In general.—The Secretary shall estab-

lish a repayment schedule requiring payments to

commence not later than 5 years after the date of

substantial completion.

“(2) Accrual.—Interest shall accrue as of the
date of disbursement, and shall be amortized over
the remaining term of the loan, beginning at the
time the payments begin.

“(3) Deferred payments.—

“(A) In general.—If, at any time the
date of substantial completion, the obligor is
unable to pay the scheduled loan repayments of
principal and interest on a direct loan provided
under this section, the Secretary, subject to
subparagraph (B), may allow, for a maximum
aggregate time of 1 year over the duration of
the direct loan, the obligor to add unpaid prin-
cipal and interest to the outstanding balance of
the direct loan.

“(B) Interest.—A payment deferred
under subparagraph (A) shall—

“(i) continue to accrue interest under
paragraph (2) until the loan is fully repaid;

and
“(ii) be scheduled to be amortized over the remaining term of the loan.

“(4) PREPAYMENTS.—

“(A) USE OF EXCESS REVENUES.—With respect to a direct loan provided by the Secretary under this section, any excess revenues that remain after satisfying scheduled debt service requirements on the project obligations and direct loan and all deposit requirements under the terms of any trust agreement, bond resolution, or similar agreement securing project obligations may be applied annually to prepay the direct loan without penalty.

“(B) USE OF PROCEEDS OF REFINANCING.—The direct loan may be prepaid at any time without penalty from the proceeds of refinancing from non-Federal funding sources.

“(k) SALE OF DIRECT LOANS.—

“(1) IN GENERAL.—Subject to paragraph (2) and as soon as practicable after substantial completion of a project, the Secretary, after notifying the obligor, may sell to another entity or reoffer into the capital markets a direct loan for the project if the Secretary determines that the sale or reoffering has a high probability of being made on favorable terms.
“(2) CONSENT OF OBLIGOR.—In making a sale or reoffering under paragraph (1), the Secretary shall not change the original terms and conditions of the secured loan without the prior written consent of the obligor.

“(1) NONSUBORDINATION.—

“(1) IN GENERAL.—Except as provided in paragraph (2), a direct loan provided by the Secretary under this section shall not be subordinated to the claims of any holder of project obligations in the event of bankruptcy, insolvency, or liquidation of the obligor.

“(2) PREEXISTING INDENTURES.—

“(A) IN GENERAL.—The Secretary may waive the requirement under paragraph (1) for a public agency borrower that is financing ongoing capital programs and has outstanding senior bonds under a preexisting indenture if—

“(i) the direct loan is rated in the A category or higher;

“(ii) the direct loan is secured and payable from pledged revenues not affected by project performance, such as a tax-based revenue pledge or a system-backed pledge of project revenues; and
“(iii) the program share, under this chapter, of eligible project costs is 50 percent or less.

“(B) LIMITATION.—The Secretary may impose limitations for the waiver of the non-subordination requirement under this paragraph if the Secretary determines that the limitations would be in the financial interest of the Federal Government.

“(m) MASTER CREDIT AGREEMENTS.—

“(1) IN GENERAL.—Subject to paragraph (2) and to subsection (d), the Secretary may enter into a master credit agreement that is contingent on all of the conditions for the provision of a direct loan or loan guarantee, as applicable, under this chapter and other applicable requirements being satisfied prior to the issuance of the direct loan or loan guarantee.

“(2) CONDITIONS.—Each master credit agreement shall—

“(A) establish the maximum amount and general terms and conditions of each applicable direct loan or loan guarantee;

“(B) identify 1 or more dedicated non-Federal revenue sources that will secure the re-
payment of each applicable direct loan or loan guarantee;

“(C) provide for the obligation of funds—

“(i) for the direct loans or loan guarantees contingent on the meeting of all applicable requirements and after all requirements have been met, for the projects subject to the master credit agreement; and

“(D) provide 1 or more dates, as determined by the Secretary, before which the master credit agreement results in the disbursement issuance of each of the direct loans or loan guarantees or in the release of the master credit agreement.

“§22403. Administration of direct loans and loan guarantees

“(a) Applications.—

“(1) In general.—The Secretary shall prescribe the form and contents required of applications for assistance under section 22402, to enable the Secretary to determine the eligibility of the applicant’s proposal, and shall establish terms and conditions for direct loans and loan guarantees made under that section, including a program guide, a standard term sheet, and specific timetables.
“(2) DOCUMENTATION.—An applicant meeting the size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) may provide unaudited financial statements as documentation of historical financial information if such statements are accompanied by the applicant’s Federal tax returns and Internal Revenue Service tax verifications for the corresponding years.

“(b) FULL FAITH AND CREDIT.—All guarantees entered into by the Secretary under section 22402 shall constitute general obligations of the United States of America and shall be backed by the full faith and credit of the United States of America.

“(c) ASSIGNMENT OF LOAN GUARANTEES.—The holder of a loan guarantee made under section 22402 may assign the loan guarantee in whole or in part, subject to such requirements as the Secretary may prescribe.

“(d) MODIFICATIONS.—The Secretary may approve the modification of any term or condition of a direct loan, loan guarantee, direct loan obligation, or loan guarantee commitment, including the rate of interest, time of payment of interest or principal, or security requirements, if the Secretary finds in writing that—
“(1) the modification is equitable and is in the
overall best interests of the United States;

“(2) consent has been obtained from the appli-
cant and in the case of a loan guarantee or loan
guarantee commitment, the holder of the obligation;
and

“(3) the modification cost has been covered
under section 22402(f).

“(e) COMPLIANCE.—The Secretary shall ensure com-
pliance by an applicant, any other party to the loan, and
any railroad or railroad partner for whose benefit assist-
ance is intended, with the provisions of this chapter, regu-
lations issued under this chapter, and the terms and con-
ditions of the direct loan or loan guarantee, including
through regular periodic inspections.

“(f) COMMERCIAL VALIDITY.—

“(1) IN GENERAL.—For purposes of claims by
any party other than the Secretary, a loan guarantee
or loan guarantee commitment shall be conclusive
evidence that the underlying obligation is in compli-
ance with the provisions of this chapter, and that
the obligation has been approved and is legal as to
principal, interest, and other terms.

“(2) VALID AND INCONTESTABLE.—A guar-
antee or commitment under paragraph (1) shall be
valid and incontestable in the hands of a holder of
the guarantee or commitment, including the original
lender or any other holder, as of the date when the
Secretary granted the application for the guarantee
or commitment, except as to fraud or material mis-
representation by the holder.

“(g) DEFAULT.—

“(1) IN GENERAL.—The Secretary shall pre-
scribe regulations setting forth procedures in the
event of default on a loan made or guaranteed under
section 22402.

“(2) LOAN GUARANTEES.—The Secretary shall
ensure that each loan guarantee made under section
22402 contains terms and conditions that provide
that—

“(A) if a payment of principal or interest
under the loan is in default for more than 30
days, the Secretary shall pay to the holder of
the obligation, or the holder’s agent, the
amount of unpaid guaranteed interest;

“(B) if the default has continued for more
than 90 days, the Secretary shall pay to the
holder of the obligation, or the holder’s agent,
90 percent of the unpaid guaranteed principal;
“(C) after final resolution of the default, through liquidation or otherwise, the Secretary shall pay to the holder of the obligation, or the holder’s agent, any remaining amounts guaranteed but that were not recovered through the default’s resolution;

“(D) the Secretary shall not be required to make any payment under subparagraphs (A) through (C) if the Secretary finds, before the expiration of the periods described in such subparagraphs, that the default has been remedied; and

“(E) the holder of the obligation shall not receive payment or be entitled to retain payment in a total amount that, together with all other recoveries (including any recovery based upon a security interest in equipment or facilities) exceeds the actual loss of the holder.

“(h) RIGHTS OF THE SECRETARY.—

“(1) SUBROGATION.—If the Secretary makes payment to a holder, or a holder’s agent, under subsection (g) in connection with a loan guarantee made under section 22402, the Secretary shall be subrogated to all of the rights of the holder with respect to the obligor under the loan.
“(2) Disposition of property.—The Secretary may complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, rent, sell, or otherwise dispose of any property or other interests obtained pursuant to this section. The Secretary shall not be subject to any Federal or State regulatory requirements when carrying out this paragraph.

“(i) Action against obligor.—

“(1) In general.—The Secretary may bring a civil action in an appropriate Federal court in the name of the United States in the event of a default on a direct loan made under section 22402 or in the name of the United States or of the holder of the obligation in the event of a default on a loan guaranteed under section 22402.

“(2) Records and evidence.—The holder of a guarantee shall make available to the Secretary all records and evidence necessary to prosecute the civil action.

“(3) Property as satisfaction of sums owed.—The Secretary may accept property in full or partial satisfaction of any sums owed as a result of a default.

“(4) Excess amount.—
“(A) PAYMENT TO OBLIGOR.—If the Secretary receives, through the sale or other disposition of the property described in paragraph (3), an excess amount described in subparagraph (B), the Secretary shall pay to the obligor the excess amount.

“(B) AMOUNT.—An excess amount under this subparagraph is an amount the exceeds the aggregate of—

“(i) the amount paid to the holder of a guarantee under subsection (g); and

“(ii) any other cost to the United States of remedying the default.

“(j) BREACH OF CONDITIONS.—The Attorney General shall commence a civil action in an appropriate Federal court to enjoin any activity that the Secretary finds is in violation of this chapter, regulations issued under this chapter, or any conditions that were agreed to, and to secure any other appropriate relief.

“(k) ATTACHMENT.—No attachment or execution may be issued against the Secretary, or any property in the control of the Secretary, prior to the entry of final judgment to that effect in any Federal, State, or other court.

“(l) CHARGES AND LOAN SERVICING.—
“(1) PURPOSES.—The Secretary may collect from each applicant, obligor, or loan party a reasonable charge for—

“(A) the cost of evaluating the application, amendments, modifications, and waivers, including for evaluating project viability, applicant creditworthiness, and the appraisal of the value of the equipment or facilities for which the direct loan or loan guarantee is sought, and for making necessary determinations and findings;

“(B) to cost of award management and project management oversight;

“(C) the cost of services from expert firms, including counsel, and independent financial advisors to assist in the underwriting, auditing, servicing, and exercise of rights with respect to direct loans and loan guarantees; and

“(D) the cost of all other expenses incurred as a result of a breach of any term or condition or any event of default on a direct loan or loan guarantee.

“(2) CHARGE DIFFERENT AMOUNTS.—The Secretary may charge different amounts under this sub-
section based on the different costs incurred under paragraph (1).

“(3) Servicer.—

“(A) In general.—The Secretary may appoint a financial entity to assist the Secretary in servicing a direct loan or loan guarantee under this chapter.

“(B) Duties.—A servicer appointed under subparagraph (A) shall act as the agent of the Secretary in servicing a direct loan or loan guarantee under this chapter.

“(C) Fees.—A servicer appointed under subparagraph (A) shall receive a servicing fee from the obligor or other loan party, subject to approval by the Secretary.

“(4) National Surface Transportation and Innovative Finance Bureau Account.—

Amounts collected under this subsection shall—

“(A) be credited directly to the National Surface Transportation and Innovative Finance Bureau Account; and

“(B) remain available until expended to pay for the costs described in this subsection.

“(m) Fees and Charges.—Except as provided in this chapter, the Secretary may not assess fees, including
user fees, or charges in connection with a direct loan or
loan guarantee provided under section 22402.

“§ 22404. Employee protection

“(a) IN GENERAL.—

“(1) FAIR AND EQUITABLE ARRANGEMENTS.—
Fair and equitable arrangements shall be provided,
in accordance with this section, to protect the inter-
ests of any employees who may be affected by ac-
tions taken pursuant to authorizations or approval
obtained under this chapter.

“(2) ARRANGEMENTS BY AGREEMENTS.—The
arrangements under paragraph (1) shall be deter-
mined by the execution of an agreement between the
representatives of the railroads and the representa-
tives of their employees not later than June 4, 1976.

“(3) PRESCRIBED ARRANGEMENTS.—In the ab-
scence of an executed agreement under paragraph
(2), the Secretary of Labor shall prescribe the appli-
cable protective arrangements not later than July 4,
1976.

“(b) TERMS.—

“(1) APPLICABILITY TO EXISTING EMPLOY-
EES.—The arrangements required under subsection
(a) shall apply to each employee who has an employ-
ment relationship with a railroad on the date on
which the railroad first applies for financial assistance under this chapter.

“(2) INCLUSIONS.—Such arrangements shall include such provisions as may be necessary for the negotiation and execution of agreements as to the manner in which the protective arrangements shall be applied, including notice requirements.

“(3) EXECUTION PRIOR TO IMPLEMENTATION OF WORK.—The agreements shall be executed prior to implementation of work funded from financial assistance under this chapter.

“(4) ARBITRATION.—

“(A) IN GENERAL.—If an agreement described in subsection (a)(2) is not reached within 30 days after the date on which an application for the assistance is approved, either party to the dispute may submit the issue for final and binding arbitration.

“(B) DECISION.—

“(i) WHEN DECISION IS TO BE RENDERED.—The decision on any arbitration under this paragraph shall be rendered within 30 days after the submission.

“(ii) EFFECT.—The arbitration decision—
“(I) shall not modify the protection afforded in the protective arrangements established pursuant to this section;

“(II) shall be final and binding on the parties to the arbitration; and

“(III) shall become a part of the agreement.

“(5) Other Inclusions.—The arrangements shall also include such provisions as may be necessary—

“(A) for the preservation of compensation (including subsequent general wage increases, vacation allowances, and monthly compensation guarantees), right, privileges, and benefits (including fringe benefits such as pensions, hospitalization, and vacations, under the same conditions and so long as the benefits continue to be accorded to other employees of the employing railroad in active service or on furlough, as the case may be) to the employees under existing collective-bargaining agreements or otherwise;

“(B) to provide for final and binding arbitration of any dispute that cannot be settled by
the parties with respect to the interpretation, application, or enforcement of the provisions of the protective arrangements;

“(C) to provide that an employee who is unable to secure employment by the exercise of the employee’s seniority rights, as a result of actions taken with financial assistance obtained under this chapter, shall be offered reassignment and, where necessary, retraining to fill a position comparable to the position held at the time of the adverse effect and for which the employee is, or by training and retraining can become, physically and mentally qualified, so long as the offer is not in contravention of collective bargaining agreements relating to the provisions in this paragraph; and

“(D) to provide that the protection afforded pursuant to this section shall not be applicable to employees benefitted solely as a result of the work that is financed by funds provided pursuant to this chapter.

“(c) SUBCONTRACTING.—The arrangements that are required to be negotiated by the parties or prescribed by the Secretary of Labor, pursuant to subsections (a) and (b), shall include provisions regulating subcontracting by
the railroads of work that is financed by funds provided pursuant to this chapter.

“§ 22405. Substantive criteria and standards

“The Secretary shall publish in the Federal Register and post on the Department of Transportation website the substantive criteria and standards used by the Secretary to determine whether to approve or disapprove applications submitted under section 22404. The Secretary shall ensure adequate procedures and guidelines are in place to permit the filing of complete applications within 30 days of the publication.

“§ 22406. Funding

“(a) Authorization of Appropriations.—

“(1) In general.—There are authorized to be appropriated out of the General Fund for credit assistance under this chapter—

“(A) $30,000,000 for fiscal year 2021;
“(B) $31,000,000 for fiscal year 2022;
“(C) $32,000,000 for fiscal year 2023;
“(D) $33,000,000 for fiscal year 2024;

and

“(E) $34,000,000 for fiscal year 2025.

“(2) Availability.—Amounts appropriated pursuant to this subsection shall remain available until expended.
“(b) USE OF FUNDS.—

“(1) IN GENERAL.—Except as provided in paragraph (2), amounts appropriated pursuant to this section shall be used for loans and loan guarantees with a total value of not more than $200,000,000.

“(2) ADMINISTRATIVE COSTS.—In each fiscal year, not less than $3,000,000 of the amounts appropriated pursuant to subsection (a) shall be made available for the Secretary for use in lieu of charges collected under section 22403(l)(1) for freight railroads other than Class I carriers and passenger railroads.

“(3) SHORT LINE SET-ASIDE.—In each fiscal year, not less than 50 percent of the amounts appropriated pursuant to subsection (a) that remain available after the set aside described in paragraph (2) shall be set aside for freight railroads other than Class I carriers.

“(4) PASSENGER RAIL SET-ASIDE.—Any amounts appropriated pursuant to subsection (a) that remain available after the set-asides described in paragraphs (2) and (3) shall be set aside for passenger railroads.”.
(b) CLERICAL AMENDMENT.—The table of chapters for title 49, United States Code, is amended by inserting after the item relating to chapter 223 the following:

“CHAPTER 224—RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM”.

SEC. 3. CONFORMING AMENDMENTS.

(a) NATIONAL TRAILS SYSTEM ACT.—Section 8(d) of the National Trails System Act (16 U.S.C. 1247(d)) is amended by inserting “(45 U.S.C. 801 et seq.) and chapter 224 of title 49, United States Code” after “1976”.

(b) PASSENGER RAIL REFORM AND INVESTMENT ACT.—Section 11315(c) of the Passenger Rail Reform and Investment Act of 2015 (23 U.S.C. 322 note; Public Law 114–94) is amended by striking “sections 502 and 503 of the Railroad Revitalization and Regulatory Reform Act of 1976” and inserting “sections 22402 and 22403 of title 49, United States Code”.

(c) PROVISIONS CLASSIFIED IN TITLE 45, UNITED STATES CODE.—

(1) Section 101 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 801) is amended—

(A) in subsection (a), in the matter preceding paragraph (1), by striking “It is the purpose of the Congress in this Act to” and in-
serting “The purpose of this Act and chapter 224 of subtitle V of title 49, United States Code, is to”; and

(B) in subsection (b), in the matter preceding paragraph (1), by striking “It is declared to be the policy of the Congress in this Act” and inserting “The policy of this Act and chapter 224 of title 49, United States Code, is”.

(2) Section 11607(b) of the Railroad Infrastructure Financing Improvement Act (Public Law 114–94; 45 U.S.C. 821 note) is amended by striking “All provisions under sections 502 through 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 8301 et seq.)” and inserting “All provisions under section 22404 through 22404 of title 49, United States Code,”.

(3) Section 11610(b) of the Railroad Infrastructure Financing Improvement Act (Public Law 114–94; 45 U.S.C. 821 note) is amended by striking “section 502(f) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 822(f)), as amended by section 11607 of this Act” and inserting “section 22402(f) of title 49, United States Code”.

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(7) Section 104(b) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1003(b)) is amended—
(A) in paragraph (1), by striking “title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.)” and inserting “chapter 224 of title 49, United States Code,”; and


(8) Section 104(b)(2) of the Rock Island Railroad Transition and Employee Assistance Act (45 U.S.C. 1003(b)(2)) is amended by striking “title V of the Railroad Revitalization and Regulatory Reform Act of 1976, and section 516 of such Act (45 U.S.C. 836)” and inserting “chapter 224 of title 49, United States Code, and section 22404 of such title 49,”.

(d) TITLE 49.—

and inserting “sections 22401 through 22403 of this title”.

(2) Section 306(b) of title 49, United States Code, is amended—

(A) by striking “chapter 221 or 249 of this title,” and inserting “chapter 221, 224, or 249 of this title,”; and

(B) by striking “, or title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.)”.


(5) Section 22905(c)(2)(B) of title 49, United States Code, is amended by striking “section 504 of
the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836)” and inserting “section 22404 of this title”.

(6) Section 24903 of title 49, United States Code, is amended—


SEC. 4. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) DEFINITIONS.—In this section:

(1) RESTATED PROVISION.—The term “restated provision” means a provision of chapter 224 of title 49, United States Code, as added by section 2.

(2) SOURCE PROVISION.—The term “source provision” means a provision of law that is replaced by a restated provision.
(b) Cutoff Date.—

(1) In General.—The restated provisions replace certain source provisions enacted on or before March 12, 2019.

(2) Subsequent Amendments and Repeals.—If a law enacted after March 12, 2019 amends or repeals a source provision, that law is deemed to amend or repeal, as the case may be, the corresponding restated provision. If a law enacted after March 12, 2019 is otherwise inconsistent with a restated provision of this Act, that law supersedes the restated provision of this Act to the extent of the inconsistency.

(e) Original Date of Enactment Unchanged.—
A restated provision is deemed to have been enacted on the date of enactment of the corresponding source provision.

(d) References to Restated Provisions.—A reference to a restated provision is deemed to refer to the corresponding source provision.

(e) References to Source Provisions.—A reference to a source provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding restated provision.
(f) Regulations, Orders, and Other Administrative Actions.—A regulation, order, or other administrative action in effect under a source provision continues in effect under the corresponding restated provision.

(g) Actions Taken and Offenses Committed.—An action taken or an offense committed under a source provision is deemed to have been taken or committed under the corresponding restated provision.

SEC. 5. REPEALS.

The following provisions of law are repealed, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

<table>
<thead>
<tr>
<th>Act</th>
<th>Section</th>
<th>United States Code Former Classification</th>
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