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Before the
Subcommittee on Housing and Transportation
Committee on Banking, Housing, and Urban Affairs
United States Senate
Hearing on Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users
June 27, 2006

Thank you, Mr. Chairman, for the opportunity to testify today on the Federal Transit Administration's (FTA) implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) enacted by Congress and signed by the President on August 10, 2005. The hard work of the members of this committee is reflected in the legislation that is good for public transportation. We appreciate your continued interest and strong commitment to public transportation as embodied in it.

Since my arrival at the FTA in January, I have made timely implementation of SAFETEA-LU my top priority. I am pleased to report to the committee that the FTA is making substantial progress in implementing this important legislation.

As you know, SAFETEA-LU authorizes a total of $45.3 billion in guaranteed funding for Federal transit programs over five fiscal years (FY) 2005 - 2009, an increase of 46 percent over the funding provided in the Transportation Equity Act for the 21st Century (TEA 21). In addition to historic funding levels, SAFETEA-LU added new programs such as New Freedom, Tribal Transit Program, and Alternative Transportation in the Parks and Public Lands that began in FY 2006, and modified other programs, such as Job Access and Reverse Commute and Clean Fuels. SAFETEA LU also required that FTA promulgate 17 new regulations, including regulations to implement FTA and Federal Highway Administration (FHWA) planning requirements, New Starts (including the Small Starts program), Buy America, Charter Bus, and a joint rulemaking with the Department of Homeland Security on transit security grants. This is an unprecedented amount of rulemaking for FTA. In fact, FTA was tasked by SAFETEA-LU with more rulemaking actions than any other Department of Transportation (DOT) modal administration. Besides regulatory changes, SAFETEA-LU also requires FTA to issue nearly 29 other program guidance documents and 19 reports to Congress.

Since the President signed SAFETEA-LU in August 2005, FTA has worked diligently with an aggressive schedule to meet the requirements in SAFETEA-LU and facilitate program implementation. First, I will outline the steps we have taken to assure an orderly implementation process, and to get the maximum amount of stakeholder input as possible. Second, I will describe the regulatory steps taken to date, and our plans for completing these actions. Finally, I will discuss the implementation of the other program changes.

Implementation Process and Outreach

Immediately after enactment of SAFETEA-LU, FTA set out to define the regulatory actions that had to be taken, the new programs to be implemented, the reports and studies to be undertaken, and the program guidance documents that had to be revised. Over 60 such products were identified, including 17 regulations, 19 reports, and 29 program guidance documents. FTA then developed a prioritized listing of these products and a detailed timeline. FTA identified 12 of these products as first priority items, based on the need for action. The delivery of these top priority items on time is one of FTA's core accountabilities for evaluating the performance of our Senior Executives, and will be reflected in their performance appraisals and compensation. I am extremely pleased to say that we have already completed eight of these twelve first priority items. Two will not meet our original schedule, but we have deliberately delayed delivery of those items to better accommodate the high degree of interest from our stakeholders in providing input to the design of the program guidance being developed. We are making steady progress on those not yet completed. Many of these first priority items involve interim steps, such as publication of Federal Register Notices for public comment 24 of which have been published by FTA to thus far.

Indeed, a key aspect of our implementation plan has involved getting input from our stakeholders. We have held nearly 100 outreach events, ranging in size from a Webinar, conducted jointly with the American Public Transportation Association, with nearly 1,000 participants, to a series of five general outreach sessions conducted last December, at which about 700 people participated, a series of three outreach sessions focused on New Starts and Small Starts with nearly 500 participants, and two national outreach sessions focused on Tribal Transit with over 100 participants, to more targeted sessions at which small groups of 20 or 30 met to discuss specific program issues.

Let me also stress our efforts to include the Congress in our outreach process. Over the last several months, we have provided periodic updates to the Congress on the status of our reauthorization implementation efforts and schedules. Let me assure you of my commitment to continue to provide timely information to Congress on our work to implement all features of this important legislation.

Further, we have taken very seriously the changes made by SAFETEA-LU that calls for FTA to provide notice and an opportunity for comment on any FTA policy or guidance document that might produce a "binding obligation" on our grantees. In implementing this provision, I am happy to report that FTA has developed a process that is fostering a healthy dialogue between FTA and our stakeholders. While there may be additional time and steps involved because of this new notice and comment provision, comments received on our draft guidance and policy statements will allow us to assure that the documents are more complete, more responsive to stakeholder needs, and more likely to take account of on-the-ground realities.

Our recent experience with the New Starts Policy Guidance demonstrates how seriously we are taking the Notice and Comment process. As I will discuss in more detail later, of the nine changes in New Starts procedures we proposed to take effect this year, three were adopted as originally proposed; three were modified to incorporate stakeholder comments; and three were either rejected or deferred pending further analysis. This is a clear demonstration of FTA's willingness to listen to our stakeholders, make changes when necessary, and even go back to the drawing board if the comments we receive make it clear that we need to do so.

Status of Regulatory Actions

Now I would like to quickly review for you the status of some of the key regulatory actions we are taking in response to direction in SAFETEA-LU. FTA has initiated rulemakings on Buy America and Charter Bus and joint rulemakings with other agencies on Security Grants, Metropolitan and Statewide Planning, and Section 4(f) of the DOT Act. In general, I believe we are making good progress on our own rulemakings; however, progress on the joint rulemakings has been comparatively slower due to the additional complication of working with other agencies.

<u>Buy America</u>. FTA issued its Notice of Proposed Rulemaking on Buy America on November 28, 2005. The rulemaking covered the definition of microprocessor and end product and the standards for pre-award and post-delivery audits for small transit vehicle purchases, among other issues. In response, we received comments indicating that the issues were more complex than originally thought. As a result, we issued a Final Rule covering the non-controversial aspects of the rule, such as the pre-award and post-delivery audits, on March 21, 2006. We now plan to issue another Notice of Proposed Rulemaking covering the remaining issues, including the definition of end product, by early fall. In addition, FTA plans to hold a public hearing in Washington, D.C. to discuss the new proposal.

<u>Charter Bus</u>. As you know, SAFETEA-LU requires a Negotiated Rulemaking to develop proposed changes to FTA's Charter Bus regulation. This involves establishment of a formal Advisory Committee under the Federal Advisory Committee Act (FACA). To do so, we published an initial Notice in the Federal Register on January 31, 2006 inviting comments on the proposed issues to be addressed and asking for nominations for membership on the Advisory Committee. We published a Notice responding to these comments and announcing the members of the Advisory Committee on April 10, 2006. The first meeting of the Committee was held on May 8 and 9, 2006, in Washington D.C. The next meeting was held on June 19 and 20, 2006 and the next meeting is scheduled for July 17 and 18, 2006. We expect to hold a series of meetings over the next several months. The exact timing of the Notice of Proposed Rulemaking will depend on the deliberations of the Committee.

<u>Security Grants.</u> FTA and DHS are jointly finalizing a Notice of Proposed Rulemaking mandated by SAFETEA-LU that outlines requirements and characteristics of public

transportation security grants, including funding priorities and eligible activities, methods for awarding these grants, and limits on administrative expenses. It is anticipated that DHS will administer these grants and DOT will provide technical assistance on development of the application and eligibility process. Also, as required by SAFETEA-LU, FTA and the Transportation Security Administration of DHS completed an Annex to the Memorandum of Understanding between DOT and DHS on transportation security on September 8, 2005.

Metropolitan and Statewide Planning. SAFETEA-LU made a number of changes to the metropolitan and statewide transportation planning and programming process. We have been working with FHWA, with whom FTA jointly administers these requirements, to implement these changes. On September 2, 2005, we provided joint guidance on the initial changes, and a Notice of Proposed Rulemaking was published on June 9, 2006. We expect to have the Final Rule in place by Spring 2007.

Section 4(f). SAFETEA-LU also made a number of changes in the requirements for protections of parks and historical resources, commonly known as Section 4(f) [of the DOT Act]. We have submitted a Notice of Proposed Rulemaking on these changes, to the Office of Management and Budget for clearance and we expect to publish this it in July 2006.

New Programs and Program Guidance

In addition to the rulemaking required by SAFETEA-LU, FTA has been working to implement our new program structure, several new programs, and to change our program guidance to reflect the changes made in program requirements. Among the most important are the New Starts and Small Starts Program, the New Freedom Program (and related changes to the Job Access and Reverse Commute program, and Elderly and Persons with Disabilities programs), the Alternative Transportation in Parks and Public Lands Program, the Tribal Transit Program, and the Public Private Partnership Pilot Program.

New Program Structure. One of our first tasks was to restructure our appropriations accounts to deal with the new program structure enacted in SAFETEA-LU. I am pleased to say that FTA successfully restructured its accounts in accordance with SAFETEA-LU in time to award grants in FY 2006. The new accounting structure will prevent the Mass Transit Account of the Highway Trust Fund from running out of money in FY 2007. The enactment of a solely trust funded account and 3 separate General Fund accounts should ensure the solvency of the Mass Transit Account well beyond the current authorization period. In fact, our estimates indicate that the Mass Transit Account should have a positive cash balance of over $6.9 billion at the end of FY 2009.

General Program Guidance. Even before tackling the major program changes, and new programs, we decided that it was important to make sure that our continuing programs were allowed to proceed on an uninterrupted basis. Thus, on November 30, 2005, we issued a Federal Register Notice outlining the changes in all our programs, and providing initial guidance on implementing these changes. This allowed us to make grants in fiscal year 2006 to such programs as the Urbanized Formula Program, the Fixed Guideway Modernization Program, the Other than Urbanized (Rural) Formula Program, and our planning grants programs as soon as FY 2006 funds were appropriated. We are now proceeding with revising our program guidance circulars on all of these programs to accommodate the changes that were made by SAFETEA-LU.

New Starts and Small Starts. SAFETEA-LU made a number of changes to the criteria for evaluating New Starts projects, and of course, established the new program category, Small Starts, for projects with a total cost of under $250 million and a New Starts share of under $75 million. Needless to say, this has generated a significant amount of interest by our stakeholders. In addition, as we reviewed the Small Starts program as enacted, it became clear that there were a wide range of issues that needed to be addressed in some detail. Further, SAFETEA-LU specifically required FTA to provide notice and comment on any changes in policy or procedures in the New Starts program early in calendar year 2006 and at least every two years thereafter. Accordingly, on January 19, 2006, we issued a Notice of Proposed New Starts Policy Guidance in the Federal Register. And on January 30, 2006, we issued an Advance Notice of Proposed Rulemaking (ANPRM) on Small Starts. While we did not have to take the preliminary step of issuing an ANPRM on Small Starts, the wide range of issues that are posed by the program suggested that we take an opportunity to get stakeholder input before embarking on a more formal NPRM.

The response to these publications suggests that this was a good idea. We received over 70 written comments on the draft New Starts Policy Guidance and over 90 comments on the Small Starts ANPRM. In response, on May 22, 2006, we published our final New Starts Policy Guidance and the FY 2008 Reporting Instructions for the New Starts criteria for submissions for the FY 2008 New Starts Report (submissions are due by June 30 for ridership and cost estimates and August 15 for financial plans). As I described earlier, we made several modifications to the proposals for specific changes in FTA New Starts Policy made in the January 19, 2006 Federal Register Notice. We believe that these changes will help make the process more effective in the short term and allow FTA to leave other major changes for later determination during the rulemaking process.

I would note that since coming to FTA, I have expressed my concerns about how long it takes and how much it costs to develop a New Starts project. While we have been able to address some of these concerns in the New Starts Policy Guidance, I believe that we should systematically reassess all that FTA and our grantees must do to move a project to the finish line. Accordingly, we have recently engaged a management-consulting firm to undertake a complete review of the New Starts project delivery process. This quick but intensive effort will be undertaken in parallel with our development of the New Starts Notice of Proposed Rulemaking.

With respect to Small Starts, we have just published, on June 9, 2006, draft Interim Guidance that FTA and our grantees may use to develop and evaluate projects beginning this year until the Final Rule is in place. We are aware that project sponsors are considering a large number of projects that may be eligible for funding under this program. In fact, a recent survey by the American Public Transportation Association identified over 75 projects in various stages of project development. Once we have received comments on the June 9 draft, FTA will modify the Interim Guidance and publish it later this summer in final form. This will allow grantees to assess projects and submit them to us for possible funding during FY 2007 and inclusion in the fiscal year 2008 New Starts report.

We also plan to develop a single NPRM later this year, which would cover both New Starts and Small Starts. Once comments are received, we would then be able to issue the Final Rule on both programs during 2007. Given the large number of comments already received on these subjects, and the large amount of interest in these programs, we want to make sure that we, and our stakeholders, have sufficient time to think through the features that should be included in this rule. The Interim Guidance on Small Starts and the Policy Guidance on New Starts should provide us with the tools needed to assure that the New Starts and Small Starts programs can be effectively executed even while the rulemaking process is underway.

<u>New Freedom, Job Access and Reverse Commute and Elderly Individuals and Individuals with Disabilities Programs.</u> As you know, SAFETEA-LU established a New Freedom program for grants to provide improved public transit services to persons with disabilities, altered the Job Access and Reverse Commute (JARC) Program to make it a formula rather than discretionary program, and modified the program requirements of the Elderly Individuals and Individuals with Disabilities Program. Taken together, these changes now provide FTA with a portfolio of interrelated programs designed to address certain essential transportation needs. An important feature of all three programs is a new requirement for locally developed, coordinated public transit--human services transportation plans. In addition, the New Freedom and JARC programs require selection of subrecipients on a competitive basis. Finally, there are some complex eligibility questions, particularly with respect to the New Freedom program which is targeted to provide new public transportation service and alternative transportation services beyond those required by the Americans with Disabilities Act.

Given the challenges involved in implementing all three programs, and the large amount of interest in them from a wide variety of stakeholders, FTA has undertaken an extensive process of outreach and public involvement. This process began with the November 30, 2005 Federal Register Notice that outlined the broad parameters of these programs and asked for input on several key issues. These issues were a major topic for discussion at the outreach sessions held around the country in December 2005 and subsequent meetings early in 2006. The process culminated with a Federal Register Notice on March 15, 2006 that responded to the comments received on the broad issues outlined in the November 30, 2005 Notice, laid out interim guidance to allow the programs to proceed in FY 2006, and provided further detailed topics for comment with respect to the major issues identified in the comments already received. FTA then held a major outreach meeting with over 150 participants on March 23, 2006 to discuss the issues in the Notice. FTA also held public conference calls and began to receive and review comment. While the comment period was originally set to end by April 21, 2006, FTA received a request for and granted an extension of the comment period through May 21, 2006. We are reviewing the comments received, and are planning to issue final program guidance later this year. In the meantime, the interim guidance included in the March 15, 2006 Notice is allowing each of these programs to be implemented during this fiscal year. The March 15th Federal Register Notice also included proposed strategies for implementation of the programs beginning in FY 2007.

Alternative Transportation in Parks and Public Lands. SAFETEA-LU established a new discretionary program, to be administered in concert with the Department of the Interior, for alternative transportation in federally-managed parks and public lands. FTA has been working closely with the Department of Interior and its National Park Service, its Fish and Wildlife Service and its Bureau of Land Management, and the Department of Agriculture's U.S. Forest Service on implementation of this program. We have established an inter-agency team with representatives of these organizations. This group has worked to develop the details of the program and a proposed Memorandum of Agreement between the Departments of Transportation and the Interior. In addition, the working group developed a Notice of Funding Availability that was published in the Federal Register on March 23, 2006. This Notice laid out the parameters of the program, and invited proposals for projects for FY 2006 funding. Proposals were due on May 5, 2006. Representatives of the participating agencies have been reviewing the proposals and are preparing a final program of projects for funding. We expect to award these funds later this fiscal year.

Grants to Native American Tribes. SAFETEA-LU establishes a new program for direct grants to Native American Tribes for public transportation within our Section 5311 program of grants to other-than-urbanized areas (the "Rural Program"). As you know, prior to passage of SAFETEA-LU, Native American Tribes were eligible to receive funding for transit projects, including projects located on reservations, but only through the States. This new program sets up a direct relationship between FTA and tribal governments. We have been working hard to implement this new program. In the November 30, 2005 Notice, we stated our basic intentions for this program and solicited comment. At the general outreach sessions held in five cities around the country in December 2005, we received a good deal of comment. We also had numerous discussions with interested parties on this program during January and February of this year. Having considered these initial comments, we then issued a Notice proposing specific program details on March 22, 2006. In that Notice we asked for comments on a number of disparate issues. We also held a series of public meetings at which tribal governments, and other interested parties, have discussed these subjects with us. The comment period on that Notice has now closed and we are reviewing the comments. We hope to issue a final Notice of Funding Availability shortly that will outline program administration details and request applications for funding. We expect to be able to announce project selections by the end of this fiscal year.

Public Private Partnership Pilot Program. SAFETEA-LU establishes a Pilot Program to assess the benefits of public private partnerships for delivery and management of major transit investments. However, the language of the legislation is very broad. Accordingly, on March 22, 2006, we issued a Notice asking for suggestions and proposals on how FTA might design the program; posing a series of specific questions on the concept of public private partnerships and how they might relate to transit projects and FTA program requirements; and requesting statements of interest for potential participants in the program. The comment period, and period for initial statements of interest, closed on June 1, 2006. FTA is quite excited by the concept of public private partnerships, and believes there are significant lessons to be learned by considering how it might be applied to our programs. We received 19 comments providing useful input on the issues raised, and 4 candidate projects. We are now reviewing the comments and proposals, and will determine how to respond shortly.

Conclusion

Mr. Chairman, and Members of the Committee, I believe you will agree that FTA is making excellent progress in implementing SAFETEA-LU. You have my commitment that we will work hard to sustain this record of achievement in the coming months. I would be happy to answer any questions you might have.