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**Before the
SURFACE TRANSPORTATION BOARD
Washington, D.C. 20590**

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February 13, 2020
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	)	
In the Matter of	)	Docket Nos. EP 722 & EP 761
	)	
Railroad Revenue Adequacy and	)	84 Fed. Reg. 48,982
Hearing on Revenue Adequacy	)	
	)	

**COMMENTS OF
THE COMPETITIVE ENTERPRISE INSTITUTE**

February 13, 2020

Prepared by:

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Introduction

On behalf of the Competitive Enterprise Institute (“CEI”), I respectfully submit these comments in response to the Surface Transportation Board’s (“STB”) Request for Comments on Railroad Revenue Adequacy.¹

CEI is a nonprofit, nonpartisan public interest organization that focuses on regulatory policy from a pro-market perspective.² This submission includes a December 5, 2019, letter from 13 free market scholars and organizations to House and Senate committees with oversight authority over railroad economic regulation expressing concern about potential misuse of revenue adequacy as a means to institute new price controls. The letter is attached on the following pages.

Respectfully submitted,

Marc Scribner
Senior Fellow
Competitive Enterprise Institute

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1. Hearing on Revenue Adequacy, *Notice of Public Hearing*, EP 722 & EP 761, 84 Fed. Reg. 48,982 (Sep. 17, 2019) [hereinafter RFC].
 2. See About CEI, <https://cei.org/about-cei> (last visited Jan. 19, 2020).

December 5, 2019

The Honorable Deb Fischer
Chairman
Subcommittee on Transportation and Safety
Committee on Commerce, Science, and
Transportation
United States Senate

The Honorable Tammy Duckworth
Ranking Member
Subcommittee on Transportation and Safety
Committee on Commerce, Science, and
Transportation
United States Senate

The Honorable Daniel Lipinski
Chairman
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
United States House of Representatives

The Honorable Rick Crawford
Ranking Member
Subcommittee on Railroads, Pipelines, and
Hazardous Materials
Committee on Transportation and Infrastructure
United States House of Representatives

Dear Chairmen Fischer and Lipinski, Ranking Members Duckworth and Crawford, and Members of the Subcommittees,

We write to you today to emphasize the significance of the Surface Transportation Board's (STB) forthcoming December 12 and 13, 2019, hearing on railroad revenue adequacy (Docket Nos. EP 722 and 761). Congress has made substantial efforts to reduce heavy-handed railroad regulation, including the expansion of strict rate regulation. The potential for the STB to use revenue adequacy as a means to institute price controls is deeply troubling.

Going forward, we recommend that Congress exercise close oversight of the STB and its remaining authorities. Partial freight rail deregulation by Congress has allowed this industry to become highly efficient in recent decades. As a result, America's private freight railroads provide innumerable benefits to U.S. businesses and the economy.

Specifically, we would like to highlight several concerns with the STB's approach to revenue adequacy raised by leading railroad regulation scholars, who authored the 2015 report *Modernizing Freight Rail Regulation* (TRB Special Report 318) for the National Research Council's Transportation Research Board of the National Academies of Sciences. These experts' concerns regarding possible changes to revenue adequacy determinations and the use of those determinations in administering railroad regulations were submitted to the STB on October 29, 2019, and include:

- **Arbitrary calculations:** "The proposal would establish rate increase caps based on the relationship of a shipper's rates to a benchmark calculated using costs derived from the inherently arbitrary Uniform Rail Costing System (URCS) and arbitrary allocations of profits that exceed the cost of capital."
- **Divorced from economic reality:** "We are deeply concerned that this approach creates a rate increase constraint that is divorced both from economic reality and from a well-articulated goal that the proposal is designed to achieve."
- **Contrary to stated intent:** "This proposal could move STB rate regulation in the direction of public utility regulation rather than the protection of captive shippers."

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Such an approach runs counter to Congress's intent in partially deregulating the railroad industry and would threaten the future health of America's railroads—which in turn would risk the massive gains to consumers from reforms enacted over the last four decades. We urge you to closely monitor the December 12 and 13 hearing and the two revenue adequacy proceedings at issue to ensure the United States will preserve these societal benefits far into the future.

Sincerely,

Marc Scribner
Senior Fellow
Competitive Enterprise Institute

Phil Kerpen
President
American Commitment

Steve Pociask
President
American Consumer Institute

Roslyn Layton
Visiting Scholar
American Enterprise Institute*

Grover Norquist
President
Americans for Tax Reform

Jon Decker
Executive Director
Committee to Unleash Prosperity

Matthew Kandrach
President
Consumer Action for a Strong Economy

Jason Pye
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FreedomWorks

Mario H. Lopez
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Tom Giovanetti
President
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Nick Zaiac
Resident Fellow, Transportation & Infrastructure
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Karen Kernigan
President & CEO
Small Business & Entrepreneurship Council

Ian Adams
Vice President of Policy
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*The American Enterprise Institute (AEI) does not take institutional positions on any issues. The views expressed are those of the scholars.