

**Testimony of Peter Varga,  
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before the  
Highways and Transit Subcommittee  
of the  
House Transportation and Infrastructure Committee  
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Chairman Petri, Ranking Member DeFazio, and members of the Subcommittee, thank you for the opportunity to testify today on implementation of Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), which was enacted last July. I am the chief executive officer of The Rapid, which is the public transportation agency serving riders in and around Grand Rapids, Michigan. In the 10 years since we were established, ridership on The Rapid's expanding network of bus routes has more than doubled. Ours is but one of many examples of the growing nationwide demand for public transportation. Today I testify as a representative of public transportation systems across the country, as I am also the vice chair of the American Public Transportation Association (APTA).

APTA is a nonprofit international association of 1,500 public and private member organizations, including transit systems; commuter, intercity and high-speed rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations; and state departments of transportation. More than ninety percent of the people using public transportation in the U.S. and Canada are served by APTA member systems.

### **Implementation Principles**

Recognizing the enormous task facing the Department of Transportation (DOT) and the Federal Transit Administration (FTA) as they implement the significant programmatic changes made in the two-year MAP-21 bill, APTA recommends some general principles to guide these efforts. For those changes to programs and policies that could significantly impact the public transportation industry for years to come, industry stakeholders must be afforded a genuine opportunity for meaningful input. In its pursuit of an aggressive timetable for implementing key program and policy priorities, the FTA should resist "one size fits all" approaches, and ensure that requirements placed on transit agencies are scalable based on agency size, resources, and operational complexity.

MAP-21 includes important programmatic changes long sought by the public transportation industry that we are eager to see fully implemented, including changes that will streamline the New Starts process, expedite environmental reviews, and ensure that public transportation has a seat at the table in regional planning decisions. A healthy opportunity for public involvement in developing these and other policy decisions will ultimately produce stronger, consensus-based rules that can be effectively implemented by the industry. These changes take place in an environment of constrained funding from all levels of government, so we ask that the FTA provide significant flexibility and discretion to transit agencies as they work to expand service to

meet ever-growing ridership demands, sustain public transportation's enviable safety record, and modernize our aging systems.

There is much to laud in the Department's MAP-21 outreach and implementation efforts to date. The FTA wisely included extensive early guidance in its FY 2013 apportionment notice. Departmental staff have held webinars and listening sessions and conducted several online national dialogues on major MAP-21 provisions. The FTA has actively participated in all of APTA's recent meetings to share information and solicit industry input on the new law. Moving forward, we strongly urge DOT to follow all public notice and comment procedures for rulemakings, circulars, and policy guidance to the maximum extent possible, to afford all stakeholders the opportunity to be heard.

We appreciate the Committee's attention at this time to MAP-21 implementation, yet we emphasize that in many respects, the process of issuing new regulations to implement the law is just beginning. In the less than 10 months since enactment, the FTA has issued few formal notices of proposed rulemaking, and our ability to comment on the details of how the law will be implemented is therefore limited. We recognize that the short timeline for implementing this two-year bill makes this task more difficult for the FTA; it also makes this Committee's review of the law prior to expiration more difficult too. APTA will remain an engaged and active partner throughout all implementation efforts.

### **Federal Safety Performance Authority**

One of the major new programs in MAP-21 is the public transportation safety program, under which the FTA is required to create a national safety plan for all modes of public transportation and establish minimum safety performance standards for rolling stock not regulated by other federal agencies. The law directs the FTA to establish a safety certification program for federal and state employees who conduct safety reviews and for safety officers at transit systems. Transit systems are required to develop comprehensive safety plans that must contain specific elements and state safety oversight agencies that now oversee safety at transit systems that operate rail transit could continue to do so if they meet certain standards and are certified by the FTA.

While no formal guidance or proposed regulations have been issued to date, APTA's member organizations are committed to complying with the new program and hope to work with the FTA on the implementation of this program, which provides significant new regulatory authority to the FTA. The FTA leadership has made clear that this is a priority under the new law, and has also stated that they intend to develop a program that recognizes both risk and agency size.

APTA trusts that the FTA will work cooperatively with the industry in the development of the program, including the development of safety standards, certification of safety personnel, and the scope and detail of program requirements for rail, bus, and other safety programs. In particular, APTA has administered both rail and bus safety management audit programs for many years, and it would like to share its experience and expertise with the FTA as it implements the new law. Moreover, industry experience, expertise, and input should be considered in the development of standards and guidelines for both operating and equipment standards. APTA

developed the Passenger Rail Equipment Safety Standards (PRESS) program during the 1990's to fill a void in safety standards for commuter rail cars, and we urge the FTA to take advantage of APTA's experience in this regard. Finally, as mentioned earlier, we urge the FTA to develop safety programs that recognize the difference between agencies that operate large-scale, complex systems and smaller bus agencies with much smaller personnel and financial resources.

### **Transit Asset Management/SGR and Performance-Based Planning**

Increasing the reliability and performance of our public transportation systems is one of APTA's most fundamental aims. Especially in our current funding climate, we recognize investment decisions must be systematic and data driven. Our progress in establishing standards for collecting sound, reliable data on asset conditions and performance predates MAP-21. Many of our agencies already collect regular condition and performance data to better focus scarce resources on coaxing greater reliability from aging assets. The FTA must encourage common asset management principles flexible enough to accommodate a broad range of transit asset management (TAM) plans, from sophisticated practices already functioning well at some agencies, to more general approaches suitable for smaller systems just initiating asset management plans.

Underpinning any TAM plan is the ultimate goal of bringing assets into a state of good repair (SGR). We commend the FTA for recognizing that transit systems can continue to be safe while working to bring their assets into a state of good repair. Further defining what constitutes a state of good repair is made more challenging by MAP-21's requirement that the term include objective standards for measuring the condition of capital assets. "Objective" must not be interpreted to require rigid or prescriptive standards, be they based on asset condition, age, performance, or reliability. Additionally, the broad applicability of the term "state of good repair" across several programs should weigh strongly in favor of a simple, flexible definition.

The MAP-21-mandated performance management goals around safety and state of good repair will be developed by transit agencies. Through the metropolitan planning process, these goals are harmonized with the regional plan; we support this process. Other important goals are defined at the regional level, such as environmental sustainability, land use, and mobility. These regional priorities, for which transit plays a key role, are equally important and should follow a similar performance management approach.

We are encouraged by FTA feedback from informal listening sessions and solicitation of stakeholder input via national dialogues on these topics, yet we still await critical rulemakings and guidance on transit asset management plans, the definition of state of good repair, and performance-based planning.

### **Capital Investment Grant Program**

Building on a rulemaking already underway when MAP-21 was enacted, the FTA has already revised the New Starts program to reflect some of the law's changes here, including simplifying the project development process and revising rating and evaluation criteria. While moving quickly on these revisions, the FTA sought significant public input, including hosting a New

Starts listening session at APTA's Annual Meeting last October. We strongly support FTA's move towards simplified, more comprehensible measures. However, we remain concerned that some of the approaches for evaluating projects do not adequately account for the substantial differences in project length, scope, complexity, and investment size among the wide breadth of projects seeking grants. Some evaluation measures apply identical rating thresholds to both New Starts and Small Starts projects, holding smaller project sponsors to an inappropriately high standard. We urge the FTA to modify its policy guidance to recognize the legitimate differences between large and small projects in the areas of mobility improvement and land use.

There remain a number of significant New Start changes not yet implemented by the FTA, including the transition to MAP-21's simplified project development process, expanded eligibility for core capacity projects, a new congestion relief rating criterion, program of interrelated projects eligibility, and the process for expedited technical capacity review. We are eager for the rulemaking implementing these MAP-21 changes to get underway. Expanding eligibility to include core capacity projects, while also slightly reducing program funding, further strains the capacity of the New Starts program. To maintain stakeholders' confidence in the integrity of decisions made in this highly competitive discretionary program, the process behind departmental approvals and funding recommendations must be transparent.

### **Environmental Streamlining**

Public transportation projects can and should be approved by FTA more quickly. Streamlining project approval and delivery processes will accelerate projects, thereby reducing costs and regulatory burdens and more efficiently using the limited resources of all levels of government and the private sector, all without compromising environmental safeguards. We applaud FTA's continued efforts to streamline the National Environmental Policy Act (NEPA) review process for federally funded transit and highway projects.

In addition to a recent final rule expanding categorical exclusions (CEs), in February the Department issued a notice of proposed rulemaking establishing CEs for certain projects within rail transit operational rights-of-way and projects receiving limited federal financial assistance. We would like to see a strong outreach program to ensure all involved understand the changes and that this rule is implemented consistently throughout the country.

### **Emergency Relief Program**

Last fall, Hurricane Sandy impacted the lives, property, and transportation systems of millions of Americans along the East Coast. New York and New Jersey in particular – comprising our Nation's most transit-reliant region – suffered unprecedented damage to their subways, buses, and commuter rail systems. Congress responded by passing the Disaster Relief Appropriations Act, providing \$10.9 billion for the transit Emergency Relief program newly established in MAP-21. FTA has allocated the initial \$2 billion to transit properties in New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, and Rhode Island for expenses incurred in preparing for Hurricane Sandy, reconstructing or replacing damaged equipment and facilities, and mitigating the impacts of any future natural disasters. The FTA and the Federal Emergency Management Agency (FEMA) also acted swiftly to complete the required Memorandum of

Agreement (MOA) that delineates the roles and responsibilities for each agency as this grant program is administered.

Assisting citizens, States, and localities in the wake of natural disasters is a fundamental role of the federal government. We are grateful to both Congress and Administration for providing and streamlining the federal assistance greatly needed by East Coast communities, riders, and transit systems as they continue to work to fully restore their systems and prepare for the inevitability of future storms.

### **Joint Development**

One significant benefit of public transportation is its ability to catalyze community development. In proposed guidance issued last month, the FTA incorporated MAP-21 provisions and consolidated its earlier collection of guidance concerning joint development, which governs how federal transit grants and federally-funded real property may be used in coordinated development of public transportation projects with other, non-transit development of real property. In reviewing transit agencies' joint development decisions, FTA should respect local authorities' findings on whether a project offers a meaningful level of benefit. Nor is it appropriate for the agency to define the benefit of a project solely in terms of revenues accruing to the local transit agency. Instead, the FTA should enable localities to consider a project's cumulative, net benefit to public transportation and the community in the context of the joint development project as a whole.

The substantial local investment of time and resources necessary to reach a final development agreement are daunting in any project scenario. The departmental project review process here must provide early, concise, and timely input, consistently implemented across the federal regions. Transparent and early action by the FTA is a key component in attracting the private capital needed to make these projects successful.

One hurdle to effective joint development involves some transit agencies' inability to take advantage of value capture, that is, to secure a dedicated revenue stream from the increased property values attributable to a transit joint development project. In some jurisdictions, these property tax revenues are only available for use by municipal governments. We look forward to working with this Committee and with FTA to address this issue and ensure transit project sponsors appropriately share in the benefits their projects bring to communities.

### **CMAQ Funding for Operating Assistance**

Flexing CMAQ (congestion mitigation and air quality improvement) funds to transit operating assistance has been an approved, well-established practice that provides essential funding for the first three years of new or expanded public transportation service. In an amendment to the CMAQ program, MAP-21 essentially codified this operating assistance eligibility. We are therefore concerned that, almost 10 months after passage of MAP-21, FTA has released no revised CMAQ guidance, creating considerable confusion. In some communities, FTA has refused to release pre-MAP-21 CMAQ funds for approved grants, asserting that all CMAQ funds – including funds authorized in legislation preceding MAP-21 – are now subject to rules DOT has

yet to make public. For transit agencies with approved CMAQ grants, the Department's suspension of operating assistance is untenable. APTA urges the Department to release these approved grants as quickly as possible.

### **Bus and Bus Facilities Program**

For a great number of smaller cities, towns, and rural areas across the country, public transportation means bus service. While both the urban and rural formula programs did increase under MAP-21, bus and bus facilities program funding was cut by more than half and discretionary bus funding was eliminated. Where agencies operating predominately bus service had the opportunity to apply for grants to fund large but infrequent major capital purchases, under MAP-21, they are now struggling to pull together alternative sources. We understand the rationales for maximizing formula funding in MAP-21, and we hope to work with the Committee to find a more workable and better-funded solution going forward.

### **Conclusion**

While not directly related to MAP-21 implementation efforts, the Department's progress in revamping its triennial review program also merits mention today. By assessing information before the on-site review and making other changes, the FTA has developed a more targeted and risk-based approach that is focused on preventing problems before they occur. We are encouraged by this new streamlined approach and the FTA's industry outreach on the process.

I conclude by reaffirming APTA's commitment to continue participating with the FTA and other transit stakeholders in meeting our shared aim of fulfilling the nation's growing demand for reliable and safe public transportation. Hallmarks of this implementation effort must include broad opportunities for public input as each MAP-21 policy and rulemaking is crafted, and flexible final requirements scalable to transit agencies of widely differing sizes and resources.

Thank you for the opportunity to testify today. I am happy to answer any questions you may have.