

TESTIMONY OF
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AMERICAN PUBLIC TRANSPORTATION ASSOCIATION
BEFORE THE
SUBCOMMITTEE ON HOUSING & TRANSPORTATION
OF THE
SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS
ON THE IMPLEMENTATION OF SAFETEA-LU

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SUBMITTED BY

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APTA is a nonprofit international association of more than 1,600 public and private member organizations including transit systems and commuter rail operators; planning, design, construction and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient and economical transit services and products. More than ninety percent of persons using public transportation in the United States and Canada are served by APTA members.

INTRODUCTION

Mr. Chairman and members of the committee, on behalf of the 1,600 members of the American Public Transportation Association (APTA), we thank you for this opportunity to testify on the implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was enacted into law last summer. SAFETEA-LU incorporates the key principles that APTA and the transit industry advocated for in the reauthorization process –

- grow the federal transit program;
- preserve the funding guarantees; and
- expedite and improve program delivery.

With federal investment of \$52.6 billion guaranteed over six years in the bill, APTA's members very much appreciate and thank this committee for its hard work and commitment to public transportation throughout the reauthorization process. The investment levels included in the legislation, and its new programs and policy changes, will have a significant impact on the mobility needs of millions of Americans, and we applaud this committee's hard work and leadership in making that happen. And we are pleased to report today that significant progress has been made toward successfully implementing this important legislation.

In that regard, Mr. Chairman, I commend the Federal Transit Administration (FTA) for acting expeditiously in implementing rulemakings and carrying out other activities required under SAFETEA-LU. The law calls for FTA to implement a significant number of programs, rulemakings, notices and other measures, and the agency has made every effort to do so in a timely and open and transparent way. FTA has conducted workshops, participated in an APTA webinar, and been on panels at APTA conferences and meetings to explain SAFETEA-LU programs and policies. We very much appreciate FTA's efforts in this regard, and we look forward to continuing the good working relationship we now have with the agency.

Looking ahead, a strong partnership between the public transportation industry, FTA and Congress is more important than ever as we implement SAFETEA-LU. Americans took more than 9.7 billion transit trips in 2005. Since 1995, the use of public transportation has increased by 25.1 percent -- more than the growth of highway travel (22.5 percent) over that period. The growth of transit ridership during the past 10 years demonstrates that Americans want transportation choices and will leave their cars behind when convenient, quality public transit service is available. As gas prices continue to rise, the demand for public transportation will only continue to grow. In short, it is clear that Americans want mobility options, and good public transportation is key to meeting that need.

FEDERAL TRANSIT PROGRAM INVESTMENT

SAFETEA-LU authorizes and guarantees \$8.975 billion for the federal transit program in Fiscal Year (FY) 2007, \$9.731 billion in FY 2008 and \$10.338 billion in FY 2009. Funding in these three remaining years of SAFETEA-LU is of critical importance. Much of the funding growth in the first full year of SAFETEA-LU necessarily went to new areas of focus - transit investment in rural communities, new investment to address the needs of people with disabilities

beyond service required under the Americans with Disabilities Act (ADA), transit in National Parks and public lands, and other new initiatives. Full funding of the SAFETEA-LU program in FY 2007 and subsequent years will ensure growth for all transit agencies which depend on annual formula funding to support their services. Moreover, investment at the guaranteed level permits long-range planning and leveraging of funds via public/private partnerships and other private sector investment activities.

APTA's members were disappointed earlier this year that the Administration proposed to fund transit below the level authorized and guaranteed by Congress for FY 2007. The Administration requested \$100 million less than the amount authorized from the general fund for the new starts program, proposing only half of the funding authorized for the new small starts program, a program to fund smaller fixed guideway projects such as light rail, commuter rail, and bus rapid transit systems.

We are pleased that the FY 2007 Transportation Appropriations bill passed by the House earlier this month funds transit programs at the \$8.979 billion level slightly above the SAFETEA-LU guaranteed level, but we are disappointed the House bill would not fund the small starts program in FY 2007. APTA believes a viable administrative procedure to evaluate grant applications and make grants will be in place with sufficient time to distribute FY 2007 small starts funding. We urge the Senate as it considers FY 2007 transportation appropriations legislation to correct this problem and fund transit programs at least at the authorized and guaranteed levels.

PROGRESS ON KEY REGULATORY ISSUES

Mr. Chairman, when SAFETEA-LU was enacted last August, our members identified four key programs that they were particularly concerned about – the new starts and small starts programs, metropolitan and statewide planning, Buy America, and charter bus – and I will provide an update on the status of these programs and a few others. Complete copies of APTA's comments can be found on our web page – www.apta.com – under “SAFETEA-LU Rulemakings and Notices” or if the committee would like we would be happy to submit copies to the committee.

NEW STARTS

As this committee knows, there is overwhelming demand for new starts projects - SAFETEA-LU authorized 387 such projects. New fixed guideway projects are an important part of meeting transit needs, but these major capital projects take years to develop and require a predictable funding commitment. SAFETEA-LU makes an important funding commitment to these projects, and it also directed FTA to advance important program changes through the rulemaking process. Mr. Chairman, our members have raised significant concerns about the length of time it takes to proceed through the new starts process, and about some of the requirements the FTA imposes during that process. In that regard, I am pleased to report to you that FTA Deputy Administrator Sandra Bushue has been very responsive to our concerns and has assured us that FTA will be conducting an independent review of the entire new starts process to make sure it is carried out in the most effective way possible.

Regarding the implementation of the new starts and small starts provisions, APTA commends FTA's outreach efforts to the transit industry. FTA has held extensive listening sessions and workshops across the country. In addition, at the request of the APTA Policy and Planning Steering Committee, FTA held a two-day working session on several issues. From these efforts, FTA has been very responsive to the industry's concerns, and rulemaking products like the *Guidance on New Starts Policies and Procedures* released May 16 have benefited from this partnership.

Let me provide some examples. The draft *Guidance* released by FTA this past January proposed that new starts projects achieve an acceptable rating before a final NEPA decision. The public transportation industry thought this would delay projects which could result in cost increases. After industry input, the final policy guidance does not implement this requirement.

Another important industry concern was a proposal to require contractors responsible for developing forecasts and related new starts data to certify that their forecasts have been properly developed and applied according to professional standards and conventions and FTA guidelines. There was again significant industry opposition to this provision because of the risk of professional liability. Moreover, accountability already exists, as it should, with the grant recipient. Again, following industry input, the final *Guidance* does not implement the provision.

In regard to other new starts implementation issues, January's draft *Guidance* proposed a cap on the size of funding in a Full Funding Grant Agreement (FFGA) at the point of approval to enter final design. While there were mixed support and opposition to the provision, the public transportation industry applauds FTA's implementation provision that states that once approved into final design, projects are not subject to future changes in the new starts program.

SMALL STARTS

The new small starts program, a program to fund less costly fixed guideway projects such as streetcar, commuter rail, and bus rapid transit systems, faces greater challenges with regard both to funding and to rulemaking implementation issues. As stated earlier, APTA's members were disappointed that the Administration's budget proposal for FY 2007 requested only \$100 million of the \$200 million authorized for the program. The effect of any underfunding the small starts program would be felt disproportionately in future years by causing transit providers to fall further behind in the development of new, less expensive projects.

As to the current status of the small starts program, APTA's members are optimistic that small starts funds could be utilized in FY 2007 using the *Proposed Interim Guidance and Instructions* just released by FTA on June 9, and we will be making that case during consideration of transportation appropriations legislation in the Senate. An APTA survey this spring identified more than 50 projects in various stages of development with an aggregate federal share of \$ 2.3 billion that could qualify for small starts funding.

APTA believes that more work is needed to simplify the small starts grant criteria, eliminate any appearance of modal bias and insure economic benefits and land-use criteria are given appropriate consideration under the *Proposed Interim Guidance and Instructions* when it is

finalized. We trust these issues will also be addressed in the Notice of Proposed Rulemaking (NPRM) expected next year. Perhaps FTA could look to the streamlined process for the “very small starts” category, which is contained in the *Proposed Interim Guidance*, and apply that simplified process to the entire small starts program.

OTHER SAFETEA-LU RULEMAKINGS AND NEW PROGRAM DEVELOPMENTS

Mr. Chairman, let me turn now to some of the other key rulemakings and new program developments under SAFETEA-LU.

Statewide and Metropolitan Planning

On June 9, 2006, FTA and the Federal Highway Administration (FHWA) issued a Notice of Proposed Rulemaking (NPRM) to implement joint planning regulations, and our members are already beginning to develop comments on that rulemaking. We appreciate that FTA and FHWA are holding outreach sessions on this important topic, including sessions at APTA workshops and conferences over the coming months.

Buy America

The FTA issued an NPRM on Buy America on November 11, 2005, and issued a partial final rule on March 3, 2006, on some aspects of the program but has not yet issued a final rule on key elements of the Buy America program. We urge them to do so as soon as possible. Given the sensitivity and importance of this regulation, we have made a particular request of FTA in this matter. To guard against unintended consequences, and to ensure that FTA's ultimate decisions are fully informed by broad public comment, APTA has asked FTA to issue an interim final rule as the next step in this matter. Issuance of an interim final rule rather than a final rule provides additional opportunity for comments to be made and considered before the rule becomes final – always an important consideration regarding Buy America issues.

Charter Bus Negotiated Rulemaking

Pursuant to direction in SAFETEA-LU's Conference Report, FTA has established an advisory committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding charter bus activities FTA recipients may engage in. The advisory committee includes representatives of public and private transportation providers and other interested parties. The committee has held two two-day sessions to date, and APTA is pleased to be represented on the committee.

Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute (JARC), New Freedom Programs and Coordinated Public Transit-Human Services Transportation Plans

Mr. Chairman, APTA submitted its comments on this matter to FTA on May 19, 2006, and we offer just a few comments here. The New Freedom program provides formula funding for new transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA) to further assist persons with disabilities. We look forward to participating in this important new program. In our comments to FTA on the program, we asked that pre-existing services transit systems already provide beyond ADA requirements be eligible for funding under the New Freedom program. APTA believes that it would be unfair not to permit funding of any existing services that already exceed ADA requirements. Regarding the coordinated planning process, we are concerned that the proposal to allow state and local authorities to designate recipients other than the section 5307 recipient

invites unnecessary bureaucracy into the coordinated planning process. Allowing multiple designated recipients could be counterproductive by adding to the number of independent services rather than enticing cooperation and coordination.

Alternative Transportation in Parks and Public Lands

SAFETEA-LU established a new program to develop public transportation in National Parks and other federally managed public lands with the goal of improving mobility and reducing congestion and pollution. FTA, in cooperation with the Department of the Interior and the Department of Agriculture's Forest Service, has published a solicitation for proposals for projects to be funded in FY 2006. APTA applauds the Administration's expeditious advancement of the program, and we look forward to the announcement of the program's first project recipients expected later this summer.

Public-Private Partnership Pilot Program

Section 3011(c) of SAFETEA-LU authorizes FTA to establish and implement a pilot program to demonstrate the advantages and disadvantages of public-private partnerships for certain new fixed guideway capital projects. We submitted comments to FTA on June 1 on this program, and are highly supportive of FTA's efforts to craft a strong public-private partnership program which is likely to be a model for many future projects. On a related note, we were pleased to submit comments to FTA on its joint development proposals.

CONCLUSION

Public transportation plays a key role in meeting the goals of the Administration and Congress in providing energy independence, congestion relief and transportation mobility options for Americans. It is important that the strong partnership among the public transportation industry, FTA and Congress continue as we move to complete SAFETEA-LU implementation and realize the promise of this important legislation. At this stage in the implementation of SAFETEA-LU we are generally pleased with the progress being made. We are particularly pleased with the outreach FTA has made to our members and its thoughtful consideration of and inclusion of the industry's ideas.

Mr. Chairman, on behalf of APTA's member organizations, I thank you for this opportunity to express our views.