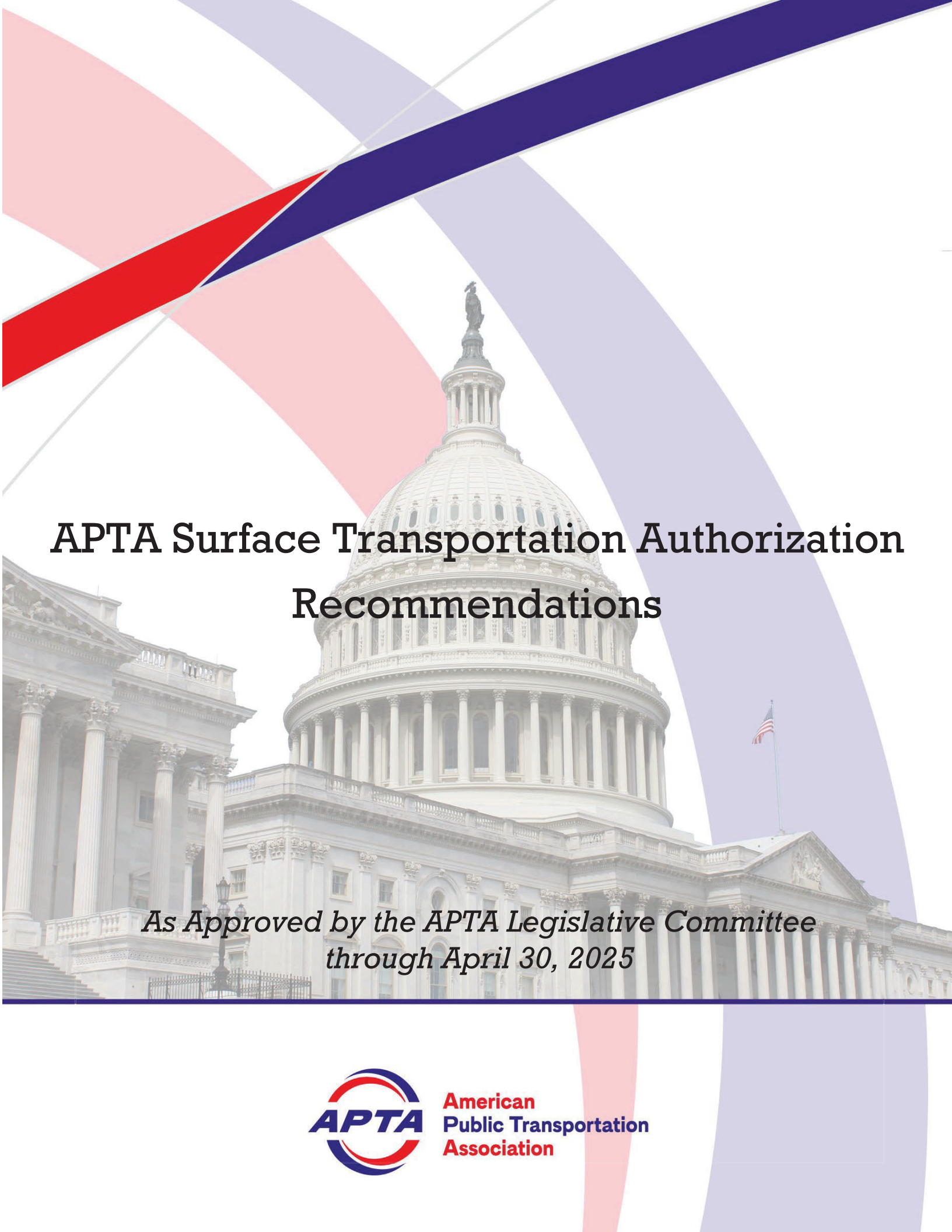

APTA Surface Transportation Authorization Recommendations

As Approved by the APTA Legislative Committee through April 30, 2025

American Public Transportation Association

APTA Surface Transportation Authorization Recommendations

As Approved by the APTA Legislative Committee on December 5, 2024, and April 6, 2025

April 30, 2025

To date, the American Public Transportation Association (APTA) Legislative Committee has adopted the enclosed *APTA Surface Transportation Authorization Recommendations*. The APTA Legislative Committee will consider additional *Recommendations*, including specific investment *Recommendations*, in the near future. After APTA approves additional investment and policy *Recommendations*, we will provide the Committee on Transportation and Infrastructure with additional, approved *Recommendations*.

Investment Recommendations

APTA Recommendations:

- **Ensure a long-term Surface Transportation Authorization Act funded by sustainable, dedicated revenues.**
    - **Enact a fee on electric vehicles dedicating the revenues solely to the Highway Trust Fund, including the Mass Transit Account, with an 80-20 highway-public transit split.**
- **Build upon Infrastructure Investment and Jobs Act total public transit and passenger rail investment in the next Surface Transportation Authorization legislation.**

Finance Recommendations

APTA urges Congress to use existing financing mechanisms as the basis for any provisions in the surface transportation authorization 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 communities face. Increased Federal funding to provide greater support for public transit must be a fundamental element of any new Federal initiative to support infrastructure investment.

Alternative Fuels Tax Credits

The Alternative Fuel Tax Credit (AFTC) is a series of income and excise tax credits for the sale or use of biodiesel, renewable diesel, and alternative fuels. The credits are found in 26 U.S.C. §§ 6426, 6427, and 40A. Public transit agencies can claim the excise tax credit under § 6427 for the use of biodiesel, renewable diesel, or alternative fuels. The AFTC expired on December 31, 2024.

APTA Recommendation:

- **Urge Congress to extend the Alternative Fuel Tax Credit for two years (Calendar Years 2025 and 2026)**.

Municipal Bonds and Advance Refunding Bonds

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.

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 would 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 those privately-operated 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".

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 $325 for 2025. The commuter tax benefit can also be used for the cost of qualified parking (with a separate monthly cap of $325). The benefit can be offered pretax, 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, the law restricts an employer's ability to deduct the cost of providing the benefit.

APTA Recommendation:

- **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).

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 (TIFIA) loans may be used for any non-Federal share of project costs. 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".

Railroad Rehabilitation and Improvement Financing (RRIF) Loans and Loan Guarantees

RRIF Loans as Non-Federal Share

Federally supported infrastructure projects typically require a non-Federal match from state, local, or private sources. Because loans from the RRIF program are secured through repayment from non-Federal sources, the loans should be considered as a non-Federal match.

APTA Recommendation:

- **Specify in statute that RRIF loans may 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 may be used for any non-Federal share of project costs required under this title if the loan is repayable from non-Federal funds."

Credit Risk Premiums

The Infrastructure Investment and Jobs Act (IIJA) required DOT to repay Credit Risk Premiums (CRP) and interest for a RRIF direct loan. In 2024, DOT finalized a rule that allowed collecting CRP as a credit spread. The Department stated that the "additional interest would not qualify as a CRP payment and would not be returned to the original source once the [loan] obligation had been satisfied." In its comments on the proposed rule, APTA expressed its concern that DOT's proposal essentially functions as an end-run around Congressional intent that the CRP, including any interest, is repaid. APTA recommends defining CRP to ensure that any payments collected by DOT are returned to the original source.

APTA Recommendations:

- **Define "Credit Risk Premiums" to include any payment collected by DOT to meet the costs for a direct loan, therefore requiring repayment.** Amend 49 U.S.C. § 22401 by redesignating paragraphs (3) through (15) as paragraphs (4) through (16), respectively, and by inserting after paragraph (2) the following:

  "(3) Credit Risk Premium. —
  The term "Credit Risk Premium" refers to payments collected from RRIF applicants to meet the costs of direct loans and loan guarantees, regardless of whether the

payment is collected as a lump sum at the start of a loan or as an adjustment to the loan's interest rate following the performance of a credit spread."

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

Definition of Rural Infrastructure Project

The Build America Bureau classifies Rural Infrastructure Projects as those within communities of 150,000 or less. Conversely, DOT uses a population of 200,000 as the cutoff for "rural area" for the Rural Surface Transportation Grant Program and the Better Utilizing Investments to Leverage Development (BUILD) Grant Program.

To acknowledge population growth in rural and small urbanized areas over the past several decades, APTA recommends adjusting the TIFIA definition of Rural Infrastructure Projects to those projects within communities of less than 200,000 to allow a greater number of small urban and rural transit operators to access financing through TIFIA and State Infrastructure Banks.

APTA Recommendation:

- **Align the TIFIA and Rural Surface Transportation Program definitions of rural infrastructure projects.** Amend 23 U.S.C. § 601(a)(15) by striking "150,000" and inserting "200,000".

Harmonizing TIFIA and CIG Guidance

Project sponsors applying for both TIFIA credit assistance and Federal Transit Administration (FTA) Capital Investment Grant (CIG) funding are receiving contradictory requirements from the DOT Build America Bureau and FTA for processing their applications. APTA recommends that the Bureau and FTA produce joint guidance for projects seeking credit assistance and CIG funding to streamline the application and selection process.

APTA Recommendation:

- **Require the Build America Bureau and Federal Transit Administration to release joint guidance outlining a step-by-step process for applicants seeking both TIFIA loan or loan guarantees and CIG funding.** Amend 49 U.S.C. § 5309 by inserting at the end:

  "(s) Joint TIFIA and CIG projects. —

  Not later than 180 days following the enactment of this Act, the Secretary shall publish joint guidance from the Build America Bureau and the Federal Transit Administration for projects seeking funding from both the Transportation Infrastructure Finance and

Innovation Act credit assistance and Capital Investment Grants program. The guidance shall contain a detailed timeline of when the Bureau and Administration expect specific project details and the steps in which the Bureau and Administration will administer their approvals."

Public Transit Program Recommendations

APTA recommends several changes to improve the efficiency, effectiveness, and distribution of FTA funds.

APTA Recommendations:

- **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.**

National Environmental Policy Act

APTA members experience project delays due to inconsistencies on the application of Categorical Exclusion (CE) exemptions across Federal reviews. Under the National Environmental Policy Act (NEPA), many bus shelter projects are exempt from review as a CE if they are in an existing right-of-way. However, the National Historic Preservation Act (NHPA) Section 106 review process, administered by the Advisory Council on Historic Preservation (ACHP), continues to apply and undermines the NEPA exemption.

Due to cross-cutting Federal requirements, transit agencies must develop and provide additional information to determine NHPA Section 106 applicability. The Section 106 process is lengthy, with outside agencies involved that are not bound by NEPA review timeframes. As a result, project sponsors experience delays and increased costs, including loss of local match, for bus shelter projects.

On April 2, 2025, the ACHP issued a Notice of Approval on the "Program Comment on Certain Housing, Building, and Transportation Undertakings",[1] which provides Federal agencies with additional flexibilities for NHPA Section 106 review. In addition to bus shelter projects in a previously disturbed right-of-way, Appendix A of the Program Comment includes several other transportation projects in which further Section 106 review is not required. The Notice provides procedures for Federal agencies to utilize the new Program Comment for projects under their authority.

[1] *See* ACHP, Notice of Approval on the "Program Comment on Certain Housing, Building, and Transportation Undertakings", 90 Fed. Reg. 14526 (April 2, 2025).

APTA Recommendation:

- **Urge the Department of Transportation and its Modal Administrations to adopt the ACHP Program Comment on Housing, Building, and Transportation Undertakings to streamline the Section 106 approval process**.

Urbanized Area Formula Grants (§ 5307)

FTA 100-Bus Rule

Agencies that serve large urban areas with more than 100 buses in peak service are not permitted to use their § 5307 formula grant funds for operational expenses. However, agencies below this threshold are allowed to utilize some of these funds for operational expenses. Under § 5307(a), agencies with between 75 and 100 buses in peak service can spend up to 50 percent of their Federal dollars on operating costs. In addition, agencies with less than 75 buses in peak service can spend up to 75 percent of their Federal dollars on operating costs.
Dozens of transit agencies are approaching the 100-bus cap, which will decrease their flexibility to utilize transit formula dollars for operating costs.

APTA Recommendation:

- **Add a new category to § 5307 to allow agencies with between 101 to 125 buses in peak service to spend up to 25 percent of Federal dollars on operating costs**. Amend 49 U.S.C. § 5307 —

(1) in subsection (a)(2)(A)—
(A) in clause (i) by striking "or" at the end;

(B) in clause (ii) by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(iii) operate a minimum of 101 buses and a maximum of 125 buses in fixed route service or demand response service, excluding ADA complementary paratransit service, during peak service hours, in an amount not to exceed 25 percent of the share of the apportionment which is attributable to such systems within the urbanized area, as measured by vehicle revenue hours; or";

(2) in subsection (a)(2)(B)—
(A) in clause (i) by striking "or" at the end;
(B) in clause (ii) by striking the period at the end and inserting "; or"; and
(C) by adding at the end the following:
"(iii) operate a minimum of 101 buses and a maximum of 125 buses in fixed route service or demand response service, excluding ADA complementary paratransit service, during peak service hours, in an amount not to exceed 25

percent of the share of the apportionment allocated to such systems within the urbanized area, as determined by the local planning process and included in the designated recipient's final program of projects prepared under subsection (b).”; and

Capital Investment Grants Program (§ 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, which has resulted in a bureaucratic maze. Congress must 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:**
  - **New Starts: 60 percent or, for New Start projects with significant total project costs, a lesser percentage;**
  - **Core Capacity: 80 percent or, for Core Capacity projects with significant total project costs, a lesser percentage; and**
  - **Small Starts: 80 percent.**

- **Increase the maximum Federal assistance costs for Small Start projects by $50 million.** In 49 U.S.C. § 5309(a)(7)(A), strike “$150,000,000” and insert “$200,000,000”.

- **Extend the deadline to complete Project Development activities for New Starts and Core Capacity projects from 2 to 3 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 Starts and Core Capacity project sponsors to complete a Before and After Study.** Strike 49 U.S.C. § 5309(k)(2)(E).

- **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.”

- **Reduce the required period of notification to Congress for a Small Start project from 10 days to 3 days.** In 49 U.S.C. § 5309(h)(6)(C), strike “10 days” and insert “3 days”.

- **Allow expenditures to fulfill compliance 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.**

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.

APTA Recommendation:

- **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)

Section 5312 provides discretionary funding for the advancement of innovative public transportation research and development. Eligible recipients include Federal departments and agencies, state and local governmental entities, providers of public transportation, private or non-profit organizations, institutions of higher education, and technical and community colleges.

Projects eligible for funding include activities that support research, innovation and development, demonstration and deployment, and evaluation. The program also supports low or no emission vehicle component assessment and the Transit Cooperative Research Program (TCRP).

APTA Recommendation:

- **Public Availability of Findings**. Amend §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)

Section 5314 authorizes the Secretary to make grants to carry out: (1) technical assistance activities for the effective and efficient delivery of transportation services, foster compliance with Federal laws, and improve public transportation service; (2) standards development and best

practices for the transit industry; and (3) address public transportation workforce needs through research, outreach, training and a frontline workforce grant program.

APTA Recommendation:

- **Allow rural transit agencies the flexibility for training and education within the Formula Grants for Rural Areas.** In 49 U.S.C. § 5314(c)(4)(A), strike "sections 5307, 5337, and 5339" and insert "sections 5307, 5311, 5337, and 5339".

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."

- **Establish a centralized database of Build America, Buy America Act-compliant construction materials**. Amend 49 U.S.C. § 5323(j) by inserting at the end:

  "(14) Buy America Construction Materials Database. —
  (A) Not later than 180 days after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Director of the Office of Management and Budget, shall make publicly available, including on a publicly available website, a database of manufacturers that produce construction materials that meet the requirements of the Build America, Buy America Act and are certified as being produced in the United States under applicable Federal regulations, and a description of the construction materials these manufacturers produce.

Real Property Acquisition (§ 5323(q))

Many public transit agencies face difficulties purchasing real property for operations and maintenance facilities because FTA policies restrict the purchase of real property where Federal funds will be, or are anticipated to be, used for the purchase or development of that property. In most cases, transit agencies cannot acquire such real property until NEPA processes are completed.

Expanded flexibility for early real property acquisition for public transportation projects is needed to reduce delays and associated costs of projects and to create certainty in property rights with a view toward future use.

APTA Recommendation:

- **Expand public transit agencies' authority to acquire land prior to the completion of National Environmental Policy Act review.** Amend 49 U.S.C. § 5323(q) to replace the term "right-of-way" with "real property interests".

Transit Asset Management (§ 5326)

Under current law, 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)

Safety is the public transit industry's most important mission, and APTA has been a leader in engaging with FTA on safety issues and implementing the IIJA statutory changes to the Public Transportation Agency Safety Plan (PTASP), and other new safety requirements. The IIJA continued FTA's Public Transportation Safety Program and adds to PTASP requirements for public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53. Specifically, the IIJA requires public transit agencies that serve large urbanized areas to form a Safety Committee consisting of an equal number of management and front-line transit workers who are tasked with approving an Agency Safety Plan. On April 11, 2024, the FTA issued its final PTASP rule, which included provisions that: (1) prevent the Accountable Executive of a transit agency from serving in a tiebreaking role as part of Safety Committee dispute resolution procedures under any circumstance; and (2) removes an Accountable Executive's decision-making authority regarding safety risk mitigations in the required safety risk reduction program.

On May 13, 2024, APTA filed a Petition for Reconsideration of FTA's final PTASP rule. FTA has yet to respond to the petition.

PTASP and other safety programs also 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 obtain comprehensive, confidential analyses of accidents without a looming threat of exposure to litigation.

APTA Recommendations:

- **Explicitly identify in statute that the Accountable Executive is the final decision-maker in all matters concerning the PTASP Safety Committee**. Amend 49 U.S.C. § 5329(d)(5) to include a new subsection "(C) Final Decisionmaker. The Accountable Executive of a recipient shall determine whether to implement the risk-based mitigation or strategies recommended by the Safety Committee and shall serve as the sole tiebreaker of any Safety Committee dispute resolution procedures."

- **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. Amend Chapter 53 as follows:**

  a) IN GENERAL.—Chapter 53 (as amended by this Act) is further amended by adding at the end the following:
  "§ 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."

- **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 merely 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)."

Proceeds from the Sale of Transit Assets (§ 5334(h)(4))

Disposition of Assets

The IIJA made a statutory change to reduce the ability of a Chapter 53 grant recipient (including States) to retain the disposition proceeds from an asset past its useful life. The IIJA requires both recipients and subrecipients to reimburse FTA for the Federal share of any proceeds from the sale of rolling stock, equipment, or supplies in excess of $5,000. APTA recommends allowing recipients to keep the proceeds from disposition of assets past their useful life (in excess of $5,000), provided the public transit agency reinvests the funds in future capital projects under sections 5307, 5310, or 5311.

APTA Recommendation:

- **Allow Chapter 53 recipients and subrecipients to retain asset disposition proceeds and reinvest in new capital projects.** Section 5334(h)(4)(B)(ii)(bb) of title 49, United States Code, is amended by inserting before the period the following: ", except in the

case of a recipient or subrecipient that certifies to the Secretary that the remaining amounts are to be used for capital projects under section 5307, 5310, or 5311".

FAST Act Recommendations

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 Starts, Core Capacity, or Small Starts 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) by striking "25 percent" and insert "50 percent".

- **Reduce the required period of notification to Congress from 15 days to 10 days.** Amend § 3005(b)(8)(D) by striking "15 days" and insert "10 days".

- **Increase the maximum Federal assistance costs for Small Starts projects to be consistent with 49 U.S.C. § 5309(a)(6), as amended by these Recommendations.** Amend § 3005(b)(1)(I) in clause one by striking "$150,000,000" and insert "200,000,000".

Innovative Procurement (FAST Act § 3019 (b))

Current law authorizes States (lead procurement agencies) and grantees to enter cooperative procurement contracts with one or more vendors for the purchase of rolling stock (railroad cars) and related equipment. However, the law does not allow the use of state purchasing schedules for the procurement of any other goods, technologies, or software services.

APTA Recommendation:

- **Allow the use of state purchasing schedules to procure goods, technologies, or software services**. Amend FAST Act § 3019 (b) by striking "rolling stock and related equipment" each time it appears and inserting "rolling stock, related equipment, and any other goods, technologies or software services".

Department of Transportation Programs

National Infrastructure Project Assistance Grants (Mega Program) (49 USC § 6701)

The DOT's Mega Program supports large, complex projects that are difficult to fund by other means and are likely to generate national or regional economic, mobility, or safety benefits. Public transit projects are only eligible for Mega Grant funding if two requirements are satisfied: (1) it is eligible for assistance under chapter 53 of title 49, and (2) it is part of a project that is otherwise eligible, such as a highway and bridge project, a freight intermodal or freight rail project, railway-highway grade separation or elimination project, or an intercity passenger rail project. APTA recommends decoupling the requirement that a public transportation project is only eligible for Mega Program funding if it is paired with another eligible project.

APTA Recommendation:

- **Provide specific eligibility for public transportation projects under the Mega Grant program.** Amend 49 U.S.C. § 6701(d)(E)(i) by striking "and" and inserting "or" and striking paragraph (ii).

Federal Motor Carrier Safety Administration Programs

Commercial Driver's License Requirements (49 CFR § 383.113)

Public transit agencies have identified the Federal Motor Carrier Safety Administration's (FMCSA) Commercial Driver's License (CDL) Pre-Trip Vehicle Inspection Rules, or "under-the-hood" requirement, as an impediment to hiring bus operators. This rule requires CDL applicants to identify each safety-related part and explain what needs to be inspected within the engine compartment (e.g., loose hoses, oil and coolant levels). Many otherwise qualified candidates may be intimidated by this knowledge test. Moreover, this test increases costs and extends new operator training time for public transit agencies, which also impacts the ability to hire. On November 4, APTA submitted a formal request to FMCSA seeking a five-year exemption from the CDL "under-the-hood" testing requirement for public transit operators. FMCSA has yet to rule on the request.

APTA Recommendation:

- **Require FMCSA to waive the CDL "under-the-hood" requirements for applicants seeking to operate vehicles in public transportation.** The Administrator of the Federal Motor Carrier Safety Administration shall revise section 383.113(a)(1)(i)) of title 49 Code of Federal Regulations (or successor regulation), to allow States to waive the under-the-hood requirement for CDL applicants seeking to operate vehicles in public transportation, including in interstate commerce.

Passenger Rail Program Recommendations

The FAST Act was the first major surface transportation authorization act that included a substantial rail title authorizing high-speed, intercity, passenger, and freight rail programs. The IIJA also included a significant rail title.

APTA Recommendation:

- **Maintain a Rail Title in the next Surface Transportation Authorization Act.**

Finance Recommendations

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 would 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 those privately-operated 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".

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 (TIFIA) loans may be used for any non-Federal share of project costs. 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".

Railroad Rehabilitation and Improvement Financing (RRIF) Loans and Loan Guarantees

APTA Recommendation:

- **Specify in statute that RRIF loans may 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 may be used for any non-Federal share of project costs required under this title if the loan is repayable from non-Federal funds."

Right of Way (§24202)

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. §24202 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."

Rail Passenger Liability Cap (49 U.S.C. § 28103)

In December 1997, Congress established a liability cap to protect the passenger rail industry from potentially catastrophic losses from passenger claims. While the statute does not mandate that commuter rail agencies carry liability insurance to the Federal liability cap of $323 million, many agencies are contractually required to maintain liability insurance to the cap because of negotiated access and vendor agreements.

Under the FAST Act, the U.S. Department of Transportation (DOT) is required to adjust the liability cap every five years to reflect inflation. In 2026, the statutory cap is set to increase to an estimated $399 million, with a statutory 30-day implementation deadline. An already-constrained insurance marketplace will likely limit the ability of commuter railroads to meet the required coverage of any new statutory cap within a 30-day timeframe.

APTA Recommendation:

- **Increase the amount of time between public notice of a new liability insurance cap and the effective date of the cap to one year.**
  Amend 49 U.S.C. § 28103(a)(2) by striking "The aggregate"; and inserting "(A) Subject to subparagraphs (B) and (C), the aggregate"; and

  (2) by adding at the end the following

  "(B) The Secretary of Transportation shall calculate the adjustment to the liability cap under subparagraph (A) on the date of enactment of this Act to reflect the change in the Consumer Price Index-All Urban Consumers between such date, using available Consumer Price Index-All Urban Consumers, and the date on which the most recent adjustment to such liability cap was announced using the October 2020 Consumer Price Index-All Urban Consumers. The Secretary shall immediately provide appropriate public notice of such calculated adjustment. Such adjustment shall be effective on the date that is 1 year after the date on which the calculated adjustment is announced.

  "(C) The Secretary of Transportation shall adjust the liability cap under subparagraph (A) every five years in accordance with the following schedule:

    "(i) On the date that is 4 years after the date on which the immediately preceding adjustment became effective, the Secretary of Transportation shall calculate the adjustment to the liability cap under subparagraph (A) to reflect the change in the Consumer Price Index-All Urban Consumers between such date, using available Consumer Price Index-All Urban Consumers, and the date on which the most recent calculation to the adjustment to such liability cap was announced, using the month's Consumer Price Index-All Urban Consumers used for such recent calculation. The Secretary shall immediately provide appropriate public notice of each such calculated adjustment.

"(ii) Such adjustment shall be effective on the date that is 1 year after the date on which the calculated adjustment is announced.".

(b) Conforming Amendment.—Section 11415 of the Passenger Rail Reform and Investment Act of 2015 (title XI of division A of Public Law 114–94; 49 U.S.C. 28103 note) is amended—

(1) in subsection (a), by striking everything before "Notwithstanding"; and

(2) by striking subsection (b).

Commuter Rail Liability Insurance Program

Commuter rail agencies face serious obstacles to finding and obtaining excess liability insurance due to a hardened insurance market. Only a handful of insurers offer this excess coverage, and a significant percentage of the railroad liability insurance marketplace is provided by foreign companies. The number of insurers in the excess market willing to even offer potential capacity for this coverage has drastically decreased over the past several years. Regardless of cost, it is becoming extremely difficult to obtain the needed coverage up to the required limits. Each policy is custom-made for the commuter rail agency, with negotiated terms and premiums. Premiums for these policies, which must be paid annually, range from $1 million to $25 million.

The increase in premiums are largely due to factors outside the control of the commuter rail industry, including losses in the commercial trucking sector, major forest fires, hurricanes, and insurers exiting the market. APTA proposes legislation to assist commuter railroads with these significant market capacity and cost issues by creating a program administered by the DOT that would provide insurance to commuter rail agencies that operate commuter rail services, either directly or through contracted services, to cover losses associated with commuter rail operations.

APTA Recommendation:

- **Establish a Commuter Rail Insurance Program (Program) at the U.S. Department of Transportation (DOT).**

Amend title 49 to add a new section:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Commuter Rail Insurance Act".

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) APPLICANT.—The term "Applicant" means a Commuter Rail Agency that applies for insurance coverage from the Secretary under the Program established by this Act.

(2) ACTUARILY FAIR PREMIUM.—The term "Actuarily Fair Premium" means a premium set at an amount or level so that the premiums paid by insured parties over a specified term or period of time are equal to the expected value of the compensation provided for Covered Losses over the same term or period of time, with "expected value" defined as the probability of occurrence of the insured-against event multiplied by the compensation received in the event of a Covered Loss.

(3) COMMUTER RAIL SERVICES.—The term "Commuter Rail Services" means commuter or other short-haul rail passenger transportation in metropolitan and suburban areas that is regulated by the Federal Railroad Administration, which may have reduced fare, multiple-ride, and commuter tickets and morning and evening peak period operations.

(4) COMMUTER RAIL AGENCY.—The term "Commuter Rail Agency" means any local, State, or regional public entity that operates Commuter Rail Services in the United States, either directly or through contracted services, and that is subject to section 28103 of title 49 and section 11415 of the Fixing America's Surface Transportation Act (FAST Act) (P.L. 114-94; December 4, 2015).

(5) COVERED LOSSES.—The term "Covered Losses" means any loss that is based on personal injury to a passenger, death of a passenger, or damage to the property of a passenger occurring during a Program Year and arising out of or in connection with the operation of Commuter Rail Service and that results in a claim by a Commuter Rail Agency for payment from the Secretary under the terms of the insurance coverage provided under this Act.

(6) DEPARTMENT.—The term "Department" means the United States Department of Transportation.

(7) DOT RAIL PASSENGER LIABILITY CAP.—The term "DOT Rail Passenger Liability Cap" means the limitation on rail passenger transportation liability established under section 28103 of title 49, United States Code, as adjusted pursuant to section 11415 of the FAST Act (P.L. 114-94).

(8) FUND.—The term "Fund" means the Commuter Rail Insurance Revolving Fund established by this Act.

(9) PRIVATE INSURER.—The term "Private Insurer" means: (a) any entity that is licensed or admitted to engage in the business of providing insurance in any State and engages in such business on a regular basis; and (b) any entity or syndicate of entities providing insurance in the surplus lines market when placed through a producer licensed or admitted to engage in the business of placing such insurance in any State.

(10) PROGRAM.—The term "Program" means the Commuter Rail Insurance Program established by this Act.

(11) PROGRAM LEVELS OF INSURANCE.—The term "Program Levels of Insurance" means liability insurance coverage between $50 million and the DOT Rail Passenger Liability Cap.

(12) PROGRAM YEAR.—The term "Program Year" means each year of the five-year duration of the Program, subject to the conditions set forth in Section 12.

(13) SECRETARY. —The term "Secretary" means the Secretary of Transportation.

SEC. 3. ESTABLISHMENT OF COMMUTER RAIL INSURANCE PROGRAM.

(a) ESTABLISHMENT AND DURATION OF PROGRAM.—There is hereby established in the Department the Commuter Rail Insurance Program. The Program shall be in effect for the five-year period beginning on the date that the Secretary issues a final rule as provided in Section 10, subject to the Secretary's determination on market conditions as provided in Section 12(b). In the event of the termination of the Program, the Secretary shall be subject to the post-termination obligation regarding claims as provided in Section 12(c).

(b) AUTHORITY AND RESPONSIBILITY OF THE SECRETARY.—Notwithstanding any other provision of law, the Secretary shall administer the Program, shall provide insurance coverage to Commuter Rail Agencies at the Program Levels of Insurance, and shall provide payments from the Fund for Covered Losses in accordance with this Act and the terms of the insurance policies issued under this Act.

(c) ELEMENTS OF PROGRAM.—
(1) PROVISION OF INSURANCE.—Upon application by a Commuter Rail Agency pursuant to Section 4, the Secretary shall provide Commuter Rail liability insurance coverage under an annual renewable liability insurance policy.
(2) SCOPE OF COVERAGE.—The insurance provided by the Secretary under this Act shall be designed to provide payment for Covered Losses arising out of or in connection with the operation of Commuter Rail Service.

(3) AMOUNT OF INSURANCE.—The amount of insurance provided shall be any and all amounts of liability insurance coverage between $50 million and the DOT Rail Passenger Liability Cap, as requested by the Commuter Rail Agency in its application.

(4) TERM.—The term of the insurance provided shall be for one year, renewable on an annual basis for each Program Year in the five-year duration of the Program, subject to the conditions set forth in Section 12.

(5) ADDITIONAL INSUREDS.—A Commuter Rail Agency securing insurance coverage under the Program may include additional insureds under such coverage if (A) inclusion of such additional insureds is required under the terms of a written

agreement that is necessary for the operation of such Agency's Commuter Rail Services or (B) such additional insureds are named on a Commuter Rail Agency's liability coverage of up to $50 million. The Secretary may not prohibit or restrict the inclusion of additional insureds that meet the criteria in this paragraph.

(d) CONTRACTS FOR SERVICES.—The Secretary may employ such persons or contract for such services, including outside consultants from the insurance industry, as may be necessary to implement the Program.

SEC. 4. ESTABLISHMENT OF COMMUTER RAIL INSURANCE REVOLVING FUND.

(a) ESTABLISHMENT OF FUND.—There is hereby established within the Department a Commuter Rail Insurance Revolving Fund to finance the Program established under this Act. The Fund shall serve as the depository of premiums paid for insurance provided under the Program and as the source of payment of Covered Losses incurred by participating Commuter Rail Agencies.

(b) INITIAL DEPOSIT INTO FUND.—

(1) DEPOSIT.—To assure that there are sufficient amounts in the Fund in the first Program Year to pay for all Covered Losses anticipated at the time, the Secretary shall, within 45 days after the date of enactment of this Act, make an initial deposit of Federal funds into the Fund in such amount as the Secretary determines to be necessary and appropriate. For purposes of making such initial deposit, the Secretary is authorized to issue bonds or other obligations to the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase such obligations, and for that purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of securities issued under chapter 31 of title 31, and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchase of the Secretary's obligations under this paragraph.

(2) REPAYMENT.—At such time as the Secretary determines that the Fund has sufficient amounts, from the receipt of premiums, to pay for anticipated Covered Losses over the remaining Program Years, the Secretary shall repay to the Secretary of the Treasury the amounts borrowed under the obligations issued pursuant to paragraph (1).

(c) ADMINISTRATION OF FUND.—

(1) INVESTMENTS.—The Secretary may invest any part of the amounts in the Fund in interest bearing securities of the United States Government. The interest on, and the proceeds from the sale or redemption of, such securities shall be deposited in the Fund.

(2) FUND BALANCES.—Any balance in the Fund in excess of the amount the Secretary determines to be necessary for the requirements of the Program and for reasonable reserves to maintain solvency of the Fund shall be deposited at least annually into the Treasury as miscellaneous receipts.

SEC. 5. APPLICATIONS FOR INSURANCE.

(a) SUBMITTAL.—Any Commuter Rail Agency may submit an application to the Secretary for insurance under the Program established by this Act. Participation in the Program by Commuter Rail Agencies is voluntary.

(b) REQUIRED CONTENTS.—A Commuter Rail Agency Applicant shall include in its initial application for insurance under the Program:

(1) the amount of insurance coverage requested, which may not exceed the DOT Rail Passenger Liability Cap;

(2) appropriate documentation demonstrating that the Applicant has implemented, or will implement by the effective date of the insurance provided under the Program, means of liability protection for the first $50 million in liability from one or more Private Insurers, captive insurers, risk pools, or other means of risk transference, all of which may include a reasonable amount of self-insurance;

(3) information regarding the Applicant's Commuter Rail Services, including service area, revenue miles operated, hours of service, average daily passenger levels, right-of-way used for operations and whether owned or used by agreement, average rolling stock fleet age, and such other related information as the Secretary may require;

(4) documentation regarding the Applicant's Commuter Rail accident history over the past 10-year period (or such shorter period as the service has been in operation), together with a listing and description of all liability insurance claims filed during such period in connection with Commuter Rail accidents, the amount of reimbursement from Private Insurers for such claims, and the amount paid out in claims by the Applicant using its self-insurance retention; and

(5) such other information as the Secretary may reasonably require.

In its application for annual renewal of insurance, a Commuter Rail Agency Applicant shall include such updated information on the topics and matters described in this subsection as the Secretary may require.

(c) ACTION ON APPLICATION.—

(1) TIMING OF ACTION.—The Secretary shall act on each initial application within 30 days after the Applicant provides all information and documentation required under subsection (b), and shall act on each annual renewal application within 20

days after the Applicant provides all information the Secretary requires for such renewal.

(2) LIMITATION ON APPLICATION DENIALS.—The Secretary may deny an application for insurance under the Program only if the Secretary finds that the Applicant has consistently and repeatedly failed to provide timely and correct information required to satisfy the required contents of an application for insurance under the Program. Before denying any initial application or application for renewal, the Secretary shall provide the Commuter Rail Agency Applicant with written notice of such potential denial and the reasons therefore, and shall provide the Agency with a reasonable opportunity to respond to and address the issues forming the basis for such potential denial.

(d) PAYMENT OF PREMIUMS.—To secure and maintain insurance coverage under the Program, a Commuter Rail Agency shall pay the premiums due on such schedule as the Secretary may establish.

SEC. 6. INSURANCE PREMIUMS.

(a) CALCULATION AND ASSESSMENT OF ACTUARILY FAIR PREMIUMS.—

(1) ESTABLISHMENT OF PREMIUMS.—The Secretary shall establish, on an annual basis for each Program Year, the premiums to be charged to Commuter Rail Agencies for insurance coverage under the Program. In establishing such premiums, the Secretary shall consult with the Federal Office of Insurance in the Department of the Treasury.

(2) BASIS FOR PREMIUM AMOUNTS.—The premiums charged shall not exceed an Actuarily Fair Premium for the insurance coverage provided for the Program Year in question. The annual premiums shall reflect an actuarily based assessment of risk in the relevant Commuter Rail Services and shall not consider risks or costs in other insurance markets.

(3) UNIFORM OR INDIVIDUAL PREMIUMS.—In establishing premiums for the insurance provided under the Program, the Secretary may establish uniform amounts per dollar of coverage to be applicable to all participating Commuter Rail Agencies, or may establish individual premium amounts for each of the participating Commuter Rail Agency.

(4) DEPOSIT OF PREMIUMS.—All premiums received by the Secretary shall be deposited into the Fund.

(b) ADMINISTRATIVE EXPENSES.—Notwithstanding subsection (a), the Secretary may charge up to 110 percent of the Actuarily Fair Premium, on an equal basis to all participating Commuter Rail Agencies, if the Secretary determines that the additional amount is needed and will be used to pay the costs of administering the Program.

SEC. 7. PAYMENT OF CLAIMS.

(a) GENERAL AUTHORITY.—The Secretary shall have the powers and authorities necessary to investigate, audit, and pay claims from the Fund for Covered Losses under the insurance provided to Commuter Rail Agencies under this Act.

(b) CLAIMS PROCESS.—The Secretary shall establish policies and procedures under which Commuter Rail Agencies insured under the Program may file and certify claims for payment. Such policies and procedures shall include a requirement that each claim be accompanied by a certification from the Commuter Rail Agency claimant that (1) the claim is made in good faith and is not fraudulent; and (2) the claim is for a Covered Loss within the scope of the applicable insurance coverage under the Program.

(c) REVIEW AND PAYMENT.—The Secretary shall determine the validity of claims in a fair and timely manner and shall promptly pay all claims determined to be valid and within the scope of coverage of the insurance provided under the Program. The Secretary may, on the basis of audit and investigation and after notice to the Commuter Rail Agency claimant, adjust the amount of the claim to be paid under the applicable insurance coverage. The Secretary may not deny a claim without good cause and without first providing the Commuter Rail Agency claimant with notice and an opportunity to respond to and address the issues forming the basis for the potential denial.

SEC. 8. ANALYSIS OF MARKET CONDITIONS.

(a) WORKING GROUP.—The Secretary shall establish a Working Group consisting of representatives from the Commuter Rail Agencies and representatives from Private Insurers to perform an annual analysis of market conditions regarding the availability and affordability of liability insurance for Commuter Rail Services. Each such analysis shall be completed within 60 days after the end of each Program Year, and the Department shall submit the results of each analysis to Congress.

(b) SECRETARIAL DETERMINATION.—At the end of Program Year 3 and upon review of the Working Group's report, the Secretary shall make a specific determination, based on the analysis of existing market conditions, as to whether market capacity exists or will likely exist at a reasonable cost for Commuter Rail Services at the end of the fifth year of the Program, in accordance with Section 12(b). Within 90 days of the Working Group's report to the Department, the Secretary shall submit the specific determination to Congress.

SEC. 9. NOTICE TO CONGRESS.

The Secretary shall notify Congress in the event of a catastrophic loss in Commuter Rail Services that is likely to result in claims that exceed the amounts available in the Fund to reimburse Covered Losses.

SEC. 10. REGULATIONS.

Within 90 days after the date of enactment of this Act, the Secretary shall, following notice and comment, issue a final rule to implement the provisions of this Act.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, for each year of the Program, such amounts as may be necessary to carry out the provisions of this Act.

SEC. 12. TERMINATION OF PROGRAM.

(a) TERMINATION DATE.—Subject to subsection (b), the Program shall terminate on the five-year anniversary of the date in which the Secretary issues a final rule in accordance with Section 10.

(b) SECRETARIAL DETERMINATION.—The Program shall only terminate after the fifth year if the Secretary makes a specific determination after Program Year 3 in accordance with Section 8(b) that market capacity exists or will exist at a reasonable cost for Commuter Rail Services.

(c) CONTINUED AUTHORITY TO ADDRESS CLAIMS.—In the event of the termination of the Program, the Secretary shall take such actions as may be necessary to investigate, audit, and pay claims for Covered Losses arising out of or in connection with any event occurring during the period in which the Program was in effect. A claim may be filed after the termination date of the Program, and shall be paid in accordance with Section 7, if the event on which such claim is based occurred on or before such termination date.