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OVERSIGHT OF SAFETEA–LU IMPLEMENTATION: THE CURRENT STATE OF PROGRESS AND FUTURE OUTLOOK

HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND TRANSPORTATION

OF THE

COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON

OVERSIGHT OF SAFETEA–LU IMPLEMENTATION:
THE CURRENT STATE OF PROGRESS AND FUTURE OUTLOOK

TUESDAY, JUNE 27, 2006

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OVERSIGHT OF SAFETEA–LU IMPLEMENTATION: THE CURRENT STATE OF PROGRESS AND FUTURE OUTLOOK

TUESDAY, JUNE 27, 2006

U.S. SENATE,
SUBCOMMITTEE ON HOUSING AND TRANSPORTATION,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Subcommittee met at 2:32 p.m., in room SD–538, Dirksen Senate Office Building, Senator Wayne Allard (Chairman of the Subcommittee) presiding.

OPENING STATEMENT OF SENATOR WAYNE ALLARD

Senator ALLARD. The Subcommittee on Housing and Transportation will come to order.

On August 10, 2005, the Surface Transportation Bill, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act, a Legacy for Users, called SAFETEA, was signed into law by President Bush. SAFETEA reauthorizes the Surface Transportation Programs through fiscal year 2009. For transit, the 6-year funding total is $52.6 billion in guaranteed funding, which is an increase of 46 percent over TEA–21. SAFETEA builds upon the successes of the previous Surface Transportation bills, ISTEA and TEA–21.

While the Act generally followed the existing transit programs, it also made a number of changes. For example, the Jobs Access Reverse Commute was changed from a discretionary to a formula program. SAFETEA also created a number of new programs, such as the Small Starts and Transit in Parks Programs, as well as new formula factors including the growing States and high density formulas.

Since reauthorization took more than 2 years, I can attest that these changes were given serious consideration.

SAFETEA represents a careful balancing of priorities. Once the Bill was signed into law, it fell to the Federal Transit Administration to implement the many changes. This is a significant undertaking and FTA has been making good progress, particularly considering that FTA has been without a confirmed administrator for some time.

Today's hearing will be an opportunity for the Subcommittee to receive an update on implementation thus far. It will also be an opportunity to consider the challenges and opportunities that FTA will face as it completes the job.

We have an excellent lineup of witnesses that will be able to give us an overview of SAFETEA implementation. First, we will hear from Ms. Sandra Bushue, Deputy Administrator at the Federal Transit Administration. Ms. Bushue has shouldered a great deal of responsibility since she has been serving as the Acting Administrator.

Next we will hear from Ms. Kate Siggerud, a Director for the Physical Infrastructure Team at the Government Accountability Office. GAO's experience with previous reauthorization bills will be helpful. They have also been studying the process by which the Act is implemented.

Finally, we will hear testimony from Mr. William Millar, President of the American Public Transportation Association, APTA. As the voice of the transit industry, Mr. Millar can help us better understand the practical bottom-line realities of implementation.

I would like to thank all of our witnesses for being here. They were very helpful as we negotiated and wrote the bill, and I am pleased to continue that partnership that SAFETEA has implemented.

There is a significant demand for transportation dollars and successful implementation will help ensure that the most worthy projects are funded and that projects are completed on time and on budget.

I will now turn to the ranking member for any statement that he may wish to make.

Senator Reed.

STATEMENT OF SENATOR REED

Senator REED. Thank you very much, Mr. Chairman. And thank you holding this hearing on the implementation of the SAFETEA–LU transit provisions.

Let me welcome all of our witnesses. Again, I would like to thank you, as the Chairman did, not just for your presence today but for your help over the many months that we drafted this legislation.

Public transit is essential to millions of Americans who use it to commute to work and to get to school, and it is a lifeline to many Americans who do not have an automobile.

Across our country, transit ridership is growing and transit is essential not only to move people around but also to reduce congestion on our highways and to clean up the environment.

Affordable and safe public transit is particularly important today when rising gas prices drain dollars out of the pocketbooks of working families all across this country.

Last year's reauthorization of our Nation's surface transportation laws was vital to our constituents and to our country. It is important that we continue to move forward with implementation of the legislation in a manner that supports local communities' efforts to develop transit that meets their needs.

I am particularly interested in hearing from our witnesses about their opinions of FTA's Very Small Starts Program and FTA's efforts to include land use and economic development factors in the evaluation of New Start and Small Start projects. The Very Small Starts Program was not authorized by Congress explicitly and I am concerned that it may not be mode neutral. Also, I am concerned

that FTA might be ignoring Congressional intent to give more weight in the evaluation process to land use and economic development.

One final comment that I would like to make is to express my disappointment that the President's budget requested $100 million less than the amount authorized in SAFETEA–LU for transit projects. The Senate fought hard to ensure that there was an 80/20 split in funding for transportation and transit projects and this cut, I believe, violates the spirit.

Also, I think it is shortsighted, given the need for transit in our Nation and across our country.

I want to thank the witnesses and I look forward to your testimony.

Senator ALLARD. Thank you, Senator Reed.

We will now continue with Ms. Bushue and then we will go and call on the rest of you.

Sandra, you are Deputy Administrator, Federal Transit Administration. We look forward to hearing from you. Thank you.

STATEMENT OF SANDRA BUSHUE, DEPUTY ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION

Ms. BUSHUE. Thank you, Mr. Chairman. And thank you for the opportunity to testify before you today.

As you know, SAFETEA–LU makes an unprecedented investment in public transportation. As noted in the June 20, 2006, Wall Street Journal article, public transportation is gaining riders and cachet, as they say.

Since my arrival at FTA, I have made timely implementation of SAFETEA–LU my top priority. To meet SAFETEA–LU mandates, FTA prioritized 60 deliverables required by the legislation. We made delivery of the top 12 items a core accountability performance standard for the FTA senior executives.

I am extremely pleased to report that we have either completed or are on target to complete all but two of them. We delayed delivery of the two items, New Starts and Small Starts, only because we made a deliberate decision to do so after seeing an extraordinary degree of stakeholder interest.

In fact, FTA's approach to the requirements of SAFETEA–LU balances an aggressive implementation schedule with a broad-based outreach effort that makes stakeholder input a priority.

We have held nearly 100 sessions, including a webinar, and other workshops specifically focused on New Starts and Small Starts. We are working diligently to ensure that grantees have an opportunity for comment on any guidance that might create a binding obligation on them. This process has fostered a healthy dialog with the transit industry which we plan to translate into policies that reflect reality.

Turning to regulatory actions, we believe we are making solid progress. We issued a notice of proposed rulemaking on Buy America on November 28, 2005, and the final rule on March 21, 2006, covering the more routine issues in the NPRM. Since the comments we received indicated that the issues were more complex than originally thought, we plan to develop a second proposed rulemaking regarding the remaining items.

FTA also began a negotiated rulemaking on Charter Bus by establishing a formal advisory committee. The exact timing of this proposed rule will depend on the committee's deliberations.

Finally, we are working with Federal Highways to implement changes made to the Metropolitan and Statewide Planning Process. We issued an NPRM on June 9 and the final rule should be in place by spring 2007.

Turning to FTA's new and modified programs, our aim is to implement SAFETEA–LU change while ensuring funding and program continuity. We have begun doing that for several programs. First, we successfully restructured our appropriations accounts to deal with SAFETEA–LU's program structure in time to award grants in fiscal year 2006.

Second, we tackled the changes to New Starts. It appears we are off to a good beginning. However, since coming to FTA, I have had concerns about the time and cost to develop New Starts projects. Hence, FTA has engaged a management consulting firm to review the New Starts delivery process, and I hope to have some preliminary findings in the next 3 months.

Third, FTA introduced the Small Starts program. With the level of stakeholder interest and the wide range of issues posed by the program, we decided to issue an advance notice of proposed rulemaking. The robust response to the ANPRM assisted us in publishing draft interim guidance that was published on June 9. Once the comment period closes on July 9, we will modify the guidance and publish it in final form later this summer. The draft guidance will allow grantees to assess their projects and submit them for possible funding during fiscal year 2007.

Fourth, changes to the Job Access and Reverse Commute and the Elderly and Persons with Disabilities programs, and the introduction of the New Freedom program emphasize local coordination of service to populations with special needs. We issued interim guidance on March 15 that allowed grants to be made in each of these programs during fiscal year 2006. The final program guidance will be published later this year.

FTA is working closely with the Department of Interior on the new Transit in the Park's program. Efforts by our interagency team allowed FTA to publish a notice of funding availability on March 23. The notice resulted in the submission of nearly 80 project proposals. The team evaluated the project proposals and recommended a list of projects to the Secretary of the Interior, who will make the final decision on the project selection later this summer.

FTA is working very hard on the Grants to Indian Tribes program that establishes a direct Government-to-Government relationship between FTA and tribes. We shared some initial thoughts on the program and requested comments on November 30, 2005. Since then, we have held a number of outreach sessions around the country. Based on the input we received, we issued a notice on March 22 that solicits additional comments on more specific program details. We plan to issue a notice of funding availability later this summer.

Last, but certainly not least, is our exciting pilot program to assess the benefits of public–private partnerships for major transit

investments. On March 22, we issued a notice requesting comments and proposals of interest for potential participants. The comment period closed on June 1 and we currently are reviewing four project proposals and the comments received.

This summary of FTA activities cannot adequately convey our aggressive implementation of SAFETEA–LU and our broad-based outreach efforts. Nevertheless, it is my hope that you agree that FTA has made progress in our implementation of SAFETEA–LU.

I would be happy to answer questions later.

Thank you.

Senator ALLARD. Ms. Siggerud from the Government Accountability Office.

STATEMENT OF KATE SIGGERUD, DIRECTOR OF PHYSICAL INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE

Ms. SIGGERUD. Thank you, Chairman Allard and Ranking Member Reed. I appreciate the invitation to participate in this hearing today on FTA's implementation of SAFETEA–LU.

My statement will cover three issues: SAFETEA–LU's changes to first, the New Starts program and second, the Job Access and Reverse Commute program, also known as JARC, and FTA's efforts to implement these changes. Also, I will cover issues that may be important as FTA moves forward with these programs.

My statement draws on both past reports that GAO has issued on New Starts and JARC, and on the preliminary results of our ongoing work for this Committee, as required in SAFETEA–LU.

Turning now to the changes made to New Starts, these include requiring FTA to issue policy guidance, establishing the Small Starts program, adding economic development to the list of evaluation criteria for proposed projects and building in accountability for measuring project outcomes.

FTA has taken steps to implement these changes, including policy guidance for New Starts this past January. I wanted to say a few words about the Small Starts program, which is one of SAFETEA–LU's key changes. Small Starts is intended to streamline the application and review process for small transit projects. To be eligible for Small Starts, projects must run along a dedicated corridor, cost less than $250 million, and request less than $75 million in Federal Small Starts funding.

Earlier this year, FTA solicited public comments on its initial ideas for Small Starts. Members of the transit community did express some concern about whether the ideas would actually streamline the process. FTA issued interim guidance, as was mentioned earlier, on the Small Starts program just a few weeks ago, and solicited comments on this proposed approach.

Under the interim guidance, Small Starts projects will be evaluated and rated using a slightly simplified version of the framework used for traditional Small Starts projects.

In this guidance, FTA discussed a separate eligibility category not included in SAFETEA–LU for Very Small Starts projects. These would be projects that cost less than $50 million and do not involve the construction of a fixed guideway. FTA is currently seeking public input on both programs and plans to issue its final interim guidance in August.

The second issue I would like to discuss today is SAFETEA–LU's changes to the JARC program. These include allowing recipients to use funds for planning activities and adding planning requirements. Most significantly, SAFETEA–LU made JARC a formula-based program rather than a discretionary program. In recent years most JARC funds were congressionally designated to specific projects. Under SAFETEA–LU, FTA will use a formula to distribute funds to States and urbanized areas, who will in turn award funds to proposed projects on a competitive basis.

As a result, some areas will receive substantially more funds than under the discretionary program, while others will receive substantially less. It will also bring new players to the table as agencies that have never received JARC funds before will now receive grants.

The third topic I would like to address is the issues that may be important as FTA moves forward with the implementation of SAFETEA–LU. The law itself responds to concerns we raised in our earlier work about transparency, communication, and accountability of these programs. Since 1998, we have made a number of recommendations in these areas.

For example, we reported that the transparency of the New Starts program could be increased by obtaining public input on proposed policy changes before they are implemented. We have also reported that FTA could better measure the outcomes of the JARC program, an important step in holding the program accountable for results. For example, SAFETEA–LU requires FTA to publish for notice and comment any proposals that make significant changes to the New Starts program, which FTA did in January. Members of the transit community and FTA officials have stated that they are pleased with the review and comment process. FTA has also held a number of outreach sessions and solicited public comments to inform its development of JARC guidance.

SAFETEA–LU also includes several provisions that emphasize the accuracy and consistency of project costs and ridership estimates in the New Starts process. For example, SAFETEA–LU requires FTA to consider the reliability of forecasting methods used by New Starts project sponsors and their contractors in estimating costs and ridership.

With regard to JARC, SAFETEA–LU requires FTA to evaluate the program's effectiveness. FTA has already begun to take some steps to meet this evaluation requirement.

We expect that several SAFETEA–LU provisions for New Starts and JARC will be a challenge for FTA to implement. The requirement to use the New Starts project's potential to stimulate economic development in evaluating it will be difficult because benefits from economic development have significant overlap with benefits from improved mobility and improved land use. FTA is also required to use those two measures as evaluation criteria.

FTA is also studying how to implement measures of accuracy in forecasting ridership and costs, an issue of particular importance for this Committee.

With regard to JARC, FTA will have to integrate new grant recipients into its established oversight process.

In conclusion, Mr. Chairman, FTA has made progress in implementing SAFETEA–LU's changes to the New Starts and JARC programs. Both are in a state of transition as FTA works to implement a number of significant changes which makes it even more important that FTA continue its efforts with regard to transparency, communication, and accountability of the programs.

This concludes my statement. I am happy to take questions when you are ready.

Senator ALLARD. Thank you.

Mr. Millar of the American Public Transportation Association. Thanks for being here.

STATEMENT OF WILLIAM MILLAR, PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

Mr. MILLAR. Thank you, Mr. Chairman. It is a pleasure to be back in front of this Subcommittee and with you and Senator Reed. We appreciate the many times that you have called upon us and we hope that we have been of good assistance to the Subcommittee and its work.

We are really pleased to be here talking about the implementation of SAFETEA–LU. Frankly, it is going very well and we are off to a very good start. As you indicated in your opening statement, record levels of funding for investment in public transit should result from SAFETEA–LU, and we are very pleased that we seem to be tracking the direction that this Subcommittee and the entire Banking Committee gave in that regard.

I am also pleased to commend our friends at the Federal Transit Administration. As Ms. Bushue has just outlined for you, they were given a Herculean task of revising many regulations, of updating many programs, at the same time introducing new programs. And we believe that they are making very good progress on those activities.

We are especially pleased that they have taken full advantage of the opportunity to contact those of us in the transit industry and get our input and our ideas, and I believe in my testimony I provided several examples where we have already seen that they have taken some preliminary ideas that they had, put them out for comment. We, in turn, have made suggestions and they have done their best to respond positively and incorporate suggestions where appropriate.

So I think we are off, in the quick summary at the beginning here, we are off to a very good start and we appreciate the spirit with which FTA is moving on this.

And it is a good time for that, because public transit is receiving attention like never before. Last year over 9.7 billion times Americans used public transit. Transit use has grown by over 25 percent in the last 10 years. These are certainly numbers I have presented to the Committee before, but I think it reminds us that what this all is all about ultimately is serving people. And when people use something more, it is obvious that they are benefiting from the investments.

Of course, recently, with the high gas prices that all of us are facing when we go to the pump, that has cost, in many communities, the ridership to grow even faster. One of the points we are

trying to help the American public understand is they do have an alternative to high gas prices. The quickest thing they can do, if it is available to them, is to take public transit.

So all in all, I think we are off to a good start.

With regard to funding levels, the new programs that have been described, the expansion of the Rural Transit program, Transit in the Parks, New Freedom, the changes in JARC, seem to us to be going off to a good start. Some of our members have been concerned that because of the need to introduce new programs, they have not seen quite the increases in funding they had first thought. But we assure them that once those programs are in and the formulas grow in subsequent years that should take care of itself.

However, we do have worries and Mr. Reed, in his opening statement, made an indication to this effect, that the Administration, in its budget proposal, did propose cutting the Small Starts program. We oppose that cut. We believe this Committee documented many times over. The need is there to justify it. And we are pleased that the House Appropriations Committee has restored the proposed cut.

Unfortunately, they did not restore it to the Small Starts program. And so while the overall funding level coming out of the House looks consistent with what this Committee authorized, we would hope that the Senate Appropriations Committee would work to bring it in line programmatically with what this Committee authorized.

Simply said, that would make sure that Small Starts gets the money that this Committee intended for it.

With regard to New Starts, we particularly want to applaud Ms. Bushue's proposal to bring in a pair of fresh eyes to look at the New Starts program. This program is now more than 20 years old. It has gone through many, many changes over the years. And we do think it is time to have an evaluation of the way the program is managed, see where there might be opportunities for improving the program and other things that may come from such an independent review.

And we have told her that we will be very, very happy to cooperate with FTA and with its consultant in at review. We think there are many improvements that can be made. We think that is a perfect opportunity for that to be made.

With regard to Small Starts, I have already described our disappointment at the funding levels, but hopefully Congress will correct that.

We have suggested, in response to their interim guidance, there may be some ideas for simplifying. We want to be careful there is no modal bias in the regulations as they come out. And a longstanding policy of ours is concerned about the way land use and economic development get treated.

We did our own quick survey this spring and found there were over 50 projects across the country that were ready to go that could meet Small Starts criteria. The aggregate value of the—the Federal share aggregate value of those projects was $2.3 billion. So we think this says that your Committee was correct in its judgment that there was a need for this type of program, and we are encouraging FTA to move as quickly as they can to implement that pro-

gram provided the appropriation is there when we get through this cycle.

So in summary, we are out of the gate in good form. We are reaching that first turn and we will see how it goes from here on around the track.

I appreciate very much the opportunity to be with you. Thank you for your leadership and I will be happy to try to answer any questions that you might have.

Senator ALLARD. I want to thank all of you for your testimony. I thought it was appropriate to have a careful review of the bill after it has been about 18 months, I believe, since we passed it just to see how it is working.

I am curious about the Very Small Starts project. These are projects that have no fixed guideway and that they cost less than $50 million.

I would like to know FTA's rationale for the Very Small Starts eligibility category within Small Starts.

Ms. BUSHUE. Certainly, Mr. Chairman.

Interestingly enough we found that, in our listening sessions, that this is what the industry wanted. There was a desire to have a Very Small Start component to allow some bus systems to participate in the program.

But you are right, and again I would just like to state the June 9 document is draft guidance and nothing is yet etched in stone. This is still an evolving program. We have certainly received a lot of feedback from this draft guidance, much as Senator Reed has said. So we are definitely going back and taking a look at it. But that is where the Very Small Starts idea did originate.

Senator ALLARD. If I remember during our conference committee, we had I think a lot of membership, Mr. Millar on the public transportation wanted something to reduce the rules and regulations. It sounds to me like this was an effort for you to try and address that concern.

The question that comes up is whether you feel like you have the authority. You have the authority for Small Starts but when we are talking about the Very Small Starts program, do you need to have additional authority from Congress, do you believe, on that?

Ms. BUSHUE. No, we do not believe that we need to have additional authority from Congress to activate the Small Starts program.

Senator ALLARD. This is the Very Small Starts.

Ms. BUSHUE. Yes, the Very Small Starts, excuse me, the Very Small Starts.

However, to that point, I think what Senator Reed said was absolutely right. We do need to ensure that we are mode neutral. I do think with the Very Small Starts program, it does not appear that we are. I think that is a very constructive criticism.

Again, these are just draft guidelines. We are going to go back and take another look at them. We were anxious to get it right at the FTA, and it seems like we got the New Starts guidelines right. The industry seems to be pretty happy with those guidelines that were put out on May 22.

It seems like we missed the ball a bit with Small Starts. We are going to go back and take another look.

Senator ALLARD. What type of projects did you envision in the Very Small Starts program?

Ms. BUSHUE. For Very Small Starts, we were envisioning projects that would not be on a fixed guideway, probably bus projects, with, however, substantial investments which would mean they would have to show some kind of substantial improvement; *i.e.,* integrating technology in some way, such as GPS systems. We were looking for that substantial upgrade.

But I am not sure if we got there with the guidelines we put out on June 9.

Senator ALLARD. I am trying to think, Very Small Starts, $50 million. That is not a very high figure if you are looking at a fixed guideway.

Ms. BUSHUE. Yes, a nonfixed guideway would be for Very Small Starts.

Senator ALLARD. But I am saying that if you have a fixed guideway, $50 million can be spent really quickly. These are nonfixed guideway projects that you have. And by necessity, I guess we have already—you tend to almost focus on one mode, and that is the busing; right?

Ms. BUSHUE. Yes, and that is why I think that is where the Small Starts criticism is coming from, that it is not mode neutral. Because I think the Very Small Starts concept probably does show a bias for more of some kind of an intelligent bus system, such as BRT.

So we are going to go back and definitely take a look and see how we can fix this.

Senator ALLARD. Also, thinking back, I think there was a strong feeling within Members of Congress that they wanted to have more projects for buses. I think they felt like buses had been shortchanged in the past and felt like buses were a relatively inexpensive alternative to look at.

And so I am glad that you have looked at the Very Small Starts program. And if we need to have new authorization language or something like that, we would be glad to work with you on that.

What about resources in terms of people? Do you have enough people and everything? I would kind of open it. Your answer is we never have enough, I suppose.

But do you have a reasonable number where you think you can do a reasonably good job with New Starts, Small Starts, and Very Small Starts programs?

Ms. BUSHUE. Thank you, Mr. Chairman. I appreciate that question.

In the President's fiscal year——

Senator ALLARD. It is a softball I am going to throw you. Wait until my next question.

Ms. BUSHUE. Payback is hard.

In the President's fiscal year 2007 budget we did request 14 additional FTEs and we need them.

FTA, over the years, has had an increase in funding, an increase in programs, and an increase in responsibilities. And so this is very important—with not an increase in staff.

So we did request 14 full-time equivalent employees. And I understand in the House Appropriations markup that these employ-

ees were included, and it is my hope that the Senate will include them as well. And I think with those 14 additional FTEs, it will be a big help in supporting the activities required by SAFETEA–LU.

Senator ALLARD. Mr. Millar, what is your view about the public comments and feedback situation on the different New Starts and Small Starts proposals?

I would also like to have you comment a little bit on the Very Small Starts concept.

Mr. MILLAR. As I indicated in my testimony, overall we are very pleased with the way the FTA has been prompt in getting proposals out to the industry. They have participated in a wide variety of ways of distributing that, not just publishing it or putting on the Web site, but appearing in webinars, coming to our conferences, meeting with people face on face, holding their own listening sessions.

So we believe they have done a very good job in the outreach.

As I indicated so far, to the degree that there have been opportunities for them to then close off something and formally respond to it, generally we believe we were listened to even if we did not get necessarily everything we got.

With regard to issues, if you do not mind me commenting on two issues that you just discussed with Ms. Bushue, I would like to mention both.

One on the Very Small Starts, and not to bore the Committee or to get my own reading of history wrong, but prior to SAFETEA–LU there was below $25 million was not subject to New Starts regulation to the same degree.

We always felt that was an authority that was never used as much as it could have been or should have been. I think we argued for a $50 million program, is what I believe he argued for at the time. We were well satisfied with the Committee's decision to make it $75 million.

But we believe not only are there very small bus projects that could be done, certainly for less than $50 million, way less than $50 million, but our experience is that some of the New Start commuter rail projects, if they have track that is in good shape, and if they have the willingness of the private railroad to work with them, it is another example where it easily could come in at less than $50 million.

Also, some of the streetcar projects, the initial links there we believe. So we think that the notion of having a simplified Very Small Starts is fine.

But I think I would go back to what we argued before the Subcommittee before SAFETEA–LU, and that is that if it is $75 million or $50 million or whatever the number is, keep the whole thing as simple as possible. Put your focus and emphasis where the big Federal dollars are. Do not worry quite as much, you do not want to waste a single dollar, but do not worry quite as much about the smaller projects. That is the place to experiment.

So we would hope that the final rules, if they decide to include a Very Small Starts, that could be fine with us. But if they decide not to, we would hope that the whole $75 million and below really keeps with the spirit of the Committee.

The other issue, on the size of the FTA staff, this may be an odd thing for an organization like mine to testify to but I have testified before this Committee before and we have not changed our minds. FTA is understaffed. So we would agree that additional staffing is necessary. But we obviously want that staff to be devoted to getting the project process moving.

We will be sharing with this Committee and FTA and others the results of a study that we commissioned this year that just shows how long it is taking New Start projects to move from conception to implementation. We are not ready to share that information yet, but when we are I think it will be an eye opener.

Senator ALLARD. I want to cut you short here because I want GAO to have a response. You did a good job in responding.

I would like to have GAO's response, Ms. Siggerud. And give how you think that the Small Starts program is coming and any comments that you may have about that.

And then when you were listening, talking to the various participants, what were some common concerns on the public comment that you were hearing from the various people who are being provided by this program?

Ms. SIGGERUD. We have looked at the guidance and the proposed rulemaking, talked with FTA staff and with project sponsors about Small Starts and the Very Small Starts proposal that is out there.

Some of the comments that we have heard is that the proposal for the Small Starts aspect in the interim guidance may still be perhaps not quite as streamlined as they would like to see. It looks rather similar to the full New Starts rating process. A number of the sponsors told us they would still like to see some progress made there.

They view the proposal for Very Small Starts, the type of documentation, the type of analysis that will be required to apply for those projects to be appropriate and to be responsive to their concerns.

With regard to the authority to develop the Very Small Starts concepts, in our view it is there in the legislation. We do have a few concerns, again on the mode neutrality and sort of separating it out from the other capital grant programs that already exist for transit.

With regard to the issue you raised about resources, I have not looked specifically at whether 14 is the right number. I would note that the New Starts process, over time, has become more labor-intensive, in terms of the types of analysis that it asks sponsors to do. There are more demands on the New Starts program, especially with the creation of these two new aspects of it. I think looking at the people resource issue is an important one.

Senator ALLARD. My time has expired.

Mr. Reed.

Senator REED. Thank you very much, Mr. Chairman, and thank you all for your testimony. Ms. Bushue, thank you for recognizing the mode neutrality issue.

With respect to Very Small Starts Program, is there some notion of how much money you are going to devote to it? Is there going to be a cap on this program? Or are you going to try to fund every project?

Ms. BUSHUE. No, we are not going to try to fund every project. I think we would be inundated with Mr. Millar's 50 in the pipeline just at the front end.

Our recommendations will be based on the project's credibility and how it passes our tests. They will certainly be evaluated and we will give them the review against the draft guidelines that we have already outlined.

Senator REED. But your allocations, and I am simplifying this, comes through the Small Starts or the New Starts allocation?

Ms. BUSHUE. Small Starts has its own allocation.

Senator REED. And you are drawing the Very Small Starts from the Small Starts?

Ms. BUSHUE. That is correct, sir.

Senator REED. Is there any breakdown, in your mind, between how much you will devote to Very Small Starts versus the Small Starts?

Ms. BUSHUE. Not at this point. I know there are about 50 to 80 projects, but I do not know the characteristics of those projects.

Senator REED. One of the concerns that GAO raised was your ability to review these issues based on cost effectiveness, support of land use and effect on local economic development. Do you think that is a fair point to be made?

Ms. BUSHUE. Yes, I do, actually. I think another criticism, if I may give it, of our Small Starts guidance is that one of the premises of the Small Starts Program is not only to keep the projects small but keep the process simple. I think that is something we do need to go back and take a look at to make sure that we are properly evaluating these projects, but that we are also not creating something like the New Starts process that has become very laborious and very, very difficult for our grantees.

Again, I think we need to look back and make sure that we simplify the best that we can.

Senator REED. Getting back again to the Very Small Starts program, effectively you have determined these are cost effective. I do not think you are doing a cost-effectiveness analysis, are you?

Ms. BUSHUE. We are doing a small one. We are also trying to identify the project characteristics that will produce enough benefits by the nature of the project. We talk about benefits, especially ridership benefits.

I think we will probably be looking also at the economic development and the land use benefits. But it is that user benefits that we will be emphasizing most.

Senator REED. Ms. Siggerud, in terms of the statutory authority, you claim that they have adequate statutory authority for the Very Small Starts program. Does that imply that they would have to use all of the same criteria that would be used for Small Starts?

Ms. SIGGERUD. That is not my interpretation. I think that there could be sort of a variety, in terms of the size of the project, in terms of the types of documentation and analysis that would be necessary in order for FTA to review and approve the proposals.

So what we see now in the interim guidance is a Small Starts approach that is fairly similar to the New Starts, and the Very Small Starts, which is actually quite different.

But what I think I hear Deputy Administrator Bushue saying is they would like to get to a Small Starts proposal that is perhaps slightly more streamlined than is out there in the interim guidance. But definitely there is, in our view, the ability to have different proposal requirements based on the size of the project.

Senator REED. You expressed, as I suggested to the Deputy Administrator, concerns about their ability to do some of these evaluations of land use and economic impact. Can you elaborate on that?

Ms. SIGGERUD. Yes and that does not apply only to the Small Starts case. This applies in general. As you know, SAFETEA–LU required future economic development potential to be included explicitly as a criterion in evaluating the project justification for these projects.

Economic development and land use are very closely linked concepts. And all of them are what we would call in cost-benefit language indirect benefits that flow from the improvement to the transportation itself, the amount of savings and the convenience that comes from building the project.

In calculating the overall benefit of the project, it is difficult to separate these direct benefits from the transportation improvement from the economic development and land use improvements that are likely to flow from it.

That is a difficult technical approach. There are a variety of different ways that FTA could go, in terms of taking a quantitative or a qualitative approach to that. There are also some thoughts they had about building in uncertainty.

We did some work a few years ago looking at this concept of benefits that flow from transit projects. We think there are some approaches that could be used on the qualitative side, looking at economic development and land use, and use of uncertainty as well.

So that we have a sense, when we are looking at these projects where the benefits look similar, that some of these projects are actually riskier than others in terms of the ability to deliver the type of economic potential that the project sponsors would like to see.

Senator REED. Ms. Bushue, you are in a similar mind, with respect to GAO's suggestions on the methodology and some of their ideas? You are prepared to accept those?

Ms. BUSHUE. Yes. One of the things that it is very difficult to measure is the ride not taken, because of economic development. It is very complex and perplexing, if I may say.

One of the things that we are thinking about doing at the FTA is working with Mr. Millar and his organization and bringing in some of their members and maybe spending half a day talking about that very subject and what is the best, fair, and consistent way to measure that component.

Because it is very difficult and complex. And I think not only the FTA, but I think industry as a whole, is uncertain really about the best measurement method.

Senator REED. Mr. Millar, you have said that your members are very pleased with not only the legislation but the implementation. Are there any concerns, though, that you would like to express, other than the underfunding?

Mr. MILLAR. Underfunding is a perennial issue, is it not?

We are concerned that some of the very hardest rules understandably are going to take a while. Right now we are doing fine. We feel we are being listened to. We feel they are making sensible choices, those kind of things.

When you get done on some of the tougher rules, to really figure them out, it will be interesting to see where the Department finally comes out.

Senator REED. Can you give us a quick two or three tough rules?

Mr. MILLAR. Buy America is always a difficult issue. There is a negotiated rulemaking on Charter Bus that is a relatively new activity for FTA, I believe, and for us to participate in. I think we are off to a good start on that, but it is a very controversial area.

The whole area of New Starts, the Small Starts and Very Small Starts. When we start taking a $75 million limit and splitting it into two, and we only have a $25 million difference—that is way more money than I will ever see in my life. But still, relative to the size of the whole program, there is not a lot of difference there.

So if we have one set of rules for plus-75, another set of rules for 50 to 75, and another set of rules for below 50, we scratch our head and begin to wonder can you really make that fine a point?

As Ms. Bushue has indicated, some of our members are concerned about some of the issues there.

So those are examples of things that while they are going fine now, we may have to come back to the Committee at a later date and report something different. But right now we are fine.

Senator REED. Thank you very much.

Thank you, Mr. Chairman.

Senator ALLARD. The other two concepts—oh, I am sorry. Senator Menendez, I did not realize you had walked in the room.

You are next. Go ahead.

STATEMENT OF SENATOR MENENDEZ

Senator MENENDEZ. Thank you, Mr. Chairman.

I just have a more limited line of questioning. And I thank all of the panelists and I have been reviewing the testimony submitted to the Committee and a lot of my questions have been answered.

But Ms. Bushue, back in February you were before the Committee, the full Committee, and I asked you a line of questions about the Trans-Hudson Midtown Corridor Project. I would like to revisit that.

This is an incredibly important project for New York and New Jersey and the entire region. It is also strongly supported in a bipartisan way. Governor Pataki, Mayor Bloomberg, my colleagues in the Senate from New York, as well as Senator Lautenberg and I, all are working together to achieve this reality.

We are reaching capacity on the current tunnel underneath the Hudson River. And if we do not build another one, we are going to be choking off the opportunity, the ability of people to get to where the jobs are on both sides of the river.

It also has a very significant matter of national security because if something happens in the tunnel, it closes the entire Northeast corridor.

I think Congress recognized that in SAFETEA–LU when it required the FTA to advance it to preliminary engineering within 90 days.

Now it has been over 320 days since the bill was signed. Can you tell me where we are with this?

Ms. BUSHUE. Yes, Senator Menendez. That is a worthy project. As you know, it is a pretty big project and very complex.

SAFETEA–LU did request that FTA have it in preliminary engineering within 90 days, but the statutory requirements that FTA has to follow are still in place.

Having said that though, FTA has worked very closely on Access to Regions Core (ARC) with the staff of New Jersey Transit (NJT).

I believe in the middle of June we just got the last piece of paperwork from NJT as it relates to their financial plan. That is being reviewed by PMO, one of our consultants. We should have a report from the consultant shortly. It is my hope that we will be moving this project into preliminary engineering soon.

Senator MENENDEZ. Well, my understanding is that you had all of this already. So I will be happy to review with the agency that is supposed to submit that to you.

But when you say the financial plan, is that the last step? Once your consultant reports to you, is that the final thing? Or are there more things to be done?

Ms. BUSHUE. I think that will be the final thing to get them into preliminary engineering. And then once they get into that phase, there is additional work, of course, that will need to be done.

Senator MENENDEZ. Because I have been told it cleared your regional office. Where is your financial planning review done? Is it done at the regional level? Or is it done at your level?

Ms. BUSHUE. It comes through the regional office and then they consult with the headquarters.

Senator MENENDEZ. So if it cleared the regional office, that means that it should have been done already; is that not correct?

Ms. BUSHUE. It comes into the regional office, and again we send it out to our financial consultants, who review it. They work closely with headquarters, as well. And then a reply comes back, which the regional office and the headquarters review.

Senator MENENDEZ. How long? Do you have a sense of how long this is going to take?

Ms. BUSHUE. I think I can say probably within 2 and 3 weeks we should have an answer. I am pretty confident we will be able to move this project into PE. The staff there at the NJT has been very responsive and I understand that they are very, very good.

Senator MENENDEZ. I appreciate that.

I am concerned that if we do not do it in that timeframe then we will miss a window as it relates to the appropriation process and going through it, which means we will have obviated for a full year the opportunity to move it forward, which is certainly not the intention of the Congress. Notwithstanding all the other statutory authorities, Congress made it very clear here that it wanted to move this forward, at least for preliminary purposes.

So I would really—you know, I know we are going to have the Administrator up for a nomination. This is incredibly important.

And I would like to get something defined from you to our office with a degree of exactitude, when are we going to achieve this?

Ms. BUSHUE. And I believe that we can pull that together for you, sir.

Senator MENENDEZ. Thank you, Mr. Chairman.

Senator ALLARD. I had a couple of concepts in the SAFETEA legislation that passed. One is contractor performance, and the other one was implementing some incentives in some of the programs.

On contractor performance, that was an analysis between cost and ridership. What steps has FTA taken to implement the contractor performance assessment report requirements? I notice you made some comments in your opening statement on that. I wonder if you could more fully inform us on how that is moving?

Ms. BUSHUE. Certainly. Actually, in the original guidelines that we put out in January, we did propose that consultants who did the modeling of ridership have to sign a certification.

Needless to say, that did not go over well in the industry. As a matter of fact, we got lots of push back only because these are private entities that would be certifying something that is relatively risky and that the assumptions that they use as variables are just that, assumptions.

I think the consultants work very, very, very hard to do their best in determining what the ridership would be. But again, it is very difficult because you are making assumptions and dealing with the unknown. So it is very, very hard to be held accountable.

Senator ALLARD. Is it not interesting that when they are making their recommendations or what not, they do not hesitate to make those recommendations on ridership and what not? But yet when you ask them to be somewhat accountable, they complain about it.

Ms. BUSHUE. Again, they are making projections. They are looking into the future. It is difficult.

But having said that, as you can understand, this is the private sector, and in this era that we live in of liability and so forth, it is something that they felt very, very strongly about.

And Mr. Chairman, we heard from the industry loudly about that issue.

What we have done, though, is to require the general manager, who is responsible for the management of the contracts, to certify to additional language that they believe that the numbers that they are providing are correct.

And so that is how we used the language of SAFETEA–LU to address this issue.

Senator ALLARD. So have you fully implemented this requirement?

Ms. BUSHUE. Again, we put that in the May 22 guidelines for the New Starts Program. But again, the New Starts guidelines and the Small Starts guidelines are not yet etched in stone. We are still open for comments.

Senator ALLARD. Do you think this is going to help projects to remain on time and on budget?

Ms. BUSHUE. As in the New Starts guidelines that we put out?

Senator ALLARD. Yes.

Ms. BUSHUE. I hope so. Actually, at FTA we have a relatively good track record regarding our full-funding grant agreement pipe-

line and our projects being on time and on budget. I am very pleased to report before the Committee some empirical data that I would, if you do not mind, like to share with you.

We have 24 full-funding grant agreements. Of those, only one of them is over budget, 21 of them are definitely on schedule, and only two of them are behind schedule.

So I think the FTA has a really good track record with our full-funding grant agreements and construction agreements, in getting the projects done on time and on budget.

However, having said that, I am also very, very sensitive to what is going on in the construction industry today, with steel prices, concrete prices, copper prices, and often commodity prices is what I like to call them, are certainly increasing. And it is something that I am very, very sensitive to.

That is why I think it is very important that the FTA works very hard with the New Starts Program in trying to, instead of taking 5 to 7 years to get a full-funding grant agreement, compress the time to 3 to 4 years? I do not know.

That is one of the reasons why I thought it was prudent to bring in a business consultant to review the New Starts process to see how we can be more efficient, and also even more effective in bringing excellent projects to our cities.

Senator ALLARD. Ms. Siggerud, would you describe FTA's efforts to implement SAFETEA–LU's changes to the New Starts and JARC programs?

Ms. SIGGERUD. In general, we believe that FTA has made good progress with regard to both of those programs. They have, for the most part, been on track in terms of the timing of the various guidance policy documents and proposed rules that they have put out.

But what I think we are most pleased to see is the outreach to the transit community that has taken place and we believe at a greater level than in the TEA–21 era.

Both the FTA staff we have spoken with who are responsible for the implementation and the project sponsors have told us that the notice and comment process has been helpful to them, and that FTA has, for the most part, been responsive to the concerns and ideas raised by the transit community.

Senator ALLARD. As FTA moves ahead on their New Starts and also their JARC program, what kind of challenges do you see them facing in the future?

Ms. SIGGERUD. There are a couple I would like to highlight. One I already talked about, and that is figuring out a way to be responsive to the SAFETEA–LU direction to measure and evaluate economic development and land use. I have already talked with you about what I see as the concerns and the challenges there.

I do think this contractor performance issue is also a concern. FTA is required to report, I believe in August, for the first time on contractor performance. My understanding is that this first will largely focus on its plans for monitoring and how it will gather that information.

The other is the incentive concept. As you know, SAFETEA–LU allowed for up to a 10 percent award essentially for those projects that kept costs and ridership close in line with their earlier estimates. FTA faces a number of challenges there, about when to

start and stop that clock and how to handle the awards of those funds.

In its solicitation and its policy guidance earlier this year, there were actually not a lot of comments from the transit community in that area.

With regard to JARC, there will be a lot of new people at the table here, including a number of recipients of JARC funds that have never been an FTA grant recipient in the past. FTA has a fairly robust oversight process, but it will now need to bring in a number of new recipients and monitor their performance and their execution of this program.

So that is a challenge that we see for JARC.

Senator ALLARD. Now, I would like to go to the incentive part of it. When I talk about the incentives in the grants, you understand what I am talking about? That if they stay within certain parameters, then they can adjust their figures?

Ms. BUSHUE. Yes.

Senator ALLARD. You can make those adjustments working with them.

How do you plan on using—first of all let me ask, do you plan on using that program?

And, number two, if you do, what steps have you taken to implement that incentive program?

Ms. BUSHUE. Actually, that is an excellent program and I certainly believe in incentives for our grantees. But we have not got that far, if I may say, Mr. Chairman. That is something that we will have to look at, and that is one thing that we have not really focused on as yet. But I do understand its importance.

Senator ALLARD. Have you taken any steps at all to implement it or thought about it in any way?

Ms. BUSHUE. No, not at all, not at this time, no sir.

Senator ALLARD. I would certainly encourage you to do it because I think contractor incentives help them. I have had good results emphasizing contractor incentives on major projects in Colorado. I know you have been involved in some of those, some of them have been cleanup projects that have been in other agencies.

But I think they do work and I would encourage you to look at them.

Ms. BUSHUE. I totally agree with you. I think it is a great idea and I will certainly get on top of that.

Senator ALLARD. The Senator from Rhode Island.

Senator REED. Thank you, Mr. Chairman.

With respect to the JARC program, we are moving to a formula grant program this year. I know you released preliminary guidance in March of this year with respect to JARC.

Do you anticipate difficulties as you move from a discretionary program to a formula program? And in particular, will there be some winners and losers? And what do you propose to do with those areas that might have received more funding in the other program and now receive less?

Ms. BUSHUE. Yes, Senator Reed, that is a very good point. It is not going to be difficult for the FTA to move from what we call a discretionary program to a formula program. But we are working very, very closely with our former grantees because, in a sense, it

is like if you put icing on the cake—if I might use this analogy. With the discretionary program, it was as if you just plop the icing on the cake and people get the money for their program. But when you go to a formula approach, you are spreading that icing over the cake. So some programs probably will get less money.

However, we have been working very, very closely with the grantee and we have a very good relationship with them. And because some of the programs or some of the services are of such high value to the community that they are already realizing that they are probably not going to get the funding that they are used to getting, they are finding funding from other sources. And I applaud their efforts and their entrepreneurship, if you will.

But that is a concern and again, we have been working very closely with the grantees on that issue.

At the same time though, there will be some winners.

As you know, it is not only a formula program but also it is a competitive program because sponsors have to compete for funds. So those programs that probably did not get the funding that they had hoped for and are worthy programs, now can compete for, and will get the funding.

But I do agree with you, sir, I think that is a correct assessment, there may be some winners and losers.

Senator REED. Thank you.

Mr. Millar, SAFETEA–LU requires areas to develop coordinated plans for JARC, New Freedom, Section 5310 projects, *et cetera.* That raises obviously the capacity issue and how effective the plans will be for communities. What is your impression? Then I will ask Ms. Bushue.

Mr. MILLAR. We certainly support the development of coordinated plans. We think that is very important indeed. So we believe that that is a good thing.

We are concerned that in many areas it will be a new activity. And so of course there are undoubtedly going to be some startup difficulties.

We also wonder about the willingness of parties who are not the recipients of funds under SAFETEA–LU to come in to that process. And yet, I think all of us know, in efforts to coordinate social service transportation, you have got to have a wide variety of folks willing to participate.

We know the Committee did its best to make it a strong provision, and we support that provision. But those are the kinds of worries that we have.

I think all of us are going to have to be patient in the first couple of years. I think all of us are going to be looking around for best practices that then we can help others come along in the process.

Senator REED. Ms. Siggerud, do you have a perspective from GAO, with respect to this coordination problem?

Ms. SIGGERUD. Yes, we do. We actually did a fairly comprehensive review a few years ago, on the concept of coordinated transportation. We looked at the Federal level, at all the Federal programs that provide some sort of social service transportation. Then we looked at State and local levels as well, at the kind of coordination that was happening there.

We found that when coordination happens that significant efficiency and improved and increased service can result.

So we are supportive of this coordination concept and plan. I think that we feel that there will be good projects emerging from it.

I would echo that getting the other partners, besides the transportation folks, to the table is important. In the previous iteration of JARC, for example, we found that coordination with the HHS and Labor programs that were serving some of these same constituents significantly improved the success of the projects.

Senator REED. Will you maintain an advisory or analytical role with respect to this coordination issue?

Ms. SIGGERUD. Absolutely. I think that SAFETEA–LU requires us to. So we will be reporting out to this Committee and to the House Transportation Committee later this fall on our view just of implementation of the JARC program.

We are also required to do another report before the end of SAFETEA–LU that does a more full evaluation of JARC. And we can certainly include that in our scope.

Senator REED. Any final comments, Ms. Bushue, with respect to this issue of coordination at the local level?

Ms. BUSHUE. I would just like to say, just echoing what Mr. Millar said, that FTA very much understands how difficult it is sometimes with the coordinated plans. We do have a phase-in requirement. And for the first year we ask our grantees to make their best efforts. But we certainly are sensitive to the difficulties sometimes in getting your plan coordinated.

Senator REED. Thank you.

Mr. MILLAR. Can I make one more comment on that?

Senator REED. Yes, sir.

Mr. MILLAR. May I, Mr. Chairman?

Senator ALLARD. Yes, Mr. Millar.

Mr. MILLAR. One other concern that our members have is under existing law there is a process of designated recipients. And there is some concern that under the JARC program that people who have long been involved in this could, through this competitive process that has been described, in their perspective be disenfranchised in that process. And that is another thing we are working with FTA on, to make sure that we do not make too many changes in that regard.

Senator REED. Thank you.

Senator ALLARD. Maybe you have already just answered this question, but what are your concerns regarding the designation of the recipient for JARC and the New Freedom funds in large urbanized areas? And do you feel that there is a potential for conflict of interest if transportation providers are designated as recipients?

Mr. MILLAR. I am sorry, I did not know you were going to ask that question. I could have been more patient.

Well, as I just expressed, we have been concerned that the designated recipient has been in Federal law probably 20 years now. Many agencies are very comfortable with it. They have procedures set up to deal with it. And we think it works well.

So we would be very loath to see changes in that or see that, for the purposes of JARC, there is a new designated recipient. JARC

is, after all, this amount of money. And yet for this amount of money there would be the traditional designated recipient.

So we are very concerned about that.

With regard to issues of conflict of interest that have been raised, the designated recipient process has worked for a long, long time quite successfully. This Committee and the Congress reauthorized that process just last year.

So we do not think there should be a big concern about that. We think we have a good track record.

Myself, I worked for many years in Pittsburgh, which had many different recipients. The recipients got together. We always worked out exactly how to handle that. I see no reason why the process that has worked in the past should not work in the future.

Senator ALLARD. Thank you.

I do not have any more questions and we do not have any more members.

Once again, I would like to thank all of our witnesses for being here today. Your testimony touched on a number of important points and we had a productive question and answer period.

I appreciate this opportunity to hear these perspectives as the Subcommittee considers how SAFETEA–LU is implemented. I would also encourage the Department to pursue the incentive program.

Ms. BUSHUE. Yes, absolutely, sir.

Senator ALLARD. The record will remain open for 10 days should members wish to submit any additional questions to the witnesses. Witnesses, we would appreciate your prompt response to the questions and would ask you to please respond to them within 10 days, if you would.

Thank you, for everyone, for attending this hearing of the Housing and Transportation Subcommittee.

The Subcommittee is adjourned.

[Whereupon, at 3:38 p.m., the hearing was adjourned.]

[Prepared statements supplied for the record follow:]

PREPARED STATEMENT OF SANDRA BUSHUE

DEPUTY ADMINISTRATOR, FEDERAL TRANSIT ADMINISTRATION

JUNE 27, 2006

Thank you, Mr. Chaimlan, for the opportunity to testify today on the Federal Transit Administration's (FTA) implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) enacted by Congress and signed by the President on August 10, 2005. The hard work of the members of this committee is reflected in the legislation that is good for public transportation. We appreciate your continued interest and strong commitment to public transportation as embodied in it.

Since my arrival at the FTA in January, I have made timely implementation of SAFETEA–LU my top priority. I am pleased to report to the committee that the FTA is making substantial progress in implementing this important legislation.

As you know, SAFETEA–LU authorizes a total of $45.3 billion in guaranteed funding for Federal transit programs over five fiscal years (FY) 2005–2009, an increase of 46 percent over the funding provided in the Transportation Equity Act for the 21st Century (TEA–21). In addition to historic funding levels, SAFETEA–LU added new programs such as New Freedom, Tribal Transit Program, and Alternative Transportation in the Parks and Public Lands that began in fiscal year 2006, and modified other programs, such as Job Access and Reverse Commute and Clean Fuels. SAFETEA–LU also required that FTA promulgate 17 new regulations, including regulations to implement FTA and Federal Highway Administration (FHWA) planning requirements, New Statis (including the Small Starts program), Buy America, Charter Bus, and a joint rulemaking with the Department of Homeland Secmity on transit security grants. This is an unprecedented amount of rulemaking for FTA. In fact, FTA was tasked by SAFETEA–LU with more rulemaking actions than any other Department of Transportation (DOT) modal administration. Besides regulatory changes, SAFETEA–LU also requires FTA to issue nearly 29 other program guidance documents and 19 reports to Congress.

Since the President signed SAFETEA–LU in August 2005, FTA has worked diligently with an aggressive schedule to meet the requirements in SAFETEA–LU and facilitate program implementation. First, I will outline the steps we have taken to assure an orderly implementation process, and to get the maximum amount of stakeholder input as possible. Second, I will describe the regulatory steps taken to date, and our plans for completing these actions. Finally, I will discuss the implementation of the other program changes.

Implementation Process and Outreach

Immediately after enactment of SAFETEA–LU, FTA set out to define the regulatory actions that had to be taken, the new programs to be implemented, the reports and studies to be undertaken, and the program guidance documents that had to be revised. Over 60 such products were identified, including 17 regulations, 19 reports, and 29 program guidance documents. FTA then developed a prioritized listing of these products and a detailed timeline. FTA identified 12 of these products as first priority items, based on the need for action. The delivery of these top priority items on time is one of FTA's core accountabilities for evaluating the performance of our Senior Executives, and will be reflected in their performance appraisals and compensation. I am extremely pleased to say that we have already completed eight of these twelve first priority items. Two will not meet our original schedule, but we have deliberately delayed delivery of those items to better accommodate the high degree of interest from our stakeholders in providing input to the design of the program guidance being developed. Weare making steady progress on those not yet completed. Many of these first priority items involve interim steps, such as publication of Federal Register Notices for public comment 24 of which have been published by FTA to thus far.

Indeed, a key aspect of our implementation plan has involved getting input from our stakeholders. We have held nearly 100 outreach events, ranging in size from a webinar, conducted jointly with the American Public Transportation Association, with nearly 1,000 participants, to a series of five general outreach sessions conducted last December, at which about 700 people participated, a series of three outreach sessions focused on New Starts and Small Starts with nearly 500 participants, and two national outreach sessions focused on Tribal Transit with over 100 participants, to more targeted sessions at which small groups of 20 or 30 met to discuss specific program issues.

Let me also stress our efforts to include the Congress in our outreach process. Over the last several months, we have provided periodic updates to the Congress on the status of our reauthorization implementation efforts and schedules. Let me

assure you of my commitment to continue to provide timely information to Congress on our work to implement all features of this important legislation.

Further, we have taken very seriously the changes made by SAFETEA–LU that calls for FTA to provide notice and an opportunity for comment on any FTA policy or guidance document that might produce a "binding obligation" on our grantees. In implementing this provision, I am happy to report that FTA has developed a process that is fostering a healthy dialog between FTA and our stakeholders. While there may be additional time and steps involved because of this new notice and comment provision, comments received on our draft guidance and policy statements will allow us to assure that the. documents are more complete, more responsive to stakeholder needs, and more likely to take account of on-the-ground realities.

Our recent experience with the New Starts Policy Guidance demonstrates how seriously we are taking the Notice and Comment process. As I will discuss in more detail later, of the nine changes in New Starts procedures we proposed to take effect this year, three were adopted as originally proposed; three were modified to incorporate stakeholder comments; and three were either rejected or deferred pending further analysis. This is a clear demonstration of FTA's willingness to listen to our stakeholders, make changes when necessary, and even go back to the drawing board if the comments we receive make it clear that we need to do so.

Status of Regulatory Actions

Now I would like to quickly review for you the status of some of the key regulatory actions we are taking in response to direction in SAFETEA–LU. FTA has initiated rulemakings on Buy America and Charter Bus and joint rulemakings with other agencies on Security Grants, Metropolitan and Statewide Planning, and Section 4(f) of the DOT Act. In general, I believe we are making good progress on our own rulemakings; however, progress on the joint rulemakings has been comparatively slower due to the additional complication of working with other agencies.

Buy America

FTA issued its Notice of Proposed Rulemaking on Buy America on November 28, 2005. The rulemaking covered the definition of microprocessor and end product and the standards for pre-award and post-delivery audits for small transit vehicle purchases, among other issues. In response, we received comments indicating that the issues were more complex than originally thought. As a result, we issued a Final Rule covering the noncontroversial aspects of the rule, such as the pre-award and postdelivery audits, on March 21, 2006. We now plan to issue another Notice of Proposed Rulemaking covering the remaining issues, including the definition of end product, by early fall. In addition, FTA plans to hold a public hearing in Washington, DC, to discuss the new proposal.

Charter Bus

As you know, SAFETEA–LU requires a Negotiated Rulemaking to develop proposed changes to FTA's Charter Bus regulation. This involves establishment of a formal Advisory Committee under the Federal Advisory Committee Act (FACA). To do so, we published an initial Notice in the Federal Register on January 31, 2006, inviting comments on the proposed issues to be addressed and asking for nominations for membership on the Advisory Committee. We published a Notice responding to these comments and announcing the members of the Advisory Committee on April 10, 2006. The first meeting of the Committee was held on May 8 and 9, 2006, in Washington, DC. The next meeting was held on June 19 and 20, 2006, and the next meeting is scheduled for July 17 and 18, 2006. We expect to hold a series of meetings over the next several months. The exact timing of the Notice of Proposed Rulemaking will depend on the deliberations of the Committee.

Security Grants

FTA and DHS are jointly finalizing a Notice of Proposed Rulemaking mandated by SAFETEA–LU that outlines requirements and characteristics of public transportation security grants, including funding priorities and eligible activities, methods for awarding these grants, and limits on administrative expenses. It is anticipated that DHS will administer these grants and DOT will provide technical assistance on development of the application and eligibility process. Also, as required by SAFETEA–LU, FTA, and the Transportation Security Administration of DHS completed an Annex to the Memorandum of Understanding between DOT and DHS on transportation security on September 8, 2005.

Metropolitan and Statewide Planning

SAFETEA–LU made a number of changes to the metropolitan and statewide transportation planning and programming process. We have been working with

FHWA, with whom FTA jointly administers these requirements, to implement these changes. On September 2, 2005, we provided joint guidance on the initial changes, and a Notice of Proposed Rulemaking was published on June 9, 2006. We expect to have the Final Rule in place by Spring 2007.

Section 4(f)

SAFETEA–LU also made a number of changes in the requirements for protections of parks and historical resources, commonly known as Section 4(f) [of the DOT Act]. We have submitted a Notice of Proposed Rulemaking on these changes, to the Office of Management and Budget for clearance and we expect to publish this it in July 2006.

New Programs and Program Guidance

In addition to the rulemaking required by SAFETEA–LU, FTA has been working to implement our new program structure, several new programs, and to change our program guidance to reflect the changes made in program requirements. Among the most important are the New Starts and Small Starts Program, the New Freedom Program (and related changes to the Job Access and Reverse Commute program, and Elderly and Persons with Disabilities programs), the Alternative Transportation in Parks and Public Lands Program, the Tribal Transit Program, and the Public Private Partnership Pilot Program.

New Program Structure

One of our first tasks was to restructure our appropriations accounts to deal with the new program structure enacted in SAFETEA–LU. I am pleased to say that FTA successfully restructured its accounts in accordance with SAFETEA–LU in time to award grants in fiscal year 2006. The new accounting structure will prevent the Mass Transit Account of the Highway Trust Fund from running out of money in fiscal year 2007. The enactment of a solely trust funded account and 3 separate General Fund accounts should ensure the solvency of the Mass Transit Account well beyond the current authorization period. In fact, our estimates indicate that the Mass Transit Account should have a positive cash balance of over $6.9 billion at the end of FY 2009.

General Program Guidance

Even before tackling the major program changes, and new programs, we decided that it was important to make sure that our continuing programs were allowed to proceed on an uninterrupted basis. Thus, on November 30, 2005, we issued a Federal Register Notice outlining the changes in all our programs, and providing initial guidance on implementing these changes. This allowed us to make grants in fiscal year 2006 to such programs as the Urbanized Formula Program, the Fixed Guideway Modernization Program, the Other than Urbanized (Rural) Formula Program, and our planning grants programs as soon as fiscal year 2006 funds were appropriated. Weare now proceeding with revising our program guidance circulars on all of these programs to accommodate the changes that were made by SAFETEA–LU.

New Starts and Small Starts

SAFETEA–LU made a number of changes to the criteria for evaluating New Starts projects, and of course, established the new program category, Small Starts, for projects with a total cost of under $250 million and a New Starts share of under $75 million. Needless to say, this has generated a significant amount of interest by our stakeholders. In addition, as we reviewed the Small Starts program as enacted, it became clear that there were a wide range of issues that needed to be addressed in some detail. Further, SAFETEA–LU specifically required FTA to provide notice and comment on any changes in policy or procedures in the New Starts program early in calendar year 2006 and at least every 2 years thereafter. Accordingly, on January 19, 2006, we issued a Notice of Proposed New Starts Policy Guidance in the Federal Register. And on January 30, 2006, we issued an Advance Notice of Proposed Rulemaking (ANPRM) on Small Starts. While we did not have to take the preliminary step of issuing an ANPRM on Small Starts, the wide range of issues that are posed by the program suggested that we take an opportunity to get stakeholder input before embarking on a more formal NPRM.

The response to these publications suggests that this was a good idea. We received over 70 written comments on the draft New Starts Policy Guidance and over 90 comments on the Small Starts ANPRM. In response, on May 22, 2006, we published our final New Starts Policy Guidance and the fiscal year 2008 Reporting Instructions for the New Starts criteria for submissions for the fiscal year 2008 New Starts Report (submissions are due by June 30 for ridership and cost estimates and August 15 for financial plans). As I described earlier, we made several modifications

to the proposals for specific changes in FTA New Starts Policy made in the January 19, 2006, Federal Register Notice. We believe that these changes will help make the process more effective in the short term and allow FTA to leave other major changes for later determination during the rulemaking process.

I would note that since coming to FTA, I have expressed my concerns about how long it takes and how much it costs to develop a New Starts project. While we have been able to address some of these concerns in the New Starts Policy Guidance, I believe that we should systematically reassess all that FTA and our grantees must do to move a project to the finish line. Accordingly, we have recently engaged a management-consulting firm to undertake a complete review of the New Starts project delivery process. This quick but intensive effort will be undertaken in parallel with our development of the New Starts Notice of Proposed Rulemaking.

With respect to Small Starts, we have just published, on June 9, 2006, draft Interim Guidance that FTA and our grantees may use to develop and evaluate projects beginning this year until the Final Rule is in place. We are aware that project sponsors are considering a large number of projects that may be eligible for funding under this program. In fact, a recent survey by the American Public Transportation Association identified over 75 projects in various stages of project development. Once we have received comments on the June 9 draft, FTA will modify the Interim Guidance and publish it later this summer in final form. This will allow grantees to assess projects and submit them to us for possible funding during fiscal year 2007 and inclusion in the fiscal year 2008 New Starts report.

We also plan to develop a single NPRM later this year, which would cover both New Starts and Small Starts. Once comments are received, we would then be able to issue the Final Rule on both programs during 2007. Given the large number of comments already received on these subjects, and the large amount of interest in these programs, we want to make sure that we, and our stakeholders, have sufficient time to think through the features that should be included in this rule. The Interim Guidance on Small Starts and the Policy Guidance on New Starts should provide us with the tools needed to assure that the New Starts and Small Starts programs can be effectively executed even while the rulemaking process is underway.

New Freedom, Job Access and Reverse Commute and Elderly Individuals and Individuals With Disabilities Programs

As you know, SAFETEA–LU established a New Freedom program for grants to provide improved public transit services to persons with disabilities, altered the Job Access and Reverse Commute (JARC) Program to make it a formula rather than discretionary program, and modified the program requirements of the Elderly Individuals and Individuals with Disabilities Program. Taken together, these changes now provide FTA with a portfolio of interrelated programs designed to address certain essential transportation needs. An important feature of all three programs is a new requirement for locally developed, coordinated public transit—human services transportation plans. In addition, the New Freedom and JARC programs require selection of subrecipients on a competitive basis. Finally, there are some complex eligibility. questions, particularly with respect to the New Freedom program which is targeted to provide new public transportation service and alternative transportation services beyond those required by the Americans with Disabilities Act.

Given the challenges involved in implementing all three programs, and the large amount of interest in them from a wide variety of stakeholders, FTA has undertaken an extensive process of outreach and public involvement. This process began with the November 30, 2005, Federal Register Notice that outlined the broad parameters of these programs and asked for input on several key issues. These issues were a major topic for discussion at the outreach sessions held around the country in December 2005 and subsequent meetings early in 2006. The process culminated with a Federal Register Notice on March 15, 2006, that responded to the comments received on the broad issues outlined in the November 30, 2005, Notice, laid out interim guidance to allow the programs to proceed in fiscal year 2006, and provided further detailed topics for comment with respect to the major issues identified in the comments already received. FTA then held a major outreach meeting with over 150 participants on March 23, 2006, to discuss the issues in the Notice. FTA also held public conference calls and began to receive and review comment. While the comment period was originally set to end by April 21, 2006, FTA received a request for and granted an extension of the comment period through May 21, 2006. We are reviewing the comments received, and are planning to issue final program guidance later this year. In the meantime, the interim guidance included in the March 15, 2006, Notice is allowing each of these programs to be implemented during this fiscal

year. The March 15 Federal Register Notice also included proposed strategies for implementation of the programs beginning in fiscal year 2007.

Alternative Transportation in Parks and Public Lands

SAFETEA–LU established a new discretionary program, to be administered in concert with the Department of the Interior, for alternative transportation in federally managed parks and public lands. FTA has been working closely with the Department of Interior and its National Park Service, its Fish and Wildlife Service and its Bureau of Land Management, and the Department of Agriculture's U.S. Forest Service on implementation of this program. We have established an inter-agency team with representatives of these organizations. This group has worked to develop the details of the program and a proposed Memorandum of Agreement between the Departments of Transportation and the Interior. In addition, the working group developed a Notice of Funding Availability that was published in the Federal Register on March 23, 2006. This Notice laid out the parameters of the program, and invited proposals for projects for fiscal year 2006 funding. Proposals were due on May 5, 2006. Representatives of the participating agencies have been reviewing the proposals and are preparing a final program of projects for funding. We expect to award these funds later this fiscal year.

Grants to Native American Tribes

SAFETEA–LU establishes a new program for direct grants to Native American Tribes for public transportation within our Section 5311 program of grants to other-than-urbanized areas (the "Rural Program"). As you know, prior to passage of SAFETEA–LU, Native American Tribes were eligible to receive funding for transit projects, including projects located on reservations, but only through the States. This new program sets up a direct relationship between FTA and tribal governments. We have been working hard to implement this new program. In the November 30, 2005, Notice, we stated our basic intentions for this program and solicited comment. At the general outreach sessions held in five cities around the country in December 2005, we received a good deal of comment. We also had numerous discussions with interested parties on this program during January and February of this year. Having considered these initial comments, we then issued a Notice proposing specific program details on March 22, 2006. In that Notice we asked for comments on a number of disparate issues. We also held a series of public meetings at which tribal governments, and other interested parties, have discussed these subjects with us. The comment period on that Notice has now closed and we are reviewing the comments. We hope to issue a final Notice of Funding Availability shortly that will outline program administration details and request applications for funding. We expect to be able to announce project selections by the end of this fiscal year.

Public Private Partnership Pilot Program

SAFETEA–LU establishes a Pilot Program to assess the benefits of public private partnerships for delivery and management of major transit investments. However, the language of the legislation is very broad. Accordingly, on March 22, 2006, we issued a Notice asking for suggestions and proposals on how FTA might design the program; posing a series of specific questions on the concept of public private partnerships and how they might relate to transit projects and FTA program requirements; and requesting statements of interest for potential participants in the program. The comment period, and period for initial statements of interest, closed on June 1, 2006. FTA is quite excited by the concept of public private partnerships, and believes there are significant lessons to be learned by considering how it might be applied to our programs. We received 19 comments providing useful input on the issues raised, and 4 candidate projects. Weare now reviewing the comments and proposals, and will determine how to respond shortly.

Conclusion

Mr. Chairman, and Members of the Committee, I believe you will agree that FTA is making excellent progress in implementing SAFETEA–LU. You have my commitment that we will work hard to sustain this record of achievement in the coming months. I would be happy to answer any questions you might have.

PREPARED STATEMENT OF KATE SIGGERUD

DIRECTOR OF PHYSICAL INFRASTRUCTURE, GOVERNMENT ACCOUNTABILITY OFFICE

JUNE 27, 2006

June 27, 2006

GAO
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Highlights

Highlights of GAO-06-910T, a testimony for the Subcommittee on Housing and Transportation, Committee on Banking, Housing, and Urban Affairs, U.S. Senate

PUBLIC TRANSPORTATION

Preliminary Information on FTA's Implementation of SAFETEA-LU Changes

Why GAO Did This Study

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) authorized a significant level of investment—over $52 billion—for federal transit programs. SAFETEA-LU also added new transit programs and made changes to existing programs, including the New Starts and Job Access and Reverse Commute (JARC) programs. The New Starts program is a discretionary grant program for public transportation capital projects. The JARC program is intended to improve the mobility of low-income individuals seeking work. SAFETEA-LU authorized $8.6 billion for these two programs. The Federal Transit Administration (FTA) manages both of these programs.

This testimony discusses GAO's preliminary findings on the (1) changes SAFETEA-LU made to the New Starts program, (2) changes SAFETEA-LU made to the JARC program, and (3) issues that may be important as FTA moves forward with implementing the act. To address these objectives, GAO interviewed FTA officials, sponsors of New Starts projects, and representatives from industry associations and reviewed FTA's guidance on the New Starts and JARC programs and federal statutes, among other things.

www.gao.gov/cgi-bin/getrpt?GAO-06-910T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Katherine Siggerud at (202) 512-2834 or siggerudk@gao.gov.

What GAO Found

The changes SAFETEA-LU made to the New Starts program range from establishing the Small Starts program to introducing new evaluation criteria. FTA has taken some initial steps in implementing SAFETEA-LU changes, including issuing an Advanced Notice of Proposed Rule Making (ANPRM) for the Small Starts program and guidance for the New Starts program in January 2006. The Small Starts program is intended to offer small projects an expedited and streamlined application and review process; however, the transit community has questioned whether the Small Starts program, as outlined in the ANPRM, would provide such a process. FTA's guidance for the New Starts program identified and sought public input on possible changes to the program that would affect traditional New Starts projects, or large starts, such as revising the evaluation process to incorporate the new criteria identified by SAFETEA-LU.

SAFETEA-LU also made a number of changes to the JARC program. One key change was to change JARC from a discretionary to a formula-based program, which provides funds to states and large urbanized areas for JARC projects. Other SAFETEA-LU changes include allowing JARC recipients to use a portion of funds for planning activities and removing a limit on the amount of funds available for reverse commute projects. To implement these changes, FTA solicited comments and input through public listening sessions and program notices. FTA has released interim guidance for fiscal year 2006, is currently developing draft final guidance for the JARC program, and plans to issue final guidance later this year.

GAO's past work suggests that transparency, communication, and accountability issues will be important as FTA moves forward in implementing SAFETEA-LU changes to the New Starts and JARC programs. Since 1998, GAO has issued numerous reports on these programs, and many of the reports contained recommendations to FTA on ways to improve the implementation of these programs. For example, GAO has reported that FTA could increase the transparency of the New Starts program by obtaining public input on proposed policy changes before they are implemented. SAFETEA-LU addressed some of these issues, and FTA has also taken steps to resolve some of them. For example, SAFETEA-LU requires FTA to publish for notice and comment any proposals that make significant changes to the New Starts program. Nevertheless, given the number of changes that are being made to both programs, continued focus on efforts to improve transparency, communication, and accountability will be important.

FTA officials provided technical comments on a draft of this testimony, which were incorporated where appropriate.

United States Government Accountability Offic

Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to provide testimony on the Federal Transit Administration's (FTA) implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). As you know, SAFETEA-LU authorized a significant level of investment—over $52 billion—for federal transit programs. This authorization provides funding for fiscal years 2004 through 2009, adds new transit programs, and makes changes to existing programs, including the New Starts and Job Access and Reverse Commute (JARC) programs. The New Starts program provides much of the federal government's share of new fixed-guideway investments. Through the New Starts program, FTA identifies and selects new fixed-guideway transit projects for funding—including heavy, light, and commuter rail; ferry; and certain bus projects. The JARC program is intended to assist low-income individuals in accessing employment opportunities by attempting to fill gaps in public transportation services.

My testimony today examines the (1) changes SAFETEA-LU made to the New Starts program, (2) changes SAFETEA-LU made to the JARC program, and (3) issues that may be important as FTA moves forward with implementing the act. My comments are based on our ongoing work for the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Transportation and Infrastructure as well as our body of work on the New Starts and JARC programs.[1] We will complete our ongoing work and report in full to the Committees later this year. For our ongoing work, we interviewed FTA officials, sponsors of New Starts projects, a metropolitan planning organization, and representatives from industry associations. We also reviewed FTA's guidance on the New Starts and JARC programs, the Advanced Notice of Proposed Rule Making (ANPRM) for the new capital investment program for Small Starts—a subcategory of new fixed guideway projects—and the public comments submitted to FTA's docket on these documents. We also reviewed the provisions of SAFETEA-LU and of its predecessor, the Transportation Equity Act for the 21st Century (TEA-21), dealing with the New Starts and JARC programs, and attended FTA's New Starts/Small Starts Seminar and

[1]TEA-21 required GAO to evaluate both the New Starts evaluation and rating process and the JARC program on a regular basis. SAFETEA-LU continued similar requirements. In particular, we are required to review the New Starts evaluation and rating process each year and the JARC program beginning 1 year after the enactment of SAFETEA-LU and every 2 years thereafter. See the Related GAO Products at the end of this testimony for a listing of previous reports on these programs.

Listening Sessions in March and June 2006. We conducted our work from February 2006 through June 2006 in accordance with generally accepted government auditing standards.

In summary:

- The eight changes SAFETEA-LU made to the New Starts program range from establishing the Small Starts program to identifying new evaluation criteria. FTA has taken some initial steps to implement these changes, including issuing an ANPRM for the Small Starts program and guidance for the New Starts program, both in January 2006. The Small Starts program is a new component of the New Starts program and is intended to offer an expedited and streamlined application and review process for small projects. The transit community, however, questioned whether the Small Starts program, as outlined in the ANPRM, would provide such a process. In its January 2006 guidance, FTA also identified and sought public input on possible changes to the New Starts program that would have an impact on traditional New Starts projects, or large starts, such as revising the evaluation process to incorporate the new criteria identified by SAFETEA-LU. According to FTA, a potential challenge in moving forward is incorporating both land use and economic development criteria into the evaluation process, including developing appropriate measures for the criteria and avoiding duplication in counting benefits. To address this issue, FTA suggested combining land use and economic development into a single measure. However, in the comments submitted to FTA, members of the transit community repeatedly stated that land use and economic development should not be combined into a single measure and that they should receive the same weight as cost-effectiveness in the evaluation and rating process.

- SAFETEA-LU made a number of changes to the JARC program. One key change was to change JARC from a discretionary to a formula-based program. Whereas funds for JARC projects were congressionally designated in recent years, SAFETEA-LU's formula distributes funds to states and large urbanized areas.[2] This will significantly change the allocation of JARC funds as some states and urbanized areas receive more funds than under the discretionary program, others receive less, and some areas will receive funds that had not received JARC funds in the past. Other key changes resulting from SAFETEA-LU include allowing JARC

[2]For this testimony, the term "states" includes the District of Columbia, American Samoa, Guam, the Northern Marianas, Puerto Rico, and the Virgin Islands. Large urbanized areas are those areas with populations of 200,000 or more.

recipients to use a portion of funds for planning activities and removing a limit on the amount of funds available for reverse commute projects. To implement these changes, FTA began soliciting comments and input through public listening sessions and program notices in November 2005. FTA has released interim guidance for fiscal year 2006, is currently developing draft final guidance for the JARC program, and plans to issue final guidance later this year. Potential challenges that FTA faces in moving forward include issuing guidance in a timely manner so that recipients can implement JARC programs, and determining how to incorporate JARC recipients into FTA's oversight processes.

- Our past work suggests that transparency, communication, and accountability issues will be important as FTA moves forward in implementing SAFETEA-LU changes to the New Starts and JARC programs. Since 1998, we have issued numerous reports on these programs, and many of the reports contained recommendations to FTA on ways to improve the programs' implementation. For example, we have reported that FTA could increase the transparency of the New Starts program by obtaining public input on proposed policy changes before they are implemented. We have also reported that FTA could better measure the outcomes of the JARC program—an important step in holding the program accountable for results. SAFETEA-LU addressed some of these issues, and FTA has also taken steps to resolve some of them. For example, SAFETEA-LU requires FTA to publish for notice and comment any proposals that make significant changes to the New Starts program, which FTA did in January 2006. Members of the transit community and FTA officials have stated that they have been pleased with the review and comment process. Nevertheless, given the number of changes that are being made to both programs, continued focus on efforts to improve transparency, communication, and accountability will be important.

SAFETEA-LU authorized over $52 billion for federal transit programs, including the New Starts and JARC programs, from fiscal year 2005 through fiscal year 2009. SAFETEA-LU authorized $7.9 billion for the New Starts program and $727 million for the JARC program. Both of these programs are managed by FTA.

The New Starts program is a discretionary grant program for investments in new fixed-guideway projects. Under the statutorily-defined evaluation process for the New Starts program, FTA identifies and selects fixed-guideway transit projects—including heavy, light, and commuter rail; ferry; and busway projects—for funding. FTA generally funds New Starts projects through full funding grant agreements (FFGA), which establish

the terms and conditions for federal participation in a New Starts project and also define a project's scope, including the length of the system and the number of stations; the project's schedule, including the date when the system is expected to open for service; and the project's cost. To obtain an FFGA, a project must progress through a local or regional review of alternatives and meet a number of federal requirements, including providing information for the New Starts evaluation and rating process. As required by SAFETEA-LU, New Starts projects must emerge from a regional, multimodal transportation planning process. The first two phases of the New Starts process—systems planning and alternatives analysis—address this requirement. The systems planning phase identifies the transportation needs of a region, while the alternatives analysis phase provides information on the benefits, costs, and impacts of different corridor-level options, such as rail lines or bus routes. The alternatives analysis phase results in the selection of a locally preferred alternative—which is intended to be the New Starts project that FTA evaluates, as required by statute. After a locally preferred alternative is selected, project sponsors seek FTA's approval for entry into the preliminary engineering phase.[3] Following completion of preliminary engineering and federal environmental requirements—and assuming New Starts requirements continue to be met—FTA may approve the project's advancement into final design,[4] after which FTA may approve the project for an FFGA and proceed to construction, as provided for in statute. FTA oversees grantees' management of projects from the preliminary engineering phase through construction and evaluates the projects for advancement into each phase of the process, as well as annually for the New Starts report to Congress.

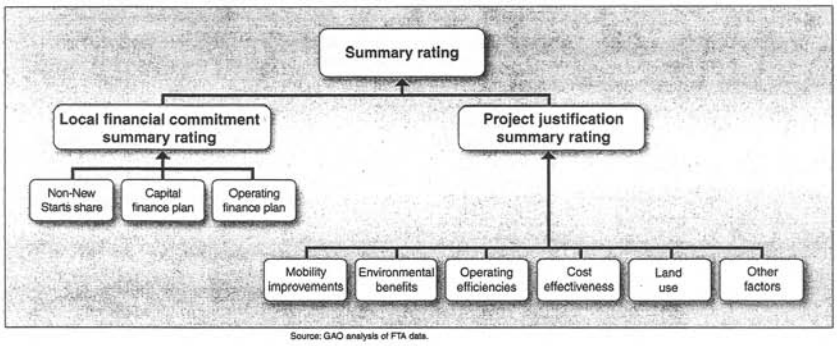
To help inform administration and congressional decisions about which projects should receive federal funds, FTA assigns ratings based on a

[3]During the preliminary engineering phase, project sponsors refine the design of the proposal, taking into consideration all reasonable design alternatives. This process results in estimates of the project's costs, benefits, and impacts (e.g., financial or environmental). According to FTA officials, to gain approval for entry into preliminary engineering, a project must (1) have been identified through the alternatives analysis process, (2) be included in the region's long-term transportation plan, (3) meet the statutorily defined project justification and financial criteria, and (4) demonstrate that the sponsors have the technical capability to manage the project during preliminary engineering. Federal New Starts funding may be used for preliminary engineering activities, if so appropriated by Congress.

[4]Final design is the last phase of project development before construction and may include right-of-way acquisition, utility relocation, and the preparation of final construction plans and cost estimates.

variety of financial and project justification criteria, and then assigns an overall rating. For the fiscal year 2007 evaluation cycle, FTA used the financial and project justification criteria identified in TEA-21.[5] These criteria reflect a broad range of benefits and effects of the proposed project, such as cost-effectiveness, as well as the ability of the project sponsor to fund the project and finance the continued operation of its transit system (see fig. 1). FTA assigns the proposed project a rating for each criterion, then assigns a summary rating for local financial commitment and project justification. Finally, FTA develops an overall project rating. Projects are rated at several points during the New Starts process—as part of the evaluation for entry into preliminary engineering and final design, and yearly for inclusion in the New Starts annual report that is submitted to Congress.

Figure 1: New Starts Evaluation Process



Source: GAO analysis of FTA data.

[5]As will be discussed, SAFETEA-LU identified additional criteria for FTA to use in its evaluation and rating process. However, according to FTA's January 2006 guidance, FTA does not plan to change the current framework and methodology for evaluating and rating New Starts projects (i.e., non-Small Starts projects) before publishing the new final rule for its New Starts program, which is expected in January 2008.

More recent than New Starts, the JARC program was created in 1998 in order to support the nation's welfare reform goals. Without adequate transportation, welfare recipients face significant barriers in moving from welfare to work. In 1998, we reported that three-fourths of welfare recipients live in central cities or rural areas, while two-thirds of new entry-level jobs are located in suburbs. Public transportation facilities often offer limited or no access to many of these jobs.[6] JARC, which is administered by FTA, was designed to fill these gaps in transportation services for low-income individuals.

JARC is intended to increase collaboration among transit agencies, local human service agencies, nonprofit organizations, and others and to improve the mobility of low-income individuals seeking work. Programs selected to receive grants—including the expansion of public transportation routes, ridesharing activities, and promotion of transit voucher programs—are designed to assist low-income individuals in accessing employment opportunities and related services, such as child care and training.

SAFETEA-LU made changes to the New Starts program that range from identifying new evaluation criteria to establishing the Small Starts program. FTA has taken some initial steps in implementing these changes, including issuing an ANPRM for the Small Starts program and guidance for the New Starts program, both in January 2006. The Small Starts program is a new component of the New Starts program and is intended to expedite and streamline the application and review process for small projects. The transit community, however, questioned whether the program, as outlined in the ANPRM, would streamline the process. In its January 2006 guidance, FTA also identified and sought public input on possible changes to the New Starts program that would affect traditional New Starts projects, or large starts, such as revising the evaluation process to incorporate the new evaluation criteria identified by SAFETEA-LU. FTA also identified possible implementation challenges, including how to distinguish between land use and economic development criteria in the evaluation framework.

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[6]GAO, *Welfare Reform: Implementing DOT's Access to Jobs Program*, GAO/RCED-99-36 (Washington, D.C.: Dec. 8, 1998).

SAFETEA-LU introduced eight changes to the New Starts program, codified an existing practice, and clarified federal funding requirements. These changes range from the creation of the Small Starts program to introducing new evaluation criteria. For example, SAFETEA- LU added economic development to the list of criteria that FTA must use in the New Starts evaluation process. In addition, SAFETEA-LU codified FTA's requirement that project sponsors conduct before and after studies for all completed projects.[7] SAFETEA-LU also clarified the federal share requirements for New Starts projects. In particular, SAFETEA-LU states that the federal share for a New Starts project may be up to 80 percent of the project's net capital project cost, unless the project sponsor requests a lower amount. SAFETEA-LU also prohibits the Secretary of Transportation from requiring a nonfederal share of more than 20 percent of the project's total net capital cost. This language addresses FTA's policy of favoring projects that seek a federal New Starts share of no more than 60 percent of the total cost. FTA instituted this policy beginning with the fiscal year 2004 evaluation cycle in response to language contained in appropriation committee reports. Table 1 describes SAFETEA-LU provisions for the New Starts program and compares them to TEA-21's requirements.

[7]A before and after study is similar to an outcome evaluation in that it compares the forecasted benefits and costs of a project with the actual benefits and costs of the project after the project is completed.

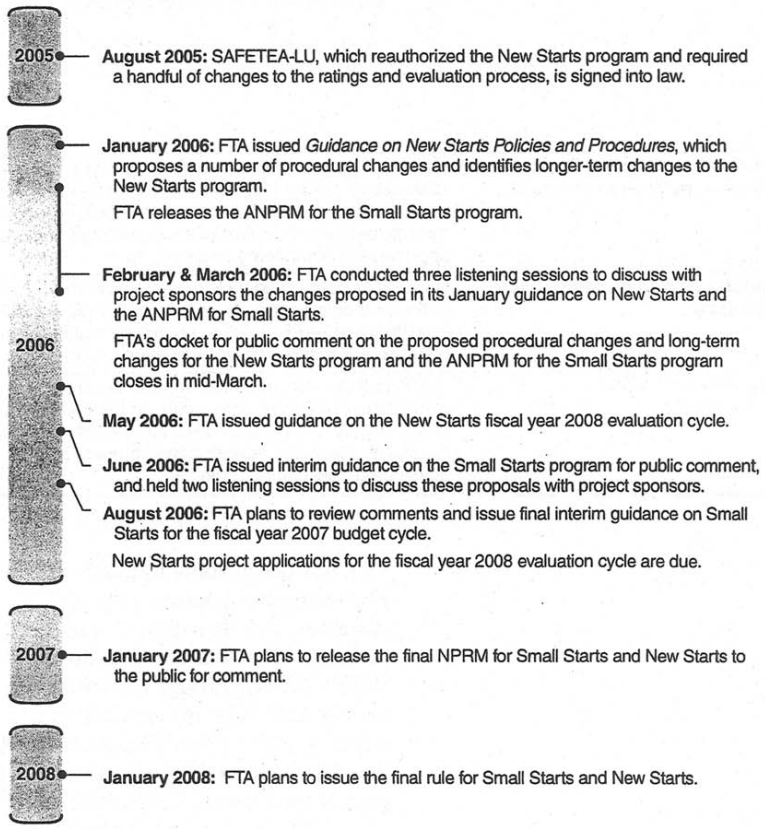
Table 1: Comparison of SAFETEA-LU's and TEA-21's New Starts Provisions

Provisions	SAFETEA-LU	TEA-21
Establish the Small Starts program	• Projects seeking less than $25 million in New Starts funds will no longer be exempt from the ratings process once the Small Starts final rule is issued. • Establishes a new capital investment program called Small Starts for projects that (1) are corridor based, (2) have a total project cost of less than $250 million, and (3) are seeking less than $75 million in federal Small Starts funding.	• Projects seeking less than $25 million in New Starts funding were exempt from the ratings process. • No separate program for small transit projects.
Codify the before and after study requirement	Project sponsors with FFGAs must conduct a study that (1) describes and analyzes the impacts of the new fixed guideway capital project on transit services and transit ridership, (2) evaluates the consistency of predicted and actual project characteristics and performance, and (3) identifies sources of differences between predicted and actual outcomes. Project sponsors must prepare an information collection and analysis plan, which must be approved prior to execution of the FFGA.	Not required under TEA-21, but FTA required project sponsors to conduct a before and after study on completed projects.
Revise New Starts overall project rating scale	Overall project rating is based on a 5-point scale of "high," "medium-high," "medium," "medium-low," and "low." Projects are required to receive a rating of "medium" or higher to be recommended for funding.	Overall project rating was based on 3-point scale: "highly recommended," "recommended," "not recommended."
Identify reliability of cost estimate and ridership forecast as a consideration in evaluation process	Requires Secretary to analyze, evaluate, and consider the reliability of the forecasting methods used by New Starts project sponsors and their contractors to estimate costs and ridership.	Not required under TEA-21.
Add economic development criterion to evaluation process	Projects will be evaluated based on a review of their effects on local economic development.	Not required under TEA-21.
Identify land use as a specific evaluation criterion	Projects will be evaluated based on a review of their public transportation supportive land use policies and future patterns.	Land use was not identified as an evaluation criterion by TEA-21. However, TEA-21 identified land use as a "consideration" in the evaluation process and FTA incorporated it into the evaluation process.
Provisions	**SAFETEA-LU**	**TEA-21**
Clarify nonfederal financial commitment	The Secretary is not authorized to require a nonfederal financial commitment for a project that is more than 20 percent of its net capital cost.	Federal share could not exceed 80 percent. But, in response to language contained in appropriations committee reports, FTA instituted a preference policy favoring projects that seek a federal New Starts share of no more than 60 percent of the total project cost beginning with the fiscal year 2004 evaluation cycle.
Establish incentives for accurate cost and ridership forecasts	A higher share of New Starts funding may be made available to project sponsors if project's cost is not more than 10 percent higher and ridership is not less than 90 percent of those estimates when project was approved for preliminary engineering.	No similar provision in TEA-21.
Require FTA to publish policy guidance	New Starts policy guidance must be published for notice and comment no later than 120 days after the enactment of SAFETEA-LU, each time significant changes are made, and at least every 2 years.	Not required under TEA-21.
Assess contractors' performance	The Secretary will submit an annual report to congressional committees analyzing the consistency and accuracy of cost and ridership estimates made by contractors to public transportation agencies developing new capital projects.	Not required under TEA-21.

Source: GAO analysis of SAFETEA-LU and TEA-21.

FTA has taken some initial steps in implementing SAFETEA-LU changes. For example, in January 2006, FTA published the New Starts policy guidance and, as will be discussed later, the ANPRM for the Small Starts program. FTA will continue to implement the changes outlined in SAFETEA-LU through the rulemaking process over the next year and a half. Specifically, in response to SAFETEA-LU changes, FTA is developing a Notice of Proposed Rulemaking (NPRM) for the New Starts and Small Starts programs. FTA plans to issue the NPRM in January 2007, with the goal of implementing the final rule in January 2008. Figure 2 shows a time line of FTA's actual and planned implementation of SAFETEA-LU changes.

Figure 2: Time Line for Implementing SAFETEA-LU Changes to the New Starts Program



Source: GAO.

A significant SAFETEA-LU change was the creation of the Small Starts program. The Small Starts program is a discretionary grant program for public transportation capital projects that (1) are corridor-based, (2) have a total cost of less than $250 million, and (3) are seeking less than $75 million in federal Small Starts program funding. The Small Starts program is a component of the existing New Starts program, but, according to the conference reports accompanying SAFETEA-LU, is intended to provide

project sponsors with an expedited and streamlined evaluation and rating process. Table 2 compares New Starts and Small Starts program requirements.

Table 2: Comparison of New Starts and Small Starts Program Requirements

Program requirements	New Starts	Small Starts
Definition of eligibility	Total project cost is $250 million or more, or $75 million or more in federal New Starts funding is sought. Provides funding for new fixed guideway systems and extensions.	Total project cost is less than $250 million, and less than $75 million in federal New Starts funding is sought. Provides funding for new fixed guideway systems and extensions, as well as corridor-based bus capital projects.
Project justification criteria	• Mobility improvements • Environmental benefits • Operating efficiencies • Cost-effectiveness • Public transportation supportive land use policies • Economic development • Reliability of forecasting	• Cost-effectiveness (based on opening year of service) • Public transportation supportive land use policies • Economic development • Reliability of forecasting
Local financial commitment criteria	• Stability and reliability of financial plan for capital costs • Stability and reliability of financial plan for operating and maintenance costs • Level of non-New Starts funding	• Stability and reliability of financial plan for capital costs • Stability and reliability of financial plan for operating and maintenance costs • Level of non-New Starts funding
Project development process	• Alternatives analysis • Preliminary engineering • Final design • Construction	• Alternatives analysis • Project development • Construction
Funding instrument	Projects are required to sign an FFGA, which sets scope, cost, and schedule, as well as maximum New starts share, source of other funds, and schedule for obligating funds.	Project will use a Project Construction Grant Agreement, which will be a streamlined version of the FFGA.

Source: GAO analysis of New Starts and Small Starts requirements.

In January 2006, FTA published an ANPRM to give interested parties an opportunity to comment on the characteristics of and requirements for the Small Starts program. In its ANPRM, FTA suggests that the planning and project development process for proposed Small Starts projects could be simplified by allowing analyses of fewer alternatives for small projects, allowing the development of evaluation measures for mobility and cost-effectiveness without the use of complicated travel demand modeling procedures in some cases, and possibly defining some classes of pre-

approved low-cost improvements as effective and cost-effective in certain contexts. FTA also sought the transit community's input on three key issues in its ANPRM, including eligibility, the rating and evaluation process, and the project development process. For each of these issues, FTA outlined different options for how to proceed, and then posed a series of questions for public comment, including the following questions on the rating and evaluation process:

- How should the evaluation framework for New Starts be changed or adapted for Small Starts projects?
- How might FTA evaluate economic development and land use as distinct and separate measures?
- How might FTA incorporate risk and uncertainty into project evaluations for Small Starts?
- What weights should FTA apply to each measure?

FTA's ANPRM for Small Starts generated a significant volume of public comment. While members of the transit community were supportive of some proposals for the Small Starts program, they also had a number of concerns. In particular, the transit community questioned whether FTA's proposals would, as intended, provide smaller projects with a more streamlined evaluation and rating process. As a result, some commenters recommended that FTA simplify some of its original proposals in the final NPRM to reflect the smaller scope of these projects. For example, several project sponsors and industry representatives thought that FTA should redefine the baseline alternative as the "no-build" option[8] and make the before and after study optional for Small Starts projects to limit the time

[8]FTA requires that the benefits and costs of the proposed New Starts project be assessed in comparison with a baseline alternative defined as the best that can be done without building a new fixed guideway. The purpose of the baseline alternative is to distill the benefits (and costs) of the proposed New Starts project from the benefits that could be achieved through low-cost improvements, such as route realignments and increases in service frequency, that would not entail the significant cost of a New Starts project's infrastructure. FTA defines the no-build alternative in two ways: (1) an alternative that incorporates "planned" improvements that are included in the fiscally constrained long-range plan for which need, commitment, financing, and public and political support are identified and are reasonably expected to be implemented, or (2) an alternative that adds only "committed" improvements together with minor transit service expansions or adjustments that reflect a continuation of existing service policies in newly developed areas.

and cost of project development. In addition, others were concerned that FTA's proposals minimized the importance of the new land use and economic development evaluation criteria introduced by SAFETEA-LU, and they recommended that the measures for land use and economic development be revised.

Since FTA does not plan to issue its final rule for the New Starts and Small Starts programs until early 2008, FTA issued proposed interim guidance for the Small Starts program in June 2006 to ensure that project sponsors would have an opportunity to apply for Small Starts funding and be evaluated in the upcoming cycle (i.e., the fiscal year 2008 evaluation cycle, which begins in August 2006). The proposed interim guidance describes the process that FTA will use to evaluate proposed Small Starts projects to support the decision to approve or disapprove their advancement to project development and the decision to recommend projects for funding, including whether proposed projects are part of a broader strategy to reduce congestion in particular regions. In addition, although not required by SAFETEA-LU, FTA introduced a separate eligibility category within the Small Starts program for "Very Small Starts" projects in the proposed interim guidance. Small Starts projects that qualify as Very Small Starts are projects that

do not include the construction of a new fixed guideway,

are in corridors with existing riders who will benefit from the proposed project and number more than 3,000 on an average weekday, including at least 1,000 riders who board at the terminal stations, and

have a total capital cost of less than $50 million and less than $3 million per mile (excluding rolling stock).

According to the proposed interim guidance on the Small Starts program, FTA intends to scale the planning and project development process to the size and complexity of the proposed projects. Therefore, Very Small Starts projects will undergo a very simple and streamlined evaluation and rating process. Small Starts projects that do not meet all three criteria for Very Small Starts projects will be evaluated and rated using a framework similar to that used for traditional, or large starts, New Starts projects. However, FTA officials have indicated that this evaluation and rating framework would be modified, for example, to include only those criteria listed in the statute. FTA is seeking public input on the Small Starts proposals contained in the proposed interim guidance through July 9, 2006. FTA plans to review the comments received and issue its final

interim guidance for the Small Starts program by August 2006. This guidance will govern the program until the final rule is issued.

In response to SAFETEA-LU, FTA identified possible changes to the New Starts program that would affect traditional New Starts projects, or large starts, in its January 2006 guidance. According to FTA, some of SAFETEA-LU provisions could lead to changes in the definition of eligibility, the evaluation and rating process, and the project development process. In the guidance, FTA outlines changes it is considering and solicits public input, through a series of questions, on the potential changes. For example, FTA identified two options for revising the evaluation and rating process to reflect SAFETEA-LU's changes to the evaluation criteria. The first option would extend the current process to include economic development impacts and the reliability of cost and ridership forecasts. Specifically, FTA suggested that economic development impacts and the reliability of forecasts simply be added to the list of criteria considered in developing the project justification rating. The second option would be to develop a broader process to include the evaluation criteria identified by SAFETEA-LU and to organize the measures to support a more analytical discussion of the project and its merits. According to FTA, the second option would broaden the evaluation process beyond a computation of overall ratings based on individual evaluation measures and develop better insights into the merit of a project than are possible from using the quantified evaluation measures alone. (See app. I for a description of the different changes FTA is considering.)

FTA also identified potential challenges in implementing some of SAFETEA-LU changes in its guidance. In particular, FTA described the challenges of incorporating and distinguishing between two measures of indirect benefits[9] in the New Starts evaluation process—land use and economic development impacts.[10] For example, FTA noted that its current land use measures (e.g., land use plans and policies) indicate the transit-

[9]Direct benefits of transportation investments, such as lowered transportation costs and improved access to goods and services, result in individuals, households, and firms acting to take advantage of those benefits. These actions can then lead to several types of indirect benefits, such as increased property values and new development.

[10]SAFETEA-LU added economic development to the list of evaluation criteria; it also identified land use as a specific evaluation criterion. Under TEA-21, land use was not identified as an evaluation criterion, but rather as a "consideration" in the evaluation process and FTA incorporated it into the evaluation process.

friendliness of a project corridor both now and in the future, but they do not measure the benefits generated by the proposed project. Rather, they describe the degree to which the project corridor provides an environment in which the proposed project can succeed. According to FTA's guidance, FTA's evaluation of land use does not include economic development benefits because FTA has not been able to find reliable methods of predicting these benefits. FTA further stated that because SAFETEA-LU introduces a separate economic development criterion, the potential role for land use as a measure of development benefits becomes even less clear given its potential overlap with the economic development criterion. In addition, FTA noted that many economic development benefits result from direct benefits (e.g., travel time savings), and therefore, including them in the evaluation could lead to double counting the benefits FTA already measures and uses to evaluate projects. Furthermore, FTA noted that some economic development impacts may represent transfers between regions rather than a net benefit for the nation,[11] raising questions as to whether these impacts are useful for a national comparison of projects. To address some of the challenges, FTA suggested that an appropriate strategy might be to combine land use and economic development into a single measure.

We have also reported on many of the same challenges of measuring and forecasting indirect benefits, such as economic development and land use impacts.[12] For example, we noted that it is challenging to predict changes in land use because current transportation demand models are unable to predict the effect of a transportation investment on land-use patterns and development, since these models use land-use-forecasts as inputs into the model. In addition, we noted that certain benefits are often double counted when evaluating transportation projects. In particular, indirect benefits, such as economic development, may be more correctly considered transfers of direct user benefits or economic activity from one area to another. Therefore, estimating and adding such benefits to direct benefits could constitute double counting and lead to overestimating a

[11]Indirect benefits, such as economic development, may represent transfers of economic activity from one area to another; and, while, such a transfer may represent real benefits for the jurisdiction making the transportation investment, it is not a real economic benefit from a national perspective because the economic activity is simply occurring in a different location.

[12]GAO, *Highway and Transit Investments, Options for Improving Information on Projects' Benefits and Costs and Increasing Accountability for Results*, GAO-05-172 (Washington, D.C.: Jan. 24, 2005).

project's benefits. Despite these challenges, experts told us that evaluating land use and economic development impacts is important, since they often drive local transportation investment choices.

FTA received a large number of written comments on its online docket in response to its proposed changes. (See app. I for common comments submitted for each proposed change.) While members of the transit community were supportive of some proposals, they expressed concerns about a number of FTA's proposed changes. For example, a number of commenters expressed concerns about FTA's options for revising the evaluation process, noting that both proposals deemphasized the importance of economic development and land use. Some commenters also noted that land use and economic development should not be combined into a single measure and that they should receive the same weight as cost-effectiveness in the evaluation and rating process.

SAFETEA-LU made a number of changes to the JARC program, the most notable of which was the creation of a formula to distribute JARC funds. Whereas funds for JARC projects were congressionally designated in recent years, SAFETEA-LU's formula distributes funds to states and large urbanized areas. This is a significant change because some states and urbanized areas will receive substantially more funds than under the discretionary program, while others will receive substantially less. In addition, the formula program will result in some areas receiving JARC funds that had not received them in the past. Other JARC changes resulting from SAFETEA-LU include the ability to use a portion of JARC funds for planning activities and the removal of a restriction on the JARC funding available for reverse commute projects, which are designed to help individuals in urban areas access suburban employment opportunities. FTA has worked to develop guidance to help JARC recipients implement these changes by soliciting comments and input through program notices and listening sessions beginning in November 2005. FTA issued interim JARC guidance in March 2006 and is currently working to develop draft final guidance for the program.[13] Final guidance for JARC is expected later this year. Two potential challenges for FTA as it moves forward will be to issue final JARC guidance in a timely manner and to determine its plan for oversight of the JARC program.

[13]FTA refers to guidance for grantees and stakeholders as a "circular;" in this testimony, we refer to FTA's draft and final circulars for JARC as draft final guidance and final guidance.

A key SAFETEA-LU change to the JARC program was the creation of a formula to distribute JARC funds. Under TEA-21, JARC was a discretionary grant program for which FTA competitively selected JARC projects and, more recently, awarded funds for congressionally designated projects. Under SAFETEA-LU, states and large urbanized areas have been apportioned funding for JARC projects through a formula based on the number of low-income individuals and welfare recipients in each area.[14] This is a significant change because some states and urbanized areas will receive substantially more funds than under the discretionary program, while others will receive substantially less. In addition, the formula program will result in some areas receiving JARC funds that had not received them in the past. Forty percent of JARC funds each year are required to be apportioned among states for projects in small urbanized and other than urbanized areas, and the remaining 60 percent are required to be apportioned among urbanized areas with a population of 200,000 or more.[15] The governor of each state must designate a recipient for JARC funds at the state level to competitively select and award funds for projects in small urbanized and other than urbanized areas within the state. In large urbanized areas, the recipient must be designated by the governor, local officials, and publicly owned operators of public transportation.

In addition to creating a formula for distributing JARC funds, SAFETEA-LU also extended a JARC requirement related to coordinated planning to additional FTA programs and made a number of other changes to key aspects of the JARC program. In the past, JARC projects were required to be part of a coordinated public transit-human services transportation plan; a similar requirement is included in SAFETEA-LU. However, this requirement will apply in fiscal year 2007 to two other FTA programs that

[14]The SAFETEA-LU formula apportions JARC funds on the basis of "eligible" low-income individuals in an area. Eligible low-income individuals are defined in SAFETEA-LU as individuals whose family income is at or below 150 percent of the poverty line.

[15]In information on the JARC program, FTA refers to urbanized areas with a population of 200,000 or more as large urbanized areas, urbanized areas with a population of between 50,000 and 200,000 as small urbanized areas, and rural and small urbanized areas with populations of less than 50,000 as other than urbanized areas.

provide funding for transportation-disadvantaged populations.[16] In addition, recipients in states and urbanized areas that select JARC projects must now certify that their selections were based on this plan. Another change resulting from SAFETEA-LU is the ability of a recipient to use up to 10 percent of its JARC allocation for administration, planning, and technical assistance,[17] and the expansion of the definition of eligible activities to include planning as well as capital and operating activities. SAFETEA-LU also removed a restriction on the amount of funding available for reverse commute projects to help individuals in urban areas gain access to suburban employment opportunities. Table 3 compares key JARC provisions under SAFETEA-LU and TEA-21.

Table 3: Comparison of SAFETEA-LU's and TEA-21's JARC Provisions

Provision	SAFETEA-LU	TEA-21
Distribute JARC funds by formula	• Requires the Secretary of Transportation to apportion funds among states and designated recipients of large urbanized areas through a formula that considers the number of eligible low-income individuals[4] and welfare recipients in each state or large urbanized area relative to other states or large urbanized areas. • Sixty percent of JARC funds are apportioned to designated recipients of urbanized areas with a population of 200,000 or more, 20 percent are apportioned to states for projects in urbanized areas with a population of less than 200,000, and 20 percent are apportioned to states for projects in other than urbanized areas.	• The Secretary of Transportation required to conduct a national solicitation for applications for grants and to select grantees on a competitive basis. • The same percentage of JARC funds allocated among large urbanized areas, small urbanized areas, and other than urbanized areas as provided under SAFETEA-LU.
Designate JARC recipient	The governor must designate a recipient at the state level to competitively select and award funds for projects in small urbanized and other than urbanized areas, and within each large urbanized area to competitively select and award funds in that area.	Not required under TEA-21. Rather, FTA competitively selected JARC projects and more recently awarded funds for projects that were congressionally designated.

[16]"Transportation-disadvantaged populations" refers to populations that lack the ability to provide their own transportation or have difficulty accessing whatever conventional public transportation may be available. FTA programs in addition to JARC that serve these populations are the Elderly Individuals and Individuals with Disabilities program, which provides formula funding for capital projects to assist in meeting the transportation needs of the elderly and persons with disabilities; and the New Freedom program, which provides formula funding for new public transportation services and public transportation alternatives that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.

[17]While TEA-21 had not included a statutory provision regarding a percentage that could be used for administration and technical assistance, FTA allowed JARC grantees to use up to 10 percent for these activities.

Provision	SAFETEA-LU	TEA-21
Use coordinated public transit-human services transportation plan to select projects for funding	• JARC projects selected for funding must be derived from a locally developed coordinated public transit-human services transportation plan; designated recipients must certify that selected projects were derived from this plan. • Additional FTA programs that provide funding for services for transportation-disadvantaged populations also subject to this requirement beginning in fiscal year 2007.[5]	JARC projects required to be part of a coordinated public transit-human services transportation planning process, but no requirement to certify that selected projects were derived from this plan.
Use competitive selection process	Designated recipients in urbanized areas required to conduct a solicitation for applications for grants in cooperation with the appropriate metropolitan planning organization;[6] designated recipients in states required to conduct a statewide solicitation for applications for grants. Grants are to be awarded on a competitive basis.	Secretary of Transportation required to conduct a national solicitation for applications for grants and to select grantees on a competitive basis. In practice, however, projects were congressionally designated in recent years.
Allow the use of funds for administration, planning, and technical assistance	• A recipient may use up to 10 percent of its apportionment to administer, plan, and provide technical assistance for JARC projects. • Planning is also included as an eligible expense along with capital and operating expenses.	No statutory provision for administration and technical assistance under TEA-21.[6] Planning and coordination activities were prohibited expenses.
Provide for transfers of JARC funds	States may transfer funds among the small urbanized area and other than urbanized area apportionments if the governor certifies that JARC objectives are being met in the specified area. States may also transfer funds from the small urbanized area and other than urbanized area apportionments to projects in any area in the state if it has a statewide program for meeting JARC objectives.	No provision under TEA-21.
Increase government's share of capital costs	JARC grants for capital projects may not exceed 80 percent of the net capital costs of the project; grants for operating assistance may not exceed 50 percent of the net operating costs of the project.	Grants for projects could not exceed 50 percent of the total project cost; no differentiation among capital and operating projects.
Remove limit on reverse commute project funding	No limit on the amount that can be used for reverse commute projects.	No more than $10 million could be used each fiscal year for reverse commute project grants.

Source: GAO analysis of TEA-21 and SAFETEA-LU.

[5]Eligible low-income individuals are those whose family income is at or below 150 percent of the poverty line.

[5]FTA programs in addition to JARC that serve these populations are the Elderly Individuals and Individuals with Disabilities program and the New Freedom program.

[6]Metropolitan planning organizations are federally mandated regional organizations responsible for comprehensive transportation planning and programming in urbanized areas.

[6]FTA allowed JARC grantees to use up to 10 percent for administration and technical assistance activities.

Some of these changes address issues that we have raised in past reports on JARC and the coordination of transportation services for transportation-disadvantaged populations.[18] For example, in 2004 we reported that a majority of the JARC grantees we spoke with supported a proposal to use grant funds for administrative, planning, and technical assistance activities, because these activities could increase coordination with potential partners. In 2003, we also reported that some federal and state officials believed that providing financial incentives or mandates for coordination was one way to improve the coordination of transportation services among federal programs. In addition, officials of one metropolitan planning organization that we spoke to about changes to the JARC program also note that the change to a formula program may better facilitate cooperation between organizations. They explained that the required coordinated plans for JARC projects became irrelevant in the past when JARC funds were congressionally designated.

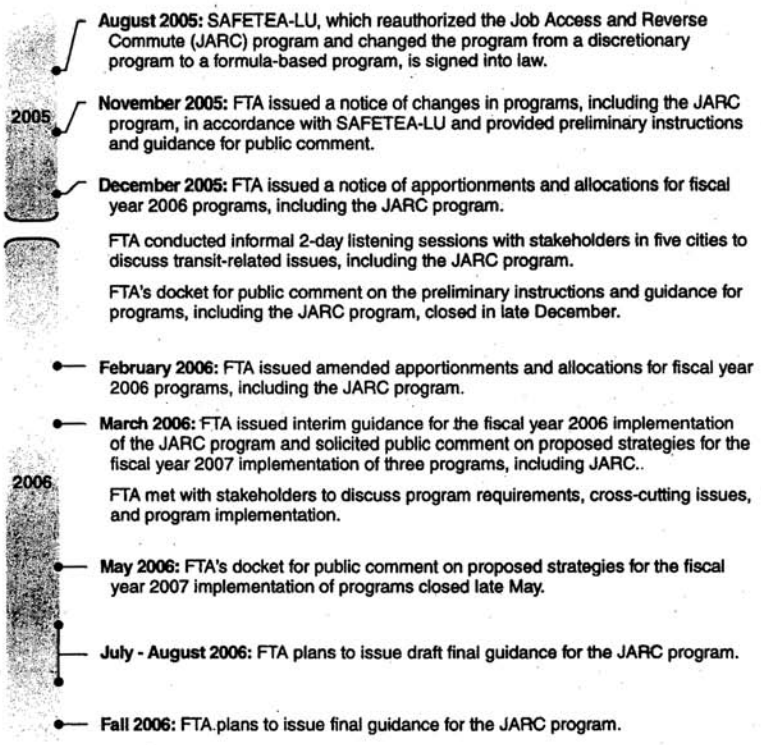
FTA has been working to develop guidance to help JARC recipients implement changes to the program. In November 2005, FTA published a notice of changes for FTA programs, including JARC. This notice provided information on the JARC program and solicited public comment on aspects of the program such as technical assistance needs and the coordinated planning process. FTA also held five public listening sessions across the country in December 2005 on a number of programs, including JARC, to obtain comments and input on the questions and issues that should be included in future guidance. In March 2006, drawing on the information FTA received through comments and the listening sessions, it released interim JARC guidance for fiscal year 2006 and proposed strategies for fiscal year 2007, and sought comments to assist in the development of program guidance.[19] FTA received more than 200 comments on this notice, and the comments addressed a variety of issues, including the coordinated planning requirement for JARC and other programs and the selection of designated recipients. For example, several private operators of transportation services have requested that FTA

[18]GAO, *Job Access and Reverse Commute: Program Status and Potential Effects of Proposed Legislative Changes*, GAO-04-934R (Washington, D.C.: Aug. 20, 2004). GAO, *Transportation-Disadvantaged Populations: Some Coordination Efforts Among Programs Providing Transportation Services, but Obstacles Persist*, GAO-03-697 (Washington, D.C.: June 30, 2003).

[19]The March 2006 notice also addressed the Elderly Individuals and Individuals with Disabilities program and the New Freedom program.

include language that private transportation operators be involved in the coordinated planning process. A number of comments have also addressed whether there would be a potential conflict of interest in having a provider of transportation services also serve as the designated recipient that will select JARC projects for funding. FTA officials have indicated that they plan to address many of the issues raised in the comments in draft final guidance for JARC that they plan to release later this summer. FTA plans to solicit comments on the draft final guidance and issue final guidance for JARC later this year. Figure 3 presents a time line for FTA's implementation of changes to the JARC program.

Figure 3: Time Line for FTA's Implementation of SAFETEA-LU Changes to the JARC Program



Source: GAO.

Through our preliminary work, we have identified two challenges that FTA may encounter as it moves forward in its implementation of changes to JARC. One potential challenge for FTA will be to ensure that it develops JARC guidance in a timely manner so that JARC recipients can implement the program. Officials from one metropolitan planning organization we spoke with about JARC changes noted that the guidance will be important because it will address questions that JARC recipients have raised about the program's implementation and to which they have received conflicting answers from FTA headquarters and regional staff. A publicly available schedule of FTA deliverables related to SAFETEA-LU's implementation

stated that draft final guidance for JARC was anticipated between May and July 2006. However, FTA officials told us that they now expect to issue the draft final guidance in late July or early August. This change reflects FTA's extension of the comment period for the March 2006 notice by 1 month to receive additional comments, and the submission of more than 100 comments on or after the last day of the comment period. The additional comments raised a number of issues for FTA to consider, according to FTA officials. While FTA has stated that criteria in the final guidance will not apply retroactively to issued grants so that areas can proceed with JARC projects, FTA officials as well as officials from an association that represents metropolitan planning organizations have told us that some recipients of JARC funds will likely wait for final program guidance before proceeding. In addition, few states and urbanized areas have taken formal steps to apply for fiscal year 2006 funds. As of late May, 5 states had notified FTA of their designated recipient for JARC funding, and 1 of the 152 urbanized areas that receive a JARC apportionment had obligated fiscal year 2006 JARC funds, according to FTA officials.

Another potential challenge for FTA in moving forward will be to determine its plan for overseeing the JARC program. FTA officials have told us that they are still developing this plan, and that at a minimum they expect to use routine grant management tools—such as progress reports and site visits—to oversee JARC recipients. In its interim guidance, FTA also indicates that it intends to use existing oversight mechanisms from the federal urbanized area and nonurbanized area formula programs, such as triennial reviews and state management reviews. However, FTA officials acknowledge they need to determine how to incorporate JARC grant recipients into these oversight processes.

Our past work suggests that transparency, communication, and accountability issues will be important as FTA moves forward in implementing SAFETEA-LU changes to the New Starts and JARC programs. Like SAFETEA-LU, TEA-21 required GAO to regularly review the New Starts and JARC programs. Since 1998, we have issued numerous reports on these programs, and many of the reports contained recommendations to FTA on ways to improve the implementation of these programs. SAFETEA-LU addressed some of these issues, and FTA has also taken steps to resolve some of them. Nevertheless, given the number of changes that are being made to both programs, continued focus on improving transparency, communication, and accountability will be important.

In our recent reports on the New Starts program, we noted several cases in which FTA could have improved the program's transparency. Typically, these cases dealt with FTA's decisions not to seek public input on proposed policy changes before they were implemented. In our 2005 report, we found that FTA had made 16 changes to the New Starts process since fiscal year 2001, but had not published information about the changes in the *Federal Register* or instituted a rulemaking process for 9 of the changes; moreover, for 6 of the 9 changes, FTA did not provide any avenues for public review and comment.[20] For example, during the fiscal year 2004 cycle, FTA instituted a preference policy in its ratings process favoring current and future projects that do not request more than a 60 percent federal funding share. However, FTA did not amend its regulations to reflect this change in policy or its existing procedures, and the public did not have an opportunity to comment on the impact of the change prior to its adoption.

SAFETEA-LU addressed our past concerns about the transparency of the New Starts program by requiring FTA to publish for notice and comment any proposals that make significant changes to the New Starts program. FTA has already implemented this requirement. For instance, earlier this year, FTA gave the transit community an opportunity to review and comment on proposed procedural changes (i.e., nonregulatory changes) to the New Starts process as well as possible changes FTA was considering for the New Starts program in the future. Although members of the transit community expressed concerns about some of FTA's proposed changes in their comments, project sponsors and industry representatives repeatedly told us that they appreciated the opportunity to review and comment on the proposals. FTA officials have also stated that they have been pleased with the review and comment process, noting that it helps to ensure that FTA's guidance is more complete, more responsive to stakeholders' needs, and more likely to take into account on-the-ground realities.

We have also previously reported shortfalls in FTA's communication of New Starts program changes to project sponsors that in several cases, have resulted in implementation problems. For example, in our 2003 report,[21] we noted that a number of project sponsors were unable to

[20]GAO, *Public Transportation: Opportunities Exist to Improve the Communication and Transparency of Changes Made to the New Starts Program*, GAO-05-674 (Washington, D.C.: June 28, 2005).

[21]GAO, *Mass Transit: FTA Needs to Provide Clear Information and Additional Guidance on the New Starts Rating Process*, GAO-03-701 (Washington, D.C.: June 23, 2003).

calculate a valid Transportation System User Benefits (TSUB) value, and as a result, their projects received a "not rated" rating for the cost-effectiveness criterion.[22] Project sponsors commented that they would have benefited from additional guidance and technical support on how to generate the required data for the TSUB measure. Similarly, during the fiscal year 2005 evaluation cycle, FTA introduced a requirement for project sponsors to submit a "make the case" document to articulate the benefits of a proposed New Starts project. FTA officials intended to use the document to help interpret data produced by the local travel forecasting models, but FTA did not prepare any written guidance on what information to include or provide report templates. Without such information, project sponsors stated that they did not understand what should be included in the document or how it would be used, and FTA officials later acknowledged that many of the submissions did not meet their expectations.

SAFETEA-LU addressed these communication problems by requiring that FTA routinely publish policy guidance. Specifically, SAFETEA-LU requires that FTA publish policy guidance for comment and response no later than 120 days after the enactment of SAFETEA-LU, each time significant changes are made, and at least every 2 years. FTA responded to this requirement by publishing policy guidance for the New Starts program in January 2006 and soliciting public comments on the proposed changes outlined in the guidance. Furthermore, in its January guidance, FTA included possible long-term changes to the large starts component of the New Starts program that FTA is considering. FTA stated that it hoped to use the policy guidance as a forum for discussing possible changes with the transit community so that FTA could take the community's comments into account when developing the NPRM for the New Starts program. In addition, FTA held multiple listening sessions across the country, during which officials told project sponsors about proposed changes to the New Starts program and their rationale for implementing these changes. Most of the project sponsors and industry representatives we interviewed told us that they appreciated FTA's efforts to solicit their feedback and to encourage an open discussion about the proposed changes.

[22]FTA noted that the projects received "not rated" ratings because project sponsors were not following FTA requirements for development of alternatives, resulting in a misrepresentation of the projects' user benefits.

Finally, we have identified steps for increasing the accountability of the New Starts and JARC programs. For example, we previously reported that outcome evaluations of completed transit and highway projects were not usually conducted to determine whether proposed outcomes were achieved.[23] We noted that because outcome evaluations are not usually completed, agencies miss an opportunity to learn from the successes and shortcomings of past projects to better inform future planning and decision making and increase accountability for results. FTA also identified such evaluations as an opportunity to hold agencies accountable for results and identify lessons learned, and therefore, starting in fiscal year 2003, FTA required project sponsors to complete before and after studies for completed New Starts projects. SAFETEA-LU codified the requirement for before and after studies, and required that these studies (1) describe and analyze the impacts of the new fixed guideway capital project on transit services and transit ridership, (2) evaluate the consistency of predicted and actual project characteristics and performance, and (3) identify sources of differences between predicted and actual outcomes. In addition, SAFETEA-LU included several provisions, including the following, that emphasize the accuracy and consistency of project cost and ridership estimates in the New Starts process:

- SAFETEA-LU requires the Secretary of Transportation to consider the reliability of the forecasting methods used by New Starts project sponsors and their contractors to estimate costs and ridership as part of the New Starts evaluation process.

- SAFETEA-LU allows the Secretary of Transportation to provide a higher grant percentage than requested by the project sponsor if the net cost of the project is not more than 10 percent higher than the net cost estimated at the time the project was approved for advancement into preliminary engineering and the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.

- SAFETEA-LU requires the Secretary of Transportation to submit an annual report to congressional committees analyzing the consistency and

[23]GAO, *Highway and Transit Investments: Options for Improving Information on Projects' Benefits and Costs and Increasing Accountability for Results,* GAO-05-172 (Washington, D.C.: Jan. 24, 2005).

accuracy of cost and ridership estimates made by contractors to public transportation agencies developing new projects.

Likewise, we have raised issues associated with FTA's measurement of the JARC program's results and made recommendations for improvement. In April 2002, we testified that FTA had not yet completed its evaluation of the JARC program or reported to Congress,[24] as TEA-21 required.[25] We also expressed concerns about FTA's plan to evaluate the program using one performance measure—the number of accessible employment sites—because it would not allow FTA to fully address key aspects of the program or criteria for selecting grantees. We reiterated these concerns in our December 2002 report and recommended that FTA report to Congress on the results of its evaluation of JARC, as required by law, and consider as part of its evaluation of the effectiveness of the JARC program in meeting both of its goals.[26] Our most recent review of the JARC program concluded that the data used in FTA's 2003 evaluation of the JARC program lacked the consistent, generalizable, and complete information needed to draw any definitive conclusions about the program as a whole.[27] According to FTA, it has faced obstacles in evaluating the JARC program primarily because grantees have had difficulty collecting and reporting information on their programs. SAFETEA-LU requires the Secretary of Transportation to evaluate the JARC program and submit a report describing the results of this study to Congress by August 2008. Specifically, the Secretary must conduct a study to evaluate the effectiveness of the grant program and the effectiveness of recipients making grants to subrecipients. FTA has already begun to take some steps to meet its evaluation requirements, even prior to issuing its final program guidance. These steps may also address some of the concerns we previously raised about FTA's evaluation of the JARC program. For example, FTA has identified new performance measures and goals, developed a preliminary performance evaluation framework to guide its data collection efforts, and is currently in the process of researching options for simplifying its data collection system and reducing the reporting requirements for grantees.

Mr. Chairman, this concludes my statement. I would be pleased to answer any questions that you or other Members of the Subcommittee may have at this time.

[24]GAO, *Welfare Reform: DOT Has Made Progress in Implementing the Job Access Program but Has Not Evaluated the Impact*, GAO-02-640T (Washington, D.C.: Apr. 17, 2002).

[25]TEA-21 required DOT to evaluate the JARC program and submit a report to Congress by June 2000.

[26]GAO, *Welfare Reform: Job Access Program Improves Local Coordination, but Evaluation Should Be Completed*, GAO-03-204 (Washington, D.C.: Dec. 6, 2002).

[27]GAO-04-934R.

Appendix I: FTA's Proposed Changes to the New Starts Program

In its January 2006 guidance, the Federal Transit Administration (FTA) identified possible changes to the New Starts program in response to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). According to FTA, some of SAFETEA-LU's provisions may lead to changes in the program's definition of eligibility, evaluation and rating process, and project development process. The following table summarizes the changes FTA has proposed in these three areas, FTA's rationale for the proposed changes, and the transit community's response to the proposed changes.

Proposed change	FTA's rationale for change	Comments submitted by the transit community
Eligibility definition		
Definition of a fixed guideway: FTA asks whether a Bus Rapid Transit project is a "fixed guideway" project and whether it should fund high-occupancy vehicle (HOV) projects to the degree that they provide benefits to public transit riders.	A fixed guideway has not been specifically defined in the statute.	• The current definition of fixed guideway works well; thus, FTA should make no changes. • A minimum percentage of the guideway (e.g., 30-75 percent) should be dedicated in order for a project to get funding. • HOV projects should be funded by the Federal Highway Administration.
Project evaluation and ratings process		•
Evaluation framework: FTA proposes two options for revising the evaluation framework. Option 1 would extend the current framework to include economic development impacts and the reliability of forecasting methods for costs and ridership. Option 2 would be a broader framework that incorporates the new evaluation factors specified by SAFETEA-LU and, according to FTA, organizes the measures to support a more informative, analytical discussion of the project and its merits for New Starts funding.	The current evaluation framework might be improved upon.	• Both proposed options raise concerns because they continue to define cost-effectiveness only in terms of mobility. • Neither proposed option gives enough weight to land use and economic development.
Nature of the problem or opportunity evaluation measure: FTA asks whether measures that represent the nature of the problem or the opportunity the proposed projects are designed to address should be included in the evaluation framework, and how FTA should evaluate or rate projects that address significant transportation problems compared with projects that take advantage of opportunities to improve service.	New Starts projects are intended to solve specific transportation problems, take advantage of opportunities to improve transportation services, or support economic development.	• Funding should be available for projects seeking to shape economic development or to provide a solution to mobility problems.

Proposed change	FTA's rationale for change	Comments submitted by the transit community
Economic development impacts measure: FTA identifies two options for characterizing economic development benefits: (1) regional economic benefits and (2) station area development impacts. FTA sought comment on whether there was preference for either option, as well as on how to evaluate economic development and land use as distinct and separate measures.	SAFETEA-LU identified economic impacts as a new evaluation criterion.	• Station area development benefits better isolate the effect of the transit project. There are too many other variables associated with regional economic benefits. • FTA should use both regional and station area economic benefits. • Land use and economic development should be separate measures and carry as much weight as cost-effectiveness. • Differentiating between land use and economic development is difficult.
Mobility benefits measure: FTA proposes to measure mobility by using a combination of user benefits per passenger mile and project ridership. FTA also asked whether other measures of mobility benefits could be used.	The measure of mobility benefits ought to capture as many benefits as possible.	• FTA should continue to work toward capturing transportation benefits to highway users in a project corridor. • FTA should analyze the impact of non-home-based trips, trips generated by special events, and automobile trips not taken because of enhanced pedestrian activity established in a project corridor.
Mobility for transit dependents measure: FTA proposes to measure mobility for transit dependents by the share of user benefits accruing to the passenger in the lowest income stratum compared with the regional share of the lowest income stratum. FTA asked whether this proposed measure would cause any implementation difficulties, and whether there were other measures FTA should consider.	Since low-income populations and households without access to automobiles depend critically on the public transportation system to provide basic mobility, access to jobs, health care and other critical services, projects that improve transit services for these populations have special merit. FTA's previous measure—percentage of low income households in the project corridor—is somewhat imprecise.	• An implementation difficulty would be the inconsistencies in regional travel demand models—that is, some models are based on income, others on automobile ownership, and some on both.
Environmental benefits measure: FTA proposes to continue using the same environmental benefits measure, which uses the projected change in regional vehicle miles traveled to estimate the change in various harmful types of vehicle emissions and energy consumption.	SAFETEA-LU maintained environmental benefits as an evaluation criterion.	• FTA should retain its current measure of environmental benefits.
Operating efficiency measure: FTA proposes removing this measure as a separate evaluation criterion, relying instead on an evaluation of cost-effectiveness to address the statutory criterion. According to FTA, the impact of the project on operating and maintenance costs is captured in the calculation of cost-effectiveness.	The current measure—projected systemwide change in operating cost per passenger mile—does not distinguish among proposed projects.	• FTA should use the cost-effectiveness evaluation measure to address the operating efficiency criterion.

Proposed change	FTA's rationale for change	Comments submitted by the transit community
Cost-effectiveness measure: FTA proposes to broaden the current cost-effectiveness measure to include nontransportation benefits, such as economic development benefits, land use impacts, and mobility benefits to transit dependents. FTA also suggests using two cost-effectiveness measures—one for the forecast year as is done today and the second calculated for the year the project opens.	The current measure of cost-effectiveness does not capture non-transportation benefits.	• Broadening the cost-effectiveness measure would increase the time and cost of project development. • FTA should use the consumer price index, not the gross domestic product index, to adjust the dollar value of the cost-effectiveness threshold.
Financial capabilities measure: FTA proposes changing the way the financial rating factors related to uncertainty are incorporated into the evaluation process. Specifically, FTA suggests using the project sponsor's ability to absorb funding shortfalls and cost overruns as an explicit measure of financial risk.	SAFETEA-LU identifies the following factors that FTA must use in evaluating financial capability: (1) the reliability of forecasting methods for costs and ridership, (2) existing grant commitments, (3) the degree to which funding sources are dedicated, (4) debt obligations of the project sponsor, and (5) the non-New Starts funding share.	• It is unclear from the guidance who is responsible for assessing the reliability of financial forecasts. • The emphasis placed on the reliability of the financial forecast should correlate to the stage of project development.
Reliability of forecasts measures: FTA proposes to assess the risk and uncertainty inherent in project evaluation. Specifically, FTA plans to evaluate the uncertainty associated with the nature and severity of the problem, as well as individual measures of project merit and cost-effectiveness measures.	SAFETEA-LU requires that the reliability of the forecasting methods used to estimate costs be considered in the evaluation of New Starts projects.	• Proposal is confusing. • Recent experience with risk assessments suggests that the proposal would require substantial effort with little reduction in uncertainty. • FTA should place significant weight on the project sponsor's ability to enhance the reliability of forecasts through the proven quality control methods.
Development of project ratings: Currently, FTA develops separate ratings for project justification and local financial commitment, and then derives an overall project rating from these component ratings using decision rules. FTA proposes to use a similar process for rating projects. However, FTA states that the reliability of forecasts needs to be incorporated into the ratings process, and suggests different options for accomplishing this, such as using probability weightings or using uncertainty indicators to decide the outcome for ratings at the margins. FTA also seeks input about the weights that should be assigned to each measure.	SAFETEA-LU requires that the reliability of the forecasting methods used to estimate costs be considered in the evaluation of New Starts projects.	• Economic development and land use should receive the same weight as cost-effectiveness.

Proposed change	FTA's rationale for change	Comments submitted by the transit community
Project development process		
Local endorsement of the financial plan: FTA proposes to require that project sponsors specify all proposed sources of funding in the financial plan, and that the sponsoring agency provide a letter endorsing the proposed financial strategies and amounts of planned funding by those agencies identified as funding sources.	SAFETEA-LU requires that FTA ensure that proposed New Starts projects are supported by an acceptable degree of local financial commitment and resources. FTA has experienced situations in which a project's financial plans state that local agencies will provide funding, but in reality those local agencies do not support the project plan.	• Securing an endorsement will be overly burdensome and delay project development. • FTA should not dictate when project sponsors receive financial commitments. • Hard to fully secure funding commitments in preliminary engineering and final design.
Approval of the baseline alternative: FTA proposes to maintain the current approval process and definition of the baseline alternative. However, FTA asks whether the baseline can be more clearly defined and whether there is a way to report on the benefits of the project including the benefits attributable to the difference between the no-build and the baseline alternatives.	There has been significant confusion over the definition of the baseline alternative.	• More clarity needed on how FTA defines baseline alternative. • Selection of baseline alternative should not be driven by FTA.
On-board transit survey: FTA is considering requiring that a recent survey of transit riders be used to inform the technical work completed during alternatives analysis. FTA suggests that "recent" could be defined as within the 5 years preceding a request to enter preliminary engineering.	Data on current ridership patterns are essential to the development of reliable forecasts.	• Surveys are expensive and may be unnecessary in some areas. • FTA should consider other means of collecting data on ridership, such as electronic fare collection data and small sample surveys.
Preliminary engineering purpose and exit criteria: FTA is considering defining the preliminary engineering phase as the process of finalizing the project's scope, cost, and financial plan such that (1) all environmental impacts are identified and adequate provisions are made for their mitigation in accordance with National Environmental Policy Act (NEPA), (2) all major or critical project elements are designed to the level that no significant unknown impacts relative to their costs will result, and (3) all cost estimating is complete to a level of confidence necessary for the sponsor to implement the financing strategy.	Since the completion of preliminary engineering for proposed projects represents the completion of nearly all the steps needed to make a final decision on the actual implementation of the proposed project, the information for making that final decision must be reliable.	• Need a clearer definition of preliminary engineering phase to help project sponsors target resources. • Design costs will be frontloaded, thereby increasing the costs of preliminary engineering.
Project reaffirmation by the metropolitan planning organization (MPO): FTA is considering requiring that the sponsoring agencies reaffirm their adoption of the project in its final configuration and costs into the MPO's long range transportation plan as part of the application to advance the project to final design.	Before a project is approved for advancement into preliminary engineering, the project must be adopted by the MPO into its long-range transportation plan. However, a project's scope and costs may change during the preliminary engineering phase. Thus, this requirement would ensure that a revised project still conforms to the MPO's transportation plans and financial investment strategies.	• Creates another step that will increase time and cost of project development. • Duplicates sponsors' ongoing work with the MPO and provides no added certainty. • Will likely have limited impact on local financial endorsement. • Inconsistent with Federal Highway Administration regulations.
New Starts funding share incentives: FTA asks how it should implement the provision in SAFETEA-LU that would give FTA discretion to provide a higher percentage of New Starts funding than that requested by the project sponsor as an incentive to produce reliable ridership and cost estimates.	SAFETEA-LU allows the Secretary to provide a higher grant percentage than requested by the project sponsor if (1) the net cost of the project is not more than 10 percent higher than the net cost estimated at the time the project was approved for advancement into preliminary engineering, and (2) the ridership estimated for the project is not less than 90 percent of the ridership estimated for the project at the time the project was approved for advancement into preliminary engineering.	• Incentive money should be invested back into the New Starts program. • Incentive should focus on the project's outcomes like project impacts.

Source: GAO analysis of FTA guidance and public comments posted on FTA's docket.

Related GAO Products

New Starts reports and testimonies

Opportunities Exist to Improve the Communication and Transparency of Changes Made to the New Starts Program. GAO-05-674. Washington, D.C.: June 28, 2005.

Mass Transit: FTA Needs to Better Define and Assess Impact of Certain Policies on New Starts Program. GAO-04-748. Washington, D.C.: June 25, 2004.

Mass Transit: FTA Needs to Provide Clear Information and Additional Guidance on the New Starts Ratings Process. GAO-03-701. Washington, D.C.: June 23, 2003.

Mass Transit: Status of New Starts Program and Potential for Bus Rapid Transit Projects. GAO-02-840T. Washington, D.C.: June 20, 2002.

Mass Transit: FTA's New Starts Commitments for Fiscal Year 2003. GAO-02-603. Washington, D.C.: April 30, 2002.

Mass Transit: FTA Could Relieve New Starts Program Funding Constraints. GAO-01-987. Washington, D.C.: August 15, 2001.

Mass Transit: Implementation of FTA's New Starts Evaluation Process and FY 2001 Funding Proposals. GAO/RCED-00-149. Washington, D.C.: April 28, 2000.

Mass Transit: Status of New Starts Transit Projects With Full Funding Grant Agreements. GAO/RCED-99-240. Washington, D.C.: August 19, 1999.

Mass Transit: FTA's Progress in Developing and Implementing a New Starts Evaluation Process. GAO/RCED-99-113. Washington, D.C.: April 26, 1999.

JARC reports and testimonies

Job Access and Reverse Commute: Program Status and Potential Effects of Proposed Legislative Changes. GAO-04-934R. Washington, D.C.: August 20, 2004.

Welfare Reform: Job Access Program Improves Local Service Coordination, but Evaluation Should Be Completed. GAO-03-204. Washington, D.C.: December 6, 2002.

Welfare Reform: DOT Has Made Progress in Implementing the Job Access Program but Has Not Evaluated Impact. GAO-02-640T. Washington, D.C.: April 17, 2002.

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Welfare Reform: DOT Is Making Progress in Implementing the Job Access Program. GAO-01-133. Washington, D.C.: December 4, 2000.

Welfare Reform: Implementing DOT's Access to Jobs Program in Its First Year. GAO/RCED-00-14. Washington, D.C.: November 26, 1999.

Welfare Reform: Implementing DOT's Access to Jobs Program. GAO/RCED-99-36. Washington, D.C.: December 8, 1998.

Welfare Reform: Transportation's Role in Moving from Welfare to Work. GAO/RCED-98-161. Washington, D.C.: May 29, 1998.

Other transit-related reports

Highway and Transit Investments: Options for Improving Information on Projects' Benefits and Costs and Increasing Accountability for Results. GAO-05-172. Washington, D.C.: January 24, 2005.

Transportation Disadvantaged Populations: Some Coordination Efforts Among Programs Providing Transportation Services, but Obstacles Persist. GAO-03-697. Washington, D.C.: June 30, 2003.

Transit Labor Arrangements: Most Transit Agencies Report Impacts Are Minimal. GAO-02-78. Washington, D.C.: November 19, 2001.

Mass Transit: Many Management Successes at WMATA, but Capital Planning Could Be Enhanced. GAO-01-744. Washington, D.C.: July 3, 2001.

Transit Grants: Need for Improved Predictability, Data, and Monitoring in Application Processing. GAO/RCED-00-260. Washington, D.C.: August 30, 2000.

PREPARED STATEMENT OF WILLIAM MILLAR

PRESIDENT, AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

JUNE 27, 2006

Mr. Chairman and Members of the Subcommittee, on behalf of the 1,600 members of the American Public Transportation Association (APTA), we thank you for this opportunity to testify on the implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which was enacted into law last summer. SAFETEA–LU incorporates the key principles that APTA and the transit industry advocated for in the reauthorization process—

- Grow the Federal transit program;
- Preserve the funding guarantees; and
- Expedite and improve program delivery.

With Federal investment of $52.6 billion guaranteed over 6 years in the bill, APTA's members very much appreciate and thank this Subcommittee for its hard work and commitment to public transportation throughout the reauthorization process. The investment levels included in the legislation, and its new programs and policy changes, will have a significant impact on the mobility needs of millions of Americans, and we applaud this Subcommittee's hard work and leadership in mak-

ing that happen. And we are pleased to report today that significant progress has been made toward successfully implementing this important legislation.

In that regard, Mr. Chairman, I commend the Federal Transit Administration (FTA) for acting expeditiously in implementing rulemakings and carrying out other activities required under SAFETEA–LU. The law calls for FTA to implement a significant number of programs, rulemakings, notices, and other measures, and the agency has made every effort to do so in a timely and open and transparent way. FTA has conducted workshops, participated in an APTA webinar, and been on panels at APTA conferences and meetings to explain SAFETEA–LU programs and policies. We very much appreciate FTA's efforts in this regard, and we look forward to continuing the good working relationship we now have with the agency. Looking ahead, a strong partnership between the public transportation industry, FTA, and Congress is more important than ever as we implement SAFETEA–LU. Americans took more than 9.7 billion transit trips in 2005. Since 1995, the use of public transportation has increased by 25.1 percent—more than the growth of highway travel (22.5 percent) over that period. The growth of transit ridership during the past 10 years demonstrates that Americans want transportation choices and will leave their cars behind when convenient, quality public transit service is available. As gas prices continue to rise, the demand for public transportation will only continue to grow. In short, it is clear that Americans want mobility options, and good public transportation is key to meeting that need.

Federal Transit Program Investment

SAFETEA–LU authorizes and guarantees $8.975 billion for the Federal transit program in Fiscal Year (FY) 2007, $9.731 billion in FY 2008 and $10.338 billion in FY 2009. Funding in these three remaining years of SAFETEA–LU is of critical importance. Much of the funding growth in the first full year of SAFETEA–LU necessarily went to new areas of focus—transit investment in rural communities, new investment to address the needs of people with disabilities beyond service required under the Americans with Disabilities Act (ADA), transit in National Parks and public lands, and other new initiatives. Full funding of the SAFETEA–LU program in FY 2007 and subsequent years will ensure growth for all transit agencies which depend on annual formula funding to support their services. Moreover, investment at the guaranteed level permits long-range planning and leveraging of funds via public–private partnerships and other private sector investment activities. APTA's members were disappointed earlier this year that the Administration proposed to fund transit below the level authorized and guaranteed by Congress for FY 2007. The Administration requested $100 million less than the amount authorized from the general fund for the new starts program, proposing only half of the funding authorized for the new small starts program, a program to fund smaller fixed guideway projects such as light rail, commuter rail, and bus rapid transit systems. We are pleased that the FY 2007 Transportation Appropriations bill passed by the House earlier this month funds transit programs at the $8.979 billion level slightly above the SAFETEA–LU guaranteed level, but we are disappointed the House bill would not fund the Small Starts Program in FY 2007. APTA believes a viable administrative procedure to evaluate grant applications and make grants will be in place with sufficient time to distribute FY 2007 Small Starts funding. We urge the Senate as it considers FY 2007 transportation appropriations legislation to correct this problem and fund transit programs at least at the authorized and guaranteed levels.

Progress on Key Regulatory Issues

Mr. Chairman, when SAFETEA–LU was enacted last August, our members identified four key programs that they were particularly concerned about—the New Starts and Small Starts Programs, Metropolitan and Statewide Planning, Buy America, and Charter Bus—and I will provide an update on the status of these programs and a few others. Complete copies of APTA's comments can be found on our web page—*www.apta.com*—under "SAFETEA–LU Rulemakings and Notices" or if the Subcommittee would like we would be happy to submit copies to the Members.

New Starts

As this committee knows, there is overwhelming demand for New Starts projects SAFETEA–LU authorized 387 such projects. New fixed guideway projects are an important part of meeting transit needs, but these major capital projects take years to develop and require a predictable funding commitment. SAFETEA–LU makes an important funding commitment to these projects, and it also directed FTA to advance important program changes through the rulemaking process. Mr. Chairman, our members have raised significant concerns about the length of time it takes to proceed through the New Starts process, and about some of the requirements the

FTA imposes during that process. In that regard, I am pleased to report to you that FTA Deputy Administrator Sandra Bushue has been very responsive to our concerns and has assured us that FTA will be conducting an independent review of the entire New Starts process to make sure it is carried out in the most effective way possible.

Regarding the implementation of the New Starts and Small Starts provisions, APTA commends FTA's outreach efforts to the transit industry. FTA has held extensive listening sessions and workshops across the country. In addition, at the request of the APTA Policy and Planning Steering Committee, FTA held a 2-day working session on several issues. From these efforts, FTA has been very responsive to the industry's concerns, and rulemaking products like the Guidance on New Starts Policies and Procedures released May 16 have benefited from this partnership. Let me provide some examples. The draft Guidance released by FTA this past January proposed that New Starts projects achieve an acceptable rating before a final NEPA decision. The public transportation industry thought this would delay projects which could result in cost increases. After industry input, the final policy guidance does not implement this requirement. Another important industry concern was a proposal to require contractors responsible for developing forecasts and related new starts data to certify that their forecasts have been properly developed and applied according to professional standards and conventions and FTA guidelines. There was again significant industry opposition to this provision because of the risk of professional liability. Moreover, accountability already exists, as it should, with the grant recipient. Again, following industry input, the final Guidance does not implement the provision. In regard to other New Starts implementation issues, January's draft Guidance proposed a cap on the size of funding in a Full-Funding Grant Agreement (FFGA) at the point of approval to enter final design. While there were mixed support and opposition to the provision, the public transportation industry applauds FTA's implementation provision that states that once approved into final design, projects are not subject to future changes in the New Starts Program.

Small Starts

The new Small Starts Program, a program to fund less costly fixed guideway projects such as streetcar, commuter rail, and bus rapid transit systems, faces greater challenges with regard both to funding and to rulemaking implementation issues. As stated earlier, APTA's members were disappointed that the Administration's budget proposal for FY 2007 requested only $100 million of the $200 million authorized for the program. The effect of any underfunding the Small Starts Program would be felt disproportionately in future years by causing transit providers to fall further behind in the development of new, less expensive projects. As to the current status of the Small Starts Program, APTA's members are optimistic that Small Starts funds could be utilized in FY 2007 using the Proposed Interim Guidance and Instructions just released by FTA on June 9, and we will be making that case during consideration of transportation appropriations legislation in the Senate. An APTA survey this spring identified more than 50 projects in various stages of development with an aggregate Federal share of $2.3 billion that could qualify for Small Starts funding. APTA believes that more work is needed to simplify the Small Starts grant criteria, eliminate any appearance of modal bias and insure economic benefits and land use criteria are given appropriate consideration under the Proposed Interim Guidance and Instructions when it is finalized. We trust these issues will also be addressed in the Notice of Proposed Rulemaking (NPRM) expected next year. Perhaps FTA could look to the streamlined process for the Very Small Starts category, which is contained in the Proposed Interim Guidance, and apply that simplified process to the entire Small Starts Program.

Other SAFETEA–LU Rulemakings and New Program Developments

Mr. Chairman, let me turn now to some of the other key rulemakings and new program developments under SAFETEA–LU.

Statewide and Metropolitan Planning

On June 9, 2006, FTA and the Federal Highway Administration (FHWA) issued a Notice of Proposed Rulemaking (NPRM) to implement joint planning regulations, and our members are already beginning to develop comments on that rulemaking. We appreciate that FTA and FHWA are holding outreach sessions on this important topic, including sessions at APTA workshops and conferences over the coming months.

Buy America

The FTA issued an NPRM on Buy America on November 11, 2005, and issued a partial final rule on March 3, 2006, on some aspects of the program but has not yet issued a final rule on key elements of the Buy America program. We urge them

to do so as soon as possible. Given the sensitivity and importance of this regulation, we have made a particular request of FTA in this matter. To guard against unintended consequences, and to ensure that FTA's ultimate decisions are fully informed by broad public comment, APTA has asked FTA to issue an interim final rule as the next step in this matter. Issuance of an interim final rule rather than a final rule provides additional opportunity for comments to be made and considered before the rule becomes final—always an important consideration regarding Buy America issues.

Charter Bus Negotiated Rulemaking

Pursuant to direction in SAFETEA–LU's Conference Report, FTA has established an advisory committee to develop, through negotiated rulemaking procedures, recommendations for improving the regulation regarding charter bus activities FTA recipients may engage in. The advisory committee includes representatives of public and private transportation providers and other interested parties. The committee has held two 2-day sessions to date, and APTA is pleased to be represented on the committee.

Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute (JARC), New Freedom Programs and Coordinated Public Transit-Human Services Transportation Plans

Mr. Chairman, APTA submitted its comments on this matter to FTA on May 19, 2006, and we offer just a few comments here. The New Freedom program provides formula funding for new transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act (ADA) to further assist persons with disabilities. We look forward to participating in this important new program. In our comments to FTA on the program, we asked that preexisting services transit systems already provide beyond ADA requirements be eligible for funding under the New Freedom program. APTA believes that it would be unfair not to permit funding of any existing services that already exceed ADA requirements. Regarding the coordinated planning process, we are concerned that the proposal to allow State and local authorities to designate recipients other than the section 5307 recipient invites unnecessary bureaucracy into the coordinated planning process. Allowing multiple designated recipients could be counterproductive by adding to the number of independent services rather than enticing cooperation and coordination.

Alternative Transportation in Parks and Public Lands

SAFETEA–LU established a new program to develop public transportation in National Parks and other federally managed public lands with the goal of improving mobility and reducing congestion and pollution. FTA, in cooperation with the Department of the Interior and the Department of Agriculture's Forest Service, has published a solicitation for proposals for projects to be funded in FY 2006. APTA applauds the Administration's expeditious advancement of the program, and we look forward to the announcement of the program's first project recipients expected later this summer.

Public–Private Partnership Pilot Program

Section 3011(c) of SAFETEA–LU authorizes FTA to establish and implement a pilot program to demonstrate the advantages and disadvantages of public–private partnerships for certain new fixed guideway capital projects. We submitted comments to FTA on June 1 on this program, and are highly supportive of FTA's efforts to craft a strong public–private partnership program which is likely to be a model for many future projects. On a related note, we were pleased to submit comments to FTA on its joint development proposals.

Conclusion

Public transportation plays a key role in meeting the goals of the Administration and Congress in providing energy independence, congestion relief, and transportation mobility options for Americans. It is important that the strong partnership among the public transportation industry, FTA, and Congress continues as we move to complete SAFETEA–LU implementation and realize the promise of this important legislation. At this stage in the implementation of SAFETEA–LU we are generally pleased with the progress being made. We are particularly pleased with the outreach FTA has made to our members and its thoughtful consideration of and inclusion of the industry's ideas.

Mr. Chairman, on behalf of APTA's member organizations, I thank you for this opportunity to express our views.