



July 10, 2009

The Honorable Joseph Szabo  
Administrator, Federal Railroad Administration  
U.S. Department of Transportation  
Docket Management Facility  
1200 New Jersey Avenue, SE  
West Building Ground Floor  
Room W12-140  
Washington, DC 20590-0001

**RE:** Docket Number FRA 2009-0045

Dear Administrator Szabo:

On behalf of the 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Railroad Administration's (FRA) Notice of Funding Availability and Interim Program Guidance concerning the High-Speed Intercity Passenger Rail Program (HSIPR), published June 23, 2009 at 74 FR 29900.

### ***About APTA***

APTA is a non-profit international trade association of 1,500 public and private member organizations, including transit systems; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

Among our members, we count the legacy members of the former High Speed Ground Transportation Association (HSGTA). Prior to its integration into APTA, HSGTA served as the premier advocate of high speed rail in America with more than 500 active members and a mature national advocacy program. HSGTA's efforts established the foundation for the current high speed rail initiatives now supported at both the state and national levels.

*Chair*  
Beverly A. Scott

*First Vice Chair*  
Mattie P. Carter

*Secretary-Treasurer*  
Michael J. Scanlon

*Immediate Past Chair*  
Michael S. Townes

*Vice Chairs*  
Richard J. Bacigalupo  
*Management and Finance*  
J. Barry Barker

*Government Affairs*  
Doran Barnes

*Human Resources*

Linda J. Bohlinger  
*Research and Technology*

Flora M. Castillo

*Transit Board Members*

Thomas J. Costello

*Marketing and Communications*

Joyce Eleanor

*Bus and Paratransit Operations*

Sharon Greene

*Business Members*

Delon Hampton

*Business Member-at-Large*

Loren "Ben" Herr

*State Affairs*

Angela Iannuzziello

*Canadian Members*

Hugh A. Mose

*Small Operations*

David Solow

*Commuter and Intercity Rail*

Gary C. Thomas

*Rail Transit*

*President*

William W. Millar

APTA is now the focal-point for high speed rail advocacy for the nation with a perspective based on the legacy of HSGTA, matured by the multi-modal and informed perspective of APTA's broad membership. The HSGTA's more than two decades of expertise is now resident in APTA's High Speed and Intercity Rail Committee and APTA stands ready to partner with FRA as it fashions a comprehensive high speed and intercity rail network fully integrated with the nation's mass transportation programs.

### **General Comment**

APTA commends FRA on the tremendous strides made in this program, particularly given the substantial time constraints, scope, and complexity inherent in creating a nationwide high speed rail program. The fact that our comments are few and quite specific demonstrates the high quality of the FRA work.

### **Competition**

Throughout this program, we encourage FRA to maximize competition, not only in the grant process but in recipient driven selections of contractors and service operators. Open selection processes are vital to establishing viable, efficient services.

### **Eligibility for Track 2**

Paragraph 1.6.2 preconditions entry into Track 2 on completion of a programmatic or Tier I environmental impact statement (PEIS) and a service development plan (SDP), presumably under Track 3. The limitation of Track 3 funding to states in section 3.1.3 forecloses groups of states or interstate compacts from applying for Track 3 funding. This combination of factors effectively forces groups of states or interstate compacts to seek funding on either the state or federal level for these activities on an inefficient, piecemeal basis. As a result, some project sponsors have been stymied by state practices that withhold funding for activities, particularly environmental work, that crosses state lines in preparation for Track 2 activities. Allowing states, groups of states, or interstate compacts to apply for entry into Track 2 upon completion of *either* the PEIS or SDP, would facilitate state funding and allow for federal assistance in multi-state corridors.

Moreover, some programs can more efficiently be developed as a single, unified project. This approach allows project sponsors to proceed without the time and expense of completing a PEIS when, in fact, moving directly to an EIS is appropriate. Allowing sponsors of these unified projects to apply for Track 2 funding would avoid duplicative, expensive, and unnecessary work and ensure optimum use of both federal and non-federal funds.

We believe FRA should change paragraph 1.6.2 to allow entry into Track 2 upon completion of *either* the PEIS or SDP.

### **Eligibility for Track 3**

Paragraph 3.1.3 limits eligibility under Track 3 to states. APTA believes this eligibility should extend to groups of states or interstate compacts. Groups of states and interstate compacts created by those states are specifically tasked with the planning activities inherent in Track 3 and are authorized to act on behalf of their parent states.

### **Project Funding**

We note the inconsistency between the authorized 100 percent federal share and the evaluation criteria that prioritize projects that incorporate non-federal funds, as evidenced in paragraphs 3.3.1.1 and 3.3.1.2. Use of these criteria effectively eliminates any opportunity for a 100 percent federal share in a deserving project. We believe FRA should preserve the opportunity for such a deserving project to win funding by not overemphasizing the weighting of non-federal funding. To the extent FRA does consider non-federal resources in project selection, we believe it imperative that potential grantees be encouraged to enlist private sector participation through public-private partnerships or innovative project delivery methods.

### **Project Inclusion in State Transportation Plans**

Paragraph 3.5.4 states: "*To be eligible for funding under Track 4, a proposed project must be specifically included in the applicant State's Statewide Transportation Improvement Plan (STIP) at the time of application.*"

This requirement is inconsistent with Sec. 301 of the *Passenger Rail Investment and Improvement Act* (PRIIA), which requires that eligible projects must be on a State rail plan. Similarly, PRIIA Sec. 501 establishes as part of the grant criteria for selecting recipients of high-speed rail development grants "that the project be part of a State rail plan" or the North East Corridor state-of-good repair plan.

Based on the congressional guidance in PRIIA, FRA should revise paragraph Sec. 3.5.4 to require inclusion on a State rail plan or a STIP, as the baseline eligibility criteria for Track 4 project applications.

### **Prerequisites for Equipment Procurement or Design Grants**

Paragraph 3.6.3 states:

*If the applicant is seeking a grant for the procurement or design of railroad equipment, the proposed equipment should be consistent with Section 305 of PRIIA, which calls for the establishment of a standardized next-generation rail corridor equipment pool. Compliance with Section 305 of PRIIA will assist in creating the economies of scale necessary to achieve the Administration's goal, as outlined in FRA's Strategic Plan, of developing a sustainable railroad equipment manufacturing base in the United States.*

Section 305 of PRIIA requires Amtrak to establish a "Next Generation Corridor Equipment Pool Committee ... including interested States ... to design, develop specifications for, and procure standardized next-generation corridor equipment."

As drafted, paragraph 3.6.3 of the interim guidance would require States or authorities proposing dedicated corridor systems or shared use applications to justify rolling stock procurement plans as an exception to any pool committee standard. PRIIA Section 305 is clearly intended to promote a single, cost-effective equipment platform when envisioned for use on the general system.

FRA should revise paragraph 3.6.3 to clarify that compliance with PRIIA Section 305 applies only to intercity and higher-speed rail initiatives intended primarily on the general railroad system, and not dedicated corridors or shared use applications proposed for operation under approved FRA waivers and system safety rules of particular applicability. FRA should emphasize direct crash avoidance systems that take advantage of current and emerging technology demonstrated in high speed rail applications throughout the world.

As an additional point, FRA should further make clear that while the Next Generation Corridor Equipment Pool Committee should proceed expeditiously, the initiative should not hold back any equipment procurement initiatives otherwise ready to proceed.

### **Environmental Issues**

While we agree that environmental review of projects is mandatory, as detailed in paragraph 5.1, we believe FRA should affirmatively state that projects within the right of way of existing rail lines and infrastructure may be eligible for categorical exclusion, consistent with the guidance at 64 Fed.Reg. 28545, at 28547.

### **Railroad Agreements**

Appendix 3.4.3 would precondition receipt of a grant on a written agreement with a host railroad that owns the applicable right of way. Given the complexity of these agreements, FRA should allow receipt of a grant in the absence of a signed agreement where it finds reasonable evidence of good faith negotiations and a likelihood that an acceptable agreement can be struck. This would allow projects to progress without unnecessary delay and unnecessary additional costs occasioned by that delay. Additionally, where not inconsistent with appropriations act limitations, federal assistance should be authorized to simply purchase right of way from railroads under fair and reasonable terms when such purchases are in the public interest. Finally, where no written agreement is forthcoming, railroad owners should not be given an effective veto of this national system. Dispute resolution mechanisms must be in place, whether under the auspices of FRA or the Surface Transportation Board.

### **Time Limitations for Track 1 Projects**

The table embedded in section 4.3.6 requires project completion “[w]ithin 2 years of obligation.” Even a small, completely shovel-ready project would be difficult to complete within 24 months. Any work undertaken in an active rail corridor must be accomplished safely and without unnecessary disruption of active traffic in the corridor. We suggest the time frame for completion be extended to at least 36 months.

### **Administrative Dates**

In its December 16, 2008 *Federal Register* announcement related to PRIIA, FRA set a September 14, 2009 deadline for expressions of interest. In light of the dates in the interim guidance, FRA should clarify whether the September 14 deadline or those in the interim guidance are controlling.

### **Interoperability**

An overarching goal of the FRA program should be interoperability. With a future vision of an interconnected, nationwide system of high speed rail, FRA should work with stakeholders to identify appropriate aspects of system parameters that will support long term interoperability without inhibiting innovation or unnecessarily adding costs to individual systems.

APTA greatly appreciates the efforts and outreach of FRA and the opportunity to assist in crafting this important program. For additional information, please contact James LaRusch of APTA’s executive office at (202) 496-4808 or email [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,



William Millar  
President

WM/rk