



TGA ASSOCIATION MANAGEMENT SOLUTIONS, LLC

TO: Railway Systems Suppliers, Inc. (“RSSI”)
FROM: TGA Association Management Solutions, LLC (“TGA AMS”)
RE: Monthly Legislative Report for August 2023
DATE: September 1, 2023

KEY UPDATES

- On May 31, FRA released [NPRM](#) proposed certification for rail signal employees
 - Comments were due to FRA on August 30, 2023
- House and Senate Appropriations Committees both passed their FY24 transportation funding bills, but there is a major delta in funding between the House and Senate
 - This must get resolved by Sept. 30 or there will be a government shutdown
- Federal discretionary grants:
 - FRA [grant NOFO/award tracker](#)
 - Applications were due on August 21, 2023 for USDOT Multimodal Project Discretionary Grant program (Mega, INFRA and Rural grant programs)
 - FRA Rail Crossing Elimination (RCE) grant program NOFO and FRA CRISI grant awards both expected in September

FY2024 APPROPRIATIONS

- The House Appropriations Committee approved their bill ([HR 4820](#)) on July 18, with a vote of 34 to 27, and the Senate approved their bill ([S 2437](#)) on July 20, with a vote of 29-0
 - Previously, on March 9, President Biden released his [FY2024 proposed budget](#)
 - A listing of [House Community Project Funding](#) requests can be found [here](#), and a listing of [Senate Congressionally Directed Spending](#) projects can be found [here](#)
- See current Appropriations table below for more details:

	Final Omni FY23	IJA Advance Approps FY24	Biden Budget Req. FY24	House FY24	Senate FY24
USDOT RAISE	\$800m	\$1.5b	\$0	\$0	\$800m
USDOT MEGA	\$0	\$1b	\$1.22b	\$0	\$0
USDOT INFRA	\$0	\$1.64b	\$0	\$0	\$0
Amtrak NEC	\$1.260b	\$1.2b	\$1.227b	\$99.23m	\$1.14b
Amtrak National Network	\$1.193b	\$3.2b	\$1.841b	\$776.4m	\$1.31b
FRA CRISI	\$560m	\$1b	\$510m	\$258.5m	\$572.9m
FRA Fed-State Partnership	\$100m	\$7.2b	\$560m	\$0	\$100m
FRA Rail Restoration/Enhancement	\$0	\$0	\$50m	\$0	\$0
FRA Rail Crossing Elimination	\$0	\$600m	\$250m	\$0	\$0
FTA New Starts	\$2.21b	\$1.6b	\$2.85b	\$392.2m	\$2.45b
FTA Formula funds	\$13.6b	-	\$14b	\$13.99b	\$13.99b

WMATA Special Appropriation	\$150m	-	\$150m	\$150m	\$150m
-----------------------------	--------	---	--------	--------	--------

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
 - **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 most high-profile item before the STB this year was the 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
 - More action on forced access/reciprocal switching expected later this year
- Regarding CP-KCS, on March 15 the STB [approved CP-KCS merger with conditions](#)

RAIL SAFETY LEGISLATION/ACTION

- Railway Safety Act of 2023 (S. 576) was introduced on March 1, 2023 by Senators Vance (R-OH), Brown (D-OH), Fetterman (D-PA), Casey (D-PA), Hawley (R-MO), and Rubio (R-FL)
 - [Revised bill](#) passed out of the Senate Commerce Committee by a vote of 16-11
 - Bill now moves to the Senate floor
 - House T&I is writing its own version of the bill, likely to be after the release of the final NTSB report
- RAIL Act (H.R. 1633) was introduced on March 17 by Reps. Johnson (R-OH) and Sykes (D-OH)
- FRA Rail Safety Advisory Committee (RSAC) held a special meeting on March 27 in response to the NS East Palestine, OH derailment

TRUCK SIZE & WEIGHTS

- On May 23, the House Transportation and Infrastructure Committee passed two bills H.R. 3372 and H.R. 2948, both of which would allow heavier trucks on the interstate highway system. H.R.

3372 would allow states to increase the allowed weight of a commercial motor vehicle operating on interstate highways from the current maximum weight of 80,000 pounds up to 91,000 pounds. H.R. 2948 (CARS Act), would increase the permissible weight of an auto transporter by 10 percent, up to 88,000 pounds. See [ASLRRA letter](#) to the House Transportation and Infrastructure Committee and a Coalition Against Bigger Trucks (CABT) [letter](#) to committee leaders urging them to reject truck size increases.

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

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

CRS Report on Highway and Transit funding in IIJA (NEW)	
WH technical asst guide	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, 2021
 - 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

U.S. DEPARTMENT OF TRANSPORTATION/FRA/FTA

- August 21, 2023. The Federal Railroad Administration (FRA) issued a Notice of Funding Opportunity (NOFO) making available \$1 million under the FY 2023 Highway-Rail Grade Crossing Safety Education and Enforcement Program. This program provides funding for Operation Lifesaver. Applications are due by September 22, 2023.
- August 17, 2023. The Federal Railroad Administration (FRA) issued a [Notice of Funding Opportunity](#) (NOFO – and [here](#) and [here](#)) making available \$139,022,333 under the FY 2017-2023 Special Transportation Circumstances Projects Program. The purpose of the NOFO is to solicit applications from the states of Alaska, Wyoming, and South Dakota for grants to assist in funding rail Capital Projects under the STC program. Capital Projects to be awarded are as follows: \$15,654,566 for Alaska, \$58,887,409 for South Dakota, and \$64,480,358 for Wyoming. The Federal share of total costs for an STC project(s) must not exceed 80 percent of the total cost of a project. **Applications for funding are due no later than 5:00 p.m. ET, on September 29, 2023.**
- August 16, 2023. The US DOT issued a (*Forecasted Opportunity – I.E., Coming Soon*) [Notice of Funding Opportunity](#) (NOFO) making available \$22 million under the FY 2023 Thriving Communities Program. The Thriving Communities Program funds technical assistance, planning, and capacity building support to under-resourced and disadvantaged communities across the U.S. to help ensure communities have the technical tools and organizational capacity to comprehensively plan for and deliver quality infrastructure projects and community development projects that enable their communities and neighborhoods to thrive. For FY 2023, the US DOT expects to award two (2) different types of cooperative agreements through the NOFO: 1.) TCP-National Capacity Builder cooperative agreements are anticipated to be in the range of \$4-5 million each, and 2.) TCP-Regional Capacity Builder cooperative agreements are anticipated to be in the range of \$1-2 million each. **The estimated application due date is December 15, 2023. The estimated posting date is September 22, 2023.**
- August 9, 2023. The Federal Railroad Administration (FRA) issued a report entitled, “[Norfolk Southern \(NS\) Safety Assessment](#).” [*On February 3, 2023, a NS train carrying hazmat derailed in East Palestine, Ohio. The incident resulted in 38 rail cars derailing, including 11 of the hazardous materials tank cars. The derailment caused a massive fire and environmental damage to the East Palestine community.*] Subsequently, the FRA [announced on March 8, 2023, a plan to conduct a 60-day Supplemental Safety Assessment of Norfolk Southern Railway’s Operations](#) (conducted between March 15 and May 15, 2023). The report documents FRA’s findings, recommendations, and methodologies resulting from the 60-Day Supplemental Safety

Assessment of NS. As part of the “Assessment,” FRA performed focused inspections and investigations to evaluate regulatory compliance, as well as assess how NS applies the 10 essential safety culture elements to the management and training of field employees. Focused inspections and investigations prioritized 11 operational elements (see report). **Related News:** On August 18, 2023, NS released a report entitled, [“Making it Right: A Six-Month Progress Report On East Palestine, Ohio, And Surrounding Communities.”](#) The report says that \$64 million has been committed to support East Palestine and the surrounding communities. On August 4, NS [announced](#) a grant of \$500,000 to support economic development in the Village of East Palestine, Ohio. On August 8, NS [announced](#) that it purchased property for a new, permanent field office in East Palestine.

- [August 8, 2023](#). The US DOT is accepting applications for the second year (FY 2023) of the [Strengthening Mobility and Revolutionizing Transportation \(SMART\) Grants Program](#) for Stage 1 Planning and Prototyping grants. The [Notice of Funding Opportunity](#) (NOFO) for the [FY 2023 SMART Grants Program](#) describes the purpose as conducting demonstration projects focused on advanced smart city or community technologies and systems in a variety of communities to improve transportation efficiency and safety. The SMART Grants Program includes two stages: Stage 1 Planning and Prototyping Grants (Stage 1 grants for \$50 million) and Stage 2 Implementation Grants (Stage 2 grants for \$50 million). US DOT anticipates that only recipients of Stage 1 Planning and Prototyping Grants will be eligible for Stage 2 Implementation Grants. The anticipated minimum award size is \$250,000 for Stage 1. **Applications must be submitted by 5:00 PM EDT on Tuesday, October 10, 2023.**
- [August 7, 2023](#). [Amtrak published survey findings](#) that demonstrate strong support from American voters for continued passenger rail investments, including infrastructure renewal and service expansion. Conducted by the Mellman Group and commissioned by Amtrak to better understand America’s interest in intercity passenger rail service, the findings show consistent support for passenger rail across geographic location, age, race, and gender. For example, 1.) 92 percent say it is important for the United States to invest in passenger rail safety and service improvements; 2.) 86 percent believe in the importance of a strong American passenger rail system; 3.) 83 percent support passenger rail investments identified by Congress in the Infrastructure Investment & Jobs Act (i.e., modern trains, aging tunnel and bridge replacements, new routes, etc.); and 4.) 81 percent want their state to invest in bringing more passenger rail service to their local area.
- [August 7, 2023](#). The Federal Transit Administration (FTA) announced a [Notice of Funding Opportunity](#) (NOFO – and [here](#)) making available \$13,460,978 under the [FY 2023 Pilot Program for Transit-Oriented Development Planning](#) (TOD Pilot Program). TOD Pilot Program grants are competitively awarded to local communities to integrate land use and transportation planning with a new fixed guideway or core capacity improvement transit capital projects. Applicants to the TOD Pilot Program must be a State or States, U.S. Territory, or local governmental authority, and an FTA grant recipient. In general, the maximum Federal funding share for proposals is 80 percent. Proposals that support planning activities that assist parts of an urbanized area or rural area with lower population density or lower average income levels compared to the applicable

area or adjoining areas are eligible to receive a Federal funding share of no less than 90 percent and applicants may request a share up to 100 percent share (see FTA 3/21/23 letter [here](#)).

Applications are due by October 10, 2023.

- **August 4, 2023.** The Federal Railroad Administration (FRA) submitted a [Report to Congress](#) entitled, “Automated Track Inspection Technologies.” The report responds to Congress’s request that FRA report on automated track inspection technologies. FRA regulations require qualified railroad track inspectors to perform visual inspections to ensure the railroad’s roadbed, track geometry, track structure, and track appliances and track-related devices meet FRA-minimum track safety standards. The use of automated track inspection technology, specifically Track Geometry Measurement Systems (TGMS) or Automated Track Geometry Measurement Systems (ATGMS), in addition to visual inspections, has helped drive down the number of track-caused derailments. In summary, the report recommends that railroads continue utilizing visual inspections while developing and testing new inspection technologies.

Selected/Anticipated Transportation-Related NOFO Announcement Dates in 2023

See [White House](#) Document on [Open/Upcoming NOFOs](#)

Month Est.	Notice of Funding Opportunity (NOFO)	Operating/Admin. Office
August 2023	Transit-Oriented Development Planning – NOFO 8/7/23.	FTA
Summer 2023	Thriving Communities	FHWA/Office of the Secretary
TBA 2023	All Stations Accessibility Program	FTA
Summer 2023	Bridge Investment Program	FHWA
Summer 2023	Railroad Crossing Elimination Grant Program	FRA
Fall 2023	Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program	FRA
Late Summer 2023	Strengthening Mobility and Revolutionizing Transportation (SMART) Grants Program – NOFO 8/8/23.	Office of the Secretary
Fall 2023	Transportation Access Pilot Program	FHWA
Fall 2023	Building Resilient Infrastructure and Communities Program	DHS/FEMA
Winter 2023	Innovative Coordinated Access and Mobility Program	FTA
Winter 2023/2024	National Culvert Removal, Replacement, and Restoration Grants	FHWA

POLITICAL ENVIRONMENT

- Current split for the 118th Congress
Senate: **51 Democrats** – **49 Republicans** (gain of 2 Dem seats)
House: **222 Republicans** – **212 Democrats** (gain of 10 Repub seats)
- President Biden made his reelection announcement official on April 25