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Reauthorization of the Federal Public Transportation Program

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SUMMARY

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William J. Mallett
Specialist in
Transportation Policy

Reauthorization of the Federal Public Transportation Program

The federal public transportation program was authorized through FY2020 as part of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94). A one-year extension of the FAST Act through September 30, 2021, was enacted as part of the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159). Several major issues may arise as Congress considers program reauthorization.

Public transportation includes local buses, subways, commuter rail, light rail, paratransit (often service for the elderly and disabled using small buses and vans), and ferryboats, but excludes Amtrak, intercity buses, and school buses. The FAST Act authorized $61.1 billion for five fiscal years beginning in FY2016, an average of $12.2 billion per year. Of the total amount, 80% was authorized from the mass transit account of the Highway Trust Fund, and 20% was authorized from the general fund of the U.S. Treasury. Most federal funding from the mass transit account is distributed to transit agencies through formula programs. Most of the general funding authorized is for the Capital Investment Grants (CIG) Program, also known as New Starts, which provides discretionary funding for large capital projects to create and extend rail and bus rapid transit systems.

The context for reauthorization of the federal public transportation programs is declining ridership, which is related to both the underlying conditions in the sector and the Coronavirus Disease 2019 (COVID-19) pandemic. Annual transit ridership reached a modern-era high of 10.7 billion trips in 2014, but fell by almost 8% to 9.9 billion trips in each of 2018 and 2019. Because of the COVID-19 pandemic, national ridership in 2020 was less than 5 billion trips, an unprecedented decline of more than 50% compared with 2018 and 2019. Likely reauthorization issues include the following:

- **Funding levels and the solvency of the mass transit account.** Even if travel fully recovers from the pandemic, spending from the mass transit account is projected to exceed revenues by an average of $5 billion annually through FY2025. Bringing receipts and expenditures into balance would require a cut in spending on the federal transit program, an increase in revenues paid into the account, or a combination of the two. Revenue options include increasing taxes that are dedicated to the mass transit accounts and transferring money from the general fund.
- **Changes to two federal loan programs that may be used for transit capital expenditures, the Transportation Infrastructure Finance and Innovation Act (TIFIA) program and the Railroad Rehabilitation and Infrastructure Finance (RRIF) program.** Issues include TIFIA's share of project costs, the speed and cost of obtaining a loan, and the authorization of federal funding to pay the credit risk premium of RRIF loans.
- **Declining public transportation ridership.** Options include linking federal formula funds to transit agencies' success in boosting ridership; redirecting CIG funding from building new rail facilities to refurbishing lines in dense cities where rail transit currently carries large numbers of riders; and funding research to explore partnerships between transit agencies and firms offering other mobility options such as ridesharing and bike sharing.
- **Funding the CIG program.** CIG has been proposed as a major source of funding for the Gateway Program, which is intended to build new rail tunnels and repair existing tunnels between New Jersey and New York. The amount sought for the Gateway Program is equal to several years of funding for CIG at recent funding levels, and could overwhelm a program that is responsible for aiding projects throughout the country.
- **Public transportation and climate change.** Congress may consider how to reduce greenhouse gas emissions from surface transportation and adaptation provisions that aim to make the public transportation system more resilient. Options considered might include dedicated funding for resilience projects and greater funding for buying low- and no-emission buses.
- **Buy America.** This law places domestic content restrictions on federally funded transportation projects, including procurement of rolling stock. Issues that might arise include the share of components and subcomponents that have to be domestically sourced, the availability of waivers, and the standardization of requirements across modes.

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Introduction

Federal assistance to public transportation is provided primarily through the public transportation program administered by the Department of Transportation's (DOT's) Federal Transit Administration (FTA). The federal public transportation program was authorized from FY2016 through FY2020 as part of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94). A one-year extension of the FAST Act was enacted as part of the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159). This report discusses the major issues that may arise as Congress considers reauthorization.

In federal law, public transportation—also known as public transit, mass transit, and mass transportation—includes local buses, subways, commuter rail, light rail, paratransit (often service for the elderly and disabled using small buses and vans), and ferryboats, but excludes Amtrak, intercity buses, and school buses (49 U.S.C. §5302). Prior to the Coronavirus Disease 2019 (COVID-19) pandemic, which has had a major effect on public transportation ridership, about 48% of public transportation trips were made by bus, 37% by heavy rail (also called metro and subway), 5% by commuter rail, and 6% by light rail (including streetcars). Paratransit accounted for about 2% of all public transportation trips, and ferries about 1%.[1]

Public transportation accounted for about 3% of all daily transportation trips prior to the COVID-19 pandemic, and about 7% of commute trips.[2] Although ridership was heavily concentrated in a few large cities and their surrounding suburbs, especially the New York City metropolitan area, public transportation was provided in a wide range of places, including small urban areas, rural areas, and Indian land.[3] The pandemic caused an unprecedented drop in ridership nationwide beginning in March 2020, but the longer-term effects on transit service and use are uncertain.

The Federal Public Transportation Program

Most federal funding for public transportation is authorized in multiyear surface transportation acts. The FAST Act authorized $61.1 billion for five fiscal years beginning in FY2016, an average of $12.2 billion per year. The Continuing Appropriations Act, 2021 and Other Extensions Act extended the FAST Act for one fiscal year, authorizing $12.6 billion for FY2021. Of the total five-year amount in the FAST Act, 80% was authorized from the mass transit account of the Highway Trust Fund. Funding authorized from the Highway Trust Fund is provided as contract authority, a type of budget authority that may be obligated prior to an appropriation. The other 20% was authorized from the general fund of the U.S. Treasury as appropriated budget authority.[4]

Funding for public transportation is sometimes provided under other authorities. The FY2018, FY2019, FY2020, and FY2021 appropriations acts (P.L. 115-141, P.L. 116-6, P.L. 116-94, P.L. 116-260), for example, provided additional general fund money for several programs that typically receive funding only from the Highway Trust Fund, thereby raising the general fund share of federal public transportation expenditures to about 28% in FY2018, 26% in FY2019,

[1] American Public Transportation Association, *Public Transportation Fact Book 2020: Appendix A*, Washington, DC, 2020, Table 2, at https://www.apta.com/research-technical-resources/transit-statistics/public-transportation-fact-book/.

[2] Federal Highway Administration, *Summary of Travel Trends: 2017 National Household Travel Survey*, Washington, DC, 2018, Tables 9b and 25, at https://nhts.ornl.gov/assets/2017_nhts_summary_travel_trends.pdf.

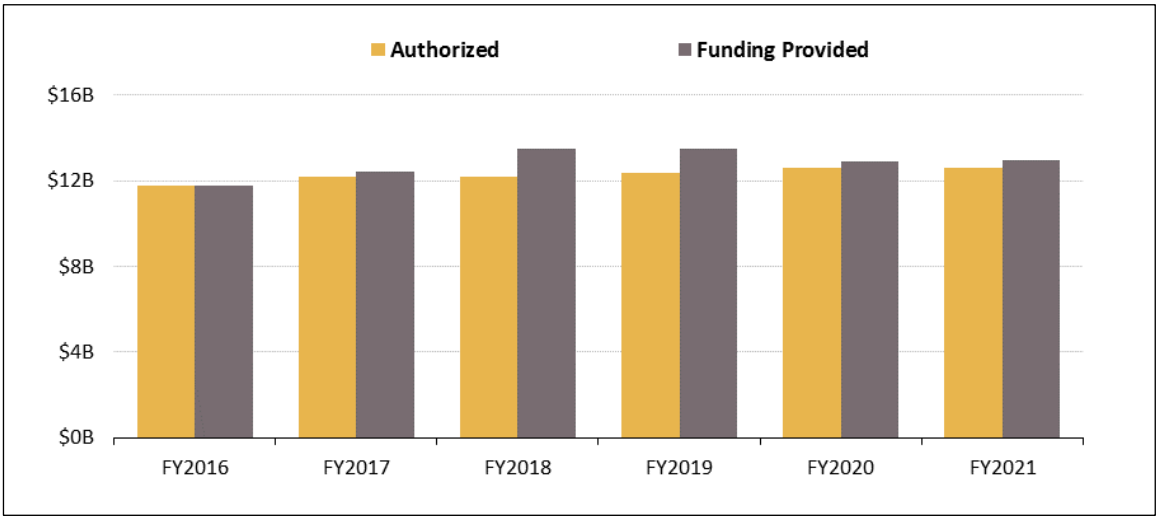
[3] For information on rural public transportation, see Upper Great Plains Transportation Institute, *Rural Transit Fact Book, 2017*, October 2017, at https://www.surtc.org/transitfactbook/downloads/2017-rural-transit-fact-book.pdf.

[4] CRS Report R42706, *Federal Public Transportation Program: In Brief*, by William J. Mallett.

21% in FY2020, and 22% in FY2021. Funding for the Public Transportation Emergency Relief (ER) Program, which makes grants from the general fund for emergency repairs following natural disasters or other emergencies, is typically provided in supplemental appropriations acts.[5] Additionally, $39 billion in emergency funding from the general fund has been provided to transit agencies outside the ER Program in response to the COVID-19 pandemic.[6] Transit projects can also be funded with money transferred (or "flexed") from federal highway programs by state and local officials. In FY2019, $1.3 billion in highway funds was flexed to transit.[7] Excluding flexed highway funds, COVID-19 relief funding, and ER program funding, funding provided in FY2017 through FY2021 was above the level authorized in the FAST Act (**Figure 1**).

Figure 1. Federal Public Transportation Program Funding, FY2016-FY2021

Current Dollars



Sources: Fixing America's Surface Transportation (FAST) Act (P.L. 114-94); Senate appropriations reports; Consolidated Appropriations Act, 2018 (P.L. 115-141); Consolidated Appropriations Act, 2019 (P.L. 116-6); Further Consolidated Appropriations Act, 2020 (P.L. 116-94); Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159); Consolidated Appropriations Act, 2021 (P.L. 116-260).

Notes: Funding provided includes contract budget authority and appropriated budget authority; and excludes flexed federal highway funding, Public Transportation Emergency Relief Program funding, and COVID-19 relief funding in the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act (P.L. 116-136) and Consolidated Appropriations Act, 2021 (P.L. 116-260).

There are six major programs for public transportation authorized by the FAST Act: (1) Urbanized Area Formula; (2) State of Good Repair; (3) Capital Investment Grants (CIG) (also known as "New Starts"); (4) Rural Area Formula; (5) Bus and Bus Facilities; and (6) Enhanced Mobility of Seniors and Individuals with Disabilities. Typically, funding for all of these programs,

[5] Appropriations for the Public Transportation Emergency Relief Program since its creation in 2012 are $10.9 billion in the Disaster Relief Appropriations Act, 2013 (P.L. 113-2); $330 million in the Bipartisan Budget Act of 2018 (P.L. 115-123); and $10.5 million in the Additional Supplemental Appropriations for Disaster Relief Act, 2019 (P.L. 116-20).

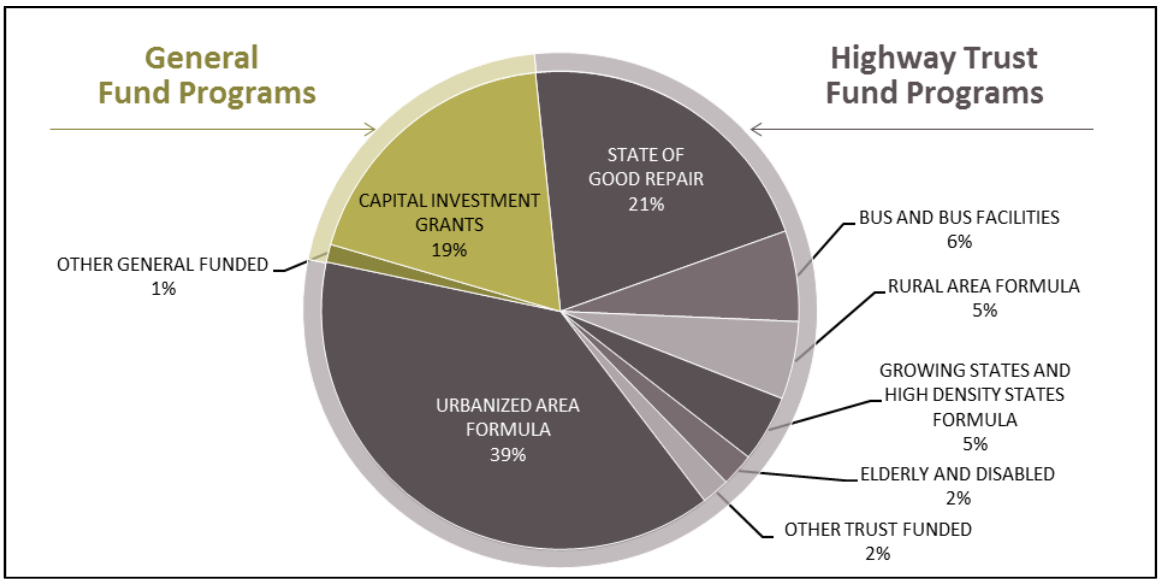
[6] For COVID-19 relief, $25 billion was provided in FY2020 in the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136) and $14 billion was provided in FY2021 in the Consolidated Appropriations Act, 2021 (P.L. 116-260).

[7] Congressional Budget Office, "Highway Trust Fund Accounts—CBO's Baseline as of March 6, 2020," at https://www.cbo.gov/data/baseline-projections-selected-programs.

except CIG, comes from the mass transit account of the Highway Trust Fund. CIG funding comes from the general fund. There are also a number of other, much smaller programs (**Figure 2**).

Figure 2. Federal Public Transportation Program Funding Shares

Funding Authorized, FY2016-FY2020



Source: Federal Transit Administration, "FAST Act Program Totals," https://www.transit.dot.gov/funding/grants/fast-act-program-totals.

Reauthorization Issues

Program Funding

The average of $12.2 billion per year authorized for the federal public transportation program in the FAST Act represented about a 14% increase (unadjusted for inflation) from the previous authorization, the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141).[8] The Senate Committee on Environment and Public Works reported a bill in August 2019 (S. 2302, 116th Congress) that would have reauthorized highway infrastructure programs through FY2025 with a 27% increase over the funding provided by the FAST Act.[9] A similar increase in the annual authorization of public transportation funding would provide for federal expenditures of about $15.5 billion per year. In July 2020, the House of Representatives passed a bill (H.R. 2, 116th Congress) to reauthorize surface transportation programs through FY2025, including the federal public transportation programs. H.R. 2 would have authorized an increase in public transportation funding from $12.2 billion per year to $21.4 billion per year, a 75% increase over the funding provided by the FAST Act. As has traditionally been the case, H.R. 2 would have

[8] General fund appropriations in FY2018, FY2019, FY2020, and FY2021 have provided additional money, on average about $637 million per year, for several programs typically only trust funded.

[9] CRS In Focus IF11300, *Surface Transportation Reauthorization and the America's Transportation Infrastructure Act (S. 2302)*, by Robert S. Kirk.

authorized about 80% of the funding for the public transportation programs from the mass transit account of the Highway Trust Fund and the other 20% from the general fund.[10]

A higher level of federal funding might improve the condition and performance of public transportation infrastructure. One indicator of the condition of public transportation infrastructure is the reinvestment backlog, which DOT defines as "an indication of the amount of near-term investment needed to replace assets that are past their expected useful lifetime."[11] DOT estimated the reinvestment backlog to be $98 billion in 2014, about 13% of the total value of transit assets.[12]

In its biennial Conditions and Performance report, DOT projects how various future spending levels might affect the condition of public transportation infrastructure. The most recent report was published in November 2019 and used 2014 as the base year for projections. Capital expenditures on public transportation in 2014, DOT noted, totaled $17.7 billion from all sources, including federal, state, and local government support. Of this amount, $11.3 billion was spent on preserving the existing system and $6.4 billion on expansion. If this spending pattern were to continue over the 20 years between 2015 and 2034, DOT estimated, the investment backlog would grow to $116 billion (in 2014 inflation-adjusted dollars), an increase of 18%.[13]

DOT constructed two scenarios to estimate how much spending would be needed to eliminate the backlog and accommodate new riders. Under the assumption of low ridership growth, DOT estimated, $23.4 billion would be needed annually, an increase of about 32% (in 2014 inflation-adjusted dollars). In a scenario projecting high ridership growth, $25.6 billion would be needed annually, an increase of 45% (in 2014 inflation-adjusted dollars). DOT did not estimate the spending necessary if ridership stagnates or declines. However, it did estimate that $18.4 billion annually (adjusted for inflation) would eliminate the reinvestment backlog over 20 years if there is no spending on expansion.[14]

The focus of the federal public transportation program is on capital expenditures, but the program also supports operational expenses in some circumstances, as well as safety oversight, planning, and research. Greater federal support for transit operations could increase the quantity of transit service offered or reduce fares. In the past, particularly in the 1970s and early 1980s, such support caused the costs of providing service to increase, particularly through increases in wages and fringe benefits and by expanding services on routes with less demand.[15] With greater flexibility to use federal funding for operating expenses, transit agencies could neglect maintenance and asset renewal, leading to a more rapid decline in the condition of capital assets. Existing flexibility to use capital funds for maintenance may help agencies preserve equipment and facilities.

The Conditions and Performance Report does not make recommendations about the relative shares of public transportation funding that should be borne by federal, state, and local governments. The federal share of government spending on public transportation has been around 15% to 20% over the past 30 years.[16] A higher level of funding by the federal government may

[10] H.R. 2 (116th Congress) included an extension of FAST Act funding for FY2021 and a reauthorization for FY2022 through FY2025.

[11] Department of Transportation, *Status of the Nation's Highways, Bridges, and Transit: Conditions and Performance*, 23rd Edition, November 2019, p. 10-28, at https://www.fhwa.dot.gov/policy/23cpr/.

[12] Ibid., p. 6-39.

[13] Ibid., pp. 7-16 to 7-18.

[14] Ibid., p. 7-27.

[15] Charles Lave, "It Wasn't Supposed to Turn Out Like This: Federal Subsidies and Declining Transit Productivity," *Access*, No. 5, Fall 1994, pp. 21-25, at http://www.uctc.net/access/access05.pdf.

[16] American Public Transportation Association, *Public Transportation Fact Book 2019: Appendix A*, Washington, DC,

not necessarily translate into more spending overall if transit providers substitute federal dollars for their own.

COVID-19 Pandemic

The COVID-19 pandemic may upend DOT's condition and performance projections. Beginning in March 2020, transit ridership and fare revenue declined by an unprecedented amount nationwide. In April 2020, transit rail ridership was about 90% less than it had been in April 2019. In November 2020, the decline was about 71% from the same month a year before. The corresponding decline in fixed route bus ridership was 72% for April and 55% for November.[17] It is uncertain when or if ridership will return to the pre-pandemic level. Some riders will return once the health threat recedes and economic activity increases. However, travel patterns, particularly commuting that is responsible for about 50% of transit ridership, may be different post-pandemic. Telecommuting, for example, may be more common than in the past. This could reduce demand overall, but it could also shift the relative share of transit demand from rail to bus because rail riders have, on average, higher incomes and more education, factors that are associated with the ability to telecommute.[18] Rail riders are also more likely to have a motor vehicle available to travel.[19]

The amount of transit service provided may also decline as a result of COVID-19, partly as a result of reduced demand and partly because of transit agency budget constraints. Passenger fares and other operating revenue contributed about 25% of transit agency budgets in 2018, the last year for which comprehensive information is available. Directly generated revenue, such as fuels taxes and sales taxes that are dedicated to transit agency budgets, contributed another 12% in that year. These revenue streams have also been affected by the pandemic. The remaining 63% of funds pre-pandemic were federal, state, and local government subsidies. For the foreseeable future, state and local government resources are likely to be constrained by the pandemic-related recession.[20]

The federal government has provided $39 billion from the general fund of the U.S. Treasury for public transportation agencies in response to the COVID-19 pandemic. While most federal funding is typically directed toward capital expenditures, this pandemic-related funding was mainly intended to support operating expenses, such as employee pay, fuel, and extra costs resulting from the pandemic, such as the more intensive cleaning of vehicles and stations and the purchase of personal protective equipment for transit workers.

Despite existing and future support from the federal government, it is likely that in the short-term transit agencies will redirect existing resources away from capital expenses toward operating expenses. This may result in a curtailment of planned expansion projects and a deterioration in existing capital assets. Another possibility is for transit providers to reduce capital and operating

2019, Table 95, at http://www.apta.com/resources/statistics/Pages/transitstats.aspx.

[17] Bureau of Transportation Statistics, "Monthly Transportation Statistics, Transit Ridership," at https://data.bts.gov/stories/s/m9eb-yevh.

[18] Matthew Day, et al., "Ability to Work From Home: Evidence From Two Surveys and Implications for the Labor Market in the COVID-19 Pandemic," *Monthly Labor Review*, June 2020, at https://www.bls.gov/opub/mlr/2020/article/pdf/ability-to-work-from-home.pdf.

[19] American Public Transportation Association, *Who Rides Public Transportation*, January 2017, at https://www.apta.com/research-technical-resources/research-reports/who-rides-public-transportation/.

[20] Center on Budget and Policy Priorities, *States Grappling With Hit to Tax Collections*, Updated November 6, 2020, at https://www.cbpp.org/research/state-budget-and-tax/states-grappling-with-hit-to-tax-collections.

expenses through a reduction in current service, although this could result in a downward spiral of reduced demand and shrinking fare revenue.[21]

Highway Trust Fund Issues

The solvency of the Highway Trust Fund and its two accounts, the highway account and the mass transit account, is a major issue in reauthorization of funding for the public transportation program. Outlays from the mass transit account have outpaced receipts for over a decade, an imbalance the Congressional Budget Office (CBO) projects will continue in the future under current law. For the five-year period that began in FY2021, CBO expects the gap between revenues and outlays to total $25 billion, an average of $5 billion annually (**Table 1**).[22]

Table 1. Projected Mass Transit Account Revenue and Spending Imbalance

Dollars in Billions

Fiscal Year	Revenue	Spending	Difference
2021	$6.2	$10.5	-$4.3
2022	$6.3	$10.8	-$4.5
2023	$6.3	$11.2	-$4.9
2024	$6.3	$11.7	-$5.4
2025	$6.3	$12.1	-$5.9
Five-year: FY2021-FY2025 total	$31.4	$56.4	-$25.0
Five-year: FY2021-FY2025 average	$6.30	$11.3	-$5.0

Source: Congressional Budget Office, "Highway Trust Fund Accounts—CBO's September 2020 Baseline."

Notes: Mass transit account revenue includes a projected $1.2 billion transferred annually from the highway account. Totals may not add due to rounding.

The primary revenue source for the Highway Trust Fund is motor fuel taxes, which were last raised in 1993. Currently, of the 18.3 cents-per-gallon tax on gasoline and 24.3 cents-per-gallon tax on diesel that go to the Highway Trust Fund, 2.86 cents is deposited in the mass transit account. Congress has chosen to transfer general fund monies into the mass transit account to permit a higher level of spending than motor fuel tax revenues alone could sustain. These transfers have totaled $32.1 billion since they began in 2008. The FAST Act transferred $18.1 billion to the mass transit account from the general fund, and the Continuing Appropriations Act, 2021 and Other Extensions Act transferred another $3.2 billion.

According to FTA, a balance of at least $1 billion in the mass transit account is required to ensure that the agency has sufficient funds to make mandated payments to transit agencies. CBO estimates that if Congress were to extend current law without providing for further transfers from the general fund to the mass transit account, the balance in the mass transit account would approach $1 billion at some point in FY2022. This would likely require FTA to slow payments to transit agencies. Outlays also outpace receipts in the highway account, and based on its current balance, payment problems are also expected to begin in FY2022.[23]

[21] CRS Report R45144, *Trends in Public Transportation Ridership: Implications for Federal Policy*, by William J. Mallett.

[22] Congressional Budget Office, "Highway Trust Fund Accounts—CBO's September 2020 Baseline."

[23] Ibid.

Bringing the receipts and outlays of the mass transit account into balance would involve a cut in program spending, an increase in revenues paid into the account, or a combination of the two. An increase in revenues could involve a commitment to regular transfers from the general fund. With the highway account facing similar problems, another possible change would be to redirect revenues from the mass transit account to the highway account and to fund the transit account with a general fund appropriation each year. This likely would make transit funding less certain, and it would not make up the entire shortfall in the highway account.

Financing

In addition to grants, the federal government supports public transportation infrastructure with direct loans and tax preferences for municipal bonds.[24] Changes to two major federal loan programs relevant to public transportation—the Transportation Infrastructure Finance and Innovation Act (TIFIA) program and the Railroad Rehabilitation and Infrastructure Finance (RRIF) program—could be considered in reauthorization.

TIFIA provides long-term, low-interest loans and other types of credit assistance for the construction of surface transportation projects (23 U.S.C. §601 et seq.). Although the maximum federal share of project costs that may be provided by the TIFIA program was raised in MAP-21 from 33% to 49%, DOT has stated that it will provide more than 33% only in exceptional circumstances.[25] To date, TIFIA has not covered more than 33% of the cost of any project. By limiting the TIFIA share in this way, DOT appears to be trying to maximize the leveraging of nonfederal resources, but it may be excluding projects that may not be financially viable without greater federal assistance. Public transportation projects typically cover a relatively small share of their costs from user fees, thus they usually need more government support than highway and bridge projects. Congress could direct DOT to consider a higher federal share in more circumstances or across the board.

Some project sponsors have stated that the lengthy process and upfront costs for obtaining TIFIA assistance led them not to seek TIFIA loans. The FAST Act required DOT to expedite projects thought to be lower-risk—those requesting $100 million or less in credit assistance with a dedicated revenue stream unrelated to project performance and standard loan terms—but this has apparently not had a significant effect: two projects have received TIFIA loans of less than $100 million since the passage of the FAST Act. Congress could make small TIFIA loans more attractive by changing a requirement that project sponsors obtain two credit ratings; at present, that requirement applies to TIFIA loans for projects with debt of $75 million or more. Less stringent requirements for credit ratings may increase the risk to the government of these loans.[26] Reauthorization legislation also could incorporate various proposals that have been suggested to speed up approvals, such as requiring more frequent meetings of the DOT officials who make recommendations on project loans to the Secretary of Transportation (known as the Council on Credit and Finance), hiring additional staff to more quickly assess applications, and mandating

[24] CRS Report R43308, *Infrastructure Finance and Debt to Support Surface Transportation Investment*, by William J. Mallett and Grant A. Driessen.

[25] Department of Transportation, Build America Bureau, *Credit Programs Guide*, March 2017, p. 2-2, at https://www.transportation.gov/sites/dot.gov/files/docs/policy-initiatives/programs-and-services/tifia/Bureau%20Credit%20Programs%20Guide_March_2017.pdf.

[26] CRS Report R45516, *The Transportation Infrastructure Finance and Innovation Act (TIFIA) Program*, by William J. Mallett.

that DOT regularly publish information about the time it takes loan applications to reach milestones.

The RRIF program was originally created to support freight railroads, particularly small freight railroads known as short lines, but loans are increasingly being made to commuter railroads.[27] Legislative changes have made RRIF loans more attractive to commuter railroads. Recent changes also permit loans for transit-oriented development—economic development projects, including commercial and residential development, physically or functionally related to a passenger rail station. Several large loans have been made to transit agencies for commuter rail projects in the past few years, including $908 million to the Dallas Area Rapid Transit to finance a project from Dallas-Fort Worth Airport, $220 million and $851 million to the Massachusetts Bay Transportation Authority for positive train control (PTC), and almost $1 billion to the New York Metropolitan Transportation Authority, also for PTC.

The federal government requires project sponsors to make a payment known as a credit risk premium to offset the risk of a default. No federal funding has been authorized to pay the credit risk premiums for RRIF borrowers, although $25 million was made available for this purpose in the 2018 appropriations act.[28] To enhance the attractiveness of RRIF for public transportation projects, Congress could authorize a federal subsidy for the credit risk premium from the Highway Trust Fund. Alternatively, Congress could provide for the credit risk premium from the general fund directly or as part of another program. For example, the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) makes RRIF credit risk premiums eligible for grants under the BUILD Transportation Discretionary Grants Program. Another RRIF-related proposal is to extend the authority to provide loans for transit-oriented development projects, which expires on September 30, 2021.[29]

Capital Investment Grants (CIG) Program

Because the CIG program receives funding from the general fund, not the Highway Trust Fund, appropriators have greater influence over its funding than they do over other transit programs. Nevertheless, the authorization sets a benchmark for the program's funding level, creates the program's overall structure, and can provide more or less discretion for FTA in the program's implementation.

During the Obama Administration, FTA, among others, recommended significant increases in CIG funding to accommodate demand by project sponsors, especially because projects to expand the capacity of existing transit facilities, known as Core Capacity projects, were made eligible for funding beginning in FY2013. FTA noted in its FY2017 budget submission that the number of projects in the CIG "pipeline" had grown from 37 in FY2012 to 63 in FY2016.[30] In addition, FTA

[27] CRS Report R44028, *The Railroad Rehabilitation and Improvement Financing (RRIF) Program*, by David Randall Peterman.

[28] Consolidated Appropriations Act, 2018 (P.L. 115-141). DOT announced in December 2019 that it would use the appropriation to offset the cost of the credit risk premium for loans to shortline freight railroads. Department of Transportation, Office of the Secretary, "Notice of Funding Opportunity for Letters of Interest for the RRIF Express Pilot Program Under the Railroad Rehabilitation & Improvement Financing Program," 84 *Federal Register* 68298-68300, December 13, 2019.

[29] 45 U.S.C. §822(b)(3). This deadline was extended from December 3, 2019, to September 30, 2020, by the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) and from October 1, 2020, to September 30, 2021, by the Continuing Appropriations Act, 2021 and Other Extensions Act (P.L. 116-159).

[30] Federal Transit Administration, *Budget Estimates FY2017*, AE-18, at https://www.transportation.gov/sites/dot.gov/files/docs/FTA-FY-2017-CJ.pdf.

asked Congress in its FY2017 budget request to increase annual CIG funding from the $2.3 billion authorized by the FAST Act to $3.5 billion, to accelerate projects to "not only potentially lower financing costs incurred on these projects, but also allow FTA to better manage the overall program given the ever growing demand for funds."[31]

For FY2018 and FY2019, the Trump Administration proposed that funding should be limited to projects with existing commitments from the federal government, and that CIG funding should be phased out. In its funding recommendation for FY2018, FTA noted that "future investments in new transit projects would be funded by the localities that use and benefit from these localized projects."[32] House and Senate appropriators rejected this approach, directing FTA to continue working with project sponsors to develop projects, including issuing project evaluation ratings, and requiring the allocation of appropriations, with deadlines, to projects that have met the program requirements.[33]

With pressure for continued operation, FTA subsequently dropped its call for phasing out the program; it recommended funding of $1.5 billion in FY2020 and $1.9 billion in FY2021, including $500 million and $925 million for new projects, respectively. Congress agreed to nearly $2 billion for the program in the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) and slightly more than $2 billion in the Consolidated Appropriations Act, 2021 (P.L. 116-260). In December 2020, FTA stated that from the beginning of the Trump Administration on January 20, 2017, FTA had "advanced" funding for 41 new CIG projects totaling $10.7 billion in CIG funding.[34]

The INVEST in America Act (H.R. 2, 116th Congress) proposed an average authorization for the CIG program of nearly $4.6 billion from FY2022 through FY2025, increasing from $3.5 billion in FY2022 to $5.5 billion in FY2025. This would represent a doubling of the annual average authorization level from the FAST Act (in nominal dollars).

New York and New Jersey Gateway Program

The Gateway Program, which involves a set of projects in a 10-mile section of the Northeast Corridor (NEC) between Penn Station in Newark, NJ, and Penn Station in New York City, would be designed to improve intercity passenger rail service by Amtrak, which owns the underlying infrastructure, as well as commuter rail service provided by New Jersey (NJ) Transit. NJ Transit ridership in the corridor is approximately 50 million passenger trips per year, making this among the most heavily traveled public transportation routes in the country.[35]

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[31] Federal Transit Administration, *Annual Report on Funding Recommendations Fiscal Year 2017: Capital Investment Grant Program*, p. 6, at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/FY17_Annual_Report.pdf.

[32] Federal Transit Administration, *Annual Report on Funding Recommendations Fiscal Year 2018: Capital Investment Grant Program*, p. 7, at https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/funding/grant-programs/capital-investments/60771/fy18-annual-report_0.pdf.

[33] U.S. Congress, House Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, *Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill, 2018*, 115th Cong., 1st sess., July 21, 2017, H.Rept. 115-237, pp. 58-59; U.S. Congress, Senate Committee on Appropriations, Subcommittee on Transportation, Housing and Urban Development, and Related Agencies, *Departments of Transportation, and Housing and Urban Development, and Related Agencies Appropriations Bill, 2018*, 115th Cong., 1st sess., July 27, 2017, H.Rept. 115-138, pp. 79-80.

[34] Federal Transit Administration, "Capital Investment Grant Funding Comparison Chart, December 17, 2020," at https://www.transit.dot.gov/about/news/capital-investment-grant-funding-comparison-chart-december-17-2020.

[35] Federal Transit Administration, "Current Capital Investment Grant Program Projects: Hudson Tunnels," at https://www.transit.dot.gov/funding/grant-programs/capital-investments/hudson-tunnel-project-profile-0.

The project sponsors—the Port Authority of New York and New Jersey, in cooperation with the Gateway Program Development Corporation, New Jersey Transit Corporation, and Amtrak—have proposed $5.3 billion in CIG program funding for the costliest Gateway Program project to date. The $12.1 billion project is for the construction of a new tunnel under the Hudson River, the restoration of the current tunnel that was damaged by Hurricane Sandy in 2012, and the preservation of the Hudson Yards right-of-way linking the proposed new tunnel with Pennsylvania Station in New York City. In addition, the project sponsors propose to borrow about $6 billion for tunnel construction from the federal government through the RRIF program. NJ Transit, the lead sponsor of the $1.9 billion Portal North Bridge project across the Hackensack River in New Jersey, has secured a CIG grant to cover about 40% of the cost.[36] The Gateway Program overall is estimated to cost about $30 billion.[37]

The federal amount sought for the Gateway Program is equal to several years of funding for CIG, at recent funding levels, and could potentially overwhelm a program that is responsible for aiding projects throughout the country. The largest CIG grant since FY2007 is $2.6 billion. FTA typically pays out such grants in smaller amounts over a prolonged construction period; single-year allocations of funding for individual projects have rarely exceeded $200 million.

The proposed use of federal loans in conjunction with federal grants for the Gateway Program has been controversial.[38] The statute governing TIFIA (23 U.S.C. §603(b)(8)) states that proceeds from a TIFIA loan "may" be used as a nonfederal share of project costs if the loan will be repaid from nonfederal funds. The Trump Administration was critical of CIG project sponsors using both federal grants and loans on public transportation projects. In June 2018, FTA circulated a letter stating the following:

> given the competitive nature of this discretionary program, the [CIG] statute specifically urges FTA to consider the extent to which the project has a local financial commitment that exceeds the required non-government share of the cost of the project. To this end, FTA considers U.S. Department of Transportation loans in the context of all Federal funding sources requested by the project sponsor when completing the CIG evaluation process, and not as separate from the Federal funding sources.[39]

The appropriations committees took action to prevent this policy from being implemented. For instance, Section 166 of Division H of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94) stated that "none of the funds made available under this Act may be used for the implementation or furtherance of new policies detailed in the 'Dear Colleague' letter distributed by the Federal Transit Administration to capital investment grant program project sponsors on June 29, 2018." In a potential reauthorization, Congress could seek to eliminate permanently

[36] Federal Transit Administration, "U.S. Department of Transportation Announces $766.5 Million Grant Agreement to New Jersey Transit for the Portal North Bridge Project in Hudson County, New Jersey," press release, January 11, 2021, at https://www.transit.dot.gov/about/news/us-department-transportation-announces-7665-million-grant-agreement-new-jersey-transit.

[37] Jeff Davis, "What Is the 'Gateway Program'?" *Eno Transportation Weekly*, June 30, 2017. The estimated cost of the Gateway program was $24 billion in 2017, but the cost of the Hudson Tunnel project has increased by $6 billion, according to information provided to the Federal Transit Administration. See Federal Transit Administration, "Current Capital Investment Grant Program Projects: Hudson Tunnels," at https://www.transit.dot.gov/funding/grant-programs/capital-investments/hudson-tunnel-project-profile-0.

[38] U.S. Congress, House Committee on Transportation and Infrastructure, *Examining the Administration's Infrastructure Proposal*, 115th Cong., 2nd sess., March 6, 2018, 115-37 (Washington: GPO, 2018), pp. 43-45.

[39] Federal Transit Administration, "Dear Colleague Letter—Capital Investment Grants Program," June 29, 2018, at https://www.transit.dot.gov/regulations-and-guidance/policy-letters/dear-colleague-letter-capital-investment-grants-program.

DOT's discretion to block project sponsors from combining CIG grants and TIFIA loans on a single project. Bills introduced in the House in the 116th Congress, H.R. 731 and H.R. 1849, would have allowed recipients of TIFIA and RRIF support to elect to have the loans treated as nonfederal funds.

Expediting CIG Projects

Applying for CIG funding requires the development of extensive data and the preparation of many detailed reports and other documents, all of which are reviewed by FTA in making project approval determinations. These administrative processes can be a source of project delay, although local issues, such as agreements for utility relocations, are more often the cause.[40] Legislative changes in MAP-21 and the FAST Act sought to simplify the overall process. For example, MAP-21 reduced the number of separate FTA approvals for more expensive projects from four to three, and for less expensive projects from three to two. The less expensive projects, known as small starts projects, are those that cost $300 million or less to build and require $100 million or less of CIG funding. Moreover, MAP-21 authorized the use of project justification warrants in certain cases "that allow a proposed project to automatically receive a satisfactory rating on a given criterion based on the project's characteristics or the characteristics of the project corridor."[41] The FAST Act created an Expedited Project Delivery for Capital Investment Grants Pilot Program to more quickly review up to eight projects involving public-private partnerships in which the federal grant is 25% or less of the project cost. The federal share of a CIG project is typically about 50%.

There have been no comprehensive evaluations of whether these changes have resulted in projects progressing more quickly through the CIG pipeline. However, there are options that could be considered to further speed CIG projects. For instance, the threshold for projects to qualify as small starts could be increased, and the use of warrants could be permitted in more circumstances. H.R. 2, for example, would have increased the small starts cost threshold from $300 million to $400 million and the federal assistance threshold for projects from less than $100 million to less than $320 million. H.R. 2 would have also raised the federal financial assistance threshold for the use of warrants from $100 million or 50% of total project cost to $500 million and a total project cost of $1 billion. The Government Accountability Office (GAO) reported that FTA had not implemented the Expedited Project Delivery for Capital Investment Grants Pilot Program as of March 2018.[42] FTA issued a notice in September 2018 asking for expressions of interest in the program and announced an allocation of funding to one project in August 2019.[43] It issued a notice of funding opportunity for the remaining funding in July 2020.[44] Increasing the

[40] U.S. Government Accountability Office, *Capital Investment Grants Program: FTA Should Improve the Effectiveness and Transparency of Its Reviews*, GAO-20-512, July 2020, at https://www.gao.gov/products/GAO-20-512.

[41] Federal Transit Administration, "Final Interim Policy Guidance Federal Transit Administration Capital Investment Grant Program," June 2016, Chapter I, p. 30.

[42] Government Accountability Office, *Capital Investment Grant Program: FTA Should Address Several Statutory Provisions*, GAO-18-462, May 2018.

[43] Federal Transit Administration, "Pilot Program for Expedited Project Delivery," 83 *Federal Register* 46521-46523, September 12, 2018; Federal Transit Administration, "U.S. Department of Transportation Announces $125 Million Funding Allocation to Santa Clara VTA for BART Silicon Valley Phase 2 Project," press release, August 28, 2019, at https://www.transit.dot.gov/about/news/us-department-transportation-announces-125-million-funding-allocation-santa-clara-vta.

[44] Federal Transit Administration, "Discretionary Funding Opportunity: Grants for Pilot Program for Expedited Project Delivery," 85 *Federal Register* 45460-45465, July 28, 2020.

permitted maximum federal share of project costs under the pilot program, currently 25%, might make the program more attractive to transit agencies.

Falling Public Transportation Ridership

According to data from the American Public Transportation Association (APTA), annual transit ridership reached a modern-era high of 10.7 billion trips in 2014. Ridership subsequently fell by almost 8% to 9.9 billion trips in each of 2018 and 2019. Because of the COVID-19 pandemic, national ridership in 2020 is likely to be less than 5 billion trips, an unprecedented decline of more than 50% compared with 2018 and 2019.[45] Ridership is likely to suffer for a few years because of the pandemic, but the longer-term effects are uncertain. Other factors are more likely to be important in the longer term.

National trends in public transportation ridership are not necessarily reflected at the local level; thus, different areas may have different reasons for growth or decline. But at the national level, the two factors that most affect public transportation ridership are competitive factors and the supply of transit service. Several competitive factors, notably increased car ownership, the relatively low price of gasoline over the past few years, and the growing popularity of bikeshare, scooters, and ridesourcing services such as Lyft and Uber, appear to have reduced transit ridership. The amount of transit service supplied has generally grown over time, along with government investment, but average fares have risen faster than inflation, possibly deterring riders.

The future of public transportation ridership in the short to medium term is likely to depend on population growth, the public funding commitment to supplying transit, and factors that make driving more or less attractive, such as the price of parking, the extent of highway congestion, and the implementation of fuel taxes, tolls, and mileage-based user fees. Another factor that may be more important is the extent to which people work from home rather than traveling to a workplace, whether some or all of the time.

Under current law, federal grants to transit agencies are based mainly on population, population density, and the amount of service provided. Congress could address the issue of declining ridership by tying the allocation of federal formula funds to agencies' success in boosting ridership or fare revenue.

Over the long term, the introduction of fully autonomous vehicles could reduce transit ridership, unless restrictions or fees make them an expensive alternative. However, there is significant uncertainty about when, or whether, fully autonomous vehicles will affect ridership. If policymakers are concerned about such a possibility, federal capital funding might focus on buses, which last about 10 years, and not new rail systems that take many years to build and will remain in service for decades. Another option would be to redirect CIG funding from building new rail systems and lines to refurbishing rail transit in the large and dense cities where rail transit currently carries large numbers of riders.

The emergence of new mobility options may have reduced transit ridership, but it also may present an opportunity for transit agencies to provide new services to improve customer mobility. FTA has funded some pilot projects through the Research, Development, Demonstration, and

[45] American Public Transportation Association, *Public Transportation Fact Book 2020: Appendix A*, Washington, DC, 2020, table 1, at https://www.apta.com/research-technical-resources/transit-statistics/public-transportation-fact-book/; American Public Transportation Association, *Transit Ridership Report*, at https://www.apta.com/research-technical-resources/transit-statistics/ridership-report/.

Deployment program. An option in reauthorization would be to fund a program that focuses on boosting transit ridership through mobility and technological innovations.[46]

To encourage ridership, H.R. 2 (116th Congress) would have created a new competitive capital grant program, the Multi-jurisdictional Bus Frequency and Ridership Competitive Grants. Funding authorized from the mass transit account of the Highway Trust Fund would have averaged about $104 million per year from FY2022 through FY2025. H.R. 2 would have also modified the formula for the Urbanized Area Formula Program (49 U.S.C. §5307) and the Bus and Bus Facilities Competitive Grants Program (49 U.S.C. §5339(b)) to incentivize more frequent service. H.R. 2 also proposed to create a pilot program for grants to implement reduced fare transit service for low-income individuals.

Mobility on Demand Services

Although the growth of ridesourcing and other types of on-demand transportation has likely caused a decline in public transportation ridership, such services can be complementary to public transportation. For example, ridesourcing companies can provide short trips for people to access public transportation stations and stops, and can substitute for public transportation during periods of very low demand. This may encourage some people to choose not to have a personal vehicle, a choice that is associated with higher transit use in general. H.R. 2 (116th Congress) proposed to allow certain formula funds to be used to fund mobility as a service and mobility on demand services.[47]

Climate Change

Surface transportation is a major source of carbon dioxide (CO_2) in the atmosphere, the main human-related greenhouse gas (GHG) contributing to climate change. At the same time, the effects of climate change on environmental conditions, such as extreme heat and global sea level rise, pose a threat to transportation infrastructure. Surface transportation reauthorization may seek to address environmental conditions with mitigation provisions that aim to reduce GHG emissions from surface transportation and adaptation provisions that aim to make the surface transportation system more resilient. During the 116th Congress, H.R. 2 included climate change provisions related to public transportation, intercity rail, and highways, and S. 2302 included climate change provisions related to highways.[48]

GHG emissions from the transportation sector come mainly from passenger cars and light trucks. Public transportation might contribute to a reduction of GHG emissions if trips made in personal vehicles, particularly single-occupant trips, are made by trains and buses instead. The efficiency of public transportation in terms of GHG emissions depends, in part, on the amount of ridership in relation to the amount of transit supplied. GHG emissions from public transportation are also

[46] For example, APTA has proposed the creation of the Mobility Innovation and Technology Initiative with $25 million of general funding authorized in FY2021 rising to $50 million in FY2025.

[47] According to H.R. 2 (Section 2203), "the term 'mobility as a service' means services that constitute the integration of mobility on demand services and public transportation that are available and accessible to all travelers, provide multimodal trip planning, and a unified payment system.... The term 'mobility on demand' means an on-demand transportation service shared among individuals, either concurrently or one after another."

[48] CRS Report R46452, *Surface Transportation Reauthorization and Climate Change: H.R. 2 and S. 2302*, by William J. Mallett.

dependent on the sources of fuel used to power trains and buses, including the way in which electricity is generated.[49]

In addition to increasing funding for public transportation, H.R. 2 proposed to create a discretionary grant program for transit agencies that increased bus frequency or succeeded in increasing ridership. Another policy option that might be considered to reduce GHG gases from public transportation vehicles could include funding for alternatives to diesel-powered buses, particularly electric buses using electricity generated from renewable sources. This could include a higher level of funding for the existing Low or No Emission Vehicle (Lo-No) Program.[50] H.R. 2 proposed to increase dedicated funding for the purchase of low- and no-emission buses and related infrastructure from $55 million per year to about $430 million per year. Another possibility would be to require buses purchased using federal funds to have low or no emissions.[51] Electric buses cost more to purchase than traditional diesel-powered buses, although the lifecycle cost is comparable. To overcome this, the federal government could offer low-interest or no-interest loans for the nonfederal share of the cost of buying electric buses.[52]

Adaptation is action to reduce the vulnerabilities and increase the resilience of the transportation system to the effects of climate change. Although much of the funding administered by FTA can be used to assess the potential impacts of climate change on public transportation infrastructure and to apply adaptation strategies, there is currently no dedicated surface transportation funding for adaptation projects. If a federal role were found to be appropriate, reauthorization could create a new grant program dedicated to adaptation planning and projects or require that funds from other programs be set aside for such purposes.

Emergency Relief Program

The Public Transportation Emergency Relief (ER) Program (49 U.S.C. §5324; 49 C.F.R. §602) provides federal funding on a reimbursement basis to states, territories, local government authorities, Indian tribes, and public transportation agencies for damage to public transportation facilities or operations as a result of a natural disaster or other emergency and to protect assets from future damage, so-called resilience projects.

FTA's ER program does not have a permanent annual authorization. Rather, all funds are authorized on a "such sums as necessary" basis and require an appropriation from the Treasury's general fund. Because of this, FTA cannot provide funding immediately after a disaster or emergency is declared. Transit agencies, therefore, typically rely on the Federal Emergency Management Agency (FEMA) to fund immediate needs beyond the capacity of state and local government. This could slow the response of transit agencies and blur the lines of responsibility between FTA and FEMA if funds are later appropriated for the ER program. Adding a quick-release mechanism to FTA's ER program would allow FTA funds to be approved and distributed within a few days of a disaster. Such a program already exists for the Federal Highway Administration, with an annual authorization of funds from the Highway Trust Fund, and FTA's

[49] Federal Transit Administration, *Greenhouse Gas Emissions from Transit Projects: Programmatic Assessment*, Report 0097, January 2017, at https://www.transit.dot.gov/research-innovation/greenhouse-gas-emissions-transit-projects-programmatic-assessment-report-0097.

[50] 49 U.S.C. §5339(c).

[51] The Green Bus Act of 2019 (H.R. 2164, 116th Congress) proposed much higher levels of funding for the Low or No Emission Vehicle (Lo-No) Program and that buses purchased or leased with federal funds will have to be zero-emission beginning October 1, 2029.

[52] The Community Health and Clean Transit Act of 2019 (S. 2403, 116th Congress) proposed a new federal loan program for the purchase of battery-electric buses.

program could similarly be authorized an amount from the mass transit account of the fund. Such an authorization, however, would place a new claim on resources of the mass transit account.

The FTA's ER program does not have a limit on the amount that can be spent on resilience projects. Although this may allow for better projects, it can result in Congress appropriating larger amounts than might otherwise be necessary, and it could also be a way for transit agencies to fund betterments and new facilities that have little direct connection to the goals of repairing damages and making the transit systems resilient to future natural hazards. A separate resilience program and changes to the ER program may be considered a more effective way to protect public transportation infrastructure from future disasters.

Public Transportation Safety

Public transportation is a relatively safe mode of passenger transportation compared with traveling by car and light truck. The fatality rate per passenger mile for cars and light trucks is about double that of transit buses and five times that of heavy rail. While the fatality rate per passenger mile for commuter rail is more comparable to cars and light trucks, most commuter rail fatalities are nonusers, such as trespassing pedestrians and those in vehicles struck at grade crossings.[53]

The federal government's role in public transportation safety has been expanded significantly since 2008. One of the major changes was the requirement in the Rail Safety Improvement Act of 2008 (P.L. 110-432) for commuter railroads, along with Amtrak and freight railroads, to install positive train control (PTC), systems that use signals and sensors to monitor and control railroad operations.

The federal requirement for PTC resulted in significant capital costs for commuter rail agencies, of which about 10% has been borne by the federal discretionary and formula funds.[54] In addition to the initial costs of installing PTC, commuter rail agencies claim that there will be ongoing costs associated with PTC estimated to be about $160 million per year. Agencies might also slow or reduce service due to increased turnaround time at terminal stations.[55] Consequently, PTC implementation may have a detrimental effect on the overall financial condition of commuter rail agencies, and, without more funding from federal, state, or local government, may have a detrimental effect on the condition of commuter rail assets. Commuter rail agencies have proposed the creation of a new federal PTC funding program that could pay some or all of these ongoing costs.[56] Separately, proposals have been advanced to dedicate federal funding for commuter railroads to improve the safety of highway-rail grade crossings.

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[53] Todd Litman and Steven Fitzroy, *Safe Travels: Evaluating Transportation Demand Management Traffic Safety Impacts*, Victoria Transport Policy Institute, Sept. 10, 2019, p. 29; CRS Insight IN10753, *Trespassing: The Leading Cause of Rail-Related Fatalities*, by John Frittelli.

[54] American Public Transportation Association, *APTA Recommendations on Surface Transportation Law*, October 12, 2019, at https://www.apta.com/wp-content/uploads/APTA-RECOMMENDATIONS-Surf.-Trans.-Auth.-for-Board-Approval-10.12.2019.pdf.

[55] Testimony of Paul P. Skoutelas, President and CEO, American Public Transportation Association, in U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, *Challenges and Opportunities for Commuter Railroads*, hearing, 116th Cong., 1st sess., September 24, 2019; Metra, "Q&A about PTC and its impact on train schedules," at https://metrarail.com/node/5839.

[56] Testimony of Mr. Jim Derwinski, CEO/Executive Director, Metra Commuter Railroad, in U.S. Congress, House Committee on Transportation and Infrastructure, Subcommittee on Railroads, Pipelines, and Hazardous Materials, *Challenges and Opportunities for Commuter Railroads*, hearing, 116th Cong., 1st sess., September 24, 2019.

Buy America

With the aim of protecting American manufacturing and manufacturing jobs, Buy America laws place domestic content restrictions on federally funded transportation projects.[57] Buy America requirements vary according to the specific DOT funding program and administering agency. For projects funded by FTA there is a 100% U.S.-made requirement for iron, steel, and manufactured goods. However, Buy America does not apply to rolling stock if more than 70% of components, by value, are produced domestically and final assembly is in the United States. An addition to Buy America law in the National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92, §7613) prohibits transit agencies purchasing railcars and buses from certain government-owned, -controlled or -subsidized companies, such as the China Railway Rolling Stock Corporation and BYD, even if they are otherwise Buy America-compliant.

Waivers of Buy America requirements can be provided by DOT agencies under certain circumstances, but these can be difficult and time-consuming to obtain. If the current waiver process were found to be too slow, Congress could require that a waiver decision be made within a specific number of days. Each DOT agency has its own Buy America requirements, creating complications when a project involves funding from more than one of the agencies. Congress might seek to standardize Buy America requirements across the department. Other proposals have been to make Buy America requirements more stringent. For example, the Buy America 2.0 Act (H.R. 2755, 116th Congress) would have increased the share of public transit rolling stock components and subcomponents that must be produced in the United States by five percentage points annually beginning in FY2021, reaching 100% by FY2026. Such measures could make it more costly and time-consuming for transit agencies to procure vehicles.

Author Information

William J. Mallett
Specialist in Transportation Policy

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[57] CRS Report R44266, *Effects of Buy America on Transportation Infrastructure and U.S. Manufacturing*, by Michaela D. Platzer and William J. Mallett.