

**SURFACE TRANSPORTATION REAUTHORIZATION:  
BUILDING ON THE SUCCESSES OF MAP-21  
TO DELIVER SAFE, EFFICIENT, AND EFFECTIVE  
PUBLIC TRANSPORTATION SERVICES AND  
PROJECTS**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**BANKING, HOUSING, AND URBAN AFFAIRS**  
**UNITED STATES SENATE**  
ONE HUNDRED FOURTEENTH CONGRESS  
FIRST SESSION  
ON  
EXAMINING THE REAUTHORIZATION OF “MOVING AHEAD FOR  
PROGRESS IN THE 21ST CENTURY ACT” (MAP-21; P.L. 112-141), THE  
SURFACE TRANSPORTATION AUTHORIZATION BILL

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# C O N T E N T S

**TUESDAY, APRIL 21, 2015**

|                                                          | Page |
|----------------------------------------------------------|------|
| Opening statement of Chairman Shelby .....               | 1    |
| Opening statements, comments, or prepared statements of: |      |
| Senator Brown .....                                      | 2    |
| Senator Crapo .....                                      |      |
| Prepared statement .....                                 | 26   |

## WITNESS

|                                                                                                                  |    |
|------------------------------------------------------------------------------------------------------------------|----|
| Therese W. McMillan, Acting Administrator, Federal Transit Administration,<br>Department of Transportation ..... | 4  |
| Prepared statement .....                                                                                         | 26 |
| Responses to written questions of:                                                                               |    |
| Chairman Shelby .....                                                                                            | 32 |
| Senator Brown .....                                                                                              | 41 |
| Senator Vitter .....                                                                                             | 41 |
| Senator Kirk .....                                                                                               | 42 |
| Senator Menendez .....                                                                                           | 44 |



# **SURFACE TRANSPORTATION REAUTHORIZATION: BUILDING ON THE SUCCESSES OF MAP-21 TO DELIVER SAFE, EFFICIENT, AND EFFECTIVE PUBLIC TRANSPORTATION SERVICES AND PROJECTS**

**TUESDAY, APRIL 21, 2015**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
*Washington, DC.*

The Committee met at 10:02 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Richard Shelby, Chairman of the Committee, presiding.

## **OPENING STATEMENT OF CHAIRMAN RICHARD C. SHELBY**

Chairman SHELBY. The hearing will come to order.

This is the first of our hearings on the reauthorization of MAP-21, which expires on May 31. I believe that a long-term reauthorization bill is necessary to provide certainty and stability to cities and States across the country. More importantly, it is essential to Americans who rely on transportation for their livelihoods.

However, the solvency of the Highway Trust Fund is the most significant hurdle we face in advancing a reauthorization bill. Today, the revenue coming into the Highway Trust Fund is \$15 billion less than what is needed to sustain transportation spending at current authorization levels. This persistent revenue shortfall highlights the fact that our transportation needs have outstripped the capacity of the trust fund. Any reauthorization proposal Congress considers, I believe, must balance spending needs with long-term sustainability, flexibility, and innovation.

Federal policies should encourage private sector investment in transportation and transit infrastructure in order to better leverage Federal investments and increase economic growth. I have long advocated this approach, and I am pleased that the administration has launched the Build America Investment Initiative, which seeks to expand the reach of existing financing tools and to promote the use of public-private partnerships.

We cannot stop there, however. By eliminating burdensome regulations, we will invite more innovation into the marketplace. By reforming the FTA's internal administrative practices, project sponsors can achieve greater efficiencies. Projects that have a minimal Federal investment and significant private investment should not be, in my opinion, subjected to the same level of bureaucratic oversight as those with a significant Federal investment. Experience

tells us that large bureaucracies tend to delay projects and ultimately discourage infrastructure investment.

In addition, Federal policies should encourage a responsible and measured approach to transportation system management. This includes the funding of operations, preventive maintenance, and most importantly, fleet acquisition. "State of good repair" must become an integral part of the public transportation dialogue, and transit systems must take a "fix it first" approach. We do not need to look any further than Washington Metro for an example of what happens when an agency does not maintain its system in a state of good repair.

Moreover, public transportation policy should support this effort and prioritize Federal spending to maintain our aging public transportation infrastructure. Federal policy should not encourage more spending to expand systems that cannot maintain what they already have.

The issues we are facing are difficult, but I believe we can find some middle ground here. It is possible to produce a long-term, fiscally responsible reauthorization bill that can garner broad bipartisan support both in the Banking Committee and on the Senate floor. I look forward to working with the administration and my colleagues on a reauthorization measure that provides the stability and the certainty that our transportation system needs.

Senator Brown.

#### **STATEMENT OF SENATOR SHERROD BROWN**

Senator BROWN. Thank you, Mr. Chairman.

Ms. McMillan, thank you for joining us today.

I am committed to passing a long-term reauthorization bill that grows the overall transportation program. It is good for the economy. It is good for workers. It is good for our Nation's economic competitiveness.

A special shout out to Senator Menendez for his studied strong advocacy on this issue. In a letter to me soon after I became Ranking Member of this Committee, he very cogently laid out the importance of a transportation policy serving his State, serving particularly the East Coast, but much more of this country than that, and I appreciate his leadership in that.

Previous generations of Americans built the best infrastructure in the world and we have watched it crumble for decades. New investment in infrastructure puts Americans back to work fixing railways and roadways. Our work in the Banking Committee to rebuild and expand public transportation will lead to new economic opportunities.

People are riding, again riding buses, trains, and subways, more last year than they have in many years. Sixty percent of the trips taken on public transportation are to and from work. Transit provides crucial access to jobs, particularly for low-income workers.

In my State's three largest cities, the three Cs, Cleveland, Columbus, and Cincinnati, our transit agencies carry more than a quarter-million passengers every day. Those trips do not just benefit riders, it is important to note. Every transit trip takes cars off the road, good for the environment, reduces highway congestion.

Federal transportation investment has been flat since 2009, but the level of backlog maintenance and repair grows each year. I appreciate Ms. McMillan speaking out on that issue, how important that is.

Cleveland RTA's fleet of 108 rail cars has an average age of more than 30 years and will need to be replaced soon. Its tunnels and stations also need major repairs. I have worked with Cleveland RTA General Manager Joe Calabrese for a long time. Most people carry pictures of their grandchildren in their wallet, but it seems that whenever I see Joe, he is showing pictures he carries around of crumbling concrete in his stations. That is all he wants to show me.

In the Banking Committee, there is a strong history of bipartisanship when it comes to drafting the transit title. I am looking forward to working with Chairman Shelby to reach a bipartisan agreement in the weeks and months ahead.

We have a chance today to talk about the President's vision for surface transportation as we begin work on a bill. He has proposed a 6-year, \$478 billion transportation package that significantly expands investment in public transportation. The President has proposed a new international corporate tax system that would shut down tax havens and increase domestic investment. This system includes a one-time transition tax on the roughly \$2 trillion—two-thousand-billion dollars—in offshore profits, which could make up the shortfall we need for a 6-year bill at administration levels.

I think we could look at a range of options, including the current user fee, but no matter what mechanism we choose and we pursue, we need to avoid an endless cycle of extensions. Nobody can plan when we run Government from Government shutdown to Government shutdown the way we have. We need to do much, much better than flat investment levels.

I would argue that stand-alone international tax reform, which I am working on with Senators Schumer and Portman and Mark Warner, who sits on this Committee, affords us the best opportunity we have had in years to escape the cycle of short-term flat funding. As the Finance Committee works on revenue for this bill, Banking will be working our part of it.

One area I think we should look at is the opportunity to increase jobs in the transit manufacturing sector in this bill through Buy America provisions. I know Senator Shelby and I both share significant transit manufacturing in our States and I am hopeful we can come to an agreement. I have been a longtime supporter of Buy America and have introduced the Invest in America Jobs Act in previous Congresses. Taxpayer dollars, whenever possible, should be spent supporting American workers and American businesses. All of us hear that in our States over and over again.

I understand there are concerns, but I do not accept the argument, as I know Ms. McMillan does not, that nothing can be done. We need to encourage the use of American suppliers up and down the supply chain. We need to close loopholes. We need to use more American-made products, such as steel.

Our Committee also needs to look at how we can build on the many successful policy changes in MAP-21. It helps speed con-

struction under New Starts and Small Starts. MAP-21 provided long-needed authority to FTA to oversee transit safety.

And, I thank again Administrator McMillan. She has been overseeing FTA's efforts to implement MAP-21. She can offer valuable guidance to our Committee.

I hope that our Committee can consider, Mr. Chairman, can consider Ms. McMillan's nomination quickly. The President nominated her in July. We reported her nomination unanimously last November, but the full Senate could not act on her nomination at the end of the year. The President re-nominated her in January. I hope she does not have to wait much longer to be confirmed.

Thank you, Mr. Chairman.

Chairman SHELBY. Thank you, Senator Brown.

Our witness today is Ms. Therese McMillan, the Acting Administrator of the Federal Transit Administration. Welcome to the Committee. Your written testimony will be made part of the hearing record. You proceed as you wish.

**STATEMENT OF THERESE W. MCMILLAN, ACTING ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF TRANSPORTATION**

Ms. MCMILLAN. Chairman Shelby, Senator Brown, and Members of the Committee, good morning and thank you for the opportunity to discuss the progress being made by the Federal Transit Administration in implementing MAP-21 and the administration's reauthorization proposal, the GROW AMERICA Act. I appreciate this Committee's continuing support of FTA as we deliver vital Federal funding to the Nation's public transport systems.

Mr. Chairman, transit ridership reached a record high of 10.8 billion trips in 2014 and the demand for transit service is on the rise. In many communities, transit is the lifeline to jobs, medical services, education, and community.

When increasing transit demand, however, is coupled with static investment, we see a growing need to bring existing systems into a state of good repair and to expand system capacity.

The passage of MAP-21 has moved us in the right direction to address these issues. Importantly, MAP-21 supported FTA's top three priorities: Improving transit safety, addressing the transit maintenance backlog, and building system capacity.

With the help and encouragement of this Committee, FTA is making significant progress toward implementing our new safety authorities. We are establishing the regulatory framework needed to ensure safety standards are in place in each transit system across the country to protect the riding public and transit agency employees. We have issued a Notice of Proposed Rulemaking to strengthen State safety oversight agencies. We have also issued final interim guidance on safety training, and there will be more FTA safety-related NPRMs and related guidance issued later this year.

MAP-21 began to address the maintenance backlog with the creation of the State of Good Repair Grant Formula Program, but much more needs to be done if we are to make significant headway against years of under-investment. The U.S. DOT's 2013 Conditions and Performance Report to Congress found an \$86 billion



maintenance backlog of transit assets and that backlog continues to grow at an estimated rate of \$2.5 billion a year.

In my 30 years working in public service, I have come to understand how critical it is to maintain and sustain the current system. Every day, millions of passengers across the country depend on the existing transit services to get onto the roads and rails and arrive at their stops or stations. This infrastructure must be maintained and renewed to improve safety and reliability.

That said, demand for new transit service continues to rise. FTA has 44 new projects in our New Starts or Small Starts pipeline since MAP-21 took effect, and 12 more projects are waiting in the wings to enter the program. This is, in part, because we have streamlined the process to help local project sponsors reduce the time required to move major projects through the pipeline.

In March of 2015, the administration submitted to Congress an updated version of its GROW AMERICA reauthorization proposal. Consistent with the President's fiscal year 2016 budget request, GROW AMERICA provides funding certainty by requesting a 6-year, \$478 billion multimodal proposal, including \$115 billion to support our Nation's public transportation systems.

The proposal increases average transit spending by nearly 76 percent above the fiscal year 2015 enacted levels, and this will enable us to address what transit agencies and local communities are asking for: Immediate repair needs, increased reliability, and better connections. GROW AMERICA also supports economic competitiveness through workforce development initiatives and increased Buy America requirements that would ensure transit assets are made in the United States.

By 2045, the population of the U.S. is expected to grow by an estimated 70 million people, and transit will be an important part of the transportation system that moves them. MAP-21 included provisions enabling FTA to focus limited resources on certain strategic investments and policies. The administration's GROW AMERICA Act will build on that foundation, improving transit service for millions of Americans by repairing and modernizing transit systems and expanding capacity for the generations to come.

I am committed to working together with this Committee toward our mutual goal of addressing America's urgent need for investment in transit infrastructure. Thank you again for inviting me to testify, and I am happy to answer your questions.

Chairman SHELBY. Thank you.

The law requires project applicants seeking a capital investment grant to have the resources necessary to recapitalize, maintain, and operate their existing system as well as the proposed system. This requirement is in place to ensure that we are not building beyond the true financial capabilities of a system. Regardless of the demand, the one thing we do not need is more infrastructure that cannot be adequately maintained.

Ms. McMillan, in reviewing the projects in the pipeline, including those currently receiving Federal funding, it is hard to believe that they are all being maintained in a state of good repair. It is even harder to believe that they will be able to maintain additional miles in the future. We all see that. What specific assurances can

you give the Committee that the Federal Transit Administration is, in fact, holding applicants to that basic requirement?

Ms. McMILLAN. Thank you, Mr. Chairman, for that question, and it reinforces the need for state of good repair in all aspects of our systems.

First of all, let me point out that under MAP-21, a significant new requirement was put in place for Transit Asset Management Plans and programs and we have been aggressively moving forward to implement that and we are expecting a Notice of Proposed Rulemaking to be issued certainly by the end of the year, and hopefully sooner than that. That is really critical in terms of being able to identify what the inventory is of all of the transit assets and to ensure that the transit agencies are assessing the risks attached to making sure they are in good repair, including safety implications. So, we will be working closely with the industry on implementing the transit asset management—

Chairman SHELBY. Along these lines, does the administration believe that the Government should continue to make investments in new or expanded fixed guideway systems without a state of good repair requirement? In other words, should project sponsors have to certify that their system is in a state of good repair before they are given Federal funding to build more? And, what, in your view, can and should be done to ensure that systems are making the investments necessary to properly maintain their infrastructure assets? It is kind of like you wanting to build onto your house a room or so and your house is just going to the devil, you know. What the heck?

Ms. McMILLAN. Well, as I mentioned before in my opening remarks, we do have an \$86 billion backlog in transit asset management. That is one of the main reasons we are asking for significant Federal dollars to invest in state of good repair as a priority. We believe that there are dual needs in the system. Clearly, we want to make sure that transit assets are safe, in the existing system, because that is the foundation, and that any new services would only be brought to bear if there is sufficient continuing progress made toward state of good repair. But, we are also seeing, as I mentioned, increasing demand to serve the growing needs for transit. So, we are trying very hard to balance both of those objectives in terms of both MAP-21 and GROW AMERICA provisions.

Chairman SHELBY. There are a lot of regional differences, we have been told. Over the years, the Committee has heard from the Federal Transit Administration grantees that FTA's regional offices do not uniformly apply the rules and regulations. These differences range from issues of funding eligibility, to ADA compliance, to Buy America waivers, among others.

Could you address just for a minute the perception that different agencies are held to different standards depending on their region of the country and tell the Committee what processes the Federal Transit Administration has in place to ensure that the regions uniformly apply the law. And, what kind of guidance and oversight of the regional offices do you have in place?

Ms. McMILLAN. Well, in the time left allowed, let me say that this is a priority for my administration. I have led significant reviews of our oversight processes. We work very closely with our

transit agencies as well as our regions if issues are brought to our attention. Very often, inconsistencies are fact specific and we want to understand those facts in order to address clearly what the concern may be. I am committed and have worked very closely with my staff to ensure that when we do oversight, it is important that it be done in a consistent and clear fashion.

Chairman SHELBY. Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

We do not in this body think all that much, unfortunately, or often enough, about low-income workers and low-income commuters, for that matter, and I find this a bit curious in that we are sort of chasing our tails. We are saying we should not invest in new infrastructure until we fund existing infrastructure, but we are not funding existing infrastructure. For example, the cars in Cleveland, is that new infrastructure to build new cars that are too aging and fixing those tunnels? Well, not really. It is really maintaining what we have. And, we are sort of chasing our tail with a kind of a circular argument, to mix metaphors here.

I bring up low-income workers because I know that, from conversations lots of places in my State, how hard it is to be poor, how hard it is to make \$9 and \$10 an hour, to get to work, to buy groceries. I remember a woman in Youngstown I was talking to who lived in what we call food deserts, and she had to get on a bus and go downtown, because that was where the line went, change buses and get on another bus and go out to Austintown, a suburb, which had real grocery stores with real fresh produce. It would take her about an hour, depending on the timing, it could take an hour and 15 minutes to get there. She could only carry—she was an older woman, I mean, sort of my age older, not 20 older, or not 70 or 80, but she was old enough that she could not carry that much with her and she had those struggles.

But, let me talk about access to jobs and commuting. How does this aging transit system affect access to jobs and commuting for low-income workers?

Ms. McMILLAN. Well, one of the critical needs, Senator, we need to be attentive to, is that the reliability of the transit system is critical in terms of job access. And, so, the state of repair of current systems can impact certainly the reliability of getting the service out on the road and that could have significant ramifications for the person who is late to their job or cannot access it at all.

But, in addition to your point about low-income workers, it is also important to note provisions both in MAP-21 as well as GROW AMERICA in trying to provide job opportunities through them, perhaps even within the transit industry. We have a workforce program that we have tried to target to low-income populations, to veterans, to women, to others who may need and could get a job through workforce programs supported by the FTA. As well, we have local hire programs that have been included recently in terms of efforts by the administration to expand the flexibility to consider local hiring, particularly in economically distressed communities, as well as provisions to allow that flexibility within GROW AMERICA.

So, I could comment more if that is getting at your concerns.

Senator BROWN. That is helpful. So, a modernized, efficient, up-to-date transit system gets people to their jobs, but a modern, efficient, up-to-date transit system also can create jobs.

Ms. MCMILLAN. Correct.

Senator BROWN. Talk to me—talk to us, if you would, about Buy America, if you would, why it makes sense to significantly increase the amount of American-made parts and materials required to go into transit vehicles in the next transportation bill. Are there interim steps we should take there to get compliance in full, meaning right up to approaching 100 percent made in America, not just for the assembly of the buses and the rail cars, but the steel and the components and all other things that can be made in America, leading up to that in the supply chain.

Ms. MCMILLAN. Yes. Thank you, Senator, for that introduction to a very important commitment by the Administration to create and preserve American manufacturing jobs in the transit industry. As you know, the GROW AMERICA Act does include a proposal to increase in a step-wise fashion the domestic content of both components and subcomponents for rolling stock from the current 60 percent on a 10-percent per year increase up to 100 percent.

It is our belief that this policy will create a significant market share for domestic manufacturing and entice overseas manufacturers to establish plants here in the United States. We have certainly seen the market be responsive to the fact that we significantly reduced waivers, Buy America waivers that we have granted—

Senator BROWN. So, explore that in the last couple seconds. Have you seen a domestic supplier stepping up where there might not have—I mean, you get these waivers because you cannot find a supplier that makes this component in a rail car, so you get a waiver. Are you seeing some new suppliers coming in, anticipating that there are going to be Buy America provisions and they are meeting that market demand?

Ms. MCMILLAN. Yes. In fact, there is a manufacturer in your State of Ohio who established a new plant in North Carolina to develop what is known as low-vibration ties, an important component of mitigating noise for a rail track. And, that had been something that had been sourced overseas previously, but when we had issued a non-availability waiver and asked for comment, this company was able subsequently to step in and fill that niche. So, we are seeing responsiveness in that—

Senator BROWN. So, that current 60 percent requirement for domestic content is going up, step by step, under MAP-21, is that right?

Ms. MCMILLAN. The proposal would be that it would increase to 70, 80, 90, and 100 on a step-wise year-by-year basis.

Senator BROWN. Mr. Chairman, bear with me for 30 more seconds.

And you are confident, Administrator McMillan, that we will be able to get to 70, 80, 90, because companies will anticipate that there is a place to sell to communities and transit systems and all, to sell these components and do it profitably and you will see these businesses begin to meet that demand?

Ms. MCMILLAN. I believe we are creating the environment for new domestic manufacturers to step in and serve the needs of

building transit infrastructure, rolling stock infrastructure, as well as rehabilitate it, yes.

Senator BROWN. Good. Thanks, Mr. Chairman.

Chairman SHELBY. Senator Scott.

Senator SCOTT. Thank you, Mr. Chairman.

Ms. McMillan, I certainly thank you, and good morning. Thank you for being here with us today. I certainly enjoyed our conversation last week as it relates to—I think we spoke in depth about the local hire program, and I will have a question about that.

But, just following up on Senator Brown's questions, this relates to Buy America and the President's proposal to move over the next 5 years incrementally to 100 percent. It appears that when I talk to industry and when I look at what we are asking industry to do, we may be creating an environment that is conducive for industry to move in that direction. I probably would say we are compelling them to move in that direction.

And, the fact of the matter is, when you talk to industry, especially Proterra, who uses a battery that is designed and made in China, getting there in 5 years just seems completely unrealistic. Your thoughts?

Ms. McMILLAN. We are attempting with the Buy America provision to significantly lift the bar and, as I said, to create the environment, to incentivize domestic manufacturers to step in. I believe that with the step-wise approach, that this provides an opportunity for the market to react. We are certainly willing to hear from the market and manufacturers, their sense of this. Our goal is to, though, make sure that we are pushing the market in a forward direction for domestic manufacturing, and importantly, domestic jobs.

Senator SCOTT. Thank you.

On the question that we discussed on the telephone, as it relates to the local hire programs, to me, part of the local hire program seems to be a perverse incentive to move jobs from one locality to another locality. It certainly has some, as Senator Brown talked about, the necessity of trying to find a way to use the Federal Government's programs to improve and incent folks to do local hiring. Perhaps there is a silver lining in there from an employee standpoint, but when you are talking about moving rolling stock from one State to the other State so that they would be compliant and allowed to bid on contracts, that seems to be a leap in the wrong direction, from my perspective.

When I look at Proterra located in South Carolina, in Greenville, South Carolina, bidding on a contract in California, it appears to me that the Department of Transportation in their recently announced pilot program would permit recipients of Federal transit money to use local hire rules in the procurement process not only for the construction services, but for the rolling stock that we talked about on the telephone. The end result would be to use South Carolina tax dollars, who contribute to the Nation, to subsidize creating jobs and, frankly, moving companies from one coast to the other in order to abide by the local hire program.

That just seems like a perverse incentive that is counterproductive, or merely charging one State and moving jobs to another State if, in fact, we saw the rolling stock move to another

State in an attempt to abide by the local hire preference programs that could be put in place.

Ms. McMILLAN. Thank you, Senator, and maybe if I could take a minute to explain the nature of the local hire options that we—  
Senator SCOTT. Please.

Ms. McMILLAN. —that we are working with. I think it would be helpful.

First of all, let me stress that the pilot program that we put forward is voluntary and the objective, actually, of putting it out there is to get at the concerns that you raised. We know that there are local communities, particularly in distressed economic areas, that would like the opportunity to create jobs for either the construction projects that are happening in their community or in the case of potential procurement opportunity. Very often, they have local or State laws that are already encouraging in that regard.

But, we also know that there are statutory provisions requiring fair and open competition, and so the objective of having the pilot program was for those areas that wanted to expand their flexibility in geographic preference to be able to evaluate the data and actually see what impact that would have on the competitive environment, so that we would have more information about how to strike that sweet spot between those two objectives: local hire, economic opportunity, and the competitive environment that we also need.

Senator SCOTT. Thank you.

My last thought would be that it seems like there may be an incentive to, in an attempt to help low-income wage earners in a specific locale, we create a program that takes good jobs in another low-income area of the country and we just transfer those jobs to another location. I am sure that is not the intention of the program. But, I think part of the unintended consequences could easily lead to us merely transferring and shifting jobs from one place to another place and both places have a very similar economic environment.

Thank you.

Chairman SHELBY. Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chairman, for convening this hearing on the Nation's transit programs. We all know they expire in just over a month, so it is incredibly important.

And, 3 years ago, the Committee worked in a bipartisan way to draft the transit title of MAP-21 and I think we made the best of a funding constrained environment, streamlining and reforming programs, eliminating stovepipes, focusing on core formula programs. But, I feel compelled to say program reforms are not going to fix our transit systems alone if we are not willing to make the necessary investments, as we have heard from everybody in the transit industry. Small transit systems are telling us they cannot replace their aging bus fleets. Large transit systems are working to tackle complex mega-projects.

So, it is an incredibly challenging set of circumstances, but incredibly important to the Nation's economy, to the Nation's national security. I say that because in the post-September 11 world, when everything closed down in New York City, it was different modes of transportation, like ferries, that brought people out of downtown Manhattan to New Jersey, where they were triaged, to

hospitals. And, when there was no other intercity travel, the reality is that Amtrak became an incredibly important tool. So, even in a post-September 11 world, in addition to the economies, moving people, the environment, quality of life, it has a national security imperative.

Now, Ms. McMillan, I appreciate your work. One of my top priorities is advancing the Gateway project, which includes replacement of the Hudson River tunnels and the Portal Bridge, both of which are over 100 years old and in serious danger of failing in the near future. Projects like this are critical for our mobility, our economic strength, particularly in our region, our security, and our safety. It is a linchpin, this particular project, of the entire Northeast Corridor region, which supports 20 percent of the United States' GDP. That is \$3.5 trillion of our domestic economy.

Now, in other parts of the world, we see visionary transit projects taking place, but here, projects like Gateway, that mean so much to our national economy, they are trying to cobble together funding and financing across dozens of funding and financing sources. So, does Congress need to fund a new Projects of National and Regional Significance Program, and does the administration have any proposals to help the United States undertake significant complex projects like Gateway?

Ms. MCMILLAN. Thank you, Senator. I would observe, first, that the significant increases in the funding levels for transit generally in GROW AMERICA is very reflective of the issues that you raised, that there is continuing need to support our existing systems and critical strategic investments, such as the Gateway project, that need to be made.

One thing that GROW AMERICA does is include significant increases in funding programs for rail, passenger rail, new programs in that regard that could certainly meet the eligibility needs of that project. We are also supporting increases in TIGER, in our TIFIA and RRIF Programs and the like. So, it is a rising tide lifts all boats scenario, I think.

Senator MENENDEZ. And, the difference with that—and I respect that and appreciate it—but, the difference with that is, again, you are creating a patchwork of funding sources for what is really a major project. In the past, we have had these Projects of National Significance or Regional Significance because we understand their significance to the country as a whole, even though it may be located in some part of the country. And, so, I hope we can look at that because otherwise, funding projects like that are very difficult.

Let me go to your testimony, which notes concerns raised by some bus systems about the cuts to the Bus and Bus Facilities Program under MAP-21. I would like to clarify several points.

First, a 2009 FTI report found \$50 billion in state of good repair needs in just seven of the larger oldest transit systems across the country. A subsequent report found that the state of good repair backlog for all transit systems nationwide was \$78 billion. So, is it safe to say that larger, older transit systems account for a significant amount of the state of good repair backlog?

Ms. MCMILLAN. Yes, Senator, and that is exactly why we have asked for a state of good repair increase in two major pots of funding under MAP-21, the Bus and Bus Facilities Program, as you

noted, significantly, but also increases in the State of Good Repair Formula Program, which serves our fixed guideways, including our rail systems.

Senator MENENDEZ. And if I may, Mr. Chairman, is it correct that according to the 2013 Conditions and Performance Report that non-vehicle rail assets are the biggest challenge to achieving a state of good repair?

Ms. McMILLAN. Yes. Critical facilities in our capital-intensive rail systems do make up a good portion of that.

Senator MENENDEZ. I have a lot of other questions, but I will submit them for the record and look forward to your answers. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Rounds.

Senator ROUNDS. Thank you, Mr. Chairman.

My questions really have to do not so much with mass transit, but with transit in rural areas. We often discuss transit funding in terms of large metropolitan areas with large transportation systems, such as a subway system, but rural areas, rural communities in a State like South Dakota depend on systems such as a bus or a van service to help seniors get to a doctor or to a pharmacy and to help workers, in many cases, get to a job in small towns and on our Reservations.

And in the case of South Dakota, we have nine Reservations, none of them in an urban area, all of them in rural areas. And, in these areas, in a lot of cases, particularly on Reservations where we have two counties that are some of the poorest counties in the entire United States, cars are still a luxury. Most—a lot of people do not have access to them. These services, in many cases, replace that vehicle. The services are vital to helping citizens in those areas get to where they need to be.

Can you outline for us some of the benefits that you would see to rural transit services with the expiration coming up of MAP-21 and what opportunities that might be available for us to modernize and to expand rural transit services while making certain that these important transportation services actually receive the necessary funding. It is kind of a softball question in a way, but I think it is something that we have to remember, is mass transit is one thing and the vast majority of the dollars we are talking about go in that direction and we understand that. But, let us not forget about the need for the transit system in our rural areas, as well.

Can you share with us a little bit about your knowledge of that and where you see the opportunities to make sure that we do not forget about those folks in those rural areas.

Ms. McMILLAN. Thank you so much for that question, because it is a critical part of the tools that we bring to bear to ensure that those tools can be used by our rural systems as well as our urban systems.

Just to give you a sense of scale, our current formula program, where we continue to offer significant assistance to the States that administer that program as well as the recipients who use it, there are 1,300 sub-recipients under what we call our 5311 Formula Rural Program. There are many, many very small systems that critically need the services that get folks, as you say, to regional



health centers or employment centers or education and we need to be very mindful of those needs.

For the Tribal Program, in particular, under MAP-21, we actually doubled the program, from \$15 million per year to \$30 million a year, and made that program into a combined formula program for some increased predictability as well as a discretionary program to deal with some specific needs. We are now serving 114 Tribes under the programs as of fiscal year 2015, so working very closely with them.

But, I would also like to point out that when we are dealing with national policies, such as our State of Good Repair Program, our Transit Asset Management Program that we have mentioned, as well as our new safety authority, it is very important to recognize one size does not fit all when we implement those policies and programs, and we are keenly aware that we need to work with our smaller urban and rural systems to ensure that we make a commonsense framework for dealing with these new programs and make sure they fit the needs of those smaller systems and are not overly burdensome.

Senator ROUNDS. Could you share a little bit about your discretionary capabilities with regards to the funding on the Tribal areas, please.

Ms. McMILLAN. So, of the \$30 million we have, \$5 million is for a discretionary program and \$25 million is for the formula. We serve every—a number of needs, anywhere from startup operation systems for new Tribal services that are put in place as well as, similar to rural areas, vehicle replacement opportunities, the facilities and services that accompany keeping those vehicles in good repair and getting the services out on the street. So, it is a fairly flexible program in terms of where we can put the need. Importantly, my regions work very closely to understand what those needs are and make sure that the technical assistance is provided to Tribal Nations to make sure that they can participate effectively in the program.

Senator ROUNDS. Thank you.

Thank you, Mr. Chairman.

Chairman SHELBY. Senator Warren.

Senator WARNER. Thank you, Mr. Chairman, and thank you, Administrator McMillan, for being here with us today.

This winter, Massachusetts was hit by a record-breaking snowfall. We had more than 110 inches in the Boston area alone, and unfortunately, the Massachusetts Bay Transportation Authority System failed under that unprecedented duress. The T was forced to shut down many of its operations and it took about a month to restore normal service. That forced tens of thousands of commuters to seek other ways to get to work, which resulted in snarled traffic, long lines, and a mess throughout the region, a very costly mess.

The T faces a huge maintenance backlog. A recent report by Governor Baker's special panel to review the MBTA indicated that the T did not do enough to bring crucial components of the transit system to a state of good repair. And, we know there are similar problems all around the country.

Now, given the size of our Nation's backlog on transit maintenance, which stands, as you said, at over \$86 billion, growing at

about \$2.5 billion annually, it is unrealistic to think that we are going to solve this problem overnight, but we need a plan to increase our transit systems' resiliency and we need it now.

Administrator McMillan, a recent GAO study noted that some aspects of Federal grants that have made it more difficult for transit networks to become more resistant to catastrophic events. Do you believe transit system resiliency should be a priority in the next reauthorization, and if so, how can grant programs be improved to achieve this goal?

Ms. MCMILLAN. Thank you for that question, and indeed, we all were incredibly mindful and, I think, humbled by Mother Nature's attack on the Northeast and its impact on transit systems. Let me point to a couple of things, Senator, that I think get to your concerns and questions.

The first, again, goes back to the effective implementation of the Transit Asset Management Program. This was, again, created in MAP-21 and the intent is to ensure that every transit agency, from our very small rural areas, and up to our complex urban systems, have a handle on what is their inventory of assets; what is the condition of those assets; what are the risks and other factors that need to be taken into account in terms of how those conditions came about and how they could be mitigated; and use that information to make very strategic decisions about the resources, not only Federal, but local and State and others, of how to prioritize those resources to deal with those needs.

Once those needs are identified, though, through those programs, as you have well mentioned, we then need to have the resources brought to bear in order to address a solution, and that is exactly why under GROW AMERICA we have identified, again, those two major programs, increasing the State of Good Repair Program for mainly our fixed guideway rail assets, but importantly on the bus side, as well, because, of course, they were caught up in those additionally—

Senator WARREN. Oh, yes.

Ms. MCMILLAN. That is where, with our Bus and Bus Facilities Program, we are looking for a fourfold increase to almost \$2 billion a year from the lower base that they were having to grapple with under MAP-21.

Senator WARREN. And, let me just ask you, and if I can, briefly, because we are low on time here, do you believe the FTA should encourage transit systems to conduct stress tests to expose the weaknesses in their systems?

Ms. MCMILLAN. I think that is exactly the type of diagnostic that would be incorporated into a Transit Asset Management Program. Again, one of the things we are very careful to acknowledge—

Senator WARREN. I take that as yes, then.

Ms. MCMILLAN. If it makes sense for the operating conditions of the transit agency, they should have the flexibility to incorporate that into their program.

Senator WARREN. OK, good. I just want to say, thank you very much. Extreme weather events are hitting more and more often. We experienced it firsthand in the Northeast this winter. We saw also firsthand the vulnerability of our decaying transportation infrastructure. We know that there are a number of challenges in

trying to deal with our maintenance backlog, but it is time to get moving, to prioritize Federal funding to get our transit systems to a state of good repair.

Thank you very much, Administrator McMillan.

Chairman SHELBY. Senator Warner.

Senator WARNER. Thank you, Mr. Chairman, and thank you, Administrator McMillan.

I want to pick up on my colleague, Senator Warren's, comments. In Boston, it was the case of an extraordinary weather event. In Washington, we did not have that excuse. The Chairman even mentioned the event that took place on January 12 here in the Washington system. Unfortunately, not the first time the Washington Metro has been plagued by events, accidents, what appears to be a lack of a culture of safety. We saw in this event failures of evacuation systems, failures of ventilation systems, failures of radio systems.

One of the things I want to thank you for was the fact that the FTA decided that they would come in and do, in effect, an after-action independent report that would provide the kind of transparency that is lacking. My understanding, that report was scheduled to be done by the end of May. I just want to know, is it still on schedule to be released at that point and are there any early, preliminary findings?

Ms. McMILLAN. Thank you, Senator, for the question. Yes, we are conducting a safety management inspection of WMATA, which is a complement, of course, to the partnering we did with the NTSB looking specifically at the L'Enfant incident. And, our field work is ongoing right now with WMATA. I do not have findings at this point to share. Certainly, when they are available, we would work with your office on not only the findings that come out, but recommendations that we may be making. The work and analytics, though, are ongoing still at this point.

Senator WARNER. But, it is still hopeful that this report will be done by the end of May, as it was announced?

Ms. McMILLAN. We are—I will get back to you with the timing on that and—

Senator WARNER. We would be very focused on the end of May.

Ms. McMILLAN. Absolutely.

Senator WARNER. Let me just move to specifics here. I have had some background in the mobile radio business, and what was remarkable in the case of the L'Enfant Plaza incident was we have now found that the radios were failing on an average of 12 percent, that there was—you know, we have got here in greater Washington a series of different governments, all with different radio systems. We contacted our Council of Governments that came back with a report on interoperability. It seems to me, and again, I think Senator Warren's comments about a stress test makes a lot of sense—are there not standards in place, standard protocols for testing of radio systems, because most every metro system has a variety of jurisdictions, all with their first responder systems different in nature.

Ms. McMILLAN. One of the key things that we are doing at the Federal Transit Administration is implementing the new safety oversight that was provided to us under MAP-21, and a significant

pivot point in our approach to that is what we call a safety management system that would be the focus of, not only for each transit agency, an opportunity for them to identify what are the unique risks that are attached to the operating environment as well as the capital infrastructure where hazard mitigations need to be identified. So, in that particular case, that would be something we would hope would be highlighted within an SMS——

Senator WARNER. Just yes or no. Will there be Federal minimum standards for emergency radio interoperability standards?

Ms. MCMILLAN. We will be——

Senator WARNER. So there is not——

Ms. MCMILLAN. There is not at this point——

Senator WARNER. What about evacuation standards?

Ms. MCMILLAN. We need to assess what makes the most sense under our safety authorities. We could certainly work with your staff and get back to you with our thinking on that——

Senator WARNER. What about——

Ms. MCMILLAN. ——as we are going forward.

Senator WARNER. ——minimum ways to check ventilation systems?

Ms. MCMILLAN. Our hope is that there certainly will be attention paid to all of those things as part of the safety protocols that we will put in place under our authority. One of the——what would be dictated in terms of national standards versus ones that agencies themselves would put into place is something we are working on right now as we are implementing our safety authorities——

Senator WARNER. What I hear is there are not any of these standards. I guess, Mr. Chairman——

Ms. MCMILLAN. Not at this point.

Senator WARNER. Mr. Chairman, what I would hope is that, you know, we have got a lot of folks in this region, a lot of our staff who ride the Metro every day. There was an inability for us to convey to riders in the aftermath of the incident on January 12 whether it was safe to get back on Metro, and there seemed to be part of that because there was not these standards that are established, and these can—I am not sure we are looking at one additional level of regulatory bureaucracy, but there ought to be some level of common standards. And, I think Senator Warren's comments of the notion of a stress test-type approach, and there are going to be radio systems, evacuation systems, ventilation systems in every transit system, would be something worthwhile.

And, again, I am looking forward to your report on the incident, hopefully reported by the end of May. But, I do think this is a subject that, as we go through reauthorization, we ought to look more carefully at.

Chairman SHELBY. Senator, I think you are right. I think Senator Warren raised that earlier. You need some uniformity when it comes to safety. We know that.

Senator WARNER. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Merkley.

Senator MERKLEY. Thank you, Mr. Chairman, and thank you, Administrator McMillan.

One of the questions that I would like to get your insight on is the Buy America provision of public transit. Our Ranking Member

has had a bill in the past that increased the proportion of inputs to rolling stock in terms of a Buy America ratio. Do you have any insights or thoughts in that regard?

Ms. McMILLAN. The GROW AMERICA Act put forward by the administration does include a step-wise change to Buy America provisions to increase the domestic content for components and subcomponents over a step-wise period of 10 percent per year. That is included in the bill.

Senator MERKLEY. And what does it rise to?

Ms. McMILLAN. It would go to a hundred percent.

Senator MERKLEY. OK. And you consider that a valuable use of public funds, to help reinvest in our own economy?

Ms. McMILLAN. Yes. We believe by increasing the domestic content requirement, it provides the environment for domestic manufacturers to step in and meet that market need and create the jobs attached to that.

Senator MERKLEY. Thank you. I appreciate that.

You said in your testimony that about, quote, "half of all transit riders do not have access to a private vehicle," making public transportation many people's primary way of getting to work, school, or health services. As we think about putting together another surface transportation bill, what suggestions might you have to ensure that we are spending our transportation dollars to better connect communities and people who have a high reliance on public transportation and the community services and jobs they depend on?

Ms. McMILLAN. A critical part of public transportation is ensuring that each community has the opportunity with Federal funds to tailor the types of services they need, whether in a large urban system it is ensuring the existing system is in a state of good repair and reliable; or providing valuable resources that exist in suburban areas that are growing, where they may need opportunities to expand transit. We would note that, very often, low-income communities are located in suburban environments as well as urban and rural environments, and so their needs would have to be addressed in that growth. There may be opportunities, or needs, certainly, to grow transit services in rural areas, as well, depending on their circumstances. So, you will see a diverse portfolio in the programs that we have in GROW AMERICA to meet the diverse needs that we are seeing.

Senator MERKLEY. Thank you, and I think Oregon has a somewhat unique situation of having urban growth boundaries that concentrate the form of the city and public transit becomes incredibly important in that strategy. The whole effort was to preserve farming and forest lands and it has worked relatively well, but it does not work well without good transit.

One of the items that transit districts in Oregon keep bringing up to me is the change from discretionary programs to formula funding in the Bus Facility Program under MAP-21. And, essentially what they lay out is they used to be able to get a big grant to help essentially buy a significant number of replacement vehicles at a single time, or if not replacement, to add to their fleet. Now, they receive formula funding that is kind of a trickle of funds and does not enable them to undertake the substantial acquisitions where there are cost efficiencies in buying a significant portion of

a fleet at a time. So, they have found themselves essentially in a situation where they use that trickle of funds to maintain aging fleets because they cannot afford to buy new ones.

I will just put it simply. They liked the previous strategy better. They found that more effective, and the ability to acquire more fuel-efficient vehicles and so forth. Is there any thought to pushing back to the direction of the former framework?

Ms. McMILLAN. GROW AMERICA would increase the overall Bus and Bus Facilities Program four times, almost \$2 billion a year, and we propose to reintroduce a portion of that, about 30 percent of that funding base, to a discretionary program.

Senator MERKLEY. Well, I do not know. You are just completely befuddling me because you are saying yes to everything I ask for. What else should I ask for, Mr. Chairman?

Chairman SHELBY. Go ahead.

Senator MERKLEY. Anything you want me to ask for on your behalf while we have got this positive rhythm going here?

Chairman SHELBY. Always something.

Senator MERKLEY. Well, really, that is all the things that I needed to raise and I appreciate your testimony, and thank you, Mr. Chairman.

Chairman SHELBY. Thank you, Senator.

Senator Moran.

Senator MORAN. Mr. Chairman, thank you very much. Ma'am, thank you very much for being here.

I always smile when I tell people I am on the Banking and Urban Affairs Committee. Coming from Kansas, it is sometimes not thought of as an urban place. The same is true of transit. We sometimes think that transit is simply something that is useful and beneficial to folks who live in the cities, who live in urban areas or suburban areas, and from my most rural communities, where a bus is necessary to get to the hospital or the doctor, to Johnson County, Kansas City, Kansas, the suburbs of Kansas City, Wichita, or Topeka, these issues are hugely important.

You indicated last year that more Americans travel by bus than any other form of transit, and MAP-21 took about half the funding of the Bus and Bus Facilities account and transferred that to the rail State of Good Repair Account Program, and as a result, our ability to purchase buses, our ability for our transit authorities to acquire the necessary equipment to meet the needs of their riders, the consumer, is significantly limited.

Johnson County, which would be the suburb of Kansas City, is our most populated county. They have 58 fixed-route buses, 20 percent of which are nearly two decades old, and those buses have been in—are very expensive to replace. The total amount of money that the transit authority got was \$350,000. It would not buy, probably, a bus.

So, my question is—I guess there is a point here. We want your help in emphasizing the importance of this program and I would ask you about how you would prioritize this—or describe the consequences of the removal of \$560 million to the railroad side of things.

Ms. McMILLAN. Senator, what you have been hearing from your constituents is clearly what we have been hearing over and over

again in terms of an area in MAP-21 that presented some significant challenges. And, to redress the concerns that we are hearing from folks, there are two things to emphasize.

One, the change to a formula did bring some predictability, but it needed to be on a much higher funding base. So, we are proposing to increase the base from just under \$500 million a year to \$2 billion a year under the GROW AMERICA proposal.

Within that, though, to the point that you made, even then, the slice of the pie that a smaller agency may have in a rural area or a small urban area simply would not be enough for those big one-time needs that they have, which is why we are proposing to reintroduce a discretionary element—not to take away the formula completely, but to make the much higher funded Bus and Bus Facilities 70 percent under formula, and 30 percent under a discretionary program.

Within that, we would also ensure that 10 percent of the discretionary awards would go to rural areas to make sure that within that discretionary paradigm, that—

Senator MORAN. How do you define rural? Do you know, in your proposal?

Ms. McMILLAN. Yes. The break points or thresholds, if you will, for formula programs are 50,000 in population or under is rural, and small urban, if I am getting this correctly, is 200,000 or under in the area.

Senator MORAN. And you are talking population—

Ms. McMILLAN. Population. Yes. Yes.

Senator MORAN. All right. So, the problems that you are aware of and that I am describing are ones that you believe your proposal would solve?

Ms. McMILLAN. Yes. We believe that—in fact, we scaled our recommendations for Bus and Bus Facilities based on the concerns that we were hearing, yes.

Senator MORAN. Thank you very much. Thank you, Mr. Chairman.

Chairman SHELBY. Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman, and welcome. Thank you very much for your service and for your testimony.

One of the things that we have discovered in Rhode Island, but it is not unique to Rhode Island, is our transit system, the operators are aging out and their anticipation is that within the next 10 years, half of the drivers, mechanics, et cetera, will be retiring from systems all across the country. So, how is the administration, or is the administration proposing to help these transit systems deal with a very quick change in their workforce?

Ms. McMILLAN. Thank you, Senator, for that question, and let me take it in two parts, briefly.

The first is that under MAP-21, we did have the opportunity to implement an Innovative Workforce Development Program, and in fiscal years 2011 and 2012, we had over that period \$10 million that we made available for workforce programs targeted particularly at the issue you have raised of the need for training a workforce and the changing technologies. As new fuel buses are coming online and the like, we were realizing that we did not have a work-

force that was trained in those new skills, nor did we have an opportunity for the existing workforce to get retrained. And, so, we were identifying pilot programs to address that.

Likewise, in October of 2014, we released a notice of funding availability for another round of workforce assistance, this time geared at creating workforce opportunities for populations often not having a chance to get into this opportunity: low-income populations, veterans, women, and the like, and looking at model workforce training with community colleges or apprenticeship programs to deal with that.

That said, the gap is estimated to be between 5,000 and 6,000 workers in terms of what transit agencies need going forward. Therefore, under GROW AMERICA, we are asking for some significant increases in workforce assistance, about \$20 million a year to support recruiting and training, again, of skilled workforce through grants, but also to revamp our public transit Federal institute that we underwrite. We would revamp that to ensure that the training offered through that mechanism would deal with what you would term blue collar or line skills training as well as managerial leadership-level training, again recognizing the breadth of need that we have.

Senator REED. Thank you very much.

We are pleased to see that the administration is proposing some significant funding for transit, and it seems, though, that—and I think there is a demand and a need for it—that some of the money is going to rural areas, which Senator Moran was talking about that, and then some of the money seems to be headed toward sort of bigger, faster growing areas. Rhode Island sort of finds itself maybe in the middle, because it is not growing dramatically in terms of population, it is not a rural area by any stretch of the imagination, but transit is so critical. How would these proposals sort of help areas like Rhode Island expand bus rapid transit service within very constrained spaces, our metropolitan areas?

Ms. McMILLAN. Well, bus rapid transit is a technology and approach that we are seeing increased popularity in across the country. And, one of the areas certainly is in our New Starts and Small Starts Program, Small Starts in particular. We are seeing a lot of demand there. We have asked for a significant uptick in funding for the program in order to create the capacity for services such as BRT, and we have seen BRT in areas such as you describe in your State, established areas that have a growing ridership, but also in areas such as El Paso, Texas. So, we just want to make sure our programs are flexible enough to accommodate each of those demands.

Senator REED. Well, I think the key is flexibility, because, again, there are rural areas that are very much underserved and then there are some older urban areas that are not growing but depend critically on transit in terms of being more productive and more attractive for job growth and everything else.

But, thank you for your service and thank you, Mr. Chairman. Chairman SHELBY. Thank you.

I have another question for you, getting into some areas that I brought up earlier. Federal policies, I believe, should encourage private investment in transportation infrastructure in order to better



leverage Federal investments and to increase economic growth. Public-private partnerships, or P3s, are one way to do this. The Denver Eagle P3 project is the only public transportation public-private partnership in existence, to my knowledge. While I am pleased that the administration is encouraging private investment in transportation infrastructure, I am interested in the steps that the Federal Transit Administration is taking to encourage more transit P3s. Are you doing that, and if not, why not?

Ms. McMILLAN. Thank you, Senator, and I would like to highlight four areas—

Chairman SHELBY. OK.

Ms. McMILLAN. —where public-private partnership is being worked on.

First of all, under MAP-21, as you know, Mr. Chairman, there was direction to provide technical assistance and education to those interested in pursuing private sector related opportunities. We launched a Web site in July of 2014 to do exactly that, highlighting areas from research that we had done with the communities, and we are working closely with the Build America Transit Infrastructure Center, as you mentioned, a very important way to collaborate and bring even more resources from the Department to bear.

We are pursuing a rulemaking, also required under MAP-21, to identify potential barriers to the private sector. Again, we spent some time researching and holding outreach efforts to the industry and stakeholders, came up with a list of barriers that have been identified, and we are hoping to get that NPRM out by the end of the year.

Importantly, though, with transit, we are pursuing private sector participation opportunities in the area of economic value capture. This is something that I think is uniquely situated to the transit industry, whereby when new transit projects come in, we can work with—

Chairman SHELBY. What do you mean by that, economic value capture? Explain.

Ms. McMILLAN. When a new transit project is built, it often has the effect of increasing the land values—

Chairman SHELBY. Oh, yes.

Ms. McMILLAN. —around the station.

Chairman SHELBY. The whole area.

Ms. McMILLAN. Exactly. And, so, what we would like to do is explore with the development community as well as local jurisdictions and transit agencies how the transit projects can capture some of that value to help with the construction, importantly, in terms of that mix, but also potentially in terms of ongoing operations and maintenance assistance. We are seeing that in a few areas, where the development community sees the “t” in transit-oriented development as critical to their ongoing health. So, that is an area we are very actively exploring.

Finally, I wanted to note, transit’s presence in accessing TIFIA loans has increased dramatically. There have been 14 TIFIA loans made to transit projects, also one RRIF loan, the rail oriented loan program, where transit had eligibilities there. And, we have seven letters of interest for additional transit projects tapping into that source. And, as you know, that has been very helpful in helping to

attract private capital into these complex funding mixes for transit. So, those are four areas where we have been involved.

Chairman SHELBY. What if someone had a vision of an area, we will just call it in Kansas or Rhode Island or anywhere else, you know, to upgrade an area, and you could do it by a new transit project and the things that build around it and so forth. Because our dollars are so short, would it make sense if you could, say, fund 20 to 30 percent of it like a grant of some kind and then have a private partnership that would come, like you would pay the downpayment and they would do it, because you could leverage so much more money. You would prime the pump, so to speak. That works in other areas. I just wondered if it was really developed theoretically, and then to a practical sense, to where you can leverage money, because leveraging money is how they do things.

Ms. McMILLAN. Right. I think those leveraging opportunities is exactly the arena that we want to explore with the Build America Transportation Investment Center. I think there are things we can learn from what our sister agencies that have seen, and bring best practices into the transit industry. And, also, again, be a resource.

We updated, for example—significantly updated—our joint development circular that we have had for many years, and we understood from the private sector industry it was quite confusing. And, so, simply by going through and revamping that and being very clear about the opportunities that presented was a way of bringing, hopefully, more folks into the circumstances you just described.

Chairman SHELBY. Do you agree that projects with a minimal Federal investment should not be subject to the same level of bureaucratic oversight as those with a significant Federal investment? And, what can you do administratively to alleviate some of those?

Ms. McMILLAN. Well, Mr. Chairman, one of the things that was an important opportunity under MAP-21 was the streamlining opportunities related to our New Starts, Small Starts Program and Core Capacity. It is a flagship program with very big dollar amounts often involved in the projects and streamlining was designed into some of the reforms that MAP-21 brought to the table.

I am happy to say that with a policy guidance that was put out for comment this month, we have addressed all of the streamlining steps that were attached to the baseline program and we are looking forward to seeing that move forward.

So, I would say, broadly, for any transit project where Federal dollars are put to use, streamlining and getting those projects out, on the ground as soon as possible, is an objective.

Chairman SHELBY. With our greatest needs that have been laid out here today all over the country, maintenance, keeping up, keeping up what we have, new buses, new transit systems, new rail, whatever, we have got to change the model some way. Do you agree with that? We are going to have to change the model, because we are not going to have the money that we need. You can see us tightening up. So, it looks to me like leveraging the private system, because the private system is much bigger, if they had the incentives to work, and I think we would all benefit from it. I know that is probably above your job description right now, but it is

something I think we, as policymakers, ought to really seriously think about up here.

Senator MORAN, do you have any other questions?

Senator MORAN. If I could, Mr. Chairman, thank you.

Chairman SHELBY. OK.

Senator MORAN. Ms. McMillan, you answered my questions earlier satisfactorily. Thank you. But, your answers did assume more money. You talked about the President's budget, our request. I think it is more likely that the spending, the funding is going to be much closer to flatlined than it is a significant increase, and my question is, do you have the capabilities and plans to help us answer those questions? How do we put more money—and perhaps this is exactly what the Chairman is indicating—how do we put more money into infrastructure and transit if it is not the easy answer that we are just going to have more money to do it? And, so, what are your priorities? How do you help us prioritize how I can help those rural communities and I can help those Topeka, Wichita, and Kansas City areas, for example, acquire a new bus if there is only the same amount of money in the transit part of the new transportation bill that I hope we pass?

Ms. McMILLAN. Senator, I would say that we can always make progress in making our framework, whether it be our regulatory framework or project development and evaluation framework more streamlined. One example with our small bus operators that we are working on is to figure out ways that we can make the procurement process for vehicles, when they only buy a small number of vehicles, make that more streamlined and, hopefully, bring the unit cost down as a result.

But, that said, I firmly believe and I have to reiterate that the reason that we have put forward the robust funding levels under GROW AMERICA is that the United States economy and the people here deserve more than just backfilling the holes that we have seen. We are not going to be able to advance and meet the needs of transit and the larger United States transportation system if we do not see increased funding levels. And, so, we look forward to working with Congress on that discussion. But, we have built these numbers around the needs that we see, everything from, again, re-investing in the existing system which is crumbling at the seams, to the demand that we are seeing from generations that want options and they want to move in ways that are different from perhaps how we are doing it right now.

Senator MORAN. Thank you.

Chairman SHELBY. Senator Schumer.

Senator SCHUMER. Thank you, Mr. Chairman, and to you and the witness, I apologize. We have Finance Committee on TPA, so that is sort of right on the hotplate right now. But, anyway, I thank you and thank you for your good work, Acting Administrator McMillan.

One of our top priorities for this Congress must be passing a long-term infrastructure bill that provides the level of funding our system needs. Throughout the country and in my State of New York, we are seeing impacts of recent failures to sufficiently invest in infrastructure. The failure to properly invest poses huge issues for safety, for local governments, for the ability to meet critical re-

pair needs, enhance capacity, and invest in projects that create jobs, spur economic growth and development in the future.

Current estimates of backlog of critical maintenance in transit alone is \$86 billion. That number does not account for roads and bridges, which are probably even greater, nor does it include projects that would increase capacity. In New York, our subway system, because New York has grown in population and we are doing pretty well, is just up to the gills, record ridership.

So, right now—and right now, the MTA, New York's transit agency, has a state of good repair backlog of \$50 billion. That is just the investment required to fix issues in the existing system and get it up to current standards.

So, my first question to you, do you believe our current transit spending levels are enough? Some people say, let us just for a short time, a long time, keep the same level of spending and renew it. Can you talk about some of the impacts both on safety and the Nation's economy if we fail to increase spending levels for these programs.

Ms. MCMILLAN. Well, the short answer to your question, Senator, is no, we do not believe that the current funding levels are sufficient. To start with your observation on need of the existing systems, we have a backlog of an estimated \$86 billion, but that grows every year at the existing funding levels, as I mentioned in my earlier remarks, at \$2.5 billion a year, and that is just for the systems as we see right now. Not dealing with that certainly increases the risks, the safety risks, of operating those systems. Transit agencies every day do the best job and put out a safe system, but crumbling infrastructure has its impacts and we need to ensure that we deal with those.

In addition to that, though, as you have mentioned, there is increasing demand for more transit service. We have programs that we have proposed in GROW AMERICA, increases in our New Starts, Small Starts, in our Core Capacity Program. New York MTA is extremely interested in participating in that, which is creating capacity within the existing footprint. Our rural systems are seeing increased pressure because of the aging populations in their area. So, demographics are pushing us to greater need and that is why we have the diverse portfolio we have proposed.

Senator SCHUMER. OK. The next two questions are transit related. Even in areas that do not have lots of mass transit—obviously, we in New York depend on it. To get 3.5 million people on and off Manhattan Island every day is an amazing accomplishment that is done by the, for all its problems and all its need for funding, the miracle of the New York City subway and mass transit system. It helps the rest of the country.

And, that is my first question. I am going to ask both at once to not take too much of the Chairman's time. Can you talk about the impact of increasing spending in transit on communities that do not have a local recipient, in other words, they do not have a local transit agency, but spending on transit still helps them, manufacturing and other things.

And, second, a specific concern I am hearing from transit agencies in my State, across my State, the need for a discretionary program for buses. I am sure you are aware, without a program of this

type, it is difficult for smaller communities, as you mentioned, to replace existing bus fleets, given the sizable one-time cost of bus replacement. Rural communities are particularly affected. Doing things like creating a discretionary bus program would be a worthwhile use of funding. We do not even have, though, now with the current funding levels, enough for the cost of maintenance of infrastructure.

So, can you talk about the benefits of creating a discretionary bus program and how smaller bus-dependent systems could benefit from an agreement by this Committee to increase that level. You can focus on the second.

Ms. MCMILLAN. On the second one——

Senator SCHUMER. Yes.

Ms. MCMILLAN. ——again, our proposal for Bus and Bus Facilities under GROW AMERICA is to increase the program fourfold and to change the structure to 70 percent of the formula that we see right now, but reintroduce the remaining 30 percent in a discretionary structure to meet the unique needs that may emerge for our transit agencies.

Senator SCHUMER. Great. Thank you.

Mr. Chairman, thank you very much.

Chairman SHELBY. Thank you for your appearance and your testimony here today. We look forward to trying to solve some of these problems together. Thank you very much.

Ms. MCMILLAN. Thank you, Mr. Chairman.

Chairman SHELBY. The meeting is adjourned.

[Whereupon, at 11:27 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

### PREPARED STATEMENT OF SENATOR MIKE CRAPO

I commend the Committee for holding this hearing on transit issues. Transit is often discussed in the context of large metropolitan areas and in the context of fixed rail service—but it is also important in a relatively rural State like Idaho where bus service is the option in our largest metro area. And it is important service. Bus and van service, whether on routes or on demand, can help get seniors to the doctor, hospital, or pharmacy and get workers to jobs. In the absence of a car, transit can be a lifeline for a number of citizens. As the Committee reviews transit issues, I urge that we keep in mind the important role played by transit in smaller and rural communities.

### PREPARED STATEMENT OF THERESE W. MCMILLAN

ACTING ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION, DEPARTMENT OF  
TRANSPORTATION

APRIL 21, 2015

Mr. Chairman, Ranking Member, and Members of the Committee, thank you for the invitation to appear before you today to report on the Federal Transit Administration's (FTA) progress toward implementing the Moving Ahead for Progress in the 21st Century Act (MAP-21). We are pleased for the opportunity to discuss the Administration's surface transportation reauthorization proposal, the Generating Renewal, Opportunity, and Work with Accelerated Mobility, Efficiency, and Rebuilding of Infrastructure and Communities throughout America (GROW AMERICA) Act. It builds on the strong foundation MAP-21 provided for public transit, recognizing transit's growing presence across the country.

In 2014, Americans took 10.8 billion trips on transit—the highest annual ridership number since 1957. Public transportation is a way of life in urban areas, a lifeline in many towns and rural areas, and a quality of life improvement for many fast growing communities. In addition, many working families, seniors, veterans, individuals with disabilities, tribal residents, and others rely on public transportation for their mobility needs. Transit is a driver of local and regional economic development, helps reduce highway congestion and greenhouse gas emissions, and provides people better access to job centers, schools, medical services, and other vital daily activities.

Approximately half of all transit riders do not have access to a private vehicle, making public transit a primary means of connecting to their local community. FTA anticipates that demand for public transportation service will continue to rise. Now is the time to deliver the policy and funding solutions America needs to improve our national transportation network, invest in our collective future, and grow the economy.

MAP-21 took effect on October 1, 2012, and authorized \$10.6 billion in FY2013 and \$10.7 billion in both FY2014 and FY2015 for public transportation. FTA is effectively and efficiently administering those Federal dollars through its formula and discretionary grant programs. We also continue to make significant progress on an aggressive timetable towards implementing new safety authority through the rule-making process and developing related guidance with input from affected stakeholders.

Last year, the Administration proposed the GROW AMERICA Act, which was a comprehensive 4-year, \$302 billion reauthorization proposal calling for substantial funding increases as well as critical policy reforms. Congress passed a short term extension with status quo policies and flat funding, which did not address America's infrastructure funding challenges. In March 2015, the Administration submitted to Congress an updated version of GROW AMERICA, consistent with the President's FY2016 Budget Request, which adds additional funding certainty by requesting a 6-year, \$478 billion multimodal proposal, including \$115 billion to support our Nation's public transportation systems.

The GROW AMERICA Act continues the focus on FTA's three key priorities: improving transit safety—FTA's highest priority; addressing a transit asset maintenance backlog that's more than \$86 billion and growing; and building system capacity to meet growing ridership demand.

To that end, the President's FY2016 Budget Request seeks \$18.4 billion to maintain existing transit systems in a state of good repair while expanding transportation options. The proposal increases average transit spending by nearly 76 percent above FY2015 enacted levels, which will enable transit agencies to address immediate repair needs, enhance core capacity and plan for expansion to improve connectivity in suburbs, fast growing cities, small towns, and rural communities.

GROW AMERICA also supports economic competitiveness by creating ladders of opportunity through workforce development initiatives and ensuring that manufactured products are produced in the United States. These transit investments will play a critical role in supporting communities around the country.

## **Safety**

### *Public Transportation Safety (49 U.S.C. 5329; Section 3008 of GROW AMERICA)*

MAP-21 amended 49 U.S.C. 5329 to give FTA authority for the first time to establish safety criteria for all modes of public transportation, and to establish minimum safety standards for public transportation vehicles used in revenue operations.

Keeping rail public transportation safe requires a partnership between FTA, transit agencies and those States that have State safety oversight (SSO) obligations. FTA will serve as a leader, facilitator, and final regulatory authority; transit agencies will be held responsible for the safe operation of their systems; and the SSOs will act as effective day-to-day safety oversight regulators capable of holding transit rail systems accountable and ensuring they comply with minimum State and Federal safety standards.

Following the August 2013 publication of an ANPRM on safety, FTA published the SSO Program Notice of Proposed Rulemaking (NPRM) on February 27, 2015, outlining a program that will replace the existing outdated regulatory framework with one designed to better evaluate the effectiveness of a rail transit agency's system safety program. This new framework will support the flexible, scalable principles of Safety Management Systems (SMS) to focus on organization-wide safety policy, proactive hazard identification and risk informed decision making as part of risk management, safety assurance, and safety promotion. Comments are requested on the SSO NPRM by April 28, 2015. Relatedly, FTA intends to launch an SMS Implementation Pilot Program to assist transit agencies of all sizes and operations, including bus-only, in the development and maintenance of their Safety Management System.

FTA also recently published the Final Interim Safety Training Certification requirements designed to enhance the technical competencies and capabilities of individuals responsible for direct safety oversight of rail transit systems at agency, State and Federal levels, and of individuals who conduct safety audits of these systems. These requirements become effective on May 28, 2015.

We intend to issue additional guidance and notices of proposed rulemaking in 2015, about such issues as the National Public Transportation Safety Plan, the Public Transportation Safety Program, the Transit Agency Safety Plan, the National Public Transportation Safety Certification Training Program and the Transit Asset Management Plan. Together, this framework will ensure safety standards are in place at each transit system across the country to protect the riding public and transit agency employees.

In the meantime, in order to better understand the strengths and weaknesses of public transit safety operations, FTA is utilizing its new safety authorities to collaborate with the Chicago Transit Authority to examine their safety program, and to conduct a Safety Management Inspection of the Washington Metropolitan Area Transit Authority, which began in early March 2015.

While MAP-21 gave FTA the authority to establish safety regulations, it did not provide FTA with expanded enforcement tools to ensure compliance with such regulations. To that end, the GROW AMERICA Act bolsters FTA's safety authority by allowing for the imposition of civil and criminal penalties and establishes emergency authority for FTA to restrict or prohibit unsafe transit practices. It also includes data confidentiality for our grantees and an opt-out provision from the law's SSO Oversight program. This will apply to States with fixed guideway public transportation systems, whether in operation, under construction, or in design, with fewer than one million combined actual and projected revenue miles per year, or which provide fewer than 10 million combined actual and projected unlinked passenger trips per year. FTA will oversee the safety of these exempted systems. The GROW AMERICA Act would also provide resources to fully carry out the safety program, including providing an appropriate level of assistance to States and individual transit providers, while also enhancing safety data collection.

## **Transit Asset Management**

### *State of Good Repair (49 U.S.C. 5337 and 5339; Section 3010 of GROW AMERICA)*

Returning transportation assets to a state of good repair is a strategic goal for the Department of Transportation (DOT) and a high priority for FTA. Well-maintained infrastructure investments can have long-term economic benefits for the Na-

tion, but those benefits are not fully realized because of years of underinvestment and neglect. This is evident in the DOT's 2013 Conditions and Performance Report to Congress, which found an \$86 billion maintenance backlog of rail and bus assets that are in marginal or poor condition. The backlog continues to grow at an estimated rate of \$2.5 billion per year under current investment levels.

MAP-21 requires transit agencies to develop a Transit Asset Management plan to help them strike a better and more informed balance between preservation and expansion needs in the context of a safety-first performance culture. Strategic and targeted investments focused on replacing and rehabilitating aging transit infrastructure are needed to help bring our Nation's bus and rail systems into a state of good repair. Having newer and more reliable track, signal systems, vehicles and stations will help ensure the safe, dependable and accessible transit service demanded by the American public.

FTA is actively working to implement this new National Transit Asset Management System through the rulemaking process, supplemented by technical assistance and outreach to grantees. Given the diversity of transit systems, from complex urban rail and bus networks, to demand response van systems in rural communities, a flexible approach will be paramount. FTA expects to issue a NPRM later this year, addressing the extensive comments received on the October 2013 Advanced NPRM, which aligned the transit asset management process with the need for strengthening transit safety. Additionally, on January 28, 2015, FTA published in the *Federal Register* final guidance to assist recipients applying for funding under the State of Good Repair Formula Grant Program.

However, under MAP-21, our efforts still do not go far enough to address the backlog of maintenance. The current State of Good Repair Formula Grant Program focuses on rail and bus rapid transit (BRT) systems that are at least 7 years old. The preservation needs of non-BRT bus services were severely impacted in MAP-21, with the decrease in funding for the Bus and Bus Facilities Formula Grant Program. The need for additional investments and innovative policies that address the backlog for all bus and rail maintenance still exists, and much more work remains to be done. To that end, the GROW AMERICA Act proposes a total of \$7.6 billion in fiscal year 2016 to support FTA's State of Good Repair efforts, and includes \$5.7 billion for State of Good Repair Grants (49 U.S.C. 5337) and \$1.9 billion for Bus and Bus Facilities Grants (49 U.S.C. 5339), with incremental increases in each fiscal year through the end of the authorization.

All of these actions, taken together, reflect the U.S. Department of Transportation's strategic commitment to address the infrastructure deficit in a holistic fashion—and to help the industry employ better metrics that enable them, in turn, to be better stewards of their assets.

### **Building System Capacity**

*Core Formula Programs (49 U.S.C. 5307, 5310, 5311; Section 3003, 3004 of GROW AMERICA)*

FTA's formula grant programs provide the critical funding for the day to day business of transit agencies across America. MAP-21 retained the program structure for the formula programs with a few exceptions, which were implemented quickly in 2013. The Urbanized Area Formula Program (5307) provides critical capital funding to transit agencies for recapitalization needs. The Rural Formula program (5311) provides capital and operating funding to transit agencies serving in rural areas, tribal lands and Appalachian States. The Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program (5310) provides funding for transit services that specifically target serving the elderly and disabled.

Since FY2013, FTA has obligated more than \$10.8 billion in funding for these three formula programs. GROW AMERICA builds on the baseline provided by MAP-21 by requesting a 2 percent increase for FY2016, with moderate increases thereafter for the life of the authorization.

*Capital Investment Grants (49 U.S.C. 5309; Section 3002a of GROW AMERICA)*

Not long after the enactment of MAP-21, FTA streamlined its New Starts and Small Starts Capital Investment Program through a final rule and accompanying guidance. The changes are helping local project sponsors shave up to 6 months off the time required to move major projects through the Capital Investment Grant (CIG) Program pipeline. Sponsors who choose to use the optional simplified travel model developed by FTA—a significant streamlining tool—may develop ridership forecasts in as little as 2 weeks, a dramatic timesaving from the 2 years it can take using traditional forecasting models, while saving as much as \$1 million on related model forecast development costs. Additionally, FTA now has a more straightforward approach for measuring a proposed transit project's cost-effectiveness, con-



siders an expanded range of environmental benefits, and has simplified the administrative reporting process.

In April 2015, FTA requested comments from the industry on interim policy guidance that, when finalized, will continue to address MAP-21 provisions that govern the CIG program. The guidance provides a deeper level of detail about the methods for applying the project justification and local financial commitment criteria for rating and evaluating New Starts, Small Starts, and Core Capacity Improvement projects, and the procedures for getting through the steps in the process required by law. FTA is proposing to use simple eligibility parameters, simplified evaluation measures, and expanded “warrants” based on readily available, easily verifiable data to make the process less burdensome and time consuming for project sponsors who qualify.

GROW AMERICA proposes to expand the CIG program by increasing the program funding level to match the growth in projects seeking funding. FTA has seen a steady rise in the demand for projects seeking Capital Investment Grant funding and a significant increase of projects requesting to enter project development since the passage of streamlined Capital Investment Grant program requirements in MAP-21. The FY2016 CIG Annual Report includes many projects seeking construction grant agreements, and FTA has seen 44 new projects overall since MAP-21 took effect.

GROW AMERICA would also create a streamlined review process for simple, low-risk, cost-effective projects in smaller communities by adding a Very Small Starts category. Very Small Starts projects would be new corridor or regional-based bus services with premium features located in small urban or rural areas.

*Rapid Growth Area Transit Program (49 U.S.C. 5314; Section 3011 of GROW AMERICA)*

GROW AMERICA proposes a new Rapid Growth Area Transit competitive program that will provide \$500 million in capital funds in fiscal year 2016, with incremental increases each fiscal year through 2021, to help fast-growing communities introduce new BRT systems as part of their transportation mix. BRT systems are a proven way to expand mobility relatively quickly and affordably, helping communities to get ahead of congestion and develop a transit-oriented culture as an integral part of their growth management strategy.

**Economic Competitiveness**

*Workforce Development (49 U.S.C. 5322; section 3005 of GROW AMERICA)*

MAP-21 formally established the Innovative Transit Workforce Development Program under 49 U.S.C. 5322, which provides funding to transit agencies and partners with solutions to pressing workforce development issues. Program funds are used to address serious shortages in the skilled transit workforce—estimated to be 5,000 to 6,000 workers—by fostering job growth and a stronger workforce through ladders of opportunity initiatives that teach individuals technical skills to support the transit industry in the 21st century.

Rapidly changing technology and growing transit ridership along with plans to expand service has heightened the need for continued training in a variety of public transportation occupations. A new generation of workers must refine their skillsets to meet future demands and contribute to building our Nation’s 21st Century transportation infrastructure. GROW AMERICA will expand FTA’s workforce development efforts with a program that will fund and support innovative transit-focused training programs and apprenticeships, particularly at the regional and/or national level. The Act will also establish a new Public Transit Institute to replace the current National Transit Institute (NTI), that allows FTA to expand training to cover blue-collar transit workforce training in addition to the management-level courses now offered by NTI.

*Local Hiring (49 U.S.C. 5325; Section 3007 of GROW AMERICA)*

Currently, Federal requirements prohibit the use of local-hiring preferences. It is important that we support local hiring as an effective tool to help men and women who are ready to work to obtain jobs, and job training, in their communities. The GROW AMERICA Act allows the use of local hiring preferences in contracts using FTA funds for projects over \$10 million when the work is in an area with a low per capita income or higher than average unemployment. The local-hiring preferences are designed with flexibility and as such may not require the hiring of workers without the necessary skills, and the use of such preferences may not compromise the quality, timeliness, or cost of the project.

*Emergency Relief (49 U.S.C. 5324; Section 3009 of GROW AMERICA)*

A final rule establishing procedures governing the implementation of the Emergency Relief program became effective on November 6, 2014. On February 4, 2015, FTA published its proposed “Emergency Relief Manual: A Reference Manual for States and Transit Agencies on Response and Recovery from Declared Disasters and FTA’s Emergency Relief Program”. FTA sought public comment through April 6, 2015, and expects to finalize the guidance later this year.

While Congress appropriated \$10.9 billion for Hurricane Sandy emergency relief efforts, these funds are only available for areas affected by Sandy. Congress did not appropriate funds for FTA’s Emergency Relief program in FY2013, FY2014, or FY2015, leaving the agency with no funds to immediately address any new disasters that impact the transit industry. GROW AMERICA proposes that \$25 million be appropriated in each fiscal year 2016 through 2021 to capitalize the program so that FTA stands ready to respond.

*Buy America (49 U.S.C. 5323(j); Section 3006 of GROW AMERICA)*

The administration remains committed to preserving and creating home-grown jobs that support our domestic manufacturing industry and position the United States to take the lead in transportation-related innovation. Therefore, GROW AMERICA proposes to increase the domestic content requirement for manufacturing rolling stock components and subcomponents further than the current standard of 60 percent. With a phased increase, by 2020, 100 percent of the components and subcomponents for rolling stock, by cost, including rolling stock prototypes, will have to be produced in the United States. Final assembly in the United States remains a requirement, as under MAP-21.

*Public-Private Partnerships (49 U.S.C. 5315)*

FTA also recognizes the value of public-private partnerships as a means of augmenting public investments in infrastructure. On August 25, 2014, FTA published a final circular on Joint Development that clearly explains how FTA funds and FTA-funded property may be used for public transportation projects that are related to and often colocated with commercial, residential, or mixed-use development. The circular emphasizes the concept of “value capture,” which encourages FTA grantees to leverage Federal investments to capture revenue that can in turn be used to offset capital and operating expenses.

Additionally, FTA held an Online Dialogue with stakeholders on Public-Private Partnerships in January 2015, and is using the information learned to develop a NPRM on Public-Private Partnerships. We expect this rulemaking to address major barriers to utilizing this financing method, and propose methods to ease and encourage their use.

**Research, Planning, and Environment***Research (U.S.C. 5312; Section 3009 of GROW AMERICA)*

GROW AMERICA includes \$60 million in FY2016 increasing to \$70 million in FY2021 to support research activities that improve public transportation systems by investing in the development, testing, and deployment of innovative technologies, materials, and processes. FTA partners with public institutions, transit agencies, nonprofits, universities, and other entities, awarding funding for activities that improve safety, state of good repair, and help to advance transit vehicle and system technology.

*Fixing and Accelerating Surface Transportation (FAST) (49 U.S.C. 5602; Section 1401 of GROW AMERICA)*

GROW AMERICA includes a new \$1 billion per fiscal year competitive grant program designed to spur major reform in the way States and metropolitan regions make transportation policy and investment decisions, and to encourage new and innovative solutions to transportation challenges. The FAST program will be jointly administered with the Federal Highway Administration (FHWA), each overseeing \$500 million, to encourage the adoption of bold, innovative strategies and best practices in transportation that will have long-term impacts on all projects across the transportation programs.

*Performance-Based Planning and Accelerated Project Delivery*

MAP-21 transformed the Federal-Aid Highway program and the Federal Transit program by requiring a transition to performance-driven, outcome-based approaches to key areas. With respect to planning, the statute introduced critical changes to the planning process by requiring States, MPOs, and providers of public transportation to link investment priorities to the achievement of performance targets for safety,

infrastructure condition, congestion, system reliability, emissions, and freight movement. FHWA and FTA jointly issued an NPRM on Metropolitan Transportation Planning, and Statewide and Nonmetropolitan Transportation Planning in June 2014, and are on target to issue a final planning rule later this year. The two agencies also jointly issued a final rule in October 2014 that creates five new categorical exclusions for transit projects, thereby shortening the environmental review process by requiring minimal analysis and documentation, where appropriate. These types of actions effectively cut red tape for funding recipients, reduce the administrative burden on State and local governments, and expedite results for the American public.

### **Conclusion**

The May 31st expiration of the extension of MAP-21 offers an important opportunity to recalibrate the way our Government evaluates and invests in our federally funded public transportation infrastructure. From a transit perspective, MAP-21 included provisions enabling FTA to focus limited resources on certain strategic investments and policies. The administration's comprehensive 6-year reauthorization plan set forth in GROW AMERICA will provide FTA with the additional tools necessary to improve the riding experience for millions of Americans by repairing and modernizing transit systems and expanding capacity for generations to come.

I am committed to working together with this Committee to achieve our mutual goal of addressing America's urgent need for investment in transit infrastructure. Thank you again for inviting me to testify on this important topic, and I will make myself and my staff available to answer your questions.

**RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN SHELBY  
FROM THERESE W. MCMILLAN**

**Q.1.** I want to revisit the first question that I posed Ms. McMillan and ask you to identify the specific measures that FTA employs to hold capital investment grant applicants to the requirement that they have the resources necessary to recapitalize, maintain, and operate their existing system, as well as the proposed system?

In your earlier answer you identified FTA's efforts to implement the new asset management program and while I agree that this is an important element to the overall state of good repair measures enacted in MAP-21, the requirements I cited have been in place since passage of SAFETEA-LU. Are you suggesting that FTA is relying solely on the new Transit Asset Management program to adhere to a statutory requirement that has been in place since 2005?

**A.1.** FTA already employs a rigorous evaluation and rating process, as required under the statute establishing the Capital Investment Grant (CIG) Program. One area that FTA is required to evaluate is local financial commitment, which includes an assessment of whether local resources are available to recapitalize, maintain, and operate the overall existing and proposed public transportation system. FTA requires project sponsors to submit detailed 20-year financial plans outlining all estimated sources and uses of capital and operating funds. Additionally, FTA requires project sponsors to submit historic information on sources and uses of funding for the transit system. When developing the rating, FTA examines the financial plan to ensure there are adequate recapitalization costs included based on an examination of the transit system's fleet management plan that outlines fleet replacement needs and historic expenditures on systemwide maintenance, repair, and operating needs. Specific measures FTA examines include: (1) the average fleet age of the transit system, which is an indicator of how well the agency has been meeting its vehicle replacement needs; (2) the operating ratio of the transit system (current assets compared to current liabilities), which is an indicator of the financial health of the transit agency; and (3) the reasonableness of the assumptions used in the financial plan with regard to growth in costs and revenues to ensure they are in line with historical expenditures and not overly optimistic. The transit asset management requirements of MAP-21 will help provide additional data to FTA that can be used to help determine the reasonableness of recapitalization estimates included in the financial plans submitted by CIG project sponsors.

**Q.2.** Again, following up on an earlier question regarding new investments in systems that are not in a state of good repair—You said: “. . . clearly we want to make sure that transit assets are safe—the existing system or the foundation, and that any new services would only be brought to bear if there is sufficient, continuing progress made toward the state of good repair.”

Could you tell the Committee exactly how FTA defines “sufficient—continuing progress” toward the state of good repair?

**A.2.** I did not intend to imply a statutory or regulatory definition of “sufficient—continuing progress” toward a state of good repair. I was using the term in a general way to convey that FTA will continue to consider a transit agency's state of good repair backlog and

its plan for managing that backlog, including prioritizing investments that address any existing backlog.

**Q.3.** Moreover, could you share with the Committee how you are applying this standard today given that “state of good repair” has not yet been defined by the FTA?

**A.3.** When a transit agency with a large backlog of state of good repair (SGR) needs comes to FTA seeking CIG funding, we ask them to provide us with a comprehensive assessment of their overall SGR needs and how they anticipate prioritizing them to ensure system safety critical needs and efficient operations are maintained. We then review their 20 year financial plan to ensure they have sufficient funding to pay for the prioritized SGR needs as well as the proposed CIG project and ongoing operations.

The term “state of good repair” will be further defined in the Transit Asset Management Notice of Proposed Rulemaking (NPRM) later this year and subject to public comment.

**Q.4.** As it relates to funding for state of good repair and funding to meet increasing demand, you stated that FTA is “trying very hard to balance both of those objectives.” Could you tell provide some specifics regarding FTA’s current efforts to balance those competing priorities?

**A.4.** FTA’s FY16 Budget proposal and GROW AMERICA reauthorization proposal demonstrate our commitment to both priorities. We are asking for significant Federal dollars to invest in state of good repair to address the more than \$86 billion backlog of transit needs around the country. We are also asking for increases in funding for the Capital Investment Grant program to address the growing demand we are seeing around the country for new and expanded transit services to move people to where they need to go safely and efficiently. Investment in both areas is critical to our Nation’s transportation system and our economy.

**Q.5.** I also want to follow-up on my question regarding the steps the Administration is taking to alleviate some of the bureaucratic oversight for projects with a minimal Federal investment. While I appreciate you sharing the details of FTA’s implementation of MAP-21’s Capital Investment Grant (CIG) streamlining provisions, I am more interested in the steps FTA can take administratively to remove bureaucratic hurdles for projects with minimal Federal investment. Has the FTA identified any efforts that it can undertake administratively and if so, what are they? Please provide details regarding the specific impact these identified administrative efforts would have on projects and project sponsors?

**A.5.** FTA has taken multiple steps over several years to streamline the process for Capital Investment Grant (CIG) program funds both prior to MAP-21 and after MAP-21. FTA implemented a Simplified Trips on Projects (STOPs) tool 2 years ago that project sponsors may use at their option to estimate project ridership. Because this tool uses readily available census data and transit network feeds commonly prepared by transit agencies to inform Google Maps and other applications, the time required for project sponsors to develop ridership estimates can be as little as 2 weeks, whereas using a conventional local travel forecasting model can take project

sponsors several months or even years. To greatly simplify the reporting process for project sponsors, FTA developed reporting templates for project sponsors that automatically populate information used in multiple measures and automatically calculate the evaluation criteria. Previously sponsors had to enter such data multiple times. FTA also recently proposed an expansion of “warrants”—ways in which projects can qualify for automatic ratings on the statutory criteria rather than having to submit extensive data and information to FTA. FTA is also tailoring its oversight of CIG projects rather than providing a one size fits all approach, which will help shorten the length of time it takes FTA to complete its reviews of smaller and less complex projects. We believe that our efforts to reduce CIG process timeframes are gaining wide acceptance. For instance, 40 percent of CIG project sponsors submitting data to FTA in fall 2014 for evaluation and rating used STOPs to develop their ridership estimates at greatly reduced time and expense.

**Q.6.** The Administration has talked a lot about private investment in transportation infrastructure and leveraging Federal dollars. While FHWA, through SEP-14 and SEP-15, has made great strides to streamline the process, particularly for P3 projects, FTA has not made similar progress. Could you identify any statutory impediments FTA believes prevent it from implementing a similar “SEP-type” process for certain CIG projects?

**A.6.** Section 20013(b) of MAP-21 requires FTA to develop and implement procedures and approaches that address impediments to the greater use of public-private partnerships and private investment in capital projects in a manner similar to FHWA’s SEP-15. FTA has conducted extensive outreach to transit stakeholders on this issue and currently is drafting a notice of proposed rulemaking (NPRM) that outlines a process similar to SEP-15. FTA expects to publish the NPRM for comment by the end of calendar year 2015.

The major impediment to FTA implementing a “similar” process for CIG projects is that FTA does not have the statutory authority to waive requirements like FHWA’s statute. FTA cannot administratively waive program requirements, such as evaluation and oversight, labor protections such as Davis Bacon or 13(c), or other requirements in order to streamline the approval process for projects with significant private funding or delivery methods.

**Q.7.** Following-up on my question regarding regional difference—could you please provide the specific guidance and oversight FTA currently has in place to ensure that the determinations of the regional offices are in line with the laws and regulations issues by headquarters?

What process to you have in place to review decisions made in the regional offices and what recourse do grantees have if they believe that rules have been applied differently?

What can/does FTA do to alleviate the innate conflict that may arise between grantees and their regional offices if they were to complain about a decision that impacts them directly?

Is there a formal appeals process that is removed from the regions?

**A.7.** FTA has taken very seriously the challenges of ensuring a foundational level of knowledge and understanding of new and changing requirements while trying to advance an ever growing program.

FTA has heard specific concerns related to consistency in oversight processes and issuance of findings. In terms of oversight, Triennial Review reports are issued at the Regional Office level, and FTA has a number of checks in place to ensure nationwide consistency. For example, FTA Headquarters subject matter experts have an opportunity to comment on draft findings prior to FTA issuing the draft report to grantees. Grantees are given an opportunity to comment on the Triennial Review draft report and grantee comments are considered by FTA prior to finalization and issuance of the report. If a grantee believes that rules have been applied differently, they may elevate their concern to FTA headquarters for review.

In addition, FTA has strengthened its oversight contractor training, and provides standardized guidance and deficiency codes to cover the typical findings and corrective actions issued in a Triennial Review to ensure consistency across the country.

Finally, FTA publishes all grant program information, guidance, and program circulars on its external and internal Web sites. FTA's Executive Management Team meets regularly, including a bi-monthly meeting with Regional staff and Headquarters Program Management staff on program, project, and grant matters. Acting Administrator McMillan also meets with all Headquarters Associate Administrators, and all 10 Regional Administrators monthly to discuss ongoing matters, in addition to receiving weekly Regional Update reports.

**Q.8.** Recent accidents such as CTA's O'Hare crash and WMATA's L'Enfant Plaza incident have further highlighted the serious safety issues that exist in many transit systems—which, prior to enactment of MAP-21, were not overseen or regulated by the FTA. Nearly 6 years after the deadliest crash in WMATA's history which provided the impetus for FTA's new safety authority, FTA has yet to issue any safety standards or protocols. Moreover, when Senator Warner asked about FTA's implementation of the safety authority, you were hesitant to provide details and, it seemed, unsure as to whether that was appropriate. What assurances can you provide the Committee that the FTA is effectively using the authority provided in MAP-21? Will FTA issue any safety standards or protocols—will FTA respond quickly and comprehensively to address safety issues that come to light in the wake of an incident?

**A.8.** Safety is and will remain the Department's number one priority. Congress did not provide FTA direct, regulatory authority over the safety of transit systems until October 2012, when MAP-21 went into effect. In the intervening 2.5 years, FTA has made extraordinary progress in addressing this new authority from the ground up, despite limited additional financial resources to do so.

FTA has been actively working to set up the regulatory framework to support its new safety authority. In early 2015, we issued an NPRM for the State Safety Oversight program. The Final Safety Certification Interim Provisions took effect on May 28, 2015, re-

quiring necessary training for rail safety employees. Later this year, we expect to issue NPRMs for the Public Transportation Safety Program, National Public Transportation Safety Plan, Public Transportation Agency Safety Plan, and Bus Testing Program.

Specific nationwide standards and protocols will emerge from this regulatory framework, once complete.

In parallel, FTA has taken several direct actions in response to specific safety incidents that have occurred: (1) FTA issued a nationwide safety advisory in December 2013 in response to incidents at WMATA and BART that resulted in the deaths of Right Of Way workers. (2) In response to multiple incidents at CTA, FTA partnered with CTA to conduct a safety examination to support strengthening their safety programs and capabilities through the implementation of Safety Management Systems (SMS). (3) Most recently, FTA is using its authority under 5329(f)(1) to conduct a Safety Management Inspection (SMI) of WMATA's transit system. At the conclusion of the inspection, FTA expects to issue findings and recommendations to assist WMATA in building a mature and effective SMS.

FTA will continue to exercise its safety authority by responding swiftly to incidents as they occur.

**Q.9.** The GROW AMERICA proposal requests additional safety authorities for the FTA, specifically fines and penalties. Why are these additional authorities necessary in light of the fact that FTA has not used any of its existing authority to ensure that certain standards and protocols are established by transit systems nationwide? Shouldn't FTA focus on making transit systems safer by using its existing authority rather than coming back to Congress for more? Is there a specific incident or scenario that the FTA is considering which would require this additional authority; if so please describe?

**A.9.** Currently, FTA's primary enforcement tool is the withholding of Chapter 53 funds. However, withholding funds from a recipient may not correct a safety issue, as the penalty would not correct the specific unsafe action nor be directed at any responsible individual. Moreover, many transit agencies are heavily reliant on Federal subsidy. To withhold funds from these agencies would ultimately pose the most adverse impact on the riding public who are reliant on public transportation services. FTA believes that having additional enforcement authority to impose civil and criminal penalties would aide in the implementation of its new safety authority, as the threat of such penalties would serve as a deterrent to non-compliance.

Similar to other Federal enforcement regimes, FTA's sister modes have civil and criminal penalty authority and are able to more effectively address specific unsafe actions—by an individual or an organization—to prevent reoccurrence. Accordingly, FTA is seeking this additional authority in order to establish a comprehensive and effective safety oversight regime.

**Q.10.** I have said many times that I am concerned that we are building transportation infrastructure without regard to their long-term maintenance and operation costs. What kind of life cycle cost analysis goes into the overall evaluation of a capital investment



grant project that is moving through the pipeline today? Does FTA have plans to modify that analysis, assuming there is one, given the current state of our transportation infrastructure?

**A.10.** The Capital Investment Grant program looks at life cycle costs in two ways. First, in our cost-effectiveness calculation, we consider not only the annualized capital cost of the project which factors in the useful life of each element of the project, but we also consider the ongoing operating and maintenance costs. Second, our financial evaluation includes an examination of a 20 year cash flow statement from the project sponsor outlining all capital and operating sources and uses of funds for the entire transit system, including the proposed project. FTA does not have plans to modify these analyses, but expects the transit asset inventory requirement of MAP-21 will provide useful additional data to FTA to help with determining the reasonableness of recapitalization costs included in the 20-year financial plan.

**Q.11.** MAP-21 included a “Pilot Program for Expedited Project Delivery” as a SEP-15-type delivery method on the transit side for a few, select capital investment grant projects that meet specific criteria. As I have shared with you and others, I am concerned that FTA has drug its feet in advancing this pilot project—which, unfortunately, is not out of the ordinary for FTA as we have seen with past legislative attempts to achieve innovative project delivery. Unofficially, I have heard numerous reasons the FTA has not taken action on this MAP-21 provision but I would like to ask you directly, why this pilot project has not been implemented.

**A.11.** The Pilot Program for Expedited Project Delivery as written in MAP-21 is limited to projects in the Capital Investment Grant (CIG) program including New Starts, Small Starts and Core Capacity. However, the law does not exempt projects in the pilot program from the evaluation and rating process required under the CIG program, the only source of funding the pilot can draw from, as the law also did not provide a separate pot of funding for which they would be eligible. The Pilot also requires the project sponsors selected for the program to develop a before and after study one year sooner than would otherwise be required under the CIG program. These requirements have led to challenges implementing the pilot program and outlining its advantages to the industry. The law appears to impose more requirements on these pilot projects, not fewer, which may prevent the industry from expressing much interest. FTA has been soliciting input and ideas from the industry on the pilot program at various CIG workshops given over the past 2 years, and we expect to put forth some proposals to implement the pilot soon.

**Q.12.** GROW AMERICA and the APTA reauthorization proposal include a discretionary bus program to supplement the 5339 formula program. This is necessary, it is argued, because of the substantial cost to buy vehicles and build facilities. A discretionary grant program, I believe, forces transit agencies to chase funding rather than budget for their needs. I do not understand how a discretionary grant program can truly address everyone’s needs. A formula program, on the other hand, has that potential.

If all transit agencies face the challenge associated with making large capital purchases, how do you make sure all agencies that need money for buses and facilities get money?

**A.12.** Formula funding has the potential to address growing capital needs only to the extent that the base program contains sufficient funding to address those needs. The shift of the Bus and Bus Facilities program, from a discretionary program to a formula program under MAP-21, was accompanied by a decrease of the funding base by more than 50 percent.

Following passage of MAP-21, one of the most frequent comments FTA received from transit agencies and localities, especially in smaller- and medium-sized urban areas, was that the new Bus and Bus Facilities formula program does not provide the necessary funding to recapitalize their systems and the lack of any supplemental discretionary program limits their ability to undertake non-routine large investments, such as bus facilities.

GROW AMERICA proposes to substantially increase funding for the Bus and Bus Facilities program (from \$428 million to over \$1.9 billion annually) to address the needs issue that you raise first. With respect to the second issue, GROW AMERICA proposes to reintroduce a discretionary element to the program, with 30 percent of the \$1.9 billion available through a competitive process with the remaining 70 percent distributed by formula. A discretionary program would permit FTA to direct funding for these larger one-time investments that cannot be solely funded through a formula to transit agencies at the point in time the funding is needed.

**Q.13.** The discretionary grant program that both GROW AMERICA and the APTA proposal include is simply that, discretionary. These proposals do not include specific criteria or rules for distribution of the resources.

What assurances would transit agencies have that discretionary funds would not be broken into “mini-grant” programs or initiatives that target specific policy preferences? Such preferences render some systems ineligible for funding as we saw with “Ladders of Opportunity,” “Bus Livability,” “Urban Partnership Program,” “Veterans Transportation and Community Living,” “Urban Circulator,” and “Transit Asset Management” among others—all were created using 5309 bus and bus facilities funding.

**A.13.** Although past discretionary programs had policy-focused areas such as economic development, connecting communities, state of good repair, and supporting veteran access to transportation services; those policy objectives did not eliminate any community from being eligible for the funding. These needs exist across all communities and all transit agencies were eligible to apply for the funds. Each of these funding opportunities was well over subscribed. Under the bus and bus facilities discretionary program proposed in GROW AMERICA, FTA would ensure resources are targeted towards communities that need nonroutine and often large investments, such as bus facilities or fleet replacement, where annual formula funds are insufficient to make this type of large one-time purchase.

**Q.14.** The Capital Investment Grant (CIG) program is, as the name implies, a capital intensive grant program but it is not funded out

of the Highway Trust Fund (HTF). Rather, CIG projects rely on the annual appropriations process for funding. However, this has not always been the case. The program has, in the past, received funds from the HTF.

Given the significance of these projects and the associated investment, is there a down side to funding this program out of General Fund revenues rather than the Highway Trust Fund?

What are the pros and cons, in your view, to the current funding structure for this program?

**A.14.** The President's Fiscal Year 2016 Budget and the GROW AMERICA Act propose that all authorized transit programs, including Capital Investment Grants, be funded with contract authority and not subject to the annual appropriations process to increase predictability in funding. Contract authority is predictable in that it is authorized in advance through a reauthorization bill enacted by Congress and allows for better planning of projects.

The FY16 Budget and GROW AMERICA Act propose an increase in the authorization level provided to the CIG program, requesting \$3,250,000,000 in fiscal year 2016.

**Q.15.** If it is most appropriate to rely on the annual appropriations process to fund the Capital Investment Grant program, can the same be said for other capital intensive grant programs, such as a bus and bus facilities grant program? Please provide a detailed explanation.

**A.15.** No, as stated above in Question 14, the Administration is proposing that all authorized transit programs, including the Capital Investment Grants and Bus and Bus Facilities programs, be funded with contract authority and not subject to the annual appropriations process to increase predictability in funding.

**Q.16.** Over the last several years, there has been a substantial increase in the number of vehicles purchased through the Research program—specifically for the demonstration and deployment of no or low-emission vehicles. That said, while these vehicles are being purchased with Federal funding and subsequently integrated into a system's fleet, they are still being tested to demonstrate their ability to withstand the rigors of regular service and fleet integration. Does FTA differentiate between the deployment of "demonstration-type" vehicles and "proven" vehicles when granting Federal funding? If so, how?

**A.16.** Research, in the Federal context, is an iterative process that takes an innovative idea, thoroughly develops and studies it, then demonstrates its feasibility in a real-world environment, and, if the concept proves itself, ultimately takes it to deployment within the industry. FTA's research program encompasses all aspects of this cycle, from proof of concept to commercialization, and supports, where appropriate, through funding and technical assistance, both demonstrations of new technologies and deployment of new, proven technologies. With respect to the "Low or No Emission Vehicle Deployment Program" (LoNo Program) as described in 49 U.S.C. 5312 paragraph (d)(5), FTA understood the law to support and focus on the deployment phase of this cycle and implemented the program as such.

Proven technology, in the case of the deployment phase of the research, is not defined in the same way as off-the-shelf equipment. The difference is that there is a long history of experience with off-the-shelf equipment, whereas, proven technologies may still be new enough to the industry that their operational capabilities are not well or fully understood. Off-the-shelf equipment, rolling stock and technology are eligible under FTA's formula and traditional capital grant programs.

**Q.17.** Do grantees have more flexibility after purchasing "demonstration-type" vehicles in terms of how the vehicles are used and integrated in their fleets; do the traditional rolling stock requirements apply? Please explain.

**A.17.** "Demonstration-type" vehicles and other technologies are ones that show promise but that haven't reached the point where they might be confidently commercialized or used in everyday, revenue service. To use more common engineering language, this could be described as the "prototype and evaluation" stage. FTA works closely with transit operators who have the technical capacity and willingness to demonstrate new technologies in real-world environments. FTA seeks out agencies that are willing to partner in this regard but it is ultimately their decision to acquire and integrate these vehicles into their operations. For procurement of equipment for demonstrations, the FTA rules that apply to any equipment purchase with Federal grants (Buy America requirements, useful life rules, etc.), apply here as well.

**Q.18.** Are grantees provided opportunities through the program or otherwise to refresh or even upgrade the vehicle's technology either during a vehicle overhaul or as it becomes available? Please explain.

**A.18.** Once a new technology "becomes available" in a commercial sense, FTA grantees have the opportunity to purchase it with formula funds. FTA might also further assist in the acquisition of new technologies by providing technical assistance on ways of using and integrating new technologies, explore innovative asset management and financing strategies (e.g., public-private partnerships, technology leasing agreements, etc.) and provide a level of confidence to grantees seeking new technologies through such means as our Bus Testing program and wider dissemination of our technology evaluations.

**Q.19.** Would, in your opinion, greater flexibility in the demonstration/deployment of new technology for rolling stock or other capital investments do more to advance cutting edge technologies in the transit space? Please explain.

**A.19.** With appropriate FTA oversight, greater program flexibility would allow for more technology innovation, improved products and enhanced transit services, especially in a time where advances in technology and service provision are transforming the nature of surface transportation. With the advent of "on-demand" technologies, the emergence of automation in various forms, and the evolving preferences of today's travelers, seamless, safe, multimodal, environmentally sound transportation is becoming a reality. Transit has a major role in this new paradigm and devel-

oping and deploying the practices and technologies involved in this innovative model require flexibility.

**Q.20.** Does FTA currently have the authority to provide this flexibility?

**A.20.** On a case by case basis, FTA has the authority to issue waivers on certain rules and requirements as needed. For example, FTA issued a program-specific Buy America waiver for the National Fuel Cell Bus Program in 2008. FTA acknowledges its important role to provide oversight of Federal funds and to ensure that federally funded programs comply with the law.

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**RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN  
FROM THERESE W. MCMILLAN**

**Q.1.** Under current Buy America regulations, does the steel and iron used to produce transit rolling stock, i.e., buses and rail cars, need to be of domestic origin? Is it the experience of the Federal Transit Administration (FTA) that the frames for transit rolling stock are generally made of domestic or foreign materials?

**A.1.** The requirement in 49 CFR 661.5(b) that all steel and iron manufacturing processes take place in the United States applies to construction materials primarily made of steel or iron, such as structural steel or iron beams, columns, and running rail. As set forth in section 661.5(c), the requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

FTA does not specifically track whether the frames for transit rolling stock are made of domestic or foreign material. Pursuant to statute, the cost of rolling stock components produced in the United States must be more than 60 percent of the cost of all components, and final assembly of the rolling stock must take place in the United States. How a rolling stock manufacturer apportions its domestic and foreign components to comply with this requirement is at the discretion of the manufacturer.

Anecdotally, FTA is aware that several rolling stock manufacturers import finished shells and frames to the United States.

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**RESPONSES TO WRITTEN QUESTIONS OF SENATOR VITTER  
FROM THERESE W. MCMILLAN**

**Q.1.** In your testimony, you stated, “In 2014, Americans took 10.8 billion trips on transit—the highest annual ridership number since 1957.” Transit continues to receive the largest Federal subsidy among all modes of passenger transportation—highways, passenger rail, transit, and air—and that figure is projected to grow over the next several years. What steps is your agency taking to aggressively pursue privatization or public-private partnerships for transit-system operations in those cities and/or regions that require the highest Federal subsidy?

**A.1.** In 2014, FTA provided technical assistance to grantees in the form of a series of public-private partnership workshops and created a private sector participation Web page that includes fact sheets, questions and answers, studies, best practices, and sample

model public-private partnership contracts. See [http://www.fta.dot.gov/grants/16030\\_16036.html](http://www.fta.dot.gov/grants/16030_16036.html).

FTA's Joint Development circular, issued in 2014, clarifies for recipients and developers the process for incorporating private investment in transit facilities with Federal funding. FTA is drafting a rulemaking to identify impediments to and facilitate the increased use of public-private partnerships and private investment. This Notice of Proposed Rulemaking (NPRM) is expected to publish for public comment by the end of 2015.

Additionally, the Department of Transportation created the Build America Transportation Investment Center to increase infrastructure investment and economic growth by engaging with State and local governments and private sector investors to encourage collaboration, expand the market for public-private partnerships and put Federal credit programs to greater use. See more at: <http://www.dot.gov/buildamerica>.

**Q.2.** In your testimony, you stated, "FTA held an Online Dialogue with stakeholders on Public-Private Partnerships in January 2015, and is using the information learned to develop a NPRM on Public-Private Partnerships. We expect this rulemaking to address major barriers to utilizing this financing method, and propose methods to ease and encourage their use." When do you expect your agency to publish those rules? What models of public-private partnerships is FTA currently considering?

**A.2.** FTA anticipates publishing the notice of proposed rulemaking by the end of calendar year 2015. FTA published the RTD-Denver Eagle P3 Concession Agreement on its public-private partnership Web page ([http://www.fta.dot.gov/grants/16030\\_16036.html](http://www.fta.dot.gov/grants/16030_16036.html)), which FTA considers to be one model for structuring public-private partnership contracts. This information can help guide local transit agencies in their decision-making process of determining how to deliver a transit project using design-build contracting methods.

#### **RESPONSES TO WRITTEN QUESTIONS OF SENATOR KIRK FROM THERESE W. MCMILLAN**

**Q.1. Core Capacity:** Three years ago, this Committee authorized a new category of projects called Core Capacity to be eligible for the Federal Transit Administration's (FTA) Section 5309 Capital Investment Grant Program in MAP-21. This program is critical for aging transit systems, including the Chicago Transit Authority, looking to compete for Federal funding to modernize their infrastructure on existing transit lines by extending platforms, modernizing signals, adding infill stations or laying new track within their existing footprint to meet growing demand.

The Administration has signaled its support for these projects by including support for core capacity in its FY16 Budget Request. As public transit ridership continues to grow, especially in urban areas like Chicago, how does the Administration see this program and other FTA initiatives working to improve our legacy transit systems?

What are the agency's plans for the program?

How will the FTA use projects like the CTA's Red and Purple Line Modernization as an example going forward?

**A.1.** FTA was very pleased to see the addition of the Core Capacity eligibility under the Capital Investment Grant program because we know there is great demand around the country for capacity improvements to existing transit infrastructure that is heavily utilized. That is why we have recommended funding in each of the past 3 years' budgets for the program, including \$351 million in our FY2016 budget proposal. We now have four core capacity projects in the program, with three more that have applied to enter.

Since passage of MAP-21, FTA has been meeting with the industry to determine how best to implement the core capacity provisions. Through ongoing dialogue with transit agencies such as CTA, NYMTA, CalTrain, BART, and others, we developed proposals for implementation of core capacity that were published in April 2015 for public comment. Our proposals are based on industry research, include easy to calculate criteria, and that recognize these projects are located in highly traveled transit corridors. The feedback from project sponsors like CTA has been invaluable as we work to implement this important new eligibility.

**Q.2.** *State of Good Repair (P3 Pilot Program):* As evidenced by a national \$86 billion maintenance backlog, returning our transportation assets to a state of good repair is a top priority. Growing public transit infrastructure backlogs in cities like Chicago, Boston, Philadelphia, and New York, continue to be a serious issue. To help tackle these challenges, MAP-21 created a pilot program for "Expedited Project Delivery" to determine if "innovative project development and delivery methods or innovative financing arrangements" can be used to expedite project delivery. If a transit agency is selected for the pilot program, it can receive Federal money earlier in the FTA process than usual transit projects. However, MAP-21 specified that in order for a transit agency to eligible to participate in the pilot, an agency must first be in a state of good repair. This presents a significant challenge as the majority of transit agencies face a growing backlog of maintenance and capital projects.

What is the current status of this program's implementation?

In a world of constrained resources, do you believe public-private partnerships programs such as this effectively accelerate project delivery and help transit systems attain a state of good repair? Why or why not?

Does the FTA have recommendations to make the program more cost effective for the taxpayer while also expanding its reach to transit agencies that are not in a state of good repair?

**A.2.** The Pilot Program for Expedited Project Delivery as written in MAP-21 is limited to projects in the Capital Investment Grant (CIG) program, including New Starts, Small Starts, and Core Capacity. However, the law does not exempt projects in the pilot program from the evaluation and rating process required under the CIG program, the only source of funding the pilot can draw from, as the law also did not provide a separate pot of funding for which they would be eligible. The Pilot also requires the project sponsors selected for the program to develop a before and after study one year sooner than would otherwise be required under the CIG program. These requirements have led to challenges implementing the pilot program and outlining its advantages to the industry. The law

appears to impose more requirements on these pilot projects, not fewer, which may prevent the industry from expressing much interest. FTA has been soliciting input and ideas from the industry on the pilot program at various CIG workshops given over the past 2 years, and we expect to put forth some proposals to implement the pilot soon.

FTA believes Public-Private Partnerships are a tool that can be used to implement projects more quickly than they might otherwise if funded by the public sector on a pay-as-you-go approach. The private sector provides much needed capital and borrowing power up front to allow for quicker implementation, which gets repaid over time by the public sector through long-term availability payments. Previous experience has indicated to FTA that project sponsors typically utilize private sector partnerships for capital projects, which do not necessarily address state of good repair needs—but typically expand transit systems.

**Q.3.** In your testimony, you discussed an upcoming Notice of Proposed Rulemaking (NPRM) for Public-Private Partnerships to address major barriers to utilizing innovative financing and attracting more private capital.

What feedback did you receive from the FTA Online Dialogue that spurred this rulemaking process?

**A.3.** Section 20013(b) of MAP-21 requires FTA to issue a rule on Public-Private Partnerships, identifying barriers to use, and suggesting possible administrative changes to promote utilization.

FTA decided to conduct the Online Dialogue, which covered more topics than just barriers, to help inform the required rulemaking process. The Online Dialogue comments that touched upon barriers to public-private partnerships were consistent with what was identified in the 2009 Government Accountability Office report entitled Federal Project Approval Process Remains a Barrier to Greater Private Sector Role and DOT Could Enhance Efforts to Assist Project Sponsors.

**Q.4.** What barriers does the FTA believe currently exist that hinder the utilization of public-private partnerships?

**A.4.** FTA is in the process of identifying barriers as part of the NPRM process, and the rule will contain more details. However, we do know that barriers typically fall into several broad categories, and include the sequential process of the Capital Investment Grants program, permitting timelines, NEPA requirements vs. categorical exclusions, and the transfer of both financial risk, and project delivery risks.

**Q.5.** When does the FTA expect to issue the NPRM?

**A.5.** FTA expects to issue the NPRM by the end of calendar year 2015.

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#### RESPONSES TO WRITTEN QUESTIONS OF SENATOR MENENDEZ FROM THERESE W. MCMILLAN

**Q.1.** Your testimony notes that the administration is moving ahead with a proposed rulemaking regarding public-private partnerships. Given our investment needs, it's important that we leverage pri-



vate sector capital when appropriate. But it's also worth noting that private sector involvement is not a panacea. It can complement, but not replace existing Federal funding—and any private sector participation still has to be subject to public sector oversight, which comes with its own costs. It's also critical that we maintain existing protections for our workers. In particular, the outsourcing of operations and maintenance functions in transit P3s has a checkered history. According to the Government Accountability Office, savings related to the contracting out of transit operations and maintenance service are often derived through diminished wages and benefits to workers, not through service delivery.

As FTA works to put together this new rulemaking, can you assure me that you won't take any actions that would undermine our existing workforce protections?

**A.1.** Yes, Senator Menendez, I can assure you that FTA will not take any actions that would undermine existing workforce protections while utilizing public-private partnerships. Section 20013(b) of MAP-21 provides that the Secretary, and therefore FTA, has no authority to waive the provisions of 49 U.S.C. §5333, which are the labor protection provisions.