



October 15, 2007

Ms. Ann Comer
Chief, Division of Statutory Programs
Office of Labor-Management Standards
Employment Standards Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-5112
Washington, DC 20210

Re: Amendment to Guidelines for Processing Applications for Assistance to Conform to Sections 3013(h) and 3031 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act—A Legacy for Users and to Improve Processing for Administrative Efficiency
29 C.F.R. Part 215
RIN 1215-AB58

Dear Ms. Comer:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am writing to comment on proposed revisions to the Department of Labor's (DOL) guidelines governing Section 5333(b) (commonly referred to as Section 13(c)) of the Federal Public Transportation Act. We appreciate the opportunity to convey transportation labor's views regarding this notice of proposed rulemaking (NPRM).

Through its 32 member unions,¹ TTD represents workers across all modes of transportation industry, including transit workers directly affected by these proposals. The Amalgamated Transit Union, a TTD affiliate, also submitted comments on this NPRM and we fully concur with their views.

TTD actively participated in the debate over the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), which was enacted into law in August 2005. Specifically, we fought to ensure that the Section 13(c) protections remained in place and continued to serve our members and promote a stable transit system as it has for over forty years. While there were some changes made to the program that we could not support, at the end of the process the core protections and purposes of Section 13(c) remained intact. In fact it is clear from the overall record that Congress, on a bi-partisan basis, continues to support the full and fair implementation of this program. Unfortunately, there are aspects of the NPRM that do not follow this mandate and stray too far from the statute and the intent of Congress. Specifically, Congress stated its intent to allow the Secretary of Labor to use a special warranty if it "provides a fair and

¹ A complete list of TTD member unions is attached.

Transportation Trades Department, AFL-CIO

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equitable arrangement to protect the interests of employees.”² We believe that the proposed guidelines do not fully meet this goal and should be modified to better safeguard transit workers’ rights.

Processing of Grant Applications to Replace Equipment or Facilities of "Like-Kind"

The proposed guidelines provide that employee protections for grants funding equipment and/or facilities of like-kind can be certified without referral. They also allow DOL to make necessary modifications to applicable protections to ensure statutory compliance. Several changes to these proposals are needed. The guidelines should state more clearly that DOL shall make only minimally necessary changes as required by SAFETEA-LU. Because such changes would not be negotiated, the appropriate labor representatives must be provided with all relevant documents relating to grants certified without referral. Such modifications made without referral cannot establish any precedent for referrals made at a later date. Any subsequent referrals should abide by the prior terms that were agreed to by the parties and only the language agreed to previously should form the basis of any negotiation over changes to terms and conditions.

Processing of Amendatory Grant Applications

Section 3031 of SAFETEA-LU establishes that “grant amendments which do not materially amend existing assistance agreements” will not be subject to the Department’s referral procedures. The NPRM does not appropriately define the line between material and immaterial grant amendments. It would undermine the intent of the 13(c) program by limiting review of grant applications that do not add a new activity and do not include a total budget increase of more than 20 percent of the previously certified federal funds. While at first glance such amendments may appear minor, a closer look clearly reveals the harmful impact this 20 percent threshold could have on employees. Because of the likelihood of harm, the NPRM would actually allow material amendments without referral, which clearly violates the intent of Section 3031 of SAFETEA-LU. Additionally, the guidelines should include language mandating that employee labor representatives receive copies of grant amendment applications that are not subject to referral.

Special Warranty Procedures for Grant Applications for Other than Urbanized Areas and Grant Applications for Over-the-Road Bus Accessibility Programs

The NPRM proposes to certify Over-the-Road Bus program (OTRB) grant applications under the Special Section 13(c) Warranty. First, we do not find legislative justification for the DOL’s proposal to apply the Special Warranty to grants funded through the OTRB. However, if this proposal were implemented, the sub-recipients would not have to provide any written assurances that they will abide by the protective arrangements included within the grant. It is unclear how any protective arrangement agreed to under these conditions would actually obligate sub-recipients. If DOL does certify OTRB grants under the Special Warranty, transportation labor urges the Department to establish procedures to guarantee that sub-recipients are bound to the protective arrangements, perhaps by continuing to require written assurances.

² The complete text of section 3013 (h) reads, “Waiver Condition.--Section 5311(j)(1) is amended by striking “but the Secretary of Labor may waive the application of section 5333(b)” and inserting “if the Secretary of Labor utilizes a special warranty that provides a fair and equitable arrangement to protect the interests of employees”.”

The DOL also proposes to establish the terms and conditions of protections in these grants by deriving such protections from the May 1979 Special Section 13(c) Warranty and subsequent precedent. This language is too vague. Instead, the Department should mandate that new arrangements must be at least as protective of employees, if not more, as the current Special Warranty.

The NPRM indicates that the “Special Warranty Arrangement will provide dispute resolution procedures for resolution of any disputes concerning the States’ or other applicants’ compliance with the requirements of the warranty.” Such a dispute resolution process must also guarantee that the DOL will abide by the arbitrator’s decision and mandate that subsequent certifications cannot be made until the arbitrator receives proof of compliance.

If the contract of assistance makes reference to the Special Warranty rather than including its complete text, such reference should specifically identify the version of the Special Warranty which shall apply. This would avoid the potential for confusion.

The NPRM would change the process for the application of a warranty without referral when processing small urban and rural grants, including the elimination of procedures to request alternative comparable arrangements. This change does not appear to be mandated by SAFETEA-LU. Additionally, its implementation would cause an array of problems, such as situations in which the warranty conflicts with local law. While this proposal may have been intended to streamline the process, it would have a variety of unintended consequences that would decrease the program’s efficiency.

Unified Protective Arrangement

The NPRM proposes to create a Unified Protective Arrangement which would no longer honor Operating and Capital Arrangements certified since 1996. These guidelines would replace past precedent. This would cause many grant applicants to administer additional arrangements beyond those that are currently in place. As above, in an effort to streamline the program, the guidelines included in the NPRM would actually cause additional problems for grant seekers.

Transportation labor appreciates the opportunity to comment as the Department implements changes to 13(c) included in SAFETEA-LU. We remain committed to a Section 13(c) program that requires fair treatment of employees before any mass transit provider can receive federal transit funds.

Thank you in advance for your consideration of our views.

Sincerely,



Edward Wytkind
President

TTD MEMBER UNIONS

The following labor organizations are members of and represented by the TTD:

Air Line Pilots Association (ALPA)
Amalgamated Transit Union (ATU)
American Federation of State, County and Municipal Employees (AFSCME)
American Federation of Teachers (AFT)
Association of Flight Attendants-CWA (AFA-CWA)
American Train Dispatchers Association (ATDA)
Brotherhood of Railroad Signalmen (BRS)
Communications Workers of America (CWA)
International Association of Fire Fighters (IAFF)
International Association of Machinists and Aerospace Workers (IAM)
International Brotherhood of Boilermakers, Blacksmiths, Forgers and Helpers (IBB)
International Brotherhood of Electrical Workers (IBEW)
International Federation of Professional and Technical Engineers (IFPTE)
International Longshoremen's Association (ILA)
International Longshore and Warehouse Union (ILWU)
International Organization of Masters, Mates & Pilots, ILA (MM&P)
International Union of Operating Engineers (IUOE)
Laborers' International Union of North America (LIUNA)
Marine Engineers' Beneficial Association (MEBA)
National Air Traffic Controllers Association (NATCA)
National Association of Letter Carriers (NALC)
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)
National Federation of Public and Private Employees (NFOPAPE)
Office and Professional Employees International Union (OPEIU)
Professional Airways Systems Specialists (PASS)
Sailors' Union of the Pacific (SUP)
Sheet Metal Workers International Association (SMWIA)
Transportation · Communications International Union (TCU)
Transport Workers Union of America (TWU)
United Mine Workers of America (UMWA)
*United Steel, Paper and Forestry, Rubber, Manufacturing, Energy,
Allied Industrial and Service Workers International Union (USW)*
United Transportation Union (UTU)

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