



TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

TO: Railway Systems Suppliers, Inc. (“RSSI”)
FROM: TGA Association Management Solutions, LLC (“TGA AMS”)
RE: Monthly Legislative Report for December 2022
DATE: December 30, 2022

KEY UPDATES

- On December 23, Congress passed a \$1.7 trillion Omnibus Appropriations bill for FY2023 to fund government accounts through September 30, 2023
- 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
 - FRA Fed-State grant NOFO [announced](#) on Dec. 22
 - FTA ASAP grant awards [announced](#) on Dec. 19
 - USDOT RAISE grant NOFO [released](#) on November 30, updated on December 14
 - USDOT MEGA grant award announcements expected in early January

FY2023 APPROPRIATIONS

- On December 23, Congress passed a \$1.7 trillion Omnibus Appropriations bill for FY2023 to fund government accounts through September 30, 2023. See bill text and explanatory statements [here](#)
- See updated Appropriations table below for more details:

	Omni FY22	IIJA FY22	Total FY22	House FY23	Senate FY23	Omni FY23
TIGER/BUILD/RAISE	\$775m	\$1.5b	\$2.275b	\$775m	\$1.09b	\$800m
FRA including Amtrak	\$2.33b	\$4.4b	\$6.73b	\$2.35b	\$2.6b	\$3.065b
<i>CRISI</i>	\$625m	\$1b	\$1.625b	\$630m	\$534.5m	\$535m
<i>Fed-State Partnership</i>	\$100m	\$7.2b	\$7.3b	\$555m	\$200m	\$100m
<i>Rail Restoration/Enhancement</i>	\$0	\$50m	\$50m	\$0	\$0	\$0
RRIF CRP Subsidy	\$0	\$50m	\$50m	\$0	\$0	\$0
Section 130 grade crossing set-aside	-	\$245m	\$245m	\$245m	\$245m	\$245m
<i>Grade crossing elimination</i>	-	\$600m	\$600m	\$0	\$0	\$0
FTA New Starts	\$2.25b	\$1.6b	\$3.85b	\$3.012b	\$2.51b	\$2.21b
FTA Formula funds	-	\$13.355b	\$13.355b	\$13.634b	\$13.634b	\$13.6b
WMATA Special Appropriation	\$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 were due on October 14
 - 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:

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

- 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 30, 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](#). **Covered by TGA AMS – Summary Available Upon Request.**

U.S. DEPARTMENT OF TRANSPORTATION/FRA/FTA

- December 22, 2022. The Federal Railroad Administration (FRA) issued a [Notice of Funding Opportunity](#) (NOFO) making available \$8,979,150,000 under the [Federal-State Partnership for Intercity Passenger Rail Grant Program](#). The NOFO is seeking applications for projects located on the Northeast Corridor (NEC) for FY 2022 and FY 2023. [*NEC means the main rail line between Boston, Massachusetts, and the District of Columbia; the branch rail lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York; and facilities and services used to operate and maintain these lines.*] FRA is to make selections consistent with the [NEC Project Inventory](#) and only projects on the NEC Project Inventory for which an application is submitted under the NOFO will be considered for award. There are no predetermined minimum or maximum dollar thresholds for awards. The Federal share of total costs for FSP projects funded under this notice shall not exceed 80 percent. See FRA press release [here](#). **Applications will be due 90 days after the official FR Notice publication.**
- December 21, 2022. The US DOT [announced awards](#) under the [FY 2022 Rural Surface Transportation Grant Program](#) in the amount of \$273.9 million for twelve projects. The Rural Surface Transportation Grant Program supports projects to improve and expand the surface transportation infrastructure in rural areas to increase connectivity, improve the safety and reliability of the movement of people and freight, and to generate regional economic growth.
- December 19, 2022. The Federal Transit Administration (FTA) [announced 15 grants](#) under the [All Stations Accessibility Program](#) in nine states to help make it easier for people with disabilities and mobility needs to access some of the nation’s oldest and busiest rail transit systems through essential upgrades, such as elevators. Examples of awards include: Metra receiving \$37.6 million to improve its 59th/60th Street Station and \$29 million to improve its 95th Street-Chicago State University station to make it fully ADA accessible. Illinois’s Chicago Transit Authority will also receive \$118.5 million to modernize its Irving Park, Belmont and Pulaski stations to make them fully ADA accessible. Press release [here](#).
- December 19, 2022. The Federal Railroad Administration (FRA) issued a [Notice of Selection and of Funding Opportunity](#) (NOFO) (and [here](#)) detailing the application requirements and procedures for the selection of eligible corridors to participate in the [Corridor Identification and Development Program](#) and to obtain grant funding appropriated in FY 2022. [*The Corridor ID Program is a comprehensive intercity passenger rail planning and development program that will help guide intercity passenger rail development throughout the country and create a pipeline of intercity passenger rail projects ready for Implementation.*] The opportunity described in the notice is made available under the “Federal-State Partnership for Intercity Passenger Rail.” The funding made available in the notice comes from FRA’s authority to use up to 5 percent of the funding made available for the Fed-State Partnership program to carry out planning and development activities related to the Corridor ID Program. [*The IJA provided significant funding for the Fed-State Partnership program of \$7.2 billion for FY 2022.*] FRA will award the applicant of a selected Corridor \$500,000 for eligible Step 1 activities. Subsequent individual awards for Step 2 and Step 3 activities have no predetermined minimum/maximum

dollar thresholds. **Applications for selection and funding under the Corridor ID Program are due on 12/20/2022.**

- December 14, 2022. The Federal Transit Administration (FTA) issued a [Notice of Funding Opportunity](#) (NOFO – and [here](#)) making available \$500,000 under the [FY 2021 Transit Worker and Rider Safety \(TWRS\) Best Practices Research Project](#). The goals of the research project are to identify public safety risks for transit vehicle operators and riders, determine the most effective mitigation strategies to minimize those risks, and promote the implementation of those strategies. The maximum Federal share of project costs under this program is limited to 80 percent. **Applications are due on February 13, 2023.**
- December 13, 2022. The Government Accountability Office (GAO) issued a report entitled, [“Freight Rail: Information on Precision-Scheduled Railroading.”](#) GAO was asked to examine the effect of PSR on freight rail safety and service. Six of the seven largest U.S. freight railroads have reported implementing precision-scheduled railroading (PSR), a strategy intended to increase efficiency and reduce costs. PSR is not defined by a prescribed set of operational changes. However, stakeholders GAO interviewed—including representatives of railroads, employee unions, and shippers—associated the following operational changes with PSR: (1) reductions in staff, (2) longer trains, and (3) reductions in assets such as locomotives. For example, the overall number of staff among the seven largest freight railroads (known as Class I) decreased by about 28 percent from 2011 through 2021. Further, all seven railroads said they have increased the length of trains in recent years. Highlights paper [here](#).
- December 8, 2022. The US Senate [confirmed Shailen Bhatt](#) as the 21st Administrator of the Federal Highway Administration (FHWA). Mr. Bhatt was nominated by President Biden on July 21, 2022. The FHWA has operated without a Senate-confirmed administrator for nearly two years.
- December 7, 2022. The Senate Committee on Commerce, Science and Transportation held an Executive Session to consider several President Biden Administration nominees, including: **Anthony Rosario Coscia** to be a Director of the Amtrak Board of Directors, **David Michael Capozzi** to be a Director of the Amtrak Board of Directors, **Christopher Koos** to be a Director of the Amtrak Board of Directors, **Samuel E. Lathem** to be a Director of the Amtrak Board of Directors, **Robin Lee Wiessmann** to be a Director of the Amtrak Board of Directors, **Robert E. Primus** to be a Member of the Surface Transportation Board, et al. [Committee Link](#). The Commerce Committee [approved](#) all of the aforementioned nominees on December 7, 2022. Any nominees not Senate-confirmed before adjournment are expected to be renominated by President Biden after the 118th Congress convenes in January.
- December 6, 2022. The Federal Railroad Administration (FRA) issued a [Notice of Funding Opportunity](#) (NOFO) making available \$2,283,150,000 in discretionary funding (splits of \$2,232,000,000 in supplemental appropriations and \$51,150,000 in annual appropriations) under the [FY 2022 Federal-State Partnership for Intercity Passenger Rail Program \(FSP\) - for projects not located on the Northeast Corridor](#). [[FRA is scheduled to publish a separate Notice for projects located on the NEC.](#)] The FSP Program provides a Federal funding opportunity to improve American passenger rail assets to expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service if an eligible applicant is involved, reduce the state of good repair backlog, improve performance, and enhance rail safety.
- December 1, 2022. Operation Lifesaver, Inc. awarded more than \$140,000 in grant funds to eight transit agencies in six states for rail transit safety public awareness and education projects and campaigns. The approved grants were awarded through a competitive process, based upon criteria such as key safety messages, target audiences and evaluation methods. The grant

amounts range between \$7,400 to \$20,000 and require each agency to provide a 25 percent match. See [here](#) for a list of grantees/projects.

- [December 1-14, 2022](#). The US DOT issued a [Notice of Funding Opportunity](#) (NOFO) making available \$1.5 billion in discretionary funding under the [FY 2023 National Infrastructure Investments Program](#) (i.e. the Rebuilding American Infrastructure with Sustainability and Equity **(RAISE – Local/Regional Project Assistance)** Grant Program). Eligible applicants are States/Dist. Of Columbia, local government/public agency, special purpose district/public authority, port authority, et al. The Federal share of the costs of an eligible project carried out using a grant provided under the RAISE grant program shall not exceed 80 percent unless the project is located in a rural area, a historically disadvantaged community (HDC), or an area of persistent poverty (APP). Minimum RAISE grant awards are to be \$5 million, except that for projects located in rural areas, the minimum award size is \$1 million. Grants are not to be greater than \$25 million. Urban projects are to receive 50 percent (750 million) and rural projects are to receive 50 percent (\$750 million) of the grant funds. [*US DOT published additional information on December 14, 2022, e.g. Complete NOFO, Application Checklist, Project Information Form, and SF424 Instructions. The full announcement can be found [here](#). Also, see US DOT press release [here](#).*] See [here](#) for more information on RAISE grants and scheduled Webinar dates/times (TBA). **Applications are due on February 28, 2023.**

POLITICAL ENVIRONMENT

- Current split for the 118th Congress
 - Senate: **51 Democrats** – **49 Republicans** (gain of 2 Dem seats)
 - House: **222 Republicans** – **213 Democrats** (gain of 10 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.
 - Hakeem Jeffries (D-NY) was elected as the new Democratic Minority Leader and Katherine Clark (D-MA) as the new Democratic Minority Whip position (the No. 2 leadership post)
- Sam Graves (R-MO) is the presumptive chairman of the House Transportation and Infrastructure Committee and Rick Larsen (D-WA) is the new Ranking Member