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## **APTA Recommendations on Surface Transportation Law**





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# APTA Surface Transportation Authorization Recommendations

**Adopted by the APTA Board of Directors**

October 12, 2019

On behalf of our more than 1,500 member organizations, the American Public Transportation Association is pleased to present recommendations for the next federal surface transportation authorization act. These recommendations were approved unanimously by APTA's Legislative Committee on June 23, 2019, [and the Board of Directors on October 12, 2019]. These recommendations are the product of a lengthy effort that began in November 2017, when the APTA Executive Committee voted to utilize the Legislative Steering Committee, which includes representatives from each of APTA's modal and member interests, to develop consensus recommendations for the federal surface transportation authorization bill that will replace the Fixing America's Surface Transportation Act (FAST Act) when it expires on September 30, 2020.

In 2018, the APTA Legislative Committee and the Board of Directors considered and adopted Principles for Surface Transportation Authorization to guide the Committee's efforts in developing specific recommendations.

The APTA Surface Transportation Authorization Recommendations reflect the consensus views and priorities of APTA's diverse membership.

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# Executive Summary

# The Case for Increased Public Transportation Investment

**Americans ride public transportation 10 billion times a year, and every trip meets a need or provides an opportunity.**

Riders of all ages and incomes depend on public transportation to access education, career opportunities, and medical care in urban, suburban, and rural communities across the country. For seniors and people with disabilities, it's a lifeline. And only with substantial and sustained investment can the public transportation network continue to create vibrant communities across America and grow our economy.

Yet, as a nation, we have neglected to make necessary investments in this vital public service. Our public transit infrastructure is on the verge of failing; the U.S. Department of Transportation estimated in 2015 that more than \$90 billion is needed just to bring bus and rail assets into a state of good repair. And communities are clamoring for even more public transportation as a way to reduce traffic congestion and ensure clean air.

**APTA calls for a federal investment of \$178 billion over six years to fund critical projects that will repair, maintain, and improve our public transit and passenger rail systems today and in the future.**

**If we invest in public transportation today, the benefits Americans will reap in the coming decades will repay that investment multiple times over.**

For every \$1 billion invested in public transportation, we create or sustain 50,000 jobs across industries. Every \$1 invested in public transportation generates approximately \$4 in economic returns.

We need to invest in public transportation infrastructure that meets the evolving needs of our residents and the places they live. Today, there are more transportation options than ever — commuters may ride a shared scooter to a bus stop or take rideshare to a rail station. Public transportation is the backbone that weaves all of these mobility options together. To make this network of transportation options possible, we must provide the necessary, dedicated funding to ensure safe, reliable, and efficient public transit and high-performance passenger rail systems.

**Not only will investment in public transportation keep economic opportunity alive in America, but it will open the door to the mobility innovations we need to compete in the 21st Century.**

**We must invest in that mobility future today.**

To maintain our position as a global leader, our country needs more job creation, a stronger economy, a cleaner environment, and more opportunity—**and public transportation gets us there.**

# **APTA's Top Three Priorities**

**APTA urges Congress to dramatically increase federal infrastructure investment levels in public transportation and passenger rail. Specifically, APTA urges Congress to:**

**1**

## **Enact a long-term surface transportation authorization act funded by dedicated, sustainable revenues (e.g., increasing federal motor vehicle user fees) that address the pending shortfall in the Highway Trust Fund (including the Mass Transit Account), and provide \$145 billion over six years to bring public transit systems to a state of good repair and meet growing community demands for increased mobility choices.**

The shortfall in the Highway Trust Fund must be addressed. With a state-of-good-repair backlog of approximately \$100 billion and growing, insufficient support from all levels of government remains an obstacle to progress. The primary funding goals of our plan are to erase the infrastructure deficit, rebuild and expand our public transportation systems to best meet the needs of today's commuting public and future demands, and enhance our nation's economic competitiveness.

**2**

## **Reestablish a 40-40-20 capital investment ratio among the Capital Investment Grants, State of Good Repair, and Buses and Bus Facilities programs.**

Americans across the country in all types of communities are demanding quality public transportation, and increased investment in all modes is necessary to meet that need. Congress should provide significant growth for all public transportation programs. In growing each program, APTA believes that a relative distribution of 40 percent for Capital Investment Grants, 40 percent for State of Good Repair, and 20 percent for Buses and Bus Facilities is the fairest distribution of funding for these three capital investment programs. The 40-40-20 relationship was maintained in authorizing law from 1987 through 1998, and for guaranteed authorizations from 1999 through 2003. Recent authorization acts have not maintained that ratio.

**3**

## **Create a new Mobility Innovation and Technology Initiative to introduce cutting-edge technologies and integrate new service-delivery approaches and mobility options in the transit marketplace.**

Advances in technology have significantly expanded and enhanced the opportunities for public transportation agencies to serve the mobility needs of their communities. To evolve the traditional public transportation infrastructure to enable broadened economic and community opportunity through these options, public transit providers need assistance to innovatively integrate new mobility solutions into their networks.

# Surface Transportation Authorization

(See Appendix for Surface Transportation Funding Principles)

Program	FY 2019 Actual	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Six-Year Total
<b>Public Transit Programs</b>	<b>\$13,460.23</b>	<b>\$16,074.68</b>	<b>\$19,000.77</b>	<b>\$21,909.51</b>	<b>\$25,283.54</b>	<b>\$29,197.75</b>	<b>\$33,739.08</b>	<b>\$145,205.33</b>
<b>Public Transportation Account</b>	<b>\$10,633.38</b>	<b>\$12,732.11</b>	<b>\$14,899.73</b>	<b>\$17,178.61</b>	<b>\$19,821.40</b>	<b>\$22,886.67</b>	<b>\$26,442.41</b>	<b>\$113,960.93</b>
§ 5305 Planning	139.09	164.90	191.45	222.28	258.06	299.61	347.85	1,484.16
§ 5307 and § 5336 Urbanized Area Formula	4,827.12	5,723.09	6,644.51	7,714.28	8,956.28	10,398.24	12,072.36	51,508.76
§ 5310 Seniors and Individuals with Disabilities	279.65	331.55	384.93	446.91	518.86	602.39	699.38	2,984.02
§ 5311 Rural Formula Grants	699.32	811.91	942.63	1,094.39	1,270.59	1,475.16	1,712.66	7,307.34
§ 5312 Public Transportation Innovation	28.00	50.00	60.00	70.00	80.00	90.00	100.00	450.00
§ 5312(i) TCRP	5.00	15.00	17.42	20.22	23.47	27.25	31.64	135.00
§ 5314 Technical Assistance and Workforce Development	9.00	22.50	23.00	23.50	24.02	24.55	25.09	142.65
§ 5314(a) Standards	-	4.00	4.09	4.18	4.27	4.36	4.46	25.36
§ 5314(a)(2)(F) Assault Mitigation Measures	-	5.00	5.11	5.22	5.34	5.45	5.57	31.70
§ 5318 Bus Testing Facility	4.00	4.00	4.09	4.18	4.27	4.36	4.46	25.36
§ 5334 FTA Administration	-	117.55	120.13	122.78	125.48	128.24	131.06	745.23
§ 5335 National Transit Database	4.00	4.40	4.84	5.32	5.86	6.44	7.09	33.95
§ 5337 State of Good Repair	2,901.37	3,368.49	3,910.81	4,540.45	5,271.47	6,120.17	7,105.52	30,316.92
§ 5339 Buses and Bus Facilities	1,127.02	1,482.04	1,955.41	2,270.23	2,635.73	3,060.09	3,552.76	14,956.25
§ 5339(a) Bus Formula	614.96	792.47	1,029.16	1,186.57	1,369.32	1,581.50	1,827.83	7,786.84
§ 5339(b&c) Bus Competitive	512.06	689.57	926.25	1,083.66	1,266.41	1,478.59	1,724.93	7,169.41
§ 5339(c) Low or No Emissions	85.00	111.78	146.98	193.28	224.40	260.53	302.48	1,239.46
§ 5340 Growing and High Density States	601.32	608.67	608.67	608.67	608.67	608.67	608.67	3,652.04
§ 5340(c) Growing States	293.31	300.67	300.67	300.67	300.67	300.67	300.67	1,804.01
§ 5340(d) High Density States	308.00	308.00	308.00	308.00	308.00	308.00	308.00	1,848.02
§ 3006(b) of FAST Act Coordinated Access and Mobility	3.50	7.00	7.15	7.31	7.47	7.64	7.80	44.38
§ 20005(b) of MAP-21 Pilot Program for TOD Planning	10.00	11.00	12.10	13.31	14.64	16.11	17.72	84.87
Mobility Innovation Initiatives	-	25.00	30.00	35.00	40.00	45.00	50.00	225.00
<b>General Fund</b>	<b>\$2,826.85</b>	<b>\$3,342.57</b>	<b>\$4,101.03</b>	<b>\$4,730.90</b>	<b>\$5,462.14</b>	<b>\$6,311.08</b>	<b>\$7,296.67</b>	<b>\$31,244.40</b>
§ 5309 Fixed-Guideway Capital Investment Grants (CIG)	2,552.69	3,152.57	3,910.81	4,540.45	5,271.47	6,120.17	7,105.52	30,101.00
§ 5312 Public Transportation Innovation	6.00	30.00	30.00	30.00	30.00	30.00	30.00	180.00
§ 5314 Technical Assistance and Workforce Development	5.00	10.00	10.22	10.44	10.67	10.91	11.15	63.40
WMATA	150.00	150.00	150.00	150.00	150.00	150.00	150.00	900.00
§ 5334 FTA Administration (Moves to Trust Fund)	113.17	-	-	-	-	-	-	-

# Funding Table

Program	FY 2019 Actual	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Six-Year Total
<b>Passenger Rail Programs*</b>	<b>\$655.00</b>	<b>\$2,262.53</b>	<b>\$3,465.10</b>	<b>\$4,700.27</b>	<b>\$5,973.29</b>	<b>\$7,290.25</b>	<b>\$8,658.22</b>	<b>\$32,349.67</b>
<b>Contract Authority</b>		226.25	693.02	1,410.08	2,389.32	3,645.12	5,194.93	13,558.73
<i>Contract Authority Ramp Up</i>		10%	20%	30%	40%	50%	60%	
<b>General Fund</b>	655.00	2,036.28	2,772.08	3,290.19	3,583.97	3,645.12	3,463.29	18,790.94
<b>Consolidated Rail Infrastructure and Safety Improvements (§ 11102 of FAST Act and 49 U.S.C. § 22907)</b>	255.00	793.13	920.82	1,069.08	1,241.20	1,441.03	1,673.04	7,138.30
<i>Commuter Rail PTC Operations and Maintenance</i>		160.00	163.52	167.12	170.79	174.55	178.39	1,014.37
<i>Passenger Rail-Highway Grade Crossing Grants</i>		250.00	255.50	261.12	266.87	272.74	278.74	1,584.96
<b>Federal-State Partnership for State of Good Repair (§ 11103 of FAST Act and 49 U.S.C. § 24911)</b>	400.00	464.40	539.17	625.97	726.76	843.76	979.61	4,179.67
<b>High-Performance Intercity Passenger Rail Grants (P.L. 110-432, § 301(a); 49 U.S.C. § 22902)</b>	-	1,000.00	2,000.00	3,000.00	4,000.00	5,000.00	6,000.00	21,000.00
<b>Railroad Cooperative Research Program (49 U.S.C. 24910)</b>	-	5.00	5.11	5.22	5.34	5.45	5.57	31.70
<b>Public Transit and Passenger Rail Total</b>	<b>\$14,115.23</b>	<b>\$18,337.21</b>	<b>\$22,465.87</b>	<b>\$26,609.78</b>	<b>\$31,256.83</b>	<b>\$36,448.00</b>	<b>\$42,397.30</b>	<b>\$177,555.00</b>

\* These amounts do not include funds specifically authorized for Amtrak.





# Surface Transportation Authorization Recommendations

# Surface Transportation Authorization Recommendations

## Funding Recommendations

The key to the ultimate success of the next authorization bill is addressing the shortfall in the Highway Trust Fund and increasing public transportation investment. With a state-of-good-repair backlog of \$100 billion and growing, insufficient support from all levels of government remains an obstacle to progress. The primary funding goals of our plan are to erase the infrastructure deficit, rebuild and expand our public transportation systems to best meet the needs of today's commuting public and future demands, and enhance our nation's economic competitiveness.

APTA supports any reasonable, bipartisan plan to increase revenues to the Highway Trust Fund, which includes the Mass Transit Account. Increasing federal motor vehicle fuel user fees is a straightforward, medium-term solution, but Congress must also find an alternative, long-term solution as vehicles become more efficient and overall consumption of motor fuels decreases.

### APTA RECOMMENDATIONS

- **Increase federal motor vehicle fuel user fees by at least 25 cents (including five cents for public transportation) to address the shortfall in the Highway Trust Fund.**  
Amend 26 U.S.C. § 4081(a)(2)(A)(i) by striking "18.3" and increasing this amount by at least five cents per year for five years. Amend 26 U.S.C. § 4081(a)(2)(A)(2) by striking "24.3" and increasing this amount by at least five cents per year for five years. Amend 26 U.S.C. § 9503(e)(2)(A) by striking "2.86" and increasing this amount by at least one cent per year for five years. Rename the "Mass Transit Account" of the Highway Trust Fund to be the "Public Transportation Account".
- **Index user fees to inflation and for future increases in fuel economy to maintain the purchasing power of this revenue source.**  
Amend 26 U.S.C. § 4081 to accomplish this objective.
- **Seek alternative, long-term solutions to the Highway Trust Fund that maintain a user-fee nexus, including establishing a national pilot program for vehicle-miles travelled (VMT) fees, which are currently being tested in several states.**
- **Provide \$145 billion over six years to bring public transit systems to a state of good repair and meet growing community demands for increased mobility choices.**
- **Create a Passenger Rail Trust Fund, and identify new, long-term, dedicated revenues to significantly increase intercity passenger rail investment.**

## Finance Recommendations

APTA urges Congress to use existing financing mechanisms as the basis for any provisions in an infrastructure bill designed to support traditional local bond issuance, leverage private-sector financing, and enable public-private partnerships, where appropriate, for public transportation infrastructure projects. We caution, however, that despite our embrace of these financing tools, they alone cannot solve the infrastructure deficit that our industry faces. New revenues to provide greater support for existing federal transit programs must be a fundamental element of any new federal initiative to support infrastructure investment.

### Municipal Bonds and Advance Refunding Bonds

For more than 100 years, municipal bonds have been a key component of state and local government projects that have built our national infrastructure system. Between 2003 and 2012, counties, localities, states and state/local authorities financed \$3.2 trillion in infrastructure investment through tax-exempt municipal bonds. Prior to 2018, a key feature of municipal bond financing was the allowance of a one-time advance refunding of these bonds to refinance existing debt when doing so provides savings to the bond issuer.

In 2017, Congress enacted the Tax Cuts and Jobs Act (P.L. 115-97), which included a provision eliminating the ability of states and municipalities to issue tax-exempt advance refunding bonds. APTA opposed that change, and we urge Congress to restore tax-exempt advance refunding. Advance refunding is an important tool that allowed state and local governments to save billions of dollars and spend taxpayer dollars more efficiently.

#### APTA RECOMMENDATION

- **Restore the ability for state and local governments to issue tax-exempt advance refunding bonds.** Amend 26 U.S.C. § 149(d)(1) by striking “to advance refund another bond” and insert “as part of an issue described in paragraph (2), (3), or (4)” and restoring provisions that existed in § 149(d) prior to enactment of the Tax Cuts and Jobs Act.

### Tax Credit Bonds for Surface Transportation Projects

APTA supports the use of Qualified Tax Credit Bonds for surface transportation projects, as well as expanding the tax liabilities eligible to be offset by the credits. This proposal should attract additional classes of investors, including non-taxable entities such as pension funds, to surface transportation investment. Pension funds are tax-exempt, which makes many tax-exempt infrastructure bonds uneconomical. The use of Qualified Tax Credit Bonds for surface transportation projects would provide pension funds an incentive to support increased investment in the rehabilitation of existing, and the construction of new, U.S. infrastructure.

Under Qualified Tax Credit Bonds, the federal government provides an interest subsidy by granting the bondholder an annual credit that can be applied against federal tax liabilities. The issuer (transit agency or municipality) remains responsible for repayment of the principal. To improve the marketability of the bonds, the tax credits should be applied against federal income tax withholding on wages and benefits (other than Social Security and Medicare), which should attract pension funds and insurance companies that currently have no financial incentive to invest in tax-exempt debt. Similar tax-credit bond programs have been authorized for school construction, energy sectors, and other purposes, but not for public transportation projects.

#### APTA RECOMMENDATION

- **Authorize Qualified Tax Credit Bonds for surface transportation projects under section 54A of the tax code.**

## Private Activity Bonds (PABs)

APTA urges Congress to enhance the availability and use of low-interest Private Activity Bonds (PABs) for public transportation and intercity passenger rail projects with significant private participation (such that the projects otherwise do not qualify for tax-exempt financing).

### APTA RECOMMENDATIONS

- **Expand the eligibility of mass-commuting facility PABs beyond their current use (construction of rail and bus infrastructure and facilities) to include acquisition of rolling stock.**  
Amend 26 U.S.C. § 142(a)(3) by adding at the end “, including the acquisition of rolling stock”.
- **Remove mass-commuting facilities from the federally-imposed state volume cap for PABs, thereby aligning these public transportation and intercity passenger rail activities with airports, docks, and wharves, which are not subject to the PAB state volume caps.**  
Amend 26 U.S.C. § 146(g)(3) by inserting “(3),” after “(2),”.
- **Reduce the “capable of 150-mph” speed requirement for high-speed intercity passenger rail facility PABs to allow more projects to be eligible, especially privately-operated passenger rail services running on shared rights-of-way with freight railroads.**  
Amend 26 U.S.C. § 142(i) by striking “150 miles per hour” and inserting “110 miles per hour” or a lower speed.

## Value Capture Tax Credits

APTA recommends that Congress provide federal tax incentives for certain equity investments in public transportation and intercity passenger rail projects, thereby enabling public transportation and intercity passenger rail agencies to benefit more directly from the increased property values and other advantages their projects bring to the communities they serve.

### APTA RECOMMENDATIONS

- **Real Estate-Based Value Capture—Establish a public transportation version of Economic Opportunity Zones, or its equivalent, in which investors in real estate projects in the vicinity of a public transportation or intercity passenger rail station, multi-modal terminal, or facility would be eligible for certain tax benefits (tax credits and/or accelerated depreciation) upon making an investment that benefits the local agency for capital purposes in an amount equal to a specified percentage of the real estate investment.**
- **Asset-Based Value Capture—Create tax code incentives to attract “tax-oriented equity” into public transportation and intercity passenger rail projects (i.e., equity investments whose return is based principally or solely on federal tax benefits).**  
In a public transit-based version of the successful Low-Income Housing Tax Credits and New Markets Tax Credits programs, investors would purchase tax credits allocated at a specified percentage of capital investments made by public transportation or intercity passenger rail agencies for facilities and equipment. This type of value capture approach would not be dependent on future real estate development, as with traditional value capture strategies. It could bring in new categories of investors to subsidize a wide range of public transportation or intercity passenger rail projects, regardless of local real estate market conditions or growth potential.

## Commuter Tax Benefits

The transportation fringe benefit, also called the Commuter Tax Benefit, is an employer-provided benefit that can cover the costs of an employee's commute via transit or vanpool up to a monthly cap of \$265 (as of 2019). The commuter tax benefit can also be used for the cost of qualified parking (with a separate monthly cap of \$265). The benefit can be offered pre-tax, as a subsidy, or in combination. APTA strongly supports the commuter tax benefit.

However, in the Tax Cuts and Jobs Act, Congress limited the benefit. While Congress recognized the value of the commuter tax benefit by retaining key elements, including the personal deduction for employees and allowing employers the ability not to pay payroll taxes on the amount provided, we are disappointed that the law restricts an employer's ability to deduct the cost of providing the benefit. The legislation also created new tax liabilities for tax-exempt entities that offer transportation benefits.

### APTA RECOMMENDATIONS

- **Restore the ability for employers to deduct the expense of providing transportation fringe benefits to employees.**  
Strike 26 U.S.C. § 274(a)(4) and 26 U.S.C. § 274(l).
- **Repeal the provision in the Tax Cuts and Jobs Act that creates new tax liabilities for tax-exempt entities that offer transportation benefits.**  
Strike 26 U.S.C. § 512(a)(7).

## Federal Loan Programs as Local Match

Federally supported infrastructure projects typically require a non-federal match—commonly referred to as “local match”—that state, local, or private sources must provide for a project to move forward. The local match is often 20 percent, but for some programs such as the Capital Investment Grants (CIG) program, the local match is often significantly higher. Congress has recognized that funding received through federal credit assistance programs (e.g., direct loans) should be considered part of the required local match because such loans are secured through repayment from non-Federal sources. Section 603(b)(8) of Title 23 explicitly states that Transportation Infrastructure Finance and Innovation Act loans may be used for any non-federal share of project costs. APTA opposes the Administration's efforts to consider federal loans repaid with non-federal funds to be part of the federal contribution and not as part of the local match. Funding from such loans should be considered local in all contexts and considerations when assessing the financing of a project.

### APTA RECOMMENDATION

- **Require the Department of Transportation (DOT) to consistently apply the requirement that federal loans be considered local match across all DOT programs.**  
Amend 23 U.S.C. § 603(b)(8) to strike “may” and insert “shall”.

## Transportation Infrastructure Finance and Innovation Act (TIFIA) Loans and Loan Guarantees

The Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94) made significant improvements to the TIFIA program, including allowing TIFIA assistance to capitalize state infrastructure banks and clarifying the definition of rural projects. APTA recommends further streamlining TIFIA program requirements for Federal Transit Administration (FTA) CIG projects.

### APTA RECOMMENDATIONS

- **Streamline and increase the coordination of the federal review processes for projects seeking assistance from both the CIG and TIFIA programs.**
- **Enhance the predictability of TIFIA assistance for CIG projects.** TIFIA's Master Credit Agreement provision is intended to assist programs of related and commonly-secured projects by removing TIFIA "selection risk" for projects scheduled in the out-years. Modify this provision to permit early TIFIA conditional commitment for a single project that also is seeking CIG funds to address FTA's requirement that other sources of capital be reasonably identified before approving a Full Funding Grant Agreement (FFGA).
- **Grant expedited credit reviews to low-risk candidates.** Amend 23 U.S.C. § 602(a)(2) by striking "\$75,000,000" in each instance and inserting "\$150,000,000".
- **Expedite processing for projects with dependable revenue sources.** Require DOT to implement the Streamlined Application Process in 23 U.S.C. § 603(f).
- **Require DOT to implement MAP-21's increased project share for TIFIA secured loans.** The Moving Ahead for Progress in the 21st Century Act (MAP-21) (P.L. 112-141) increased the maximum federal percentage of a TIFIA loan from 33 percent to 49 percent of project costs. This increased share would enable TIFIA credit assistance to meaningfully support certain projects with large public benefits that may be difficult to finance conventionally without federal credit support, while still ensuring other investors share in project costs and risks. Although DOT has authority to approve loans as a greater percentage of project costs, in practice, DOT does not issue loans for more than 33 percent of project costs for any project.



## Railroad Rehabilitation and Improvement Financing (RRIF)

### Loans and Loan Guarantees

APTA recommends that Congress authorize federal funding for the credit risk premium of RRIF projects, consistent with the TIFIA program. This proposal will enhance and ensure access to the RRIF loan program by public transportation agencies.

In addition, the FAST Act includes a provision expanding the eligibility for RRIF loans and loan guarantees to authorize support for rail-related Transit-Oriented Development (TOD) projects. However, this eligibility expires on December 4, 2019. DOT's Build America Bureau, which serves as the single point of contact for RRIF and other loan programs, recommends that TOD sponsors apply early to ensure enough time to process applications in advance of the deadline. Congress should extend this eligibility as soon as possible to ensure project sponsors are not discouraged from initiating an application due to the fast-approaching deadline.

APTA supports TOD where it is appropriate and viable. TOD projects have real economic development, mobility, environmental, and other community benefits. Opportunities for "value capture", increased ridership, and other revenue opportunities associated with TOD make taxpayer dollars go further.

### APTA RECOMMENDATIONS

- **Specify in statute that RRIF loans shall be used for the non-federal share of a project.**

Amend 45 U.S.C. § 822 by adding a new subsection:

"(n) NON-FEDERAL SHARE.—The proceeds of a secured loan under this subchapter shall be used for any non-Federal share of project costs required under this title if the loan is repayable from non-Federal funds."

- **Authorize federal funds for credit risk premiums under RRIF to leverage RRIF loan assistance.**

Amend 45 U.S.C. § 822(f) by adding a new paragraph:

"(5) USE OF FEDERAL FUNDS.—An applicant may use Federal funds to pay the credit risk premium determined under paragraph (2)."

- **Authorize Better Utilizing Investments to Leverage Development (BUILD) grant funds to be used to fund the subsidy cost of federal credit assistance under RRIF, similar to the authority to use BUILD grants for TIFIA subsidy costs.**

- **Permanently extend eligibility for TOD projects for RRIF loans and loan guarantees.**

Strike 45 U.S.C. § 822(b)(3).

- **Require the Secretary of Transportation to repay the credit risk premium for recipients that have satisfied all obligations that attached to RRIF loans.**

Amend 45 U.S.C. § 822(f) by adding at the end the following:

"(6) REFUND OF PREMIUMS.—The Secretary shall repay the credit risk premium of each loan, with interest accrued thereon, not later than 60 days after the date on which all obligations attached to each such loan have been satisfied.

"(7) MODIFICATION COST.—Of the amounts made available for credit assistance under 45 U.S.C. 822, such sums as may be necessary to pay any modification cost, as defined in section 502 of the Federal Credit Reform Act of 1990, shall be available to carry out paragraph (6)."

## Repeal FAST Act Contract Authority Rescission

Most Federal-aid highway and public transportation programs are funded by a special type of budget authority called contract authority. With contract authority, authorized amounts are available for obligation according to the provisions of the authorization act without further legislative action. In the Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Act, Congress limits the amount of contract authority that may be used in a given year by providing an annual obligation limitation. Contract authority provides public transit agencies, local communities, and states advance notice of the size of the federal transit and highway programs at the time an authorization act is enacted. In this way, contract authority eliminates budgetary uncertainty and facilitates long-term planning.

Under the Federal-aid highway program, states receive more highway contract authority (approximately 8 percent) than they can spend (obligate) in a given year. Given that states have flexibility on which programs to fund in a given year, the unobligated balances are typically larger in programs that do not necessarily involve highway construction (e.g., Congestion Mitigation and Air Quality Improvement (CMAQ) and the Surface Transportation Block Grant program (STBG)). When Congress enacts a highway contract authority rescission, non-highway construction programs like CMAQ and STBG take a disproportionate cut because they have higher remaining balances in the state accounts.

According to Federal Highway Administration (FHWA) data, as of September 30, 2017, states had \$8.2 billion of unobligated balances available for rescission under the FAST Act. Section 1438 of the FAST Act permanently rescinds \$7.569 billion of Federal-aid Highway contract authority from states' unobligated balances of highway funds on July 1, 2020.

If the rescission goes into effect, states will be required to cut their available contract authority balances by their proportionate share of the \$7.6 billion rescission. Given the limited available balances of contract authority, these cuts will likely significantly impact programs like CMAQ and STBG that are important sources of funding for public transportation projects. Since 2010, states and local communities have transferred an average of \$1.79 billion per year from CMAQ, STBG, and other highway programs to public transit agencies for transit capital projects. This rescission could delay or cancel projects to construct or extend fixed-guideway systems, replace buses, and implement new transit services.

In addition, the section 1438 rescission eliminates all of the contract authority increases provided by the FAST Act. The total amount of annual contract authority for the FAST Act reauthorization will be cut from \$58.7 billion in fiscal year (FY) 2020 to \$51.1 billion in FY 2021 and subsequent years. From a budgetary standpoint, Congress will begin discussing surface transportation reauthorization as if the FAST Act funding increases never occurred.

### APTA RECOMMENDATION

- Repeal section 1438 of the FAST Act (P.L. 114-94).



# Public Transportation Program Structure Recommendations

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Silver Spring Station  
Silver Spring Station

# Public Transportation Program Structure Recommendations

APTA recommends maintaining the basic program structure as passed in the FAST Act, with the following priority recommendations to improve the efficiency, effectiveness, and distribution of the existing programs. Overall, APTA recommends increases to critical funding programs to reduce the state-of-good-repair backlog and invest in new capacity.

Funding increases must be sufficient to address the estimated \$100 billion state of good repair backlog. Transit agencies deal with this issue every day with bus and rail rolling stock operating past their useful lives, and deferred facility, equipment, and infrastructure improvements. Likewise, demand for transit across the country requires investment in CIG projects (including New Start, Core Capacity, and Small Start projects) that provide major expansions of existing systems, as well as enable new fixed guideway systems.

Failure to address these issues only increases long-term costs for taxpayers and delays the safety and mobility improvements that will result from increased investment.

In growing each program, APTA believes that a relative distribution of 40 percent for Capital Investment Grants, 40 percent for State of Good Repair, and 20 percent for Buses and Bus Facilities is the fairest distribution for these capital investment programs. The 40-40-20 relationship was maintained in authorizing law from 1987 through 1998, and for guaranteed authorizations from 1999 through 2003. Recent authorization acts have not maintained that ratio. With significant growth for all three programs, APTA's proposal restores the 40-40-20 capital investment ratio in the second year of a new authorization act.

Under current practice, FTA does not make apportionments to agencies until appropriations cover a certain time period into a fiscal year, often at least five months. This delay can cause significant hardships, especially for smaller agencies that rely on federal funding for ongoing operating and capital expenses. APTA's proposal requires FTA to provide contract authority to transit agencies at the beginning of the fiscal year, consistent with the FHWA's practice.

Congress can also minimize the impacts of partial government shutdowns by providing FTA administrative salaries from the Mass Transit Account of the Trust Fund rather than by annual appropriations. As we have seen too often, allowing FTA appropriations to lapse sidelines most FTA staff who provide critical support to the public transportation industry. During a lapse in DOT appropriations, the agency is not able to execute grants, cooperative agreements, or contracts. Moreover, public transportation agencies, which rely on grants to support operations and capital projects, do not receive any reimbursements for previously approved projects and expended funds.

APTA also reaffirms its support for the Disadvantaged Business Enterprise (DBE) program and urges Congress to reauthorize it for six years. The DBE program is vital to ensure that minority- and women-owned firms have an equal opportunity to participate in federally assisted public transportation and passenger rail projects.

Finally, throughout our recommendations, APTA proposes improvements to existing programs by streamlining the transportation delivery process. APTA supports consistency and transparency across FTA regions and across all DOT modes, specific timelines for permitting decisions, limitations on unnecessary requirements in guidance documents, and, where appropriate, a zero-based review of existing requirements.

## APTA RECOMMENDATIONS

- **Reestablish a 40-40-20 capital investment ratio among Capital Investment Grants (§5309), State of Good Repair (§ 5337), and Buses and Bus Facilities (§ 5339) programs.**

To reestablish this ratio, overall funding must be sufficient to ensure that each program receives significant funding increases. APTA does not advocate for increases to any program that results in a decrease in current funding levels for other existing programs.

- **Provide contract authority for formula programs on October 1 of each fiscal year and make the funds immediately available for obligation.**

Amend Chapter 53 of Title 49 at the appropriate place to include language similar to the distribution of Federal-aid Highway contract authority pursuant to 23 U.S.C. § 118.

- **Provide that FTA funds be apportioned or granted directly to the public transportation agencies in Urbanized Areas with a population of 50,000 to 200,000.**

- **Reauthorize the DBE program for federally assisted public transportation and passenger rail projects.**

- **Fund FTA administrative salaries (§ 5334) from the Mass Transit Account rather than the General Fund to allow FTA employees to continue many of their functions in the event of a government shutdown.**

Strike 49 U.S.C. § 5338(e). Add sections "5334", "5329", and "5326" to the list in 49 U.S.C. § 5338(a)(1) and make other adjustments as appropriate.

- **Restore eligibility for non-functional landscaping and other transit facility projects.**

Amend 49 U.S.C. § 5323 (h) as follows: in paragraph (1) by inserting "or" after the semicolon, by striking paragraph (2) and by re-designating paragraph (3) as (2).

## Planning Programs (§§ 5303, 5304, 5305)

APTA continues to support performance-based planning. Proper asset management evaluations and procedures support regional transportation goals and are important to understanding how agencies invest, monitor, improve safety, and reduce risks to service. However, some agencies may face classification changes due to population increases or decreases. The 2020 Census will result in some rural areas being reclassified as urban areas. Other areas will be reclassified relative to thresholds that affect FTA funding and requirements, including the population threshold affecting Small Transit Intensive Cities (STIC) eligibility (i.e., population of 50,000 to 200,000), and the 1 million population threshold. FTA should provide public transit agencies with technical assistance when they experience a change in classification.

### APTA RECOMMENDATION

- **Require FTA to provide technical assistance to public transportation agencies when agencies experience a change in Census classification.**

Amend 49 U.S.C. § 5305 to include a new subsection

"(i) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to public transportation agencies that experience a change in population-based classification as a result of the decennial census. Such population-based classifications include: "rural area" as defined in section 5302 (16); "urbanized area" as defined in section 5302 (23); "large urbanized areas" and "small urbanized areas" as described in section 5310(c)(1); "eligible area" as defined in section 5336(i)(1)(A); and "urbanized area with a population of at least 1,000,000" described in section 5336(c)(1)(A)."

## Urbanized Area Formula Grants (§ 5307)

As the largest source of federal transit funding under the FAST Act, Congress must continue to support and grow this critical program that funds public transportation agencies across the country, including the bus, fixed guideway, and passenger ferry boat programs.

### APTA RECOMMENDATION

- **Increase the Small Transit Intensive Cities (STIC) set-aside from two percent to three percent.**  
Strike 49 U.S.C. § 5336(h)(3) and insert:  
“(3) of amounts not apportioned under paragraphs (1) and (2), 3.0 percent shall be apportioned to urbanized areas with populations of less than 200,000 in accordance with subsection (i);”

## Capital Investment Grants (§ 5309)

APTA strongly supports the CIG program. Beginning with enactment of the Transportation Equity Act for the 21st Century (TEA 21) in 1998, both Congress and FTA have repeatedly layered additional requirements on the CIG program, resulting in a bureaucratic maze. Congress must continue to reject policies that would cut, delay, or make this vital program more burdensome. We urge Congress to adopt provisions that will strengthen the CIG program and ensure that beneficial projects across the country are delivered in a timely manner.

### APTA RECOMMENDATIONS

- **Establish a fixed federal CIG share for New Start, Core Capacity, and Small Start projects. The fixed federal CIG shares shall be:**
  - i. New Starts: 60 percent or, for New Start projects with significant total project costs, a lesser percentage;
  - ii. Core Capacity: 80 percent or, for Core Capacity projects with significant total project costs, a lesser percentage; and
  - iii. Small Starts: 80 percent.
- **Increase the maximum federal and total estimated net capital costs for Small Start projects by \$100 million.**  
In 49 U.S.C. § 5309(a)(7)(A), strike “\$100,000,000” and insert “\$200,000,000”; and in subparagraph (B), strike “\$300,000,000” and insert “\$400,000,000”.
- **Extend the time period for Core Capacity projects to be at or over capacity from five years to 10 years and clarify that projects that expand or modify existing station facilities are increasing capacity.**  
Strike clause (iii) of 49 U.S.C. § 5309(e)(2)(A), and insert:  
“(iii) will increase capacity of an existing fixed guideway system, corridor, or station at least 10 percent and is – (I) at or over capacity; or (II) projected to be at or over capacity within the next 10 years;”.
- **Extend the deadline to complete Project Development activities for New Start and Core Capacity projects from two to three years.**  
In 49 U.S.C. § 5309(d)(1)(C)(i) and in § 5309(e)(1)(C)(i), strike “2” and insert “3”.
- **Strike the requirement for New Start and Core Capacity project sponsors to complete a Before and After Study and require the Government Accountability Office to provide Congress a biannual report that analyzes the impacts of New Start and Core Capacity projects on public transportation services and ridership.**  
Strike 49 U.S.C. § 5309(k)(2)(E).
- **Expand the use of warrants, where a project can pre-qualify for a satisfactory rating on particular requirements if certain conditions are met. Current FTA policy guidance does not allow warrants for projects with a capital cost greater than \$500 million.**  
Strike 49 U.S.C. § 5309(g)(3)(D). In 49 U.S.C. § 5309(g)(3)(C), strike “; and” and insert “.”

## APTA RECOMMENDATIONS (CONT.)

- **Require FTA to conduct the Risk Assessment and establish the federal CIG share during the Engineering phase of New Start and Core Capacity projects.**

In 49 U.S.C. § 5309, insert a subsection:

“(r) For projects defined under subsection (a)(2) or (a)(5), the Secretary may not determine a maximum Capital Investment Grant contribution or perform a risk assessment until at least 180 days after a project has entered into the Engineering phase, unless the project sponsor specifically requests a risk assessment on an earlier date.”.

- **Require FTA to reduce the probability threshold from 65 percent to 50 percent in determining the reasonableness of cost and schedule estimates, which will restore the probability threshold to the level required prior to FTA’s 2018 changes in Risk Assessment policy.**

In 49 U.S.C. § 5309(f)(1)(A) before the semicolon, add “but may not exceed 50 percent”.

- **Establish a CIG Program Pipeline Dashboard on a publicly available website that includes complete information on the program and the status of each CIG project in the pipeline, including:**

- i. the amount of CIG funding appropriated, allocated, and obligated for the program and each of its components (New Starts, Core Capacity, and Small Starts).
- ii. the date the project entered Project Development and Engineering (if applicable);
- iii. the status of FTA and DOT review at each stage of the process, including when a Letter of No Prejudice (LONP) was requested and the date of when the LONP was issued;
- iv. the date the New Start FFGA, Core Capacity FFGA, or Small Start grant agreement was executed; and
- v. the status of the project sponsor in securing its non-federal match, based on information provided by the project sponsor.

- **Reduce the required period of notification to Congress from 30 days to 10 days before issuing a letter of intent, entering into an FFGA, or entering into an early systems work agreement.**

In 49 U.S.C. § 5309(k)(5), strike “30 days” and insert “10 days”.

- **Reduce the required period of notification to Congress for a Small Start project from 10 days to three days.**

In 49 U.S.C. § 5309(h)(6)(C), strike “10 days” and insert “3 days”.

- **Allow expenditures to comply with the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 et seq.), to be counted toward the non-federal match for CIG projects prior to entering Project Development.**

- **Require the Secretary to issue updated guidance no later than six months after the date of enactment to implement APTA’s CIG recommendations.**

In 49 U.S.C. § 5309(g)(5)(A), strike “of the Federal Public Transportation Act of 2012”.

- **Add a Congressional notification requirement on the status of implementation for the Program of Interrelated Projects and the Expedited Project Delivery Pilot Program.**

Add the following new section:

SEC. \_\_\_\_\_. CAPITAL INVESTMENT GRANTS PROGRAM NOTIFICATION REQUIREMENT.—Not later than 90 days after the date of enactment of this section, and every 90 days thereafter, the Administrator shall notify the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of—

(A) The status of implementation for the Program of Interrelated Projects and the Expedited Project Delivery Pilot; and

(B) Any additional legislative actions that may be needed.

## Expedited Project Delivery for Capital Investment Grants Pilot Program (FAST Act § 3005(b))

The Expedited Project Delivery for Capital Investment Grants Pilot Program was originally established in MAP-21. This pilot program allows for up to eight New Start, Core Capacity, or Small Start projects to expedite the evaluation process normally required for CIG.

### APTA RECOMMENDATIONS

- **Increase the maximum federal CIG share from 25 percent to 50 percent.**  
Amend § 3005(b)(9)(A) of the FAST Act by striking “25 percent” and insert “50 percent”.
- **Reduce the required period of notification to Congress from 30 days to 10 days.**  
Amend § 3005(b)(8)(D) of the FAST Act by striking “30 days” and insert “10 days”.
- **Increase the maximum federal and total estimated net capital costs for Small Starts projects to be consistent with 49 U.S.C. § 5309(a)(7), as amended by these Recommendations.**  
Amend § 3005(b)(1)(I) of the FAST Act in clause one by striking “\$75,000,000” and insert “\$200,000,000”; and in clause two, strike “\$300,000,000” and insert “\$400,000,000”.
- **Strike the requirement for project sponsors to complete a Before and After Study.**  
Amend § 3005(b) of the FAST Act by striking paragraph (12) and re-designating paragraph (13) as (12).

## Mobility of Seniors and Individuals with Disabilities (§ 5310)

Demand for public transportation services from seniors and Americans with disabilities continues to grow in urban, suburban, and rural communities. Sufficient resources should be directed toward this program to meet these growing demands. In addition, there should be shared responsibility for coordination between human services and transportation agencies to serve the mobility needs of our nation’s seniors, veterans, and people with disabilities.

Congress must also require greater coordination and efficiencies among the dozens of federal programs supporting non-emergency medical transportation (NEMT) across several different federal departments. The Coordinating Council on Access and Mobility (CCAM), originally established under Executive Order No. 13330 and codified in section 3006(c) of the FAST Act, is a partnership of federal agencies working to improve the availability, quality, and efficient delivery of transportation services to people with disabilities, older adults, and people with low incomes. APTA supports CCAM and urges Congress to continue its commitment to this coordination.

Finally, the Administration has proposed to change NEMT support for Medicaid recipients from a mandatory requirement to an optional activity for state Medicaid programs. Making NEMT optional will diminish the opportunities for Medicaid recipients to receive the preventive care they need to avoid more costly treatments later. If no transportation were provided for Medicaid recipients, there would be an increase in the demand for services from public transportation, likely without an additional source of funding.

### APTA RECOMMENDATIONS

- **Mandate Non-Emergency Medical Transportation as a benefit in the Medicaid statute.**
- **Prohibit funding to implement any proposal to make NEMT for Medicaid recipients optional for states.**  
Include in the appropriate place:  
SEC. \_\_. Notwithstanding any other provision of law, no funds are authorized to be appropriated, obligated or expended by the Department of Health and Human Services to take any action to advance the proposed regulation in the Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions relating to the Medicaid Nonemergency Medical Transportation benefit for Medicaid beneficiaries expected to be published for comment in May 2019 and promulgated in Fall 2019 (RIN:0938-AT81).

## APTA RECOMMENDATIONS (CONT.)

- **Require CCAM to evaluate the impact of NEMT waivers on other CCAM partners and programs, and evaluate the potential impact of including Medicare transportation in the overall transportation network of supported services.**

Amend § 3006(c)(2) of the FAST Act to include the following new paragraphs:

“(G) examines the impact of Medicaid waivers for Non-Emergency Medical Transportation on all member agencies of the Council and makes recommendations to ensure that any waivers issued do not shift the costs of providing the service to another member agency; and

“(H) assesses the potential impact of including Medicare Non-Emergency Medical Transportation in the overall transportation network of supported services.”

- **Require quarterly reports from CCAM to Congress until the Council complies with the FAST Act requirement to publish a Strategic Plan.**

Add a new paragraph (4) to section 3006 of the FAST Act and renumber accordingly:

“(4) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, and each 90 days thereafter, the Council shall report on the progress of the strategic plan required under section 3006(c)(2) and submit it to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives and make it publicly available.”

- **Expand the Pilot Program for Innovative Coordinated Access and Mobility (§ 3006(b) of the FAST Act) and provide dedicated funding to better integrate Health and Human Services, Americans with Disabilities Act of 1990 paratransit, and integrated mobility programs.**

Amend 49 U.S.C. § 5338(2)(E) to read as follows:

“\$7,000,000 for fiscal year 2021, and adjusted for inflation thereafter, shall be available for the pilot program for innovative coordinated access and mobility under section 3006(b) of the Fixing America’s Surface Transportation Act.”

- **Provide additional flexibility under § 5310(c)(2)(B) by allowing any funds apportioned to a state under § 5310(c)(1)(A) to be reallocated to projects in small urbanized or rural areas.**

## Public Transportation Research and Development (§ 5312)

The FAST Act authorizes \$28 million of contract authority each year for the Public Transportation Innovation program. In addition to this funding, the FAST Act also authorizes an additional \$20 million from the General Fund, which is subject to annual appropriations. The eligible activities under this section include research; innovation and development; demonstration, deployment, and evaluation; low- or no-emission vehicle component testing (low-no testing); and the Transit Cooperative Research Program (TCRP).

### APTA RECOMMENDATIONS

- **Increase funding for the TCRP in the first year of the authorization act and provide subsequent annual growth in the program funding level.**

Amend 49 U.S.C. § 5338(a)(2)(G)(ii) to increase funding for the program to \$15,000,000 in FY 2021 and provide annual growth thereafter.

- **Require the University Transportation Centers Program to include at least two centers focused on public transportation issues.**

Amend 49 U.S.C. § 5505(c)(2)(B) to include a new clause:

“(iii) SCOPE.—Not less than two of the consortia receiving a grant under this paragraph shall focus research on issues related to public transportation.”

- **Public Availability of Findings from Mobility on Demand Projects.**

Amend 49 U.S.C. § 5312(e)(4) to include a new sentence at the end of the paragraph:

“The Secretary shall make all findings under this section publicly available.”

## Technical Assistance and Workforce Development (§ 5314)

The FAST Act authorizes \$14 million annually to carry out a range of technical assistance, workforce development, and education activities. Annual funding is provided to continue the operation of the National Transit Institute (NTI). Section 5314 also allows the Secretary to make grants to fund: the development of transit standards, technical assistance provided by qualified national nonprofit organizations, employment training programs (including assistance to veterans and minority populations), apprenticeship programs, and other education programs. It also allows up to 0.5 percent of funding from 49 U.S.C. § 5307 to be utilized for workforce development activities. APTA recommends significantly increased funding for 49 U.S.C. § 5314 to facilitate best practices to promote bus driver safety and for the development of standards.

Safety is our top priority and the instances of assault on public transportation operators are of critical concern. APTA is aware of Congressional efforts to address bus driver assaults through mandating the deployment of assault mitigation infrastructure and technologies (e.g., barriers surrounding workstations). However, many APTA members have expressed concern about a “one-size-fits-all” approach to safety and any requirement for public transit agencies to retrofit every bus in their fleets. APTA members want to work locally within their communities to provide safe travel for their employees and riders, which may or may not include installing workstation barriers. In addition, APTA members strongly support de-escalation training for drivers, and we recommend that the surface transportation authorization act provide specific, dedicated funding for bus operator assault mitigation measures.

Finally, standards are an important program in the public transportation industry. Standards are used to improve safety, reliability, and services and to achieve operational efficiencies of facilities and vehicles. APTA plays a major role in creating active working groups focused on the development of standards. Given the evolving transportation landscape, we recommend that the authorization act provide specific, dedicated funding for the development of industry consensus standards.

### APTA RECOMMENDATIONS

- **Provide \$5 million per year for bus operator assault mitigation measures.**  
Under 49 U.S.C. § 5338(a)(2)(H) insert after “section 5314;”:  
“of which \$5,000,000 per year shall be to carry out section 5314(a)(2)(F);”
- **Provide \$4 million per year for the development of industry consensus standards.**  
Under 49 U.S.C. § 5338(a)(2)(H) insert after “section 5314 (a)(2)(F);” as amended:  
“and \$4,000,000 shall be available for standards development under section 5314(a)(1)(B)(ii).”
- **Expand the Innovative Frontline Workforce Development Program to fund workforce training innovations by transit agencies aimed at addressing evolving or expected technological impacts on frontline workers, such as the autonomy impact on drivers.**  
Amend 49 U.S.C. § 5314(b)(1) to include a new paragraph:  
“(F) training and assistance for frontline workers.”  
Amend § 5314(b)(2)(B) to include a new paragraph:  
“(v) address evolving or expected impacts on frontline workers as a result of new technological advances in autonomy and mobility.”  
Amend § 5314(b)(2)(C) to include a new paragraph:  
“(x) advance the workforce development and training needs of frontline workers.”
- **Allow rural transit agencies the flexibility to use formula grant funds for training and education.**  
In 49 U.S.C. § 5314(c)(4)(A), strike “sections 5307, 5337, and 5339” and insert “sections 5307, 5311, 5337, and 5339”.

## Bus Testing Facility (§ 5318)

Under current law, any new model bus purchased with federal funds must comply with Buy America requirements and must meet minimum requirements to pass the Model Bus Testing Program (Altoona Test). The public transit agency, not the bus manufacturer, is responsible for certifying that these requirements have been met. This is a burdensome and costly requirement to public transit agencies.

### APTA RECOMMENDATION

- **Establish a new pilot program that requires bus manufacturers to directly provide a single certification to FTA demonstrating compliance with Buy America and federal bus testing requirements.**

## Buy America (§ 5323(j))

APTA supports Buy America but believes that there are ways to improve and streamline the application of the provisions to public transportation projects.

### APTA RECOMMENDATIONS

- **Limit the duration of FTA's Buy America waiver request process, including creating an expedited waiver review process for recurring procurements.**

Amend 49 U.S.C § 5323(j)(3) to include a new subparagraph:

“(C) **WAIVER REVIEW.**—The waiver determination shall be issued within 60 days of the submittal of the application, or, if a waiver for the same product has already been issued by the Department within the past 36 months, the determination shall be issued within 10 days of the submittal of the application.”

- **Require DOT to provide a defined list of application requirements that waiver applicants must submit.**

Amend 49 U.S.C. § 5323(j)(3) to include a new subparagraph:

“(D) **REQUIREMENTS LIST.**—No later than 12 months after enactment of this act, the Secretary shall promulgate a defined list of application requirements that waiver applicants must submit.”

- **Require the Secretary to issue guidance on compliance for Buy America regulations where FHWA, Federal Railroad Administration (FRA), and FTA funding is used on the same project and create a unified system for complying with, and requesting waivers for, projects receiving funding from more than one DOT agency.**

## Transit Asset Management (§ 5326)

Under MAP-21, and continued in the FAST Act, DOT is required to establish a national Transit Asset Management (TAM) system to monitor and manage public transportation assets to improve safety and increase reliability and performance.

APTA believes that proper asset management evaluations and procedures support regional transportation goals and are important to understanding how agencies invest, monitor, improve safety, and reduce risks to service. The APTA Standards Development Program has published documents providing recommended practices for TAM.

Congress and FTA must take all possible actions to safeguard sensitive information related to condition and risk. Any compromise of data will hinder the effectiveness of this program.

### APTA RECOMMENDATION

- **Protect safety-sensitive data from state and federal Freedom of Information Act (FOIA) requests and from admissibility into evidence in state and federal courts (see APTA Recommendations on 49 U.S.C. § 5329).**

## Public Transportation Safety Program (§ 5329)

In MAP-21, Congress directed FTA to establish a comprehensive Public Transportation Safety Program that will include implementation of Safety Management Systems (SMS). SMS is an organized set of programs, principles, processes, and procedures for the allocation of resources to achieve the condition where risks are identified and managed to acceptable levels of safety. Safety is the public transit industry's most important mission, and APTA has been a leader in developing the standards to fully implement SMS across the country. SMS and other safety programs require the collection and analysis of sensitive safety information.

Experts agree that to best protect the safety and security of public transportation riders, public transit agencies must be able to collect comprehensive and confidential data about safety risks without a looming threat of exposure to litigation. It is vitally important that this data not be subject to public disclosure to enable a strong culture of self-analysis that this program requires. Unwarranted exposure to liability and lawsuits could create perverse incentives for public transit agencies to limit the scope of their SMS programs, ultimately defeating the purpose of the program.

### APTA RECOMMENDATIONS

- **Protect safety-sensitive transit data from state and federal Freedom of Information Act (FOIA) requests and from admissibility into evidence in state and federal courts.**

Add a new 49 U.S.C. § 5341:

"§ 5341. Limitation on disclosure of safety information.

"(a) IN GENERAL.—Except as provided by subsection (c), a report, data, or other information described in subsection (b) shall not be subject to disclosure under section 552 of title 5, United States Code, or any other similar Federal, State or local law if the report, data, or other information is created by or on behalf of or submitted to the Federal Transit Administration, a State, a State Safety Oversight Agency or Transit Agency.

"(b) APPLICABILITY.—The limitation established by subsection (a) shall apply to the following:

"(1) Reports, surveys, schedules, lists, data, or other information developed under the Public Transportation Safety Program.

"(2) Reports, surveys, schedules, lists, data, or other information produced or collected under the National Public Transportation Safety Plan.

"(3) Reports, surveys, schedules, lists, data, or other information developed under the Public Transportation Safety Certification Training Program.

"(4) Reports, data, or other information developed under the Public Transportation Agency Safety Plan.

"(5) Reports, surveys, schedules, lists, data, or other information produced or collected for purposes of developing and implementing a safety management system acceptable to the Administrator.

"(6) Reports, analyses, and directed studies, based in whole or in part on reports, surveys, schedules, lists, data, or other information described in paragraphs (1) through (5).

"(c) EXCEPTION FOR DE-IDENTIFIED INFORMATION.—

"(1) IN GENERAL.—The limitation established by subsection (a) shall not apply to a report, data, or other information if the information contained in the report, data, or other information has been de-identified.

"(2) DE-IDENTIFIED DEFINED.—In this subsection, the term 'de-identified' means the process by which all information that is likely to establish the identity of the specific persons or related entities submitting reports, data, or other information is removed from the reports, data, or other information.

"(d) DISCOVERY AND ADMISSION AS EVIDENCE.— Notwithstanding any other provision of law, reports, surveys, schedules, lists, data, or other information produced or collected for the purpose of identifying, evaluating, or planning the safety enhancement of potential accident sites, including but not limited to— hazardous conditions, railway- highway crossings, rail right-of-way, or rail platform train interfaces pursuant to section 5329 of this title or for the purpose of developing any public transportation safety program or safety management system which may be implemented shall not be subject to discovery or admitted into evidence in a Federal or State court proceeding or considered for other purposes in any action for damages arising from any occurrence at a location mentioned or addressed in such reports, surveys, schedules, lists, or data."

## APTA RECOMMENDATIONS (CONT.)

- **Require FTA to establish a formal process to resolve differences when a public transit agency disagrees with a State Safety Oversight Agency (SSOA) safety finding.**

Current policy allows an SSOA “discretion” as to whether it should reconsider a safety finding. A public transit agency must have a realistic method for contesting a perceived incorrect finding or conclusion by an SSOA.

Amend 49 U.S.C. § 5239(b)(2) to include a new subparagraph: “(F) a formal process to resolve differences between a state safety oversight agency and a rail transit agency with respect to any investigative findings under subsection (e)(4)(A)(v).”

## National Transit Database (§ 5335)

FTA issued new policies for the 2018 National Transit Database (NTD) reporting year. The new reporting policies include a provision that redefined commuter bus, rail, and ferry services of more than 90 minutes in duration as intercity service. The new reporting policies require the sponsor of such services to conduct extensive and expensive statistical analysis to qualify for commuter eligibility/meet NTD reporting thresholds. The 90-minute trip duration is arbitrary in that it does not consider the effects of traffic-related congestion; availability of or proximity to affordable housing; and/or other economic factors impacting commute times for individuals that choose to use public transportation services.

In addition, public transit systems are working with transportation network companies (TNCs) and other entities to provide first-mile and last-mile trips as part of the public transportation agency’s service. Such public transportation agency-designated trips should be included in NTD ridership data.

### APTA RECOMMENDATIONS

- **Prohibit FTA from implementing NTD policy changes and reporting clarifications for Report Year 2018 pertaining to commuter vs. intercity services. This prohibition should be effective as of October 1, 2018, until repealed.**
- **Authorize public transportation-agency-designated TNC and other first-mile/last-mile trips to be included in NTD ridership data.**

Amend 49 U.S.C. § 5335 to include a new subsection:

“(d) DEMAND SERVICE DATA.—The Secretary shall allow for publicly-funded first-mile and last-mile programs contracted by a designated recipient through a mobility service to be counted as unlinked trips for purposes of receiving grants under sections 5307 or 5311 of this title. Data associated with publicly funded first-mile and last-mile programs, including ridership, locations, and trips completed shall be provided to the designated recipient to ensure that each trip can be accounted for, monitored and used for planning purposes.”

## State of Good Repair Grants (§ 5337)

APTA urges Congress to build on the increased funding levels provided to transit capital programs in the FAST Act and the 2018 and 2019 Transportation, Housing and Urban Development, and Related Agencies Appropriations Acts (P.L. 115-141, Division L; P.L. 116-6, Division G). The State of Good Repair (SOGR) program supports urgent capital projects for fixed guideway systems including rail, bus rapid transit (BRT), and passenger ferry systems.

Moreover, bus service operated in high occupancy toll (HOT) lanes should be permitted to count as route mileage under the High-Intensity Motorbus (HIM) program. FTA's current policy of excluding HOT lane miles from HIM apportionments is inconsistent with statutory language and disadvantages regions of the country that are pioneering congestion management strategies that will benefit transit by increasing vehicle speeds.

### APTA RECOMMENDATION

- **Authorize bus service operated in HOT lanes to be counted as route mileage under the HIM program.**

In 49 U.S.C. § 5337(d)(1), add at the end “, including facilities with access for fee-paying single occupancy vehicles as well as high occupancy vehicles, commonly known as “high-occupancy toll” lanes, provided that high intensity motorbus services and high-occupancy vehicles are permitted to use the facilities without charge.”

## Buses and Bus Facilities Grants (§ 5339)

Increased funding for Buses and Bus Facilities grants remains a vital priority for APTA. Under MAP-21, section 5339 was reduced by a significant amount, neglecting urgent needs across the country to replace buses and bus-related infrastructure. As a result, public transit agencies are forced to operate buses beyond their useful life and the backlog of bus infrastructure needs continues to grow. APTA appreciates the significant increase for Buses and Bus Facilities grants in the FAST Act. The further increases in funding provided in both the 2018 and 2019 THUD Appropriations Acts have also helped address the bus and bus infrastructure backlog. Finally, the FAST Act's restoration of the Buses and Bus Facilities competitive grant program has been important to public transit agencies.

Significant increases in section 5339 funding would allow agencies across the country to better address capital needs, including large and infrequent capital investments needed for major bus procurements and facility improvements that can be addressed by a robust competitive program. The increased levels of funding in the THUD Appropriations Acts should reset the baseline to significantly grow the Buses and Bus Facilities program.

### APTA RECOMMENDATIONS

- **Require FTA to issue a new rule with input from the public transportation industry to create more flexibility in spare-ratio requirements.**

Under current regulations, the number of spare buses in the active fleet for recipients operating 50 or more fixed-route revenue vehicles cannot exceed 20 percent of the number of vehicles operated in maximum fixed-route service.

At the end of 49 U.S.C. § 5339, add a new section (d): “The Federal Transit Administration shall amend the Grant Management Requirements Circular 5010.1 (a) to not consider vehicles operating beyond the minimum useful life in the spare ratio calculation; and (b) to not consider low- or no-emission vehicles in the spare ratio calculation.”

- **Ensure that the statute is technology neutral regarding alternative fuel transit vehicles, including No and Low Emission Bus Grants, to enable public transit agencies to choose the type of alternative fuel transit vehicles that meet varying demands and conditions in different regions and communities.**

# Passenger Rail Program Recommendations



# Passenger Rail Program Recommendations

## Rail Title and Passenger Rail Trust Fund

The FAST Act was the first major surface transportation authorization bill that included a substantial rail title authorizing high-speed, intercity, passenger, and freight rail programs. APTA calls for Congress to create a Passenger Rail Trust Fund and identify new revenues, other than revenues dedicated to the Highway Trust Fund, to support intercity passenger rail.

### APTA RECOMMENDATIONS

- **Maintain a Rail Title in the next Surface Transportation Authorization act.**
- **Create a Passenger Rail Trust Fund, and identify new, long-term, dedicated revenues to significantly increase intercity passenger rail investment.**

Amend title 26 to add a new section:

“SEC. \_\_\_\_ . PASSENGER RAIL TRUST FUND.

“(a) CREATION OF PASSENGER RAIL TRUST FUND. There is established in the Treasury of the United States a trust fund to be known as the “Passenger Rail Trust Fund”, consisting of such amounts as may be appropriated or credited to the Passenger Rail Trust Fund under this section.

“(b) DATE AVAILABLE FOR OBLIGATION. —Authorizations from the Passenger Rail Trust Fund to carry out this title shall be available for obligation on the date of their apportionment or allocation or on October 1 of the fiscal year for which they are authorized, whichever occurs first.

“(c) PERIOD OF AVAILABILITY.— Funds apportioned or allocated pursuant to this title in a State shall remain available for obligation in that State for a period of 3 years after the last day of the fiscal year for which the funds are authorized. Any amounts so apportioned or allocated that remain unobligated at the end of that period shall lapse.

“(d) OBLIGATION AND RELEASE OF FUNDS.—

“(1) IN GENERAL.— Funds apportioned or allocated to a State for a purpose for any fiscal year shall be considered to be obligated if a sum equal to the total of the funds apportioned or allocated to the State for that purpose for that fiscal year and previous fiscal years is obligated.

“(2) RELEASED FUNDS.—Any funds released by the final payment for a project, or by modifying the project agreement for a project, shall be—

“(A) credited to the same class of funds previously apportioned or allocated to the State for the project; and

“(B) immediately available for obligation.

“(3) NET OBLIGATIONS.— Notwithstanding any other provision of law (including a regulation), obligations recorded against funds made available under this subsection shall be recorded and reported as net obligations.”

Amend title 49 to add a new section:

“SEC. \_\_\_\_ . AUTHORIZATION OF APPROPRIATIONS. There are authorized to be appropriated from the Passenger Rail Trust Fund \$\_\_\_\_\_ to pay for the costs of projects described in paragraphs (2)(A) and (2)(B) of section 22901, United States Code.”

- **Retitle 49 U.S.C. § 22902 from “Capital investment grants to support intercity passenger rail” to “High-Performance Intercity Passenger Rail Grants”.**
- **Specify in statute that RRIF loans shall be used for the non-federal share of a project.**

Amend 45 U.S.C. § 822 by adding a new subsection:

“(n) NON-FEDERAL SHARE.—The proceeds of a secured loan under this subchapter shall be used for any non-Federal share of project costs required under this title if the loan is repayable from non-Federal funds.”

## APTA RECOMMENDATIONS (CONT.)

- **Authorize federal funds for credit risk premiums under RRIF to leverage RRIF loan assistance.**  
Amend 45 U.S.C. § 822(f) by adding a new paragraph:  
“(5) USE OF FEDERAL FUNDS.—An applicant may use Federal funds to pay the credit risk premium determined under paragraph (2).”
- **Authorize BUILD grant funds to be used to fund the subsidy cost of federal credit assistance under RRIF, consistent with the TIFIA program.**
- **Permanently extend eligibility for Transit-Oriented Development projects for RRIF loans and loan guarantees.**  
Repeal section 11604(c) of the FAST Act (P.L. 114-94).
- **Require the Secretary to repay the credit risk premium for recipients that have satisfied all obligations that attached to RRIF loans.**  
Amend 45 U.S.C. 822(f) by adding at the end the following:  
“(6) REFUND OF PREMIUMS.—The Secretary shall repay the credit risk premium of each loan, with interest accrued thereon, not later than 60 days after the date on which all obligations attached to each such loan have been satisfied.  
“(7) MODIFICATION COST.—Of the amounts made available for credit assistance under chapter 6 of title 23, United States Code, such sums as may be necessary to pay any modification cost, as defined in section 502 of the Federal Credit Reform Act of 1990, shall be available to carry out paragraph (5).”
- **In Value Capture Tax Credits, recognize the benefits of new intercity passenger rail stations.**  
*See Surface Transportation Authorization Finance Recommendations.*

## Positive Train Control

The commuter rail industry has been dedicated to implementing positive train control (PTC) because safety is a core operating principle and promise to riders. APTA estimates that commuter railroads will spend \$4.1 billion implementing the life-saving PTC technology and approximately \$160 million each year operating and maintaining PTC.

### APTA RECOMMENDATION

- **Provide specific funding to commuter railroads for PTC implementation and ongoing operations and maintenance costs incurred after completing PTC implementation under the Consolidated Rail Infrastructure and Safety Improvements (CRISI) program.**  
Amend 49 U.S.C. § 22907(c) to include a new paragraph (2) and renumber accordingly:  
“(2) Maintenance and operating expenses incurred after a positive train control system is placed in revenue service.”  
  
Amend subsection (k) and insert the following:  
“Section 22905 (f) of Title 49 shall not apply to projects for the implementation, maintenance and operating expenses of positive train control systems otherwise eligible under subsections (c)(1), (c)(2), and rail-highway grade crossing improvement projects eligible under (c)(6) of this section.”  
  
Add a new subsection:  
“(m) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for eligible projects under (c)(2), \$160,000,000 for fiscal year 2021, and adjusted for inflation thereafter.”

## Passenger Rail-Highway Grade Crossing Safety

Passenger rail-highway grade crossing safety remains a significant concern throughout the country. More funding is needed to implement measures to reduce these grade crossing incidents for commuter rail agencies and other operators in high-ridership corridors.

### APTA RECOMMENDATION

- **Provide specific funding to commuter railroads for passenger rail-highway grade crossing safety.**

Amend 49 U.S.C. § 22907 to add a new paragraph:

“(n) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for eligible projects under subsection (c)(6) for commuter rail and operators in high-ridership corridors, \$250,000,000 for fiscal year 2021, and adjusted for inflation thereafter.”

## Right of Way

### APTA RECOMMENDATION

- **Authorize advance acquisition of railroad right of way (ROW) similar to advance acquisition permitted for highway and public transit projects.**

Amend 49 U.S.C. § 24302 to include a new subsection:

“(c) RAIL CORRIDOR PRESERVATION.—

“(1) IN GENERAL.—The Secretary may assist a recipient in acquiring right-of-way before the completion of the environmental reviews for any project that may use the right of way if the acquisition is otherwise permitted under Federal law.

“(2) ENVIRONMENTAL REVIEWS.—Rights of way acquired under this section may not be developed in anticipation of the project until all required environmental reviews for the Project have been completed.”



## National Commitment to Intercity Passenger Rail

### APTA RECOMMENDATION

- **Authorize a study to address the actions needed to upgrade and restore intercity passenger rail for 21st Century demands.**

Include a standalone section:

SEC. \_\_. FUTURE INTERCITY PASSENGER RAIL STUDY.

- (a) FUTURE OF INTERCITY PASSENGER RAIL SYSTEM.—Not later than 180 days after the enactment of this Act, the Secretary shall enter into an agreement with the Transportation Research Board of the National Academies to conduct a study on the actions needed to upgrade and restore the national Intercity Passenger Rail system to its role as a premier system that meets the growing and shifting demands of the 21st Century.
- (b) CONTENTS OF STUDY.—The study (1) shall include specific recommendations regarding the features, standards, capacity needs, application of technologies, baseline costs, and intergovernmental roles to upgrade the Intercity Passenger Rail system, including any revisions of law (including regulations) that the Transportation Research Board determines appropriate; and (2) is encouraged to build on the institutional knowledge in the passenger rail industry to carry out this study.
- (c) CONSULTATION.—In carrying out the study, the Transportation Research Board shall convene and consult with a panel of national experts, including operators and users of the Intercity Passenger Rail System and private sector stakeholders.
- (d) REPORT.—Not later than 3 years after the date of enactment of this Act, the Transportation Research Board shall submit to the Secretary, the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure of the House of Representatives, a report on the results of the study conducted under this section.
- (e) FUNDING.—From the amounts authorized to carry out the Railroad Cooperative Research Program, the Secretary shall use not more than \$3 million to carry out this section.

## Rail Research

### APTA RECOMMENDATION

- **Restore the Railroad Cooperative Research Program and authorize appropriations to support a broad range of railroad research needs.**

Amend 49 U.S.C. § 24910(e) to read as follows:

“There are authorized to be appropriated to the Secretary of Transportation \$5,000,000 for fiscal year 2021 and adjusted for inflation thereafter.”



# Mobility and Innovation



# Mobility and Innovation

Advances in technology have significantly expanded and enhanced the opportunities for public transportation agencies to serve the mobility needs of their communities. To evolve the traditional public transportation infrastructure to enable broadened economic and community opportunity through these options, public transit providers need assistance to innovatively integrate new mobility solutions into their networks.

## APTA RECOMMENDATIONS

- **Create a Mobility Innovation and Technology Initiative.**

Add a new 49 U.S.C. § 5313:

“Sec. 5313. MOBILITY INNOVATION AND TECHNOLOGY INITIATIVE.

“(a) DEFINITIONS.—In this section, the following definitions apply:

“(1) ELIGIBLE RECIPIENT.—The term “eligible recipient” means

“(A) a State or local government entity; or

“(B) publicly owned operator of public transportation.

“(2) STATEMENT OF MOBILITY COMMITMENT.—The term “statement of mobility commitment” means a policy adopted by an eligible recipient that it is committed to pursuing sustainable mobility options that:

“(A) enhance the customer experience, improve operations, or provide efficiencies of service;

“(B) integrate both public and private technology or mobility services, if available, to enhance its network system; and

“(C) address equity of service to every person regardless of income, age or ability.

“(b) IN GENERAL.—The Secretary shall establish an innovative mobility integration and deployment program to provide grants to eligible recipients to assist in financing demonstration projects or continued deployment projects that will—

“(1) advance first-mile, last-mile, late-night or low-density services;

“(2) allow for the integration of mobility services and technologies;

“(3) enable new or expanded reservation, fare, automation, or delivery designs to improve options in public transportation; or

“(4) provide accessibility and connectivity for rural areas or areas not being adequately served by public transportation.

“(c) PERIOD OF GRANT.—

“(1) DEMONSTRATION PROJECT.—A grant for a demonstration project to develop, test, or implement a new mobility technology, practice, model, or service shall be for a period of 3 years beginning on the date of the first payment of any amount under the grant to the entity awarded a grant.

“(2) CONTINUED DEPLOYMENT PROJECT.—A grant for a project that maintains continued deployment of a mobility technology, practice, model or service shall be for a period of 3 years beginning on the date of the first payment amount under the grant to the entity awarded a grant.

“(3) CLARIFICATION.—Nothing in this section shall preclude an eligible entity from applying for and receiving more than one grant under subsection (b).

“(d) APPLICATION.—

“(1) IN GENERAL.—To receive a grant, contract, cooperative agreement, or other agreement under this section, an entity described in paragraph (1)(A) shall submit an application to the Secretary.

“(2) FORM AND CONTENTS.—An application under subparagraph (A) shall be in such form and contain such information as the Secretary may require, including—

“(A) a statement of purpose detailing the need being addressed;

“(B) the short- and long-term goals of the project, including opportunities for future innovation and development; and

“(C) the short- and long-term funding requirements to complete the project and any future objectives of the project.

## APTA RECOMMENDATIONS (CONT.)

“(e) SELECTION CRITERIA.—

“(1) IN GENERAL.—The Secretary may provide Federal assistance for an innovative mobility demonstration project or continued deployment project under this subsection only if the Secretary determines that the eligible entity—

“(A) has adopted a statement of mobility commitment; and

“(B) has included the project as part of a locally developed, coordinated public transportation mobility plan.

“(2) DEVELOPMENT OF CRITERIA.—The Secretary shall work with eligible recipients, including large, mid-sized and small operators, and other public transportation industry representatives to develop appropriate criteria for the selection, evaluation and distribution of funding for eligible projects.

“(3) PUBLIC COMMENT.—Before issuing the criteria in paragraph (2), the Secretary shall provide an opportunity for public comment.

“(f) GRANT REQUIREMENTS.—The Secretary may approve modified grant requirements for projects funded under subsection (b).

“(g) GOVERNMENT SHARE OF COSTS.—The Government share of the cost of a project carried out under this section shall not exceed 80 percent.

“(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for capital, operating, or planning expenses associated with projects funded under subsection (b), \$25,000,000 for fiscal year 2021, \$30,000,000 for fiscal year 2022, \$35,000,000 for fiscal year 2023, \$40,000,000 for fiscal year 2024, \$45,000,000 for fiscal year 2025, \$50,000,000 for fiscal year 2026 to carry out this section. Such sums shall be available until expended.

“(i) BEST PRACTICES.—The Secretary shall collect from, review, and disseminate to public transportation agencies annually —

“(1) innovative practices;

“(2) program models;

“(3) new service delivery options; and

“(4) other findings or best practices from projects funded under subsection (b).”



## APTA RECOMMENDATIONS (CONT.)

- **Ensure coordination on surface transportation automation and emerging technologies by mandating that the Secretary of Transportation establish an internal working group comprised of staff from the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, FHWA, FRA, and the FTA. The Secretary shall designate the Chair of the Surface Transportation Automation and Emerging Technology Working Group.**

SEC. \_\_\_\_\_. SURFACE TRANSPORTATION AUTOMATION AND EMERGING TECHNOLOGY WORKING GROUP.

- (a) **IN GENERAL.**—Not later than 90 days after the date of enactment of this Act, the Secretary shall establish a Surface Transportation Automation and Emerging Technology Working Group within the Department of Transportation.
- (b) **MEMBERSHIP.**—The working group convened shall consist of representatives of—
  - (1) Federal Highway Administration;
  - (2) Federal Motor Carrier Safety Administration;
  - (3) Federal Railroad Administration;
  - (4) Federal Transit Administration;
  - (5) National Highway Traffic Safety Administration; and
  - (6) such other designees as the Secretary determines appropriate.
- (c) **RESPONSIBILITIES.**—The working group shall—
  - (1) serve as a single place within the Department of Transportation for expertise in automation and human behavior, computer science, machine learning, sensors, and other technologies involving automated surface transportation systems;
  - (2) be comprised of a workforce capable of reviewing, validating, and certifying the safety of automated and emerging surface transportation technologies.
- (d) **CHAIR.**—The Secretary shall designate the Chair of the Surface Transportation Automation and Emerging Technology Working Group.
- (e) **REPORT.**—Not later than 120 days after the date of enactment of this Act, the Secretary shall report to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate on staffing needs and the staffing plan for the Surface Transportation Automation and Emerging Technology Working Group.

- **Study of Mobility-as-a-Service Platforms.**

Add a new standalone section:

SEC. \_\_\_\_\_. MOBILITY-AS-A-SERVICE PLATFORMS STUDY. The Secretary shall request that the National Academy of Sciences conduct a study of Mobility-as-a-Service (MaaS) platforms to determine appropriate standards for ensuring the public interest, including providing the traveling public with a full range of mobility choices, travel time, payment information, and connecting trips. There are authorized to be appropriated \$1,000,000 to carry out this section. The study shall be commenced 4 years after the date of enactment of this section to review MaaS platform and operational approaches, with a report submitted to Congress no later than five years after the date of enactment of this Act.

- **Study of Interoperability of Trip Planning and Payment Systems.**

Add a new standalone section:

SEC. \_\_\_\_\_. INTEROPERABILITY OF TRIP PLANNING AND PAYMENT SYSTEMS STUDY. The Secretary shall conduct a study and develop recommendations regarding interoperability of trip planning and payment system technologies between public transportation systems and across other modes.

- **Ensure that bike share is a viable first-mile/last-mile solution to reduce congestion.**

Amend 49 U.S.C. § 5302 by striking in paragraph (1)(E) “and the installation” and inserting “, the installation” and by inserting before the semicolon the following “, and bike share projects”.



# Federal Highway Program Recommendations

# Federal Highway Program Recommendations

The FAST Act continues to make flexible funding programs available to state and local governments for transportation projects and programs including the Surface Transportation Block Grant (STBG) Program, Congestion Mitigation and Air Quality Improvement (CMAQ) Program, and National Highway Performance Program (NHPP).

Funds transferred to FTA from FHWA involve the same approval process as traditional FTA eligible activities. The administrative requirement to develop and submit separate grants adds additional review and approval resulting in project delay and increased costs.

## **APTA RECOMMENDATIONS**

- **Require DOT to review its policies on requiring separate grants for STBG or CMAQ funds to provide greater flexibility to agencies for transfers from FHWA to FTA programs. Any policy to provide greater flexibility to combine transferred funds should be an option, not a requirement, and should not result in delaying fund availability or slowing project delivery.**
- **Amend the current FHWA Value Pricing Pilot Program, established under section 1216(a) of TEA 21, to remove the limitation on the number of cooperative agreements that may be implemented.**



# Appendix

# APTA Principles for Surface Transportation Authorization

**Adopted by the APTA Board of Directors**  
September 22, 2018

Public transportation and intercity passenger rail systems across the country form an interconnected system that links our nation's regions and communities—urban, suburban, and rural—and is an essential component of our overall transportation system. APTA members are committed to providing safe, high-quality public transportation services for all Americans. **We urge Congress to significantly increase public transportation infrastructure investment and provide the necessary resources to build, maintain, and operate the public transportation and intercity passenger rail systems required to support our nation's integrated transportation network, the backbone of the American economy.**

In developing surface transportation authorization legislation to succeed the Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94), APTA's Principles are to:

- Provide certainty to public transit agencies, local communities, and states by authorizing a long-term surface transportation authorization act funded by dedicated, sustainable revenues that address the pending shortfall in the Highway Trust Fund (including the Mass Transit Account).
- Identify new long-term, dedicated, sustainable revenues to significantly increase federal public transportation and intercity passenger rail investment to bring our public transportation systems to a state of good repair and meet growing demands for increased mobility choices.
- Support public transit agencies' efforts to implement innovative mobility management strategies by introducing cutting-edge technologies and integrating new service-delivery approaches and mobility options in the transit marketplace.
- Preserve the federal, state, and local funding partnership (including traditional match ratios) and preserve and enhance the current surface transportation funding flexibility that enables states and local communities to address critical transit capital and people-readiness needs.
- Build on the existing surface transportation program structure in legislation that authorizes public transportation, intercity passenger rail, and Federal-aid highway investment.
- Expedite implementation of the Moving Ahead for Progress in the 21st Century (MAP-21) (P.L. 112-141) and FAST Act provisions to streamline the transportation project delivery process, and pursue additional commonsense reforms to improve federal agency accountability and make taxpayer dollars go further.

# Guiding Principles for Surface Transportation Authorization Funding Levels

**These Guiding Principles establish the framework for APTA's recommended funding levels for public transportation, and commuter and intercity passenger rail programs.**

## General Principles

In developing Surface Transportation Authorization Recommendations to succeed the Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94):

- APTA supports a Surface Transportation Authorization act of not less than six years.
- The beginning budget baseline for the funding level of each program is the highest funding level provided considering:
  - the FAST Act Fiscal Year (FY) 2020 authorization level; and
  - the FY 2019 Transportation, Housing and Urban Development, and Related Agencies (THUD) Appropriations Act.

The Surface Transportation Authorization Recommendations also authorize several new programs (e.g., Mobility Innovation and Technology Initiative; Passenger Rail-Highway Grade Crossing Grants; High-Performance Intercity Passenger Rail Grants) that are in addition to the current program budget baseline.

- Public transportation contract authority is distributed on October 1 of each fiscal year and is not contingent on enactment of a THUD Appropriations act or continuing resolution.
- Funding of Federal Transit Administration (FTA) administrative expenses (49 U.S.C. §5334) is from the Mass Transit Account of the Highway Trust Fund, not the General Fund. This change enables FTA to continue to administer its programs during any future government shutdown caused by a lapse in appropriations.
- APTA will not advocate for increases to any program that would result in a decrease in current funding levels for another program. APTA will not advocate for changes in funding formulas that would result in a lower apportionment for any transit agency.

## Public Transit Funding

- Four core capital funding programs grow over current levels at a rate that eliminates the estimated **\$100 billion** backlog to bring public transit systems to a state of good repair over the six-year period of the authorization act. The four programs are:
  - Urbanized Area Formula Grants (49 U.S.C. § 5307);
  - State of Good Repair (SOGR) Formula Grants (49 U.S.C. § 5337);
  - Rural Area Formula Grants (49 U.S.C. § 5311); and
  - Buses and Bus Facilities Formula and Competitive Grants (49 U.S.C. § 5339).

## GUIDING PRINCIPLES FOR SURFACE TRANSPORTATION AUTHORIZATION FUNDING LEVELS (CONT.)

APTA staff estimate that the Federal Government provides approximately 41 percent of transit capital funding. Therefore, these four programs grow by **\$41 billion** over the six-year period (in addition to annual inflation adjustments).

- In general, public transit capital programs grow at similar rates (i.e., 16.1 percent per year). The three primary exceptions to this general rule are:
  - Growing States and High-Density States Grants (49 U.S.C. § 5340);
  - Buses and Bus Facilities Grants; and
  - Capital Investment Grants (CIG) (49 U.S.C. § 5309).
- The Growing States and High-Density States Grants program does not receive any increased funding levels over the authorization period.
- The Buses and Bus Facilities Grants program grows at a higher rate (i.e., 31.5 percent) than other programs until the program achieves a 20 percent capital investment share and reestablishes a 40-40-20 capital investment ratio among the following three programs:

• CIG—	40 percent
• SOGR Formula Grants—	40 percent
• Buses and Bus Facilities Formula and Competitive Grants—	20 percent

The Buses and Bus Facilities capital investment share of 20 percent will be reestablished as soon as possible, consistent with other Guiding Principles. With sufficient overall increased funding for all programs, the Buses and Bus Facilities share of 20 percent will be reestablished by the second year of the authorization period. Within the Buses and Bus Facilities program, all growth is divided equally between formula and competitive grants.

- Similarly, the CIG program grows at a higher rate (i.e., 23.5 percent) than most other capital programs until it achieves a 40 percent capital investment share in the second year of the authorization period. APTA staff estimate that this level of funding will address the requested federal share for all projects currently in the CIG pipeline.
- After the 40-40-20 capital investment ratio is reestablished among CIG, SOGR, and Buses and Bus Facilities Formula and Competitive Grants, all capital programs (except §5340) grow at the same rate (i.e., 16.1 percent).

## Commuter and Intercity Passenger Rail Funding

- Intercity passenger rail grants will be funded in part with new, long-term dedicated revenues to significantly increase passenger rail investment. These passenger rail revenues will be deposited in a Passenger Rail Trust Fund and will not compete with revenues dedicated to the Highway Trust Fund.
- The Surface Transportation Authorization Recommendations authorize funding for four specific commuter and intercity passenger rail programs:
  - Consolidated Rail Infrastructure and Safety Improvements (CRISI) Grants (49 U.S.C. § 22907);
  - Federal-State Partnership for State of Good Repair Grants (49 U.S.C. § 24911);
  - High-Performance Intercity Passenger Rail Grants (49 U.S.C. § 22902); and
  - Railroad Cooperative Research Program (49 U.S.C. § 24910).
- The CRISI and Federal-State Partnership for State of Good Repair Grants grow at the same general rate (i.e., 16.1 percent per year) as public transit capital funding.
- The Authorization Recommendations also include specific authorizations of funding within the CRISI Grant program for:
  - Operations and maintenance of Positive Train Control on commuter railroads (\$160 million per year); and
  - Passenger Rail-Highway Grade Crossing Grants for commuter railroads and other operators of high-ridership corridors (\$250 million per year).
- In addition, the Authorization Recommendations authorize \$21 billion for High-Performance Intercity Passenger Rail Grants over the six-year period.

- Commuter and intercity passenger rail grants are funded by a combination of new contract authority and General Fund authorizations.
- The contract authority is derived from the newly established Passenger Rail Trust Fund. The percentage of funding derived from contract authority increases each fiscal year (growing from 10 percent of funding in FY 2021 to 60 percent in FY 2026). Over the authorization period, the Authorization Recommendations include \$13.6 billion of contract authority for commuter and intercity passenger rail grants.







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