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August 12, 2022

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

RE: Federal Railroad Administration Docket No. FRA-2022-0035  
Guidance on Development and Implementation of Railroad Capital Projects

Dear Docket Clerk:

The American Public Transportation Association (APTA) represents an \$80 billion industry that directly employs 450,000 people and supports millions of private-sector jobs. I write to provide comments on the Federal Railroad Administration's (FRA) Request for Comments on the Proposed Guidance on Development and Implementation of Railroad Capital Projects as published in the *Federal Register* (Vol. 87, No. 123) on June 28, 2022.

The Infrastructure Investment and Jobs Act (IIJA) will provide unprecedented Federal funding for rail improvement projects in America and FRA will play a crucial role in building out our national rail passenger network. As an organization composed of mobility providers and infrastructure agencies, we view intercity passenger rail services as the top tier of a broader, integrated passenger mobility network.

We appreciate that FRA is seeking comment from the industry and all interested parties and understand the challenge that FRA is faced with in balancing accountability with optimizing the use of federal money. In developing our comments, APTA solicited input from its members to develop the responses to the questions posed by FRA in the RFI. APTA organized and facilitated two meetings of our members to prepare our responses to FRA's questions.

**OVERALL COMMENTS**

APTA requests that FRA be as consistent as possible with the *effective components* of FTA and FHWA project development guidance. However, because FRA grant programs differ from the FTA Capital Investment Grant (CIG) program, APTA also recommends that FRA adopt a project delivery process that is simpler than the FTA CIG process. We support a smaller body of structured requirements than FTA, with a focused set of requirements to assure accountability and good stewardship for public dollars.

APTA requests that FRA be as consistent as possible with the effective components of FTA and FHWA project development guidance. Simplicity, consistency, and predictability will expand sponsors, owners, regulators, and consultants' ability to deliver on the intercity rail objectives of the IIA. We have long recognized an existing and upcoming shortage in workforce in the transportation planning, engineering, and construction trades. Consistency in guidance between US Department of Transportation (USDOT) modal agencies will assist in growing our bench of workforce practitioners by bringing efficiencies in training and onboarding professionals from other modes and simplicity will aid in the development of young professionals. Intercity rail projects may be sponsored by a variety of regional or local governmental or private entities that have not previously developed capital rail projects. A system based on foundational principles from Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) will aid in simplifying the process for entities new to the process.

FTA regularly schedules project delivery training in conjunction with APTA conferences and we invite FRA to do the same. Particularly effective training could combine FTA and FRA trainers to highlight the similarities and differences in processes, not only offering a platform for FRA to train the industry on new guidance, but also bringing clarity and eliminating confusion for transit/rail practitioners. An FRA Intercity Rail 101 training program could also see high levels of interest.

Because FRA grant programs differ from the FTA Capital Investment Grant (CIG) program, APTA also recommends that FRA adopt a project delivery process that is simpler than the FTA CIG process. We support a smaller body of structured requirements than FTA, with a focused set of requirements to assure accountability and good stewardship for public dollars.

In the following pages we have pointed out specific components of FTA's program that would bring efficiencies and would benefit FRA to adopt.

## **1. COMMENTS ON DEFINITIONS ESTABLISHED IN THE GUIDANCE**

### **Major Project**

FRA is proposing a Major Project definition of \$300 million in estimated total project cost or \$100 million in federal assistance. APTA recommends consistency with the FHWA definition of \$500 million in estimated total project cost to decrease the burden of compliance on a wider range of projects. As construction costs are escalating, the lower threshold may inadvertently cast the net too wide. APTA also recommends clarifying that the capital costs are in year of expenditure (YEO).

Importantly APTA also recommends that FRA clearly state what additional requirements outside the guidance are brought to bear when a project is defined as major – for example, NEPA page and time limits from the One Federal Decision policy or permitting dashboard reporting.

### **Non-Major Project**

No comments.

### **Project Sponsor**

FRA's definition of Project Sponsor accounts for the range of public and private applicants eligible for FRA grant programs. APTA recommends that the definition clarify that joint or multiple sponsors are allowed to maximize opportunity for project success, specifically the model of a state or local sponsor paired with a federal sponsor.

### **Project Management Plan**

No comments.

### **Schedule**

No comments.

### **Capital Cost Estimate**

FRA should consider revising this definition to include both capital and O&M estimates, or, at minimum, adding O&M estimates in the Financial Plan.

### **Financial Plan**

The definition should call out separate estimates for capital costs and operating & maintenance (O&M).

## **2. COMMENTS ON CREDIT AND GRANT PROGRAMS ADMINISTERED BY THE DOT**

FRA requested comments on the application of this guidance to railroad projects receiving financing or funding under the credit and grant programs administered by the DOT. Our comments pertain in particular to RIF and TIFIA. We suggest that the guidance reference and specifically allow these programs to support commercial development around stations. APTA strongly believes that federal credit programs should not count as federal share on rail projects where state funds or passenger revenues are the source of repaying the loans similar to the method that FHWA employs. We do not support additional restrictions on using these loan programs in conjunction with federal grants.

## **3. COMMENTS ON PROJECT LIFECYCLE STAGES**

FRA requested comments on the Project Lifecycle Model and terminology in relationship to past FRA programs and to the project lifecycle models of the FTA and FHWA.

APTA supports the six (6) project stages that FRA has proposed provided:

- a) FRA approval is not required to advance through each stage, and
- b) FRA does not require an official study at each stage, as studies become obsolete and can impede project progression.
- c) FRA allows flexibility in combining stages as appropriate for particular projects.

### **Stage 1 Systems Planning**

APTA recommends that the guidance clarify that FRA is responsible for overall system planning in consultation with state and regional rail plans. This particular stage differs from the remaining stages as the Project Sponsor is responsible for the remaining stages.

We recommend that FRA play a strong role in the system planning and lead in developing a nationwide intercity rail plan. APTA believes that FRA has an important role to play in setting the larger context of investment priorities especially when projects connect regions or serve as key connections to the greater rail network, particularly those regions with high population growth projections. In our March 15, 2022 letter we recommended a National Passenger Rail Plan including a Vision Map of a national network of intercity passenger rail services that builds on FRA's regional rail studies, not unlike the "National System of Interstate Highways" map prepared by the Federal Works Agency in the late 1940s.

State rail plans are currently a good way to accomplish system planning and have a role in helping create a pipeline of projects. We suggest that projects on state rail plans or regional rail plans can continue to be considered for FRA grant programs. A national plan would not override state rail plans or regional rail plans but would stitch them together at a national level and identify priority inter-state corridors.

### **Stage 2 Project Planning**

No comments.

### **Stage 3 Project Development**

Given the challenges with delays during the NEPA process, APTA suggests that guidance expand on innovative and best practices during the NEPA process to streamline federal permitting and meet project schedules. Key in this process is stakeholder and public engagement. Specifically, we recommend:

- a) Encourage Planning and Environmental Linkages analysis in pre-NEPA stages (systems planning and project planning)
- b) Encourage concurrent, online reviews by lead agencies and cooperating agencies to eliminate sequential reviewing steps, bring efficiencies and collaboration, and identify conflicts earlier in the process
- c) Require digital, interactive, and cloud-based tools and documents including interactive maps versus PDF maps to deepen stakeholder and public understanding, speed reviews, and reduce version control issues and time spent shuffling documents
- d) Require accountability on implementation of mitigation measures

We also recommend continued use of the Categorical Exclusion (CE) process. However, we recommend including provisions in the guidance to encourage public engagement throughout the CE process to ensure that communities that have previously been impacted by transportation infrastructure do not continue to bear the burden of small expansion projects that cumulatively contribute to substantial air, noise, or construction impacts.

Last, APTA urges a discussion of resiliency and how to consider it in project selection, design, and cost estimating in FRA's guidance.

### **Stage 4 Final Design**

Please clarify if procurement falls under this stage or the construction stage.

### **Stage 5 Construction**

No comments.

### **Stage 6 Operation**

We recommend changing to Operation and Maintenance.

## **4. COMMENTS ON THE COMPLETION MEASURES AND MILESTONE ACTIVITIES FOR PROJECT STAGES**

APTA recommends that project sponsors drive the project delivery process and FRA monitors it to ensure effective obligation of their funds, oversee safety, and assist in the build out of a national network. In general, APTA recommends that any milestones should be flexible and reasonable to encourage project progression.

We do not recommend specific FRA approvals or ratings to allow projects to progress through stages. In the interest of streamlining, we recommend considering allowing project sponsors to self-certify that they are meeting program requirements for applicable projects. Control over review times may also be considered.

APTA recognizes that the lack of clarity of the commitments of project stakeholders can be a significant risk to project delivery and operation. One of the functions of Project Development should be to identify all parties' roles and responsibilities for the implementation and operation of intercity passenger rail service. During Project Development, the project sponsor(s) should develop an inventory of any entities that have approval authority or a role in obligating the project funds. The inventory would include approvals needed from the Class I railroads. FRA should require resolutions or letters of support from each of these entities similar to the FTA CIG process, including support from the local MPO and inclusion in the Regional Transportation Plan. Adoption by governing bodies and partnering agencies would indicate that a stage is completed and signal a seminal approval for the adopted alternative, including the route and stations.

At the point when FRA commits funding, FRA should ensure that the project is able to withstand political changes and that funds will be obligated throughout the life of the project. This can be accomplished by requiring project sponsors to demonstrate local financial commitment, not unlike in the CIG program.

As a consideration in moving forward (not a requirement) FRA should also encourage as much local support and concurrence as possible.

#### **Specific to the Design Review & Approval**

Currently FRA reviews and approves design documents throughout the life of a project. FRA review/approval is conducted after project sponsors have incorporated comments from other stakeholders. We recommend that FRA adopt FTA practice, which would not require submission, review, or approval by FRA. Any FRA oversight on design should be limited to self-certification that the design was prepared in compliance with all required codes and regulations.

We also recommend that FRA approval by other stakeholder railroads be limited to self-certification that the project sponsor has received detailed design comments from the stakeholder parties and that the comments have been incorporated into the design

## **5. COMMENTS ON PROJECT MANAGEMENT TOOLS**

### **Project Management Plan**

APTA agrees with the PMP elements proposed by FRA and its alignment with FTA practice. However, APTA recommends that FRA allow flexibility in how project sponsors structure their budgets in PMP submissions. Flexibility would allow project sponsors to structure project budgets the same way they would for non-federally assisted projects, improving the accuracy of cost estimates for each work element and avoiding the FRA's lengthy budget revision process if estimates are incorrect. We also urge FRA to allow flexibility in how dollars are used for each work element and allow dollars to be shifted around if needed, consistent with the FRA-funded scope.

### **Schedule**

No comments.

### **Capital Cost Estimate**

APTA supports standard capital cost (and O&M costs if possible) spreadsheets similar to FTA as well as standard guidance or method to account for inflation across projects in a given year. We support the Monte

Carlo or similar statistical method as a good practice in cost estimating, but request that the method be applied only at certain milestones and that it be integrated into the standard cost spreadsheet. APTA suggests that O&M costs, including the lifecycle costs of maintenance, be specifically required when appropriate for the project.

APTA disagrees with FRA's proposal that projects should only calculate total project cost in year-of-expenditure (YoE) dollars. We recommend flexibility in whether project sponsors use midpoint of construction method or the YoE method. Project sponsors should be able to use the method that fits each individual project given its size, scope, and current lifecycle.

APTA disagrees with FRA's proposal that risk review should be conducted by a party independent of the project sponsor. The project sponsor has the most knowledge of the project and better understanding of the impact of risks.

We recommend that project sponsors hold a workshop to perform risk modeling scenarios, led by an internal party independent of the project team and invite FRA to participate. We recommend that the proposed risk assessment of P65 only be required for projects at or beyond 30% design

#### **Financial Plan**

FRA should clarify "availability of funding" to mean that all required approvals for funding from governing bodies have been secured, such as an approved capital plan. We recommend that the Initial Financial Plan and annual updates be reviewed by an internal party independent from the project team and self-certified by the project sponsor. We recommend that FRA provide the basis for review/approval required for any section(s) of the Financial Plan that is reviewed/approved by FRA or an external party

We request that any specific timing requirements for submitting the Initial Financial Plan and annual updates, including the expected time between submission and approval (if required), be clarified in detail.

### **6. COMMENTS ON PUBLIC PRIVATE PARTNERSHIPS AND INNOVATIVE PROCUREMENTS**

APTA recognizes the important role the private sector plays in the development of an intercity passenger rail program. Most passenger trains operate on privately-owned freight railroad tracks. FRA encourages private sector projects in a reasonable fashion as well as public private partnerships as a key component to delivering intercity rail projects. FRA should emphasize projects that advance the regional economic development goals to include, but not be limited to, public-private partnerships and transit-oriented and supportive developments.

APTA appreciates the opportunity to comment and looks forward to further collaboration with FRA on this guidance. For additional information, please contact Linda Ford, APTA General Counsel, at (202) 496-4808, or [lford@apta.com](mailto:lford@apta.com).

Sincerely yours,



Paul P. Skoutelas  
President and CEO