



June 5, 2009

The Honorable Joseph C. Szabo  
Administrator  
Federal Railroad Administration  
1200 New Jersey Avenue, SE  
Washington D.C. 20590

**RE: Federal Railroad Administration Docket No. FRA-2009-0045  
Capital Assistance for High Speed Rail Corridors and Intercity  
Passenger Rail Service: Public Input on Recovery Act Guidance to  
Applicants**

Dear Administrator Szabo:

On behalf of the Transportation Trades Department, AFL-CIO (TTD) we are pleased to submit comments on the Federal Railroad Administration's (FRA) implementation of the high speed rail and intercity passenger rail service grant program funded through the American Recovery and Reinvestment Act of 2009 (ARRA).<sup>1</sup>

As explained below, TTD urges the FRA to issue grant terms, conditions and procedures that will ensure that the \$8 billion provided in the ARRA will result in a robust and successful high speed rail system that creates and sustains good jobs and protects workers. Specifically, the FRA must ensure that Amtrak, our nation's national passenger rail carrier and the only current provider of high speed rail, plays the central role in the delivery of the expanded rail services envisioned under the ARRA. The grants guidance must also ensure that any recipient of funding ensure that rail workers are covered under the appropriate rail and labor statutes, that Davis-Bacon prevailing wage requirements fully apply to all covered construction work, that Buy America requirements are applied and enforced rigorously and that labor protections for affected workers are administered fairly and consistent with the law.

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<sup>1</sup> Attached is a list of TTD's 32 member unions who represent workers in all modes of transportation.

**Transportation Trades Department, AFL-CIO**

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Edward Wytkind, President • Patricia Friend, Secretary-Treasurer



TTD and our affiliated unions strongly supported passage of the ARRA, and specifically, provisions in the bill providing for significant investment in our transportation infrastructure. This historic legislation will create and sustain good jobs while making a down-payment on reversing years of neglect and underinvestment in our transportation infrastructure. We specifically applaud the Administration for its unprecedented commitment to high speed rail in the ARRA and its clear intention to support this initiative through the annual appropriation process. The Administration recognizes that in order to achieve a first-class intermodal transportation system, a viable intercity passenger rail system that includes a high speed rail component is essential.

We also understand that the FRA is under strict deadlines and requirements to deliver the ARRA funds quickly while at the same time ensuring they are used effectively to create a viable high speed rail service. With this in mind, we believe utilizing Amtrak and its existing and future workforce as FRA seeks to implement this program is absolutely critical. While we understand that the decision to use Amtrak is not one for the FRA to decide at this time, the grant conditions and application procedures must recognize the unique role Amtrak can and should play in this process. It is clear that Amtrak is in an excellent and unique position to provide the high speed rail service envisioned by the President and embodied in the ARRA.

Amtrak is by law our nation's national passenger rail carrier, and through its Acela Express service in the Northeast Corridor, is the only current U.S. provider of high speed service. The carrier has an established national network which includes an extensive reservation system, existing rolling stock and a physical infrastructure that could be leveraged to support various high speed rail initiatives. Furthermore, Amtrak has a working relationship with freight railroads and has a statutory right to use existing freight track and rights-of-way. Amtrak has also partnered with state and local governments to provide passenger rail service for decades. And through almost four decades of being in service, Amtrak understands and has a track record of adhering to the various grant requirements imposed by the federal government and specifically included for the funds provided in the ARRA.

Most importantly, Amtrak has a dedicated and experienced workforce who will be critical in rolling out and operating high speed passenger rail service. Experienced conductors, mechanical shop employees, signalmen, train dispatchers, Carmen and onboard service workers – to name just a few – are all employed by the company and understand what it takes to run a passenger rail system. These employees have delivered Amtrak service to a growing national ridership<sup>2</sup> despite

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<sup>2</sup> In FY2008, Amtrak transported nearly 28.7 million passengers – 11 percent more than in FY2007 and its sixth consecutive year of record ridership.

years of inadequate funding, an uncertain future, and at times Executive Branch leadership that wanted to dismantle the company or break it up through privatization schemes. With recent passage of multi-year Amtrak reauthorization legislation and election of a President with a vision for an expanded role for passenger rail service, these employees are well positioned to implement the aggressive agenda and challenges presented by the ARRA.

Utilizing Amtrak for high speed rail service will also eliminate certain employee issues that could arise if a new entity is created to provide this service. It is well established that Amtrak is a carrier covered under the Railway Labor Act, the Railroad Retirement Act, the Railroad Unemployment Insurance Act and other applicable rail and labor statutes. Collective bargaining has existed at the carrier since its creation and current labor agreements are in place with all the company's unions. While rail unions and Amtrak have experienced challenging negotiations over the years, the company does understand its obligations under the various rail statutes and the inherent costs associated with those obligations.

In drafting the grant conditions and procedures, FRA must ensure that applicants are able and willing to adhere to the requirements specified in the ARRA.<sup>3</sup> Not only are these requirements required by law, but speak directly to the cost of providing rail services. The FRA must be able to evaluate all applicants and conclude with confidence that they will comply with the explicit mandates.<sup>4</sup> For example, Amtrak, as a rail carrier, has financial obligations to its employees through the Railroad Retirement Act. If another entity seeks to provide service but does so with the intention of evading the railroad retirement system, that entity could artificially undercut Amtrak on a cost basis. While the application of the statutory requirements should address this issue, the FRA must ensure that potential providers of service do not attempt to evade the requirements and that all applicants are judged on a level playing field.

Specifically, 49 U.S.C. 24405(b) directs that a person who conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part by a grant shall be considered a rail carrier as defined in Section 10102(5) for purposes of statutes that use the definition, including, but not limited to the Railroad Retirement Act, the Railway Labor Act, and the Railroad Unemployment Insurance Act. Section 10102(5) in turn defines a rail carrier as a person providing common carrier railroad transportation for compensation. Finally, Section

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<sup>3</sup> The appropriation of \$8 billion for Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service specifically provides that "section 24405 of title 49, United States Code, shall apply to funds provided under this heading." Section 24405 was enacted into law as Section 301 of the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432, October 16, 2008).

<sup>4</sup> We note that the FRA correctly recognizes the need, as articulated in its Notice of Public Docket, to establish "clear selection criteria and evaluation procedures."

10102(6) states that the term “railroad” includes a switch, spur, track, terminal, terminal facility and a freight depot, yard, and ground, used or necessary for transportation. Taken together, these definitions describe a rail carrier as an entity that conducts operations and undertakes a variety of rail activities necessary to provide railroad transportation. With this mind, the FRA must ensure that a state that receives funds under the ARRA commits to ensure that entities conducting rail operations under the various statutory definitions will indeed be covered as rail carriers. ARRA funds cannot be used as a way to exclude rail workers from the statutory regimes they currently fall under and in the process to allow entities to unfairly compete with Amtrak or other rail carriers playing by the rules.

The FRA must also ensure that any construction work performed by contractors is compliant with Davis-Bacon prevailing wage requirements. Amtrak has long been subject to this requirement and Davis-Bacon protections specifically apply through Section 24405(c)(1)(A) and in the ARRA itself. Davis-Bacon has for almost 80 years required federal-project contractors to pay workers current rates in the community where the federally funded project is under construction. This prevents contractors from winning federally funded projects by importing lower-waged workers into communities or driving down wages of local workers. Equally important, Davis-Bacon promotes quality infrastructure, cost-effective construction and greater productivity from the workforce. Given the importance of first-rate construction for the implementation of high speed rail and the need to promote good jobs in this economy, the application of Davis-Bacon is critical to the success of this program. In addition, consistent with an Executive Order issued by President Obama earlier this year, the FRA should consider using project labor agreements (PLAs) as a cost-effective procurement option.

We also urge the FRA to ensure that Buy America requirements, included in both the Amtrak statute and the ARRA, are adhered to and the grant recipients understand these mandates. TTD has long believed that a strong transportation system is dependent on a strong domestic manufacturing base that can produce raw materials and finished products including train equipment necessary for high speed rail.

The purpose of the ARRA, and specifically its transportation investment provisions, was to create and sustain U.S. jobs while improving our transportation network. Allowing grant recipients to circumvent Buy America requirements would obviously run counter to the need to preserve and create American jobs. In addition, and perhaps more importantly, permitting grant recipient to evade Buy America mandates would represent a missed opportunity to revitalize our declining manufacturing base and to build a sustainable domestic production capability that could serve our rail system and related industries for decades to come. There is no question that our nation’s ability to produce locomotives, rail cars and related train equipment has declined in recent years. Instead of using this fact to grant Buy America waivers that will further erode U.S.

manufacturing, the Administration must work with Amtrak, other providers of service, labor, and potential manufacturers to ensure that there is both a steady need, and a standing production capability for U.S.-made products.

Finally, the FRA must ensure that the labor protections applicable to this program fully apply and that potential applicants understand these rules. Specifically, 49 U.S.C. 24405(c)(2) requires applicants to comply with the protective arrangements established in Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 with respect to employees affected by a project financed in whole or in part with grants under this program. In addition, Section 24405(d) established detailed procedures for the preservation of jobs and collective bargaining agreements if an entity that receives money under this program replaces current intercity passenger rail services provided by Amtrak. As a general comment, we would note that the purpose of these protections is not simply to provide financial assistance to displaced workers, though that may indeed be necessary. Instead, employee protections should be seen as a means of integrating the existing workforce into high speed rail and expanded intercity service. Furthermore, existing collective bargaining agreements can assure that new operations have access to experienced and trained workers, and in the process, minimize labor uncertainty.

Good labor policy and sound transportation policy are not inconsistent propositions, and in fact, high speed rail in this country will only succeed if workers are brought into the process and treated fairly. The statutory framework and requirements for the ARRA high speed rail program makes this objective easier but it will be up to the FRA to ensure that the intent of these protections is indeed carried out.

We look forward to working with you and the Secretary to advance the President's vision for a new national commitment to high speed rail and expanded intercity rail. Thank you for taking the time to consider the views of transportation labor

Sincerely,

A handwritten signature in black ink, appearing to read "Edward Wytkind", with a horizontal line underneath.

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 Aviation Safety 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)*