



WASHINGTON UPDATE

PREPARED BY CATHY CONNOR,
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July 23, 2018

Congress is making a big push this week and next week to get as much legislation completed as possible before the annual August recess. While the Senate plans to only take one week off in August, most of the extra floor time will be spent on judicial nominations, including the Supreme Court vacancy. The House will adjourn on August 3 and not return to session until after Labor Day.

The primary focus this week is on moving FY'19 federal agency appropriation bills. The Senate expects to vote on a four-bill "minibus" as early as today which will likely include the FY'19 THUD (US DOT) funding bill. The House version of the bill has not yet gone to the floor. The Senate bill is relatively free of controversial policy riders as part of an effort to assure quick passage. However, the House version of the funding bill includes several riders which have raised concerns, such as changes to truck size and weight policy and restrictions on procurement of certain Chinese products, such as rolling stock, by transit and rail agencies. Both bills include the same total level of funding for highway and transit programs, and Amtrak. Differences include funding levels for TIGER and the three FRA discretionary grants.

Once both bills are passed, the House and Senate will meet in conference to resolve the differences in the two bills and hopefully send the final appropriations bill to the White House before the start of FY'19 on October 1.

Here is a [link](#) to more information about the pending House and Senate FY'19 transportation funding bills and a [link](#) to a chart showing proposed funding levels for key programs.

Also on tap this week is House T&I Committee Chairman Bill Shuster's (R-PA) release of an infrastructure proposal. It appears that it will not be an actual bill, but rather a discussion draft to set the stage for legislation in the next Congress. Chairman Shuster is retiring this year, so this is an opportunity for him to lay out his thoughts and priorities on paper. The document is expected to be a broad infrastructure proposal that will address surface transportation as well as aviation, water, broadband, etc., but will not include funding levels. It will address the issue of "pay fors", but it is not clear whether it will recommend a federal gas tax increase, which Shuster is on record supporting.

Also pending potential floor action are the FAA reauthorization bill and the Water Resources/Corps (WRDA) bill.

FAA Reauthorization – The full House passed a multi-year FAA reauthorization bill (HR 4) on April 27 by a vote of 393 to 13, once the controversial provision to privatize the Air Traffic Control (ATC) system was dropped. The Senate Commerce Committee approved its version of the bill (S.1405) on May 9. The Senate hopes to bring its bill to the floor before



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the August recess, although floor debate is complicated by efforts to attach various non-aviation-related bills, such as the pending Senate autonomous vehicle bill (S.1885). The FAA bill is attracting add-ons because it is viewed as “must pass” since the current short-term extension of FAA taxes and programs expires on September 30, 2018. Here is a [link](#) to information about both bills.

WRDA Authorization – On June 6, the House passed its version of a water resources bill (HR 8) to authorize funding for Corps’ of Engineers programs and projects. The Senate version of the bill (S.2800) was passed by the Environment & Public Works Committee on May 22, but it has not yet been scheduled for a floor vote. Congressional leaders would like to keep to an every two-year schedule for passing a WRDA bill. The previous bill was passed in 2016. In addition, House T&I Committee Chairman Bill Shuster (R-PA) wants to complete the bill during his tenure. Here is a [link](#) to information about both bills.

FTA CIG Program/Dear Colleague Letter

On June 29, FTA issued a “Dear Colleague” [letter](#) to transit agencies outlining FTA policy regarding certain aspects of the Capital Improvement Grant (CIG) discretionary program. The letter included a controversial statement regarding federal financing programs such as TIFIA and RRIF – “To this end, FTA considers US DOT loans in the context of all federal funding sources requested by a project sponsor when completing the CIG evaluation process, and not separate from the federal funding sources”. In other words, FTA counts federal loan financing as part of the federal share of a project, not as the state and local share even though state and local funding is used to pay back the loans. This is a different interpretation of the statute than is used by the other modal administrations, such as FHWA. This would make it very difficult for project sponsors to meet their required non-federal share or to present a favorable benefit-cost ratio.

Other CIG policy changes include establishing geographical diversity as a factor in FTA funding allocation decisions and changing the CIG Risk Assessment process. Here is a [link](#) to APTA’s summary of the policy changes.

The letter has raised serious concerns with transit agencies, industry stakeholders, and many members of Congress. The Democratic leadership of the House T&I Committee has written a [letter](#) to US DOT Secretary Elaine Chao, as did the Republican chairman of the House Appropriations Committee, expressing their strong opposition and asking for clarification. It is possible House and/or Senate appropriators may include language in the pending FY’19 THUD appropriations bills to oppose these policy changes.



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US DOT Competitive Grant Programs

Here is the status of several US DOT competitive grant programs:

BUILD (TIGER) – On April 20, US DOT published a Notice of Funding Opportunity (NOFO) for the Better Utilizing Investments to Leverage Development (BUILD) grant program, previously known as the TIGER program. Applications for \$1.5B in FY'18 funding were due last week on July 19. BUILD funding can support roads, bridges, transit, rail, ports or intermodal transportation projects. Here is a [link](#) to the NOFO and a [link](#) to the US DOT announcement.

INFRA – On June 6, US DOT sent to Congress a list of the combined FY'17 and FY'18 grant awards under the Nationally Significant Freight and Highway Projects Program (now branded as "Infrastructure for Rebuilding America" or "INFRA" program) created in the FAST Act. Here is a [link](#) to the cover letter and project profiles, a [link](#) to a one-page list of the grantees and a [link](#) to general information about the program. Twenty-six projects totaling more than \$1.5B were awarded. Under the FAST Act, the department must notify Congress of its proposed INFRA grants, and Congress has a 60-day review period (ending on August 6) to pass a joint resolution rejecting any or all the proposed grants before they can be officially awarded. The INFRA program provides grants to make investments in critical freight and highway projects.

FTA Bus and Bus Facilities – On June 21, FTA [announced](#) a NOFO to apply for approximately \$366.3M in FY'18 competitive grant funding for transit bus projects nationwide. The [Buses and Bus Facilities Infrastructure Investment Program](#) is authorized by Congress to improve the condition of bus infrastructure nationwide by funding the replacement and rehabilitation of buses and related facilities. Projects will be evaluated by criteria outlined in the [Notice of Funding Opportunity](#). The program allocates a minimum of 10 percent – \$36.6M – to rural bus needs. The application period will close on August 6. Here is a [link](#) to more information about this program.

FRA CRISI - FRA published a NOFO in the July 19 Federal Register for the FY'18 Consolidated Rail Infrastructure and Safety Improvements (CRISI) program. The CRISI program was authorized as a new discretionary grant program in the FAST Act. Applications are due to US DOT by September 17. Approximately \$318M in available in FY'18 funding. Note - \$250M in funding for positive train control (PTC) deployment was provided under a different CRISI NOFO published on May 18, 2018. Applications in response to that NOFO were due on June 30. Applicants may apply for funding for PTC system elements under this NOFO as well if such elements are otherwise eligible under the CRISI Program. This NOFO will assist in funding rail projects that improve intercity passenger and freight rail transportation safety, efficiency, and reliability. Here is a [link](#) to the NOFO, a [link](#) to FRA's CRISI website, and a [link](#) to the FRA Press Release. FRA will host a webinar on August 8 to provide information on applying for a CRISI grant. You can register for the webinar [here](#).



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MARAD Marine Highway Project Grants – On June 27, the Maritime Administration (MARAD) published a NOFO in the Federal Register announcing \$7M in competitive grants to expand marine highway services. Applications are due by October 5. Here is a [link](#) to the NOFO and a [link](#) to more information about the program. A Marine Highway projects is a planned service or expansion of an existing service on a designated Marine Highway Route that provides new modal choices to shippers of cargo, reduces transportation costs and maintenance costs, and improves safety and resiliency.

FTA Tribal Transit Program – On July 11, FTA issued a NOFO for \$5M in FY'18 funding for the Tribal Transit Program. Here is a [link](#) to more information and the NOFO. Applications are due by September 10.

Other Issues

FTA Safety Plan Final Rule – On July 19, FTA issued two final regulations to strengthen the safety of public transportation systems: [the Public Transportation Agency Safety Plan rule](#) and the [Safety Certification Training Program rule](#). The Public Transportation Agency Safety Plan rule requires transit agencies to incorporate [Safety Management System](#) (SMS) policies and procedures as they develop safety plans to better manage their safety risks. Transit operators must certify they have a safety plan in place meeting the requirements of the FTA final rule by July 20, 2020. The plan must be updated and certified by the transit agency annually. With these actions, FTA has completed the regulatory framework for the National Public Transportation Safety Program as authorized by Congress.

FTA FY'18 Apportionment Notice – On July 16, FTA published in the Federal Register its [Fiscal Year 2018 Apportionments Notice](#), including policies, procedures and streamlining activities. The notice details \$13.4B in formula and competitive funding to FTA's grant recipients through September 30, 2018. Previously in May of 2018, FTA published the [FY18 apportionment tables](#) on its website. This year's total funding represents an increase of 8 percent over FY'17 levels.

FTA Issues Notice of On-Line Dialogue on "What is a Federal Project" – FTA is soliciting public input through an [online dialogue](#) exploring how to best define a "federal" project. As part of a comprehensive review of regulations and guidance, the dialogue will help FTA identify opportunities to expedite transit infrastructure funding. The online dialogue poses questions to help FTA review the thresholds for defining whether a project qualifies as federally funded and subject to various federal requirements, reviews and oversight.



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FTA Final P3 Rule -On June 30, FTA published the [Private Investment Project Procedures \(PIPP\) Final Rule](#). The Final Rule describes new procedures to encourage private sector involvement in public transportation projects. FTA anticipates using the lessons learned through the experimental procedures to develop more effective approaches to private participation and investment in transit projects. Here are links to the FTA news release [U.S. Department of Transportation Announces Final Rule to Encourage Private Sector Involvement in Transit Projects](#) and [PIPP Frequently Asked Questions \(FAQ\)](#).

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