



American Public Transportation Association

Legislative Committee

Agenda

April 7, 2024

3:00 p.m. – 5:00 p.m. ET

JW Marriott Washington, DC

Room: Grand Ballroom Salons II-IV (Ballroom Level)

1. Welcome and Call to Order—Matthew O. Tucker, Chair, and Leslie S. Richards, Vice Chair
2. Approval of Minutes of December 7, 2023 Legislative Committee Meeting—Matt Tucker
3. Remarks from APTA Leadership
4. Federal Transit Administration (FTA) Update—Paul Kincaid, Associate Administrator for Communications and Congressional Affairs, Federal Transit Administration
5. Legislative Update and Advocacy Strategy—Ward McCarragher, Vice President, Government Affairs and Advocacy
6. Regulatory Update—Stacie Tionson, Senior Director, Government Affairs and Advocacy
7. APTA Task Force on Strengthening U.S. Bus Manufacturing—Dorval R. Carter, Jr., Chair, Bus Manufacturing Task Force
8. U.S. Department of Transportation's Disadvantaged Business Enterprise Program and Recent Legal Challenges—Ann-Therese Schmid, Partner, Nossaman LLP
9. Implementation of the Bipartisan Infrastructure Law and Surface Transportation Reauthorization—Leslie Richards
10. Communications Advocacy Strategy—
TJ Doyle, Vice President, Communications and Marketing
Will Taliaferro, Partner, GMMB
Dana Cronyn, Senior Vice President, GMMB

11. Advocacy Afternoon—Kevin Schultze, President, Soapbox Consulting, LLC
12. Open Discussion
13. Adjourn

ENCLOSED DOCUMENTS

- APTA Legislative Steering Committee Roster (04.01.2024)
- Minutes of December 7, 2023 Legislative Committee Meeting (04.01.2024)
- APTA Legislative Update (04.01.2024)
- APTA Legislative Agenda Palm Card (04.01.2024)
- APTA TALKING POINTS THUD Appropriations: Public Transit (04.01.2024)
- APTA TALKING POINTS THUD Appropriations: Passenger Rail (04.01.2024)
- APTA MESSAGING GUIDE Talking About the Economic Impact of Public Transportation (04.01.2024)
- [APTA Capital Investment Grants Project Pipeline Dashboard](#) (03.11.2024)
- APTA FACT SHEET President's FY 2025 Budget Request: Real Property Acquisition (04.01.2024)
- APTA POLICY BRIEF Public Transportation Ridership Update (04.2024)
- [APTA Bus Manufacturing Task Force Recommendations](#) (01.2024)
- Disadvantaged Business Enterprise Recent Legal Challenges Analysis (04.06.2024)



American Public Transportation Association

Legislative Steering Committee Roster (2023 - 2024)

April 1, 2024

Committee Chair

Matthew O. Tucker (Term began December 2022);
Matthew.Tucker@hdrinc.com; 760.277.5252

Committee Vice Chair

Leslie S. Richards (Term began December 2022)
lrichards@septa.org; 215.964.5086
Staff Advisor: Ward McCarragher

Legislative Committee Subcommittees

Business Member Legislative Subcommittee

Brian Tynan, Chair; brian.tynan@aeacom.com; 202.772.0752
Caroline Decker, Vice Chair; caroline.decker@wsp.com; 202.695.0809
Staff Advisor: Melissa Mejias

Mission: Identify legislative and regulatory issues of particular interest to APTA Business Members; provide input for all subcommittees on issues relevant to Business Member interests; organize advocacy initiatives for Business Members and provide support and assistance to the overall APTA legislative program.

Commuter and Intercity Passenger Rail Subcommittee

Naomi Renek, Co-Chair; naomi.renek@mtacd.org; 917.991.5874
Julie A. White, Co-Chair; juliewhite@ncdot.gov; 984.218.0087
Staff Advisor: Benji Schwartz

Mission: Develop a legislative advocacy program that advances the interests and enables the growth and development of commuter rail operators and intercity passenger rail; identify legislative and regulatory issues of particular interest to commuter rail operators and intercity passenger rail; and comment on industry-wide legislative policies as they relate to commuter rail operations and intercity passenger rail.



American Public Transportation Association

Federal Procedures and Regulations Subcommittee

Christopher P. Boylan, Chair; cboylan@gcany.net; 212.687.3131

Rick Bacigalupo, Vice Chair; rick@cardinalinfrastructure.com; 714.318.8913

Kate Mattice, Vice Chair; katemattice@novatransit.org; 571.457.9523

Staff Advisor: Katie Corr

Mission: Review, comment on, and make recommendations on federal regulatory and administrative policies and procedures, and on legislation that relates to such policies and procedures, issued or administered by the Department of Transportation, the Environmental Protection Agency, and the Departments of Energy, Labor, Justice, and Homeland Security.

Funding, Finance, and Tax Policy Subcommittee

Sharon Greene, Co-Chair; sharon.greene@infrastrategies.net; 714.743.0118

Debra A. Johnson, Co-Chair; debra.johnson@rtd-denver.com; 720.392.6473

Peter Rogoff, Vice Chair; peter@contortagroup.com; 206.240.6854

Staff Advisor: Benji Schwartz

Mission: Develop, analyze, coordinate and make recommendations on the advancement of legislative, regulatory and administrative proposals, strategies and policies pertaining to the funding and financing of federal transportation programs; advocate for funding and finance initiatives, including traditional transportation funding methods, innovative finance techniques and tax-related initiatives that positively impact the public transportation industry.

Intergovernmental Issues Subcommittee

Marlene B. Connor, Co-Chair; mbconnor@mcntp.com; 413.539.9005

Rick Ramacier, Co-Chair; rramacier@outlook.com; 925.383.2268

Staff Advisor: Jillian Kinder

Mission: Identify and make recommendations on legislative and regulatory issues that affect transit industry relations with, and the coordination of transportation services by, the Departments of Health and Human Services, Labor, Education, and Housing and Urban Development; identify and make recommendations on legislative and regulatory issues that affect the transit industry under the Americans with Disabilities Act and in the provision of service to people with disabilities; identify legislative issues and review and comment on recommendations regarding research and development concerns, issues, the Transit Cooperative Research Program, university centers, transportation institutes, and related issues.



American Public Transportation Association

Small Operations Subcommittee

Allan Pollock, Chair; allan.pollock@cherriots.org; 503.588.2424

Alexander Clifford, Vice Chair; aclifford@sjrtd.com; 209.467.6691

Staff Advisor: Katie Corr

Mission: Identify issues of particular concern to Small Operators and comment on all subcommittee or full committee issues of importance to Small Operator interests.

Transit Board Members Legislative Subcommittee

Beth Holbrook, Chair; bholbrook@rideuta.com; 801.867.5552

Balwinder Singh, Vice Chair; bsingh@sanjoaquinRTD.com; 209.467.6613

Staff Advisor: TaNeesha Johnson

Mission: Help Transit Board Members become better advocates for public transportation and get in lock-step with APTA Legislative Committee plans and advocacy initiatives, especially authorization of new surface transportation legislation; identify strategies to leverage Board Members' influence in states and local communities to support their transit agencies and CEOs through coordination with APTA.

Additional Members of the Steering Committee

Erin Rogers, Chair, Bus and Paratransit CEOs Committee;

erin.rogers@omnitrans.org; 909.379.7121

Catherine Rinaldi, Chair, Commuter Rail CEOs Committee;

crinaldi@mnr.org; 646.529.0203

Dawn Distler, Chair, Mid-Size Operations Committee;

dawn.distler@akronmetro.org; 330.564.2211

Carolyn Gonot, Chair, Rail Transit CEOs Committee;

carolyn.gonot@vta.org; 408.321.5559

Allan Pollock, Chair, Small Operations Committee;

allan.pollock@cherriots.org; 503.588.2424



American Public Transportation Association

Committee and Subcommittee Staff

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**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
LEGISLATIVE COMMITTEE MEETING**

**Thursday, December 7, 2023
1:30 p.m. – 4:30 p.m. ET**

MINUTES

1. Welcome and Call to Order – Matthew O. Tucker, Chair

Matthew Tucker, Legislative Committee Chair, welcomed the Legislative Committee members to Washington, DC, and called the meeting to order. Chair Tucker gave a special acknowledgement and welcome to the members who have joined the Legislative Committee since the last meeting in Orlando, FL.

2. Approval of Minutes of October 8, 2023 Legislative Committee Meeting – Matt Tucker

Chair Tucker presented the minutes of the October 8, 2023 Legislative Committee meeting for approval. A motion was made to approve the minutes, which was seconded, and then approved without objection.

3. Remarks from APTA Leadership

APTA Chair Michele Wong Krause provided opening remarks, thanking Chair Matt Tucker for his leadership of the Committee. She recognized the new Chair and Vice Chair of the RCA Council, Denise Figueroa, Board Member for the Capital District Transportation Authority in Albany, New York, and Bacarra Mauldin, Deputy Chief Executive Officer for the Memphis Area Transit Authority in Tennessee. She acknowledged the vital role the RCA Council plays in APTA's advocacy efforts on Capitol Hill and the need for full funding for both public transportation and passenger rail through federal transportation appropriations.

Paul Skoutelas, APTA President and CEO, welcomed members to Washington, DC, and highlighted the Commuter Rail Workshop, which took place on December 6. The Commuter Rail Workshop included discussion of commuter rail ridership, safety, and resiliency, and planning for Capitol Hill visits. Skoutelas also emphasized that it is critical that we work together as an industry to protect investments in public transit and passenger rail as the future for continued funding is unclear.

Catherine Rinaldi, President, MTA Metro-North Railroad, and Deborah Johnson, General Manager and CEO of Denver's Regional Transportation District, provided a recap of their discussions with House and Senate Committee staff as a part of the APTA Commuter Rail Workshop. Discussions included ridership, positive train control, and liability insurance.

4. Opportunities and Challenges of Implementation of the Bipartisan Infrastructure Law—The Honorable Christopher Coes, Assistant Secretary for Transportation Policy, U.S. Department of Transportation

Assistant Secretary Christopher Coes praised the partnership between U.S. Department of Transportation (DOT) and APTA. Infrastructure is a priority for the Biden-Harris Administration. Coes noted that each piece of legislation passed and implemented by this Administration, including the American Rescue Plan, Infrastructure Investment and Jobs Act (IIJA), and Inflation Reduction Act (IRA), focuses on key objectives: addressing climate, equity, and accessibility, and creating millions of well-paying jobs.

Coes acknowledged a few challenges facing the industry, such as the transit fiscal cliff. The Biden Administration is encouraging the use of flex funding. He noted that \$2.3 billion in funds were transferred to transit in Fiscal Year (FY) 2023, and the FY 2024 President Budget Proposal included provisions allowing large urban areas to flex to continue to support operations. Rural and tribal agencies will be granted a 100 percent Federal share for mobility programs.

Additional challenges include the physical and verbal violence that transit workers face on a day-to-day basis. DOT is committed to helping protect the health and life of transit riders and workers through rulemaking, special directives, and training programs. DOT is working with key stakeholders, like APTA, to advance the implementation of the IIJA. The Administration is also focused on reducing administrative burdens to better ensure the flow of IIJA funding, including shortening grant agreements and frontloading grant dollars to fast-track other items necessary to begin projects; improving the permitting process; digitizing the National Environmental Protection Act (NEPA) process; and increasing staffing and technology.

Coes also highlighted upcoming grant opportunities and proposed rules. Specifically, he noted that \$50 million in competitive funding will be available through the Federal Highway Administration Congestion Relief Program and transit projects are eligible. DOT will also launch a combined application for the Reconnecting Communities Program and Neighborhood Access Grants to create safer and more inclusive infrastructure; transit will be eligible to compete for this funding. In addition, he noted that the Department's Disadvantage Business Enterprise final rule is at the Office of Management and Budget for review.

Last, the Build America Bureau will implement a new Innovative Finance and Asset Concession Grant Program, a \$40 million financing program to fund state and local government technical, financial, and legal advisory service costs for alternative project delivery through a technical assistance team. The grants will enable recipients to develop and evaluate public-private partnerships, including asset concessions, to explore opportunities for innovative finance and delivery.¹

¹ See U.S. Department of Transportation Build America Bureau, [Innovative Finance and Asset Concession Grant Program](#).

5. Climate Initiatives and Tax Credits of the Inflation Reduction Act—Seth Hanlon, Deputy Assistant Secretary for Tax and Climate Policy, U.S. Department of the Treasury

Deputy Assistant Secretary Hanlon emphasized that reducing U.S. greenhouse gas (GHG) emissions is one of the Biden-Harris Administration's top climate goals, including: reducing GHG emissions 50-52 percent below 2005 levels by 2030; achieving a net-zero emissions economy by 2050; and reaching 100 percent carbon pollution-free electricity by 2035.

The IRA includes tax incentives for a broad range of activities that support building a clean energy economy, as well as certain cross-cutting provisions and bonuses that apply to multiple incentives and are geared to advance specific policy goals. It also established novel tax credit monetization provisions. The IRA tax incentives work in tandem with other federal policies, including emissions standards for power plants and vehicles, a new methane emissions charge, investments in electrical grid and electric vehicle charging infrastructure, and financing tools to promote a just transition and support technological innovation. Since the IRA was enacted, the U.S. Department of the Treasury and the Internal Revenue Service have issued more than 40 guidance items. Additional information and guidance will be released soon on the Alternative Fuel Infrastructure (30C) and Commercial Clean Vehicle (45W) credit programs.

The Department of the Treasury is looking to partner with stakeholders, such as APTA, to inform their constituencies about the tax credits and is willing to participate in briefings on IRA programs to ensure that transit agencies understand the availability and how to apply for the credits.

6. APTA Task Force on Strengthening U.S. Bus Manufacturing— Paul Skoutelas, APTA President and CEO

Before his update on the Bus Manufacturing Task Force, Paul Skoutelas provided remarks on the passing of fellow APTA colleagues, Mort Downey, Clint Forbes, and Anja Graves, and their legacy and impact on the transit industry.

The APTA Task Force on Strengthening U.S. Bus Manufacturing was established by APTA Chair Michele Wong Krause. Skoutelas stated that the new Task Force will examine issues facing Original Electric Bus Manufacturers, including Gillig and New Flyer. APTA is working with the Federal Transit Administration (FTA) and the White House to address these critical issues. The Task Force is expected to release an initial set of recommendations that can be completed quickly in the new year.

7. Legislative and Regulatory Update—Ward McCarragher, Vice President, and Stacie Tiongson, Senior Director, Government Affairs and Advocacy (GAA)

Ward McCarragher provided a Legislative Update, including changes in the speakership of the U.S. House of Representatives. On November 14 and 15, Congress passed a continuing resolution (CR) extending FY 2023 funding through January 19, 2024, for four appropriations bills, including the Transportation, Housing and Urban Development, and Related Agencies

(THUD) Appropriations bill. Appropriations for an additional eight bills expire on February 2, 2024. McCarragher highlighted potential government shutdown impacts and stated that FTA will not shutdown since its programs are funded by the Highway Trust Fund.

Switching to APTA's advocacy efforts, McCarragher provided a snapshot of APTA's outreach to House offices to defeat several harmful amendments offered by Rep. Scott Perry (R-PA) during debate on the House Transportation, Housing and Urban Development, and Related Agencies Appropriations bill (THUD Appropriations bill). The Perry amendments would have stripped critical funding from public transportation programs, such as Capital Investment Grants. The House of Representatives did not vote on final passage of the bill.

Stacie Tionson provided an update on APTA's Regulatory Reform Initiative and Recommendations regarding real property acquisition, NEPA and National Historic Preservation Act applicability to bus shelters, drug and alcohol testing protocols, FTA spare ratio policy for buses, and commercial driver's license testing requirements. Initial recommendations were approved by the Legislative Committee at the October 8, 2023 Annual Meeting. Tionson outlined actions APTA has taken since October 8, including sending a letter to the U.S. Department of Health and Human Services (HHS) urging it to certify laboratories and oral fluid collection devices; requesting a meeting with HHS officials; and, at APTA's request, the Transit Cooperative Research Program is undertaking research to examine transit workforce issues and cannabis use. Tionson also indicated that FTA had recently issued a new webpage on Spare Ratio Frequently Asked Questions, which will be reviewed prior to launching an assessment of the impact of FTA's spare ratio policy on transit agencies transition to zero emissions fleets.

8. A Fireside Chat: The Year Ahead in Congress and Politics— Matt Tucker featuring The Honorable Doug Jones, Former Senator (D-AL) and Counsel, ArentFox Schiff LLP, Washington, DC; and The Honorable Philip English, Former Representative (R-PA) and Senior Policy Advisor, ArentFox Schiff LLP, Washington, DC.

Former Senator Doug Jones and former Representative Phil English participated in a fireside chat and provided their perspectives on what is needed to ensure continued funding of public transportation programs. They noted that funding needs to be seen as an investment that is bipartisan and largely agreed upon by both parties. They also provided their perspectives on the FY 2024 THUD appropriations bill and appropriations process; the important role public transit and passenger rail play in addressing climate change; permitting reform as it relates to public transit; political trends and outcomes for the 2024 Presidential and Congressional elections; and the importance of consensus building across all levels of government.

9. Open Discussion

Chair Tucker opened the floor for discussion.

10. Adjourn

Chair Tucker thanked everyone for their participation. There being no further business, a motion was made and seconded to adjourn the meeting. Chair Tucker adjourned the meeting.



Legislative Update

This year, APTA is focused on three major initiatives:

- **aggressively advocating for public transportation investments** in the Fiscal Year (FY) 2025 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** focused on specific Members of Congress.

Aggressively Advocating for Public Transportation Investments in the FY 2025 THUD Appropriations Bill

In March 2024, Congress enacted the THUD Appropriations Act, 2024 (P.L. 118-42, Division F). The THUD Appropriations Act provides the overwhelming majority of public transit and passenger rail investments authorized in the IIJA. APTA strongly supported the final THUD Appropriations Act.

The THUD Appropriations Act, together with the IIJA's advance appropriations, provides **\$20.9 billion for public transit** in FY 2024, which is **\$364 million (2 percent)** less than the FY 2023 enacted level. This total funding represents **96 percent** of the amount authorized in the IIJA. The THUD Appropriations Act fully funds the public transit contract authority of \$14 billion as provided by the IIJA. The Act, together with the IIJA advance appropriations, provides \$3.8 billion for Capital Investment Grants (CIG). Currently, communities are requesting more than \$45.3 billion of CIG funds in FY 2024 and subsequent years to fund construction of 66 projects in 24 states. View [APTA's CIG Project Pipeline Dashboard](#).

In addition, the THUD Appropriations Act and IIJA provide **\$16.3 billion** for passenger and freight rail in FY 2024, which is **\$383 million (2 percent)** less than the FY 2023 enacted level. This total funding represents **80 percent** of the amount authorized in the IIJA.

On March 11, 2024, President Biden submitted his FY 2025 Budget Request to Congress. The President requests \$21.1 billion for public transit and \$16.4 billion for passenger rail in FY 2025. The President's Budget Request also includes several important policy proposals, such as expanding public transit agencies' authority to acquire land prior to the completion of National Environmental Policy Act review.

This year, APTA urges Congress and the Biden-Harris Administration to honor the promise of the Bipartisan Infrastructure Law by fully funding public transportation. Specifically, we urge Congress and the Administration to:

- **provide at least \$21.9 billion for public transit and \$20.6 billion for passenger rail in FY 2025;** and
- **accelerate project delivery by enacting commonsense regulatory reform,** such as streamlining real property acquisition for public transit projects.

***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 subject to appropriations 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 (i.e., advance appropriations) and \$36.1 billion of General Fund authorizations subject to appropriations 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) on successful implementation of the IIJA. Since enactment of the legislation, DOT has awarded billions of dollars for public transit and passenger rail competitive grants. In addition, DOT, the Federal Transit Administration, the Federal Railroad Administration, and other agencies have issued final rules, Notices of Proposed Rulemaking, Guidance, Dear Colleague letters, and Requests for Information regarding IIJA implementation. APTA has actively engaged in this regulatory process and provided numerous comments on IIJA implementation, including comments on public transit safety, Buy America, CIG, and innovative financing.

To assist APTA members in tracking IIJA funding apportionments and competitive grant opportunities and policy actions, APTA has created 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 Notices of Funding Opportunities. 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 \$3.2 billion for Neighborhood Access and Equity Grants and \$2 billion for Low-Carbon Transportation Materials Grants.

APTA is engaging with DOT and the U.S. Department of the Treasury on efficient implementation of the Inflation Reduction Act. APTA is focused on successful delivery of the new commercial clean vehicle tax credit. 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. On March 11, 2024, the Department of the Treasury issued a final rule on the elective payment of applicable credits, including the new commercial clean vehicle tax credit. APTA is actively working to ensure that public transit agencies benefit from this provision and receive a direct payment in lieu of a tax credit.

Carrying Out a Holistic Advocacy Outreach Effort

Finally, APTA is carrying out a holistic outreach effort focused on specific Members of Congress, particularly key transportation leaders. This initiative involves the meticulous identification of key transportation lawmakers and the execution of a coordinated advocacy campaign, together with APTA members, aimed at advancing APTA's objectives. This strategy is focused on grassroots advocacy, and **we urge APTA members to:**

- use APTA's Action Center for targeted advocacy campaigns;
- utilize APTA's Industry Footprint to highlight the breadth of public transportation providers, businesses, and funding in your Congressional District and State;
- encourage APTA public transit agencies to use APTA's My Economic Impact Tool to calculate the economic impact of your transit service;
- engage Voices for Public Transit advocates for targeted advocacy campaigns; and
- create local media campaigns (e.g., videos, editorials, letters to the editor).

For instance, APTA has created a specific advocacy campaign for fully funding CIG. Last year, APTA worked to encourage Representatives to sign a letter, led by Representative Earl Blumenauer (D-OR), to House Committee on Appropriations leaders to fully fund CIG in the FY 2024 THUD Appropriations bill. Utilizing its [CIG Project Pipeline Dashboard](#), APTA engaged CIG project sponsors to assist in this effort and 124 Representatives signed the letter urging full funding of CIG—double the number of signers in FY 2022. This year, in addition to continuing to build upon this success, APTA is urging CIG project sponsors to contact their Members of Congress to submit programmatic requests to the THUD Subcommittee for full funding of the program.

More generally, we strongly encourage all APTA members to meet with their Members of Congress to:

- outline the role that public transportation plays in your communities and the nation's economy; and
- educate them on the need to honor the promise of the Bipartisan Infrastructure Law by fully funding public transportation in the FY 2025 THUD Appropriations bill.

At both the Legislative Conference and the annual Fly-In, APTA assists members with scheduling meetings with their Congressional delegations to facilitate members' advocacy activities. During the record-setting 2023 Fly-In, 60 APTA members conducted 105 in-person meetings with Members of Congress and staff.

Most importantly, we urge APTA members to tell your stories of the difference that these public transit and passenger rail investments are making in the lives of people of your communities.

Public Transportation Grows the Economy and Creates Opportunities

- Public transportation **grows the economy and connects people to jobs, education, healthcare, businesses, and other opportunities.**
- It is a **\$79 billion industry** that directly **employs more than 430,000 people and supports millions of private-sector jobs.**
- Every **\$1 billion invested** in public transportation **creates or sustains** nearly **50,000 jobs** across the entire economy.
- Each **\$1 invested** in public transportation **generates \$5 in long-term economic returns.**
- **9 of 10 transit trips directly benefit the economy** by bringing people to where they spend and earn money.
- **Buy America laws** ensure that public transportation funds are used to **create American jobs, construct our public transportation systems, and manufacture railcars and buses in the U.S.**

**See How Public Transportation
Benefits Your Community**

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**American
Public Transportation
Association**

Honor the Promise of the Bipartisan Infrastructure Law by Fully Funding Public Transportation

- **Provide \$21.9 billion for Public Transit and \$20.6 billion for Passenger Rail in FY 2025** to bring public transportation systems to a state of good repair and meet the mobility demands of communities; and
- **Accelerate Project Delivery** by enacting commonsense regulatory reform, such as streamlining real property acquisition for public transit projects.



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THUD Appropriations: Public Transit

April 1, 2024

In March 2024, Congress enacted the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2024 (P.L. 118-42, Division F) (THUD Appropriations Act). The THUD Appropriations Act provides \$20.9 billion for public transit investments in Fiscal Year (FY) 2024. On March 11, President Biden submitted his FY 2025 Budget Request, proposing \$21.1 billion for public transit.

APTA urges Congress to honor the promise of the Bipartisan Infrastructure Law by fully funding public transit in the FY 2025 THUD Appropriations bill.

Public transportation is a **\$79 billion** industry that directly employs more than **430,000** people and supports **millions** of private-sector jobs.

APTA urges Congress to provide at least \$21.9 billion for public transit in the THUD Appropriations bill (when combined with the advance appropriations of the Bipartisan Infrastructure Law). These investments will help bring public transit systems to a state of good repair and meet the mobility demands of communities.

For Capital Investment Grants (CIG), APTA urges Congress to provide **\$4.6 billion** to help communities meet mobility demands. Today, **66 projects in 24 States** across the nation are seeking **\$45.3 billion** of CIG funds.



Every \$1 invested in public transit generates \$5 in long-term economic returns.



Every \$1 billion invested in public transit creates or sustains nearly 50,000 jobs across the entire economy.



9 of 10 transit trips directly benefit the economy by bringing people to where they spend and earn money.

APTA urges Congress to:

- ✓ **Provide at least \$21.9 billion for Public Transit in the FY 2025 THUD Appropriations bill**, including \$4.6 billion for Capital Investment Grants;
- ✓ **Accelerate project delivery by enacting commonsense regulatory reform**, such as streamlining real property acquisition for public transit projects.



THUD Appropriations: Passenger Rail

April 1, 2024

In March 2024, Congress enacted the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2024 (P.L. 118-42, Division F) (THUD Appropriations Act). The THUD Appropriations Act provides \$16.3 billion for passenger rail investments for Fiscal Year (FY) 2024. On March 11, President Biden submitted his FY 2025 Budget Request, proposing \$16.4 billion for passenger and freight rail.

APTA urges Congress to honor the promise of the Bipartisan Infrastructure Law by fully funding passenger rail in the FY 2025 THUD Appropriations bill.

Public transportation is a **\$79 billion** industry that directly employs more than **430,000** people and supports **millions** of private-sector jobs.

APTA urges Congress to provide at least \$20.6 billion for passenger rail in the THUD Appropriations bill (when combined with the advance appropriations of the Bipartisan Infrastructure Law). These investments will help bring passenger rail systems to a state of good repair and meet the mobility demands of communities. Today, the Federal Railroad Administration is advancing 69 Corridor projects across 44 States.

For Amtrak, APTA urges Congress to provide **\$4.0 billion** in the THUD Appropriations bill to help it meet the mobility demands of its customers. Congress must also fully fund **Federal-State Partnership for Intercity Passenger Rail, Consolidated Rail Infrastructure and Safety Improvement, and Railroad Cross Elimination Grants**.



Every \$1 invested in public transit generates \$5 in long-term economic returns.



Every \$1 billion invested in public transit creates or sustains nearly 50,000 jobs across the entire economy.



9 of 10 transit trips directly benefit the economy by bringing people to where they spend and earn money.

APTA urges Congress to:

- ✓ **Provide at least \$20.6 billion for Passenger Rail in the FY 2025 THUD Appropriations bill**, including fully funding Federal-State Partnership for Intercity Passenger Rail, Consolidated Rail Infrastructure and Safety Improvement, and Railroad Cross Elimination Grants.

Overview: Talking About the Economic Impact of Public Transportation

In 2024, the American Public Transportation Association (APTA) Communications conducted message research to improve how we tell the story of public transportation's economic impact to local and national elected officials.

Our testing found that more than 85% of survey respondents believe public transportation is important to the economy.

This positive sentiment means your message will be well received by elected officials — and that your voice is critical to explaining the economic value of public transportation and securing ongoing support and funding.

As you meet with Members of Congress and their staff, as well as local elected officials in your communities, we want to shift conversations to focus on the national and local economic benefits of public transportation — beyond who rides or is employed by local systems.

We also found that our message was more persuasive — sometimes up to 12 times as much — when we used real stories and statistics.

Below is APTA's recommended key messaging for Congressional, staff, and local elected audiences, including examples of proof points and stories to bring our messages to life.

Key Message	Your Message	Customize for Your Area
Transit creates economic growth for our community and our country.	Public transportation doesn't just benefit those who ride it. Public transportation strengthens our economies by connecting employees to employers, customers to commerce, and communities to investment opportunities. Transit keeps our cities competitive and growing.	<i>How has public transit helped your community grow (E.g., attracting businesses, tax revenue or expanded housing and development)?</i> <i>What are examples of how public transportation is innovating for the future?</i>
Transit creates good-paying jobs across all sectors of the economy.	Public transportation employs more than 430,000 people and supports millions of private sector jobs. From companies that build buses to local transit systems, public transportation creates high-paying American jobs in key sectors like constructing, manufacturing, engineering, and operations.	<i>How many people does your business or transit system employ?</i> <i>How many American suppliers and companies do you use?</i>
Transit gets people where they need to go — families, students, and workers.	Public transportation also helps communities of all sizes flourish — connecting workers to jobs, helping people get to school, bringing children to daycare. Accessible, affordable public transportation helps families, students, and workers save money and pursue financial security.	<i>Do you have examples from the last year of public transportation carrying concert attendees, sports fans, or tourists?</i> <i>Does public transit in your area link to schools, major employers, health care services, etc.?</i>
We need to keep investing in public transportation.	Continued funding is crucial to keeping our community running and our economy strong.	<i>What are some examples of how your transit agency or company has used federal funding? Or plans to use funding?</i>

Deep Dive: Tailoring Your Economic Impact Messaging

Our research also found that certain key messages are more persuasive with each of APTA's audiences. Differences include:

When meeting with elected officials who may be concerned about spending or who have previously opposed transportation funding, emphasize the impact on our national economy and workers.

Public transportation is essential for America's economy:

- It supports hundreds of thousands of jobs every year, in every corner of the U.S., in industries from rail to operations. **Every \$1 invested in public transportation generates \$5 in long-term economic returns.**
- Funding transit today will generate strong economic returns that will keep the economy strong tomorrow. **Nearly \$42 billion in transit spending flows into the private sector — 65% increase since 2000.**

Public transportation is essential for American workers:

- Funding our public transit system creates good-paying jobs in manufacturing, construction, and operations. **For every \$1 billion invested, nearly 50,000 jobs are created or sustained across the entire economy.**
- Every company that supplies bus parts or builds railways needs workers. And so does every local transit system. **Public transportation relies on more than 2,000 suppliers in 48 states and Washington, D.C.**
- Sustained funding will keep American industry — and the workers that drive it — strong.

When meeting with elected officials who are supporters of public transit, emphasize families, local businesses, and sustainability.

Public transportation is essential for America's families:

- Public transportation helps Americans support their families and pursue their dreams — finding a better job, attending night school, getting to the doctor, or bringing a child to daycare. **Of all riders, 71% are employed and 7% are students.**
- Public transportation gives American families stability and security. **A family can save more than \$13,000 by taking public transportation and living with one less car.**

Public transportation is essential for America's local businesses:

- In small towns and big cities, public transportation gets people where they need to go and helps create bustling retail, service, and office hubs. **Home values were up to 24% higher near public transportation than in other areas.**
- By bringing people to work and connecting customers to businesses, public transit helps local business owners keep the lights on. **Nearly 2.8 million essential workers take public transportation to work every day — including more than 600,000 healthcare workers and 113,000 public safety and armed forces members.**

Public transportation is essential for sustainability and improved quality of life:

- From hybrid buses to light rail systems, public transportation is leading the way in clean technology development. **Nearly 20% of public transportation buses are hybrid-electric, compared to less than 1% of U.S. vehicles.**
- By using public transportation, workers, students, and families reduce their carbon footprint, decreasing air pollution and lowering health risks for everyone. **Public transportation's overall effects save the U.S. 6 billion gallons of gasoline annually.**



AMERICAN PUBLIC TRANSPORTATION ASSOCIATION FACT SHEET

PRESIDENT'S FY 2025 BUDGET REQUEST: REAL PROPERTY ACQUISITION

April 1, 2024

Issue Summary

Many public transit agencies face difficulties purchasing real property for operations and maintenance facilities because Federal Transit Administration (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 National Environmental Policy Act (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

- **Urge Congress to adopt section 165 of the President's Fiscal Year (FY) 2025 Budget Request, which expands public transit agencies' authority to acquire land prior to the completion of NEPA review.**

On October 8, 2023, the APTA Legislative Committee endorsed this concept, as outlined in President Biden's FY 2024 Budget Request.

APTA Actions

- **APTA will urge Congress to adopt section 165 of the President's FY 2025 Budget Request in its letter to Senate and House Committee on Appropriations leaders outlining APTA's priorities for the FY 2025 THUD Appropriations bill.**

Background

On July 11, 2022, FTA sent a Dear Colleague letter to remind project sponsors that the purchase of real property outside of existing transit corridors cannot proceed until the NEPA process is completed or until FTA has either determined that the project is exempt as a Categorical Exclusion (CE) (i.e., corridor preservation or there will be no substantial changes); issued a decision that there is "Finding of No Significant Impact"; or issued a combined or separate final Environmental Impact Statement and or Record of Decision, ultimately clearing the project.

On March 11, 2024, President Biden released his FY 2025 Budget Request, including a legislative proposal to add flexibility to FTA's policy on land acquisition prior to NEPA by amending 49 U.S.C. § 5323(q) to replace the term "right-of-way" with "real property interests", thereby expanding the opportunity for broader property acquisition prior to the completion of



environmental reviews. This proposal would bring FTA's authority into parity with the Federal Highway Administration's property acquisition authority.

During consideration of the FY 2024 THUD Appropriations bill, the Senate adopted a similar proposal (§ 168). APTA urged Senate and House Committee on Appropriations leaders to include this provision in the THUD Appropriations Act. However, the provision was not included in the final THUD Appropriations Act, 2024 (P.L. 118-42, Division F).



APTA Public Transportation Ridership Update

Key Takeaways

1. After falling to 20 percent of pre-pandemic levels in April 2020, public transit ridership has recovered to **79 percent** of pre-pandemic levels.
2. Transit riders took **7.1 billion trips** on public transportation in 2023, a **16 percent increase** over 2022.
3. Public transportation ridership levels increased throughout 2023, while office occupancy rates remained stagnant.
4. Success in ridership recovery has been dependent on transit service delivery and reliability and external factors, such as the makeup of local economies.
5. As clearly illustrated during the pandemic, public transportation provides mobility to essential workers, which has sustained transit ridership over the past four years.

National Ridership Picture

Return-to-office policies and a strong job market both have positive implications for public transportation ridership recovery. However, office occupancy rates remained flat at 50 percent throughout 2023, according to Kastle Systems.¹ Regardless of slow office occupancy recovery, public transit ridership recovery has continued. This recovery indicates that transit agencies are having success in attracting non-commute trips. Current data remains limited, but indicators in several metro regions point to transit recovery being led by trips to and from residential and commercial areas as opposed to office/work centers. More time and data are needed to determine if this transit demand shift will remain the driving force for ridership return.

With transit ridership recovering at a much faster rate than office attendance, other factors must be considered for transit's rebound. Non-office jobs, such as work in restaurants and bars, have rebounded tremendously since March 2020. According to the National Restaurant Association, the restaurant industry was the largest job creator from January 2021 to May 2023.² Many restaurant jobs require late-night hours and are generally lower income than office jobs. Average bus rider demographics generally

¹ Kastle data aggregated from several weekly data update emails. www.kastle.com.

² <https://restaurant.org/research-and-media/media/press-releases/restaurant-job-growth-continues-nationwide/>.

align with those of restaurant or other late-night employees, indicating a significant reason for bus ridership increases leading overall transit recovery.

The structure and makeup of local economies also impact the degree of transit ridership decline. Technology-focused economies with an existing and prominent work-from-home culture initially noticed a steeper decline in ridership than those with more service industry jobs and essential workers who power the supply chain. Systems in college towns were also severely affected, as many universities closed and sent students home. Regions of the country that were hardest hit early in the pandemic (e.g., the Northeast, Seattle, and San Francisco Bay areas) had, in general, larger ridership drops than other areas of the country that saw the worst pandemic impacts later in 2020.

Bus ridership recovery has been the consistent leader compared to other transit modes largely due to bus rider demographics. According to APTA's *Who Rides Public Transportation*, 22 percent of bus riders are under the age of 25, twice the percentage of younger rail riders. With bus riders on average earning less than rail riders and often working non-office jobs, they have been a critical driver of ridership recovery for many public transit agencies.³ Regional differences in modal ridership return have presented themselves. Generally, Bus and Demand Response have led the way followed by Heavy/Light Rail and Commuter Rail trailing. However, some regions have bucked that trend. For instance, at the Massachusetts Bay Transportation Authority in the Boston area, Commuter Rail ridership return leads Heavy and Light Rail ridership return.

Ridership tracked closely with job growth generally, and service industry jobs more specifically. The cost of car ownership provides another insight into why people have been choosing public transit. A recent analysis conducted by APTA shows that riders can save more than \$13,000 annually by using public transit instead of driving.⁴

After a rapid decline in March and April 2020 to 19 percent of pre-pandemic levels, public transit ridership recovered quickly to approximately 37 percent of pre-pandemic ridership as of July 2020. National transit ridership remained at that approximate level until early 2021, rising to 42 percent of pre-pandemic levels by April 2021.

In April and May 2021, COVID-19 vaccines became widely available. The availability of vaccines resulted in another sustained increase in ridership, with national ridership rising from 42 percent in April to 53 percent in July 2021. During this time, data indicated that more people were returning to offices and starting to increase other types of outside-the-home activities.

Another surge in ridership growth occurred in September and October 2021. Many transit systems that served universities reported significant gains in fall and winter 2021 as students returned to campus. More employees returned to their offices during this time, though the uptake was tempered by the surge in COVID-19 cases due to the Delta variant.

Ridership remained steady through December 2021, when it stood at 58 percent of pre-pandemic ridership. In December, the COVID-19 surge due to the Omicron variant led to reduced travel, and it also

³ [APTA, *Who Rides Public Transportation*.](#)

⁴ <https://www.apta.com/research-technical-resources/research-reports/transit-savings-report/>.

had significant impacts on public transportation workforces and services. Many transit agencies reported difficulty with service reliability because of the number of operators, mechanics, and other transit workers required to stay at home because of COVID. Ridership dropped to 52 percent of pre-pandemic levels in early January 2022.

As the Omicron wave subsided, public transportation ridership began to rise again. From mid-February to April 2022, national public transit ridership was approximately 60 percent of pre-pandemic levels.

From late spring to fall 2022, ridership recovery continued. In May, national ridership was at 60 percent of 2019 levels; it grew to 66 percent of 2019 levels by September 2022. Ridership levels also increased during the fourth quarter of 2022. As of January 2023, national ridership stood at 71 percent of 2019 levels. National ridership remained at close to that level through the summer of 2023.

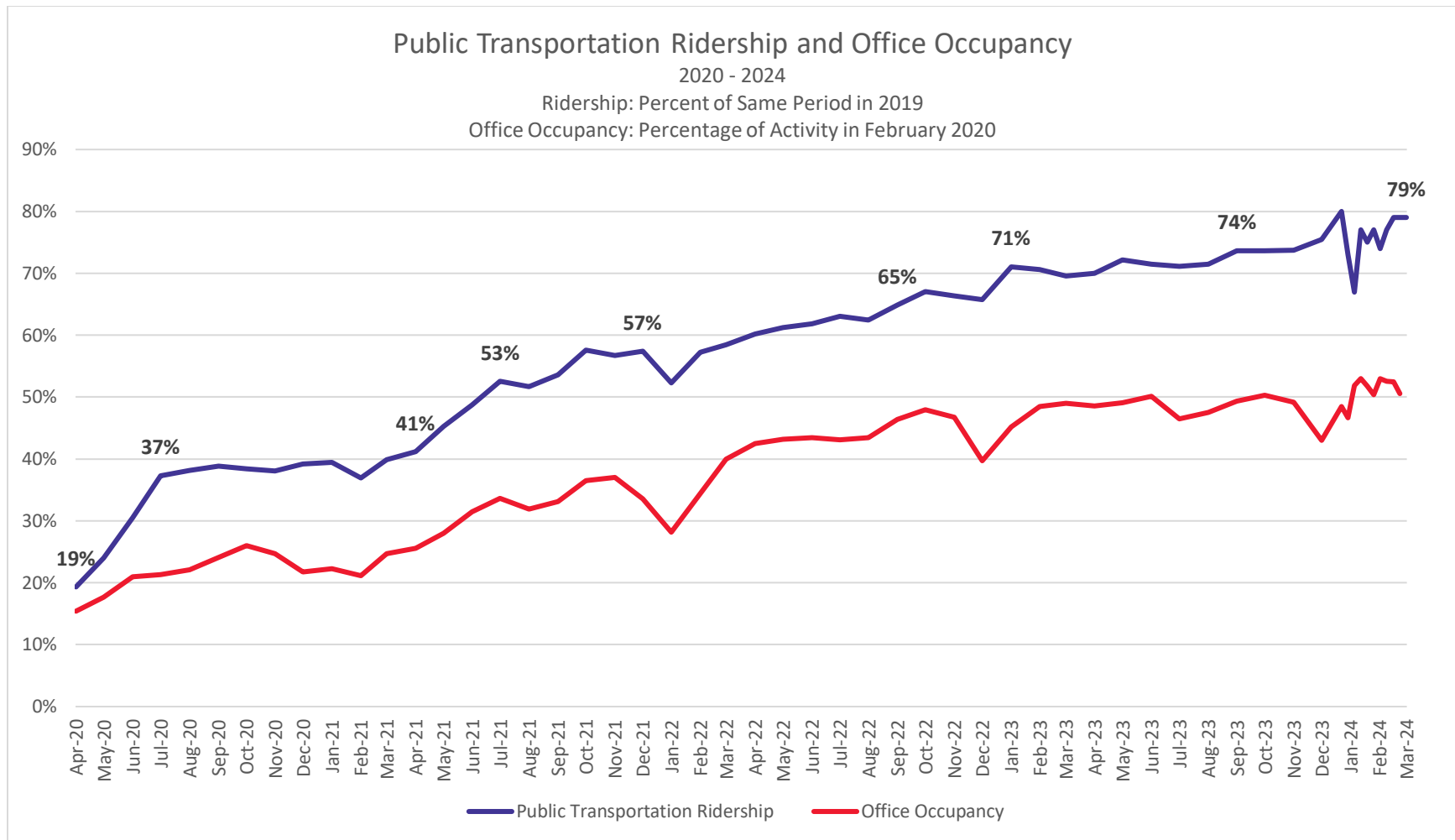
In the fall of 2023, public transit ridership began to increase again. In September 2023, ridership rose to 74 percent of 2019 levels, and remained at that level through the end of 2023. Public transit ridership rose 16 percent from 2022 to 2023, to 7.1 billion total trips in 2023. In the first three months of 2024, APTA's Ridership Trends Dashboard finds that U.S. public transportation ridership has fluctuated between 73 and 79 percent of 2019 levels, when comparing the same week in each year.

Important Trends

APTA's Quarterly Ridership Report data indicates that ridership recovery has differed based on city size. In general, smaller cities have recovered ridership to a higher level than larger cities. The largest urban areas (population more than 2 million) and medium-sized urban areas (population 500,000 to 2 million) have recovered ridership to approximately the same level when compared to 2019. In general, smaller cities tend to serve relatively fewer riders with alternatives such as teleworking. Office return data also suggests that proportionally more workers in smaller cities are working in offices than in larger cities. The data from medium-sized urban areas suggest that those areas have had particular difficulty attracting office workers and those with more options back to transit. Data from APTA's Quarterly Ridership Report indicates that, in Q4 2023, smaller cities (population 100,000 to 500,000) had recovered to 79 percent of 2019 transit ridership levels. The largest and medium-sized urban areas recovered to 74 percent of 2019 levels.

National public transit ridership has seen regular increases around September and October of each year. While corroborating data is difficult to find, it is possible that this ridership increase is because individuals often change schedules and routines around this time of year. The end of summer and the start of the school year may present an opportunity for families to reconsider how they get around, or how many days they choose to work in the office. New students start at colleges and universities across the country in the fall, often representing a large change in routine for those students. These changes in routine have the potential to encourage more public transit use and, in turn, increase ridership.

The following chart details public transportation ridership from April 2020 to March 2024, and office occupancy rates in 10 cities for the same time period. Ridership data is from APTA's 2020 - 2023 Quarterly Ridership Reports and APTA's Ridership Trends Dashboard, while office occupancy data is courtesy of Kastle Systems.



Sources:

APTA Quarterly Ridership Reports, April 2020 – December 2023; [APTA Ridership Trends Dashboard](#) January 2024 – March 2024; [Kastle Back to Work Barometer](#), Kastle Systems.

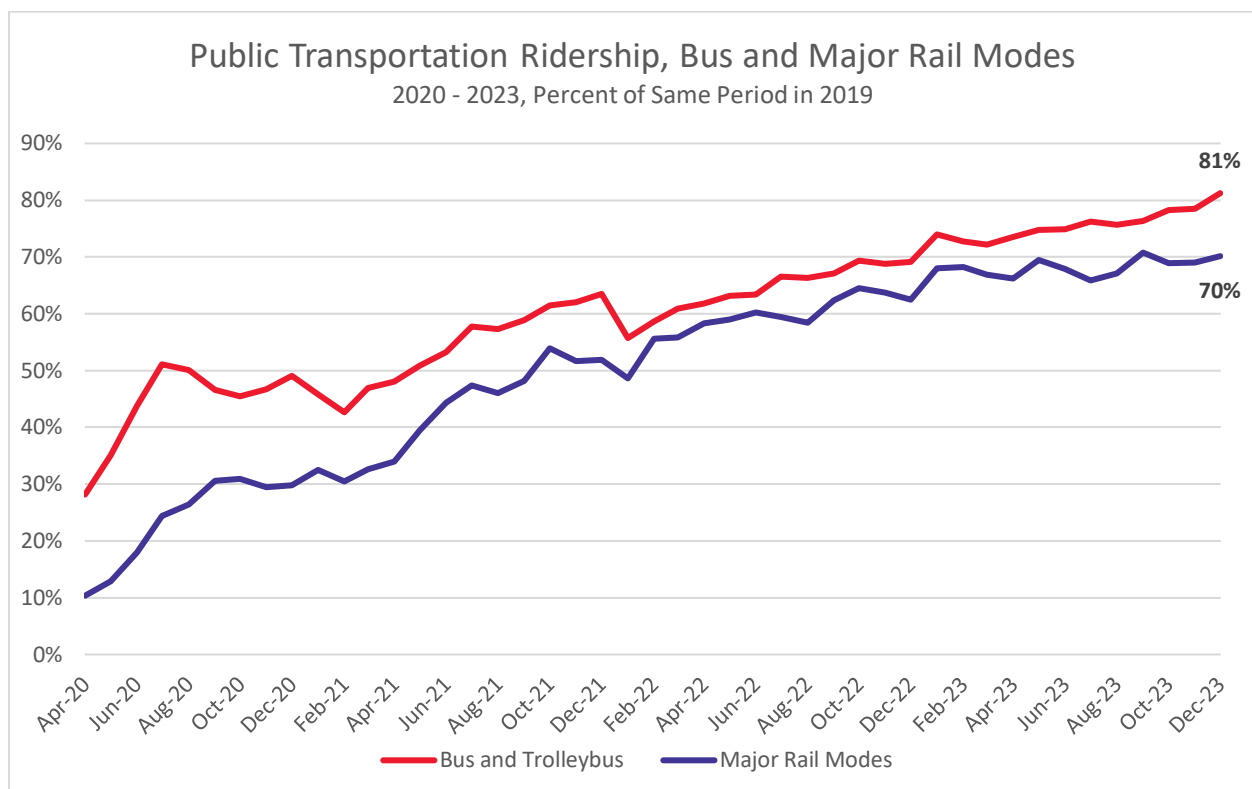
Modal Differences

Although all public transit modes saw significant decreases in ridership because of the COVID-19 pandemic, rail modes (i.e., heavy rail, light rail, streetcar, commuter rail, and hybrid rail) had comparatively larger decreases compared to bus modes. During the early part of the pandemic, rail ridership decreased to 10 percent of pre-pandemic levels in April 2020, while bus ridership decreased to 28 percent of pre-pandemic levels.

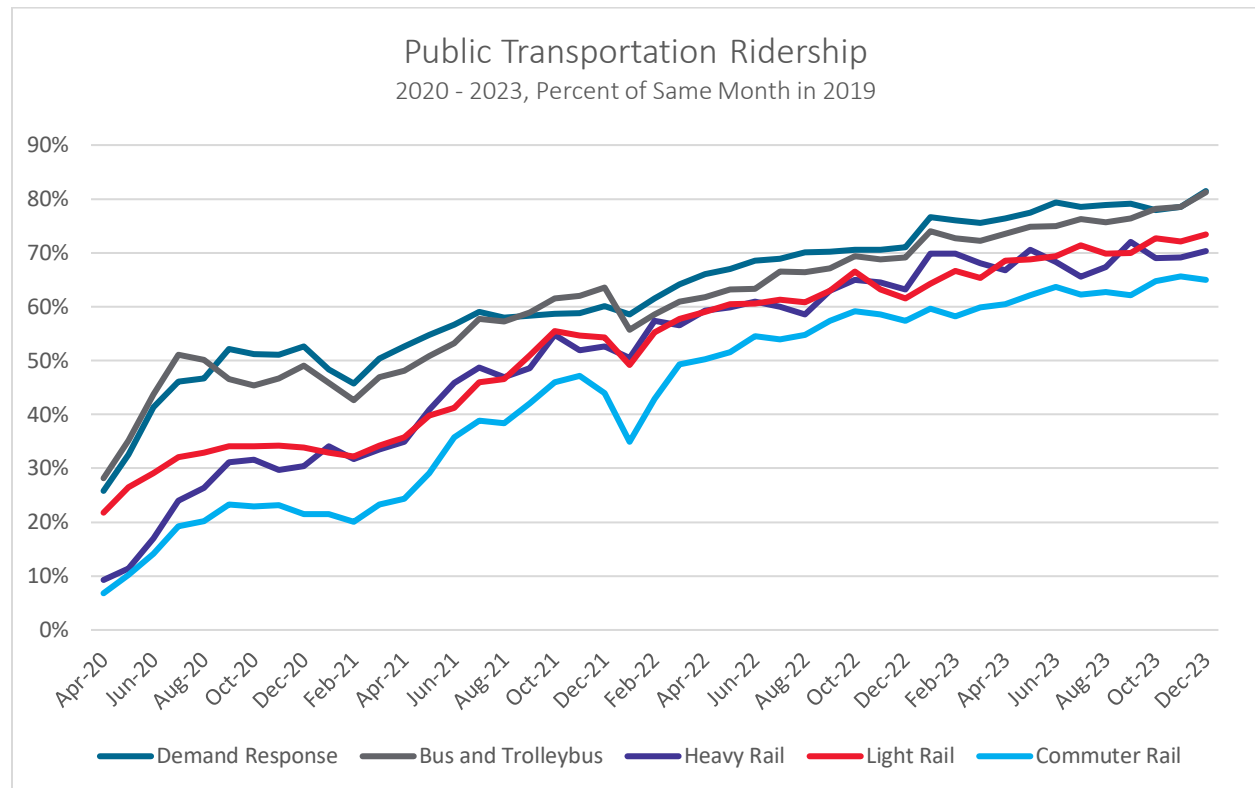
In general, bus modes have been able to retain more riders than rail modes because they generally serve more essential workers, while rail modes serve more office commuters. During the pandemic, rail riders have been more likely to have options to work from home.

Bus ridership has seen a relatively steady increase since February 2021. On the other hand, rail ridership more clearly shows the impact of vaccinations and other factors described in the previous section. Rail ridership shows a sustained increase from April to June 2021, and another increase in September and October 2021, coinciding with the wide availability of COVID-19 vaccines, and the post-summer return to offices and school, respectively. All modes show the impact of the Omicron wave in January 2022, although rail ridership recovered more quickly from the Omicron wave than bus ridership.

Throughout 2022, both bus and rail modes saw a steady increase in ridership relative to 2019, adding almost 13 percent across all modes. Bus ridership was at 69 percent of 2019 levels in December 2022, and rail ridership recovered to 62 percent of 2019 levels. During 2023, bus ridership grew by 12 percentage points to 81 percent of 2019 levels, while rail ridership grew by eight percentage points relative to 2019, ending the year at 70 percent.



Considering individual modes, Demand Response and Bus have recovered the most ridership, reaching 81 percent of pre-pandemic levels in December 2023. Heavy and Light Rail are at 70 and 73 percent of 2019 ridership levels, respectively, and Commuter Rail is currently at 65 percent of pre-pandemic levels as of December.



Commuter rail historically has seen increased ridership with high gas prices, but the spring and summer gas price increases did not drive an increase in ridership. Of note, regions with the highest gas prices are also the ones with the most extensive commuter rail systems impacting regional ridership return.

Comparison to Travel on Roads and Streets

Motor vehicle travel has only recently eclipsed pre-pandemic levels. According to the Federal Highway Administration's Traffic Volume Trends report,⁵ travel on U.S. roads and streets in 2023 was higher than 2019 levels by one tenth of one percent.

What Leads to Ridership Success

APTA's *On the Horizon: Planning for Post-Pandemic Travel* report collected best practices on transit ridership successes. Agencies that were successful in retaining ridership made sure to consistently communicate with the public, keeping them abreast of changes to public transit service; conduct reinforcing social media campaigns; and monitor customer feedback. They thought proactively about service, focusing on essential workers and social equity, communities of color, and low-income families.

⁵ https://www.fhwa.dot.gov/policyinformation/travel_monitoring/tvt.cfm.

These agencies also emphasized rider and employee safety. Sanitation measures implemented by many transit agencies with more routine cleaning protected riders and provided greater feelings of safety. They worked to develop effective cleaning protocols for vehicles and stations and worked with labor representatives to develop protocols to keep employees safe and healthy.

Agencies stand to increase ridership and achieve other goals by focusing efforts on historically marginalized communities. Rebuilding post-COVID provides a unique opportunity for reinvestment in equitable transit. Investing in transit operations to better support hourly, late-night, and early-morning workers who rely on public transit would further equity goals by providing transit choices for at-risk residents. With investments in communities of low income and otherwise vulnerable people, public transit agencies can regain lost ridership and support the larger community.

Real estate investment in central-city areas, in partnership with transit agencies, will potentially further support increased ridership. Development of affordable and market-priced housing in proximity to transit routes will serve to benefit all community residents, including transit riders. Community outreach programs for transit agencies are vital to securing an equitable future: transit agencies need feedback to know how to best serve their customers and communities. With improved community engagement, strategic identification of residents' needs can be achieved more efficiently.

How Can Public Transit Agencies Adapt to the Future

Key changes in operations and planning can help public transit agencies adapt to the future. APTA's *On the Horizon* report organizes these key changes into four overarching themes:

- Institutionalize Best Practices from the COVID-19 Period;
- Plan and Operate More Effectively in Prioritizing Social Equity;
- Leverage Opportunities to Expand Ridership; and
- Keep Abreast of Changing Trends.

For more information, please see APTA's report, [On the Horizon: Planning for Post-Pandemic Travel](#).

About the APTA Ridership Trends Dashboard with Transit app

Estimated ridership values in the APTA Ridership Trends Dashboard are modeled based on measures of Transit app usage to provide a current measure of demand for public transit. Estimated ridership values for each week are extrapolated values from the most recent quarterly actual ridership figures reported by transit agencies. These estimates represent the percent difference between actual pre-pandemic ridership and estimated ridership for a given period during the pandemic, and do not represent actual reported ridership counts from agencies.

Transit app usage is attributed to a particular transit agency if that agency's service appears as a nearby option for the user when they open the app, or if a user taps on a line operated by a particular transit agency. Surveys of Transit app users since the onset of the pandemic have shown that the app's user demographics generally match those of public transit riders overall, both compared to other common survey methods and available U.S. Census data.

Sources

APTA Ridership Report: <https://www.apta.com/research-technical-resources/transit-statistics/ridership-report/>

APTA Ridership Trends Dashboard: <https://transitapp.com/apta>

On the Horizon: Planning for Post-Pandemic Travel: <https://www.apta.com/research-technical-resources/research-reports/on-the-horizon-planning-for-post-pandemic-travel/>

The American Public Transportation Association (APTA)

The American Public Transportation Association is a nonprofit international association of 1,500 public- and private-sector organizations that represents a \$79 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.

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APTA Vision Statement

APTA leads public transportation in a new mobility era,
advocating to connect and build thriving communities



DBE Recent Challenges Analysis

APRIL 6, 2024

I. Brief Background of the U.S. DOT DBE Program

In 1983, Congress enacted the Disadvantaged Business Enterprise (“DBE”) statutory provision, requiring the United States Department of Transportation (“U.S. DOT”) to ensure that at least 10% of the funds authorized for the highway and transit federal assistance programs be expended with DBEs. Congress regularly reauthorizes the DBE program for highway and transit projects, most recently in the Infrastructure Investment and Jobs Act. In the wake of the 2023 United States Supreme Court decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (“SFFA”), limiting race-based affirmative action programs in college admissions, there have been several challenges questioning the constitutionality of the U.S. DOT DBE program and other federal and state sponsored programs with an affirmative action element. U.S. DOT has indicated that a revised DBE rule is expected in April 2024.

II. Constitutionality of the U.S. DOT DBE Program

A. Mid-America Milling Co. v. U.S. Department of Transportation

a. Overview:

Mid-America Milling Co. (“Mid-America”) filed a complaint challenging the constitutionality of the U.S. DOT DBE program, alleging that it is “qualified, willing, and able” to bid or compete for “contracts impacted by the federal DBE program” but “remain at a disadvantage because of their race and gender.” In a motion to dismiss, U.S. DOT asserted that Congress repeatedly authorized the U.S. DOT DBE program, which: is designed to

provide fair and efficient small business contracting, including by remedying ongoing discrimination and the continuing effects of past discrimination in federally assisted highway, transit, and airport contracting markets nationwide; does not set aside contracts or impose quotas for certain races or genders; and requires each funding recipient to calculate a local goal for participation by DBEs based on their availability and other factors.

b. Status

The decision on a motion to dismiss is pending.

III. Federal Programs with an Affirmative Action Component

A. The Small Business Administration’s 8(a) Program

1) Ultima Services Corp. v. U.S. Department of Agriculture

a. Overview:

Ultima Services Corp. (“Ultima Services”), a small business owned by a white woman facing financial losses, brought an action against the United States Department of Agriculture (“USDA”) and Small Business Administration (“SBA”), alleging that the agencies had engaged in race discrimination by employing a rebuttable presumption that members of certain racial minority groups were “economically and socially disadvantaged” when making preferential contract awards to socially disadvantaged small businesses. The SBA developed the current 8(a) business development program “to assist eligible small, disadvantaged business concerns compete in the American economy through business development.”

b. *Status:*

The district court granted Ultima Service's motion for summary judgment in part and denied USDA's/SBA's motion for summary judgment, enjoining the USDA and SBA from using the presumption of social disadvantage in administering the 8(a) program. Following the decision, the SBA issued interim guidance on August 18, 2023, requiring all 8(a) participants whose program eligibility is based upon one or more individuals who relied upon the presumption of social disadvantage to establish their individual social disadvantage by completing a social disadvantage narrative.

2) Hierholzer v. Guzman

a. *Overview:*

Marty Hierholzer, a small business owner and Navy veteran, alleged that the SBA has denied him the opportunity to participate in the 8(a) program in part based on his race. The SBA argued that since the Ultima ruling enjoined defendants from using the race-conscious presumption, the SBA has "purged" the presumption from the 8(a) program process.

b. *Status:*

The district court granted SBA's motion to dismiss, but Hierholzer filed an appeal, which is pending.

B. The Minority Business Development Agency Program

1) Nuziard et al v. Minority Business Development Agency et al.

a. *Overview:*

Christian Bruckner, Jeffrey Nuziard, and Matthew Piper, who are not of diverse backgrounds, filed a lawsuit seeking federal assistance for their respective businesses, alleging the Minority Business Development Agency's ("MBDA") use of a racial and ethnic presumption is unconstitutional. The MBDA argued its programming is constitutional because it is designed to remedy past discrimination in which the government "passively participated."

b. *Status:*

The U.S. District Court for the Northern District of Texas imposed a permanent injunction that enjoined the MBDA from considering an applicant's race or ethnicity when determining eligibility to receive program benefits, finding that the presumption of social disadvantage for the statutorily defined minority groups was unconstitutional.

IV. State Program with an Affirmative Action Component

A. Dalton v. Hao

a. *Overview:*

Brian Dalton alleges that the Inclusive Recovery Grant Program, a grant program administered by the Commonwealth of Massachusetts and the Massachusetts Growth Capital Corporation, violated the Equal Protection Clause of the Fourteenth Amendment. The Inclusive Recovery Grant Program was introduced to assist small businesses negatively impacted by the COVID-19 pandemic with grants of up to \$75,000, specifically "for businesses owned by people of color, women, veterans, immigrants, individuals with disabilities, or those who identify as part of the LGBTQ+ community; businesses that focus on reaching markets predominantly made up of socially and economically disadvantaged and historically underrepresented groups; and other underserved markets."

b. *Status:*

Hao informed Dalton that the Commonwealth and Massachusetts Growth Capital Corporation would not award grant funds under the Inclusive Recovery Grant Program to applicants who only indicated that their business is minority-owned, woman-owned, or LGBTQ+-owned, and that funds will only be given to applicants who indicated that their business focuses on reaching markets predominantly made up of socially and economically disadvantaged and historically underrepresented groups or underserved markets.