



LEGISLATIVE COMMITTEE | AGENDA

**Sunday, May 19, 2019
10:00 a.m. to 12:00 p.m. (Eastern Time)**

**Omni Louisville Hotel
400 S 2nd Street
Louisville, KY 40202
Room: Olmstead Ballroom 6-7 (2nd Level)**

**Call-In Option (Listen Only)
Phone No.: 866.951.1151
Access Code: 123.441.870**

1. Welcome and Call to Order—Diana Mendes, Chair
2. Remarks from APTA Chair—David Stackrow
3. Update from APTA President and CEO—Paul Skoutelas
4. Approval of Minutes of March 17, 2019 Legislative Committee Meeting
5. Legislative Update—Ward McCarragher, Vice President, Government Affairs
6. Surface Transportation Authorization Funding Levels—
Diana Mendes and Leanne Redden, Vice Chair
 - a. Guiding Principles for Funding Levels
 - b. Surface Transportation Authorization Tables
7. Surface Transportation Authorization Recommendations Working Draft 5.0—
Diana Mendes and Leanne Redden
 - a. Reports from Legislative Subcommittee Chairs on Authorization
Recommendations 5.0
 - b. Discussion of Authorization Recommendations 5.0
8. Top Priorities for Surface Transportation Authorization—
Diana Mendes and Leanne Redden
9. Adjourn



ENCLOSED DOCUMENTS

- Minutes of March 17, 2019 Legislative Committee Meeting
- Summary of Legislative Committee Surface Transportation Authorization Outreach
- Timetable to Develop and Approve APTA's Surface Transportation Authorization Recommendations
- Guiding Principles and Authorization Table for Surface Transportation Authorization Funding Levels
- Surface Transportation Authorization Recommendations Working Draft 5.0

**AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
LEGISLATIVE CONFERENCE
LEGISLATIVE COMMITTEE MEETING
Grand Hyatt Washington Hotel
Room: Independence Ballroom A
Sunday, March 17, 2019
3:30 p.m. to 6:00 p.m. (Eastern Time)**

MINUTES

1. Welcome and Call to Order

Legislative Committee Chair Diana Mendes called the meeting to order, welcomed the members to Washington D.C., and thanked them for taking time out of their schedules to join her and Vice Chair Leanne Redden to consider the surface transportation authorization proposal and funding principles. Chair Mendes also thanked APTA's Chair David Stackrow and President and CEO Paul Skoutelas for joining the meeting.

2. Remarks from APTA Chair

APTA Chair David Stackrow thanked the Legislative Committee for the work they have done with surface transportation authorization and funding principles. He then mentioned the need for consensus building and the extraordinary efforts that have been taken to date to conduct outreach to APTA's diverse membership. He emphasized the need to speak with one voice to Capitol Hill to ensure that our priorities are heard.

3. Update from APTA President and CEO

APTA President and CEO Paul Skoutelas greeted members of the Legislative Committee and thanked them for coming to Washington, D.C. for this event. He recognized the leadership of Chair Mendes and Vice Chair Redden on their efforts surrounding authorization and the funding principles. He also highlighted APTA's increased advocacy efforts, including hand delivery of an individualized package to every Member of Congress outlining the benefits of public transportation and the need for greater investment; testifying at Committee hearings; and engaging with our coalition partners. Lastly, he urged APTA members to reach out to their Members of Congress and invite them to visit their respective facilities to bring awareness to the lack of investments made in public transportation and the negative effects it causes on our systems and our local communities.

4. Approval of Previous Meeting Minutes

Chair Mendes presented the minutes of the previous Legislative Committee meeting that occurred on Thursday, November 29, 2018, for approval. A motion was made to approve the minutes, which was seconded, and then approved without objection.

5. Legislative Overview

APTA Vice President of Government Affairs Ward McCarragher addressed the Committee, giving an update on the status of pending Congressional and Administration priorities. He also discussed the impacts of the 2019 government shutdown, the Highway Trust Fund shortfall, and the prospects for the authorization and funding of an Infrastructure Initiative.

6. Update from Chair of the APTA Research, Communications and Advocacy (RCA) Council

Dorval Carter, Chair of the RCA Council, gave a presentation on Advocacy and the New Congress. He emphasized the steps that APTA is taking to conduct outreach and to educate new Members of Congress. Other advocacy efforts include the Business Member Board of Governor's Targeted Senate Outreach Initiative, a new Communications firm to ramp up the transit industry's and APTA's profile, and a re-energized Center for Transportation Excellence.

7. Surface Transportation Authorization Discussion

a. Timetable and Worksheet

Chair Mendes reminded members of the Timetable to develop and approve the APTA Surface Transportation Authorization Recommendations, noting that the process begun over a year ago and that the Steering Committee sought input from APTA's diverse membership along the way. The goal is to have final Authorization Recommendations approved by this Committee by summer, with Board of Directors consideration and approval at the Annual Meeting in October. She also noted that APTA staff, at the direction of the Legislative Steering Committee, had developed a Worksheet to submit proposed changes to the Working Draft 3.0, and encouraged members to use it to develop proposals that could be included in subsequent drafts of the Surface Transportation Authorization Recommendations.

b. Reports from Legislative Subcommittee Chairs regarding Authorization Activities

Representatives of the Business Member Legislative, Commuter and Intercity Passenger Rail, Federal Procedures and Regulations, Funding, Finance and Tax Policy, Small Operations, and Transit Board Members Legislative Subcommittees reported out progress and discussions related to authorization activities.

c. APTA Principles for Surface Transportation Authorization Funding Levels and Surface Transportation Authorization Recommendations Working Draft 3.0

Chair Mendes introduced the Principles for Surface Transportation Authorization Funding Levels and emphasized that the primary purpose of the Funding Principles is to guide APTA staff in developing recommended funding levels for public transportation and intercity passenger rail programs, and that the Principles are meant to be scalable. In addition, she noted that the meeting was an opportunity to provide specific comments with respect to the Surface Transportation Authorization Working Draft 3.0.

Vice Chair Redden reiterated that the Principles and Recommendations Working Draft are a work in progress and that more drafts will be forthcoming. She also emphasized the need to stick together and advocate forcefully for our shared vision of increased dedicated federal revenues for programs that support public transportation and intercity passenger rail, addressing the \$90 billion state-of-good-repair backlog, and meeting the demands of growing communities.

Members of the Legislative Committee raised the following issues, among others, during the discussion: Federal Transit Administration expenses out of the HTF, Capital Investment Grants firewall, public transportation innovation, Railroad Rehabilitation and Improvement Financing credit risk premiums, placement of rail provisions in the new authorization document, national transit database issues, and leveraging private investment.

8. Adjourn

There being no further business before the Legislative Committee, a motion was made and seconded to adjourn the meeting. Chair Mendes adjourned the meeting.

APTA Legislative Committee

Surface Transportation Authorization Outreach

May 19, 2019

Chair Diana Mendes

Vice-Chair Leanne Redden

Staff Advisor: Ward McCarragher

OUTREACH TO DATE

- **November 2017:** At the APTA Executive Committee retreat, the Executive Committee agreed to use the Legislative Steering Committee to develop surface transportation authorization recommendations.
- **December 2017:** Committee Leaders briefed the Board of Directors and the Legislative Committee on the authorization timeline and process and solicited input from both entities.
- **January 2018:** Committee Leaders developed questions for internal outreach and to solicit input on issues; assigned outreach responsibilities and APTA Committee targets to Steering Committee members; and directed Steering Committee members to solicit input from respective subcommittees. Committee Leaders also met with the Business Member Legislative Subcommittee and full Business Member Board of Governors (BMBG) at the Annual BMBG meeting.

Committee Leaders began conducting monthly conference calls of the Legislative Steering Committee to review and update members on the status of recent actions.

- **February 2018:** Committee Leaders conducted a session on the authorization process and issues at the Annual CEO Seminar with participants representing various operating perspectives. The Leaders also solicited input at both the Legal Affairs Seminar and Marketing and Communications Workshop.
- **March 2018:** Committee Leaders continued outreach to APTA Committees and Legislative Subcommittees and briefed the Board of Directors on the authorization process. At the Legislative Committee meeting, the Leaders conducted live polling to facilitate discussion of authorization issues.
- **April 2018:** Committee Leaders reviewed deliberations that took place at the March 2018 Legislative Conference. Leaders also agreed to conduct a Legislative Steering Committee meeting at the June 2018 Rail Conference.
- **May 2018:** Committee Leaders provided a brief update on the authorization process at the Board of Directors meeting at the Bus & Paratransit Conference.

- **June 2018:** Committee Leaders conducted meetings of the Legislative Steering Committee and the Legislative Committee where the Committees considered and adopted Principles for Surface Transportation Authorization unanimously. In addition, the Committees considered and approved five specific Finance Recommendations unanimously.

Committee Leaders briefed the Executive Committee on the actions of both the Legislative Steering Committee and Legislative Committee.

- **July 2018:** Committee Leaders participated in a nearly all-day surface transportation authorization discussion with the Small Operations Committee during its Planning Meeting in Chicago. The Small Operations Committee agreed upon several key priorities for the bill that it brought to the Legislative Committee at the Annual Meeting.
- **August 2018:** Committee Leaders and the Legislative Steering Committee directed APTA staff to develop a working draft of Surface Transportation Authorization “Straw Man” Recommendations for the Legislative Committee to consider.
- **September 2018:** Committee Leaders presented the Principles for Surface Transportation Authorization and five Finance Recommendations, as adopted by the Legislative Committee in June 2018, to the Board of Directors. After adopting a minor amendment, the Board of Directors adopted the Principles unanimously. The Board also approved the five specific Finance Recommendations unanimously. Committee Leaders also briefed the Board on recent actions of both the Legislative Steering Committee and Legislative Committee.

In addition, Committee Leaders conducted meetings of the Legislative Committee and each of the seven Legislative Subcommittees. At each of these meetings, the Leaders presented and discussed the working draft of APTA’s Surface Transportation Authorization “Straw Man” Recommendations.

- **November 2018:** Committee Leaders briefed the Executive Committee on the Surface Transportation Authorization process. The Leaders outlined the Legislative Committee’s timetable for developing, considering, and approving Recommendations.

On November 29, the Legislative Committee met to further consider the Surface Transportation Authorization “Straw Man” Recommendations 2.0. On November 30, Committee Leaders briefed the Board of Directors on the Surface Transportation Authorization process and timetable for developing, considering, and approving Recommendations.

- **January 2019:** Committee Leaders briefed the Executive Committee and the Business Members Board of Governors on the Surface Transportation Authorization process. The leaders discussed the timetable and ongoing collaboration with Congress and industry partners.

- **February 2019:** APTA staff presented at the Legal Affairs Conference on the Surface Transportation Authorization process, timeline, and sought additional input on the draft Recommendations.
- **March 2019:** On March 17, the Legislative Committee met to further consider the Surface Transportation Authorization Working Draft 3.0 and encouraged members to share suggestions and submit worksheets for input not reflected in the current draft.
- **April 2019:** On April 12, the Legislative Steering Committee met to further discuss and provide input on the Working Draft 4.0 and Funding Levels.

Committee Leaders briefed the Transit CEOs on the Surface Transportation Authorization Working Draft 4.0, Funding Levels, and the Surface Transportation Authorization process.

NEXT MEETING: **Mobility Conference (May 19, 2019)**
To consider Surface Transportation Authorization Recommendations
Working Draft 5.0 and Funding Levels.

Legislative Committee
Timetable to Develop and Approve
APTA's Surface Transportation Authorization Recommendations
May 19, 2019

MAJOR MILESTONE ACTIVITIES	APTA MEETING (Date(s))	ACTIONS
Major Milestone Activities -- To Date		
Executive Committee Agrees to Use Legislative Steering Committee to Develop Surface Transportation Authorization Recommendations	Executive Committee Retreat (November 16, 2017)	The Executive Committee agreed to use the Legislative Steering Committee to develop Surface Transportation Authorization Recommendations.
Legislative Steering Committee Adopts Principles for Surface Transportation Authorization	Rail Conference (June 10, 2018)	The Legislative Steering Committee adopted the Principles for Surface Transportation Authorization unanimously.
Legislative Committee Adopts Principles for Surface Transportation Authorization	Rail Conference (June 10, 2018)	The Legislative Steering Committee adopted the Principles for Surface Transportation Authorization (with a minor amendment) unanimously.
Executive Committee Discusses Principles for Surface Transportation Authorization	Virtual Meeting (September 12, 2018)	N/A
Board of Directors Adopts Principles for Surface Transportation Authorization	Annual Meeting (September 22, 2018)	The Board of Directors adopted the Principles for Surface Transportation Authorization (with a minor amendment) unanimously.
Legislative Committee Considers Surface Transportation Authorization "Straw Man" Recommendations 1.0	Annual Meeting (September 23, 2018)	The Legislative Committee considered the Surface Transportation Authorization "Straw Man" Recommendations 1.0.
Executive Committee Discusses APTA's Surface Transportation Authorization Timetable	Executive Committee Retreat (November 12, 2018)	The Executive Committee discussed the timetable for developing and approving APTA's Surface Transportation Authorization Recommendations.
Legislative Committee Considers Authorization Recommendations 2.0	Industry Leadership Summit (November 29, 2018)	The Legislative Committee considered the Authorization Recommendations 2.0.
Legislative Steering Committee Considers Guiding Principles for Surface Transportation Authorization Funding Levels	Legislative Conference (March 17, 2019)	The Legislative Steering Committee considered Guiding Principles for Surface Transportation Authorization Funding Levels.
Legislative Committee Considers Authorization Recommendations 3.0	Legislative Conference (March 17, 2019)	The Legislative Committee considered the Authorization Recommendations 3.0.

Legislative Committee
Timetable to Develop and Approve
APTA's Surface Transportation Authorization Recommendations
May 19, 2019

MAJOR MILESTONE ACTIVITIES	APTA MEETING (Date(s))	ACTIONS
Major Milestone Activities -- To Date (Continued)		
APTA Staff Distributes Authorization Recommendations 4.0 to Legislative Steering Committee	April 10, 2019	APTA Staff distributed Authorization Recommendations 4.0 to Legislative Steering Committee.
Legislative Steering Committee Considers Surface Transportation Authorization Recommendations 4.0 and Funding Levels	Legislative Steering Committee Meeting (April 12, 2019)	The Legislative Steering Committee considered the Authorization Recommendations 4.0 and Funding Levels.
Legislative Committee Leaders Continue Outreach regarding Authorization Recommendations 4.0	APTA Transit CEOs Seminar (April 13-15, 2019)	Legislative Committee Leaders continue their outreach efforts regarding Authorization Recommendations 4.0 at Transit CEOs Seminar.
APTA Staff Distributes Authorization Recommendations 5.0 (and Funding Levels) to Legislative Committee	May 15, 2019	APTA Staff distributed Authorization Recommendations 5.0 (and Funding Levels) to the Legislative Committee.
Major Milestone Activities -- Upcoming		
Legislative Committee Considers Authorization Recommendations 5.0	Mobility Conference (May 19, 2019)	The Legislative Committee will consider Authorization Recommendations 5.0.
Legislative Steering Committee Resolves any Remaining Issues Regarding Authorization Recommendations 5.0	May - June 2019	The Legislative Steering Committee resolves any remaining issues regarding Authorization Recommendations 5.0.
Legislative Committee Considers and Approves Final Authorization Recommendations	Rail Conference (June 23, 2019)	The Legislative Committee will consider and approve Final Authorization Recommendations.
Legislative Committee Leaders Brief Executive Committee on Final Authorization Recommendations	June - October 2019	Legislative Committee Chair Diana Mendes and Vice Chair Leanne Redden will brief the Executive Committee on the Final Authorization Recommendations.
Legislative Committee and Marketing & Communications Committee Develop Marketing, Communications, and Advocacy Plan for Final Authorization Recommendations	Marketing & Communications Strategic Planning Meeting (July 2019)	The Legislative Committee and Marketing & Communications Committee will develop marketing, communications, and advocacy plan for Final Authorization Recommendations.
Board of Directors Considers and Approves Final Authorization Recommendations	Annual Meeting (October 12, 2019)	The Board of Directors will consider and approve Final Authorization Recommendations.



Guiding Principles for Surface Transportation Authorization Funding Levels

May 19, 2019

These Guiding Principles establish the framework for APTA's recommended funding levels for public transportation and intercity passenger rail programs. Based on these Guiding Principles, APTA staff developed the enclosed draft funding tables for the Authorization Recommendations for consideration by the Legislative Committee.

If Congress considers legislation that has a different overall funding level than the level outlined in our Recommendations, APTA will continue to advocate for our position. However, these Guiding Principles are also designed to be scalable—they will guide APTA's advocacy under those different circumstances.

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).

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 grants and competitive grants.

- Similarly, the CIG program grows at a higher rate (i.e., 23.5 percent) than most other programs until it achieves a 40 percent capital investment share. With sufficient overall increased funding for all programs, the CIG share of 40 percent will be reestablished by the second year of the authorization period.
- 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 (\$130 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 2022 to 60 percent in FY 2026). Over the authorization period, the Authorization Recommendations include \$13.5 billion of contract authority for commuter and intercity passenger rail grants.

Enclosed is APTA's draft Surface Transportation Authorization Funding Table.

Surface Transportation Authorization Funding Table

May 19, 2019

Program	FY 2020 FAST Act Authorization	FY 2019 Appropriation	New Authorization						
			FY 2021	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total
Total All Transit Programs	\$12,742.15	\$13,460.23	\$16,056.68	\$18,979.08	\$21,885.20	\$25,257.83	\$29,172.06	\$33,715.07	\$145,065.92
Total Funded from the Public Transportation Account	\$10,150.35	\$10,633.38	\$12,714.11	\$14,878.05	\$17,154.30	\$19,795.69	\$22,860.98	\$26,418.40	\$113,821.52
5305 Planning	142.04	139.09	164.90	191.45	222.28	258.06	299.61	347.85	1,484.16
5307 and 5336 Urbanized Area Formula	4,929.45	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	285.57	279.65	331.55	384.93	446.91	518.86	602.39	699.38	2,984.02
5311 Rural Formula Grants	673.30	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	28.00	41.00	47.60	55.26	64.16	74.49	86.49	369.01
5312(i) TCRP	5.00	5.00	15.00	17.42	20.22	23.47	27.25	31.64	135.00
5314 Technical Assistance and Workforce Development	9.00	9.00	13.50	13.80	14.10	14.41	14.73	15.05	85.59
5318 Bus Testing Facility	3.00	4.00	4.00	4.00	4.00	4.00	4.00	4.00	24.00
5334 FTA Administration	-	-	117.55	120.13	122.78	125.48	128.24	131.06	745.23
5335 National Transit Database	4.00	4.00	4.40	4.84	5.32	5.86	6.44	7.09	33.95
5337 State of Good Repair	2,683.80	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 Bus and Bus Facilities	808.65	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 and Bus Facilities Formula	464.61	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 and Bus Facilities Competitive	344.04	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 Grants	55.00	85.00	111.78	146.98	193.28	224.40	260.53	302.48	1,239.46
5340 Growing and High Density States	570.03	601.32	608.67	608.67	608.67	608.67	608.67	608.67	3,652.04
5340(c) Growing States	300.67	293.31	300.67	300.67	300.67	300.67	300.67	300.67	1,804.01
5340(d) High Density States	269.36	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	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	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
Total Funded from General Revenues	\$2,591.80	\$2,826.85	\$3,342.57	\$4,101.03	\$4,730.90	\$5,462.14	\$6,311.08	\$7,296.67	\$31,244.40
5309 Fixed-Guideway Capital Investment Grants (CIG)	2,301.79	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	20.00	6.00	30.00	30.00	30.00	30.00	30.00	30.00	180.00
5314 Technical Assistance and Workforce Development	5.00	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	150.00	900.00
5334 FTA Administration (Moves to Trust Fund)	115.02	113.17	-	-	-	-	-	-	-
CIG	39.7%	38.8%	39.4%	40.0%	40.0%	40.0%	40.0%	40.0%	
SOGR	46.3%	44.1%	42.1%	40.0%	40.0%	40.0%	40.0%	40.0%	
Bus	14.0%	17.1%	18.5%	20.0%	20.0%	20.0%	20.0%	20.0%	

Total All Rail Programs*	\$630.00	\$655.00	\$2,232.53	\$3,430.27	\$4,659.84	\$5,926.34	\$7,235.74	\$8,594.94	\$32,079.66
Contract Authority			223.25	686.05	1,397.95	2,370.54	3,617.87	5,156.96	13,452.63
Contract Authority Ramp Up			10%	20%	30%	40%	50%	60%	
General Fund	630.00	655.00	2,009.28	2,744.22	3,261.89	3,555.81	3,617.87	3,437.98	18,627.03
Consolidated Rail Infrastructure and Safety Improvements (sec. 11102 and 49 U.S.C. 24407)	330.00	255.00	763.13	885.99	1,028.64	1,194.25	1,386.52	1,609.75	6,868.29
Commuter Rail PTC Operations and Maintenance			130.00	132.86	135.78	138.77	141.82	144.94	824.18
Passenger Rail-Highway Grade Crossing Grants			250.00	255.50	261.12	266.87	272.74	278.74	1,584.96
Federal-State Partnership for State of Good Repair (sec. 11103 and 49 U.S.C. 24911)	300.00	400.00	464.40	539.17	625.97	726.76	843.76	979.61	4,179.67
High-Performance Intercity Passenger Rail Grants (P.L. 110-432, sec. 301(a))	-	-	1,000.00	2,000.00	3,000.00	4,000.00	5,000.00	6,000.00	21,000.00
Railroad Cooperative Research Program (49 U.S.C. 24910)	-	-	5.00	5.11	5.22	5.34	5.45	5.57	31.70

Total All Transit and Rail Programs	\$13,372.15	\$14,115.23	\$18,289.21	\$22,409.35	\$26,545.03	\$31,184.17	\$36,407.80	\$42,310.01	\$177,145.58
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* These amounts do not include funds specifically authorized for Amtrak.



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

APTA Surface Transportation
Authorization Recommendations
Working Draft 5.0

Legislative Committee Meeting
Louisville, KY
May 19, 2019

APTA Surface Transportation Authorization Recommendations Working Draft 5.0

At the direction of the Legislative Steering Committee, led by Chair Diana Mendes and Vice Chair Leanne Redden, APTA staff drafted an initial document of APTA's Surface Transportation Authorization Recommendations for discussion. The first iteration of this document was shared at the APTA Annual Meeting in September 2018. The Working Draft 2.0 was discussed at the Industry Leadership Summit in November 2018. The Working Draft 3.0 was discussed at the Legislative Conference in March 2019. The Working Draft 4.0 was discussed at a Legislative Steering Committee meeting on April 12, 2019. This document represents Version 5.0 of the Working Draft of APTA's Surface Transportation Authorization Recommendations.

The goal is to have a final product that reflects APTA's consensus top priorities to guide our advocacy before Congress and the Administration.

[Table of Contents—The Table of Contents will assist the reader in finding specific APTA recommendations.]

[Executive Summary—The Executive Summary will make the case for significantly increasing federal investment in public transportation and intercity passenger rail. It will also outline APTA's Top Priorities for Surface Transportation Authorization.]

APTA Principles for Surface Transportation Authorization

Adopted by APTA's Board of Directors on 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.

Funding Recommendations

The key to the ultimate success of the next authorization bill is addressing the shortfall in the Highway Trust Fund. With a state-of-good-repair backlog of \$100 billion and growing, sufficient 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 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 5 cents for public transportation).** 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.
- **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.**
- **Rename the “Mass Transit Account” of the Highway Trust Fund to be the “Public Transportation Account”.**
- **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 the 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 our industry currently 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 use 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) before P.L. 115-97.

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. Pension funds are tax-exempt, which makes many tax-exempt infrastructure bonds uneconomic. 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 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 his or her 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 and highway 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 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 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 number.

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 commuter or intercity passenger rail station or bus terminal would be eligible for certain tax benefits (tax credits and/or accelerated depreciation) upon making a grant to 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 pretax, as a subsidy, or in combination. APTA strongly supports the commuter tax benefit.

However, pursuant to the Tax Cuts and Jobs Act of 2017 (P.L. 115-97), 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 (TIFIA) 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 for 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.
- **Grant expedited credit reviews to low-risk candidates.** For example, 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 sufficient 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 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."
- **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.** 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 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. It will make it more difficult to continue funding the public transportation, highway, and highway safety programs at FAST Act levels, let alone provide necessary increases.

The enclosed December 2, 2015 Congressional Budget Office table on the FAST Act’s contract authority illustrates the effect of the rescission on the budgetary resources for the FAST Act reauthorization bill:

December 2, 2015

TABLE 3. CONTRACT AUTHORITY PROVIDED BY CONFERENCE AGREEMENT ON H.R. 22, THE FAST ACT, AS POSTED ON THE WEBSITE OF THE HOUSE COMMITTEE ON RULES ON DECEMBER 1, 2015

	By Fiscal Year, in Millions of Dollars										
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016-2025
Contract Authority Assumed In CBO’s Baseline (before the enactment of the FAST Act)	51,143	51,143	51,143	51,143	51,143	51,143	51,143	51,143	51,143	51,143	511,430
Contract Authority Under the FAST ACT											
Specified by the FAST Act	53,746	55,115	56,112	57,376	58,712	--	--	--	--	--	281,061
Rescission	--	--	--	--	-7,569	--	--	--	--	--	-7,569
Assumed in the Baseline After 2020 ^a	--	--	--	--	--	51,143	51,143	51,143	51,143	51,143	255,715
Total Contract Authority Under the FAST Act	53,746	55,115	56,112	57,376	51,143	51,143	51,143	51,143	51,143	51,143	529,207
Change in Contract Authority ^b	2,603	3,972	4,969	6,233	0	0	0	0	0	0	17,778

a. As required by law, CBO’s baseline reflects the assumption that most mandatory programs (including programs funded from the Highway Trust Fund) that expire on specific dates will continue to operate as they did immediately before their expiration.

b. This line appears under the heading “Contract Authority Subtotal” in Table 2.

APTA Recommendation:

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

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 backlog in deferred maintenance and replacement needs. Transit agencies deal with this issue every day with bus and rail rolling stock operating past their useful life, and deferred facility, equipment, and infrastructure improvements. Likewise, demand for transit across the country requires investment in CIG projects (including New Start, Small Start, and Core Capacity projects) that provide major expansions of existing 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.

Under current law, FTA does not make apportionments to agencies until appropriations cover a certain time period into a fiscal year, often at least five months. This can cause significant hardships, especially on smaller agencies that rely on federal funding for ongoing operating and capital expenses. Congress can take action to provide contract authority to transit agencies at the beginning of the fiscal year, consistent with the Federal Highway Administration.

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 the overwhelming majority of FTA staff who provide critical support of the public transportation industry. Under an FTA shutdown, 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.

Finally, throughout our recommendations, APTA recommends 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 from the Mass Transit Account formula programs at the beginning of the fiscal year and make the funds available for obligation for transit agencies, subject to the obligation limit set in annual appropriations legislation.**
Amend Chapter 53 of Title 49 at the appropriate place to include language similar to 23 U.S.C. § 118.
- **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.
- **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 (at the option of the agencies).**

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. FTA should provide technical assistance when agencies have a change in classification.

APTA Recommendations:

- **Require FTA to provide technical assistance to public transportation agencies when agencies have a change in Census classification.** Amend § 5305 to include a new section “(i) TECHNICAL ASSISTANCE.— The Secretary shall provide technical assistance to public transportation agencies that have a change in classification from a rural area as defined in section 5302 (16) to an urbanized area as defined in section 5302 (23) as a result of the 2020 decennial census of population.”

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 2 percent to 3 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 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 continue to reject any 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 share for New Start, Core Capacity, and Small Start projects. The fixed Federal 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 federal share and estimated net capital costs for Small Start Projects by \$100 million.** In § 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”.
- **Clarify that Core Capacity projects that expand or modify existing station facilities are increasing capacity and extend the time period for projects to be at or over capacity from five years to 10 years.** Strike clause three of § 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 Starts and Core Capacity projects from 2 to 3 years.** In § 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 replace with a Government Accountability Office study.** Strike § 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 § 5309(g)(3)(D). In § 5309(g)(3)(C), strike “; and” and insert “.”
- **Require FTA to conduct the Risk Assessment during the Engineering phase of New Start and Core Capacity projects, which will restore the Risk Assessment to the review required prior to FTA’s recent changes in Risk Assessment policy.**

- **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 recent changes in Risk Assessment policy.**
- **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, Engineering (if applicable), and Construction;**
 - 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; and**
 - iv. **the date of completed FFGA or SSGA application.**
- **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 § 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 3 days. In § 5309(h)(6)(C), strike “10 days” and insert “3 days”.**
- **Allow environmental work expenditures by project sponsors 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 enactment. In § 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.**

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 fixed guideway capital projects, small start projects, or core capacity projects to expedite the evaluation process normally required for CIG. FTA has only issued an expression of interest for projects and has not begun implementation of the pilot program.

APTA Recommendations:

- **Increase the maximum Federal share from 25 percent to 50 percent.**
- **Increase the cap on Small Start grant funding from \$75 million to \$200 million to be consistent with § 5309(a)(7), as amended by these Recommendations.**

Mobility of Seniors and Individuals with Disabilities (§ 5310)

Demand for public transportation services from senior and disabled Americans continues to grow in urban, suburban, and rural communities. Sufficient resources should be directed toward this program to meet these unique, 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 and others who require alternatives to traditional public transportation service.

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 was 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 Non-Emergency Medical Transportation 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)."
- **Require CCAM to evaluate impact of NEMT waivers on other CCAM partners and programs and evaluate impacts of including Medicare transportation in the overall transportation network of supported services.** Amend § 3006(c)(2) 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 under 3006(c)(2).** Add a new paragraph (4) to § 3006 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 § 3006(c)(2) and submit it to the Committee on Environment and Public Works 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, ADA paratransit, and integrated mobility programs.** Amend § 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.”

Public Transportation Innovation (§ 5312)

The FAST Act authorizes \$28 million 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 for 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 §5338(a)(2)(G)(ii) to triple 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 § 5505(c)(2)(B) to include a new section “(iii) Scope. – Not less than two of the consortia receiving a grant under this paragraph shall focus research on issues related to public transportation.”

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) at a public four-year degree granting institution of higher learning. 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 § 5307 to be utilized for workforce development activities.

Concerns have been raised about assaults on public transportation workers, and the safety risk that such assaults pose to workers and the general public. More funding should be devoted to bus operator safety mitigation measures to reduce the number of such assaults.

APTA Recommendations:

- **Provide \$5 million per year for bus operator assault mitigation measures.** Amend §5338(a)(2)(H) as follows: “\$13,500,000 for fiscal year 2021, and indexed to inflation thereafter, shall be available to carry out section 5314; of which \$5,000,000 shall be available for the national transit institute under section 5314(c).” Amend §5338(c) as follows: “\$10,000,000 for fiscal year 2021, and indexed to inflation thereafter, shall be available to carry out section 5314; of which there are authorized to be appropriated \$5,000,000 per year to carry out §5314(a)(2)(F).”
- **Create a demonstration grant program that will fund workforce training innovations by transit agencies. Target funds to address evolving or expected technological impacts on front line workers such as the autonomy impact on drivers.**

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). These dual certifications fall to the public transit agency, not the bus manufacturer, to certify 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 would require bus manufacturers to directly provide a single certification to the Federal Transit Administration demonstrating compliance with Buy America and Federal bus testing requirements.**

Buy America (§ 5323(j))

Buy America regulations should be consistent across agencies and modes. APTA has submitted detailed recommendations to the Department of Transportation to improve and streamline application of Buy America requirements that would reduce costs and project delays. *See APTA, Invest in Public Transportation for a Stronger America, Appendix: Regulatory Reform Recommendations.*

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."

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 FOIA requests and from admissibility into evidence in state and federal courts (see APTA Recommendations on § 5329).**

Public Transportation Safety Program (§ 5329)

Safety and Security Data Protections

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 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, transit systems must be able to obtain comprehensive, confidential analyses of accidents 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 will require. Unwarranted exposure to liability and lawsuits could create perverse incentives for 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. 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 transit agency must have a realistic method for contesting a perceived incorrect finding or conclusion by an SSOA. Amend §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. Included in the new reporting policies was 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) 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 National Transit Database 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 trips to be included in NTD ridership data.** Amend § 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 private 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 Program (§ 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, 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 be a jumping off point 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.** We offer several different approaches to make the rule more flexible. We recommend adopting one or more of these approaches. 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 change spare ratio requirements to no less than 30 percent; (b) to not consider vehicles operating beyond the minimum useful life in the spare ratio calculation; (c) to not consider low or no emission vehicles in the spare ratio calculation; (d) to not apply spare ratio policies to recipients operating fewer than 200 fixed-route revenue vehicles."
- **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 Structure 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 bill.**
- **Create a Passenger Rail Trust Fund, and identify new, long-term, dedicated revenues to significantly increase intercity passenger rail investment.**

“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.”

“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 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.”
- **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 Working Draft 5.0 Finance Recommendations at 7.*

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 has estimated that commuter railroads will spend \$4.1 billion implementing the life-saving PTC technology and up to \$130 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 § 11102 Consolidated Rail Infrastructure and Safety Improvements 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 paragraph (k) and insert the following: “Section 22907 (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) and (c)(2) of this section.”

Add a new paragraph (m). “AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for eligible projects under (c)(2), \$130,000,000 per year for fiscal year 2021, and _____.”

Passenger Rail-Highway Grade Crossing Safety

Passenger rail-highway grade crossing safety remains a significant safety 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)(5) for commuter rail and operators in high-ridership corridors, \$250,000,000 for fiscal year 2021, and _____.”

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 paragraph “(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 similar to § 6021 of the FAST Act to address the actions needed to upgrade and restore intercity passenger rail for the demands of a 21st Century.**

Include a standalone section: “Sec __. FUTURE INTERCITY 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 (RCRP) 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 _____ for carrying out this section.”

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 to ensure, among other things, that first and last mile public transportation needs are met.

APTA Recommendations:

- **Create a Mobility Innovation and Technology Initiative.** Add a new § 5313:

“Sec. 5313. MOBILITY INNOVATION AND TECHNOLOGY INITIATIVE.

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

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

- (A) a State or local government entity; or
- (B) publicly owned operators 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—

- (A) Advance first-mile, last-mile, late-night or low-density services;
- (B) allow for the integration of mobility services and technologies;
- (C) enable new or expanded reservation, fare, automation, or delivery designs to improve options in public transportation; or
- (D) 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.
- (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 approved by a metropolitan planning organization.
- (2) DEVELOPMENT OF CRITERIA.—The Secretary shall work with eligible recipients and other public transportation industry representatives to develop appropriate criteria for the selection and evaluation of eligible projects. In determining such criteria, the Secretary may consider how the deployment of technology or services will—
- (A) increase the reliability of service;
- (B) allow for first and last mile connectivity;
- (C) decrease the average distance to pick up or drop off point;
- (D) enable the integration of mobility services;
- (E) incorporate partnerships with public or private sector partners to enhance mobility offerings; and
- (F) any other factor that the Secretary determines to be appropriate.
- (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) any other findings or best practices from projects funded under subsection (b)."
- **Public Availability of Findings from Mobility on Demand Projects.** 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."
- **Study of Mobility-as-a-Service Platforms.** Add a new standalone section: "Sec. __ 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 assuring 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 submitted to Congress no later than one year after the date of enactment of this Act."
- **Study of Interoperability of Planning and Payment Systems.** Add a new standalone section: "Sec __. 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."

Federal Highway Programs

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 the Federal Highway Administration (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.**