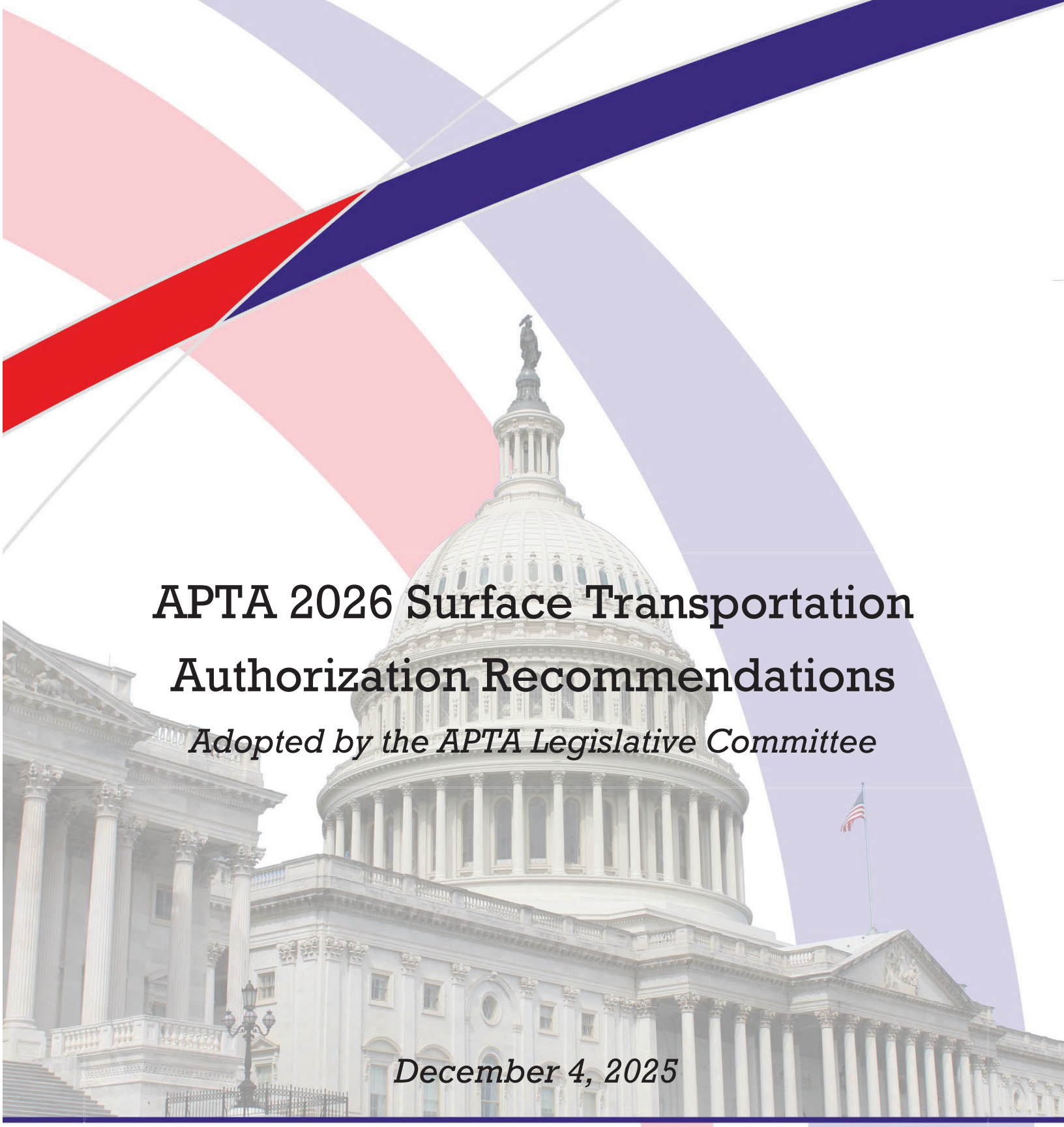

APTA 2026 Surface Transportation Authorization Recommendations

Adopted by the APTA Legislative Committee

December 4, 2025

American Public Transportation Association

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The American Public Transportation Association (APTA) Legislative Committee has adopted the enclosed *APTA Surface Transportation Authorization Recommendations*. The APTA Legislative Committee approved packages of *Recommendations* on December 5, 2024, and April 6, May 18, June 29, and September 14, 2025. On December 4, 2025, the Legislative Committee will discuss top priorities of the *Recommendations.* The Legislative Committee will present this final package of *Recommendations* to the APTA Board of Directors in 2026.

Investment and Revenue Recommendations

APTA's top priority is achieving a long-term Surface Transportation Authorization Act that builds upon current investment levels and adjusts those levels for inflation. Current total public transit and passenger rail funding (including guaranteed funding) must serve as the baseline for the Surface Transportation Authorization Act.

APTA recommends that Congress and the Administration provide $138 billion for public transit and $130 billion for passenger rail over five years. These critical investments in public transportation infrastructure will grow the economy, support American workers, save money for families, and make communities safer.

Importantly, the Infrastructure Investment and Jobs Act (IIJA) provides guaranteed funding for public transit and passenger rail investment through both Highway Trust Fund contract authority and advance appropriations. Public transit agencies and intercity passenger rail authorities need funding certainty to conduct efficient long-term planning. In addition, funding certainty is key to unlocking innovative finance opportunities that can deliver important new services for growing communities.

In its Public Transit Investment *Recommendations*, APTA proposes to provide all guaranteed transit funding through Highway Trust Fund contract authority. However, APTA supports any mechanism, including continued advance appropriations, which guarantees public transit investment. In its Passenger Rail Investment *Recommendations*, APTA proposes to provide guaranteed passenger rail funding through advance appropriations. Again, APTA supports any mechanism, including establishing a Passenger Rail Trust Fund, which guarantees passenger rail investment. We will work with Congress on any means that will accomplish these objectives.

If we invest in public transportation today, the benefits America will reap in the coming decades will repay that investment multiple times over. Every $1 invested in public transit generates $5 in

long-term economic returns. Moreover, 77 percent of Federal public transit investments flow to the private sector. Every $1 billion invested in public transportation creates or sustains more than 41,000 jobs across industries.

These critical investments will help public transit agencies tackle the more than $150 billion state-of-good repair backlog, meet growing mobility demands in our communities, and drive innovation and new technologies.

APTA Recommendations:

- **Ensure a long-term Surface Transportation Authorization Act funded by sustainable, dedicated revenues.**
    - **Any new revenue into the Highway Trust Fund must include deposits into the Mass Transit Account, with an 80-20 highway-public transit split.**
    - **Enact a fee on electric vehicles dedicating the revenues solely to the Highway Trust Fund, including the Mass Transit Account.**
- **Build upon Infrastructure Investment and Jobs Act (IIJA) total public transit and passenger rail investment in the next Surface Transportation Authorization legislation, with growth rates equal to or greater than for Federal-aid Highways.**

Highway Trust Fund

Rostenkowski Test

The "Rostenkowski Test" is a provision in the Internal Revenue Code that automatically cuts Federal public transit formula apportionments when revenues into the Mass Transit Account of the Highway Trust Fund do not sufficiently align with public transit spending. Although Congress has consistently blocked application of this provision, it should be repealed to prevent any costly disruptions to transit investment that Americans rely on and that drive economic growth. APTA continues to urge Congress to address the solvency of the Highway Trust Fund by increasing dedicated revenues and ensuring that at least 20 percent of such revenues are deposited into the Mass Transit Account.

APTA Recommendation:

- **Repeal the "Rostenkowski Test".** Repeal 26 U.S.C. § 9503(e)(4).

Finance Recommendations

APTA urges Congress to use existing financing mechanisms as the basis for any provisions in the surface transportation authorization bill designed to support traditional local bond issuance, leverage private-sector financing, and enable public-private partnerships, where appropriate, for public transportation infrastructure projects. We caution, however, that despite our embrace of these financing tools, they alone cannot solve the infrastructure deficit that our communities face. Increased Federal funding to provide greater support for public transit must be a fundamental element of any legislation to support infrastructure investment.

Private Activity Bonds (PABs)

The Build America Bureau administers Private Activity Bonds (PABs). PABs are an important financing tool that supports private-sector participation and investment in infrastructure projects, including public transit projects. As of November 1, 2025, the Bureau reports that it has allocated all of the $30 billion statutory PAB cap. APTA urges Congress to enhance the availability and use of low-interest PABs for public transportation and intercity passenger rail projects with significant private participation (such that the projects otherwise would not qualify for tax-exempt financing).

APTA Recommendations:

- **Increase the statutory Private Activity Bond cap for "qualified highway or surface freight transfer facilities" from the current $30 billion to $45 billion.** In 26 U.S.C. § 142(m)(2)(A), strike "$30,000,000,000" and insert "$45,000,000,000".

- **Expand the eligibility of mass-commuting facility PABs beyond their current use (construction of rail and bus infrastructure and facilities) to include acquisition of rolling stock.** Amend 26 U.S.C. § 142(a)(3) by adding at the end ", including the acquisition of rolling stock."

- **Remove mass-commuting facilities from the Federally imposed state volume cap for PABs, thereby aligning these public transportation and intercity passenger rail activities with airports, docks, and wharves, which are not subject to the PAB state volume caps.** Amend 26 U.S.C. § 146(g)(3) by inserting "(3)," after "(2),".

- **Reduce the "capable of 150-mph" speed requirement for high-speed intercity passenger rail facility PABs to allow more projects to be eligible, especially those privately-operated services running on shared rights-of-way with freight railroads.** Amend 26 U.S.C. § 142(i) by striking "150 miles per hour" and inserting "110 miles per hour".

Alternative Fuels Tax Credits

The Alternative Fuel Tax Credit (AFTC) is a series of income and excise tax credits for the sale or use of biodiesel, renewable diesel, and alternative fuels. The credits are found in 26 U.S.C. §§ 6426, 6427, and 40A. Public transit agencies can claim the excise tax credit under § 6427 for the use of biodiesel, renewable diesel, or alternative fuels. The AFTC expired on December 31, 2024.

APTA Recommendation:

- **Urge Congress to extend the Alternative Fuel Tax Credit for two years (Calendar Years 2025 and 2026)**.

Commuter Tax Benefits

The transportation fringe benefit, also called the commuter tax benefit, is an employer-provided benefit that can cover the costs of an employee's commute via transit or vanpool up to a monthly cap of $325 for 2025. The commuter tax benefit can also be used for the cost of qualified parking (with a separate monthly cap of $325). The benefit can be offered pretax, as a subsidy, or in combination. APTA strongly supports the commuter tax benefit.

However, in the Tax Cuts and Jobs Act, Congress limited the benefit. While Congress recognized the value of the commuter tax benefit by retaining key elements, including the personal deduction for employees and allowing employers the ability not to pay payroll taxes on the amount provided, the law restricts an employer's ability to deduct the cost of providing the benefit.

APTA Recommendation:

- **Restore the ability for employers to deduct the expense of providing transportation fringe benefits to employees.** Strike 26 U.S.C. § 274(a)(4) and 26 U.S.C. § 274(l).

Municipal Bonds and Advance Refunding Bonds

In 2017, Congress enacted the Tax Cuts and Jobs Act (P.L. 115-97), which included a provision eliminating the ability of States and municipalities to issue tax-exempt advance refunding bonds. APTA opposed that change, and we urge Congress to restore tax-exempt advance refunding. Advance refunding is an important tool that allowed state and local governments to save billions of dollars and spend taxpayer dollars more efficiently.

APTA Recommendation:

- **Restore the ability for State and local governments to issue tax-exempt advance refunding bonds.** Amend 26 U.S.C. § 149(d)(1) by striking "to advance refund another bond" and insert "as part of an issue described in paragraph (2), (3), or (4)" and restoring provisions that existed in § 149(d) prior to enactment of the Tax Cuts and Jobs Act.

Value Capture Tax Credits

Public transportation and transit-supporting businesses provide tremendous economic value for large and small communities across the country, with every $1 in Federal investment spurring $5 in long-term economic benefits. One type of increased value that local governments sometimes utilize to fund public transit is increased property values and business activity in areas near new transit infrastructure. The Federal Transit Administration (FTA) notes findings that "transit projects increase nearby property values by 30 to 40 percent, and as much as 150 percent where conditions are ideal." Such "value capture", where part of the increased economic value due to transit in a specific area is collected as taxes, can create a virtuous cycle where more public transit investment results in increased economic activity, which is partially collected as taxes, which supports more transit investment, and so on.

Federal incentives can complement local efforts and ensure that this tool is more broadly available across the country. Using existing Federal models such as Economic Opportunity Zones, Low-Income Housing Tax Credits, or New Markets Tax Credits as inspiration, tools such as tax credits, accelerated depreciation, and other incentives would attract private capital investments for public transit projects. A successful value capture program would leverage the tremendous value that transit creates for nearby property values and may also provide competitive investment opportunities for new categories of investors.

APTA Recommendations:

- **Real Estate-Based Value Capture—Establish a public transportation version of Economic Opportunity Zones, or its equivalent, in which investors in real estate projects in the vicinity of a public transportation or intercity passenger rail station, multi-modal terminal, or facility would be eligible for certain tax benefits (e.g., tax credits, accelerated depreciation) upon making an investment that benefits the local public transit agency.**

- **Asset-Based Value Capture—Create tax code incentives to attract "tax-oriented equity" into public transportation and intercity passenger rail projects (i.e., equity investments whose return is based principally or solely on Federal tax benefits).** In a public transit-based version of the successful Low-Income Housing Tax Credits and New Markets Tax Credits programs, investors would purchase tax credits allocated at a specified percentage of capital investments made by public transportation or intercity passenger rail agencies for facilities and equipment. This type of value capture approach would not be dependent on future real estate development, as with traditional value capture strategies. It could bring in new categories of investors to subsidize a wide range of public transportation or intercity passenger rail projects, regardless of local real estate market conditions or growth potential.

"Sliding Scale" Federal Share for States with Federal Lands

Federal Highway Administration (FHWA) "sliding scale" Federal share policies allow States with significant areas of Federal and other nontaxable land to have a higher Federal share for highway projects under FHWA formula grants because these States have a limited opportunity to raise funds for local match. The 14 States with sufficient nontaxable lands to qualify for sliding scale match ratios are Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

Clearly, the same local match limitations affect public transit projects as well as highway projects. Adopting sliding scale shares for relevant FTA programs would promote consistency across surface transportation modes.

Sliding scale match ratios are currently allowed in statute for § 5311 Formula Grants for Rural Areas but are not allowed for several other important public transit formula programs, including § 5307 Urbanized Area Formula grants, § 5310 Seniors and Individuals with Disabilities grants, § 5337 State of Good Repair grants, and § 5339(a) Buses and Bus Facilities Formula grants.

APTA Recommendation:

- **Under public transit formula programs, provide a Federal share for transit projects in States with significant nontaxable lands in accordance with the FHWA "sliding scale".** For each transit formula program, insert at the relevant place: "FEDERAL SHARE EXCEPTION.—A designated recipient in a State described in section 120(b) of title 23 shall receive a Government share of the net costs in accordance with the formula under that section."

Funding Transferability for Public Transit Investments

The ability for States to transfer funds from certain FHWA programs to public transit programs has been an important source of funding for public transit projects. States demonstrate the demand for public transit investments by exercising this authority every year, and timely completion of this process ensures that critical public transit projects are not unduly delayed.

DOT's Flexible Funding Process Guidebook states: "It takes approximately 60 days to review, approve, and complete the transfer process from the time the State DOT sends a written request to FHWA to flex funds to FTA." Some public transit agencies experience even longer wait times. APTA recommends that the transfer process be limited to 30 days.

APTA Recommendation:

- **Require FHWA to complete the funding transferability process to FTA within 30 days.** Insert a new 23 U.S.C. § 104(f)(1)(C), 23 U.S.C. § 104(f)(2)(C), and 49 U.S.C. § 5334(i)(3) by adding: "Such transfers shall be completed and made available to the recipient within 30 days of a State making a request and supplying all required documentation."

Railroad Rehabilitation and Improvement Financing (RRIF) Loans and Loan Guarantees

RRIF Loans as Non-Federal Share

Federally supported infrastructure projects typically require a non-Federal match from state, local, or private sources. Because loans from the RRIF program are secured through repayment from non-Federal sources, the loans should be considered as a non-Federal match.

APTA Recommendation:

- **Specify in statute that RRIF loans may be used for the non-Federal share of a project.** Amend 45 U.S.C. § 822 by adding a new subsection: "(n) NON-FEDERAL SHARE.—The proceeds of a secured loan under this subchapter shall be used for any non-Federal share of project costs required under this title if the loan is repayable from non-Federal funds."

Credit Risk Premium

The IIJA requires DOT to repay the Credit Risk Premium (CRP) and interest for a RRIF direct loan. In 2024, DOT finalized a rule that allowed collecting CRP as a credit spread. The Department stated that the "additional interest would not qualify as a CRP payment and would not be returned to the original source once the [loan] obligation had been satisfied." In its comments on the proposed rule, APTA expressed its concern that DOT's proposal essentially functions as an end-run around Congressional intent that the CRP, including any interest, is repaid. APTA recommends defining CRP to ensure that any payments collected by DOT are returned to the original source.

APTA Recommendation:

- **Define "Credit Risk Premium" to include any payment collected by DOT to meet the costs for a direct loan, therefore requiring repayment.** Amend 49 U.S.C. § 22401 by redesignating paragraphs (3) through (15) as paragraphs (4) through (16), respectively, and by inserting after paragraph (2) the following:

  "(3) Credit Risk Premium. —
  The term "Credit Risk Premium" refers to payments collected from RRIF applicants to meet the costs of direct loans and loan guarantees, regardless of whether the payment is collected as a lump sum at the start of a loan or as an adjustment to the loan's interest rate following the performance of a credit spread."

Transportation Infrastructure Finance and Innovation Act (TIFIA) Loans and Loan Guarantees

Federal Loan Programs as Local Match

Federally supported infrastructure projects typically require a non-Federal match—commonly referred to as "local match"—that state, local, or private sources must provide for a project to move forward. Under U.S. Department of Transportation (DOT) surface transportation programs, the local match is often 20 percent. However, for some programs, such as FTA's Capital Investment Grants (CIG), the local match is often significantly higher. Congress has recognized that funding received through Federal credit assistance programs (e.g., direct loans) should be considered part of the required local match because such loans are secured through repayment from non-Federal sources. Section 603(b)(8) of Title 23 explicitly states that Transportation Infrastructure Finance and Innovation Act (TIFIA) loans may be used for any non-Federal share of project costs. Funding from such loans should be considered local in all contexts and considerations when assessing the financing of a project.

APTA Recommendation:

- **Require DOT to consistently apply the requirement that Federal loans be considered local match across all DOT programs.** Amend 23 U.S.C. § 603(b)(8) to strike "may" and insert "shall".

Definition of Rural Infrastructure Project

Under 23 U.S.C. § 601(a)(15), Rural Infrastructure Projects for purposes of TIFIA financing are defined as those within communities of up to 150,000 people. Conversely, rural areas are defined as having a population of fewer than 200,000 for the Rural Surface Transportation Grant Program (23 U.S.C. § 173(a)(2)) and the Better Utilizing Investments to Leverage Development (BUILD) Grant Program (49 U.S.C. § 6702(a)(5)).

To acknowledge population growth in rural and small urbanized areas over the past several decades and to better harmonize definitions across programs, APTA recommends adjusting the TIFIA definition of Rural Infrastructure Projects to those projects within communities of fewer than 200,000 to allow a greater number of small urban and rural transit operators to access financing through TIFIA and State Infrastructure Banks.

APTA Recommendation:

- **Align the Transportation Infrastructure Finance and Innovation Act and Rural Surface Transportation Program definitions of rural infrastructure projects.** Amend 23 U.S.C. § 601(a)(15) by striking "150,000" and inserting "200,000".

Harmonizing TIFIA and CIG Guidance

Project sponsors applying for both TIFIA credit assistance and FTA CIG funding are receiving contradictory requirements from the DOT Build America Bureau and FTA for processing their applications. APTA recommends that the Bureau and FTA produce joint guidance for projects seeking credit assistance and CIG funding to streamline the application and selection process.

APTA Recommendation:

- **Require the Build America Bureau and FTA to release joint guidance outlining a step-by-step process for applicants seeking both Transportation Infrastructure Finance and Innovation Act loan or loan guarantees and CIG funding.** Amend 49 U.S.C. § 5309 by inserting at the end:

  "(s) Joint TIFIA and CIG projects. —

  Not later than 180 days following the date of enactment of the Surface Transportation Authorization Act, the Secretary shall publish joint guidance from the Build America Bureau and the Federal Transit Administration for projects seeking funding from both the Transportation Infrastructure Finance and Innovation Act credit assistance and Capital Investment Grants program. The guidance shall contain a detailed timeline of when the Bureau and Administration expect specific project details and the steps in which the Bureau and Administration will administer their approvals."

Eligibility of Corridor-Based Bus Rapid Transit Projects

Under current law, projects eligible for TIFIA financing as a transit-oriented development (TOD) project and projects eligible for TOD planning grants include fixed guideway transit facilities, but do not include corridor-based bus rapid transit projects. APTA recommends expanding the eligibility of a TOD project to include corridor-based bus rapid transit projects.

APTA Recommendation:

- **Expand the definition of a transit-oriented development project to include corridor-based bus rapid transit projects.**

  Amend 23 U.S.C. § 601(a)(12)(E) to insert "corridor-based bus rapid transit facility," in the list after "fixed guideway transit facility,". Insert in the definition section, 23 U.S.C. § 601(a): "The term 'corridor-based bus rapid transit' has the meaning provided in 49 C.F.R. §611.105."

  Amend section 20005(b)(1)(A) of the Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141) by adding at the end: "or new corridor-based bus rapid transit project, as that term is defined in 49 C.F.R. §611.105."

Public Transit Program Recommendations

APTA recommends several changes to improve public transit program administration and the efficiency, effectiveness, and distribution of FTA funds.

APTA Recommendations:

- **Provide contract authority for formula programs on October 1 of each fiscal year and make the funds immediately available for obligation.** Amend Chapter 53 of Title 49 at the appropriate place to include language similar to the distribution of Federal-aid Highway contract authority pursuant to 23 U.S.C. § 118.

- **Provide that FTA funds be apportioned or granted directly to the public transportation agencies in Urbanized Areas with a population of 50,000 to 200,000.**

- **Reauthorize the Disadvantaged Business Enterprise program for Federally assisted public transportation projects.**

Program Consolidation

In growing transit investments, APTA recommends a relative distribution of 40 percent for Capital Investment Grants, 40 percent for State of Good Repair, and 20 percent for Buses and Bus Facilities among these three capital investment programs. In addition, APTA recommends streamlining FTA programmatic structures to increase flexibility for agencies, simplify program administration, and ensure broad and fair opportunities for important competitive grants. Specifically, we recommend consolidating FTA's numerous bus and passenger ferry grant programs into three key initiatives: Bus Formula Grants; Bus Competitive Grants; and Passenger Ferry Competitive Grants. We believe this structure will meet the diverse needs of public transit agencies and streamline the grant application process.

The § 5339 Buses and Bus Facilities programs are consolidated into one formula grant program and one competitive grant program. Under APTA's proposed funding levels, APTA recommends that 65 percent of § 5339 Buses and Bus Facilities funding be apportioned by formula and 35 percent of funding be allocated through competitive grants. The Bus Competitive Grants program will fund buses and bus facilities of all propulsion types. The choice of propulsion type will be at the option of the public transit agency submitting the application.

The three ferry grant programs (49 U.S.C. § 5307(h) Passenger Ferry Grant Program, IIJA § 71102 Electric or Low-Emitting Ferry Pilot Program, and IIJA § 71103 Ferry Service for Rural Community Program) are consolidated into one Passenger Ferry Competitive Grants program. APTA recommends that Congress establish a minimum percentage of Ferry Grants for both urbanized areas and rural areas to ensure equitable distribution of funds. The Passenger Ferry Competitive Grants program will fund ferry and ferry facilities of all propulsion types. The choice of propulsion type will be at the option of the public transit agency submitting the application.

Metropolitan Transportation Planning (§ 5303)

Metropolitan Planning Organizations (MPOs) play a crucial role in deciding which projects receive funding under Chapter 53. APTA strongly advocates for public transit operators to receive voting seats on the Board of MPOs to ensure that public transit agencies' complex needs are taken into consideration during the metropolitan planning process. In addition, APTA recommends ensuring that due process is available to public transit agencies.

APTA Recommendations:

- **Ensure that public transit agencies have a voting seat(s) on the Board of a Metropolitan Planning Organization**. Amend 49 U.S.C. § 5303(d)(2) and 23 U.S.C. §134(d)(2), by striking "Federal Public Transportation Act of 2012" and "MAP-21", respectively, and inserting "Surface Transportation Authorization Act".

  In section (d)(2)(B) strike ", including representation by providers of public transportation."

  Insert after (d)(2)(B), new subsection "(C) providers of public transportation that together represent at least 75 percent of the annual unlinked passenger trips in the metropolitan planning area; and".

  Redesignate "(d)(2)(C)" as "(d)(2)(D)".

  Amend 49 U.S.C. § 5303(d)(3)(C) and 23 U.S.C. §143(d)(3)(C) by striking "paragraph (2)(B)" and inserting "paragraphs (2)(B) and (2)(C)."

- **Require FTA and FHWA to jointly establish an appeals process for Metropolitan Planning Organization actions that procedurally violate Federal law or regulations.** Create new subsections 49 U.S.C. § 5303(s) and 23 U.S.C. § 134(s): "The Federal Transit Administration Regional Office and Federal Highway Administration Division Office of primary jurisdiction are authorized to jointly investigate and consider formal complaints made by affected public transportation providers, that a metropolitan planning organization has procedurally violated Federal law or regulations. An investigation shall conclude and a decision shall be announced within 30 days of receipt of the complaint. Such decisions shall be final, subject to judicial review."

  Insert at end of 49 U.S.C. § 5303 and 23 U.S.C. § 134: SAVINGS CLAUSE.—Nothing in subsection (s) authorizes an affected public transportation provider to challenge a decision of a metropolitan planning organization regarding specific project selections."

Urbanized Area Formula Grants (§ 5307)

FTA 100-Bus Rule

Agencies that serve large urban areas with more than 100 buses in peak service are not permitted to use their § 5307 formula grant funds for operational expenses. However, agencies below this threshold are allowed to utilize some of these funds for operational expenses. Under § 5307(a), agencies with between 75 and 100 buses in peak service can use up to 50 percent of their Federal funds on operating costs. In addition, agencies with fewer than 75 buses in peak service can use up to 75 percent of their Federal funds on operating costs.

Dozens of public transit agencies are approaching the 100-bus cap, which will decrease their flexibility to utilize transit formula funding for operating costs. The Federal framework should allow an agency's fleet size to be determined by ordinary conditions such as funding availability and population changes. It should not create consequential disincentives around ceilings set in statute.

APTA Recommendation:

- **Add a new category to § 5307 to allow agencies with between 101 to 125 buses in peak service to spend up to 25 percent of Federal dollars on operating costs**. Amend 49 U.S.C. § 5307—

  (1) in subsection (a)(2)(A)—
  (A) in clause (i) by striking "or" at the end;

  (B) in clause (ii) by striking the period at the end and inserting "; or"; and

  (C) by adding at the end, the following:

  "(iii) operate a minimum of 101 buses and a maximum of 125 buses in fixed route service or demand response service, excluding ADA complementary paratransit service, during peak service hours, in an amount not to exceed 25 percent of the share of the apportionment which is attributable to such systems within the urbanized area, as measured by vehicle revenue hours; or";

  (2) in subsection (a)(2)(B)—
  (A) in clause (i) by striking "or" at the end;
  (B) in clause (ii) by striking the period at the end and inserting "; or"; and
  (C) by adding at the end, the following:
  "(iii) operate a minimum of 101 buses and a maximum of 125 buses in fixed route service or demand response service, excluding ADA complementary paratransit service, during peak service hours, in an amount not to exceed 25 percent of the share of the apportionment allocated to such systems within the urbanized area, as determined by the local planning process and included in the designated recipient's final program of projects prepared under subsection (b)."

Expedited Technical Capacity Review

Current law (49 U.S.C. § 5309(c)(3)) directs FTA to use an expedited process to review a CIG project sponsor's technical capacity if the sponsor has (1) successfully completed a New Start or Core Capacity project recently and (2) the transit agency continues to have the staff expertise and other resources necessary to implement a new project. APTA recommends establishing an expedited technical capacity review process for § 5307 recipients that exceed performance measures. This provision will help accelerate project delivery.

APTA Recommendation:

- **Establish an expedited technical capacity review process for § 5307 recipients that exceed performance measures where grantees demonstrate prior successful delivery of public transit capital projects.**

"TECHNICAL CAPACITY.—The Secretary shall use an expedited technical capacity review process for applicants that have recently and successfully completed capital projects, if—

(A) the applicant achieved budget, cost, and ridership outcomes for the project that are consistent with or better than projections; and

(B) the applicant demonstrates that the applicant continues to have the staff expertise and other resources necessary to implement a new project.

Not later than 180 days following the date of enactment of the Surface Transportation Authorization Act, the Secretary shall publish guidance on the expedited technical capacity review process. The guidance will include the metrics the Department will use to determine whether a project sponsor qualifies for an expedited technical capacity review as well as how the expedited technical review process will simplify the review process for qualified project sponsors."

Capital Investment Grants Program (§ 5309) and Expedited Project Delivery for Capital Investment Grants Pilot Program (FAST Act § 3005(b))

APTA strongly supports the CIG program. Beginning with enactment of the Transportation Equity Act for the 21st Century in 1998, both Congress and FTA have repeatedly layered additional requirements on the CIG program, which has resulted in a bureaucratic maze. Congress must reject policies that would cut, delay, or make this vital program more burdensome. In 2012, Congress established the Expedited Project Delivery for Capital Investment Grants Pilot Program (EPD Pilot Program). The EPD Pilot Program allows for up to eight New Starts, Core Capacity, or Small Starts projects to expedite the evaluation process normally required for CIG.

We urge Congress to adopt provisions that will strengthen the CIG and EPD programs and ensure that beneficial projects across the country are delivered in a timely manner.

APTA Recommendations:

Project Awards

- **Establish a fixed Federal CIG share for New Start, Core Capacity, and Small Start projects. The fixed Federal CIG shares shall be:**
  - **New Starts: 60 percent or, for New Start projects with significant total project costs, a lesser percentage;**
  - **Core Capacity: 80 percent or, for Core Capacity projects with significant total project costs, a lesser percentage;**
  - **Small Starts: 80 percent; and**
  - **Expedited Project Delivery: 50 percent.**

- **Increase the maximum Federal CIG amount for Small Start projects from $150 million to $250 million.**
  - Amend 49 U.S.C. § 5309(a)(6)(A) by striking "$150,000,000" and inserting "$250,000,000".
  - Amend § 3005(b)(1)(I) in clause one by striking "$150,000,000" and insert "250,000,000".

- **Increase the maximum net total project cost for Small Start projects from $400 million to $500 million.** Amend 49 U.S.C. § 5309(a)(6)(B) by striking "$400,000,000" and inserting "$500,000,000."

- **Require that FTA share cost savings with grantees for eligible activities not included in an originally defined project.** Amend 49 U.S.C. § 5309(l)(2) by striking "may" and inserting "shall".

Project Efficiency and Program Improvements

- **Extend the deadline to complete Project Development activities for New Starts and Core Capacity projects from 2 to 3 years.** In 49 U.S.C. § 5309(d)(1)(C)(i) and in § 5309(e)(1)(C)(i), strike "2" and insert "3".

- **Require FTA to conduct the Risk Assessment and establish the Federal CIG share during the Engineering phase of New Start and Core Capacity projects.** In 49 U.S.C. § 5309, insert a subsection: "(r) For projects defined under subsection (a)(2) or (a)(5), the Secretary may not determine a maximum Capital Investment Grant contribution or perform a risk assessment until at least 180 days after a project has entered into the Engineering phase, unless the project sponsor specifically requests a risk assessment on an earlier date."

- **Reduce the required period of notification to Congress for a Small Start project from 10 days to 3 days.** In 49 U.S.C. § 5309(h)(6)(C), strike "10 days" and insert "3 days".

- **Reduce the Expedited Project Delivery required period of notification to Congress from 15 days to 10 days.** Amend § 3005(b)(8)(D) by striking "15 days" and insert "10 days".

- **Strike the requirement for New Start and Core Capacity project sponsors to submit an information collection and analysis plan.** Amend 49 U.S.C. § 5309 by striking section (k)(2)(E) and redesignating section (F) as (E).

- **Consistent with the Transportation Infrastructure Finance and Innovation Act and Railroad Rehabilitation and Improvement Financing programs, allow expenditures to fulfill compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321 et seq.) and related to project design and engineering to be counted toward the non-Federal match for CIG projects prior to entering Project Development.**

- **Expand the list of eligible projects for Core Capacity Improvements.** Amend 49 U.S.C. § 5309(b)(2) by striking "elements to improve general station facilities or parking, or".

- **Require that the entirety of a project bundle receive a single evaluation where applicable.** Amend 49 U.S.C. § 5309(i)(1)(H) as follows:

  "(H) EVALUATION.—All projects submitted for consideration for funding in a future bundling request shall be subject to a single evaluation where the applicable evaluation criteria under this section are the same between project types."

Guidance

- **Require FTA to publish separate policy guidance for the Small Start program.** Amend 49 U.S.C. § 5309(g)(5) to include a new subsection:

  "(C) the Secretary shall issue a separate policy guidance for Small Start Projects that reflects the differences in scope, cost, risk, and source of local monies for Small Start projects as compared to New Start or Core Capacity Projects—

  (i) Not later than 180 days after the date of enactment of the Surface Transportation Authorization Act.

  (ii) Each time the Secretary makes significant changes to the process and criteria."

- **Establish guidelines for the expedited technical capacity review process.** Amend 49 U.S.C. § 5309(c)(3)(B) by inserting:

  "(C) Not later than 180 days following the date of enactment of the Surface Transportation Authorization Act, the Secretary shall publish guidance on the expedited technical capacity review process. The guidance will include the metrics the Department will use to determine whether a project sponsor qualifies for an expedited technical capacity review as well as how the expedited technical review process will simplify the review process for qualified project sponsors."

Mobility of Seniors and Individuals with Disabilities (§ 5310) and Rural Area Formula Grants (§ 5311)

Demand for public transportation services from seniors and Americans with disabilities continues to grow in urban, suburban, and rural communities. Sufficient resources should be directed toward this program to meet these growing demands. In addition, there should be shared responsibility for coordination between human services and transportation agencies, to serve the mobility needs of our nation's seniors, veterans, and people with disabilities.

APTA Recommendation:

- **Provide additional flexibility under § 5310(c)(2)(B) by allowing any funds apportioned to a State under § 5310(c)(1)(A) to be reallocated to projects in small urbanized or rural areas.**

Public Transportation Research and Development (§ 5312)

Section 5312 provides discretionary funding for the advancement of innovative public transportation research and development. Eligible recipients include Federal departments and agencies, state and local governmental entities, providers of public transportation, private or non-profit organizations, institutions of higher education, and technical and community colleges.

Projects eligible for funding include activities that support research, innovation and development, demonstration and deployment, and evaluation. The program also supports low or no emission vehicle component assessment and the Transit Cooperative Research Program (TCRP).

APTA members derive great benefit from the TCRP program including research, development, and demonstration regarding improved operations, application of new technologies, innovative finance, improved ways of serving riders with special needs, and workforce development. APTA proposes to significantly increase funding for this important program, from approximately $7 million per year to greater than $15 million per year.

APTA Recommendation:

- **Public Availability of Findings**. Amend § 5312(e)(4) to include a new sentence at the end of the paragraph: "The Secretary shall make all findings under this section publicly available."

Technical Assistance and Workforce Development (§ 5314)

Section 5314 authorizes the Secretary to make grants to carry out: (1) technical assistance activities for the effective and efficient delivery of transportation services, foster compliance with Federal laws, and improve public transportation service; (2) standards development and best practices for the public transit industry; and (3) research, outreach, training, and a frontline workforce grant program to address public transportation workforce needs.

APTA Recommendation:

- **Allow rural transit agencies the flexibility for training and education within the Formula Grants for Rural Areas.** In 49 U.S.C. § 5314(c)(4)(A), strike "sections 5307, 5337, and 5339" and insert "sections 5307, 5311, 5337, and 5339".

Bus Fleet Spare Ratio (§ 5323)

For three decades, FTA has implemented a policy regarding "spare ratio" (or reserve rolling stock) for public transit agencies proposing to replace, rebuild, or acquire additional vehicles for their bus fleets. Pursuant to an FTA Circular, for every five fixed-route vehicles in a public transit agency's active bus fleet, it can only have one bus (20 percent) as a spare vehicle. FTA assesses grant applicants' compliance with the spare ratio rule when reviewing applications for Federal funds to replace, rebuild, or add vehicles to an agency's fleet.

Some public transit agencies have faced difficult fleet management choices as needed vehicles surpass their useful life and agencies transition their fleets to zero-emission buses, which have different operating characteristics (e.g., range limitations, fueling requirements) than other vehicles. Currently, transit agencies cannot assume that zero-emission buses can replace traditionally fueled buses at a 1:1 ratio. Failure to meet the spare ratio requirements may place an agency in violation of the Circular.

FTA's "20 percent" limitation is arbitrary and not based on any statutory requirement. Furthermore, the Office of Management and Budget Guidance for Federal Financial Assistance (2 C.F.R. § 200.318(d)), which is incorporated into FTA Circular 5010.1 (Award Management Requirements), prohibits the acquisition of unnecessary or duplicative items. Accordingly, APTA recommends eliminating the 20 percent limitation such that there would be no ceiling on the number of reserve buses in a transit agency's fleet.

APTA Recommendation:

- **Promote flexibility and eliminate the Bus Fleet Spare Ratio 20 percent limitation.** At the end of 49 U.S.C. § 5323, add a new subsection: "(w) SPARE RATIO POLICIES REPEAL.—The Bus Fleet Rolling Stock Spare Ratio Policies, as described in the FTA Grant Management Requirements Circular 5010.1, is repealed."

Buy America (§ 5323(j))

APTA supports Buy America but believes that there are ways to improve and streamline the application of the provisions to public transportation projects.

APTA Recommendations:

- **Limit the duration of FTA's Buy America waiver request process, including creating an expedited waiver review process for recurring procurements**. Amend 49 U.S.C § 5323(j)(3) to include a new subparagraph (C): "WAIVER REVIEW.—The waiver determination shall be issued within 60 days of the submittal of the application, or, if a waiver for the same product has already been issued by the Department within the past 36 months, the determination shall be issued within 10 days of the submittal of the application."

- **Establish a centralized database of Build America, Buy America Act-compliant construction materials**. Amend 49 U.S.C. § 5323(j) by inserting at the end:

  "(14) Buy America Construction Materials Database. —
  (A) Not later than 180 days after the date of enactment of the Surface Transportation Authorization Act, the Secretary of Transportation, in consultation with the Director of the Office of Management and Budget, shall make publicly available, including on a publicly available website, a database of manufacturers that produce construction materials that meet the requirements of the Build America, Buy America Act and are certified as being produced in the United States under applicable Federal regulations, and a description of the construction materials these manufacturers produce."

Real Property Acquisition (§ 5323(q))

Many public transit agencies face difficulties purchasing real property for operations and maintenance facilities because FTA policies restrict the purchase of real property where Federal funds will be, or are anticipated to be, used for the purchase or development of that property. In most cases, transit agencies cannot acquire such real property until NEPA processes are completed.

Expanded flexibility for early real property acquisition for public transportation projects is needed to reduce delays and associated costs of projects and to create certainty in property rights with a view toward future use.

APTA Recommendation:

- **Expand public transit agencies' authority to acquire land prior to the completion of National Environmental Policy Act review.** Amend 49 U.S.C. § 5323(q) to replace the term "right-of-way" with "real property interests".

Public Transportation Emergency Relief Program (§ 5324)

With the increasing prevalence and severity of extreme weather events, we must be better prepared for rapid and effective disaster response activities to support impacted communities. APTA proposes that funds be immediately available for FTA "quick release" responses each fiscal year, similar to the existing FHWA emergency relief authority.

APTA Recommendation:

- **Authorize $25 million per year in Highway Trust Fund contract authority for the Public Transportation Emergency Relief program.**

Transit Asset Management (§ 5326)

Under current law, DOT is required to establish a national Transit Asset Management (TAM) system to monitor and manage public transportation assets to improve safety and increase reliability and performance.

APTA believes that proper asset management evaluations and procedures support regional transportation goals and are important to understanding how agencies invest, monitor, improve safety, and reduce risks to service. The APTA Standards Development Program has published documents providing recommended practices for TAM.

Congress and FTA must take all possible actions to safeguard sensitive information related to condition and risk. Any compromise of data will hinder the effectiveness of this program.

APTA Recommendation:

- **Protect safety-sensitive data from State and Federal Freedom of Information Act (FOIA) requests and from admissibility into evidence in state and Federal courts. *See* APTA Recommendations on 49 U.S.C. § 5329.**

Project Management Oversight (§ 5327)

Under current FTA regulation, a "major capital project", means a project that involves the construction, expansion, rehabilitation, or modernization of a fixed guideway that has a total project cost of $300 million or more and receives Federal funds of $100 million or more (defined at 49 C.F.R. Part 633.5).

APTA proposes to raise the threshold for project management oversight and definition of a major capital project from $300 million to $500 million and to eliminate the Federal funds threshold, bringing FTA regulation into parity with FHWA's definition. This recommendation also matches APTA's proposal to increase the maximum total project cost for Small Start projects to $500 million within the CIG program.

APTA also proposes to decrease the frequency of reviews for major capital projects to an annual process, reducing unnecessary and burdensome requirements. This recommendation also brings FTA policy into parity with FHWA projects.

These recommendations ensure Federal oversight is reserved for higher-risk projects without discouraging innovation.

APTA Recommendations:

- **Increase the threshold for a project to be considered a "major capital project" from $300 million to $500 million.** Amend 49 U.S.C. § 5327(d)(1) by striking "a project to acquire rolling stock or to maintain or rehabilitate a vehicle" and inserting—

  "(A) a project to acquire rolling stock or to maintain or rehabilitate a vehicle; or"

  "(B) a project with an estimated total cost of less than $500,000,000, unless the Secretary determines project management oversight will benefit the Federal Government or the recipient."

- **Decrease the frequency of quarterly reviews for major capital projects to annual reviews.** Amend 49 U.S.C. § 5327—

  (1) In subsection (a)(12) by striking "quarterly" and inserting "annually";

  (2) In subsection (d)(2)(B) by striking "quarterly" and inserting "annual"; and

  (3) In subsection (d)(3) by striking "quarterly" and inserting "annual".

Public Transportation Safety Program (§ 5329)

Safety is the public transit industry's most important mission, and APTA has been a leader in engaging FTA on all safety issues, including implementing the IIJA statutory changes to the Public Transportation Agency Safety Plan (PTASP). The IIJA continued FTA's Public Transportation Safety Program and adds to PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. Specifically, the IIJA requires public transit agencies that serve large urbanized areas to form a Safety Committee consisting of an equal number of management and front-line transit workers who are tasked with approving an Agency Safety Plan. On April 11, 2024, FTA issued its final PTASP rule, which included provisions that: (1) prevent the Accountable Executive of a transit agency from serving in a tiebreaking role as part of Safety Committee dispute resolution procedures under any circumstance; and (2) removes an Accountable Executive's decision-making authority regarding safety risk mitigations in the required safety risk reduction program. On May 13, 2024, APTA filed a Petition for Reconsideration of FTA's final PTASP rule.

PTASP and other safety programs also require the collection and analysis of sensitive safety information. Experts agree that to best protect the safety and security of public transportation riders, Public transit agencies must be able to obtain comprehensive, confidential analyses of accidents without a looming threat of exposure to litigation.

APTA Recommendations:

- **Explicitly identify in statute that the Accountable Executive is the final decision-maker in all matters concerning the PTASP Safety Committee**. Amend 49 U.S.C. § 5329(d)(5) to include a new subsection "(C) Final Decisionmaker. The Accountable Executive of a recipient shall determine whether to implement the risk-based mitigation or strategies recommended by the Safety Committee and shall serve as the sole tiebreaker of any Safety Committee dispute resolution procedures."

- **Protect safety-sensitive transit data from State and Federal FOIA requests and from admissibility into evidence in state and Federal courts. Amend Chapter 53 as follows:**

  a) IN GENERAL.—Chapter 53 (as amended by this Act) is further amended by adding at the end the following:

  "§ 5341. Limitation on disclosure of safety information.

  "(a) IN GENERAL.—Except as provided by subsection (c), a report, data, or other information described in subsection (b) shall not be subject to disclosure under section 552 of title 5, United States Code, or any other similar Federal, State or local law if the report, data, or other information is created by or on behalf of or submitted to the Federal Transit Administration, a State, a State Safety Oversight Agency or Transit Agency.

"(b) APPLICABILITY.—The limitation established by subsection (a) shall apply to the following:

"(1) Reports, surveys, schedules, lists, data, or other information developed under the Public Transportation Safety Program.

"(2) Reports, surveys, schedules, lists, data, or other information produced or collected under the National Public Transportation Safety Plan.

"(3) Reports, surveys, schedules, lists, data, or other information developed under the Public Transportation Safety Certification Training Program.

"(4) Reports, data, or other information developed under the Public Transportation Agency Safety Plan.

"(5) Reports, surveys, schedules, lists, data, or other information produced or collected for purposes of developing and implementing a safety management system acceptable to the Administrator.

"(6) Reports, analyses, and directed studies, based in whole or in part on reports, surveys, schedules, lists, data, or other information described in paragraphs (1) through (5).

"(c) EXCEPTION FOR DE-IDENTIFIED INFORMATION.—

"(1) IN GENERAL.—The limitation established by subsection (a) shall not apply to a report, data, or other information if the information contained in the report, data, or other information has been de-identified.

"(2) DE-IDENTIFIED DEFINED.—In this subsection, the term 'de-identified' means the process by which all information that is likely to establish the identity of the specific persons or related entities submitting reports, data, or other information is removed from the reports, data, or other information.".

"(d) DISCOVERY AND ADMISSION AS EVIDENCE.— Notwithstanding any other provision of law, reports, surveys, schedules, lists, data, or other information produced or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, including but not limited to— hazardous conditions, railway- highway crossings, rail right-of-way, or rail platform train interfaces pursuant to section 5329 of this title or for the purpose of developing any public transportation safety program or safety management system which may be implemented shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data."

- **Require FTA to establish a formal process to resolve differences when a public transit agency disagrees with a State Safety Oversight Agency (SSOA) safety finding.** Current policy merely allows an SSOA "discretion" as to whether it should reconsider a safety finding. A public transit agency must have the opportunity to contest an incorrect finding or conclusion by an SSOA.

  Amend 49 U.S.C. §5239(b)(2) (F) by striking "and"; insert a new subparagraph (G) as follows: "(G) a formal process to resolve differences between a state safety oversight agency and a rail transit agency with respect to any investigative findings under subsection (e)(4)(A)(v)". Redesignate existing subparagraph (G) as subparagraph (H).

- **Require FTA to issue regulations to prohibit employees who have previously worked for public transit agencies from being hired by an SSOA for a minimum of 12 months and prohibit any such employee from overseeing projects or programs under the employee's purview while at the transit agency.** Some public transit agency employees seek employment at SSOAs and are assigned to oversee areas in which they previously worked. APTA has raised the issue of conflicts of interest for such employees in several comments to FTA. To preserve integrity and to avoid conflicts of interest, APTA recommends that the law establish a "cooling-off period" of at least 12 months between when an employee leaves or retires from a Rail Transit Agency and is employed by an SSOA. In addition, APTA recommends a prohibition against a former transit employee hired by an SSOA to oversee the exact same area in which they previously worked at a public transit agency.

Labor Standards (§ 5333)

Under existing regulation (29 C.F.R. § 215), the U.S. Department of Labor (DOL) must certify that protective arrangements are in place and meet the requirements of 49 U.S.C. § 5333 before FTA can execute a grant agreement. The initial DOL review period is 15 days (if there are no objections from labor representatives) before DOL can certify FTA to release grant funds. FTA's DOL review process is rarely used by labor unions to comment on Federally funded work, but the DOL approval process delays grant approvals and contract awards. If there is an objection from a labor organization, a separate review timeline applies.

Moreover, FTA's Transit Award Management System (TrAMS) automatically selects all unions in the service area to participate in the DOL review. This approach includes unions that are not relevant to a particular project or operating agency, which further exacerbates delays. FTA's TrAMS should only populate those labor unions relevant to a particular grant application.

APTA Recommendations:

- **Direct the U.S. Department of Labor to revise the initial grant review period in 29 C.F.R. § 215.3(d)(1) from 15 days to five days to expedite the execution of grant agreements**.

- **Direct FTA, in coordination with the U.S. Department of Labor, to update the Transit Award Management System to only populate those labor unions relevant to a particular grant application.**

Proceeds from the Sale of Transit Assets (§ 5334(h)(4))

Disposition of Assets

The IIJA made a statutory change to reduce the ability of a Chapter 53 grant recipient (including States) to retain the disposition proceeds from an asset past its useful life. The IIJA requires both recipients and subrecipients to reimburse FTA for the Federal share of any proceeds from the sale of rolling stock, equipment, or supplies more than $5,000. APTA recommends allowing recipients to keep the proceeds from disposition of assets past their useful life (more than $5,000), provided the public transit agency reinvests the funds in future capital projects under §§ 5307, 5310, or 5311.

APTA Recommendation:

- **Allow Chapter 53 recipients and subrecipients to retain asset disposition proceeds and reinvest in new capital projects.** Amend 49 U.S.C. § 5334(h)(4)(B)(ii)(bb) by inserting before the period the following: ", except in the case of a recipient or subrecipient that certifies to the Secretary that the remaining amounts are to be used for capital projects under section 5307, 5310, or 5311".

Buses and Bus Facilities Grants (§ 5339)

In growing public transit investments, APTA recommends a relative distribution of 40 percent for Capital Investment Grants, 40 percent for State of Good Repair, and 20 percent for Buses and Bus Facilities among these three capital investment programs. The 40-40-20 ratio was maintained in authorizing law from 1987 through 1998, and for guaranteed authorizations from 1999 through 2003. In 2012, MAP-21 significantly deviated from this ratio. Under the IIJA, Congress largely restored the 40-40-20 ratio when considering all funding sources (i.e., contract authority, advance appropriations, and General Fund authorizations). To fully conform to a 40-40-20 ratio, Congress must slightly increase the growth rate for the Buses and Bus Facilities program and the State of Good Repair program compared to CIG.

We also recommend greater transparency for Buses and Bus Facilities competitive grant decisions by requiring FTA to provide the amount and percentage of grant applications by propulsion type.

APTA Recommendation:

- **Restore an exact 40-40-20 ratio among the Capital Investment Grants (§ 5309), State of Good Repair (§ 5337), and Buses and Bus Facilities (§ 5339) programs.**

- **Direct FTA, as part of the grant award announcement for the Buses and Bus Facilities program, to provide the amount and percentage of grant applications by propulsion type.**

Innovative Procurement (FAST Act § 3019 (b))

Current law authorizes States (lead procurement agencies) and grantees to enter cooperative procurement contracts with one or more vendors for the purchase of rolling stock (e.g., buses, rail cars) and related equipment. However, the law does not allow the use of state purchasing schedules for the procurement of any other goods, technologies, or software services.

APTA Recommendation:

- **Allow the use of state purchasing schedules to procure goods, technologies, or software services**. Amend FAST Act § 3019 (b) by striking "rolling stock and related equipment" each time it appears and inserting "rolling stock, related equipment, and any other goods, technologies, or software services".

Mega Events Program

Mega Events Program (§ 53__)

Over the next 10 years, the United States will host an unusually high number of major, international events requiring tremendous planning, coordination, and resources for public transit agencies to allow visiting fans to move safely and prevent logistical disasters. The 2026 FIFA World Cup will be held throughout North America in June and July 2026, with more than 70 matches played in 11 cities across the United States. In addition to the World Cup, the United States will host the 2028 Summer Olympic and Paralympic Games in Los Angeles, CA; 2031 Men's Rugby World Cup; 2033 Women's Rugby World Cup; and 2034 Winter Olympic and Paralympic Games in Salt Lake City, UT.

Public transit agencies play a critical role in Mega Events, providing increased capacity and optimized routes and frequency to move millions of fans efficiently. Transit agencies provide essential services such as bringing fans to and from the airports, events, and celebrations—all while driving revenue, creating jobs, and proving public transit investments are powerful economic catalysts.

These Mega Events require extensive Federal, state, and local resources. The Federal Government provided almost $2 billion to support the 1984, 1996, and 2002 Olympic and Paralympic Games held in the United States. However, no law or policy exists that defines the Federal Government's overall role in funding and supporting such events when hosted in the United States.

APTA proposes to create a discretionary grant program to provide funding to public transit agencies for capital and operating costs incurred to host and carry out a Mega Event.

APTA Recommendation:

- **Establish a Mega Events discretionary grant program to provide funding to public transit agencies for capital and operating costs incurred to host and carry out a Mega Event.**

Amend Chapter 53 of U.S.C. title 49 by inserting the following section:

"§ ____. Mega Events Program.

"(a) DEFINITION.—In this section the following definition shall apply:

> "(1) MEGA EVENT.—The term "Mega Event" means an event that is held at a site within the United States or United States territory, which has been designated as a Level One National Special Security Event by the Department of Homeland Security's Office of Situational Awareness through the Special Event Assessment Rating System.

"(b) GENERAL AUTHORITY.—The Secretary of Transportation shall establish a program under which the Secretary may make grants to public transportation agencies for capital and operating costs incurred to host and carry out a Mega Event.

"(c) GRANT REQUIREMENTS.—A grant awarded under this section shall be subject to the requirements of—

"(1) section 5307 for eligible recipients of grants made in urbanized areas; and
"(2) section 5311 for eligible recipients of grants made in rural areas.

"(d) ELIGIBLE RECIPIENTS.—Eligible recipients include a State or local governmental authority, or any other operator of a public transportation system that receives financial assistance under this chapter that—

"(1) is supporting a Mega Event; and
"(2) is located not more than 100 miles from the location or locations in which the applicable Mega Event is or will be held.

"(e) ELIGIBLE ACTIVITIES.—Eligible recipients may use funding provided under this section for—

"(1) capital projects as defined in section 5302(4) for a Mega Event; and
"(2) to finance the operating cost of equipment and facilities for use in public transportation for a Mega Event.

"(f) COORDINATION OF MEGA EVENT PROGRAM FUNDS.—

"(1) USE OF FUNDS.—Funds appropriated to carry out this section shall be in addition to any other funds available under this chapter.
"(2) NO EFFECT ON OTHER GOVERNMENT ACTIVITY.—The provision of funds under this section shall not affect the ability of any other agency of the Government, or a state agency, a local governmental entity, organization, or person, to provide any other funds otherwise authorized by law.

"(g) GOVERNMENT SHARE OF COSTS.—

"(1) CAPITAL PROJECTS.—A grant for a capital project under this section shall not exceed 80 percent of the net capital project cost. The recipient may provide additional local matching amounts.
"(2) OPERATING ASSISTANCE.—A grant for operating expenses under this section may be up to 100 percent of the net project cost of the project.
"(3) REMAINDER.—The remainder of net project costs shall be provided—
"(i) in cash from non-Government sources other than revenues from providing public transportation services;
"(ii) from revenues from the sale of advertising and concessions;

"(iii) from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital;

"(iv) from amounts appropriated or otherwise made available to a department or agency of the Government (other than the Department of Transportation) that are eligible to be expended for transportation; and

"(v) from amounts received under a service agreement with a State or local social service agency or private social service organization.

"(h) AUTHORIZATIONS.—There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out this section."

Accelerating Project Delivery and Permitting Reform

The National Environmental Policy Act of 1969 (NEPA) and the National Historic Preservation Act (NHPA) require different types of reviews for Federally funded projects. The NEPA review process is designed to identify and evaluate the potential environmental impacts of a project and to consider alternatives that may reduce or avoid those impacts. The NHPA Section 106 review process is designed to identify historic properties that may be affected by a project and to assess the impact of the project on those properties.

Section 106 of the NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The Section 106 consultation process (36 C.F.R. § 800) involves feedback and community outreach between the Federal agency, such as FTA, and State and Tribal Historic Preservation Offices, including the Advisory Council on Historic Preservation (ACHP), to fully evaluate and consider the project proposal and potential adverse effects.

Intersection of NEPA and National Historic Preservation Act

Section 106 Review Process

APTA members experience project delays due to inconsistencies in the application of Categorical Exclusion (CE) exemptions across Federal reviews. For example, under NEPA, many bus shelter projects are exempt from review as a CE if they are in an existing right-of-way. However, the NHPA Section 106 review process, administered by ACHP, continues to apply and undermines the NEPA exemption.

Due to cross-cutting Federal requirements, public transit agencies must develop and provide additional information to determine NHPA Section 106 applicability. The Section 106 process is lengthy, with outside agencies involved that are not bound by NEPA review timeframes. As a result, project sponsors experience delays and increased costs, including loss of local match for projects—many of which are in public rights-of-way or are buildings owned by the public transit agency itself. The most frequent CE projects delayed during Section 106 include the simple installation of bus shelters and signs, and the general maintenance, safety upgrades, and rehabilitation of bus and rail stations. This process continues to be a significant challenge for the public transit industry.

On April 2, 2025, the ACHP issued a Notice of Approval on the "Program Comment on Certain Housing, Building, and Transportation Undertakings", which provides Federal agencies with additional flexibilities for NHPA Section 106 review. Appendix A of the Program Comment excludes bus shelter projects in a previously disturbed right-of-way and several other transportation projects from further Section 106 review. The Notice provides procedures for Federal agencies to utilize the new Program Comment for projects under their authority.

In addition, APTA applauds the recent decision by DOT to devolve programmatic review of Section 106 under NEPA to the State of Connecticut. We encourage FTA to allow for delegation

of the Section 106 process to public transit agencies with appropriately qualified staff to conduct the process on behalf of FTA. This programmatic approach sets a positive precedent for project sponsors, with appropriately qualified staff, to manage both the Section 106 and Section 7 (Endangered Species Act) reviews on a nationwide basis.

Section 106 Review – Consistency Across Modes

FTA and the Federal Railroad Administration (FRA) have differing Section 106 review guidelines and processes. For example, FRA currently requires grantees to conduct the four Section 106 consultation steps *sequentially*:

- establish the Area of Potential Effects (APE),
- identify historic properties in the APE,
- identify project impacts, and
- identify mitigation measures.

Each step requires a separate meeting with consulting parties. In contrast, FTA allows all consultation steps to occur *simultaneously*, significantly shortening the process.

APTA recommends that there be greater consistency for a streamlined Section 106 consultation process across all DOT modal agencies.

APTA Recommendations:

- **Direct DOT and its modal administrations to adopt the Advisory Council on Historic Preservation Program Comment on Housing, Building, and Transportation Undertakings to streamline the Section 106 approval process.**

- **Direct FTA to allow for the delegation of the Section 106 process to public transit agencies with appropriately qualified staff to conduct the process on behalf of the FTA as provided in 36 C.F.R. § 800.14.**

- **Direct DOT to ensure that the Section 106 consultation process is consistent across all DOT modal administrations, including allowing the steps in the Section 106 consultation process to occur simultaneously.**

Categorical Exclusions

To confirm the eligibility of a project for a CE, an FTA grantee must complete an extensive paperwork process. This process often requires preparation of an extensive "worksheet" package, consisting of completing a questionnaire and documenting exhibits of maps, samples, and studies. The worksheet and documentation must be completed even for replacement projects in kind within previously disturbed right of way. The worksheet packages must then be reviewed and approved by FTA legal staff and a Regional Administrator. This unduly burdensome process often takes three to six months.

APTA recommends that DOT eliminate the documentation requirements for CEs provided that the grantee retains its own files subject to DOT audit that accurately describes the applicable CE for the project at issue. This reform will ensure the efficient use of taxpayer dollars for projects that support and increase mobility with limited environmental effects.

Moreover, in some cases, environmental reviews required under state or local law already satisfy NEPA, making the Federal NEPA review redundant. APTA recommends that FTA and FRA jointly issue a CE to cover projects that meet state or local environmental requirements that satisfy NEPA. This approach would leverage existing state and local processes to transfer a time-consuming labor-intensive task from the Federal Government to States, allowing projects to advance more quickly.

APTA Recommendations:

- **Direct DOT to eliminate the documentation requirements for Categorical Exclusions in 23 C.F.R. § 771.118 (d) provided that the grantee retains its own files subject to DOT audit that accurately describe the applicable Categorical Exclusion for the project at issue.**

- **Direct FTA and FRA to publish a new Categorical Exclusion to cover projects that meet state or local environmental requirements that satisfy the National Environmental Protection Act.**

Public Transit Agency Assumption of Responsibility for Categorical Exclusions

Since 1989, FHWA Division Offices and State DOTs have entered into programmatic agreements to approve highway project CEs to fulfill NEPA obligations. Section 1318(d) of MAP-21 formalized this authority into law and FHWA, through rulemaking, codified it in 23 C.F.R. § 771.117(g). For example, Connecticut, Nebraska, New Mexico, Ohio, Oregon, and Washington State DOTs have executed agreements with FHWA for CE approval.

APTA recommends that Congress extend that authority to public transit agencies to approve their own CEs to accelerate project delivery and bring parity across modal administrations.

APTA Recommendation:

Amend Chapter 53 of U.S.C. title 49 by inserting the following section:

§ ____. Transit Agency Assumption of Responsibility for Categorical Exclusions.

(a) CATEGORICAL EXCLUSION DETERMINATIONS.—

(1) IN GENERAL.—The Secretary may assign, and a recipient of Chapter 53 funds may assume responsibility for determining whether certain designated activities are included within classes of action identified in regulation by the Secretary that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to Interim Final Rule promulgated by the U.S. Department of Transportation at 23 C.F.R. Part 771 or its successor.

(2) SCOPE OF AUTHORITY.—A determination described in paragraph (1) shall be made by a recipient of Chapter 53 funds in accordance with criteria established by the Secretary and only for types of title 49, Chapter 53 activities specifically designated by the Secretary.

(3) CRITERIA.—The criteria under paragraph (2) shall include provisions for public availability of information consistent with section 552 of title 5 and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(4) PRESERVATION OF FLEXIBILITY.—The Secretary shall not require a recipient of Chapter 53 funds, as a condition of assuming responsibility under this section, to forgo project delivery methods that are otherwise permissible for transit projects.

(b) OTHER APPLICABLE FEDERAL LAWS.—

(1) IN GENERAL.—If a recipient of Chapter 53 funds assumes responsibility under subsection (a), the Secretary may also assign and the recipient of Chapter 53 funds may assume all or part of the responsibilities of the Secretary for environmental review, consultation, or other related actions required under any Federal law applicable to activities that are classified by the Secretary as categorical exclusions, with the exception of government-

to-government consultation with Indian tribes, subject to the same procedural and substantive requirements as would be required if that responsibility were carried out by the Secretary.

(2) SOLE RESPONSIBILITY.—A recipient of Chapter 53 funds that assumes responsibility under paragraph (1) with respect to a Federal law shall be solely responsible and solely liable for complying with and carrying out that law, and the Secretary shall have no such responsibility or liability.

(c) MEMORANDA OF UNDERSTANDING.—

(1) IN GENERAL.—The Secretary and the recipient of Chapter 53 funds, after providing public notice and opportunity for comment, shall enter into a memorandum of understanding setting forth the responsibilities to be assigned under this section and the terms and conditions under which the assignments are made, including establishment of the circumstances under which the Secretary would reassume responsibility for categorical exclusion determinations.

(2) TECHNICAL ASSISTANCE.—On request of a recipient of Chapter 53 funds, the Secretary shall provide to the recipient technical assistance, training, or other support relating to—
(A) assuming responsibility under subsection (a);
(B) developing a memorandum of understanding under this subsection; or
(C) addressing a responsibility in need of corrective action under subsection (d)(1)(B).

(3) TERM.—A memorandum of understanding—
(A) except as provided under subparagraph (C), shall have a term of not more than 3 years;
(B) shall be renewable; and
(C) shall have a term of 5 years, in the case of a recipient of Chapter 53 funds that has assumed the responsibility for categorical exclusions under this section for not fewer than 10 years.

(4) ACCEPTANCE OF JURISDICTION.—In a memorandum of understanding, the recipient of Chapter 53 funds shall consent to accept the jurisdiction of the Federal courts for the compliance, discharge, and enforcement of any responsibility of the Secretary that the recipient of Chapter 53 funds assumes.

(5) MONITORING.-The Secretary shall—
(A) monitor compliance by the recipient of Chapter 53 funds with the memorandum of understanding and the provision by the recipient of financial resources to carry out the memorandum of understanding; and
(B) take into account the performance by the recipient of Chapter 53 funds when considering renewal of the memorandum of understanding.

(d) TERMINATION.—

(1) TERMINATION BY SECRETARY.—The Secretary may terminate the participation of any recipient of Chapter 53 funds in the program if—

(A) the Secretary determines that the recipient of Chapter 53 funds is not adequately carrying out the responsibilities assigned to the recipient of Chapter 53 funds;

(B) the Secretary provides to the recipient of Chapter 53 funds—

(i) a notification of the determination of noncompliance;

(ii) a period of not less than 120 days to take such corrective action as the Secretary determines to be necessary to comply with the applicable agreement; and

(iii) on request of the CEO of the recipient of Chapter 53 funds, a detailed description of each responsibility in need of corrective action regarding an inadequacy identified under subparagraph (A); and

(C) the recipient of Chapter 53 funds after the notification and period described in clauses (i) and (ii) of subparagraph (B), fails to take satisfactory corrective action, as determined by the Secretary.

(2) TERMINATION BY THE RECIPIENT OF CHAPTER 53 FUNDS.—The recipient of Chapter 53 funds may terminate the participation of the recipient of Chapter 53 funds in the program at any time by providing to the Secretary a notice not later than the date that is 90 days before the date of termination, and subject to such terms and conditions as the Secretary may provide.

(e) RECIPIENT OF CHAPTER 53 FUNDS AGENCY DEEMED TO BE FEDERAL AGENCY.—A recipient of Chapter 53 funds that is assigned a responsibility under a memorandum of understanding shall be deemed to be a Federal agency for the purposes of the Federal law under which the responsibility is exercised.

(f) LEGAL FEES.—A recipient of Chapter 53 funds assuming the responsibilities of the Secretary under this section for a specific project may use funds apportioned to the recipient under title 49, Chapter 53 for attorney's fees directly attributable to eligible activities associated with the project.

(g) DEFINITION.—A recipient of Chapter 53 funds under this section means any direct recipient in an urbanized area of more than 200,000 people that can demonstrate to the Federal Transit Administration that the recipient has the legal, technical, and financial capacity to perform the responsibilities required in this section.

U.S. Department of Transportation and other Federal Agencies

National Infrastructure Project Assistance Grants (Mega Program) (49 USC § 6701)

The DOT's Mega Program supports large, complex projects that are difficult to fund by other means and are likely to generate national or regional economic, mobility, or safety benefits. Public transit projects are only eligible for Mega Grant funding if two requirements are satisfied: (1) it is eligible for assistance under Chapter 53 of title 49, and (2) it is part of a project that is otherwise eligible, such as a highway and bridge project, a freight intermodal or freight rail project, railway-highway grade separation or elimination project, or an intercity passenger rail project. APTA recommends decoupling the requirement that a public transportation project is only eligible for Mega Program funding if it is paired with another eligible project.

APTA Recommendation:

- **Provide specific eligibility for public transportation projects under the Mega Grant program.** Amend 49 U.S.C. § 6701(d)(E)(i) by striking "and" and inserting "or" and striking paragraph (ii).

Federal Motor Carrier Safety Administration Programs
Commercial Driver's License Requirements (49 C.F.R. § 383.113)

Public transit agencies have identified the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Pre-Trip Vehicle Inspection Rules, or "under-the-hood" requirement, as an impediment to hiring bus operators. This rule requires CDL applicants to identify each safety-related part and explain what needs to be inspected within the engine compartment (e.g., loose hoses, oil and coolant levels). Many otherwise qualified candidates may be intimidated by this knowledge test. Moreover, this test increases costs and extends new operator training time for public transit agencies, which also impacts the ability to hire. On November 4, 2024, APTA submitted a formal request to FMCSA seeking a five-year exemption from the CDL "under-the-hood" testing requirement for public transit operators. On July 16, 2025, FMCSA granted APTA's request for an exemption from this requirement and will allow States the option to waive CDL under-the-hood testing for applicants for two years. APTA urges Congress to make this waiver permanent.

APTA Recommendation:

- **Require FMCSA to waive the CDL "under-the-hood" requirements for applicants seeking to operate vehicles in public transportation.** Amend 49 U.S.C. § ____ to insert at the end:

  "(_) CDL UNDER-THE-HOOD TESTING REQUIREMENT FOR PUBLIC TRANSPORTATION OPERATIONS.—The Administrator of the Federal Motor Carrier Safety Administration shall revise section 383.113(a)(1)(i)) of title 49 Code of Federal Regulations (or successor regulation), to allow States to waive the under-the-hood requirement for CDL applicants seeking to operate vehicles in public transportation, including in interstate commerce."

U.S. Department of Health and Human Services
Oral Fluid Drug Testing

Public transit agencies are required to drug test employees using urine tests. In May 2023, DOT added oral fluid drug testing to the testing protocols, which reduces tampering risks, is less invasive, and is a better measure of impairment. However, oral fluid testing cannot be implemented until the U.S. Department of Health and Human Services (HHS) certifies two laboratories to conduct the drug testing. To date, HHS has not certified these laboratories.

APTA Recommendation:

- **Direct the U.S. Department of Health and Human Services to take the necessary actions to certify laboratories needed to conduct oral fluid drug testing**.

Passenger Rail Program Recommendations

The Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94) was the first major surface transportation authorization act that included a substantial rail title authorizing high-speed, intercity, passenger, and freight rail programs. The IIJA also includes a significant rail title.

APTA Recommendation:

- **Maintain a Rail Title in the Surface Transportation Authorization Act.**

Finance Recommendations

Private Activity Bonds (PABs)

APTA urges Congress to enhance the availability and use of low-interest PABs for public transportation and intercity passenger rail projects with significant private participation (such that the projects otherwise would not qualify for tax-exempt financing).

APTA Recommendations:

- **Expand the eligibility of mass-commuting facility PABs beyond their current use (construction of rail and bus infrastructure and facilities) to include acquisition of rolling stock.** Amend 26 U.S.C. § 142(a)(3) by adding at the end ", including the acquisition of rolling stock."

- **Remove mass-commuting facilities from the Federally imposed state volume cap for PABs, thereby aligning these public transportation and intercity passenger rail activities with airports, docks, and wharves, which are not subject to the PAB state volume caps.** Amend 26 U.S.C. § 146(g)(3) by inserting "(3)," after "(2),".

- **Reduce the "capable of 150-mph" speed requirement for high-speed intercity passenger rail facility PABs to allow more projects to be eligible, especially those privately-operated services running on shared rights-of-way with freight railroads.** Amend 26 U.S.C. § 142(i) by striking "150 miles per hour" and inserting "110 miles per hour".

Value Capture Tax Credits

Public transportation and transit-supporting businesses provide tremendous economic value for large and small communities across the country, with every $1 in Federal investment spurring $5 in long-term economic benefits. One type of increased value that local governments sometimes utilize to fund public transit is increased property values and business activity in areas near new transit infrastructure. FTA notes findings that "transit projects increase nearby property values by 30 to 40 percent, and as much as 150 percent where conditions are ideal." Such "value capture", where part of the increased economic value due to transit in a specific area is collected as taxes, can create a virtuous cycle where more transit investment results in increased economic activity, which is partially collected as taxes, which supports more transit investment, and so on.

Federal incentives can complement local efforts and ensure that this tool is more broadly available across the country. Using existing Federal models such as Economic Opportunity Zones, Low-Income Housing Tax Credits, or New Markets Tax Credits as inspiration, tools such as tax credits, accelerated depreciation, and others would attract private capital investments for public transit projects. A successful value capture program would leverage the tremendous value that transit creates for nearby property values and may also provide competitive investment opportunities for new categories of investors.

APTA Recommendations:

- **Real Estate-Based Value Capture—Establish a public transportation version of Economic Opportunity Zones, or its equivalent, in which investors in real estate projects in the vicinity of a public transportation or intercity passenger rail station, multi-modal terminal, or facility would be eligible for certain tax benefits (e.g., tax credits, accelerated depreciation) upon making an investment that benefits the local public transit agency.**

- **Asset-Based Value Capture—Create tax code incentives to attract "tax-oriented equity" into public transportation and intercity passenger rail projects (i.e., equity investments whose return is based principally or solely on Federal tax benefits).** In a public transit-based version of the successful Low-Income Housing Tax Credits and New Markets Tax Credits programs, investors would purchase tax credits allocated at a specified percentage of capital investments made by public transportation or intercity passenger rail agencies for facilities and equipment. This type of value capture approach would not be dependent on future real estate development, as with traditional value capture strategies. It could bring in new categories of investors to subsidize a wide range of public transportation or intercity passenger rail projects, regardless of local real estate market conditions or growth potential.

Federal Loan Programs as Local Match

Federally supported infrastructure projects typically require a non-Federal match—commonly referred to as "local match"—that state, local, or private sources must provide for a project to move forward. Under DOT surface transportation programs, the local match is often 20 percent. However, for some programs, such as Capital Investment Grants, the local match is often significantly higher. Congress has recognized that funding received through Federal credit assistance programs (e.g., direct loans) should be considered part of the required local match because such loans are secured through repayment from non-Federal sources. Section 603(b)(8) of Title 23 explicitly states that Transportation Infrastructure Finance and Innovation Act (TIFIA) loans may be used for any non-Federal share of project costs. Funding from such loans should be considered local in all contexts and considerations when assessing the financing of a project.

APTA Recommendation:

- **Require DOT to consistently apply the requirement that Federal loans be considered local match across all DOT programs.** Amend 23 U.S.C. § 603(b)(8) to strike "may" and insert "shall".

Railroad Rehabilitation and Improvement Financing (RRIF) Loans and Loan Guarantees

APTA Recommendation:

- **Specify in statute that Railroad Rehabilitation and Improvement Financing loans may be used for the non-Federal share of a project.** Amend 45 U.S.C. § 822 by adding a new subsection: "(n) NON-FEDERAL SHARE.—The proceeds of a secured loan under this subchapter shall be used for any non-Federal share of project costs required under this title if the loan is repayable from non-Federal funds."

Right of Way (§ 24202)

Acquiring the right of way (ROW) for railroad projects is an expensive and time-consuming aspect of project development. Allowing the acquisition of railroad ROW prior to completing environmental reviews can reduce delays and associated costs for rail transportation projects.

APTA Recommendation:

- **Authorize advance acquisition of railroad right of way similar to advance acquisition permitted for highway and public transit projects.** Amend 49 U.S.C. § 24202 to include a new subsection:

"(c) RAIL CORRIDOR PRESERVATION.—
(1) IN GENERAL.—The Secretary may assist a recipient in acquiring right-of-way before the completion of the environmental reviews for any project that may use the right of way if the acquisition is otherwise permitted under Federal law.
(2) ENVIRONMENTAL REVIEWS.—Rights of way acquired under this section may not be developed in anticipation of the project until all required environmental reviews for the Project have been completed."

Federal-State Partnership for Intercity Passenger Rail (§ 24911)

The Federal-State Partnership for Intercity Passenger Rail Grant Program provides Federal funds for capital projects that reduce the state-of-good-repair backlog, improve performance, or expand or establish new intercity passenger rail service. The program receives the largest allocation of annual Federal funds for passenger rail services.

APTA proposes reducing the required period of notification to Congress for the program from 30 days to 3 days, consistent with many DOT requirements for grant notification to Congress (e.g., Railroad Crossing Elimination Program (49 U.S.C. § 22909)). Reducing the period of notification will expedite project delivery without compromising the quality of projects selected for funding or ensuring Congress has an opportunity to review awards in advance of public announcement.

APTA Recommendation:

- **Reduce the required period of notification to Congress for the Federal-State Partnership for Intercity Passenger Rail Program from 30 to 3 days.** Amend 49 U.S.C. § 24911(e)(3)(A) by striking "30 days" and inserting "3 days".

Rail Passenger Liability Cap (49 U.S.C. § 28103)

In December 1997, Congress established a liability cap to protect the passenger rail industry from potentially catastrophic losses from passenger claims. While the statute does not mandate that commuter rail agencies carry liability insurance to the Federal liability cap of $323 million, many agencies are contractually required to maintain liability insurance to the cap because of negotiated access and vendor agreements.

Under the FAST Act, DOT is required to adjust the liability cap every five years to reflect inflation. In 2026, the statutory cap is set to increase to an estimated $399 million, with a mandatory 30-day implementation deadline. An already-constrained insurance marketplace will likely limit the ability of commuter railroads to meet the required coverage of any new statutory cap within a 30-day timeframe.

APTA Recommendation:

- **Increase the amount of time between public notice of a new liability insurance cap and the effective date of the cap to one year.**
  Amend 49 U.S.C. § 28103(a)(2) by striking "The aggregate"; and inserting "(A) Subject to subparagraphs (B) and (C), the aggregate"; and

  (2) by adding at the end, the following

  "(B) The Secretary of Transportation shall calculate the adjustment to the liability cap under subparagraph (A) on the date of enactment of this Act to reflect the change in the Consumer Price Index-All Urban Consumers between such date, using available Consumer Price Index-All Urban Consumers, and the date on which the most recent adjustment to such liability cap was announced using the October 2020 Consumer Price Index-All Urban Consumers. The Secretary shall immediately provide appropriate public notice of such calculated adjustment. Such adjustment shall be effective on the date that is 1 year after the date on which the calculated adjustment is announced.

  "(C) The Secretary of Transportation shall adjust the liability cap under subparagraph (A) every five years in accordance with the following schedule:

    "(i) On the date that is 4 years after the date on which the immediately preceding adjustment became effective, the Secretary of Transportation shall calculate the adjustment to the liability cap under subparagraph (A) to reflect the change in the Consumer Price Index-All Urban Consumers between such date, using available Consumer Price Index-All Urban Consumers, and the date on which the most recent calculation to the adjustment to such liability cap was announced, using the month's Consumer Price Index-All Urban Consumers used for such recent calculation. The Secretary shall immediately provide appropriate public notice of each such calculated adjustment.

"(ii) Such adjustment shall be effective on the date that is 1 year after the date on which the calculated adjustment is announced.".

(b) Conforming Amendment.—Section 11415 of the Passenger Rail Reform and Investment Act of 2015 (title XI of division A of Public Law 114–94; 49 U.S.C. 28103 note) is amended—

(1) in subsection (a), by striking everything before "Notwithstanding"; and

(2) by striking subsection (b).

Commuter Rail Liability Insurance Program

Commuter rail agencies face serious obstacles to finding and obtaining excess liability insurance due to a hardened insurance market. Only a handful of insurers offer this excess coverage, and a significant percentage of the railroad liability insurance marketplace is provided by foreign companies. The number of insurers in the excess market willing to even offer potential capacity for this coverage has drastically decreased over the past several years. Regardless of cost, it is becoming extremely difficult to obtain the needed coverage up to the required limits. Each policy is custom-made for the commuter rail agency, with negotiated terms and premiums. Premiums for these policies, which must be paid annually, range from $1 million to $25 million.

The increase in premiums is largely due to factors outside the control of the commuter rail industry, including losses in the commercial trucking sector, major forest fires, hurricanes, and insurers exiting the market. APTA proposes legislation to assist commuter railroads with these significant market capacity and cost issues by creating a program administered by the DOT that would provide insurance to commuter rail agencies that operate commuter rail services, either directly or through contracted services, to cover losses associated with commuter rail operations.

APTA Recommendation:

- **Establish a Commuter Rail Insurance Program (Program) at the U.S. Department of Transportation.**

Amend Chapter ___ of U.S.C. title 49 by inserting the following section:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commuter Rail Insurance Act".

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) APPLICANT.—The term "Applicant" means a Commuter Rail Agency that applies for insurance coverage from the Secretary under the Program established by this Act.

(2) ACTUARILY FAIR PREMIUM.—The term "Actuarily Fair Premium" means a premium set at an amount or level so that the premiums paid by insured parties over a specified term or period of time are equal to the expected value of the compensation provided for Covered Losses over the same term or period of time, with "expected value" defined as the probability of occurrence of the insured-against event multiplied by the compensation received in the event of a Covered Loss.

(3) COMMUTER RAIL SERVICES.—The term "Commuter Rail Services" means commuter or other short-haul rail passenger transportation in metropolitan and suburban areas that is regulated by the Federal Railroad Administration, which may have reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

(4) COMMUTER RAIL AGENCY.—The term "Commuter Rail Agency" means any local, State, or regional public entity that operates Commuter Rail Services in the United States, either directly or through contracted services, and that is subject to section 28103 of title 49 and section 11415 of the Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94; December 4, 2015).

(5) COVERED LOSSES.—The term "Covered Losses" means any loss that is based on personal injury to a passenger, death of a passenger, or damage to the property of a passenger occurring during a Program Year and arising out of or in connection with the operation of Commuter Rail Service and that results in a claim by a Commuter Rail Agency for payment from the Secretary under the terms of the insurance coverage provided under this Act.

(6) U.S. DEPARTMENT.—The term "U.S. Department" means the United States U.S. Department of Transportation.

(7) DOT RAIL PASSENGER LIABILITY CAP.—The term "DOT Rail Passenger Liability Cap" means the limitation on rail passenger transportation liability established under section 28103 of title 49, United States Code, as adjusted pursuant to section 11415 of the FAST Act (P.L. 114-94).

(8) FUND.—The term "Fund" means the Commuter Rail Insurance Revolving Fund established by this Act.

(9) PRIVATE INSURER.—The term "Private Insurer" means: (a) any entity that is licensed or admitted to engage in the business of providing insurance in any State and engages in such business on a regular basis; and (b) any entity or syndicate of entities providing insurance in the surplus lines market when placed through a producer licensed or admitted to engage in the business of placing such insurance in any State.

(10) PROGRAM.—The term "Program" means the Commuter Rail Insurance Program established by this Act.

(11) PROGRAM LEVELS OF INSURANCE.—The term "Program Levels of Insurance" means liability insurance coverage between $50 million and the DOT Rail Passenger Liability Cap.

(12) PROGRAM YEAR.—The term "Program Year" means each year of the five-year duration of the Program, subject to the conditions set forth in Section 12.

(13) SECRETARY. —The term "Secretary" means the Secretary of Transportation.

SEC. 3. ESTABLISHMENT OF COMMUTER RAIL INSURANCE PROGRAM.

(a) ESTABLISHMENT AND DURATION OF PROGRAM.—There is hereby established in the U.S. Department the Commuter Rail Insurance Program. The Program shall be in effect for the five-year period beginning on the date that the Secretary issues a final rule as provided in Section 10, subject to the Secretary's determination on market conditions as provided in Section 12(b). In the event of the termination of the Program, the Secretary shall be subject to the post-termination obligation regarding claims as provided in Section 12(c).

(b) AUTHORITY AND RESPONSIBILITY OF THE SECRETARY.—Notwithstanding any other provision of law, the Secretary shall administer the Program, shall provide insurance coverage to Commuter Rail Agencies at the Program Levels of Insurance, and shall provide payments from the Fund for Covered Losses in accordance with this Act and the terms of the insurance policies issued under this Act.

(c) ELEMENTS OF PROGRAM.—

(1) PROVISION OF INSURANCE.—Upon application by a Commuter Rail Agency pursuant to Section 4, the Secretary shall provide Commuter Rail liability insurance coverage under an annual renewable liability insurance policy.

(2) SCOPE OF COVERAGE.—The insurance provided by the Secretary under this Act shall be designed to provide payment for Covered Losses arising out of or in connection with the operation of Commuter Rail Service.

(3) AMOUNT OF INSURANCE.—The amount of insurance provided shall be any and all amounts of liability insurance coverage between $50 million and the DOT Rail

Passenger Liability Cap, as requested by the Commuter Rail Agency in its application.

(4) TERM.—The term of the insurance provided shall be for one year, renewable on an annual basis for each Program Year in the five-year duration of the Program, subject to the conditions set forth in Section 12.

(5) ADDITIONAL INSUREDS.—A Commuter Rail Agency securing insurance coverage under the Program may include additional insureds under such coverage if (A) inclusion of such additional insureds is required under the terms of a written agreement that is necessary for the operation of such Agency's Commuter Rail Services or (B) such additional insureds are named on a Commuter Rail Agency's liability coverage of up to $50 million. The Secretary may not prohibit or restrict the inclusion of additional insureds that meet the criteria in this paragraph.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ such persons or contract for such services, including outside consultants from the insurance industry, as may be necessary to implement the Program.

SEC. 4. ESTABLISHMENT OF COMMUTER RAIL INSURANCE REVOLVING FUND.

(a) ESTABLISHMENT OF FUND.—There is hereby established within the U.S. Department a Commuter Rail Insurance Revolving Fund to finance the Program established under this Act. The Fund shall serve as the depository of premiums paid for insurance provided under the Program and as the source of payment of Covered Losses incurred by participating Commuter Rail Agencies.

(b) INITIAL DEPOSIT INTO FUND.—

(1) DEPOSIT.—To assure that there are sufficient amounts in the Fund in the first Program Year to pay for all Covered Losses anticipated at the time, the Secretary shall, within 45 days after the date of enactment of this Act, make an initial deposit of Federal funds into the Fund in such amount as the Secretary determines to be necessary and appropriate. For purposes of making such initial deposit, the Secretary is authorized to issue bonds or other obligations to the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase such obligations, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of securities issued under Chapter 31 of title 31, and the purposes for which securities may be issued under Chapter 31 of title 31 are extended to include any purchase of the Secretary's obligations under this paragraph.

(2) REPAYMENT.—At such time as the Secretary determines that the Fund has sufficient amounts, from the receipt of premiums, to pay for anticipated Covered Losses over the remaining Program Years, the Secretary shall repay to the Secretary of the

Treasury the amounts borrowed under the obligations issued pursuant to paragraph (1).

(c) ADMINISTRATION OF FUND.—

(1) INVESTMENTS.—The Secretary may invest any part of the amounts in the Fund in interest bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, such securities shall be deposited in the Fund.

(2) FUND BALANCES.—Any balance in the Fund in excess of the amount the Secretary determines to be necessary for the requirements of the Program and for reasonable reserves to maintain solvency of the Fund shall be deposited at least annually into the Treasury as miscellaneous receipts.

SEC. 5. APPLICATIONS FOR INSURANCE.

(a) SUBMITTAL.—Any Commuter Rail Agency may submit an application to the Secretary for insurance under the Program established by this Act. Participation in the Program by Commuter Rail Agencies is voluntary.

(b) REQUIRED CONTENTS.—A Commuter Rail Agency Applicant shall include in its initial application for insurance under the Program:

(1) the amount of insurance coverage requested, which may not exceed the DOT Rail Passenger Liability Cap;

(2) appropriate documentation demonstrating that the Applicant has implemented, or will implement by the effective date of the insurance provided under the Program, means of liability protection for the first $50 million in liability from one or more Private Insurers, captive insurers, risk pools, or other means of risk transference, all of which may include a reasonable amount of self-insurance;

(3) information regarding the Applicant's Commuter Rail Services, including service area, revenue miles operated, hours of service, average daily passenger levels, right-of-way used for operations and whether owned or used by agreement, average rolling stock fleet age, and such other related information as the Secretary may require;

(4) documentation regarding the Applicant's Commuter Rail accident history over the past 10-year period (or such shorter period as the service has been in operation), together with a listing and description of all liability insurance claims filed during such period in connection with Commuter Rail accidents, the amount of reimbursement from Private Insurers for such claims, and the amount paid out in claims by the Applicant using its self-insurance retention; and

(5) such other information as the Secretary may reasonably require.

In its application for annual renewal of insurance, a Commuter Rail Agency Applicant shall include such updated information on the topics and matters described in this subsection as the Secretary may require.

(c) ACTION ON APPLICATION.—

(1) TIMING OF ACTION.—The Secretary shall act on each initial application within 30 days after the Applicant provides all information and documentation required under subsection (b), and shall act on each annual renewal application within 20 days after the Applicant provides all information the Secretary requires for such renewal.

(2) LIMITATION ON APPLICATION DENIALS.—The Secretary may deny an application for insurance under the Program only if the Secretary finds that the Applicant has consistently and repeatedly failed to provide timely and correct information required to satisfy the required contents of an application for insurance under the Program. Before denying any initial application or application for renewal, the Secretary shall provide the Commuter Rail Agency Applicant with written notice of such potential denial and the reasons therefore, and shall provide the Agency with a reasonable opportunity to respond to and address the issues forming the basis for such potential denial.

(d) PAYMENT OF PREMIUMS.—To secure and maintain insurance coverage under the Program, a Commuter Rail Agency shall pay the premiums due on such schedule as the Secretary may establish.

SEC. 6. INSURANCE PREMIUMS.

(a) CALCULATION AND ASSESSMENT OF ACTUARILY FAIR PREMIUMS.—

(1) ESTABLISHMENT OF PREMIUMS.—The Secretary shall establish, on an annual basis for each Program Year, the premiums to be charged to Commuter Rail Agencies for insurance coverage under the Program. In establishing such premiums, the Secretary shall consult with the Federal Office of Insurance in the U.S. Department of the Treasury.

(2) BASIS FOR PREMIUM AMOUNTS.—The premiums charged shall not exceed an Actuarily Fair Premium for the insurance coverage provided for the Program Year in question. The annual premiums shall reflect an actuarily based assessment of risk in the relevant Commuter Rail Services and shall not consider risks or costs in other insurance markets.

(3) UNIFORM OR INDIVIDUAL PREMIUMS.—In establishing premiums for the insurance provided under the Program, the Secretary may establish uniform amounts per dollar of coverage to be applicable to all participating Commuter Rail Agencies, or may establish individual premium amounts for each of the participating Commuter Rail Agency.

(4) DEPOSIT OF PREMIUMS.—All premiums received by the Secretary shall be deposited into the Fund.

(b) ADMINISTRATIVE EXPENSES.—Notwithstanding subsection (a), the Secretary may charge up to 110 percent of the Actuarily Fair Premium, on an equal basis to all participating Commuter Rail Agencies, if the Secretary determines that the additional amount is needed and will be used to pay the costs of administering the Program.

SEC. 7. PAYMENT OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to investigate, audit, and pay claims from the Fund for Covered Losses under the insurance provided to Commuter Rail Agencies under this Act.

(b) CLAIMS PROCESS.—The Secretary shall establish policies and procedures under which Commuter Rail Agencies insured under the Program may file and certify claims for payment. Such policies and procedures shall include a requirement that each claim be accompanied by a certification from the Commuter Rail Agency claimant that (1) the claim is made in good faith and is not fraudulent; and (2) the claim is for a Covered Loss within the scope of the applicable insurance coverage under the Program.

(c) REVIEW AND PAYMENT.—The Secretary shall determine the validity of claims in a fair and timely manner and shall promptly pay all claims determined to be valid and within the scope of coverage of the insurance provided under the Program. The Secretary may, on the basis of audit and investigation and after notice to the Commuter Rail Agency claimant, adjust the amount of the claim to be paid under the applicable insurance coverage. The Secretary may not deny a claim without good cause and without first providing the Commuter Rail Agency claimant with notice and an opportunity to respond to and address the issues forming the basis for the potential denial.

SEC. 8. ANALYSIS OF MARKET CONDITIONS.

(a) WORKING GROUP.—The Secretary shall establish a Working Group consisting of representatives from the Commuter Rail Agencies and representatives from Private Insurers to perform an annual analysis of market conditions regarding the availability and affordability of liability insurance for Commuter Rail Services. Each such analysis shall be completed within 60 days after the end of each Program Year, and the U.S. Department shall submit the results of each analysis to Congress.

(b) SECRETARIAL DETERMINATION.—At the end of Program Year 3 and upon review of the Working Group's report, the Secretary shall make a specific determination, based on the analysis of existing market conditions, as to whether market capacity exists or will likely exist at a reasonable cost for Commuter Rail Services at the end of the fifth year of the Program, in accordance with Section 12(b). Within 90 days of the Working Group's

report to the Department, the Secretary shall submit the specific determination to Congress.

SEC. 9. NOTICE TO CONGRESS.

The Secretary shall notify Congress in the event of a catastrophic loss in Commuter Rail Services that is likely to result in claims that exceed the amounts available in the Fund to reimburse Covered Losses.

SEC. 10. REGULATIONS.

Within 90 days after the date of enactment of the Surface Transportation Authorization Act, the Secretary shall, following notice and comment, issue a final rule to implement the provisions of this Act.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, for each year of the Program, such amounts as may be necessary to carry out the provisions of this Act.

SEC. 12. TERMINATION OF PROGRAM.

(a) TERMINATION DATE.—Subject to subsection (b), the Program shall terminate on the five-year anniversary of the date in which the Secretary issues a final rule in accordance with Section 10.

(b) SECRETARIAL DETERMINATION.—The Program shall only terminate after the fifth year if the Secretary makes a specific determination after Program Year 3 in accordance with Section 8(b) that market capacity exists or will exist at a reasonable cost for Commuter Rail Services.

(c) CONTINUED AUTHORITY TO ADDRESS CLAIMS.—In the event of the termination of the Program, the Secretary shall take such actions as may be necessary to investigate, audit, and pay claims for Covered Losses arising out of or in connection with any event occurring during the period in which the Program was in effect. A claim may be filed after the termination date of the Program, and shall be paid in accordance with Section 7, if the event on which such claim is based occurred on or before such termination date.

Public Transit Security Recommendations

Transit Security Grant Program (6 U.S.C. § 1135)

The Transit Security Grant Program (TSGP) is a competitive grant program that provides funding to eligible public transportation systems to protect critical surface transportation infrastructure and the traveling public from acts of terrorism. Among other eligible activities, grant recipients can use funding from TSGP for law enforcement, surveillance training, public awareness campaigns, detection equipment, security cameras, cybersecurity technologies, and hardening infrastructure.

The program has not been authorized since Fiscal Year (FY) 2011. Since FY 2012, Congress has appropriated at most $93 million each year, far less than the original authorized funding level of $1.1 billion.

APTA Recommendation:

- **Authorize $1.1 billion annually for the Transit Security Grant Program and strike requirements related to how much funding can be used for operational costs**.

  Amend 6 U.S.C. § 1135(n)(1) by striking subparagraphs (A) through (E) and inserting:

  "(A) $1,100,000,000 for fiscal year 2027;

  (B) $1,100,000,000 for fiscal year 2028;

  (C) $1,100,000,000 for fiscal year 2029;

  (D) $1,100,000,000 for fiscal year 2030; and

  (E) $1,100,000,000 for fiscal year 2031."

Harmonizing Cybersecurity Requirements

The Transportation Security Administration (TSA), Cybersecurity and Infrastructure Security Administration (CISA), and FTA all play a vital role in ensuring the ongoing security of infrastructure. Currently, TSA, CISA (through requirements from the Cyber Incident Reporting for Critical Infrastructure Act of 2022), and FTA (through the National Transit Database) have duplicative and unharmonized cybersecurity incident reporting requirements for entities that are required to report to the three agencies.

APTA Recommendation:

- **Require TSA, CISA, and FTA to release joint guidance coordinating requirements for the population of entities required to report cybersecurity incidents to the three agencies.** Amend 6 U.S.C. § 681b by inserting at the end:

  "(i) HARMONIZED CYBERSECURITY INCIDENT REPORTING REQUIREMENTS.—Not later than 180 days after the date of enactment of the Surface Transportation Authorization Act, the Secretary, in coordination with the Secretary of Transportation, shall publish joint guidance for the Transportation Security Administration, the Cybersecurity and Infrastructure Security Administration, and the Federal Transit Administration for the population of entities required to report cybersecurity incidents to such agencies. The guidance shall contain instructions on how to create and submit a single report to the three agencies for entities to fulfill relevant cybersecurity incident reporting requirements."