STATEMENT OF
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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
U.S. HOUSE OF REPRESENTATIVES

"Back on Track: WMATA Red Line Metrorail Accident and Continual Funding Challenges"

July 14, 2009

Mr. Chairman, Ranking Member Chaffetz, Delegate Norton, and members of the subcommittee, thank you for inviting me to appear before you today to discuss the Federal Transit Administration's (FTA) safety oversight of the Washington Metropolitan Area Transportation Authority (WMATA).

Secretary LaHood and I would like to express our sincere condolences to those who lost loved ones in the accident on June 22, 2009. Our thoughts and prayers go out to the families and friends affected by this tragedy.

Before I address the specifics of FTA's safety oversight, I note that FTA's role in transit rail safety is extremely limited as a matter of Federal law. Our nation's rail transit systems operate under two very different Federal safety regimes. Some FTA funded rail transit systems are governed by the Federal Railroad Administration (FRA) safety regulations while others are governed by the States. For example, commuter rail operations on the general system of railroads like Virginia Railway Express and Maryland Area Regional Commuter fall under FRA's safety regulatory system that includes national mandatory safety standards and on-site spot inspections and audits by Federal technical specialists and inspectors with backgrounds in train control, track operations and other disciplines. FRA is also empowered to dictate operating practices and assess fines on these transit operators for any deficiencies found. On the other hand, for rail systems not subject to FRA oversight, such as the WMATA and the New York City subway system, the State is expected to take the lead for oversight and require those systems to stand up a safety program. The State is then expected to monitor the transit system's implementation of its safety program and FTA's role is to set minimum requirements for States and to monitor the States' implementation activities. FTA is prohibited by law from establishing national safety standards, requiring Federal inspections, or dictating operating practices.

As Secretary LaHood and the new Administration team has come on board and reviewed the existing legal authorities, we believe that the status quo, with its two distinct systems of rail safety oversight, is in need of reform. Secretary LaHood has

directed us to take a fresh look at how the Federal government provides oversight for transit safety. To that end, the Secretary has established a multi-modal Departmental committee, chaired by Deputy Secretary John Porcari, to identify and consider alternative approaches to effectively address what we consider a gap in safety oversight. The current State Safety Oversight ("SSO") structure (with a few exceptions) lacks sufficient authority to provide for a uniform approach to transit system safety.

Secretary LaHood's team of safety officials and experts within the Department is focused on developing options for transit safety reforms. This team will review the many alternative models within DOT to address safety as well as review the statutory authority on safety for transit with an eye toward developing reforms. In addition, I have called upon my staff to review our safety goals and priorities to determine resource needs and identify improvements that we can make now, within our existing legislative framework, to improve safety for transit systems across the country.

Rail transit provides more than 3 billion passenger trips each year, and moves millions of people each day. Thus, as we discuss transit safety reforms, it is critically important to remember that transit systems like WMATA remains a very safe mode of transportation and is the safest way to travel in Washington, D.C. or in any city in the United States. Over the past seven years, national passenger fatality rates for heavy rail transit have run about 0.03 per million passenger miles. This is a lower rate than most other modes of transportation and far safer than traveling by automobile.

It is impossible to discuss the issue of the safety of our nation's transit systems without simultaneously discussing the financing of these systems. In our experience, the systems that are adequately financed are those that have a dedicated funding source. The WMATA system does not have such a dedicated revenue stream. WMATA does, however, benefit from a regular stream of Federal formula grant funds totaling approximately $220 million in FY '08 and also operates in the only city in the United States for which transit benefits are mandated for all Federal employees. This provision alone generates fare box revenue for WMATA totaling roughly $170 million per year. In addition to these Federal resources, the Secretary and I support Congressional efforts to make WMATA more financially viable with dedicated revenue funding sources, including matching Federal grants available to WMATA for 2010, while working within the overall spending ceiling established in the President's annual budget. However, we believe strongly that these Federal matching funds must be used by WMATA to address the most safety critical issues in the system as identified by appropriate vulnerability assessments.

I would now like to address how FTA has utilized the safety authority it has. By way of background, FTA's SSO program affects 27 States and 48 rail transit agencies nationwide.

FTA's involvement in safety began in 1991 when Congress first authorized a safety program for FTA. The SSO program was developed in response to recommendations from the National Transportation Safety Board (NTSB) as the result of their extensive

study of oversight options for rail transit. The design of the program places primary responsibility for rail transit safety oversight with the States and, as I mentioned earlier, FTA is only responsible for setting minimum program requirements to be met by the States and for monitoring implementation of the program.

The first few years of the program were challenging ones. When FTA finalized its safety regulation in 1995, only five States had existing oversight programs, and not one of these programs fully met FTA's requirements.

FTA worked with the Transportation Safety Institute (TSI) and the National Transit Institute (NTI) to establish safety and security training programs that would address a range of technical issues faced by industry. This training is provided free of charge, and has been given to the majority of SSO agencies and representatives from the affected rail transit safety and security departments. FTA believes this training is critical to ensure that personnel involved in implementing the SSO program develop core competencies in rail transit safety. Over the past four years, nine courses were funded by FTA and conducted by TSI at WMATA. This week, TSI is conducting a course on managing transit emergencies.

Further, to fulfill our obligation to monitor the SSO program implementation, FTA initiated compliance audits of SSO agencies in the fall of 1998. This is a program comprised of pre-audit interviews and document reviews, on-site program examination, and generation of a final audit report, delivered in draft form to the SSO agency at the exit interview. FTA also established an annual report that is submitted by the SSO agencies documenting their oversight activities for the year and collecting detailed information regarding the rail transit accidents occurring in their jurisdictions.

In 2003, we initiated a rulemaking to update our safety regulation based on the results of our SSO audit program as well as input from NTSB and FRA. On April 29, 2005, our revised final rule was published, with an effective date of May 1, 2006. The revised rule clarifies that program requirements apply in situations where rail transit agencies are built entirely with State and local funds, but plan to receive FTA formula funds during revenue service. Examples of these systems include Houston Metro's light rail and New Jersey Transit's River Line. The revised rule also addressed an NTSB recommendation regarding the need for proficiency and compliance testing for operations and maintenance personnel.

In August 2005, the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amended the SSO program. First, SAFETEA-LU required that the program be extended to rail transit projects that are in the design phases. Second, SAFETEA-LU clarifies that in those instances where a rail transit agency operates across State lines, the rail transit agency shall not be subject to more than one set of safety oversight standards.

Regarding the role of SSO agencies in projects in the design phase, we increased coordination with our Regional Offices, and now invite the SSO agencies to Quarterly

Review Meetings conducted for New Starts projects in their jurisdictions. We are also requiring Safety and Security Management Plans for all major capital projects. A critical element addressed in these plans relates to the grantee's readiness to comply with SSO requirements with the initiation of revenue service. Finally, our Project Management Oversight contractors interface with SSO agencies and personnel during their monthly visits to the projects to identify and resolve any potential issues. FTA already addressed the multi-State coordination issue in its 2005 revised rule.

For WMATA, the SSO Agency is the Tri-State Oversight Committee (TOC), which is comprised of the part time, collateral efforts of different personnel from Virginia, Maryland, and the District of Columbia. The TOC is charged with implementing 49 CFR Part 659 requirements for WMATA and was created through a 1997 memorandum of agreement between the District of Columbia, the State of Maryland, and the Commonwealth of Virginia. Each of the three jurisdictions has two representatives on the TOC. In 2008, the TOC reported 2,291 staff hours working on SSO activities, and 1,705 contractor hours working on SSO issues. This level of effort has been relatively stable over the previous three years and translates into the equivalent of less than two full time employees for their entire oversight effort during 2008.

FTA has conducted several SSO program audits of TOC since Part 659 went into effect on January 1, 1997. The most recent audit was conducted in October 2007. Previous audits took place in 2000 and 2005. FTA also conducted a Safety Review in 1997. The 2007 audit was conducted as part of FTA's three-year audit cycle for all 27 SSO agencies in the audit program. During this audit, while on-site at TOC and WMATA, FTA also reviewed the progress made by TOC and WMATA to address two findings that were still open from FTA's 2005 SSO Program audit of TOC. In addition, FTA used this opportunity to assess WMATA's response to Safety Recommendation R-06-4 from the National Transportation Safety Board (NTSB), which addressed the adequacy of WMATA's organizational structure and its ability to effectively identify safety issues. Prior to the Woodley Park-Zoo accident, the WMATA Safety Department reported to the General Manager through a Deputy. Shortly after, WMATA changed its organization so that the Chief Safety Officer and head of System Safety and Risk Management (SSRM) was a direct report to the General Manager. NTSB correspondingly classified this recommendation as "Closed – Acceptable Action".

However, in recent months, WMATA has re-organized the Chief Safety Officer position to report to the Chief Administrative Officer, who reports to the General Manager. FTA asked the TOC to follow up with WMATA. WMATA has assured the TOC that the organizational changes do not adversely affect safety and that the "visibility and importance of the safety department will not diminish". FTA continues to view the NTSB recommendation as a sound safety model and the current structure at WMATA causes us concern.

In conclusion, FTA's existing Federal statutory authority presents significant challenges in ensuring consistent national safety standards for many rail transit systems. Even so, Secretary LaHood and I are committed to transit safety reforms. We look to Congress

to partner with us to develop a transit reform strategy that is consistent and provides the highest level of safety across all types of public transportation.

Thank you again for the invitation to be here today and I would be happy to answer any questions that you may have.