



# TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

**TO:** Railway Systems Suppliers, Inc. (“RSSI”)  
**FROM:** TGA Association Management Solutions, LLC (“TGA AMS”)  
**RE:** Monthly Legislative Report for November 2022  
**DATE:** December 1, 2022

## KEY UPDATES

- Congress intervened and passed a resolution on December 1 forcing the railroads and labor unions to adopt the September [agreement](#) to stave off a labor strike and work stoppage that would have started on December 9
- Federal discretionary grants:
  - FRA CRISI grants were due Dec. 1
  - USDOT RAISE grant NOFO [released](#) on November 30
  - USDOT MEGA grant award announcements expected before end of the year
- On September 30, Congress passed a Continuing Resolution to keep the government funded through December 16, 2022
  - Work on funding government accounts beyond Dec. 16 and other year-end items underway in the current lame duck session of Congress
- Midterm elections occurred on November 8
  - House will be controlled by the Republicans (220-213 currently)
  - Senate will be controlled by the Democrats (50-49)
    - Georgia run off election is December 6

## FY2023 APPROPRIATIONS

- On September 30, Congress passed a Continuing Resolution to fund government accounts through December 16, 2022
  - Work on an omnibus bill for the remainder of FY23 is underway
- Senate Appropriations Committee released its FY23 Transportation-HUD Appropriations bill on July 28. See bill [here](#) and committee report [here](#)
- House Appropriations Committee marked up its FY23 Transportation-HUD Appropriations bill on June 30 and the full House passed the bill on July 20. See bill [here](#) and committee report [here](#)
- See updated Appropriations table below for more details:

	FY22 House	FY22 Senate	Omni FY22	IIJA FY22	Total FY22	House FY23	Senate FY23
TIGER/BUILD/RAISE	\$1.2b	\$1.09b	\$775m	\$1.5b	\$2.275b	\$775m	\$1.09b
FRA including Amtrak	\$2.7b	\$2.7b	\$2.33b	\$4.4b	\$6.73b	\$2.35b	\$2.6b
<i>CRISI</i>	\$500m	\$522.8m	\$625m	\$1b	\$1.625b	\$630m	\$534.5m
<i>Fed-State SOGR Partnership</i>	\$0	\$220m	\$100m	\$7.2b	\$7.3b	\$555m	\$200m
<i>PRIME grants</i>	\$625m	\$0	\$0	\$0	\$0	\$0	\$0
<i>Rail Restoration/Enhancement</i>	\$0	\$2m	\$0	\$50m	\$50m	\$0	\$0
<i>MagLev</i>	\$5m	\$0	\$0	\$0	\$0	\$0	\$0
RRIF CRP Subsidy	\$0	\$10m	\$0	\$50m	\$50m	\$0	\$0

Section 130 grade crossing set-aside	\$245m	\$245m	-	\$245m	\$245m	\$245m	\$245m
<i>Grade crossing elimination</i>			-	\$600m	\$600m	\$0	\$0
FTA New Starts	\$2.5b	\$2.25b	\$2.25b	\$1.6b	\$3.85b	\$3.012b	\$2.51b
FTA Formula funds	\$12.8b	\$10.8b	-	\$13.355b	\$13.355b	\$13.634b	\$13.634b
WMATA Special Appropriation	\$150m	\$150m	\$150m	-	\$150m	\$150m	\$150m

## INFLATION REDUCATION ACT/BUILD BACK BETTER (BBB) ACT/BUDGET RECONCILIATION

- Budget reconciliation is a process through which only requires 50+1 votes in the Senate that Democrats are attempting to push many social spending programs
- In a breakthrough amidst a flurry of legislative activity before the August recess, on August 7 the Senate passed the **Inflation Reduction Act of 2022** and the House followed suit on August 12. President Biden signed the bill into law on August 16. The bill will target climate change, curb healthcare costs, impose a 15 percent minimum corporate tax (raising about \$313 billion over a decade), and will increase IRS enforcement. The bill is said to raise a total \$739 billion over 10 years with \$370 billion in expenditures to be funneled to energy and climate efforts that will reduce carbon emissions by 40 percent by 2030, another \$64 billion is to extend Affordable Care Act health care subsidies for three years. See one-page summary [here](#). The bill includes \$50b in transportation related funding but nothing specifically for rail.

## CHINA TRADE & COMPETITIVENESS BILL

- A revised and slimmed down version of the previously passed bills in the House (COMPETES Act) and Senate (USICA) was passed by Congress. The new bill, “CHIPS and Science Act of 2022” was sent to President Biden and signed into law. See summary [here](#)
  - The bill provides \$52 billion for U.S. companies producing computer chips, as well as billions more in tax credits to encourage investment in chip manufacturing. It also provides tens of billions of dollars to fund scientific research, and to spur the innovation and development of other U.S. technologies.

## SURFACE TRANSPORTATION BOARD

- Current STB members:
  - **Chairman Martin Oberman (Democrat):** Former Chairman of Metra in Chicago. Named STB Chairman at the beginning of the Biden administration
  - **Robert Primus (Democrat):** Career Democratic staffer on Capitol Hill, formerly served as Chief of Staff to Rep. Nanette Barragan (D-CA), Rep. Michael Capuano (D-MA), and Rep. Tony Cardenas (D-CA)
  - **Karen Hedlund (Democrat):** former Obama FRA Deputy Administrator
  - **Vice Chair Patrick Fuchs (Republican):** Former Senate Commerce Committee staffer under Chairman John Thune (R-SD) who is well versed on regulatory issues affecting the railroad industry. He has been very friendly to freight railroads and we know where he stands on the issues
  - **Michelle Schultz (Republican):** Previously spent 14 year in leadership roles with SEPTA and had a career in law before that
- The STB has broad regulatory oversight of railroads and is a key agency to monitor. At the beginning of January, after being confirmed easily by the Senate, STB nominees Michelle Schultz and Robert Primus started their five-year terms on the STB as board members. It represents the

first time the board has had its full complement of five members since the 2015 STB Reauthorization Act expanded the board from three to five

- The most high-profile item before the STB this year has been the potential merger between Canadian Pacific and Kansas City Southern, but the board is also still considering several major rules with huge implications for the railroads: 1) forced access/reciprocal switching and 2) NPRMs on shipper/railroad rate disputes
  - On May 6, 2022, the Surface Transportation Board (STB) [announced](#) that it will require certain railroads to submit service recovery plans as well as provide additional data and regular progress reports on rail service, operations, & employment. [BNSF](#), [CSX](#), [Norfolk Southern](#) (NS) & [Union Pacific](#) (UP) have submitted service recovery plans. The plans can also be found [here](#)
  - The STB held public meetings on April 26 and 27 to discuss rail service issues
    - Class Is mostly got grilled for how they have handled cargo amid continued supply chain disruptions. STB Chair Oberman made it clear that he's frustrated with the railroad industry's excessive delays, fees and failures to ship goods at agreed upon dates and times
  - The [STB approved the CSX-Pan Am merger](#) on April 14
  - The STB held a [Public Meeting](#) on March 15-16 concerning the forced access/reciprocal switching regulations
    - [AAR statement opposing](#) this effort
    - See the US Department of Justice comments on reciprocal switching [here](#) and other comments [here](#) (type in EP 711 on Docket Number box)
    - Also, see Railway Age article, "[A Primer on Reciprocal Switching.](#)"
    - On March 23, the STB issued a decision allowing supplemental written comments and extending the ex parte communications period in the Reciprocal Switching proceeding. Following the March 15/16 hearing, the [STB decided to allow interested persons to file supplemental written comments](#) limited to issues raised at the hearing or in written materials submitted in response to the Board's December 28, 2021 notice
  - Regarding CP-KCS
    - On September 28-30, public hearings took place in DC to review the proposed merger's merits
    - On August 5, STB issued a [draft EIS](#)
      - Public meetings regarding the environmental issues were held across the country from Sept. 12-19
      - Comments on the EIS are now due on October 14 (originally Sept. 26)
    - On July 25, a [letter of opposition](#) was sent by Senators Durbin, Duckworth and Reps. Newman and Krishnamoorthi
    - On July 22, the STB [announced](#) that it will hold a three-day public hearing on the proposed merger between Canadian Pacific Railway Limited (CP) and Kansas City Southern Railway Company (KCS) on September 28, 29, and 30, 2022 at the agency's headquarters in Washington, DC. The Board is also modifying the procedural schedule so that final briefs will be due by October 14, 2022, after the public hearing
    - On June 22, three Commissioners (of the five Commissioners) of the Federal Maritime Commission [filed a letter](#) with the Surface Transportation Board to "respectfully urge the Surface Transportation Board to disapprove of the consolidation of the railroad systems of the CP and the KCS." The rationale, as explained in the letter from the Commissioners notes that, "the proposed merger will adversely impact U.S. ports and the primarily U.S.-based intermodal

railway systems that serve our ports, and would disproportionately benefit Canadian ports and the primarily Canadian-based intermodal railway systems that service Canadian ports for transportation of U.S.- bound cargo.” The Commissioners logging their concerns with the merger are Carl Bentzel (Republican), Louis Sola (Republican) and Max Vekich (Democrat)

- On June 14, Metra said that new analysis shows CP-KCS merger would vastly increase commuter train delays, more info [here](#)
- On March 16, the STB noted that CP submitted 2019 baseline GT/M data for CP and KCS lines that is different from data in the Master Segment Table that was submitted. And on Feb 28, CN formally requested, via a [Responsive Application](#), to the STB to divest the parallel Springfield Line to CN’s as a condition of any approval of the proposed CP-KCS merger. CN argued that, “Allowing CP to consolidate control over two routes between Kansas City, on the one hand, and Chicago, Detroit, and Eastern Canada, on the other hand, would diminish competitive alternatives for rail customers— particularly because the CP-KCS application makes clear that CP will favor its existing Chicago-Kansas City route over potential routings involving the parallel Springfield Line.” CN has also intimated that it will invest in the creation of the Kansas City Speedway, if granted control over the line, bringing significant environmental benefits by removing 80,000 trucks a year from the road

## INFRASTRUCTURE BILL (IIJA)/BIPARTISAN INFRASTRUCTURE LAW (BIL)

See links below for some helpful summaries of programs and provisions contained in the IIJA/BIL:

<a href="#">WH technical asst guide (NEW)</a>	<a href="#">USDOT BIL NOFO Tracker</a>
<a href="#">Section 130 program BIL fact sheet</a>	<a href="#">Brookings Online Hub</a>
<a href="#">CRS Report on FHWA programs in IIJA</a>	<a href="#">CRS Report on passenger rail programs in IIJA</a>
<a href="#">White House Guidebook</a>	<a href="#">Updated WH Fact Sheet</a>
<a href="#">White House Fact Sheet</a>	<a href="#">USDOT State Fact Sheets</a>
<a href="#">AASHTO IIJA Summary 9 15 2021</a>	<a href="#">APTA IIJA Passenger Rail Investment</a>
<a href="#">ARTBA IIJA Summary 8 2 2021</a>	<a href="#">FTA Key Priorities</a>
<a href="#">IIJA Summary</a>	<a href="#">CBO Score of IIJA</a>
<a href="#">National Association of Regional Councils</a>	<a href="#">Dept. of Energy IIJA Fact Sheet</a>
<a href="#">National Association of Counties NACo</a>	<a href="#">T&amp;I Links to Excel Apportionment Charts</a>
<a href="#">APTA IIJA Public Transportation Investment</a>	<a href="#">AASHTO Implementation Outline for IIJA</a>

- As a reminder, \$1.2 trillion five-year bill was signed into law on November 15
  - Bill includes \$550 billion in new spending
  - \$66 billion for passenger and freight rail
    - \$36B Fed-State Partnership for Intercity Passenger Rail grants
    - \$16B Amtrak National Network
    - \$6B Amtrak NEC
    - \$5B FRA CRISI grants
    - \$3B new FRA rail crossing elimination program
  - \$39 billion for transit
    - \$19.15B increased contract authority for formula funding
    - \$4.75B State of Good Repair

- \$8B FTA CIG/New Starts
- Other key grant programs in the bill
  - New Megaprojects grant program (freight and passenger rail eligible) funded at \$10B
  - USDOT RAISE (formerly BUILD or TIGER grants) funded at \$7.5B
  - USDOT INFRA grants funded at \$3.2B
  - \$50M/year to subsidize credit risk premium for RRIF loans
- **\*Key programs of importance to RSSI**
  - New rail crossing elimination grant program funded at \$3B
  - Section 130 funded at \$245M/year from FY 2022-2026 with several key policy changes:
    - The bill removes the requirement that at least half of the funds set aside for the Section 130 program must be for the installation of protective devices at railway-highway crossings
    - The bill increases the Federal share for projects funded under the Section 130 program from 90 to 100 percent, as well as clarifies that the replacement of functionally obsolete warning devices is an eligible expense
    - The bill also increases the amount of state incentive payment at-grade crossing closures from \$7,500 to \$100,000 and increases the set-aside for compilation and analysis of data from 2 percent up to 8 percent
    - Regarding eligibility, the bill emphasizes eligibility for projects to reduce pedestrian fatalities and injuries from trespassing at grade crossings, and states that it is the sense of Congress that the DOT should, where feasible, coordinate efforts to prevent or reduce trespasser deaths along railroad rights-of-way and at or near railway highway crossings
      - This section also requires the Comptroller General of the United States to submit a report that includes an analysis of the effectiveness of the Section 130 program as a set-aside within HSIP
  - FRA CRISI grants funded at \$5B
    - Expands eligibility to include rehabilitating, remanufacturing, procuring, or overhauling locomotives that result in a significant reduction in emissions; researching, developing, and testing innovative rail technology; and developing and implementing measures to prevent trespassing and reduce injuries and fatalities
- Other key provisions:
  - Codifies the One Federal Decision executive order which streamlines the permitting process by consolidating decision-making processes and expediting deadlines.
  - FRA Railroad Research and Development program funded an average of \$45 million per Fiscal Year
    - Including up to \$4.5 million per FY for grants to establish and maintain a Center of Excellence to advance the safety, efficiency, and reliability of rail
  - Includes a Highway Cost Allocation Study, the first since 1997. This study will help Congress better ensure different highway users, including commercial motor vehicles, cover their fair share of costs to maintain our nation's roads and bridges
  - Includes National Motor Vehicle Per-Mile User Fee (VMT) Pilot program to demonstrate a national VMT, including for commercial motor vehicles, to restore and maintain long-term solvency of the Highway Trust Fund
  - Establishes an FRA blocked crossings portal pilot program
  - What is notably NOT in the bill
    - No changes were made to the federal truck size or weights
    - Minimum crew size mandates

- LNG by rail prohibition
- Restrictive labor provisions
- Yardmaster HOS

## CONGRESSIONAL HEARINGS

- November 29, 2022. The Senate Committee on Environment and Public Works held a hearing to discuss and receive testimony on, “Putting the Bipartisan Infrastructure Law to Work: The Private Sector Perspective.” [Committee Link](#).
- November 29, 2022. The Senate Committee on Environment and Public Works held a Committee business Meeting to vote on nominations, including Shailen Bhatt to be Federal Highway Administrator. [Committee Link](#).
- November 15, 2022. The Senate Committee on Environment and Public Works held a hearing to discuss and receive testimony on, “Implementing IIJA: Opportunities for Local Jurisdictions to Address Transportation Challenges.” [Committee Link and Testimony](#). **Covered by TGA AMS – Summary Available Upon Request.**

## U.S. DEPARTMENT OF TRANSPORTATION/FRA/FTA

- November 25, 2022. The Federal Railroad Administration (FRA) issued a [Notice of Final Guidance](#) (and [here](#)) in connection with statutorily required protective arrangements for employees impacted by certain projects financed by the Federal government. The FRA Guidance describes both procedural and substantive protections. The substantive protections include dismissal and displacement allowances and moving assistance, among other things. The procedural protections include opportunities for employees (or their representatives) to engage in negotiations with respect to application of the protections. **The final guidance is effective December 28, 2022.**
- November 21, 2022. The Federal Transit Administration (FTA) issued a [Notice of Funding Opportunity](#) (and [here](#)) (NOFO) making available \$3 million under the [FY 2023 Technical Assistance and Workforce Development Program](#). FTA is seeking proposals to develop voluntary standards and standards-related best practices, guidance, and tools in safety, and other areas that improve public transportation by directly engaging and working with transit stakeholders. Eligible applicants include providers of public transportation, including public transportation agencies, State/local government DOTs, private for-profit and not-for-profit organizations et al. The eligible Federal share for the cooperative agreement that will be awarded for this program is 100 percent. No non-Federal cost sharing is required. Applications are due on January 23, 2023.
- November 18-21, 2022. The Congressional Research Service (CRS) released a Sidebar Report entitled, “[The Railway Labor Act and Congressional Action](#).” In light of the recent developments in negotiations between railway carriers and labor unions and those unions that have voted to reject contracts with the carriers, Congress may consider various options, including extending the cooling-off period or implementing the terms of either an unratified agreement or the recommendations of the Presidential Emergency Board. The Sidebar Report provides background on the Railway Labor Act (RLA) and legislative action in resolving past disputes, examines the current dispute, and discusses considerations for Congress. The CRS also published another report entitled, “[Rail Labor Dispute Could Result in Work Stoppages](#)” (Updated 21 November 2022).
- November 17, 2022. The Federal Transit Administration (FTA) [announced](#) 19 awards totaling approximately \$13.1 million in grants from FTA’s [Pilot Program for Transit-Oriented Development](#) (TOD). The Pilot Program for TOD Planning helps support FTA’s mission of improving America’s communities through public transportation by providing funding to local



communities to integrate land use and transportation planning with a new fixed guideway or core capacity transit capital investment. See [here](#) for a list of FY 2022 TOD Planning Projects.

- [November 17, 2022](#). The US Government Accountability Office (GAO) released a report entitled, [“Discretionary Transportation Grants: DOT Should Better Communicate Federal Share Requirements to Applicants.”](#) Since 2009, Congress has appropriated more than \$12 billion to a DOT discretionary grant program currently known as RAISE. The GAO found that US DOT did not consistently communicate key information for the RAISE grant program. That is, US DOT did not inform applicants of specific eligibility information on how to calculate the federal government’s portion of project costs (known as the federal share), and US DOT did not disclose whether US DOT would use an application’s requested federal share as a merit selection criterion when evaluating applications. See highlights paper [here](#).
- [November 15, 2022](#). The US Government Accountability Office (GAO) released a report entitled, [“Federal Railroad Administration: Better Communication of Safety Information Could Improve the Close Call System.”](#) The Federal Railroad Administration (FRA) helps administer a voluntary, confidential reporting system (Confidential Close Call Reporting System aka C3RS) where railroad employees can report close calls and unsafe events (e.g., a train going beyond the authorized maximum speed) that may have been caused by human error. However, as of August 2022, only 23 of the nearly 800 railroads in the U.S. participated in this system. GAO is recommending that the FRA improve its communication with the wider railroad industry by sharing information from the C3RS program including (1) broader safety trends and (2) success stories.
- [November 14, 2022](#). The Federal Railroad Administration (FRA) published a [Notice of Availability of the Northeast Corridor Project Inventory](#), which is a requirement of the Federal-State Partnership for Intercity Passenger Rail Program (FSP). FRA is required to publish the NEC Project Inventory no later than one year after the [enactment of the IJJA](#), which was enacted on November 15, 2021. The FRA NEC Project Inventory, can be found [here](#). The project inventory will guide up to \$24 billion in funding that FRA is investing in NEC intercity passenger-rail service through the Federal-State Partnership for Intercity Passenger Rail Program. In the future, FRA will publish FSP Notices of Funding Opportunity (NOFO) soliciting applications for NEC Projects listed on the NEC Project Inventory. See FRA press release [here](#), and Amtrak CEO Stephen Gardner statement [here](#).
- [November 10, 2022](#). The Congressional Research Service (CRS) issued a report entitled, [“Public Transportation Ridership: Implications of Recent Trends for Federal Policy.”](#) This report discusses the implications of the pre-COVID-19 and post-COVID-19 trends in transit ridership for federal policy, including short-term needs and options for further “emergency” operational support and longer-term options to reverse the decline in public transportation ridership. A longer-term issue is how transit agencies are to adapt if ridership and fare revenues do not return to pre-pandemic levels.
- [November 4-7, 2022](#). US DOT has two proposed notices of Buy America Waivers: 1.) [Waiver of Buy America requirements for De Minimis costs, Small purchase, and Minor Components](#), and 2.) [Waiver of Buy America for Narrow Category of Contracts and Solicitations](#). **Comments are due by November 20, 2022**. Also, see the Federal Transit Administration (FTA) [“Dear Colleague Letter”](#) informing project sponsors of a change regarding Buy America Requirement for projects fund with FTA financial assistance. The letter notes that, “For grants obligated on or after November 10, 2022, FTA will add construction materials to the categories of products that must be manufactured in America on federally funded transit infrastructure projects.”

According to the ARTBA, the **“De Minimis”** waiver, the US DOT would waive Buy America requirements on iron, steel and construction products if:

- The total value of non-domestic products is no more than the lesser of \$1,000,000 or 5 percent of total allowable costs from the federal-aid funding;
- Federal-aid funding for the project is below \$500,000; or
- The non-domestically produced miscellaneous minor components comprise no more than 5 percent of the total material cost of an otherwise domestically produced iron or steel product.

According to the ARTBA, the “**Narrow Category of Contracts/Solicitations**” waiver, the US DOT would waive Buy America requirements on construction materials on “sufficiently advanced” projects if:

- Any contract entered into before Nov. 10, 2022; and
  - Any contract entered into before March 10, 2023, if the contract results from a solicitation published prior to May 14, 2022
- **November 3, 2022**. The US DOT recently posted a **Pedestrian and Bicycle Opportunities** table. The table indicates potential eligibility for pedestrian and bicycle activities and projects under US DOT surface transportation funding programs. The table has links to specific program information. The Pedestrian/Bicycle Information Center can be found **here**.

## POLITICAL ENVIRONMENT

- Current split for the 118<sup>th</sup> Congress  
Senate: **50 Democrats – 49 Republicans** (Georgia runoff still outstanding, gain of 1 Dem seat)  
House: **220 Republicans – 213 Democrats** (2 seats still under a recount, gain of 8 Repub seats)
  - Senate:
    - Senate Minority Leader Mitch McConnell (R-KY) was challenged for his **Senate Minority leadership** position by Senator Rick Scott (R-FL); however, Senator McConnell was re-elected on a secret ballot as Senate Minority Leader on November 16, 2022 by a vote of 37 to 10. Senator John Thune (R-SD) was re-elected Senate Republican Whip.
    - Senator Maria Cantwell (D-WA) is expected to remain as Chair of the **Senate Committee on Commerce, Science & Transportation**, with current Ranking Member Roger Wicker (R-MS) expected to move to the Armed Services Committee. Ted Cruz (R-TX) is expected to be the Ranking Member.
    - Senator Tom Carper (D-DE) is expected to remain as Chair of the **Senate Committee on Environment and Public Works**, with Shelley Moore Capito (R-WV) to continue as the Ranking Member
  - House:
    - Kevin McCarthy (R-CA) and Steve Scalise (R-LA) are running for the respective leadership positions of **House Speaker and House Majority Leader**. On November 15, House Minority Leader Kevin McCarthy secured a 188-31 vote for nomination to the House Speaker position, still 30 votes less than the 218 votes needed to secure the post. A final vote for House Speaker will take place on the House floor in January 2023. Andy Biggs (R-AZ) secured 31 votes and ran in opposition to Kevin McCarthy, likely in an attempt to secure some concessions (such as changes in conference rules) from the right flank of the party. House Republican Whip Steve Scalise was elected Majority Leader unanimously by voice vote.
    - Current **House Speaker** Nancy Pelosi (D-CA) indicated on November 17 that she would not seek a House Democratic leadership position. Likewise Steny Hoyer (D-MD) will not seek a return as House Majority Leader. Meanwhile, Hakeem



Jeffries (D-NY) officially announced his bid for House Democratic Minority Leader on November 18, 2022, and Katherine Clark (D-MA) is seeking the House Democratic Whip position (the No. 2 leadership post).

- Sam Graves (R-MO) is the presumptive chairman of the House Transportation and Infrastructure Committee