



## DEPARTMENT OF TRANSPORTATION

### Office of Secretary of Transportation

#### 49 CFR Parts 80 and 260

[Docket Number DOT-OST-2024-0006]

**RIN 2105-AE69**

### **Amendment to the Railroad Rehabilitation and Improvement Financing Program and Transportation Infrastructure Finance and Innovation Act Program Regulations**

**AGENCY:** Office of the Secretary of Transportation, Department of Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Transportation (“DOT” or “the Department”) proposes to implement provisions of the Infrastructure Investment and Jobs Act (the “IIJA”) that expand or modify the authorities applicable to the Railroad Rehabilitation and Improvement Financing (“RRIF”) and Transportation Infrastructure Finance and Innovation Act (“TIFIA”) programs, and make other necessary updates, by amending the RRIF program and TIFIA program regulations. DOT solicits written comments on this rulemaking.

**DATES:** Written comments will be accepted until *[insert 30 days after date of publication in the Federal Register]*. We will consider late comments to the extent practicable.

**ADDRESSES:** Your comments may be submitted by one of the following methods:

- Federal eRulemaking Portal: Go to [www.regulations.gov](http://www.regulations.gov) and follow the instructions for submitting comments.
- Mail: Send comments to Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Room W12-140, Washington, DC 20590.
- Hand-Delivery or Courier: Take comments to Docket Operations in Room W12-140 on the ground floor of the West Building at 1200 New Jersey Avenue, SE, Washington, DC between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

*Instructions: All comments must include the agency name and docket number or Regulation Identifier Number (“RIN”) for this rulemaking. To avoid duplication, please submit comments using only one of the above methods. For detailed instructions on submitting comments and additional information on the rulemaking process, see the section entitled Public Comment Procedures.*

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this proposed rule, contact Tanya Langman of the National Surface Transportation and Innovative Finance Bureau at 1200 New Jersey Avenue, SE, Washington, DC 20590, (202) 366-2300, e-mail at [tanya.langman@dot.gov](mailto:tanya.langman@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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**I. Introduction and Background**

The National Surface Transportation and Innovative Finance Bureau, also known as the Build America Bureau (the “Bureau”), administers certain Department of Transportation lending programs, including under Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended (the “RRIF Act”),<sup>1</sup> and the Transportation Infrastructure Finance and Innovation Act of 1998, as amended (the “TIFIA Act,” and together with the RRIF Act, the “Acts”).<sup>2</sup> The RRIF Act authorizes the Secretary of Transportation (the “Secretary”) to make direct loans and loan guarantees for eligible projects that meet enumerated criteria,<sup>3</sup> and the TIFIA Act authorizes the Secretary to issue secured loans, loan guarantees, and lines of credit for eligible projects that meet statutory factors.<sup>4</sup> The Bureau has administered both programs pursuant to their respective regulations set forth at 49 CFR part 260 (the “RRIF Rule”) and 49 CFR part 80 (the “TIFIA Rule,” and together with the RRIF Rule, the “Rules”), as well as additional criteria in notices of funding, which are issued and updated from time to time, and guidance<sup>5</sup> to applicants.

The IIJA<sup>6</sup> was enacted in November 2021, as a historic investment in the Nation’s infrastructure. That investment includes the expansion and modification of the authorities in the Acts. Specifically, the IIJA authorizes a longer term for both RRIF and TIFIA obligations than was previously allowed,<sup>7</sup> expands the definition of projects eligible for TIFIA funding,<sup>8</sup> and adds a requirement that the Secretary return credit risk premiums paid to the Government plus accrued interest to the source of the payment when all obligations of a loan or loan guarantee have been satisfied.<sup>9</sup> The Bureau proposes to implement these provisions of the IIJA by amending the Rules.

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<sup>1</sup> Public Law 94-210, title V (1976), codified by Public Law 117-58 (2021) as chapter 224 of title 49; 49 U.S.C. Ch. 224.

<sup>2</sup> Public Law 105-178, sec. 1504-10 (1998); 23 U.S.C. Ch. 6.

<sup>3</sup> 49 U.S.C. 22402(b)(1).

<sup>4</sup> 23 U.S.C. 603(a), 603(e), and 604(a).

<sup>5</sup> <https://www.transportation.gov/buildamerica/financing/program-guide>

<sup>6</sup> Public Law 117-58 (2021).

<sup>7</sup> Public Law 117-58, sec. 12001(e)(2), 21301(d)(6) (2021).

<sup>8</sup> Public Law 117-58, sec. 12001(a) (2021).

<sup>9</sup> Public Law 117-58, sec. 21301(d)(5)(B) (2021).

## II. Discussion of Proposed Rule

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

The IIJA amends both Acts to allow obligations with long tenors. Section 21301(d)(6) of the IIJA amends Section 22402(g)(1) of the RRIF Act to allow the Secretary to issue direct loans or loan guarantees with a term that is not longer than the shorter of:

- (A) 75 years after the date of substantial completion of the project;
- (B) 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; or
- (C) for projects determined to have an estimated useful life that is longer than 35 years, the period that is equal to the sum of—
  - (i) 35 years; and
  - (ii) the product of—
    - (I) the difference between the estimated useful life and 35 years; multiplied by
    - (II) 75 percent.<sup>10</sup>

Similarly, capital assets with an estimated life of more than 50 years may be issued a TIFIA secured loan or loan guarantee with a final maturity date that is the lesser of:

- (i) 75 years after the date of substantial completion of the project; or
- (ii) 75 percent of the estimated useful life of the capital asset.<sup>11</sup>

The RRIF Act, and the TIFIA Act, except as provided in 23 U.S.C. 603(b)(4)(B)-(C), require that the interest rate on a loan be not less than the yield on United States Treasury securities of a similar maturity.<sup>12</sup> Both RRIF and TIFIA obligations currently bear interest at a fixed rate, calculated by adding one basis point (.01%) to the interest rate of securities of a similar maturity as published, on the execution date of the loan agreement, in the United States Treasury Bureau of Public Debt's daily rate table for State and Local Government Series (SLGS) securities. The daily rate table for SLGS securities, however, does not currently post rates for maturities longer than 30-40 years.

The Bureau proposes to amend the Rules to address compliance with these interest rate requirements for RRIF or TIFIA obligations if the United States Treasury does not post the yield

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<sup>10</sup> 49 U.S.C. 22402(g)(1), as amended through Public Law 117-58, sec. 21301(d)(6) (2021).

<sup>11</sup> 23 U.S.C. 603(b)(5)(C), as added by Public Law 117-58, sec. 12001(e)(2) (2021).

<sup>12</sup> 49 U.S.C. 22402(e); 23 U.S.C. 603(b)(4)(A).

for securities of a similar maturity. The amended Rules will require an interest rate spread on any RRIF or TIFIA loan with both: 1) a final maturity date that is more than 35 years after the date of substantial completion of the project; and 2) a loan term – the period beginning on the date of execution of the loan agreement and ending on the final maturity date – that is more than 40 years. The interest rate will be equal to not less than the rate on thirty-to-forty-year SLGS securities plus an annual interest rate adjustment for any period of the loan term after year 40 through year 100, as detailed in §80.23 of this proposed rulemaking. This interest rate adjustment will be cumulative.

The conceptual framework and methodology for the interest rate adjustment on loans with long tenors is in large part based on results from a working paper out of the San Francisco Federal Reserve Bank.<sup>13</sup> Relying both on bonds with long tenors originated by other countries as well as an extrapolation of United States Treasury data using a statistical model, the paper found a difference centering around 14 basis points between 30-year and hypothetical 50-year Treasury rates. This finding is further supported by both the Treasury Nominal Coupon<sup>14</sup> and High Quality Market Corporate Bond Par Yield<sup>15</sup> interest rate spread over the time period sampled in the Federal Reserve paper. The proposed annual interest rate adjustment is consistent with the above findings and data. A 14-basis point spread is reflected in the proposed rate adjustment for each year between year 40 and 50.

Consistent with financial theory and historic tendencies, both the High Quality Market Corporate Bond Par Yield and the Treasury Nominal Coupon anticipate milder increases in interest rates after year 50 than before. Accordingly, the Bureau does not expect that the interest rates on hypothetical Treasury securities would grow linearly from year 51. Instead, the rates for such maturities would be expected to flatten out in the outyears. To reflect this expectation, the

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<sup>13</sup> <https://www.frbsf.org/wp-content/uploads/sites/4/wp2021-19.pdf>

<sup>14</sup> <https://home.treasury.gov/data/treasury-coupon-issues-and-corporate-bond-yield-curves/treasury-coupon-issues>

<sup>15</sup> <https://home.treasury.gov/data/treasury-coupon-issues-and-corporate-bond-yield-curve/corporate-bond-yield-curve>

Bureau proposes to lower the interest rate adjustment in the outyears. Specifically, the Bureau proposes to add 0.4 basis points for each year between years 51 and 70, and 0.2 basis points for each year between years 71 and 100. This tapering is consistent with the projected flattening of the Treasury Nominal Coupon and High Quality Market Corporate Bond yield curves beyond 2050.

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

The Federal Credit Reform Act of 1990, as amended (“FCRA”),<sup>16</sup> requires that new direct loan obligations and new loan guarantee commitments be made only to the extent that: (1) new budget authority to cover their costs is provided in advance in an appropriations Act; (2) a limitation on the use of funds otherwise available for the cost of a direct loan or loan guarantee program has been provided in advance in an appropriations Act; or 3) authority is otherwise provided in appropriation Acts.<sup>17</sup> Section 22402(f) of the RRIF Act provides that a source of the subsidy cost<sup>18</sup> may be either appropriated budget authority, funds from a non-Federal source, or any combination thereof. In the absence of appropriated budget authority for RRIF loan subsidy, the subsidy cost associated with any RRIF direct loan or loan guarantee must be provided by the borrower or project infrastructure partner, which includes any participant in the project.<sup>19</sup> This subsidy cost, referred to as the credit risk premium (“CRP”) in the RRIF statute, is determined by estimating the total long-term cost to the Federal Government of the RRIF direct loan or loan guarantee.<sup>20</sup> The CRP must be paid before the disbursements of the direct loan.<sup>21</sup>

Section 21301(d)(5)(B) of the IIJA amends Section 22402(f)(7) of the RRIF Act to require the Secretary to “return credit risk premiums paid, and interest accrued on such

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<sup>16</sup> Public Law 101-508, title XIII (1990); 2 U.S.C. 661 *et seq.*

<sup>17</sup> 2 U.S.C. 661c(b).

<sup>18</sup> 2 U.S.C. 661a(5)(A).

<sup>19</sup> 49 U.S.C. 22402(f)(1). Please note that Congress appropriated \$25M to cover RRIF subsidy costs, which the Bureau allocated to the RRIF Express Program, as laid out in the Notice of Funding Opportunity published at 88 FR 35995. Congress has further authorized \$50M per year to cover RRIF subsidy costs, but that funding has not yet been appropriated to the Bureau.

<sup>20</sup> 49 U.S.C. 22402(f)(2).

<sup>21</sup> 49 U.S.C. 22402(f)(4).

premiums, to the original source when all obligations of a loan or loan guarantee have been satisfied.”<sup>22</sup> However, without an appropriation from Congress to cover a loan’s subsidy cost, under FCRA budgeting requirements a loan’s CRP would be cost prohibitive in order to be returned to the original source. To avoid an outcome in which the CRP due by a borrower impedes the issuance of RRIF direct loans, the Bureau proposes to amend the RRIF Rule to add a credit spread to the interest rate charged on any RRIF direct loan or loan guarantee that is projected to have a positive subsidy cost (i.e., would require the payment of CRP). The additional interest would not qualify as a CRP payment and would not be returned to the original source once the obligation is satisfied. Amendments to update the TIFIA and RRIF regulations in other areas not addressed in this rulemaking will be included in a subsequent rulemaking at a later date.

#### *C. Inclusion in Transportation Plans and Programs*

The TIFIA Act requires a project to “satisfy the applicable planning and programming requirements of sections 134 and 135 at such time as an agreement to make available a Federal credit instrument is entered into under the TIFIA program.”<sup>23</sup> This requirement was added by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).<sup>24</sup> Prior to this amendment, the TIFIA Act included a similar, but more specific provision.<sup>25</sup>

The TIFIA Rule was published in 1998<sup>26</sup> and section 80.13, which includes language about the inclusion of projects in transportation plans and programs, has not been amended since then. As a result, section 80.13 mirrors the pre-SAFETEA-LU statutory language. The Bureau

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<sup>22</sup> 49 U.S.C. 22402(f)(7), as amended through Public Law 117–58, sec. 21301(d)(5)(B) (2021).

<sup>23</sup> 23 U.S.C. 602(a)(3).

<sup>24</sup> Public Law 109–59 (2005).

<sup>25</sup> The text read: “The project—

(A) shall be included in the State transportation plan required under section 135; and  
(B) at such time as an agreement to make available a Federal credit instrument is entered into under this subchapter, shall be included in the approved State transportation improvement program required under section 134.”

<sup>26</sup> 64 FR 29750 (June 2, 1999).

proposes to amend the TIFIA Rule to reflect the current statutory requirements of 23 U.S.C.

602(a)(3).

### **III. Public Comment Procedures**

Interested persons are invited to participate in this proposed rulemaking by submitting data, views, and comments. Written comments must include the agency name and docket number or Regulation Identifier Number (“RIN”), RIN 2105-AE69, and should be submitted to one of the addresses indicated in the **ADDRESSES** section of this Notice of Proposed Rulemaking. To help the Bureau review the comments, interested persons are asked to refer to specific proposed rule provisions, whenever possible.

The Bureau will consider all comments received before the close of business on the comment closing date indicated above under **DATES**.

Background documents or comments received may be read at [www.regulations.gov](http://www.regulations.gov) at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 on the ground floor of the West Building at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy). If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as one copy from which the information claimed to be exempt by law from public disclosure has been deleted. DOT is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it in accordance with the DOT’s Freedom of Information regulations (49 CFR Part 7).

### **IV. Regulatory Review**

#### *A. Executive Order 12866*

This proposed rule has been determined to not be a significant regulatory action under Executive Order 12866, “Regulatory Planning and Review,” 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs within the Office of Management and Budget.

*B. Rulemaking Summary, 5 U.S.C. 553(b)(4)*

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department’s Unified Agenda entry for this rulemaking at

<https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202304&RIN=2105-AE69>.

*C. Paperwork Reduction Act*

According to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), no Federal agency may collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. The Bureau received approval from OMB for use of its forms under OMB control number 2105-0569, with an expiration date of February 28, 2025. This proposed rule does not change that collection of information or create any collection of information, and therefore, is not subject to the Paperwork Reduction Act requirements.

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the Federal agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOT issued procedures and policies to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process and DOT has made its procedures and policies available on its website:

<https://www.transportation.gov/regulations/rulemaking-requirements-concerning-small-entities>.

The Bureau has evaluated the effects of this proposed action on small entities and has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities. First, the Bureau does not expect to enter into loans with a substantial number of small entities. In the last five years, the Bureau has obligated almost 40 loans under both the RRIF and TIFIA programs, and no borrowers have been small entities. Given that zero percent of borrowers were small entities in the time period sampled, the Bureau does not expect that a substantial percentage of borrowers will be small entities in the future. Second, the Bureau doesn't believe that this action would have a significant economic impact. The changes to the TIFIA Rule related to inclusion in the transportation plans and programs will not have any economic impact. While the changes to the Rules related to long-tenored obligations will raise interest rates for borrowers of long-tenored obligations, this impact can be avoided by a borrower opting for a loan term that is less than 40 years. A RRIF loan with a positive CRP will similarly have a higher interest rate, but the Bureau believes this economic impact is preferable to a CRP payment that is so large it is cost prohibitive. For those reasons, the Bureau certifies that this action would not have a significant economic impact on a substantial number of small entities.

*E. Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 et seq.) requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. The proposed rule does not contain such a mandate; therefore, the analytical requirements of Title II of the Act do not apply.

*F. Executive Order 12988*

Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), requires that Federal agencies promulgating new regulations or reviewing existing regulations take steps to minimize litigation, eliminate ambiguity and to reduce burdens on the regulated

public. The Bureau has reviewed this rulemaking and has determined that this rulemaking action conforms to the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988.

*G. Executive Order 13175*

Consistent with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments, 65 FR 67249 (Nov. 6, 2000), DOT ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. The Bureau has not identified any unique or significant effects, environmental or otherwise, on Tribes resulting from this proposed rule.

*H. Executive Order 13132*

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOT has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

**List of Subjects**  
**49 CFR Part 80**

Credit, Highways and roads, Loan programs-transportation, Mass transportation, Railroads.  
**49 CFR Part 260**

Loan programs-transportation, Railroads.

**The Proposed Rule**

In consideration of the foregoing, the Bureau proposes to amend Subtitle B of title 49 of the Code of Regulations, to read as follows:

## **PART 80—CREDIT ASSISTANCE FOR SURFACE TRANSPORTATION PROJECTS**

1. The authority citation for part 80 is amended to read as follows:

**Authority:** Secs. 1501 et seq., Pub. L. 105–178, 112 Stat. 107, 241, as amended; 23 U.S.C. 601–611 and 315; 49 CFR 1.48 and 1.49.

### **§ 80.13 [Amended]**

2. In § 80.13:

- a. Remove “five” in the introductory text of paragraph (a) and replace with “three”.
- b. Remove paragraphs (a)(1) and (a)(5) and renumber paragraphs (a)(2) through (a)(4) as (a)(1) through (a)(3).

3. Add a new § 80.23 to read as follows:

### **§ 80.23 Loan terms.**

(a) The interest rate on a secured loan will be not less than the rate on United States Treasury securities of a similar maturity to the maturity of the secured loan on the date of the execution of the loan agreement, except as provided in paragraph (b) of this section and chapter 6 of title 23 of the United States Code.

(b) If, on the date of the execution of the loan agreement, the United States Treasury does not post the rate of securities of a similar maturity to the maturity of the secured loan, the interest rate on any secured loan with both a final maturity date that is more than 35 years after the date of substantial completion of the project, and a loan term that is more than 40 years, will be equal to not less than the rate on thirty-to-forty year Treasury securities plus an annual interest rate adjustment. The annual interest rate adjustment will be, cumulatively:

- (i) 1.4 basis points for each year of the loan term after year 40 to, but not including, year 51;
- (ii) 0.4 basis points for each year of the loan term from year 51 to, but not including, year 71; and
- (iii) 0.2 basis points for each year of the loan term from year 71 to year 100.

(c) For purposes of this section, “loan term” means the period beginning on the date of the execution of the loan agreement and ending on the final maturity date.

**PART 260—REGULATIONS GOVERNING LOANS AND LOAN GUARANTEES  
UNDER THE RAILROAD REHABILITATION AND IMPROVEMENT FINANCING  
PROGRAM**

4. The authority citation for part 260 is amended to read as follows:

**Authority:** 49 U.S.C. 22401, 22402, 22403, 22404, 22405, 22406; 49 CFR 1.49.

5. Revise § 260.9 to read as follows:

**§ 260.9 Loan terms.**

(a) The interest rate on a direct loan will be not less than the rate on United States Treasury securities of a similar maturity of the direct loan on the date of the execution of the loan agreement, except as described in paragraph (b) of this section and in § 260.17(d).

(b) If, on the date of the execution of the loan agreement, the United States Treasury does not post the rate of securities of a similar maturity of the direct loan, the interest rate on any direct loan with both a final maturity date that is more than 35 years after the date of substantial completion of the project, and a loan term that is more than 40 years, will be equal to not less than the rate on thirty-to-forty year Treasury securities plus an annual interest rate adjustment.

The annual interest rate adjustment will be, cumulatively:

- (i) 1.4 basis points for each year of the loan term after year 40 to, but not including, year 51;
- (ii) 0.4 basis points for each year of the loan term from year 51 to, but not including, year 71; and
- (iii) 0.2 basis points for each year of the loan term from year 71 to year 100.

(c) For purposes of this section, “loan term” means the period beginning on the date of the execution of the loan agreement and ending on the final maturity date.

**§ 260.17 [Amended]**

6. Amend § 260.17 by adding paragraph (d) to read as follows:

\* \* \* \* \*

(d) Positive Credit Risk Premium.

(1) Where the Credit Risk Premium determined pursuant to paragraph (a) of this section is a positive amount, the interest rate on the direct loan will be equal to not less than the rate set pursuant to section 260.9 plus an interest rate adjustment sufficient to result in a Credit Risk Premium of zero dollars.

(2) Paragraph (d)(1) of this section shall apply to a direct loan or loan guarantee only so long as the Act requires the Secretary to return Credit Risk Premiums paid on that loan or loan guarantee to the original source.

(Authority: Pub. L. 117-58, sec. 12001 and sec. 21301 (2021); 23 U.S.C. 601-611 and 315; 49 U.S.C. 22401-22406; and 49 CFR 121.)

Peter Paul Montgomery Buttigieg,  
Secretary, Department of Transportation.

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