



American Public Transportation Association

Legislative Committee Agenda

**Sunday, June 5, 2022
1:30 p.m. – 3:00 p.m. PT**

**Hilton San Diego Bayfront Hotel
Aqua Salon D (Level 3)**

1. Welcome and Call to Order—Dorval R. Carter, Jr., Chair
2. Approval of Minutes of March 13, 2022 Legislative Committee Meeting
3. Remarks from APTA Chair—Jeffrey A. Nelson
4. Update from APTA President and CEO—Paul P. Skoutelas
5. Outlook from the U.S. Department of Transportation—The Honorable Christopher A. Coes, Assistant Secretary for Transportation Policy, U.S. Department of Transportation
6. Update from the Federal Transit Administration—Paul Kincaid, Associate Administrator for Communications and Congressional Affairs, Federal Transit Administration
7. Legislative Update—Ward W. McCarragher, Vice President, Government Affairs and Advocacy (GAA)
8. Regulatory Update—Linda Ford, General Counsel
9. Discussion of Bipartisan Infrastructure Law Implementation—Dorval Carter
 - a. *What issues are agencies facing in applying for U.S. Department of Transportation (DOT) grant opportunities?*
 - b. *What technical assistance or guidance have you received from Federal Transit Administration, Federal Railroad Administration, or other DOT agencies, and how could those interactions be improved?*

- c. What new program requirements and priorities (e.g., equity, climate) are proving difficult to understand, and what suggestions do you have that would improve addressing those issues in your grant applications?*

10. New APTA Advocacy Engagement Tool—Stacie Tionson, Senior Director, GAA
11. APTA Fly-In—Melissa Mejias, Senior Legislative Representative, GAA
12. Adjourn

ENCLOSED DOCUMENTS

- APTA Legislative Steering Committee Roster (05.31.2022)
- Minutes of March 13, 2022 Legislative Committee Meeting
- APTA Legislative Update (05.26.2022)
- APTA Letter to House Committee on Appropriations Leaders regarding Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations bill (05.27.2022)
- APTA Comments to Federal Transit Administration on Capital Investment Grants Program Initial Guidance Proposals (04.14.2022)
- APTA Comments to Centers for Medicaid and Medicare Services on Non-Emergency Medical Transportation (05.20.2022)
- APTA Letter to U.S. Department of Transportation regarding Historically Disadvantaged Communities Mapping Tool (05.20.2022)
- APTA Build America, Buy America Fact Sheet (05.31.2022)
- U.S. Department of Transportation Notice of Temporary Waiver of Buy America Requirements for Construction Materials (05.25.2022)
- APTA Comments to U.S. Department of Transportation Proposed Temporary Waiver of Buy America Requirements for Construction Materials (05.13.2022)



Legislative Steering Committee Roster (2021-2022)

May 31, 2022

Committee Chair

Dorval R. Carter, Jr. (Term began October 2019);
d2580carter@transitchicago.com; 312.681.5000

Committee Vice Chair

Erika Mazza (Term began October 2019);
erika.mazza@capmetro.org; 928.699.8913
Staff Advisor: Ward McCarragher

Legislative Committee Subcommittees

Business Member Legislative Subcommittee

Brian Tynan, Chair; brian.tynan@aecom.com; 202.772.0752
Caroline Decker, Vice Chair; caroline.decker@wsp.com; 202.695.0809
Staff Advisors: Melissa Mejias; David Carol

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

Leslie S. Richards, Co-Chair; richards@septa.org; 215.964.5086
Amy Scarton, Co-Chair; scartoa@wsdot.wa.gov; 206.571.5162
Staff Advisors: Stacie Tiongson; Art Guzzetti

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: Stacie Tiongson

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, Chair; sharon.greene@infrastrategies.net; 714.743.0118

Michael McLaughlin, Vice Chair; michael.mclaughlin@vpra.virginia.gov; 804.629.0008

Staff Advisor: Ward McCarragher

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: Stacie Tiongson

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 Advisors: Melissa Mejias; David Carol

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, P.E., Vice Chair; bsingh@sanjoaquinRTD.com; 209.467.6613

Staff Advisors: Melissa Mejias; Petra Mollet

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

Karen H. King, Chair, Bus and Paratransit CEOs Committee;
kking@getbus.org; 661.324.9874

James M. Derwinski, Chair, Commuter Rail CEOs Committee;
jderwinski@metrarr.com; 312.656.0300

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 Advisors**

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**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
LEGISLATIVE COMMITTEE MEETING**

**Sunday, March 13, 2022
3:00 p.m. – 5:00 p.m. (Eastern Time)**

MINUTES

1. Welcome and Call to Order

Legislative Committee Vice Chair Erika Mazza welcomed the Legislative Committee members to the meeting and called the meeting to order. Vice Chair Mazza announced three new leaders to the Legislative Steering Committee: Kate Mattice, Vice Chair of Federal Procedures & Regulations Subcommittee; Rick Ramacier, Co-Chair of the Intergovernmental Issues Subcommittee; and Beth Holbrook, Chair of the Transit Board Members Subcommittee. Vice Chair Mazza also welcomed Carolyn Gonot, Chair of the Rail Transit CEOs Committee, to the Legislative Steering Committee. Vice Chair Mazza also welcomed all the new Legislative Committee members.

2. Approval of Minutes of November 7, 2021, Legislative Committee Meeting

Vice Chair Mazza presented the minutes of the previous Legislative Committee meeting that occurred on November 7, 2021, for approval. A motion was made to approve the minutes, which was seconded, and then approved without objection.

3. Remarks from APTA Chair

APTA Chair Nelson recognized and thanked the leadership of Vice Chair Mazza. Nelson thanked the Committee for its determination in advocating for increased investment in public transit and passenger rail and made the point that the industry should work hard to show our industry's use of federal funding for new infrastructure investments. Nelson also noted that there is more work to do, including: advancing equity throughout our industry through APTA's Racial Equity Commitment Pilot Program; helping our members address critical workforce shortages; and finding innovative ways to bring back ridership. Last, Nelson thanked everyone for coming to the Legislative Conference.

4. Update from APTA President and CEO

President and CEO Skoutelas thanked everyone for being here, as well as Chair Carter, who was not able to attend, Vice Chair Mazza, and Board Chair Nelson for their hard work and leadership of the Committee and APTA. He emphasized that investing in transit infrastructure is our industry's top priority because expectations are high. He also noted that our communities want us to make transit more convenient, flexible, reliable, and customer-focused; incorporate sustainability, resiliency, and clean energy in all our planning, procurement, and decision-making; and view every transit investment through the lens of equity, fairness, and access to opportunities for all. Skoutelas stated that the industry must tell the public about our successes,

as all of our stakeholders will be watching how effectively and efficiently we use these new funds to fix old challenges and prepare for new priorities. Skoutelas concluded by thanking everyone for coming to Washington and to enjoy the Conference.

5. Remarks from Paul Kincaid, Associate Administrator for Communications and Congressional Affairs, Federal Transit Administration

Paul Kincaid, Associate Administrator for Communications and Congressional Affairs, provided an update on the Federal Transit Administration's (FTA) implementation of the historic Bipartisan Infrastructure Law. He emphasized how FY 2022 THUD Appropriations for Capital Investment Grants (CIG) will create positive community-altering projects, nearly doubling previous years' funding. He noted that the CIG program is authorized at \$4.6 billion over the next four years, and that the increase in the formula funding would go into effect soon. Kincaid also discussed the FTA bus programs, such as the Low and No Emission Bus Grant Program. He mentioned that in applying for funding with this program, it is crucial to show how the projects will focus on zero-carbon and electrification technologies. Kincaid stated that it is crucial now that we use the Bipartisan Infrastructure Law funding to show everyone why transit matters.

6. Legislative Update

Ward McCarragher, APTA Vice President of Government Affairs and Advocacy, provided a Legislative Update. He explained that APTA's approach to the agenda and advocacy strategy going forward is focused on four items, including implementation of the Bipartisan Infrastructure Law; THUD Appropriations Act; Building a Better America (Build Back Better); and S. 3011. McCarragher also emphasized the risk of recission of the COVID relief funds, and urged transit agencies to obligate their funds immediately. Moving onto IIJA implementation, he discussed the huge increases in funding for public transit, rail, and CIG. He concluded by discussing APTA's CIG pipeline dashboard and APTA's Smart Guide to the Bipartisan Infrastructure Law.

7. Reports from Legislative Subcommittee Chairs

Vice Chair Mazza asked the Legislative Subcommittee Chairs to share their reports to the Legislative Committee. Business Member Legislative Subcommittee Chair Bryan Tynan reported and discussed that advocacy does not stop even after the Bipartisan Infrastructure Law passage; it is crucial to keep pressing on. He outlined the Business Member and Transit Board Member (TBM) targeted advocacy efforts, APTA's June 22 Fly-In, and to expand outreach to the business advocacy network for manufacturers as well as engineering consultants. Commuter and Intercity Passenger Rail Subcommittee Co-Chair Amy Scarton reported and discussed Surface Transportation Board Member Karen Hedlund's presentation to the Subcommittee earlier that day, discussing how STB can and will engage on passenger rail issues. Scarton also mentioned that the Subcommittee had a robust discussion on commuter rail issues post-pandemic, and APTA's Comments on the Federal Railroad Administration's (FRA) Request for Information (RFI) on the Corridor Identification and Development program. Federal Procedures and Regulations Subcommittee Chair Chris Boylan, reported on the Federal Transit Administration's (FTA) safety plan, Buy America, and a presentation by the Build America Bureau on public transit financing opportunities. Funding, Finance, and Tax Policy

Subcommittee Vice Chair Sharon Greene reported on efforts to repeal the gas tax and requested that APTA adopt a resolution that states APTA opposes repeal of the gas tax. Members weighed in regarding a possible resolution. A motion was made and subsequently withdrawn and no formal APTA resolution was proffered. Intergovernmental Issues Subcommittee Co-Chair Marlene Connor reported on the industry's opportunity to work with the Coordinating Council on Access and Mobility (CCAM). She also noted that FTA would be holding CCAM Listening Sessions to gain more insight on issues with the delivery of service. Small Operations Subcommittee Chair Allan Pollock reported on workforce challenges, alternative fuel transition plans, and the new working group to help committee leadership with its regulatory agenda. TBM Subcommittee Chair Beth Holbrook reported on continued advocacy with congressional leaders. She discussed a forum that she attended where there was an opportunity to meet with newly elected officials on the challenges and concerns with public transit, and how communities need public transit. Erika Mazza thanked the Chairs and Co-Chairs for their reports.

8. FRA Corridor Identification and Development Request for Information

Amy Scarton gave an overview of APTA's Comments on the FRA Corridor Identification and Development program RFI.

9. Implementation of the Infrastructure Investment and Jobs Act (IIJA)

Ward McCarragher provided an update on the implementation of IIJA. He discussed APTA's Smart Guide and how this tool will help members. He discussed the Administration's robust response to implementing the IIJA through RFIs, guidance, and regulatory initiatives. the Administration. Finally, he highlighted APTA's intent to focus on specific issues regarding IIJA implementation, such as Buy America requirements.

10. APTA's 2022-2023 Advocacy Focus

APTA's consultants Dan Renberg, Randi Reid, and James Reid discussed APTA's future advocacy efforts. Their discussion focused on the: 2022 midterm elections; changing political landscape; and importance of Congressional outreach. Their presentation showed the Congressional reapportionment for states; adding and losing seats; and the competitive Senate seats for the midterm elections. They also discussed next steps for APTA Advocacy in 2022 and beyond with a potential Congressional turnover, outreach strategies, and outreach to specific Congressional Republicans.

11. New APTA Advocacy and Engagement Tool

Patrick Miller of FiscalNote discussed APTA's new advocacy and engagement tool. The APTA Advocacy and Engagement Tool will be used to notify members of active APTA advocacy campaigns. Push alerts will be sent with links for easy use and will provide members with the ability to directly engage their Members of Congress with a click of a button.

12. Open Discussion

13. Adjourn

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



American Public Transportation Association

LEGISLATIVE UPDATE

APTA is focused on three major initiatives in 2022:

- ensuring continued successful implementation of COVID-19 emergency relief funding;
- 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
- aggressively advocating for enactment of three important bills:
 - Transportation, Housing and Urban Development, and Related Agencies Appropriations bill (THUD Appropriations bill);
 - State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act (S. 3011/H.R. 5735); and
 - Building a Better America legislation.

Ensuring Continued Successful Implementation of COVID-19 Emergency Relief Funding

Public transit agencies continue to successfully utilize COVID-19 emergency relief funding. For instance, more than one-half of public transit agencies have used COVID-19 funding to provide vaccine access services. To date, public transit agencies have obligated more than **89 percent** of the **\$69.5 billion** of COVID-19 emergency relief through a total of almost 1,750 grants. In addition to the formula grants, on March 7, 2022, the Federal Transit Administration (FTA) awarded \$2.2 billion of additional COVID-19 emergency funding to 35 public transit agencies in 18 states.

For future COVID-19 relief, Congress is expected to seek budget offsets from prior COVID-19 appropriations to pay for the new investment. For instance, on April 4, 2022, a key group of Senators reached a bipartisan agreement on H.R. 4373, the Bipartisan COVID Supplemental Appropriations Act, 2022, which provides \$10 billion for domestic COVID-19 response programs, including vaccines, therapeutics, and testing capacity. The bill includes \$10 billion of COVID-19 rescissions to offset the costs of these initiatives. However, it does not include any rescissions to public transit COVID-19 emergency funding.

APTA is extremely encouraged by public transit agencies' efficient and effective use of COVID-19 emergency funding as we continue to highlight the importance of public transit to communities' efforts to recover from the pandemic. APTA urges all transit agencies to obligate and expend these emergency funds as soon as possible.

Working to Ensure Successful Implementation of the Bipartisan Infrastructure Law

On November 15, 2021, President Joseph 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 investment include \$91.2 billion of guaranteed funding (i.e., contract authority and advance appropriations) and \$17.0 billion of General Fund authorizations for Capital Investment Grants (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 \$66.0 billion of guaranteed funding (advance appropriations) and \$36.1 billion of General Fund authorizations for Amtrak and other programs. In addition, the IIJA provides significant funding for multimodal investments that include public transit and passenger rail as essential elements.

In terms of **APTA's Top Priorities**, the IIJA:

- provides a long-term surface transportation authorization and significant increases in investment to put public transit agencies on a path to modernize their systems and meet the growing and evolving demands of our communities;
- when considering all funding provided in the legislation (including advance appropriations), significantly increases the bus capital share of funding to a 19 percent share for bus investment under the 40-40-20 capital investment ratio; and
- does not include APTA's Mobility Innovation and Technology Initiative but includes other important mobility initiatives (e.g., SMART mobility grants).

Finally, the IIJA includes numerous other APTA legislative priorities, such as significant reforms and streamlining of the CIG program.

APTA is actively working with the U.S. Department of Transportation (DOT) on implementation of the Bipartisan Infrastructure Law. On April 6, 2022, FTA issued its full-year apportionments of public transit formula funds for FY 2022. DOT, FTA, the Federal Railroad Administration, and other agencies have issued numerous Notice of Funding Opportunities (NOFOs) for competitive grants and we expect additional NOFOs in the coming months. To date, DOT and FTA have issued NOFOs for **\$8.25 billion** of grants that include public transportation eligibility, including: \$2.3 billion of Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grants; \$2.8 billion of Mega, INFRA, and Rural Transportation grants; \$1.2 billion for Low and No Emission Bus grants; \$547 million for Buses and Bus Facilities grants; \$450 million for University Transportation Centers grants; and \$1.0 billion for Safe Streets and Roads for All (SS4A) grants. In addition, FTA issued several important Dear Colleague letters regarding IIJA implementation, including on Zero-Emission Transition Plans and Public Transportation Agency Safety Plan (PTASP) requirements. Finally, on May 19, DOT issued a 180-day Temporary Waiver of Buy America Requirements for Construction Materials.

To assist APTA members in tracking IIJA funding apportionments and competitive grant opportunities and policy actions, APTA has developed a [Smart Guide to the Bipartisan Infrastructure Law](#) on its website. The APTA Smart Guide includes funding and apportionment tables, section-by-section

analyses, and DOT guidance, regulations, and NOFOs. Finally, the Smart Guide includes advocacy and media toolkits to help APTA members tell their Bipartisan Infrastructure Law success stories.

Aggressively Advocating for APTA's Legislative Agenda

APTA continues to aggressively advocate for enactment of three important bills: the THUD Appropriations bill, the Fiscal Recovery Infrastructure Flexibility Act (S. 3011), and Building a Better America legislation.

THUD Appropriations Bill

In March, Congress passed and President Biden signed the Consolidated Appropriations Act, 2022 (P.L. 117-103), which included the THUD Appropriations Act. When combined with the advance appropriations included in the IIJA, Congress provides **\$20.5 billion for public transit** in Fiscal Year (FY) 2022, an increase of \$7.6 billion (58 percent) from the FY 2021 enacted level. In addition, Congress provides **\$16.6 billion for passenger and freight rail** in FY 2022, an increase of \$13.7 billion (475 percent) from the FY 2021 enacted level.

The 2022 THUD Appropriations Act fully funds the public transit contract authority and appropriates the overwhelming majority of the additional public transit and passenger rail funding authorized by the IIJA. It appropriates \$2.2 billion for CIG and an additional \$250 million for bus capital grants. The legislation sets aside \$201 million for congressionally directed spending on designated public transit projects and \$121 million for designated Consolidated Rail Infrastructure and Safety Improvement (CRISI) grants. In addition, the 2022 THUD Appropriations Act provides additional funding for RAISE and Mega competitive grants. Finally, the legislation includes language blocking the Rostenkowski Test to prevent an across-the-board cut of FY 2022 transit formula funds to each public transit agency.

The House and Senate Appropriations Committee have begun developing their FY 2023 THUD Appropriations bills. The House is expected to mark up its bill in June, with possible House Floor action in July. The Senate may release its bill this summer or fall, but Senate Floor action is unlikely. Final action on the FY 2023 THUD Appropriations bill is not expected until after the November elections.

APTA is aggressively advocating that the FY 2023 THUD Appropriations bill fully fund the IIJA and provide additional resources for targeted investments (e.g., mobility).

S. 3011, the Fiscal Recovery Infrastructure Flexibility Act

The American Rescue Plan Act of 2021 (ARP) provides **\$350 billion** of COVID-19 emergency funding to state and local governments. The ARP provides \$195 billion to states, \$130 billion to local governments, and \$25 billion to tribal and territorial governments. Although the Fiscal Recovery Funds are available for water, sewer, and broadband infrastructure, transportation infrastructure investment is not eligible under the current program. APTA, together with Coalition partners, has strongly urged the Department of the Treasury and Congress to authorize state and local governments to use these Fiscal Recovery Funds for surface transportation infrastructure.

Last year, the Senate passed S. 3011, the State, Local, Tribal, and Territorial Fiscal Recovery, Infrastructure, and Disaster Relief Flexibility Act (Fiscal Recovery Infrastructure Flexibility Act), by Unanimous Consent. The bill authorizes states and local governments to use up to **\$123 billion** of these

Fiscal Recovery Funds for transportation infrastructure investments, including public transportation. S. 3011 also allows states and local governments to use these funds as non-federal match on CIG, Mega, and Transportation Infrastructure Financing and Innovation Act (TIFIA) projects. The House introduced a companion bill (H.R. 5735) and APTA has been working with the bipartisan sponsors of the bill to encourage other Representatives to cosponsor the bill. To date, the bill has 155 bipartisan cosponsors.

On April 4, a key group of Senators reached a bipartisan agreement on H.R. 4373, the Bipartisan COVID Supplemental Appropriations Act, 2022, which provides \$10 billion for domestic COVID-19 response programs, including vaccines, therapeutics, and testing capacity. Importantly, the bill includes S. 3011, the Fiscal Recovery Infrastructure Flexibility Act. To date, the Senate has been unable to advance the bill because of an unrelated immigration issue.

APTA, together with Coalition partners, have sent several letters to House and Senate Leaders urging Congress to pass the Fiscal Recovery Infrastructure Flexibility Act. Most recently, on April 20, APTA and Coalition partners urged Congress to include S. 3011 in the Bipartisan COVID Supplemental Appropriations Act.

APTA strongly urges Congress to include the Fiscal Recovery Infrastructure Flexibility Act in the Bipartisan COVID Supplemental Appropriations Act.

Building a Better America Legislation

On November 19, 2021, the House passed H.R. 5376, the Build Back Better Act. The bill provides:

- \$10 billion for a new, innovative program providing competitive grants for public transit access to affordable housing and to enhance mobility for low-income riders and residents of disadvantaged communities;
- \$10 billion for the planning and development of public high-speed rail projects; and
- Additional investments in climate incentive grants and neighborhood access and equity grants.

It also creates a manufacturer's tax credit equal to 30 percent of the cost of electric or hydrogen fuel-cell transit buses; extends the alternative fuel tax credit; and extends and substantially increases the alternative fuel vehicle property tax credit.

In December 2021, Senator Joe Manchin, III (D-WV) stated that he would not support the Build Back Better Act. Without his support, the Senate Democratic majority does not have the votes to pass the bill. At this point, Senate Democrats are trying to develop a more focused bill that they refer to as Building a Better America legislation as a possible compromise that all 50 Senate Democrats could support. If they reach agreement among all Democrats, it is more likely to include tax credit provisions that would assist the transition to zero-emission vehicles than any additional public transportation funding initiatives.

APTA strongly supports providing \$10 billion for public transit, \$10 billion for high-speed rail, and tax credits for zero-emission vehicles and infrastructure as part of the Building a Better America legislation.



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

May 27, 2022

EXECUTIVE COMMITTEE

CHAIR

Jeffrey A. Nelson

VICE CHAIR

Kevin J. Holzendorf

SECRETARY-TREASURER

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Jeffrey Wharton
Evalynn "Eve" Williams

PRESIDENT AND CEO

Paul P. Skoutelas

The Honorable Rosa L. DeLauro
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The Honorable David E. Price
Chairman
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The Honorable Kay Granger
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The Honorable Mario Diaz-Balart
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Dear Chairwoman DeLauro, Ranking Member Granger, Chairman Price,
and Ranking Member Diaz-Balart,

On behalf of the American Public Transportation Association (APTA), which represents an \$80 billion industry that directly employs 450,000 people and supports millions of private-sector jobs, **I write to urge you to honor the promise of the bipartisan Infrastructure Investment and Jobs Act (IIJA) and provide funding levels at least equal to the IIJA's public transportation and passenger rail investments for Fiscal Year (FY) 2023.** These historic investments will enable our communities to provide access to opportunities and create family-wage jobs, advance equity, tackle climate change, and meet growing and evolving mobility demands.

Specifically, in your development of Subcommittee allocations pursuant to section 302(b) of the Congressional Budget Act of 1974, we urge you to allocate the necessary resources to the Subcommittee on Transportation, Housing and Urban Development, and Related Agencies (THUD) to provide at least **\$17.0 billion** for public transit and **\$6.7 billion** for passenger and freight rail.

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When combined with the IIJA's FY 2023 advance appropriations, these amounts will fully fund the public transit and passenger rail investments of the Bipartisan Infrastructure Law. We also request that you fully fund RAISE and Mega grants in the bill. These investments will help communities create more resilient, multimodal transportation systems to meet today's equity, mobility, and climate challenges.

Regarding the Federal Transit Administration's Capital Investment Grants (CIG), we urge you to provide at least **\$3.0 billion for CIG projects**. This request is endorsed by 105 of your colleagues, led by Representative Earl Blumenauer (D-OR) and Representative Jackie Walorski (R-IN), in a bipartisan letter to you.¹ Together with the IIJA's advance appropriations, this funding will help our communities begin to address the backlog of demand for more mobility choices. Today, **78 projects** across the nation are seeking more than **\$39 billion** of CIG funds in FY 2023 and subsequent years. *See APTA's Capital Investment Grants Project Pipeline Dashboard.*

In addition, we ask that you provide at least \$50 million for the Integrated Smart Mobility Pilot program, \$50 million for the Zero Emission System Transformation Planning Program, and \$100 million for the Climate Resilience and Adaptation Program as requested in the President's FY 2023 Budget. These programs will enhance the safety of our critical infrastructure, reduce environmental impacts, and improve access to jobs, housing, health care, and education. We also recommend that you appropriate the additional ferry funding that was agreed to in the Bipartisan Infrastructure Law but not included because of a technical error during legislative drafting.

Regarding passenger rail grants, we request that you fully fund the IIJA authorizations for the Federal-State Partnership for Intercity Passenger Rail and Consolidated Rail Infrastructure and Safety Improvements (CRISI) grant programs. In addition, we urge you to include at least **\$500 million** as authorized by the IIJA for Railroad Crossing Elimination grants, which will help address rail-related fatalities at the nation's more than 200,000 highway-rail grade crossings.²

Finally, we appreciate that the 2022 THUD Appropriations Act and prior THUD Appropriations Acts have included a provision to prohibit implementation of the Rostenkowski Test, and we strongly encourage the continuation of this provision in the THUD Appropriations bill for FY 2023.

¹ [Bipartisan Letter to House Committee on Appropriations Leaders](#) requesting \$3.0 billion for the Federal Transit Administration's Capital Investment Grants in the FY 2023 THUD Appropriations bill (April 27, 2022).

² Federal Railroad Administration, Report to Congress: National Strategy to Prevent Trespassing on Railroad Property (October 2018). [Highway-Rail Grade Crossing and Trespassing Research | FRA \(dot.gov\)](#).

The Honorable Rosa L. DeLauro, Kay Granger, David E. Price, and Mario Diaz-Balart

May 27, 2022

Page 3

Thank you for your strong support for public transportation and passenger rail and consideration of our FY 2023 priorities. Your leadership is critical to ensure that Congress upholds the promise of the historic investments authorized in the Bipartisan Infrastructure Law.

Sincerely,

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

Paul P. Skoutelas
President and CEO

Encl.

cc: Members of the Transportation, Housing and Urban Development, and Related Agencies
Subcommittee, Committee on Appropriations, U.S. House of Representatives



APTA’s Capital Investment Grants Project Pipeline Dashboard

May 18, 2022
(in millions)

State	City	Project	Senators	Representatives	Project Sponsor	Project Category	Project Type	Date of Grant Agreement	Total Project Cost	CIG Percent Share	Total CIG Funding	Total CIG Funding Allocated	CIG Funding Required Post-FY 2021
18 CIG Projects with Executed Full Funding Grant Agreements													
AZ	Phoenix	South Central/Downtown Hub Light Rail	Kyrsten Sinema (D) Mark Kelly (D)	Ruben Gallego (D-AZ-07)	Valley Metro	New Starts	Light Rail	FFGA 01/06/2021	\$1,345	39%	\$530	\$298	\$232
AZ	Phoenix	Northwest Extension Phase II	Kyrsten Sinema (D) Mark Kelly (D)	David Schweikert (R-AZ-06) Greg Stanton (D-AZ-09)	Valley Metro	New Starts	Light Rail	FFGA 11/19/2021	\$401	39%	\$158	\$100	\$58
CA	Los Angeles	Westside Subway Section 1	Dianne Feinstein (D) Alex Padilla (D)	Ted Lieu (D-CA-33) Jimmy Gomez (D-CA-34) Karen Bass (D-CA-37)	Los Angeles County Metropolitan Transportation Authority	New Starts	Heavy Rail	FFGA 6/14/2014	\$2,822	44%	\$1,250	\$763	\$487
CA	Los Angeles	Westside Subway Section 2	Dianne Feinstein (D) Alex Padilla (D)	Ted Lieu (D-CA-33) Karen Bass (D-CA-37)	Los Angeles County Metropolitan Transportation Authority	New Starts	Heavy Rail	FFGA 12/1/2016	\$2,499	47%	\$1,187	\$598	\$589
CA	Los Angeles	Westside Subway Section 3	Dianne Feinstein (D) Alex Padilla (D)	Ted Lieu (D-CA-33) Karen Bass (D-CA-37)	Los Angeles County Metropolitan Transportation Authority	New Starts	Heavy Rail	FFGA 3/17/2020	\$3,599	36%	\$1,300	\$398	\$902
CA	San Carlos	Peninsula Corridor Electrification Project	Dianne Feinstein (D) Alex Padilla (D)	Nancy Pelosi (D-CA-12) Jackie Speier (D-CA-14) Ro Khanna (D-CA-17) Anna G. Eshoo (D-CA-18) Zoe Lofgren (D-CA-19)	Joint Powers Board (Caltrain)	Core Capacity	Commuter Rail	FFGA 5/23/2017	\$1,931	34%	\$647	\$573	\$74
CA	San Diego	Mid-Coast Corridor Transit Project	Dianne Feinstein (D) Alex Padilla (D)	Scott H. Peters (D-CA-52) Sara Jacobs (D-CA-53)	San Diego Association of Governments	New Starts	Light Rail	FFGA 9/1/2016	\$2,171	48%	\$1,043	\$628	\$416
CA	San Francisco Bay Area	BART Transbay Corridor Core Capacity Project	Dianne Feinstein (D) Alex Padilla (D)	Nancy Pelosi (D-CA-12) Barbara Lee (D-CA-13) Jackie Speier (D-CA-14) Eric Swalwell (D-CA-15)	Bay Area Rapid Transit District	Core Capacity	Heavy Rail	FFGA 09/14/2020	\$2,706	43%	\$1,169	\$1,026	\$143
IL	Chicago	Red and Purple Line Modernization Project Phase 1	Richard J. Durbin (D) Tammy Duckworth (D)	Mike Quigley (D-IL-05) Janice D. Schakowsky (D-IL-09)	Chicago Transit Authority	Core Capacity	Heavy Rail	FFGA 1/17/2017	\$2,067	46%	\$957	\$691	\$265
IN	Lake Co.	West Lake Corridor	Todd Young (R) Mike Braun (R)	Frank Mrvan (R-IN-01)	Northern Indiana Commuter Transportation District	New Starts	Commuter Rail	FFGA 10/28/2020	\$945	38%	\$355	\$198	\$157
IN	Gary to Michigan City	Double Track	Todd Young (R) Mike Braun (R)	Frank Mrvan (R-IN-01)	Northern Indiana Commuter Transportation District	New Starts	Commuter Rail	FFGA 01/07/2021	\$491	35%	\$173	\$100	\$73
MA	Cambridge to Medford	Green Line Extension	Edward J. Markey (D) Elizabeth Warren (D)	Katherine M. Clark (D-MA-05) Ayanna Pressley (D-MA-07)	Massachusetts Bay Transportation Authority	New Starts	Light Rail	FFGA 1/5/2015	\$2,298	43%	\$996	\$948	\$48
MD	Bethesda	Maryland National Capital Purple Line	Benjamin L. Cardin (D) Chris Van Hollen (D)	Anthony G. Brown (D-MD-04) Steny H. Hoyer (D-MD-05) Jamie Raskin (D-MD-08)	Maryland Transit Administration	New Starts	Light Rail	FFGA 8/22/2017	\$2,407	37%	\$900	\$805	\$95
MN	Minneapolis	Southwest LRT	Amy Klobuchar (D) Tina Smith (D)	Dean Phillips (D-MN-03) Ilhan Omar (D-MN-05)	Metropolitan Council	New Starts	Light Rail	FFGA 09/14/2020	\$2,003	46%	\$929	\$213	\$716
MO	Kansas City	Streetcar Main Street Extension	Roy Blunt (R) Josh Hawley (R)	Emanuel Cleaver (D-MO-05)	Kansas City Area Transportation Authority	New Starts	Streetcar	FFGA 01/08/2021	\$352	49%	\$174	\$150	\$24
NJ	Hudson Co.	Portal North Bridge	Robert Menendez (D) Cory A. Booker (D)	Albio Sires (D-NJ-08) Bill Pascrell, Jr. (D-NJ-09)	Gateway Program Development Corporation	Core Capacity	Commuter Rail	FFGA 01/11/2021	\$1,732	44%	\$767	\$248	\$519
WA	Seattle	Federal Way Link Extension	Patty Murray (D) Maria Cantwell (D)	Adam Smith (D-WA-09)	Central Puget Sound Regional Transit Authority	New Starts	Light Rail	FFGA 01/22/2020	\$3,161	25%	\$790	\$298	\$492
WA	Seattle	Lynnwood Link Extension	Patty Murray (D) Maria Cantwell (D)	Pramila Jayapal (D-WA-07)	Central Puget Sound Regional Transit Authority	New Starts	Light Rail	FFGA 12/20/2018	\$3,260	36%	\$1,173	\$498	\$675
Subtotal for FFGA projects									\$36,189		\$14,497	\$8,530	\$5,967



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May 18, 2022
(in millions)

State	City	Project	Senators	Representatives	Project Sponsor	Project Category	Project Type	Date of Grant Agreement	Total Project Cost	CIG Percent Share	Total CIG Funding	Total CIG Funding Allocated	CIG Funding Required Post-FY 2021
4 CIG Pipeline Projects in Engineering													
MN	Minneapolis	METRO Blue Line Extension (Bottineau LRT)	Amy Klobuchar (D) Tina Smith (D)	Dean Phillips (D-MN-03) Ilhan Omar (D-MN-05)	Metropolitan Council	New Starts	Light Rail	Engineering	TBD	TBD	TBD	\$0	TBD
MN	St. Paul	METRO Gold Line Bus Rapid Transit	Amy Klobuchar (D) Tina Smith (D)	Betty McCollum (D-MN-04)	Metro Transit	New Starts	BRT	Engineering	\$532	45%	\$239	\$0	\$239
NY	New York	Canarsie Line Power and Station Improvements	Charles E. Schumer (D) Kirsten E. Gillibrand (D)	Nydia M. Velázquez (D-NY-07) Jerrold Nadler (D-NY-10) Carolyn B. Maloney (D-NY-12)	New York Metropolitan Transportation Authority	Core Capacity	Heavy Rail	Engineering	\$373	27%	\$100	\$100	\$0
NY	New York	Second Avenue Subway Phase 2	Charles E. Schumer (D) Kirsten E. Gillibrand (D)	Carolyn B. Maloney (D-NY-12) Adriano Espaillat (D-NY-13)	New York Metropolitan Transportation Authority	New Starts	Heavy Rail	Engineering	\$6,949	49%	\$3,405	\$0	\$3,405
Subtotal for Engineering Projects									\$9,390		\$4,666	\$100	\$4,566
2 CIG Pipeline Project in Expedited Project Delivery Pilot Program													
CA	Los Angeles	East San Fernando Valley Transit Corridor Phase 1 Project	Dianne Feinstein (D) Alex Padilla (D)	Brad Sherman (D-CA-30)	Los Angeles County Metropolitan Transportation Authority	New Starts	Light Rail	EPD Program	\$3,635	25%	\$909	\$0	\$909
CA	San Jose	BART Silicon Valley Phase II Extension	Dianne Feinstein (D) Alex Padilla (D)	Ro Khanna (D-CA-17) Zoe Lofgren (D-CA-19)	Santa Clara Valley Transportation Authority	New Starts	Heavy Rail	EPD Program	\$9,148	25%	\$2,287	\$225	\$2,062
Subtotal for EPD Project									\$12,783		\$3,196	\$225	\$2,971
54 CIG Pipeline Projects in Project Development													
AZ	Flagstaff	Transit Spine BRT	Kyrsten Sinema (D) Mark Kelly (D)	Tom O'Halleran (D-AZ-01)	Northern Arizona Intergovernmental Public Transportation Authority	Small Starts	BRT	PD	\$33	TBD	TBD	\$0	TBD
CA	Inglewood	Inglewood Transit Connector	Dianne Feinstein (D) Alex Padilla (D)	Maxine Waters (D-CA-43)	City of Inglewood	New Starts	Light Rail	PD	\$1,150	TBD	TBD	\$0	TBD
CA	Los Angeles	Restoration of Historic Streetcar in Downtown Los Angeles	Dianne Feinstein (D) Alex Padilla (D)	Jimmy Gomez (D-CA-34)	City of Los Angeles Department of Transportation	Small Starts	Streetcar	PD	\$296	34%	\$100	\$0	\$100
CA	Los Angeles	West Santa Ana Branch Corridor	Dianne Feinstein (D) Alex Padilla (D)	Jimmy Gomez (D-CA-34)	Los Angeles County Metropolitan Transportation Authority	New Starts	Light Rail	PD	\$4,900 - \$5,100	TBD	TBD	\$0	TBD
CA	Monterey	SURF! Highway 1 Busway and BRT	Dianne Feinstein (D) Alex Padilla (D)	Jimmy Panetta (D-CA-20)	Monterey-Salinas Transit	Small Starts	BRT	PD	\$55	73%	\$40	\$0	\$40
CA	Sacramento	Downtown Riverfront Streetcar Project	Dianne Feinstein (D) Alex Padilla (D)	Doris O. Matsui (D-CA-06)	Sacramento Regional Transit District	Small Starts	Streetcar	PD	\$117	43%	\$50	\$50	\$0
CA	San Bernardino	West Valley Connector BRT Project	Dianne Feinstein (D) Alex Padilla (D)	Pete Aguilar (D-CA-31) Norma J. Torres (D-CA-35)	San Bernardino County Transportation Authority	Small Starts	BRT	PD	\$263	33%	\$87	\$87	\$0
CA	San Francisco	Transbay Downtown Rail Extension Project	Dianne Feinstein (D) Alex Padilla (D)	Nancy Pelosi (D-CA-12)	Transbay Joint Powers Authority	New Starts	Commuter Rail	PD	\$4,400 - \$5,000	TBD	TBD	\$0	TBD
CO	Denver	Colfax Avenue Bus Rapid Transit	Michael F. Bennet (D) John W. Hickenlooper (D)	Diane DeGette (D-CO-1)	Regional Transportation District	New Starts	BRT	PD	\$200-\$300	TBD	TBD	\$0	TBD
CO	Fort Collins	West Elizabeth Corridor	Michael F. Bennet (D) John W. Hickenlooper (D)	Joe Neguse (D-CO-2)	City of Fort Collins	Small Starts	BRT	PD	\$74	TBD	TBD	\$0	TBD
FL	Miami	East-West Corridor Rapid Transit Phase 1 Project	Marco Rubio (R) Rick Scott (R)	Maria Salazar (R-FL-27) Frederica Wilson (D-FL-24)	Miami-Dade County Department of Transportation and Public Works	Small Starts	BRT	PD	\$281	33%	\$93	\$0	\$93
FL	Miami	Northeast Corridor Rapis Transit Project	Marco Rubio (R) Rick Scott (R)	Maria Salazar (R-FL-27) Frederica Wilson (D-FL-24)	Miami-Dade County Department of Transportation and Public Works	New Starts	BRT	PD	\$414	50%	\$207	\$0	\$207
FL	Orlando	SunRail Connector to the Orlando International Airport	Marco Rubio (R) Rick Scott (R)	Stephanie N. Murphy (D-FL-07) Val Butler Demings (D-FL-10)	Florida Department of Transportation	Small Starts	Commuter Rail	PD	\$175 - \$225	33%	\$75	\$0	\$75
FL	Tampa	Tampa Streetcar Extension and Modernization	Marco Rubio (R) Rick Scott (R)	Kathy Castor (D-FL-14)	City of Tampa	Small Starts	Streetcar	PD	\$235	43%	\$100	\$0	\$100
GA	Atlanta	Clayton Southlake BRT Project	Jon Ossoff (D) Raphael Warnock (D)	Nikema Williams (D-GA-5)	Metropolitan Atlanta Rapid Transit Authority	Small Starts	BRT	PD	\$338	44%	\$150	\$0	\$150



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54 CIG Pipeline Projects in Project Development (continued)													
IL	Chicago	Red Line Extension	Dick Durbin (D) Tammy Duckworth (D)	Rep. Robin Kelly (D-IL-2)	Chicago Transit Authority	New Starts	Heavy Rail	PD	\$2,500	TBD	TBD	\$0	TBD
IN	Indianapolis	IndyGo Blue Line Rapid Transit	Todd Young (R) Mike Braun (R)	André Carson (D-IN-07)	Indianapolis Public Transportation Corporation	Small Starts	BRT	PD	\$220	45%	\$100	\$0	\$100
MA	Boston	Green Line Transformation Program	Edward J. Markey (D) Elizabeth Warren (D)	Jake Auchincloss (D-MA-04) Ayanna Pressley (D-MA-07) Stephen F. Lynch (D-MA-08)	Massachusetts Bay Transportation Authority	Core Capacity	Light Rail	PD	\$2,100	TBD	TBD	\$0	TBD
MN	Minneapolis	METRO F Line Bus Rapid Transit	Amy Klobuchar (D) Tina Smith (D)	Ilhan Omar (D-MN-05) Tom Emmer (R-MN-06)	Metropolitan Council	Small Starts	BRT	PD	\$75 - \$85	41%	\$35	\$0	\$35
MN	Rochester	Rochester Rapid Transit	Amy Klobuchar (D) Tina Smith (D)	Jim Hagedorn (R-MN-01)	The City of Rochester	Small Starts	BRT	PD	\$115	49%	\$56	\$0	\$56
MN	St. Paul	METRO Purple Line Bus Rapid Transit Project	Amy Klobuchar (D) Tina Smith (D)	Betty McCollum (D-MN-04)	Metropolitan Council	New Starts	BRT	PD	\$445	49%	\$218	\$0	\$218
NC	Chapel Hill	North-South Bus Rapid Transit	Richard Burr (R) Thom Tillis (R)	David E. Price (D-NC-04)	Chapel Hill Transit	Small Starts	BRT	PD	\$141	71%	\$100	\$0	\$100
NC	Raleigh	Wake Bus Rapid Transit: New Bern Avenue Project	Richard Burr (R) Thom Tillis (R)	Deborah Ross (D-NC-02)	City of Raleigh	Small Starts	BRT	PD	\$71	49%	\$35	\$35	\$0
NC	Raleigh	Wake Bus Rapid Transit (BRT) - Southern Corridor Project	Richard Burr (R) Thom Tillis (R)	Deborah Ross (D-NC-02)	City of Raleigh	Small Starts	BRT	PD	\$93 - \$126	49%	TBD	\$0	TBD
NC	Raleigh	Wake Bus Rapid Transit (BRT) - Western Corridor Project	Richard Burr (R) Thom Tillis (R)	Deborah Ross (D-NC-02)	City of Raleigh	Small Starts	BRT	PD	\$180	TBD	TBD	\$0	TBD
NJ-NY	Secaucus	Hudson Tunnel	Robert Menendez (D-NJ) Cory A. Booker (D-NJ) Charles E. Schumer (D-NY) Kirsten E. Gillibrand (D-NY)	Albio Sires (D-NJ-08) Jerrold Nadler (D-NY-10)	Gateway Program Development Corporation	New Starts	Commuter Rail	PD	\$12,685	44%	\$5,583	\$0	\$5,583
NV	Las Vegas	Maryland Parkway High Capacity Transit Project	Jacky Rosen (D) Catherine Cortez-Masto (D)	Dina Titus (D-NV-01)	Regional Transportation Commission of Southern Nevada	New Starts	BRT	PD	\$287	35%	\$100	\$0	\$100
NY	New York	Woodhaven Boulevard Select Bus Service	Charles E. Schumer (D) Kirsten E. Gillibrand (D)	Gregory W. Meeks (D-NY-05) Grace Meng (D-NY-06) Alexandria Ocasio-Cortez (D-NY-14)	New York City Department of Transportation	Small Starts	BRT	PD	\$259	38%	\$97	\$0	\$97
OH	Cleveland	MetroHealth Line Bus Rapid Transit project	Rob Portman (R) Sherrod Brown (D)	Shontel Brown (D-OH-11)	Greater Cleveland Regional Transit Authority	Small Starts	BRT	PD	\$50	40%	\$20	\$0	\$20
OH	Columbus	East Main Street Bus Rapid Transit Project	Rob Portman (R) Sherrod Brown (D)	Joyce Beatty (D-OH-03)	Central Ohio Transit Authority	Small Starts	BRT	PD	\$220-\$230	TBD	TBD	\$0	TBD
OH	Columbus	West Broad Street Bus Rapid Transit Project	Rob Portman (R) Sherrod Brown (D)	Joyce Beatty (D-OH-03) Mike Carey (R-OH-15)	Central Ohio Transit Authority	Small Starts	BRT	PD	\$180-\$190	TBD	TBD	\$0	TBD
OR	Portland	Southwest Corridor LRT	Ron Wyden (D) Jeff Merkley (D)	Suzanne Bonamici (D-OR-01) Earl Blumenauer (D-OR-03)	Tri-County Metropolitan Transportation District of Oregon	New Starts	Light Rail	PD	\$2,600 - \$2,800	50%	\$1,300 - \$1,400	\$0	\$1,300 - \$1,400
PA	King of Prussia	King of Prussia Rail Project	Robert P. Casey, Jr. (D) Patrick J. Toomey (R)	Madeleine Dean (D-PA-04)	Southeastern Pennsylvania Transportation Authority	New Starts	Light Rail	PD	\$2,082	TBD	TBD	\$0	TBD
PA	Pittsburgh	Downtown-Uptown-Oakland-East End Bus Rapid Transit	Robert P. Casey, Jr. (D) Patrick J. Toomey (R)	Michael F. Doyle (D-PA-18)	Port Authority of Allegheny County	Small Starts	BRT	PD	\$250	40%	\$100	\$100	\$0
SC	Charleston	Lowcountry Rapid Transit	Tim Scott (R) Lindsey Graham (R)	Nancy Mace (R-SC-01) James E. Clyburn (D-SC-06)	Berkeley-Charleston-Dorchester Council of Government	New Starts	BRT	PD	\$388	TBD	TBD	\$0	TBD
TN	Memphis	Memphis Innovation Corridor Project	Marsha Blackburn (R) Bill Hagerty (R)	Steve Cohen (D-TN-01)	Memphis Area Transit Authority	Small Starts	BRT	PD	\$73	63%	\$46	\$0	\$46
TX	Austin	Blue Line Light Rail Transit Project	John Cornyn (R) Ted Cruz (R)	Chip Roy (R-TX-21) Lloyd Doggett (D-TX-35)	Capital Metropolitan Transportation Authority	New Starts	Light Rail	PD	\$2,000	TBD	TBD	\$0	TBD
TX	Austin	Expo Center Bus Rapid Transit Project	John Cornyn (R) Ted Cruz (R)	Chip Roy (R-TX-21) Roger Williams (R-TX-25) Lloyd Doggett (D-TX-35)	Capital Metropolitan Transportation Authority	Small Starts	BRT	PD	\$36	50%	\$18	\$0	TBD
TX	Austin	Initial Investment of the Orange Line Light Rail Transit Project	John Cornyn (R) Ted Cruz (R)	Michael McCaul (R-TX-10) Pete Sessions (R-TX-17) Chip Roy (R-TX-21) Roger Williams (R-TX-25) Lloyd Doggett (D-TX-35)	Capital Metropolitan Transportation Authority	New Starts	Light Rail	PD	\$3,800	TBD	TBD	\$0	TBD



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54 CIG Pipeline Projects in Project Development (continued)													
TX	Austin	Pleasant Valley Bus Rapid Transit Project	John Cornyn (R) Ted Cruz (R)	Chip Roy (R-TX-21) Roger Williams (R-TX-25) Lloyd Doggett (D-TX-35) Al Green (D-TX-09)	Capital Metropolitan Transportation Authority	Small Starts	BRT	PD	\$37	50%	\$18	\$0	\$18
TX	Houston	University Corridor Bus Rapid Transit Project	John Cornyn (R) Ted Cruz (R)	Lizzie Fletcher (D-TX-07) Dan Crenshaw (R-TX-02) Sheila Jackson Lee (D-TX-18) Sylvia Garcia (D-TX-29)	Metropolitan Transit Authority of Harris County	New Starts	BRT	PD	\$1,560	60%	\$936	\$0	\$936
TX	San Antonio	Advanced Rapid Transit North/South Corridor Project	John Cornyn (R) Ted Cruz (R)	Joaquin Castro (D-TX-20) Chip Roy (R-TX-21) Lloyd Doggett (D-TX-35)	VIA Metropolitan Transit	New Starts	BRT	PD	\$320	50%	\$158	\$0	\$160
TX	Waco	Waco Rapid Transit Corridor	John Cornyn (R) Ted Cruz (R)	Pete Sessions (R-TX-17)	Waco Transit System	Small Starts	BRT	PD	\$18 - \$19	TBD	TBD	\$0	TBD
UT	Salt Lake Co.	Midvalley Connector Project	Mike Lee (R) Mitt Romney (R)	Burgess Owens (R-UT-04)	Utah Transit Authority	Small Starts	BRT	PD	\$106	48%	\$51	\$0	\$51
VA	Alexandria	West End Transitway	Mark R. Warner (D) Tim Kaine (D)	Donald S. Beyer, Jr. (D-VA-08)	City of Alexandria	Small Starts	BRT	PD	\$119 - \$140	TBD	TBD	\$0	TBD
VA	Northern Virginia	Northern Virginia Core Capacity Project	Mark R. Warner (D) Tim Kaine (D)	Donald S. Beyer, Jr. (D-VA-08) Eleanor Holmes Norton (D-DC-At Large)	Virginia Passenger Rail Authority	Core Capacity	Commuter Rail	PD	\$2,415	TBD	TBD	\$0	TBD
VA	Fairfax Co.	Richmond Highway BRT	Mark R. Warner (D) Tim Kaine (D)	Don Beyer (D-VA-08)	Fairfax County Department of Transportation	New Starts	BRT	PD	\$730	39%	\$285	\$0	\$285
WA	Seattle	Center City Connector	Patty Murray (D) Maria Cantwell (D)	Pramila Jayapal (D-WA-07)	Seattle Department of Transportation	Small Starts	Streetcar	PD	\$286	26%	\$75	\$50	\$25
WA	Seattle	Madison Street BRT	Patty Murray (D) Maria Cantwell (D)	Pramila Jayapal (D-WA-07) Adam Smith (D-WA-09)	Seattle Department of Transportation	Small Starts	BRT	PD	\$118	47%	\$60	\$60	\$0
WA	Seattle	RapidRide I Line	Patty Murray (D) Maria Cantwell (D)	Kim Schrier (D-WA-08) Adam Smith (D-WA-09)	King County Metro	Small Starts	BRT	PD	\$141	47%	\$67	\$0	\$67
WA	Seattle	RapidRide J Line Bus Rapid Transit	Patty Murray (D) Maria Cantwell (D)	Suzan K. DelBene (D-WA-01) Adam Smith (D-WA-09)	King County Metro	Small Starts	BRT	PD	\$121	50%	\$60	\$0	\$60
WA	Seattle	RapidRide K Line Bus Rapid Transit	Patty Murray (D) Maria Cantwell (D)	Suzan K. DelBene (D-WA-01) Adam Smith (D-WA-09)	King County Metro	Small Starts	BRT	PD	\$90	TBD	TBD	\$0	TBD
WA	Tacoma	Pacific Avenue/State Route 7 BRT	Patty Murray (D) Maria Cantwell (D)	Derek Kilmer (D-WA-06) Marilyn Strickland (D-WA-10)	Pierce Transit	Small Starts	BRT	PD	\$170	44%	\$75	\$0	\$75
WI	Madison	Madison East-West BRT	Ron Johnson (R) Tammy Baldwin (D)	Mark Pocan (D-WI-02)	City of Madison	Small Starts	BRT	PD	\$160	50%	\$80	\$0	\$80
Subtotal for PD projects									\$51,421		\$28,084	\$382	\$27,702
Subtotal for all CIG projects									\$109,783		\$50,443	\$9,236	\$41,206
Unallocated Core Capacity (FY 2021 & FY 2022)													\$765
Unallocated New Starts (FY 2022)													\$2,339
Unallocated Small Starts (FY 2021 & FY 2022)													\$589
Unallocated EPD Pilot (FY 2021 & FY 2022)													\$360
Subtotal for Remaining Unallocated FY 2021 & FY 2022 Funding													\$4,053
Total Additional Funding Required (Beyond FY 2022)													\$37,154

Sources: Federal Transit Administration website (last updated May 18, 2022), FTA press releases, and other FTA information.



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

April 14, 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

**Subject: Request for Comment on the Capital Investment Grants
Program Initial Guidance Proposals (FTA-2021-0010)**

Dear Docket Clerk:

On behalf of the 1,500 public- and private-sector member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration's (FTA) Capital Investment Grants (CIG) Program Initial Guidance Proposals published in the *Federal Register* on March 15, 2022, at 87 FR 14612. The Infrastructure and Investments Jobs Act (IIJA) (P.L. 117-58) made a series of changes to the CIG program framework. FTA's proposed Initial Guidance clarifies how several specific changes in the statute will be incorporated into the overall CIG program.

We appreciate that FTA is seeking feedback from the public transit industry on its CIG Initial Guidance Proposals and are grateful for the opportunity to provide this input. APTA strongly supports the CIG program and has surveyed members to develop these comments regarding the Initial Guidance.

As Congress developed the IIJA, APTA strongly urged Congress and the Administration to conduct a zero-based review of each requirement in the CIG program. We believe that Congress, in adopting many of APTA's CIG recommendations, specifically intended to strengthen the CIG program, expedite approval, and ensure that beneficial projects across the nation are delivered in a timely manner. As FTA implements changes to the CIG program and processes, we urge the agency to ensure that each change further streamlines the delivery of this critically important program to our communities.

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The FTA Initial Guidance proposes changes in three key areas: CIG project eligibility; demonstrating progress toward meeting Transit Asset Management (TAM) targets; and bundles of CIG projects.

APTA offers the following comments on FTA's proposed changes to its CIG Policy Guidance.

1. CIG Project Eligibility

- a. **New Starts and Small Starts:** Consistent with the IIJA, FTA's Initial Guidance proposes to change the eligibility of New Starts to projects with a total estimated cost of \$400 million or more or that are seeking \$150 million or more of section 5309 CIG funds. FTA proposes to change the eligibility of Small Starts to projects that are less than these two thresholds. FTA further indicates that these changes are self-effectuating. **APTA strongly supports FTA's determinations and believes that these new thresholds should be effective as of the date of enactment of the IIJA.** We believe that these changes will have an important impact on expediting approval of Small Starts that qualify under the revised thresholds.¹
- b. **Core Capacity:** In addition, the IIJA includes changes to the eligibility parameters for Core Capacity projects. Specifically, under the IIJA, for a project to be eligible for Core Capacity, the project must be at or over capacity within 10 years. As we stated in our October 13, 2021 letter² to FTA responding to its Request for Information (RFI) on the CIG program, **APTA strongly supports this change because Core Capacity projects are major investments and require a longer time horizon.**

Concurrent with the statutory change to the 10-year time horizon for Core Capacity projects, FTA proposes to alter its methodology for making a Core Capacity eligibility determination. The Initial Guidance also incorporates the IIJA requirement that the assessment of capacity shall be "without regard to any temporary measures employed by the applicant expected to increase short-term capacity within the next 10 years."

APTA also urges FTA to allow transit agencies to demonstrate that a corridor is likely to be over capacity in 10 years based upon a forecast of future service and ridership, perhaps using FTA's Simplified Trips-on-Project Software (STOPS) or the agencies own regional travel demand model. There are situations where existing ridership is a poor indicator of future ridership (*e.g.*, in cases where a new line is being built that

¹ See APTA Capital Investment Grant Project Pipeline Dashboard (03.28.2022) at <https://www.apta.com/wp-content/uploads/APTA-CIG-Project-Pipeline-Dashboard-03.28.2022.pdf>.

² APTA Letter to the Honorable Nuria I. Fernandez regarding FTA Request for Information Concerning the Capital Investment Grants Program (FTA-2021-0010), October 13, 2021.

connects to an existing line.). Additionally, current COVID era ridership may not be an adequate indicator of where ridership will be in near term windows of time.

Although APTA appreciates FTA's proposal of less stringent current usage requirements, we believe that the changes proposed by FTA do not address and adequately measure the significant capacity constraints faced by transit agencies in certain corridors. As we indicated in our October 13 letter,³ a transit corridor's capacity is determined by three factors:

- 1) the corridor's maximum throughput capacity;
- 2) ridership levels and passenger loads, particularly at maximum load points; and
- 3) the safe and comfortable passenger carrying capacity per vehicle.

Agencies establish thresholds for passenger crowding in their formal service standards, the most common of which is vehicle passenger loads at maximum load points. Those service standards are officially adopted by the agency's policymaking body and communicated to FTA in the agency's Title VI program. If the agency's service standards are being violated and the corridor is already performing at maximum vehicle throughput capacity (i.e., the maximum number of trains or buses per hour as determined by existing systems, equipment, and facilities), the corridor may warrant the type of major capital investment anticipated by the Core Capacity category of the CIG program.

APTA strongly encourages FTA to allow a project to qualify as capacity constrained based on the public transit agency's own established service standards, as included in the Title VI program submitted to FTA. This approach would align FTA's calculations and requirements with the standards and methods most agencies already use to track and evaluate corridor crowding and capacity. It also allows FTA to easily verify each project sponsor's metrics and thresholds against the service standards listed in the Title VI program.

In addition, APTA believes the capacity utilization measure should be calculated and applied at the corridor's peak load point or segment, rather than calculated as an average of the entire project corridor.

If FTA believes that it is necessary to retain the current capacity measure based on average space per passenger, FTA should allow project sponsors to input the actual usable space of the vehicles serving that corridor, rather than an automatic calculation based on the vehicle's length and width. This approach would allow for a fairer accounting of the actual usable space in an agency's vehicles, as seating configurations

³ *Id.*

and other internal elements can vary widely. FTA should understand that rail vehicles, and particularly light rail vehicles, vary greatly from agency to agency.

Moreover, in the Explanatory Statement of the Congressional Appropriations Act, 2022 (P.L. 117-103), Congress directed FTA to reevaluate the calculation to determine interior size of railcar capacity for making core capacity determinations. In re-evaluating this calculation, Congress specifically directed FTA to “ensure that the method recognizes variation in vehicle configurations and provides flexibility for agencies in determining usable space per passenger in the corridor for determining eligibility for Core Capacity funding.”⁴

We strongly believe that allowing project sponsors the option of proposing an alternative way to calculate capacity based upon unique characteristics of their vehicle fleet is both the best policy approach and most reflective of Congressional intent.

Finally, FTA should also ensure that any capacity threshold defined by a square feet per passenger standard must not only consider vehicle dimensions but also allow agencies to align their capacity definitions to changes in public health considerations. FTA must allow agencies to reduce their passenger load factors and maximum crowding thresholds because of the COVID-19 pandemic and concerns about future public health emergencies.

2. Demonstrating Progress Toward Transit Asset Management Targets

The IIJA requires FTA to determine that an applicant has made progress toward meeting TAM targets prior to issuing a CIG Grant. APTA supports FTA’s efforts to promote the integration of asset management principles into overall agency plans, including system expansion, and strongly agrees that progress toward TAM targets should be based on performance against a public transit agency’s chosen target. At the same time, we do not believe that the Initial Guidance is likely to promote transit asset stewardship as intended with the TAM final rule. In its Initial Guidance, FTA focuses on TAM targets and performance for rolling asset classes. Specifically, FTA recommends that, if agencies demonstrate that at least one of the asset classes within the rolling stock vehicle category has met or done better than its target in at least one of the applicable years, the agency can determine that progress has been made toward meeting TAM targets and the CIG can be awarded.

APTA has several concerns with this approach.

First, under the TAM final rule, FTA established state-of-good-repair performance measures for four areas: rolling stock, infrastructure, facilities, and equipment. The Initial Guidance limits review to progress in rolling stock only. This approach is problematic and may be counterproductive. The transit network is a “system of systems”, and there is a synergy among

⁴ 168 Cong. Rec. 3038 (March 9, 2022).

the asset management categories and progress in one area may overcompensate for lack of perceived progress in another area. For instance, on a transit rail system, a train moves from a facility on track laid on a guideway that may cross a bridge or a culvert; and is powered by power systems and controlled by signal and communications systems to transport customers to stations. None of these service enabler assets (e.g., maintenance equipment, signals, systems, amenities, power, track, facilities, and land) are considered in the proposed approach, but without them, the service would not be able run. Moreover, these assets often account for the largest share of an agency's capital asset base, and possibly the largest share of its capital program. In the exercise of planning, programming, and implementing capital plans, the entire system must be considered. Moreover, the Initial Guidance, with its exclusive focus on rolling stock, would adversely impact transit agencies that have focused investments on core infrastructure, which is also essential to providing safe, reliable, and efficient public transit service. **APTA recommends that the Guidance enable transit agencies to show progress toward meeting TAM targets in any of the four SGR areas: rolling stock, infrastructure, facilities, and equipment.**

Second, the Initial Guidance does not take into account that, under some circumstances, it may make fiscal sense to operate vehicles beyond their useful life.⁵ When assets are well maintained and new methodologies and maintenance practices are adopted through a controlled data-driven process, assets can outlast their expected useful life thresholds and still function effectively. In addition, if an asset is designed to be more resilient with materials that have long use lives and are more wear and contaminant resistant, it is feasible for assets to surpass their benchmark useful lives. For example, the New York Metropolitan Transportation Authority implemented new assets and “hardened” existing assets in its public transit system to be more resilient after Super Storm Sandy, thereby increasing its useful life for vulnerable assets throughout the system.⁶ **APTA agrees that progress on one of the rolling stock vehicle classes should constitute progress toward meeting the TAM targets. However, APTA also recommends that the Guidance take into account that, under some circumstances, it may make fiscal sense to operate vehicles beyond their useful life.**

Third, the Initial Guidance does not adequately account for achieving long-term TAM targets. The Initial Guidance could disadvantage agencies, particularly legacy rail transit systems, that are making significant rolling stock procurements because of the long-term delivery schedule of some major rolling stock procurements (e.g., rail cars). APTA's recommended practice on establishing TAM targets advocates for mid- to long-term targets and makes the case that short-term targets are more about how well your procurement and supplier functions work. **APTA recommends that the Guidance take into account achieving long-term TAM targets.**

⁵ *Useful Life of Transit Buses and Vans*, Report No. FTA VA-25-7229-07.1.

⁶ FTA Funding Allocations for Hurricane Sandy Recovery and Resiliency at <https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/fta-funding-allocations-hurricane-sandy-recovery-and>.

Fourth, we appreciate that FTA has taken a two-step approach where projects that are expected to receive a CIG Grant on or before December 31, 2023, meet one standard while projects that expect a CIG Grant after that date meet a higher standard. We understand that FTA implemented this two-step approach because many agencies typically only have three full years of data currently available. We appreciate that FTA devised this two-step approach to assist agencies.

APTA recommends that this approach be restructured in the following manner. The two-step threshold process should remain in place, but the transition point should be extended from December 31, 2023, to December 31, 2027. APTA believes that more time is needed for public transit agencies to prepare for this significant change in the decision-making process.

Until January 2028, require agencies to produce their TAM plans and narrative reports, and how they plan to make progress toward achieving a state of good repair over the TAM plan horizon. Any shorter window is not practical with how agencies procure vehicles or perform projects. Using a five-year or 10-year target setting process would align with APTA's recommended practice.⁷ This approach will allow agencies to utilize existing plans and reports to document the alignment of their TAM and financial plans.

For those projects anticipating a CIG Grant after January 2028, FTA must develop a new set of standards for utilizing a measuring system that demonstrates improvements in asset management that meets the statutory requirement. If FTA must be able to award grants based on progress toward TAM targets, then a rubric for qualitatively assessing alignment to that purpose should be implemented. We appreciate that Congress and FTA want to determine if an agency is making progress toward TAM targets before FTA issues a grant for a new major capital investment. There is, however, no single measurement that would tell us that. With time, a rubric could be created that utilizes information on asset management performance that better encapsulates an agency's progress than using an oversimplified reliance on a single asset category. Significant work went into standardizing National Transit Database (NTD) data and there are now a set of standards that have been documented. We recognize that developing such a rubric will take a significant effort, but we believe it will be a much better tool to demonstrate progress.

We encourage FTA to develop this approach in new Guidance that is issued for public comment by December 31, 2022, and that the agency issue final CIG Guidance with these revised TAM requirements no later than October 1, 2023. Under this timeline, agencies can understand the CIG TAM requirements nearly five years prior to implementation and develop TAM updates that align with these expectations.

⁷ Using Performance Targets to Drive a Transit Asset Management Program at <https://www.apta.com/research-technical-resources/standards/sustainability/apta-suds-tam-wp-009-20/>, October 16, 2020.

APTA, and specifically APTA's Planning, Policy & Program Development Committee, is eager to work with FTA staff to discuss this issue further.

3. Bundles of CIG Projects

APTA strongly supports the CIG bundling authority provided by the IIJA. We believe that there are many public transit systems currently performing large-scale, transformational planning for entirely new or expanded transit investments that can benefit from this approach. As FTA develops the bundling authority, it is important to remember that the purpose of this initiative is to expedite approval of these transformational public transit investments. The proposed changes to implement bundling in the Initial Guidance appear limited to the information necessary for an agency to request to enter a bundle of projects into Project Development (PD). We are encouraged that FTA envisions this information can be included in a "short letter" and these additional requirements appear to be reasonable and straightforward.

As this program is further defined, particularly the requirements of PD and Engineering, we believe that FTA must take a broad view of how a bundle is structured. To make this program as open and effective for the array of agencies who may try to utilize it, FTA must provide as much flexibility as possible. Some public transit agencies may be envisioning a series of what would otherwise be individual Small Starts, while other larger systems might be envisioning a bundle of New Starts and Small Starts. Some transit agencies with existing transit networks might want to consider a series of New Starts, Small Starts and Core Capacity projects in one bundle. FTA should provide transit agencies with maximum flexibility to define their bundles in a manner that best meets the needs of their specific communities. A limited definition of eligible elements in a bundle will limit the success of bundling.

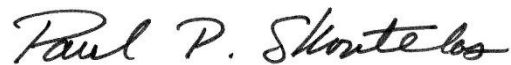
In addition, for the purpose of project management, and consistent with the objectives of the bundling authority, APTA urges FTA to consider a bundle as one project and allow for single, comprehensive documentation of the project (e.g., Project Management Plans, Financial Capacity Documentation, Technical Capacity Documentation). While these documents may be updated over the life of a bundle, agencies must not be overly burdened by creating new versions of each submittal for each element of a bundle. FTA must also give consideration for work previously completed on early elements of a bundle.

We also suggest that for immediate bundles, when developing project criteria, FTA allow proponents to combine (e.g., a single Land Use criteria submittal vs one for each separate project) and that ridership demand modeling be conducted once with all immediate bundle projects, rather than independently for each separate project. This would reflect the systemic benefits of having the multiple projects in operation together and recognize the benefits of combining projects.

We appreciate the opportunity to provide input to FTA on its CIG Initial Guidance. We realize that this Initial Guidance is an interim document and anticipate that FTA will issue comprehensive CIG Guidance later this year. In October 2021, APTA provided significant comments in its response to the FTA CIG RFI, and we look forward to working with you as FTA prepares its comprehensive Guidance, or as it considers other updates to the CIG program.

If you have questions or would like to discuss our comments further, please contact Linda Ford, APTA's General Counsel, at (202) 496-4808 or lford@apta.com.

Sincerely yours,

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

Paul P. Skoutelas
President and CEO



**AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION**

May 20, 2022

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Principal - Health FFRDC

MITRE Corp on behalf of Centers for Medicaid and Medicare Services

NEMTEngagement@mitre.org

Subject: CMS Non-Emergency Medical Transportation (NEMT)
Program Comments

Dear Mr. Goldman:

The American Public Transportation Association (APTA) represents 1,500 public- and private-sector organizations that directly employ 450,000 people and support millions of private-sector jobs. Many of our public transit agency members provide non-emergency medical transportation (NEMT), a Medicaid benefit that provides vital access to health-care appointments for Medicaid recipients, particularly in rural areas. Without NEMT, millions of Americans would not be able to access these important medical services.

APTA believes that, as partners in transportation to the most vulnerable members of our communities, we should find ways to coordinate and collaborate on best practices to ensure that these communities are well-served. It is in that spirit that we provide the following comments on the Centers for Medicaid and Medicare Services (CMS) NEMT Program.

At the outset, APTA strongly encourages CMS to clearly define the roles of federal, state, and local agency partners and providers associated with providing NEMT services. By clearly defining the roles of each agency that touches an NEMT trip, CMS will establish a more cohesive and consistent system that providers and customers can easily understand and access.

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In addition, CMS should look to more broadly coordinate with public transportation providers, recognizing that the social determinants of health outcomes are dependent on the ability to access broader mobility in communities, and work to effectively utilize all resources. Many individuals who utilize NEMT services, are also customers of other systems and programs including public transportation, thus enabling transportation to be a seamless and easily accessible from a customer perspective.

After these roles are defined, we strongly encourage CMS to coordinate communication in each region of the country with other transportation providers so customers know what transportation resources are available to them, and how they can be accessed.

APTA recognizes the financial complexities of coordinating with multiple agencies, programs, and outcomes. Given the complexities, APTA is concerned about cost transference and urges the CMS to address it directly. Cost transference occurs when states or private, for-profit brokerages transfer transportation responsibility to local communities or public transit agencies through increased use of the transit agencies' Americans with Disabilities Act (ADA) paratransit services. This cost transference places a significant financial strain on local taxpayers who fund public transportation agencies, particularly small urban and rural systems. Public transit agencies should not be required to absorb financial and other burdens to relieve other entities of their responsibilities in paying for and providing trips.

In Florida, APTA is aware of an issue where NEMT trips are being improperly applied to state transit agencies' ADA services. In that situation, the Florida Commission for the Transportation Disadvantaged (CTD) has denied individuals access to state-reimbursable trips if they live within a transit ADA corridor. Accordingly, transit agencies are not able to seek reimbursement for transportation services rendered from state funds specifically reserved for these trips. APTA strongly discourages this "trip shedding" and believes the ADA complementary services should not be used to deny access to eligible NEMT trips.

In addition, the Coordinating Council on Access and Mobility (CCAM) plays a vital role in ensuring federal agency collaboration to ensure community-wide access to transportation networks for all, including underserved communities. As a CCAM-participating agency, CMS should ensure that any NEMT policy changes are well vetted and coordinated with all federal agency CCAM partners, including the U.S. Department of Transportation and the Federal Transit Administration (FTA). Failure to coordinate transportation leads to confusion and creates unnecessary barriers for providing these essential services.

CMS should also work with FTA to ensure that Medicaid programs do not place additional licensing, drug testing, and training requirements on public transit drivers performing NEMT services. Public transit drivers are currently required by law to undergo significant training, obtain CDL licensing, and adhere to well-established drug testing protocols, among other requirements. Any additional requirements imposed by state Medicaid programs are

Mr. Jeff Goldman

May 20, 2022

Page 3

unnecessary, contrary to Congressional directives,¹ and could adversely affect public transit authorities' ability to hire drivers to perform these vital services.

Last, APTA is strongly supportive of the NEMT program and opposes any effort to make NEMT for Medicaid recipients optional for states. APTA commits to continue to collaborate with CMS and all federal, state, and local agency partners to improve NEMT coordination and services for our customers. If there are any questions regarding this letter, please contact Stacie Tiongson, Senior Director, Government Affairs and Advocacy, at stiongson@apta.com.

Sincerely,



Paul P. Skoutelas
President and CEO

cc: The Honorable Chiquita Brooks-LaSure, Administrator, Centers for Medicaid and Medicare Services

The Honorable Nuria Fernandez, Administrator, Federal Transit Administration,
U.S. Department of Transportation

¹ The Consolidated Appropriations Act, 2021 (P.L. 116-260) specifically excludes public transit authorities from the requirement that State Medicaid plans include NEMT provider and individual driver requirements. Under the law, State plans must ensure that any provider (including a transportation network company) or individual driver of NEMT receiving payments under the plan **(but excluding any public transit authority)**: (1) is not barred from participating in any federal healthcare plan and is not on the HHS Inspector General's exclusion list; (2) each individual driver has a valid driver's license; and (3) each provider has a process in place to address any violation of a State drug law and to disclose the driving history, including traffic violations, of each individual employed.



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May 20, 2022

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PRESIDENT AND CEO

Paul P. Skoutelas

The Honorable Peter Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, D.C. 20590

Dear Secretary Buttigieg:

On behalf of America's \$80 billion public transportation industry, which directly employs 450,000 workers and supports millions of private-sector jobs, I write to urge the U.S. Department of Transportation (DOT) to extend for 10 business days the deadline for pending surface transportation Notices of Funding Opportunities (NOFOs) that include equity as a consideration. In particular, we request a 10-day extension for DOT's Multimodal Project Discretionary Grant Opportunity (Deadline: May 23) and the Federal Transit Administration's Low or No Emission Grant Program and the Grants for Buses and Bus Facilities Competitive Program (Deadline: May 31). This extension would better enable public transportation agencies and other applicants to ensure that their applications address equity using DOT's corrected Transportation Disadvantaged Census Tracts (Historically Disadvantaged Communities (HDCs)) mapping tool.

In addition, in its consideration of Rebuilding American Infrastructure with Sustainability and Equity (RAISE) grant applications (Deadline: April 14), we urge DOT to provide appropriate credit to any public transportation agency that submitted a project with an HDC designation using DOT's available mapping tool at the time of application, regardless of its HDC designation under the corrected mapping tool. This approach will "hold harmless" public transportation agencies that acted in good faith in submitting their RAISE grant applications using the available HDC mapping tool.

Addressing equity is a shared commitment of both the public transportation industry and the Biden-Harris Administration and DOT's HDC mapping tool is critical to these efforts. Last week, DOT corrected its mapping tool, which had incorrectly designated a significant number of Census tracts.¹

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Public transportation agencies have used this mapping tool extensively as part of their efforts to address equity in their competitive grant applications. The changes to Census tract designations have significantly affected many forthcoming applications for competitive grants.

Public transportation agencies go through a long and intense process for deciding which projects to submit for competitive grants. Given transit agencies shared equity objectives, a project's HDC designation is a major consideration in project selection. Many agencies have selected projects based on how historically disadvantaged communities will benefit from the project. Agencies also recognize that equity is a significant factor for consideration in DOT's and FTA's decision-making processes for grant awards.

Given the extensive time and effort that agencies have undertaken to develop these competitive grant applications, we urge DOT to provide an extension to enable agencies to recraft their applications to best describe how their submissions align with the Administration's priorities based on corrected HDC data.

For these reasons, we request a 10-day extension for DOT's Multimodal Project Discretionary Grant Opportunity (Deadline: May 23) and the Federal Transit Administration's Low or No Emission Grant Program and the Grants for Buses and Bus Facilities Competitive Program (Deadline: May 31) to better enable public transportation agencies and other applicants to ensure that their applications address equity using DOT's corrected HDCs mapping tool. In addition, we urge DOT to provide appropriate credit to any public transportation agency that submitted a RAISE grant project application with an HDC designation using DOT's available mapping tool at the time of application.

Finally, I want to express my great appreciation to your staff for taking the time to meet with APTA staff today to help us better understand how the HDC designation is simply a tool to inform a project's impact on equity. We greatly appreciate your partnership and look forward to working with you on our shared commitment to address equity in transportation.

Thank you for your consideration.

Sincerely,



Paul P. Skoutelas
President and CEO

cc: The Honorable Nuria Fernandez, Administrator, Federal Transit Administration

The Honorable Amit Bose, Administrator, Federal Railroad Administration

¹ See Federal Transit Administration, Bus and Low-No Potential Applicants: Update on USDOT Transportation Disadvantaged Mapping Tool, March 12, 2022.

AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
FACT SHEET
INFRASTRUCTURE INVESTMENT AND JOBS ACT
BUILD AMERICA, BUY AMERICA TITLE
May 31, 2022

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 The IIJA's Build America, Buy America (BABA) Title also encourages strengthening the Buy American Act regarding federal government procurement.² Under IIJA Buy America requirements, each federal agency must:

- within 60 days, submit to the Office of Management and Budget (OMB) a report that identifies each federal financial assistance program for infrastructure administered by the agency. The report must identify all domestic content procurement requirements applicable; assess the applicability of domestic content procurement preference requirements in current law; provide details on any applicable domestic content procurement preference requirements and any exceptions or waivers; and describe the types of infrastructure projects that receive funding under the program. In addition, the report must identify programs for which the domestic content procurement preference does not apply or is subject to a waiver.³
- within 180 days, “ensure that none of the funds made available for a Federal financial assistance program for infrastructure, including each deficient program, may be obligated for a project unless all of the iron, steel, and manufactured products and construction materials used in the project are produced in the United States.”

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.

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

³ *See* OMB Memorandum M-22-08 (Dec. 20, 2021).

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

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

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

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

The IIJA requires the Secretary of Transportation, before granting a waiver, to consult with the Director of the Hollings Manufacturing Extension Partnership regarding whether there is a domestic entity that can provide the material that is the subject of a waiver request.⁵

DOT Report on Infrastructure Programs Subject to BABA

On February 7, 2022, the Department of Transportation (DOT) published its report on [DOT's Identification of Federal Assistance Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act](#).⁶

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

⁵ In addition, the legislation requires the Secretary of Transportation to enter into a technical assistance partnership with the Secretary of Commerce to: ensure the development of a domestic supply base to support intermodal transportation in the United States (e.g., high-speed passenger rail and public transportation); ensure compliance with Buy America laws that apply to a project receiving assistance from a DOT modal program; encourage technologies developed with the support of and resources from the Secretary to be transitioned into commercial market and application; and establish procedures for consultation with the Hollings Manufacturing Extension Partnership.

⁶ 87 Fed. Reg. 6943 (Feb. 7, 2022).

In its report, DOT finds that none of its programs, including public transit and passenger rail programs, is currently fully consistent with BABA requirements.⁷ DOT states:

...the mode-specific Buy America(n) statutes applied by most DOT agencies cover iron, steel and manufactured products, in ways that are generally consistent (or that in some cases exceed) that standards found in the BABA. **However, none of those statutes specifically cover construction materials**, other than to the extent that such materials would already be considered iron, steel, or manufactured products.⁸ (emphasis added)

OMB Initial Implementation Guidance

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

On April 18, 2022, OMB issued a Memorandum providing Initial Implementation Guidance on applying Buy America preferences for infrastructure (“OMB Initial Implementation Guidance”).⁹ The OMB Initial Implementation Guidance states that agencies must ensure that all applicable programs include Buy America requirements in each award for an infrastructure project.¹⁰ It also outlines the process for issuing Buy America waivers.¹¹

On April 21, 2022, OMB issued a Notice of Listening Sessions and Request for Information (RFI) seeking public comment on BABA implementation. The RFI contains specific questions regarding construction materials.¹² OMB subsequently extended the comment period to June 6, 2022.¹³

DOT Temporary Waiver of Buy America Requirements for Construction Materials

On April 28, 2022, DOT published a notice seeking comment on whether it should use its authority, in accordance with § 70914(b)(1) of BABA, to provide a temporary waiver of the Buy America requirement for construction materials on DOT-assisted infrastructure projects, on the basis that applying the domestic content preference for these materials would be inconsistent with the public interest.

⁷ Id. at 19.

⁸ Id. at 21.

⁹ OMB, Memorandum-22-11, [Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) (April 18, 2022).

¹⁰ Id. at 2.

¹¹ Id. at 6-13.

¹² OMB, [Notice of Listening Sessions and Request for Information](#), 87 Fed. Reg. 23888 (April 21, 2022).

¹³ OMB, [Construction Materials Used in Federal Financial Assistance Projects for Infrastructure and End Products Manufactured in the United States under the Build America, Buy America Act; Request for Information](#), 87 Fed. Reg. 32063 (May 26, 2022).

On May 13, 2022, [APTA filed comments](#) strongly supporting DOT's proposed temporary waiver of the Buy America requirements for construction materials. The request for a waiver acknowledges that the requirement will take time to implement in an already constrained supply chain that threatens to implode if further uncertainty is injected into the contracting process. APTA also recommends that neither the Federal Transit Administration nor the Federal Railroad Administration make any changes to the rigorous rolling stock and final assembly requirements under current law and regulation. In addition, options in rolling stock contracts should be subject to the same Buy America requirements as the base contract.

On May 19, 2022, DOT issued a [Temporary Waiver of Buy America Requirements for Construction Materials](#) for a period of 180 days beginning on May 14, 2022, and expiring on November 10, 2022.¹⁴ DOT is establishing this transitional waiver to prepare for compliance with the new Buy America standards for construction materials. During this time, DOT expects states, industry, and other partners to begin developing procedures to document compliance.¹⁵

¹⁴ 87 Fed. Reg. 31931 (May 25, 2022)

¹⁵The waiver is applicable to awards that are obligated on or after May 14, 2022, and before November 10, 2022. Unless extended, the waiver expires on November 10, 2022.

copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption and the regulatory provision from which the exemption is granted. The notice must specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

Current Regulatory Requirements

The ELDT regulations, set forth in 49 CFR part 380, subparts F and G, were implemented on February 7, 2022 established minimum training standards for individuals applying for certain CDLs and defined curriculum standards for theory and BTW training. Subpart G of Title 49 of the CFR established an online training provider registry (TPR), eligibility requirements for providers to be listed on the TPR, and qualification requirements for instructors. Under 49 CFR 380.713, a training provider must use instructors who meet the definitions of “theory instructor” and “behind-the-wheel (BTW) instructor” in 49 CFR 380.605, which require that instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the CMV for which training is to be provided, and have either: (1) A minimum of 2 years of experience driving a CMV requiring a CDL of the same or higher class and/or the same

endorsement; or (2) at least 2 years of experience as a BTW CMV instructor. Exceptions apply to both definitions.

Applicant's Request

SBL seeks an exemption from the requirement in 49 CFR 380.713 that a training provider use instructors who meet the definitions of “theory instructor” and “BTW instructor” in 49 CFR 380.605. SBL specifies that it has two employees who do not have two years of required driving experience. SBL states that the two employees meet the qualifications under current State regulations and Federal regulations in effect before implementation of the ELDT requirements, have class A CDLs with tanker endorsements, and are medically qualified.

SBL states that the instructor qualifications required by the ELDT regulations will have a severe negative impact on its business and on the driver shortage. SBL requests an exemption that would allow the two instructors to accumulate two years of experience while continuing to provide BTW and theory instruction. SBL asserts the exemption would allow for full instructor staffing, resulting in a “50% increase of approximately 96 students annually.” If the exemption is denied, SBL states that it would be forced to terminate the employees and replace them with less qualified individuals.

SBL also notes that FMCSA has included “grandfathering” provisions in the implementation of other new regulations. SBL points to the provisions in 49 CFR 380.603, which provide that individuals who obtained a Commercial Learner's Permit (CLP) before February 7, 2022 are not required to comply with the ELDT rule if they obtain a CDL before the CLP expires. SBL is requesting similar consideration for State-licensed instructors who met applicable Federal requirements prior to February 7, 2022.

IV. Equivalent Level of Safety

To ensure an equivalent level of safety, SBL's application offers a comprehensive list of the qualifications for the two driver training instructors for whom they request the exemption. Both individuals meet the qualifications required prior to implementation of the ELDT rule; both have Class A CDLs with tanker endorsements; both are medically qualified; both have graduated from a State-licensed truck driver training school; both have taught over the road driving; both have previously trained commercial drivers; one individual worked as a commercial driver; and both have the ability to instruct all topics required by the ELDT regulations.

SBL indicates that the request for the exemption “places no known negative safety impact” and SBL would continue to adhere to all applicable State and Federal regulations that govern the safe operation of CMVs. SBL provides the South Carolina Department of Motor Vehicles requirements for instructors that were in effect prior to implementation of the ELDT final rule. SBL asserts that both employees meet those requirements and that South Carolina-licensed schools have seen no negative safety impacts to date by using instructors with fewer than 2 years of driving experience.

A copy of SBL's application for exemption is available for review in the docket for this notice.

V. Request for Comments

In accordance with 49 U.S.C. 31315(b), FMCSA requests public comment from all interested persons on SBL's application for an exemption from the requirement in 49 CFR 380.713 to use instructors who meet the definitions of “theory instructor” and “BTW instructor” in 49 CFR 380.605. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the Addresses section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–11271 Filed 5–24–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Temporary Waiver of Buy America Requirements for Construction Materials

ACTION: Notice.

SUMMARY: As the Biden-Harris Administration implements the historic Bipartisan Infrastructure Law (BIL), we seek to maximize the use of American made products and materials in all federally funded projects while also successfully delivering a wide range of

critical infrastructure projects for States, local communities, counties, Tribal nations and farms, factories and businesses across the U.S. In order to deliver projects and meaningful results while ensuring robust adoption of Buy America standards, the U.S. Department of Transportation (“DOT” or “Department”) is establishing a temporary public interest waiver for construction materials for a period of 180 days beginning on May 14, 2022 and expiring on November 10, 2022. DOT is establishing this transitional waiver to prepare for compliance with the new Made in America standards for construction materials. During this time period, DOT expects States, industry, and other partners to begin developing procedures to document compliance. DOT will continue its engagement through the waiver period to help facilitate the creation of robust enforcement and compliance mechanisms and to rapidly encourage domestic sourcing of construction materials for transportation infrastructure improvements.

DATES: The waiver is applicable to awards that are obligated on or after May 14, 2022 and before November 10, 2022. Unless extended, the waiver expires on November 10, 2022.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Darren Timothy, DOT Office of the Assistant Secretary for Transportation Policy, at darren.timothy@dot.gov or at 202–366–4051. For legal questions, please contact Michael A. Smith, DOT Office of the General Counsel, 202–366–2917, or via email at michael.a.smith@dot.gov.

SUPPLEMENTARY INFORMATION:

Background

In January 2021, President Biden issued Executive Order (E.O.) 14005, titled “Ensuring the Future is Made in All of America by All of America’s Workers,” launching a whole-of-government initiative to strengthen Made in America standards.

The E.O. states that the United States Government “should, consistent with applicable law, use terms and conditions of Federal financial assistance awards and Federal procurements to maximize the use of goods, products, and materials produced in, and services offered in, the United States.” DOT is committed to ensuring strong and effective Buy America implementation consistent with E.O. 14005 and has a long track record of successfully applying Made in America standards to support American workers and businesses through its

more than \$70 billion in grant programs and \$700 million in direct purchases in FY2020.

On November 15, 2021, President Biden signed the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58, which includes the Build America, Buy America Act (“the Act”). Public Law 117–58, div. G §§ 70901–52. The BIL not only makes a historic investment in American transportation—from roads and bridges to rail to transit—but also greatly strengthens Made in America standards. Specifically, the Act expands the coverage and application of Buy America preferences in Federal financial assistance programs for infrastructure. The Act requires that no later than May 14, 2022—180 days after the date of enactment—the head of each covered Federal agency shall ensure that “none of the funds made available for a Federal financial assistance program for infrastructure . . . may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.” BIL § 70914(a).

The Act provides that the preferences under Section 70914 apply only to the extent that a domestic content procurement preference as described in Section 70914 does not already apply to iron, steel, manufactured products, and construction materials. BIL § 70917(a)–(b). This provision allows Federal agencies to preserve existing Buy America policies and provisions that meet or exceed the standards required by the Act, such as FHWA’s existing requirements for iron and steel.

One of the new Buy America preferences included under Section 70914 of the Act is for construction materials. By May 14, 2022, each covered Federal agency must ensure that all manufacturing processes for construction materials used in Federally assisted infrastructure projects occur in the United States. None of the specific statutes that apply particular Buy America¹ requirements to the Federal financial assistance programs administered by DOT’s Operating Administrations (OAs), including 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2) (MARAD), specifically cover construction materials, other than to the extent that such materials would

already be considered iron, steel, or manufactured products.

In addition to establishing Buy America preferences, the Act also provides certain statutory authorities for the Made in America Office (“MIAO”) in the Office of Management and Budget (“OMB”). BIL §§ 70915(b) and 70923. MIAO was first established by Section 4 of E.O. 14005. MIAO’s authorities under the BIL include issuing guidance to assist in applying the Act’s requirements and issuing standards that define term “all manufacturing processes” in the case of construction materials. BIL § 70915.

On April 18, 2022, OMB issued memorandum M–22–11, “Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure” (“Implementation Guidance”). Under section VIII of the Implementation Guidance, “Preliminary Guidance for Construction Materials,” “construction materials” includes: An article, material, or supply—other than an item of primarily iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is or consists primarily of:

- Non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

Implementation Guidance at p. 13–14. The Implementation Guidance also states that “an article, material, or supply should only be classified into one of the following categories: (1) Iron or steel; (2) a manufactured product; or (3) a construction material. For ease of administration, an article, material, or supply should not be considered to fall into multiple categories.” *Id.* at p. 6. The Implementation Guidance also explains that “items that consist of two or more of the listed materials that have been combined together through a manufacturing process, and items that include at least one of the listed materials combined with a material that is not listed through a manufacturing process, should be treated as manufactured products, rather than as construction materials.” *Id.* at p. 14. OMB characterizes its guidance on which materials are construction materials as “preliminary and non-binding guidance . . . so that agencies can begin applying Buy America

¹ In this notice, references to “Buy America” include domestic preference laws called “Buy American” that apply to DOT financial assistance programs.

requirements to those materials.” *Id.* at p. 13.

DOT is taking appropriate steps to ensure the definition of “construction material” specified in the Implementation Guidance applies to each award from a financial assistance program for infrastructure projects, including by incorporating that definition in terms and conditions incorporating a Buy America preference.

Section 70915(b) of the BIL requires OMB to issue standards that define “all manufacturing processes” for construction materials. Section VIII of the Implementation Guidance provides that, “[p]ending MIAO’s issuance of final standards on construction materials, and absent any existing applicable standard in law or regulation that meets or exceeds these preliminary standards, agencies should consider ‘all manufacturing processes’ for construction materials to mean the final manufacturing process and the immediately preceding manufacturing stage for the construction material.” Implementation Guidance at p. 14. After considering information received through stakeholder and industry outreach, MIAO will issue further guidance that identifies initial manufacturing process for each type of construction material that should be considered as part of “all manufacturing processes.” *Id.* Agencies are also directed to “consult with MIAO, as needed, to ensure that any waiver issued for construction materials is explicitly targeted and time-limited, in order to send a clear market signal that additional standards for ‘all manufacturing processes’ in the case of construction materials will be forthcoming.” *Id.*

The Implementation Guidance notes that a “waiver in the public interest may be appropriate where an agency determines that other important policy goals cannot be achieved consistent with the Buy America requirements established by the Act.” Implementation Guidance at p. 10. The guidance also recognizes several instances in which Federal agencies may consider issuing a public interest waiver and encourages agencies to consider an adjustment period where time limited waivers would allow recipients and agencies to transition to new Buy America preferences, rules, and processes. *Id.* at p. 11.

In bringing its Federal financial assistance programs for infrastructure into compliance with the Act’s requirement for construction materials, DOT must also ensure that these important Federal programs for transportation infrastructure investment

are able to obligate funds and complete infrastructure projects in a timely manner. For example, the new construction materials requirement will apply to capital projects funded by formula and discretionary programs of the Federal Transit Administration, including projects under the new All Stations Accessibility Program, which will upgrade the accessibility of fixed guideway public transportation systems for people with disabilities.

Because construction materials have not previously been subject to Made in America rules as have iron and steel, there is a need to gather data on domestic sourcing capacity to inform stronger standards. For example, while the exact impact on highway project construction is unknown, the Department believes that it could be significant. According to the current National Bridge Inventory, there are more than 62,588 bridges with wood or timber elements (including 16,909 bridges whose main span have wood or timber elements), 2,281 bridges with non-ferrous metal elements, and 19,562 bridges with polymer-based products elements. Additionally, construction materials are used in a wide variety of other applications, such as culverts, glass for retro-reflectivity in pavement markings, glass in fiber optics involved in utility relocations, non-ferrous metals in sign sheeting, and dry wall used in rest areas and other vertical construction applications. These are just a few examples of construction materials that may be found in highway projects.

The Department has heard from stakeholders regarding concerns about the implementation of Buy America requirements to construction materials, specifically how recipients of Federal funds will need to require contractors to source Buy America compliant construction materials and how industry will certify and demonstrate compliance. The Department recognizes both the importance of ensuring Buy America compliant construction materials and the need to implement the requirement in a way that is not overly burdensome.

Issuance of the Proposed Temporary Waiver and Discussion of Comments Received

In accordance with Section 70914(b)(1) of the Act, on April 28, 2022, DOT published a notice on its website seeking comment on whether to use its authority to provide a temporary waiver of the Buy America requirement for construction materials on DOT-assisted infrastructure projects, on the basis that applying the domestic content

preference for these materials would be inconsistent with the public interest.² The notice explained that the waiver would be applicable to awards that are obligated on or after May 14, 2022. To maximize notice to affected stakeholders, the Department also announced the proposal on several email distribution lists related to the operating administrations’ existing Buy America requirements.

The DOT received 83 separate comments in response to the publication from a wide array of stakeholders, including State transportation agencies, public transit agencies, airport operators, construction firms, manufacturers and suppliers, labor organizations, and individuals, as well as associations representing each of those groups. The vast majority of commenters supported DOT’s proposal to issue a temporary waiver for construction materials. Comments opposing the waiver came from certain manufacturers and labor organizations; their key concerns relevant to the proposal are discussed in more detail below.

In the notice of proposed waiver, DOT asked whether a longer or shorter effective period than 180 days from May 14, 2022 would be warranted. Most commenters who addressed this question stated that this length of time would likely be inadequate to accomplish the goals of the transition waiver period and suggested that it be increased. Most of those commenters suggesting a longer waiver period specifically offered that it should have a duration of one year, but several others proposed even longer effective periods ranging from 18 months to 4 years. Several reasons were given for the commenters’ belief that a longer period would be justified. For example, the Utah Department of Transportation described a series of steps that will need to be undertaken before the new requirements for construction materials can be implemented, including OMB issuing final standards for construction materials, as well as State DOTs updating standard specifications; establishing certification processes; working with and informing industry to demonstrate their products meet the standards; working with contractors and incorporating new contract provisions

² Because the application of Buy America to construction materials is required under BIL § 70914, the authority for this waiver is also based on BIL § 70914. Therefore, reference to, and reliance on, the waiver authority under specific Buy America provisions that are administered by the Department, such as 49 U.S.C. 50101 (FAA); 23 U.S.C. 313 (FHWA); 49 U.S.C. 22905(a) (FRA); 49 U.S.C. 5323(j) (FTA); and 46 U.S.C. 54101(d)(2)(MARAD), is unnecessary.

prescribing Buy America requirements; and reviewing and updating stewardship and oversight agreements with FHWA to address non-compliance with Made in America standards. The Alaska Department of Transportation and Public Facilities and the Pennsylvania Department of Transportation also noted that the 180-day period would overlap with the peak construction season in most States, and thus affect participation from the contractors, suppliers, and agencies that are needed to develop new compliance processes for construction materials.

Other commenters, such as the Greater Orlando Aviation Authority, focused on the steps needed to investigate potential domestic sources of construction materials and to build up an adequate supply base to support federally funded transportation infrastructure projects. Several commenters, such as the Associated General Contractors of America, noted that current supply chain challenges in the materials industry and the resulting volatility in those markets make it “extremely difficult to determine at this time whether U.S. production for these newly covered materials can support the demand the IJIA’s increased funding levels will place on these markets, or whether there is sufficient or existing U.S. production at all for some of these goods.”

The Wyoming Department of Transportation, however, commented that it while it “believes the waiver may need to be extended, perhaps considerably,” it also “recognizes that DOT needs to move promptly to ensure at least the six-month period to minimize disruption to the current construction season,” and noted that while compliance procedures may not currently be in place, “the ability to certify materials will grow over time, so there should be a good faith certification process that can be refined over time.” While recognizing the challenges that commenters noted on the steps that will ultimately be required to fully implement the new Buy America provisions for construction materials and to achieve a robust, thriving domestic supply base, DOT agrees with Wyoming DOT on the importance of moving quickly with a short-term waiver and with an approach of refining processes over time, rather than delaying the application of the new requirements for an extended period of time until those processes and domestic supply bases can be perfected.

No commenters provided evidence of an existing certification process for construction materials that is already in use and could be immediately adopted

by suppliers, contractors, and project sponsors. However, the Spring City Electrical Manufacturing Company, a manufacturer of aluminum lampposts, listed five products that it believes would qualify as construction materials under the Act and noted that the aluminum production process is similar to that for iron and steel products, for which “DOT has previously determined the ‘material certification process has been adequate for determining compliance,’ ” as “contractors must provide certificates of origin to the project sponsor.” The commenter also stated that “notably for the [State] DOTs’ interests the aluminum lampposts and bases are covered by country of origin marking requirements in 19 U.S.C. 1304(e) that should aid in origin identification.” The Department will determine whether the company’s products would be considered construction materials once OMB has issued final standards, but DOT believes that this comment supports the conclusion that some types of construction materials may be readily addressed with new Buy America compliance procedures adapted from existing procedures elsewhere in use, and that the limited 180-day duration of the waiver as proposed is appropriate to enable that adaptation.

Some commenters, including the United Steelworkers Union (USW), the Municipal Castings Association (MCA), and the Alliance for American Manufacturing (AAM) questioned the duration of the period that the Department provided to comment on the proposed waiver. USW asserted that “BABA clearly states that agencies requesting general applicability public interests waivers allow for 30 days for public comments.” The Department disagrees with that description of the statute. Section 70914(c)(2) of the Act requires agencies to “provide a period of not less than 15 days for public comment on the proposed waiver.” Section 70914(d) is a separate provision that requires a comment period of “not less than 30 days” when an agency conducts a review of an existing general applicability waiver. That provision is not applicable to new general applicability waivers. Accordingly, the Department’s comment period satisfies the applicable statutory requirement. The Department chose not to extend the comment period beyond May 13, 2022, because the relevant Buy America requirements became effective on May 14, 2022. The Department determined that the interest in providing financial assistance recipients with certainty about applicable requirements

outweighed the benefits of a longer comment period. That determination is supported by the fact that 82 commenters, representing a diverse set of stakeholders, submitted comments in the time provided.

USW, MCA, and AAM, along with the Commercial Metals Company, also expressed concern about the Department’s failure to propose the waiver before April 28, 2022. USW asserted that this undermines stakeholder’s confidence in the Department’s capacity to efficiently implement the Act. The Department’s timing was responsive to the public availability of the Implementation Guidance. As explained above, that guidance was issued on April 18, 2022; the Department proposed the waiver 8 business days later. If the Department had proposed the waiver before OMB issued the Implementation Guidance, the public would have lacked important context to inform its comments and the Department would have been at risk of needing to withdraw and re-propose a waiver that complied with the Implementation Guidance. The Department and OMB anticipate providing additional opportunities for further stakeholder input on implementation of the Act, and, as described in the proposal and this notice, the Department will consider narrowing the breadth or shortening the duration of this waiver in response to information supporting the availability of demonstrably compliant categories of construction materials.

USW and AAM also raised concerns about the issuance of a temporary general applicability waiver for construction materials on the basis of public interest. Both parties acknowledged “that limited, narrow use of waiver authority may be necessary, including for those departments and agencies working to establish a Buy America policy for the first time.” DOT agrees and notes that while its Operating Administrations have longstanding experience in applying Buy America preferences for iron and steel and for manufactured products, applying such policies to construction materials is a new exercise. USW also noted that “this Administration has stated clearly that public interest waivers be used sparingly, and reserved for truly exigent circumstances.” DOT agrees that public interest waivers should be used sparingly and has concluded that avoiding the disruption to transportation infrastructure projects that would occur without a period for deliberate development of processes needed to transition to the new requirements constitutes a rare and

appropriate use of the authority. Both USW and AAM also expressed concern about public interest waivers being used to delay the application of Buy America preferences indefinitely. DOT's purpose in limiting the temporary waiver for construction materials to only 180 days avoids such an outcome and communicates that stakeholders need to rapidly adopt the necessary procedures to ensure compliance with the new requirements.

Several commenters requested that the Department expand the scope of the proposed waiver to include items that are not construction materials, as that term is defined in the Act and Section VIII of the Implementation Guidance. The Department considers those requests to be outside the scope of its current waiver action. Likewise, for the purpose of this waiver action, DOT considers out of scope the comments that were received addressing other types of public interest waivers that DOT could issue under the Act, the application of Buy America requirements to manufactured products and to iron and steel, and the importance of complying with cargo preference (a.k.a. Ship American) requirements when transporting foreign-made materials purchased pursuant to a Buy America waiver. However, DOT values the feedback received in those comments and will consider those requests and comments as it continues implementation of the Act, including its development of guidance and reviews of existing waivers of general applicability under section 70914(d) of the Act.

Finding on the Temporary Waiver

Based on all the information available to the Agency, DOT concludes that applying the domestic content preference for construction materials under Section 70914(a) of the Act on DOT-assisted infrastructure projects now, before adequate compliance processes are in place, would be inconsistent with the public interest, and that a temporary waiver of that requirement is thus appropriate under Section 70914(b)(1). This waiver is applicable only to awards obligated on or after May 14, 2022 and before November 10, 2022. For awards obligated during that 180-day period, the waiver applies for the duration of the award. Unless extended, the waiver is inapplicable to any award obligated on or after November 10, 2022.

In issuing this temporary public interest waiver, DOT is not making a finding that any construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality.

Such a finding would require a separate waiver action under section 70194(b)(2).

Ramping Up Made in America Compliance and Ongoing Request for Comments

With the goal of advancing crucial infrastructure projects in a timely manner while implementing the new Buy America requirements, the DOT is providing this notice as its finding that a waiver of Buy America requirements for construction materials is appropriate at this time. DOT continues to encourage suppliers and other stakeholders to inform DOT of any procedures that may be developed or be in place to certify the compliance of construction materials with the domestic preference requirement in the Act. That information helps DOT rapidly encourage domestic sourcing and potentially shorten the effective period or narrow the applicability of the transitional waiver. The Department also encourages supplier and other stakeholders to identify categories of construction materials that currently have sufficient domestic availability to support DOT-assisted infrastructure projects, to assist contractors and project sponsors in incorporating compliant products in their projects and to help the Department focus its activities to benefit domestic manufacturers. Comments may be submitted to the U.S. Government electronic docket site at <http://www.regulations.gov/>, Docket: DOT-OST-2022-0047.

The temporary general waiver of the Buy America requirement for construction materials under the Act will provide sufficient time for DOT to: (i) Seek information and feedback from State, local, industry, and other partners and stakeholders on challenges with and solutions for implementing the requirement; (ii) allow a reasonable adjustment period for recipients of DOT financial assistance, including States, local communities, Tribal nations, transit agencies, railroads, airports and ports and their industrial vendors to develop and transition to new compliance and certification processes for construction materials; and (iii) gather data on the sourcing of the full range of construction materials used in Federally funded transportation projects and strategies for increasing domestic capacity to produce those materials.

During the waiver period, DOT expects that implementing partners will take rapid action to prepare for compliance with the new requirements, as they currently do for iron and steel, for example. Actions to prepare for compliance with the new requirements include:

1. Establishing certification processes by grantees to determine Buy America compliance for construction materials;

2. Working with industry to ensure that manufacturers are prepared to demonstrate that their products meet applicable Buy America standards;

3. Ensuring contractors and subcontractors are prepared to certify compliance with Buy America requirements for construction materials, and provide all relevant information, including contract provisions prescribing Buy America requirements;

4. Establishing appropriate diligence by State DOTs, contracting agencies, and other relevant agencies, including audits and reviews as appropriate; and

5. Providing further data and information to DOT on the domestic availability of construction materials, in particular, through comment by suppliers on construction materials that can be sourced in the U.S. currently.

During the waiver period, DOT will also work to prepare for implementation of new Made in America requirements for construction materials by:

1. Assessing existing Made in America processes such as questions and requirements for grantees and contractors to ensure processes for reviewing construction materials are aligned with standards already in place, such as for iron and steel, as appropriate;

2. Building new Made in America requirements into forthcoming Notice of Funding Opportunities, loan programs, and other resources provided by the Department, as appropriate;

3. Reviewing DOT's enforcement processes, including stewardship and oversight agreements with States, risk-based reviews, and compliance assessment program reviews for non-compliance with Made in America standards to ensure the enforcement processes for construction materials are effective and consistent with processes for products such as iron and steel, as appropriate;

4. Reviewing data, information, and comments provided by States, industry, and other partners to further assess opportunities, challenges, and the availability of domestically sourced construction materials. Stakeholders are encouraged to provide information to DOT in response to this notice, as well as to the OMB's Listening Sessions and Request for Information on the application of Made in America requirements to construction materials.

By the end of the waiver period, DOT expects State, industry, and other partners to establish an effective compliance process appropriate for construction materials, consistent with

the BIL and relevant implementation guidance and standards. As explained above, the Department's implementation activities will continue during the waiver period. If DOT can determine, using all available information, including stakeholder comments and data, that there are currently sufficient compliance processes for certain

categories of construction materials, DOT will consider shortening the period of the waiver overall, or for certain categories of product, to rapidly encourage domestic sourcing. In making any adjustments, DOT will follow the public input requirements of Section 70914(d), which provide for at least a 30-day comment period for DOT's

conduct of a review of an existing general applicability waiver.

Issued in Washington, DC, on: May 19, 2022.

Polly E. Trottenberg,

Deputy Secretary.

[FR Doc. 2022–11195 Filed 5–24–22; 8:45 am]

BILLING CODE 4910–9X–P



**AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION**

May 13, 2022

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Washington, DC 20590

Subject: Docket DOT-OST-2022-0047

Dear Docket Clerk:

On behalf of the 1,500 public- and private-sector member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Department of Transportation's notice and request for comments regarding Notice of Temporary Waiver of Buy America Requirements for Construction Materials published April 28, 2022.

APTA strongly supports DOT's proposed temporary waiver of the Buy America Requirements for Construction Materials. The request for a waiver acknowledges that the construction material requirement will take time to implement in an already constrained supply chain that threatens to implode if further uncertainty is injected into the contracting process. Moreover, we are encouraged that DOT intends to use the waiver period to further engage the public transportation industry and other partners on implementation of the Buy America Requirements for Construction Materials.

As part of our effort to provide industry feedback, APTA surveyed its members on the Buy America requirements. Based on this feedback, APTA strongly believes that the current Federal Transit Administration (FTA) and Federal Railroad Administration (FRA) Buy America requirements (except for construction materials) are wholly consistent with the Build America, Buy America Act (BABA) (P.L. 117-58, Division G, Title IX). Thus, APTA recommends that neither FTA nor FRA make any changes to the rigorous rolling stock and final assembly requirements under current law and regulation. In addition, options in rolling stock contracts should be subject to the same Buy America requirements as the base contract. If a grant is executed for a base contract on a rolling stock

procurement before May 14, 2022, all options associated with the base contract should be subject to the base contract's requirements, even if the options are funded by a grant executed on or after May 14.

In addition, we provide feedback from some of our members who made the following recommendations:

- Given that the Office of Management and Budget (OMB) Guidance allows for several new types of general applicability waivers within the public interest category, DOT should consider the creation of the following general applicability public interest waivers:
 - De Minimis: Establish a threshold of five percent of project costs up to a maximum of \$1 million. A De Minimis waiver would avoid potential delays to contract awards and job creation that might occur if grantees are required to obtain individual or unexpected Buy America waivers for minor components of large projects.
 - Minor Components: Consistent with the OMB guidance that allows federal agencies to issue general applicability waivers for minor components, issue a public interest waiver for non-domestically produced miscellaneous minor components comprising no more than five percent of the total material cost of an otherwise domestically produced iron and steel product. Such a waiver at the limits allowed by the OMB Guidance could create more U.S. jobs.
 - Adjustment Period: Issue a four-year public interest waiver to provide agencies sufficient time to transition to new rules and processes established under OMB's Guidance. This transition period will enable both public transit agencies and relevant industries to transition to the new Buy America rules and comply with any new regulations while avoiding project delays.
- With regard to the Construction Materials requirement, the OMB Guidance requires that "agencies should consider 'all manufacturing processes' for construction materials to include at least the final manufacturing process and the immediately preceding manufacturing stage for the construction material." DOT should not consider the origin of raw materials when defining the requirements for construction materials. Our members would appreciate clear guidance on what constitutes "the final manufacturing process and immediately preceding manufacturing stage" and a member urges DOT to include the following for each construction material:
 - Drywall: Require manufacturing of drywall to occur in the U.S. but allow the gypsum raw material to be imported.
 - Lumber: Require the sawing, milling, and final manufacturing of the lumber to occur in the U.S. but allow the logs to be imported.

- Non-ferrous Metals: Require the manufacturing of non-ferrous building materials to occur in the U.S. but allow the raw material (e.g., copper, tin) to be imported.
- Plastic and Polymer-based Products: Require the cutting, milling, and any required dapping to occur in the U.S. but allow blocks of polymer and other raw materials to be imported.
- Glass: Require manufacturing of the glass construction material (including optic glass) to occur in the U.S. but allow any raw materials to be imported.

We appreciate the opportunity to comment and we welcome the opportunity to partner with DOT to bring together interested members of the public transit industry during the 180-day waiver period to provide additional feedback. Should you have any questions regarding the positions or comments discussed in this letter, please contact Linda Ford, APTA's General Counsel at LFord@apta.com or 202-496-4808.

Sincerely,

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

Paul P. Skoutelas
President and CEO