



American Public Transportation Association

Funding, Finance, and Tax Policy and Federal Procedures and Regulations Subcommittees

Agenda

**Sunday, March 12, 2023
8:00 a.m. - 9:30 a.m. ET**

**Grand Hyatt Washington
Room: Independence FG (Level 5B)**

1. **Introductory Remarks—**

Sharon Greene, FF & T Subcommittee 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. **FTA Budget and IIJA Implementation—**Bruce Robinson, Associate Administrator for Program Management
- b. **FTA Safety Initiatives and Compliance Review—**Joseph DeLorenzo, Associate Administrator for Transit Safety and Oversight and Chief Safety Officer and Hope Jensen, Director, Program Oversight

3. **Environmental Protection Agency (EPA) and Army Corps of Engineers Rulemaking on Definition of “Waters of the United States” and Potential Impact on Infrastructure Projects—**Chris Boylan

4. **Regulatory Update—**Stacie Tiongson, Senior Director, APTA Government Affairs and Advocacy

5. **Open Discussion**

6. Adjourn

ENCLOSED DOCUMENTS

- APTA Legislative Update (03.03.2023)
- APTA Executive Summary of Build America, Buy America Act (03.08.2023)
- Congressional Research Service, “[Waters of the United States \(WOTUS\): Frequently Asked Questions About the Scope of the Clean Water Act](#)” (02.06.2023)



Legislative Update

This year, APTA is focused on three major initiatives:

- **aggressively advocating for public transportation investments** in the Fiscal Year (FY) 2024 Transportation, Housing and Urban Development, and Related Agencies Appropriations bill (THUD Appropriations bill);
- **actively working to ensure successful implementation of the Infrastructure Investment and Jobs Act (IIJA)** (P.L. 117-58), commonly referred to as the Bipartisan Infrastructure Law, **and the Inflation Reduction Act** (P.L. 117-169); and
- **carrying out a holistic advocacy outreach effort** to every new and returning Member of Congress in the 118th Congress.

Aggressively Advocating for Public Transportation Investments in the FY 2024 THUD Appropriations Bill

In December 2022, Congress enacted the Consolidated Appropriations Act, 2023 (P.L. 117-328), which includes the FY 2023 THUD Appropriations Act (Division L). The THUD Appropriations Act appropriates an overwhelming majority of public transit and passenger rail authorizations of the Infrastructure Investment and Jobs Act (IIJA), commonly referred to as the Bipartisan Infrastructure Law.

Specifically, the THUD Appropriations Act, together with the advance appropriations of the IIJA, provides a total of **\$21.2 billion** for public transit in FY 2023, an increase of \$704 million from the FY 2022 enacted level. This total appropriation is \$66 million less than the total amount authorized in the IIJA. The THUD Appropriations Act and IIJA also include **\$16.6 billion** for passenger and freight rail, an increase of \$69 million from the FY 2022 enacted level. This total appropriation is \$3.2 billion less than the amount authorized in the IIJA. In addition, the Consolidated Appropriations Act and IIJA allocate **\$2.3 billion** for Rebuilding American Infrastructure with Sustainability and Equity (RAISE) competitive grants and **\$214 million** for the Federal Transit Administration's (FTA) Public Transportation Emergency Relief Program (49 U.S.C. § 5324) to provide financial assistance for public transit systems affected by major declared disasters.

This year, APTA urges Congress and the Biden-Harris Administration to harness the potential of the Bipartisan Infrastructure Law by fully funding public transportation in the FY 2024 THUD Appropriations bill. Specifically, we urge Congress and the Administration to:

- **provide at least \$21.6 billion for public transit and \$20.2 billion for passenger rail in FY 2024;**
- **streamline project delivery by enacting commonsense regulatory reforms** (e.g., expediting Capital Investment Grant (CIG) review; simplifying Commercial Driver's License requirements); and
- **create a new Mobility Innovation and Technology Initiative** to integrate new mobility solutions into public transit networks. In APTA's 2019 Surface Transportation Authorization Recommendations, we recommended a new Mobility Initiative as a top priority. Regrettably, Congress did not enact it as part of the IIJA, and we urge Congress to advance this Mobility Initiative in the 118th Congress.

Working to Ensure Successful Implementation of the Infrastructure Investment and Jobs Act and the Inflation Reduction Act

IIJA

On November 15, 2021, President Biden signed the IIJA into law. The IIJA provides **\$108.2 billion** for public transit over five years (FY 2022 through FY 2026), an increase of **\$42.4 billion (64 percent)** from current levels. These historic increases in public transit investments include \$91.2 billion of guaranteed funding (i.e., contract authority and advance appropriations) and \$17.0 billion of General Fund authorizations for CIG and other grants.

The legislation also provides **\$102.1 billion** for passenger and freight rail over five years, an increase of **\$86.7 billion (561 percent)** from current levels. These historic passenger rail investments include \$66 billion of guaranteed funding (advance appropriations) and \$36.1 billion of General Fund authorizations for Amtrak and other programs. In addition, the IIJA includes significant funding for multimodal investments (e.g., Rebuilding American Infrastructure with Sustainability and Equity (RAISE) and Mega grants) that include public transit and passenger rail as essential elements.

APTA is actively working with the U.S. Department of Transportation (DOT) toward successful implementation of the IIJA. In the first 15 months since enactment of the legislation, **DOT has advanced competitive grants totaling more than \$30 billion that include public transit and passenger rail eligibility.** DOT and its modal agencies have awarded **\$8.6 billion** for Low and No Emission Bus grants, Buses and Bus Facilities grants, RAISE grants, and other programs. In addition, DOT and its agencies have issued Notices of Funding Opportunities (NOFOs) for **\$21.5 billion** of additional competitive grants that include public transportation eligibility.

In addition, DOT, FTA, the Federal Railroad Administration, and other agencies have issued Notices of Proposed Rulemaking, Guidance, Dear Colleague letters, and Requests for Information regarding IJIA implementation. APTA has actively engaged in this regulatory process and provided numerous comments on IJIA implementation, including comments on Buy America, CIG, Public Transportation Agency Safety Plan Safety Requirements, and Railroad Capital Projects.

To assist APTA members in tracking IJIA funding apportionments and competitive grant opportunities and policy actions, APTA has developed a [Smart Guide to the Bipartisan Infrastructure Law and Inflation Reduction Act](#). The APTA Smart Guide includes funding and apportionment tables, section-by-section analyses, and DOT guidance, regulations, and NOFOs. The Smart Guide also includes advocacy and media toolkits to help APTA members tell their Bipartisan Infrastructure Law success stories. In addition, APTA has developed a [Regulatory Matrix](#) to track all regulatory and other administrative actions.

Inflation Reduction Act

On August 16, 2022, President Biden signed the Inflation Reduction Act of 2022 into law. The Act incorporates numerous important provisions that benefit public transportation, including alternative fuel tax credits and significant new investments in climate, zero-emission technology, equity, and environmental streamlining. The Inflation Reduction Act:

- extends the excise tax credits for alternative fuels, biodiesel, and renewable diesel;
- expands and substantially restructures the alternative fuel vehicle property credit;
- establishes a new commercial clean vehicle tax credit; and
- provides significant new investments in climate, zero-emission technology, equity, and environmental review, including \$27 billion for a Greenhouse Gas Reduction Fund; \$3.2 billion for Neighborhood Access and Equity Grants; and \$2 billion for Low-Carbon Transportation Materials Grants.

APTA is actively working with DOT, the U.S. Department of the Treasury, and the Environmental Protection Agency (EPA) on efficient implementation of the Inflation Reduction Act. In particular, APTA is focused on successful delivery of the new commercial clean vehicle tax credit and the new grant programs. Section 13403 of the Act creates a new tax credit (up to \$40,000) for commercial clean vehicles (e.g., zero-emission buses). Commercial clean vehicles include battery electric and fuel cell vehicles. This 10-year tax credit took effect in 2023. The section requires the Secretary of the Treasury to issue regulations or guidance as necessary to implement the provision. APTA is actively working to ensure that public transit agencies may benefit from this provision and receive a direct payment in lieu of a tax credit.

APTA is also working with agencies on implementation of several new programs created by the Inflation Reduction Act. For example, APTA wants to ensure public transportation eligibility under the new **\$27 billion** Greenhouse Gas Reduction Fund, administered by EPA. Under the program, EPA will make competitive grants, loans, other financial assistance, and technical assistance

available to states and local governments to enable communities, particularly low-income and disadvantaged communities, to reduce or avoid greenhouse gas emissions and deploy or benefit from zero-emission technologies.

Carrying Out a Holistic Advocacy Outreach Effort to the New Congress

Finally, APTA is carrying out a comprehensive outreach effort to every new and returning Representative and Senator in the 118th Congress, including:

- Sending each Member of Congress, totaling 541 offices, a personalized packet that contains background information about the public transportation industry; a copy of their Congressional District or State Transit Industry Footprint; and APTA's legislative priorities.
- Meeting with each new Member of Congress to ensure that they understand our industry and APTA's priorities for the 118th Congress.
- Urging all APTA members to contact their new and returning Members of Congress to:
 - introduce themselves;
 - outline the role that public transportation plays in your community and the nation's economy; and
 - educate them on the need to harness the potential of the Bipartisan Infrastructure Law by fully funding public transportation in the FY 2024 THUD Appropriations bill.

In addition, we are launching a new advocacy strategy focused on grassroots outreach. As part of this effort, we continue to expand APTA's grassroots advocacy tools, such as APTA's Industry Footprint and Advocacy Engagement tools.

**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
EXECUTIVE SUMMARY
INFRASTRUCTURE INVESTMENT AND JOBS ACT
BUILD AMERICA, BUY AMERICA IMPLEMENTATION
March 8, 2023**

On November 15, 2021, President Joseph Biden signed the Infrastructure Investment and Jobs Act (IIJA) into law, which includes a title addressing Buy America requirements for infrastructure projects.¹ Under the Build America, Buy America Act (BABA), each federal agency is required to “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.”

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
- For construction materials, that all manufacturing processes occurred in the U.S.²

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.

¹ P.L. 117-58, Division G, Title IX. 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* (Jan. 25, 2021).

² Please note that BABA 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.

Office of Management and Budget Guidance for Grants and Agreements

On February 9, 2023, the Office of Management and Budget (OMB) issued a proposed rule to revise OMB Guidance for Grants and Agreements.³ On March 8, OMB issued a correction to the notice indicating that OMB is issuing proposed guidance, not a proposed rule.⁴ OMB is proposing a new part 184 in 2 CFR chapter I to: support implementation of BABA provisions of the IIJA; clarify existing requirements to domestic preferences for procurements;⁵ and improve federal financial assistance management and transparency. This proposed guidance generally aligns with the OMB Initial Implementation Guidance.⁶

Comments are due Monday, March 13. On February 16, APTA, together with Coalition partners, sent a [letter](#) to OMB requesting that it provide for an additional 30 days (total of 60 days) for public comment on the proposed guidance until April 12, 2023. APTA is currently drafting comments to the proposed guidance.

DOT Proposed Waiver of Buy America Requirements for De Minimis Costs, Small Grants, and Minor Components

On May 19, 2022, the U.S. Department of Transportation (DOT) issued a temporary waiver of the BABA construction materials requirement. The waiver expired on November 10. On November 15, concurrent with a notice not to extend the temporary BABA waiver for construction materials and a proposed waiver for [contracts and solicitation](#), DOT published a notice seeking comment on whether it should use its authority, in accordance with § 70914(b)(1) of BABA, to grant a waiver in the public interest for the Buy America requirement for De Minimis Costs, Small Grants, and Minor Components.⁷

DOT proposed to waive BABA Buy America requirements for iron, steel, manufactured products, and construction materials under a single DOT financial assistance award for which:

- The total value of the non-compliant products is no more than the lesser of \$1 million or five percent of total allowable costs under the Federal financial assistance award;
- The size of the federal financial assistance award is below \$500,000; or
- The non-domestically produced miscellaneous minor components comprise no more than five percent of the total material cost of an otherwise domestically produced iron or steel product.

To date, DOT has not issued a final rule regarding this proposed waiver for De Minimis costs.

³ OMB, [Notice of Proposed Rule: Notification of Proposed Guidance](#), 88 Fed. Reg. 8374 (February 9, 2023).

⁴ OMB, [Guidance for Grants and Agreements Correction](#) (March 8, 2023).

⁵ [2 CFR 200.322](#)

⁶ OMB, Memorandum-22-11, [Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) (April 18, 2022).

⁷ DOT, [Notice of Proposed Waiver of Buy America Requirements for De Minimis Costs, Small Grants, and Minor Components](#), 87 Fed. Reg. 68576 (November 15, 2022)

DOT Limited Waiver of Buy America Requirement for Construction Materials for Certain Contracts and Solicitations

On January 30, 2023, DOT issued a limited Waiver of Buy America Requirements for Construction Materials for Certain Contracts and Solicitation.⁸ The new waiver exempts construction materials used in federally funded infrastructure projects based on the date of grant obligation, the date of contract execution for materials, and other factors. Specifically, this waiver exempts BABA domestic preference requirements for construction materials for:

- Any contract entered into before November 10, 2022; and
- Any contract entered into on or after November 10, 2022, and before March 10, 2023, if the contract results from a solicitation published prior to May 14, 2022.

This waiver applies only to:

- DOT awards obligated on or after January 30, 2023; and
- For awards that are obligated on or after November 10, 2022, but prior to January 30, 2023, expenditures for construction materials incurred on or after January 30, 2023.

For contracts executed after May 14, 2022, the waiver does not apply to any construction materials that a contractor or subcontractor takes delivery of on or after October 1, 2024.

DOT Notice of Waiver of Buy America Requirements for Electric Vehicle Chargers

On February 21, 2023, the Federal Highway Administration (FHWA) published a notice establishing a temporary public interest waiver to waive BABA requirements for steel, iron, manufactured products, and construction materials in electric vehicle (EV) chargers.⁹ The temporary waiver is effective beginning March 23, 2023.

This short-term, temporary waiver enables EV charger acquisition and installation to immediately proceed while also ensuring the application of Buy America to EV chargers by the phasing out of the waiver in two phases. As of the effective date of this waiver, FHWA is also removing EV chargers from its existing general applicability waiver for manufactured products.

⁸ DOT, [Notice of Waiver of Buy America Requirements for Construction Materials for Certain Contracts and Solicitations](#) (January 30, 2023).

⁹ FHWA, [Notice of Temporary Waiver of Buy America Requirements for Electric Vehicle Chargers](#), 88 Fed. Reg. 10619 (February 21, 2023).