

June 26, 2023

The Honorable Nuria Fernandez  
Administrator  
Federal Transit Administration  
U.S. Department of Transportation  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**Re: NPRM re: Public Transportation Agency Safety Plans  
Docket No. FTA-2023-0007, RIN 2132-AB44**

Dear Administrator Fernandez:

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to respond to the Federal Transit Administration's (FTA) Notice of Proposed Rulemaking (NPRM) implementing statutory changes in the Infrastructure Investment and Jobs Act (P.L. 117-58) regarding safety protections for frontline transportation workers. TTD consists of 37 affiliated unions – including those representing the majority of public transportation workers in the United States – who together, fought to ensure the provisions under consideration in this rulemaking were passed into law, and who have a significant interest in ensuring they are correctly implemented.

In addition to our own comments below, we endorse the comments filed by our affiliated unions, the Amalgamated Transit Union (ATU) and the Transport Workers Union of America (TWU), as well as those filed by Majority Leader Schumer, and the comments jointly filed by Senators Brown, Van Hollen, Reed, Warren, and Menendez.

## **Background**

First, TTD wishes to express our serious concern about unmet requirements to protect transit workers dating back to the 2015 Fixing America's Surface Transportation (FAST) Act (P.L. 114-94). Section 3022 of that law required the FTA to publish a Notice of Proposed Rulemaking on protecting public transportation operators from the risk of assault, with specific consideration given to the safety needs of drivers of different modes, differences in operating environments, the use of technology to mitigate driver assault risks, existing tools that agencies and operators are already using or testing, and the impact of the rule on future rolling stock procurements and vehicles currently in revenue service.

In 2019, then Acting Administrator of the FTA, K. Jane Williams, determined that the mandate to promulgate rulemaking “would be redundant.” It is clear to both labor and Congress that there was no sound basis for this decision, and Congress has since issued the following directive to the FTA, most recently in the FY23 Consolidated Appropriations Act Report Language:

*The Committee notes that the FTA has not met the statutory deadline in accordance with section 3022 of the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94), which requires the FTA to establish protections from assault for transit workers. The Committee does not view the actions taken by the FTA under 84 FR 24196 as sufficient to meet the requirements under such section and notes that Congress explicitly directed the FTA to address the threat of transit worker assault separately in addition to its directives with regard to public transportation agency safety plans. The Committee directs the FTA to brief the House and Senate Committees on Appropriations no later than 60 days after enactment of this Act on how it will comply with section 3022 of the FAST Act in a manner that is consistent with congressional intent.*

To our knowledge, the FTA has provided no timeline for issuing the required rulemaking.

Transportation labor’s efforts to pass additional, specific requirements to ensure safety for frontline transit workers was in part in response to the FTA’s inaction. However, the provisions in the IJA that are addressed in this rulemaking are not and were never meant to supersede those in the FAST Act, and we remain deeply concerned about the FTA’s inaction more than 9 years after the FAST Act was passed.

Regarding this rulemaking, TTD echoes the specific concerns raised by our affiliated unions and our partners in the Senate who spent years fighting to ensure public transit workers had the long overdue protections they deserve. Specifically, TTD firmly believes that the FTA must address the following:

**The accountable executive must not be given unilateral authority to override the decisions of the safety committees**

The proposed rule currently states that an Accountable Executive “receives and considers recommendations for safety risk mitigations from the Safety Committee[s]” established under Section 30012 of the IJA.

There is no question over the intent of Congress regarding the function of the safety committees and the role of the accountable executive. As clearly stated in the comments filed by Senator Brown and his colleagues on the Senate Banking Committee, “Congress’s decision to direct each agency safety committee to approve an agency’s safety plans before an Accountable Executive implements the safety plan demonstrates the Congressional interest in ensuring that the work of the agency safety committee is not ignored or rejected by an Accountable Executive or their designees.”

The change proposed by the FTA is not representative of the statute or the intent of its authors and must be removed from the final rule.

**Tiebreaking mechanisms must be consistent with the joint labor-management spirit of the safety committees**

By establishing safety committees that are made up by an equal number of representatives from labor and management, Congress clearly demonstrated its interest in having safety decisions arise from a collaborative and democratic process involving both frontline workers and management. While we strongly support this framework, we also understand that disagreements are inevitable and will require a solution that is in the spirit of these committees. We share the position of Senator Brown's comments, which state that "FTA should clarify that any tie-breaking mechanism must maintain the balance between labor and management, as well as be a mutually agreed upon process, which may include an existing collectively bargained dispute resolution process," and also urge the FTA to give full consideration to the recommendations put forward in the comments filed by ATU and TWU.

**The FTA must ensure accountability and compliance with the requirements of the IIJA**

In comments filed by ATU and TWU, serious concerns are raised over transit agencies who have been non-compliant with the new safety requirements already put in place by the FTA. Without a strong commitment to compliance oversight by the FTA that holds transit agencies accountable when they disregard their legal duties, this rulemaking will ultimately hold no weight.

Again, we encourage the FTA to give due and serious consideration to the recommendations of our affiliated unions, which go into much greater detail on these as well as other concerns. With those addressed, we believe that this rulemaking can result in real changes that improve the lives and safety of working people throughout our public transportation system.

Sincerely,

A handwritten signature in black ink, appearing to read 'Greg Regan', written over a circular stamp or mark.

Greg Regan  
President