



## Funding, Financing and Tax Policy and Federal Procedures and Regulations Subcommittees Agenda

**Sunday, March 13, 2022  
9:30 a.m. - 11:00 a.m. (ET)**

**Grand Hyatt Washington  
Independence Ballroom BCDE**

**1. Introductory Remarks—**

Ron Epstein, FF & T Subcommittee Chair  
Sharon Greene, FF & T Subcommittee Vice Chair  
Michael McLaughlin, FF & T Subcommittee Vice Chair  
Christopher P. Boylan, FP & R Subcommittee Chair  
Richard J. Bacigalupo, FP & R Subcommittee Vice Chair  
Kate Mattice, FP & R Subcommittee Vice Chair

**2. Federal Transit Administration (FTA) Update—**

- a. Safety Initiatives in the Bipartisan Infrastructure Law (BIL)—Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight and Chief Safety Officer
- b. Buy America Provisions and BIL Implementation—Dana Nifosi, Deputy Chief Counsel

**3. U.S. Department of Transportation Build America Bureau Update—**

- a. Build America Bureau Initiatives—Robert Hanifin, Transit & TOD Project Development Lead

**4. S. 3011, the State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act—**

**5. S. 3609, the Gas Price Relief Act of 2022—**



6. Build Back Better Act Finance Provisions—
  - a. Credit for Qualified Commercial Electric Vehicles
  - b. Alternative Fuels Tax Credits
7. Discussion with White House Council on Environmental Quality regarding NEPA—Christopher Boylan and Richard Bacigalupo
8. Open Discussion
9. Adjourn

**ENCLOSED DOCUMENTS**

- FTA Dear Colleague Letter regarding PTASP Safety Requirements (02.17.2022)
- APTA Summary of Build America, Buy America Title of Infrastructure Investment and Jobs Act (03.04.2022)
- APTA Summary of S. 3011, the State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act (03.04.2022)
- ATM-TCC Coalition Letter to Congress Opposing S. 3609, the Gas Price Relief Act of 2022 (02.17.2022)
- APTA Summary of NEPA NPRM and One Federal Decision (11.02.2021)
- APTA Comments regarding Title VI Implementation Request for Information (12.28.2022)
- FTA Dear Colleague Letter regarding Zero-Emission Transition Plans (12.01.2021)





U.S. Department  
of Transportation  
**Federal Transit  
Administration**

Administrator

1200 New Jersey Avenue, SE  
Washington, DC 20590

February 17, 2022

Dear Colleague:

On November 15, 2021, President Biden signed into law the Bipartisan Infrastructure Law, which authorizes \$108 billion over the next five years for public transportation – the most significant federal investment in transit in the nation’s history. The Bipartisan Infrastructure Law amends FTA’s safety program at 49 U.S.C. § 5329(d) (Section 5329(d)) by adding to the public transportation agency safety plan (PTASP) requirements. These changes include the requirement that certain transit agencies establish a Safety Committee. I am writing to inform you of these changes to Section 5329(d), which are included [here](#). These new requirements apply to those transit agencies that must have an Agency Safety Plan (ASP) in place under the PTASP regulation (49 CFR part 673). Transit agencies should review their ASP to determine if it meets these requirements.

The Bipartisan Infrastructure Law requires transit agencies to address strategies to minimize exposure to infectious diseases, consistent with Centers for Disease Control and Prevention or State health authority guidelines. Each transit agency should consider identifying mitigations or strategies related to exposure to infectious diseases through the safety risk management process described in the agency’s ASP.

Changes to PTASP requirements for agencies serving an urbanized area with a population of fewer than 200,000 (small urbanized area)

A transit agency serving a small urbanized area must develop its ASP in cooperation with frontline employee representatives. If the agency’s ASP was not developed in cooperation with frontline employee representatives, FTA expects the transit agency to update its ASP in cooperation with frontline employee representatives by December 31, 2022.

Changes to PTASP requirements for Urbanized Area Formula Funding (49 U.S.C. § 5307) recipients serving an urbanized area with a population of 200,000 or more (large urbanized area)

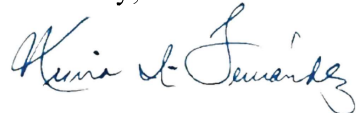
A transit agency that receives Section 5307 funding and serves a large urbanized area must establish a Safety Committee compliant with 49 U.S.C. § 5329(d)(5) by July 31, 2022. Once established, the Safety Committee should begin work to meet its responsibilities as soon as practicable. If a transit agency is not yet compliant with the new PTASP requirements, FTA expects the Safety Committee to approve an update to the agency’s ASP, incorporating applicable PTASP requirements in 49 U.S.C. § 5329(d), by December 31, 2022.



Transit agencies may choose to follow an existing collective bargaining process to establish and operate the required Safety Committee, provided requirements of Section 5329(d)(5) are met. Similarly, if a transit agency has an existing Safety Committee, that committee will be sufficient if it meets the statutory requirements. Performance targets for a risk reduction program are not required to be in place until FTA has updated the National Public Transportation Safety Plan to include these performance measures required by the Bipartisan Infrastructure Law.

Safety is the number one priority of the U.S. Department of Transportation and FTA, and we are working expeditiously to implement the changes called for in the Bipartisan Infrastructure Law to enhance transit safety. To support these efforts, in the future FTA may issue guidance and/or amend the PTASP regulation at 49 CFR part 673. All FTA updates related to the Bipartisan Infrastructure Law are available on [www.transit.dot.gov/BIL](http://www.transit.dot.gov/BIL). For any further questions related to Bipartisan Infrastructure Law requirements, please contact us at [FTA-IIJA@dot.gov](mailto:FTA-IIJA@dot.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Nuria I. Fernandez", written in a cursive style.

Nuria I. Fernandez

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies. Grantees and subgrantees should refer to FTA's statutes and regulations for applicable requirements.



**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION**  
**FACT SHEET**  
**INFRASTRUCTURE INVESTMENT AND JOBS ACT**  
**BUILD AMERICA, BUY AMERICA TITLE**  
*March 7, 2022*

On November 15, 2021, President Joseph R. Biden, Jr. signed the Infrastructure Investment and Jobs Act (IIJA) into law, which includes a title addressing Buy America requirements for infrastructure projects.<sup>1</sup> The IIJA's Build America, Buy America (BABA) title also encourages strengthening the Buy American Act regarding federal government procurement.<sup>2</sup> Under IIJA Buy America requirements, each federal agency must:

- Within 60 days, submit to the Office of Management and Budget (OMB) a report that identifies each federal financial assistance program for infrastructure administered by the agency. The report must identify all domestic content procurement requirements applicable; assess the applicability of domestic content procurement preference requirements in current law; provide details on any applicable domestic content procurement preference requirements and any exceptions or waivers; and describe the types of infrastructure projects that receive funding under the program. In addition, the report must identify programs for which the domestic content procurement preference does not apply or is subject to a waiver.
- within 180 days, “ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, and manufactured products and construction materials used in the project are produced in the United States.”

On February 7, 2022, the Department of Transportation (DOT) published its report on [\*DOT's Identification of Federal Assistance Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act.\*](#)<sup>3</sup>

In this Act, “produced in the United States” means:

- For iron or steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the U.S.;
- For manufactured products, that the product was manufactured in the U.S. and the cost of the product components mined, produced, or manufactured in the U.S. is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content applies; and

---

<sup>1</sup> This title builds on [\*Executive Order 14005, Ensuring the Future is Made in All of America by All of America's Workers\*](#) (Order); signed by President Joseph Biden on January 25, 2021; *see also* APTA Fact Sheet, *Executive Order on Ensuring the Future is Made in All of America by All of America's Workers* (January 25, 2021).

<sup>2</sup> On March 7, 2022, the Administration issued a final rule on new Buy American requirements. Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements, 87 Fed. Reg. 12780 (Mar. 7, 2022).

<sup>3</sup> DOT's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act, 87 Fed. Reg. 6943 (Feb. 7, 2022).



- For construction materials, that all manufacturing processes occurred in the U.S.

Note that the IIJA excludes from the definition of construction materials: cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. In addition, the Act limits the standards under § 70915 (OMB Guidance) from including cement and cementitious materials; aggregates such as stone, sand, or gravel, or aggregate binding agents or additives as inputs of the construction materials.

A federal agency may waive the application of the domestic content procurement preference where:

- applying the preference would be inconsistent with the public interest;
- the types of iron, steel, manufactured goods, or construction materials are not produced in sufficient and reasonably available quantities or satisfactory quality; or
- the inclusion of the materials produced in the United States will increase the cost of the project by more than 25 percent.

Before a federal agency may grant a waiver, it must make it publicly available and provide at least 15 days for public comment. Waivers issued after the date of enactment of this program will be reviewed every five years.<sup>4</sup>

The IIJA directs OMB to issue guidance to assist in identifying deficient programs and applying new domestic content procurement standards, and to define the term “all manufacturing processes” in the case of construction materials (except for the exempt materials listed above).

**In DOT’s Buy America report submitted to OMB pursuant to the BABA title, DOT finds that none of its programs, including public transit and passenger rail programs, is currently fully consistent with BABA requirements.<sup>5</sup> DOT states:**

...the mode-specific Buy America(n) statutes applied by most DOT agencies cover iron, steel and manufactured products, in ways that are generally consistent (or that in some cases exceed) that standards found in the BABA. **However, none of those statutes specifically cover construction materials**, other than to the extent that such materials would already be considered iron, steel, or manufactured products.<sup>6</sup> (emphasis added)

---

<sup>4</sup> Please note that existing product-specific general applicability waivers issued more than 180 days prior to the date of enactment of this program are not subject to the review or public comment period for five years.

<sup>5</sup> [\*DOT’s Identification of Federal Assistance Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act\*](#), at 19.

<sup>6</sup> *Id.* At 21.



In addition, the legislation requires the Secretary of Transportation to enter into a technical assistance partnership with the Secretary of Commerce to:

- ensure the development of a domestic supply base to support intermodal transportation in the United States (e.g., high-speed passenger rail and public transportation);
- ensure compliance with Buy America laws that apply to a project receiving assistance from a DOT modal program;
- encourage technologies developed with the support of and resources from the Secretary to be transitioned into commercial market and application; and
- establish procedures for consultation with the Hollings Manufacturing Extension Partnership.

Finally, the IIJA requires the Secretary of Transportation, before granting a waiver, to consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that can provide the material that is the subject of a waiver request.



**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION**  
**FACT SHEET**  
**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS AND**  
**S. 3011, THE STATE, LOCAL, TRIBAL, AND TERRITORIAL FISCAL RECOVERY,**  
**INFRASTRUCTURE, AND DISASTER RELIEF FLEXIBILITY ACT**  
*March 4, 2022*

**CORONAVIRUS STATE AND LOCAL FISCAL RECOVERY FUNDS**

The American Rescue Plan Act of 2021 (ARP) provides **\$350 billion** of COVID-19 emergency funding to states, Tribal, and local governments. Under the U.S. Department of Treasury program, the funds are available for specific COVID-19 response, public health, and economic purposes, including replacing lost public sector revenue and providing premium pay for essential workers (including frontline public transit workers). The ARP provides \$195 billion to states, \$130 billion to local governments, and \$25 billion to tribal and territorial governments. These Fiscal Recovery Funds do not require a local match and the Treasury Department provides these funds in one or two tranches in May 2021 and May 2022. Please click [here](#) to find specific state, county, city, and other local government allocations.

Although the Fiscal Recovery Funds are available for water, sewer, and broadband infrastructure, transportation infrastructure investment is not eligible under the program. See [Department of Treasury interim final rule](#).

**APTA, together with Coalition partners, has strongly urged the Department of the Treasury and Congress to authorize State and local governments to use these Fiscal Recovery Funds for surface transportation infrastructure.** See letters to [Secretary of the Treasury Janet Yellen](#) and [Senators](#) supporting transportation infrastructure eligibility for these Funds.

**S. 3011, THE STATE, LOCAL, TRIBAL, AND TERRITORIAL FISCAL RECOVERY,**  
**INFRASTRUCTURE, AND DISASTER RELIEF FLEXIBILITY ACT**

On October 19, 2021, the U.S. Senate passed S. 3011, the State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act. The bill, sponsored by Senator John Cornyn (R-TX) and Senator Alex Padilla (D-CA), authorizes state and local governments to use these Fiscal Recovery Funds for transportation infrastructure, including public transportation. Bill sponsors stated that this flexibility authorizes **\$123 billion** of funding for transportation infrastructure, at the discretion of state and local authorities.

The House introduced a companion bill (H.R. 5735) and APTA has been working with the bipartisan sponsors of the bill (Representative Dusty Johnson (R-SD) and Representative Carolyn Bordeaux (D-GA)) to encourage other Representatives to cosponsor the legislation. To date the bill has 150 bipartisan cosponsors.

On March 2, 2022, APTA, together with Coalition partners, sent a letter to House and Senate leaders urging Congress to include the Fiscal Recovery Infrastructure Flexibility Act in the final



Omnibus Appropriations Act. *See* [Coalition letter](#) to Congressional Leaders supporting adding the bipartisan legislation to the FY 2022 Omnibus Appropriations package.

**APTA strongly urges Congress to include the Fiscal Recovery Infrastructure Flexibility Act in the final FY 2022 Omnibus Appropriations Act.**

Under the bill, eligible projects include Urbanized Area Formula, Rural Area Formula, Capital Investment Grants (CIG), State of Good Repair, and Bus and Bus Facilities projects. Funding for public transit projects must be used for capital expenses; operating expenses are not eligible under the bill. Eligible projects also include Surface Transportation Block Grant (STBG), Congestion Mitigation and Air Quality Improvement (CMAQ), and Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant projects and projects eligible for Transportation Infrastructure Financing and Innovation Act (TIFIA) credit assistance.

Importantly, S. 3011 authorizes these Fiscal Recovery Funds to be used for the non-federal share for CIG projects and projects of national and regional significance (§ 21201 of IIJA). With regard to TIFIA projects, the bill authorizes these Funds to be used for the non-federal share or to repay a TIFIA loan.

State and local governments may spend up to 30 percent of their allocations for these new purposes, or \$10 million, whichever is greater. These Fiscal Recovery Funds must be obligated by December 31, 2024, and fully expended by September 30, 2026.

The enclosed table outlines the total amounts that would be available to state and local governments that could be invested in public transportation capital projects.



**State and Local Fiscal Recovery Funds  
Available for Public Transportation Investment**

*October 28, 2021*

State	Funding Available (in millions)	State	Funding Available (in millions)
Alabama	\$1,696	Montana	\$530
Alaska	\$448	Nebraska	\$716
Arizona	\$2,325	Nevada	\$1,296
Arkansas	\$1,198	New Hampshire	\$574
California	\$14,498	New Jersey	\$3,539
Colorado	\$2,101	New Mexico	\$938
Connecticut	\$1,537	New York	\$7,899
Delaware	\$450	North Carolina	\$3,580
DC	\$541	North Dakota	\$493
Florida	\$6,153	Ohio	\$4,230
Georgia	\$3,634	Oklahoma	\$1,406
Hawaii	\$686	Oregon	\$1,579
Idaho	\$721	Pennsylvania	\$5,025
Illinois	\$5,184	Rhode Island	\$567
Indiana	\$2,395	South Carolina	\$1,748
Iowa	\$1,206	South Dakota	\$509
Kansas	\$1,094	Tennessee	\$2,496
Kentucky	\$1,733	Texas	\$9,662
Louisiana	\$1,906	Utah	\$1,005
Maine	\$626	Vermont	\$481
Maryland	\$2,287	Virginia	\$3,080
Massachusetts	\$2,977	Washington	\$2,698
Michigan	\$4,162	West Virginia	\$926
Minnesota	\$2,078	Wisconsin	\$2,058
Mississippi	\$1,289	Wyoming	\$485
Missouri	\$2,217		
Total		\$122,661	
Source: Office of Senator John Cornyn			





February 17, 2022

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, DC 20510

The Honorable Kevin McCarthy  
Republican Leader  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Mitch McConnell  
Republican Leader  
U.S. Senate  
Washington, DC 20510

Dear Speaker Pelosi, and Leaders Schumer, McCarthy, and McConnell:

Suspending the federal gasoline tax in the name of “economic relief” is misguided and could undermine the recently enacted and bipartisan Infrastructure Investment and Jobs Act (IIJA). The national associations and labor unions of the Transportation Construction Coalition (TCC) and the Americans for Transportation Mobility (ATM) coalition strongly oppose the S. 3609, the Gas Price Relief Act of 2022.

Federal highway and public transportation programs are funded primarily with taxes on gasoline and diesel fuel, founded on a “user pays” model, where those who use transportation systems pay for them. The TCC and ATM strongly support these user fees.

Proponents of the gasoline tax holiday, as proposed in S. 3609, suggest it would lower prices for consumers. However, the view that federal fuel taxes have a discernible impact on prices at the pump misses the mark. The federal gasoline tax has not been increased since 1993, when gasoline was around \$1.00 per gallon nationally. Meanwhile, gasoline prices have increased roughly 250 percent, which indicates other factors, like supply and demand, input costs, and geopolitics are drivers of price fluctuations—not federal fuel taxes. A gasoline tax holiday would have little meaningful impact on fuel prices, would further erode the user-pays system, and make it harder to repair America’s aging infrastructure.

The IIJA provides resources to rebuild American infrastructure for the 21<sup>st</sup> century and provide the short and long-term economic benefits that will make a real difference for American families, rather than temporary political gimmicks. The IIJA will make important improvements to connect communities, prioritize resiliency, save lives, and facilitate economic growth and competitiveness. Disrupting the carefully negotiated revenue structure in the IIJA would jeopardize these benefits.

The TCC and ATM oppose this proposal to suspend the federal gasoline user fee and urge the House and Senate to reject this plan as well. We believe efforts would be better spent on delivering the first year of promised investments by completing the FY 2022 appropriations process.

Sincerely,

The Transportation Construction Coalition

Americans for Transportation Mobility



**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION**  
**FACT SHEET**  
**NATIONAL ENVIRONMENTAL POLICY ACT REGULATIONS AND STATUTORY PROVISIONS**  
*November 2, 2021*

On October 7, 2021, the Council on Environmental Quality (CEQ) published in the Federal Register a notice of proposed rulemaking (NPRM) on [\*National Environmental Policy Act \(NEPA\) Implementing Regulations Revisions\*](#). The NPRM states that this will be part of a series of rulemakings, and it may allow greater consideration of climate change impacts of major new projects as part of the permitting process.

In addition to the NPRM, Congress is considering H.R.3684, the Infrastructure Investment and Jobs Act (IIJA), that will have implications for the NEPA process. (There is a high likelihood that the Senate-passed IIJA will eventually be enacted into law without changes.) Specifically, IIJA would codify “One Federal Decision” (OFD), an interagency coordination process for NEPA and other environmental reviews.

**National Environmental Policy Act Implementing Regulations Revisions**

After President Biden issued [\*Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis\*](#) and [\*Executive Order 14008, Tackling the Climate Crisis at Home and Abroad\*](#), CEQ issued an NPRM on October 7 to begin the process of reforming NEPA. The NPRM would generally restore regulatory provisions that were in effect before changes made by the Trump Administration in 2020.

The NPRM proposes to reintroduce previously eliminated provisions related to the “purpose and need” section of an Environmental Impact Statement (EIS), which describes the rationale for the agency’s proposed action and shapes the range of alternatives to be considered by an agency. CEQ proposes changes that would ensure that factors such as the public interest are considered along with the project sponsor’s goals.

The NPRM also restores the definition of “effects or impacts” that federal agencies must consider to again include the concepts of “direct effects<sup>1</sup>”, “indirect effects<sup>2</sup>”, and “cumulative effects<sup>3</sup>.” The NPRM states that reinstating these concepts will ensure that the NEPA process fully considers effects “such as air and water pollution, greenhouse gas emissions that contribute to climate change, and effects on communities with environmental justice concerns.”

Finally, the NPRM clarifies that while NEPA procedures within federal agencies must be consistent with CEQ regulations, agencies will have the discretion to develop procedures beyond the CEQ requirements.

---

<sup>1</sup> Direct effects are effects caused by the action and occur at the same time and place. 40 CFR 1508.8(a) (2019).

<sup>2</sup> Indirect effects are effects caused by the action that are later in time or farther removed in distance but are still reasonably foreseeable. *Id.* at §1508.8(b).

<sup>3</sup> Cumulative effects have been defined as effects resulting from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of who undertakes the other actions.



## **Codification of “One Federal Decision” in the Infrastructure Investment and Jobs Act**

H.R. 3684, the Infrastructure Investment and Jobs Act (IIJA), includes section 11301, “Codification of One Federal Decision”, which includes policies that APTA has supported. Under this section, the U.S. Department of Transportation (DOT) must develop a schedule for environmental reviews for major projects with the goal of completion within two years. If certain timelines are not met, federal agencies must publicly disclose the reasons for not meeting the deadline. Some environmental documents are limited to 200 pages, unless the review is determined to be of unusual scope and complexity. It also establishes a procedure directing DOT and relevant agencies to adopt appropriate categorical exclusions to facilitate project delivery.





**AMERICAN  
PUBLIC  
TRANSPORTATION  
ASSOCIATION**

December 28, 2021

---

**EXECUTIVE COMMITTEE**

CHAIR

Jeffrey A. Nelson

VICE CHAIR

Kevin J. Holzendorf

SECRETARY-TREASURER

Matthew O. Tucker

IMMEDIATE PAST CHAIR

David M. Stackrow, Sr.

Dorval R. Carter, Jr.

Jim Derwinski

Dawn Distler

Jannet Walker-Ford

Michael Goldman

Karen H. King

Michele Wong Krause

Jeanne Krieg

Richard A. Kwasneski

Thomas C. Lambert

Richard J. Leary

Henry Li

MJ Maynard

Raymond J. Melleady

Jeffrey A. Parker

Allan Pollock

Leslie S. Richards

Doug Tisdale

Thomas R. Waldron

Jeffrey Wharton

Evalynn "Eve" Williams

---

**PRESIDENT AND CEO**

Paul P. Skoutelas

Department of Transportation  
Docket Operations  
M-30, West Building Ground Floor, Room W12-140  
1200 New Jersey Avenue S.E.  
Washington, DC 20590

Subject: Docket No. FTA-2021-0014

Dear Docket Clerk:

On behalf of the more than 1,300 member organizations of the American Public Transportation Association (APTA), we respectfully submit comments on behalf of our members for the request for information notice regarding Title VI implementation published in the *Federal Register* November 3, 2021, at 86 FR 60735.

**About APTA**

The American Public Transportation Association is a nonprofit international association of 1,300 public and private sector organizations which represent a \$71 billion industry that directly employs 430,000 people and supports millions of private sector jobs. APTA members are engaged in the areas of bus, paratransit, light rail, commuter rail, subways, waterborne services, and intercity and high-speed passenger rail. This includes transit systems; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA is the only association in North America that represents all modes of public transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products.

APTA members applaud the Federal Transit Administration's (FTA) effort to collect information regarding Title VI implementation and looking for information and best practices that the transit industry has developed over the last ten years since the circular was first revised. APTA sponsored a webinar December 15<sup>th</sup> to collect comments from its members including comments from its EJ/Title VI subcommittee that included representatives from small, medium, and large agencies.

1300 I Street NW  
Suite 1200 East  
Washington, DC 20005  
p: (202) 496-4800  
f: (202) 496-4324

---

**APTA.COM**



The responses collected are summarized below according to the categories in the Request for Information (RFI).

### **Public Participation**

The RFI asks about the public participation practices in the DOT order 1000.12C. APTA members believe incorporating that order as part of its guidance on promoting inclusive public participation would be helpful. The ten practices provided in the Order are all effective in ensuring proactive public engagement and FTA should consider providing guidance on how transit systems should measure the effectiveness of virtual communication and best practices when promoting inclusive public participation to ensure there are no limitations imposed on communities without access to the internet and/or technology. Furthermore, APTA members warn against incorporating public participation requirements that are overly prescriptive. Transit systems should have flexibility in how they engage their communities. In addition, the impact of the pandemic has shown that virtual avenues of outreach tend to result in more diverse participation and any requirement that relies on in-person meetings only would result in less representative meetings.

Effective public participation practices include ensuring that participation is not limited to the same attendees, which could create a potential bias; evaluating virtual meeting attendance to ensure attendance by Title VI protected groups; ensuring LEP populations with language or other communication impairments are considered. LA Metro includes Spanish only meetings with live interpretation via telephone; and utilizing community-based organizations and previously planned meetings.

Effectiveness can be defined and measured by how many people joined or participated in relation to how many were invited. Reaching the right groups of people is more important than just having a large turnout.

Finally, while we have already cited a benefit to virtual outreach being more diverse, our members would like to point out that an important element of gathering the most diverse and inclusive participation is to make such outreach efforts *accessible* since disability often overlap with multiple Title VI protected classes.

### **Service and Fare Equity Analysis**

APTA members are very concerned about a new requirement to receive review and/or approval of their service and fare equity (SAFE) analysis before Board approval. The additional time would impact projects and undermine a transit system's ability to move forward expeditiously. Further, many members pointed out that their systems already post equity analysis on the web as part of the Board agenda process. Because there is built in transparency into the process, there is no need for FTA to review and/or approve an agency's SAFE analysis.



Also, it is unclear from the RFI whether FTA is asking about a SAFE analysis that is route specific or system-wide. Changes can washout at the system-wide, so FTA should provide guidance about which one is required. That being said, any updates to the circular that provides such guidance should have more than one example, so the guidance does not become the de facto rule. Providing guidance about what the recipient should look for and beware of would be helpful. If FTA must set a value, it should set a minimum value, but FTA should note that setting a minimum threshold value or limit may not be beneficial to transit agencies that are working to bring back ridership through service changes because every region or service area is different in terms of demographic and population and setting specific limits might prevent agencies from creating meaningful service changes that would benefit their local communities.

APTA members do not believe additional public participation should be required as part of disparate impact or disproportionate burden policies. Approval timeframes are usually very tight and additional public participation would not be helpful.

APTA members suggest using a combination of both population and ridership as an option for Service Equity. Assessing equity based on ridership is a circular analysis because everyone is entitled to equity. Examples in the guidance are helpful, but there are situations where one or the other are a better fit. Sometimes you do not have the data for one and will need to use the other.

Overall, recipients may use whatever is acceptable and useful. Using population data, however, is tricky for fare equity and likely ridership data would be more useful.

Requiring access to destination analysis is preferred over access to transit. The quality of the service access is arguably more important than the service itself and we need more ways of assessing transit services. FTA should be very clear about recommended data sources and how transit systems can access those data sources. In addition, access to transit has to be a frequency-weighted measurement, several members noted that a SAFE analysis does not measure access to transit. This has become a critical issue for transit planners and the trend is to move away from access to transit and more toward access to a stop or destinations traveled by riders.

Requiring an analysis may put up barriers for innovative ideas for fare/service changes on a temporary basis. Allowing more time for fare changes gives riders time acclimate to the change especially a fare reduction. APTA members suggest temporary changes (service and fare) should be increased to 18 months.



### **Facility Equity Analysis**

FTA should provide additional guidance on facility equity analysis as it does for SAFE.

It would be helpful for FTA to publish a sample (preferably more than one) facility analysis in the Appendix to the Circular. Recipients can post the facility analysis on the website upon completion and prior to Board approval as part of the Board approval process. Until FTA provides clear guidance on what is expected as part of the facility equity analysis, members could not comment on whether additional analysis or public participation would be helpful or harmful.

### **Rider Conduct Policies**

APTA members were united in their opposition to a Federal standard for rider conduct policies. Members believe this is an intensely local decision that should not be subject to a Federal standard.

### **Additional Comments**

APTA members suggest FTA provide minimum Federal standards such as equity analysis for micro-transit zones (use revenue hours?). Members would also appreciate more guidance about LEP and how best to develop LEP plan and have language assistance requirements that are meaningful. Members also warn against combining public participation with language assistance plans because it would dilute the language assistance plan. Furthermore, the four-factor analysis is a little hard to follow and could use some clarity and simplification. Also, it would be greatly appreciated if FTA could dedicate funding for ridership surveys.

Thank you for considering these comments and we look forward to working with FTA as it revised the Title VI Circular. Should you wish to discuss any of the comments in this letter, please contact Linda Ford, APTA's General Counsel at [lford@apta.com](mailto:lford@apta.com) or 202-496-4808.

Sincerely,

A handwritten signature in black ink that reads "Paul P. Skoutelas". The signature is written in a cursive, flowing style.

Paul P. Skoutelas  
President and CEO





U.S. Department  
of Transportation

**Federal Transit  
Administration**

Administrator

December 1, 2021

1200 New Jersey Avenue, SE  
Washington, DC 20590

Dear Colleague:

This letter provides an update regarding the Federal Transit Administration's (FTA) implementation of the Grants for Buses and Bus Facilities Competitive Program (49 U.S.C. § 5339(b)) and the Low or No Emission Program (49 U.S.C. § 5339(c)). The Bipartisan Infrastructure Law (BIL), Pub. L. 117-58, signed by the President on November 15, 2021, amended the statutory provisions for these programs to include the requirement that any application for projects related to zero-emission vehicles include a Zero-Emission Transition Plan.

It is FTA's intent, through this letter, to provide information in advance of the Notice of Funding Opportunity (NOFO) for these programs so applicants may better prepare documentation to meet this requirement.

A Zero-Emission Transition Plan must, at a minimum:

1. Demonstrate a long-term fleet management plan with a strategy for how the applicant intends to use the current request for resources and future acquisitions.
2. Address the availability of current and future resources to meet costs for the transition and implementation.
3. Consider policy and legislation impacting relevant technologies.
4. Include an evaluation of existing and future facilities and their relationship to the technology transition.
5. Describe the partnership of the applicant with the utility or alternative fuel provider.
6. Examine the impact of the transition on the applicant's current workforce by identifying skill gaps, training needs, and retraining needs of the existing workers of the applicant to operate and maintain zero-emission vehicles and related infrastructure and avoid displacement of the existing workforce.

FTA acknowledges that applicants may already have this information available. However, applicants should consolidate this information into a single document for the purpose of applying for zero-emission vehicles under the Grants for Buses and Bus Facilities Competitive and Low or No Emission Programs.

The cost of developing a transition plan is eligible under the planning programs (49 U.S.C. § 5305) as well as under the urbanized area formula (49 U.S.C. § 5307) and rural area formula programs (49 U.S.C. § 5311). When developing their transition plan, transit agencies may want to consider the information contained in the Guidebook for Deploying Zero-Emission Transit Buses recently published by the Transit Cooperative Research Program (<http://nap.edu/25842>).



Transit agencies can consider the flexibilities and Federal funding share FTA provides. For example, FTA's guidance permits agencies to include vehicles that have met their minimum useful life in their contingency fleet if an agency is introducing zero-emission vehicles into its fleet, and those vehicles are not included in the calculation of spare ratio. In addition, the Federal share of the cost of leasing or purchasing a zero-emission transit bus is not to exceed 85 percent of the total transit bus cost, and the Federal share in the cost of leasing or acquiring low- or no-emission bus-related equipment and facilities is 90 percent of the net project cost.

FTA is committed to working with you to successfully deliver projects that support public transportation in America's communities. We look forward to our continued partnership in accomplishing this common goal.

If you have any questions, please contact your FTA Regional Office.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nuria I. Fernandez", with a stylized flourish at the end.

Nuria I. Fernandez