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PUBLIC  
TRANSPORTATION  
ASSOCIATION

June 7, 2022

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The Honorable Nuria Fernandez  
Administrator  
Federal Transit Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue S.E.  
Washington, DC 20590

Subject: Bipartisan Infrastructure Law Changes to Public Transportation  
Safety Agency Safety Plan Requirements

Dear Administrator Fernandez:

Safety is the number one core value of the public transportation industry, including bus, rail, commuter and intercity rail and ferry operators. The employees responsible for managing and operating public transportation systems are fully committed to the safety of their systems, passengers, fellow employees, and the public. As a result of this commitment to safety, traveling by public transportation is ten times safer per mile than traveling by car.

We greatly appreciate the ongoing dialogue between the Federal Transit Administration (FTA) and the American Public Transportation Association (APTA) regarding safety, including the Bipartisan Infrastructure Law's (BIL) recent statutory changes to the public transportation agency safety plan (PTASP) requirements at 49 U.S.C. § 5329(d). These changes require that, for large public transit agencies, a Safety Committee be formed consisting of equal numbers of management and front-line workers, who will be tasked with approving the Safety Plan. The Safety Committee will have significant authority. Moreover, FTA's Urbanized Area Formula Grants are tied directly to an approved Safety Plan. As such, **we strongly encourage FTA to ensure that the Safety Committees remain focused exclusively on safety, and not serve as a forum for other issues or collective bargaining.**

In addition, we are concerned with FTA's implementation of the new BIL safety requirements, as outlined in its "Dear Colleague Letter: Bipartisan

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Infrastructure Law Changes to PTASP Requirements”, published on February 17, 2022. FTA chose to impose these requirements through a Dear Colleague letter without the benefit of public notice and comment, including an analysis of the impact of the new requirements and the deadlines associated with them on public transit agencies. When APTA staff inquired about the lack of public notice and comment with FTA, we were informed that some of the Bipartisan Infrastructure Law requirements at 49 U.S.C. § 5329(d) became effective immediately when signed into law and are self-effectuating. FTA staff further stated that the Dear Colleague letter establishes compliance deadlines for transit agencies to implement these new provisions and agencies must comply with the deadlines established in the letter.

While transit agencies are required to follow federal requirements, it is APTA’s understanding that FTA must provide notice and comment prior to imposing a binding obligation on federal grant recipients,<sup>1</sup> as required by 49 U.S.C. §5334(k):

(k) AGENCY STATEMENTS.—

(1) IN GENERAL.—The Administrator of the Federal Transit Administration shall follow applicable rulemaking procedures under section 553 of title 5 before the Federal Transit Administration issues a statement that imposes a binding obligation on recipients of Federal assistance under this chapter.

(2) BINDING OBLIGATION DEFINED.—In this subsection, the term “binding obligation” means a substantive policy statement, rule, or guidance document issued by the Federal Transit Administration that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy.

**Accordingly, APTA requests that FTA use federal rulemaking procedures to gather comments from the public transit industry and other stakeholders before these requirements and deadlines are established and become binding upon federal grant recipients.**

In addition, APTA members are concerned about the short deadlines imposed by the Dear Colleague letter for transit agencies to both form the new Safety Committees and have them review and approve the PTASP. The Dear Colleague states that, “a transit agency that receives 5307 funding and serves a large urbanized area must establish a Safety Committee compliant with 49 U.S.C. §5329(d)(5) by July 31, 2022.”

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<sup>1</sup>Although the Dear Colleague letter states that, “The contents of this document do not have the force and effect of the law and are not meant to bind the public in any way...”, FTA’s response that the Dear Colleague establishes compliance deadlines for transit agencies to implement these new provisions and that transit agencies must comply with the deadlines is a binding obligation that “imposes obligations . . . or effects a significant change in existing policy.”

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APTA believes that this deadline is unreasonably short to create this important Safety Committee. Multiple agencies state that they would have to make major revisions to their bylaws, charters, and Board-approved policies to create the new Safety Committee consisting of equal representation of management and labor. Many agencies will also need to have these policy changes approved by their Boards of Directors. Establishing compliant Safety Committees under these new rules will be a major undertaking, and **APTA requests that FTA extend this July 31, 2022 deadline to December 31, 2022**, to allow transit agencies sufficient time to enact these significant changes to the Safety Committee structure.

The Dear Colleague also establishes a deadline of December 31, 2022, for the newly established Safety Committee to approve an update to its existing PTSAP. APTA believes this deadline does not allow adequate time for Safety Plan approval and will not further our shared safety goals. We believe that many transit agencies will need the remainder of 2022 to reestablish their Safety Committees pursuant to BIL requirements. In addition, agencies must ensure that all Committee members are trained in accordance with FTA's safety regulations prior to reviewing and approving any PTASP. For example, new Safety Committee members will need extensive training to understand key Safety Management System (SMS) concepts; applicable security requirements; new risk reduction requirements; and other technical issues associated with the PTASP and SMS regulations. Accordingly, **APTA requests that FTA extend the December 31, 2022 deadline for the new Safety Committee approval of PTSAPs to July 31, 2023.**

Many transit agencies also expressed concern that aligning the State Safety Oversight Agency (SSOA) program standard with this new requirement may be difficult. FTA must inform all SSOAs about these significant changes to the PTASP requirements to ensure a common understanding of the new requirements. APTA believes that extending the time for approval of PTSAPs by the new Safety Committee to July 31, 2023, will also serve to ensure that SSOA program standards are aligned with the new Safety Committee requirements.

In summary, APTA requests that FTA use the federal rulemaking process to allow for public comment prior to imposing these binding requirements. We also urge FTA to extend the deadlines for transit agencies to form their new Safety Committees to December 31, 2022, and for review and approval of PTSAPs to July 31, 2023.

If you have any questions regarding this letter, please contact Brian Alberts, APTA's Senior Director of Safety and Advisory Services, at [balberts@apta.com](mailto:balberts@apta.com) or 202.496.4885.

Thank you for your consideration.

Sincerely,



Paul P. Skoutelas  
President and CEO