

FEDERAL RAILROAD ADMINISTRATION

DOCKET NO. FRA-2022-0035

**Guidance on Development and
Implementation of Railroad Capital
Projects**

**COMMENTS OF
BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES DIVISION/IBT**

The Brotherhood of Maintenance of Way Employees Division/IBT (BMWED or Union); submit these comments in response to the Federal Railroad Administration's (FRA) Request for Information for Guidance on Development and Implementation of Railroad Capital Projects. The Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58, also known as the "Bipartisan Infrastructure Law") will provide unprecedented Federal funding for rail improvement projects in America. BMWED recognizes the need to establish clear practices and procedures through the issuance of agency guidance. BMWED would like to offer the following comments to assist in the creation of this guidance.

INTEREST OF THE UNION

BMWED is the recognized collective bargaining representative for more than 30,000 railroad maintenance of way employees who inspect, install, construct, repair and maintain railroad tracks, and railroad bridges on Class I railroads, Amtrak, commuter railroads, and short line and regional railroads in the United States. BMWED has CBAs covering work performed on and for the railroads and the development and funding of Capital Projects will affect the Union's members. BMWED has a substantial interest in development of these projects with the work being performed by entities and workers covered by the Railway Labor Act (RLA), Railroad Retirement Act (RRRA), and Railroad Unemployment Insurance Act (RUIA). and ensuring that the proper employee protections are attached to FRA grants.

COMMENTS

FRA guidance should clearly prioritize Capital projects where the entities who will be responsible for operations; and for inspection, maintenance, and repair of railroad track and right of way, bridges and structures, as well as their employees, are covered by the RLA, RRRA and RUIA. This work has historically been done by these stakeholders and workers covered by those statutes. Safe, efficient, and effective railroading has been ensured by the work being performed by qualified railroad workers covered by those statutes. The railroad labor and employment laws and collective bargaining agreements (CBAs) have provided for good jobs with good rates of pay, benefits and working conditions; stable employment; and the ability of rail employers to recruit and retain qualified workers. The standards established by those laws and CBAs should not be undercut by non- RLA/RRRA/RUIA entities, especially when the projects are supported by

federally funded programs. Prioritizing projects where the entities responsible for operations and inspection, maintenance, and repair work, and the individuals who perform the work, are covered by the RLA, RRRRA and RUIA is consistent with policies of the Biden Administration, particularly as expressed in *Task Force on Worker Organizing and Empowerment Report to the President* at 27-28 (Ensuring Effective Enforcement of Existing Laws, Support Enforcement of Labor and Employment Standards), 30 (Strong Labor Standards Applied to Federal Funding), and 33-34 (Incorporating Labor Standards Into Transportation Department Discretionary Grant Programs).

This FRA guidance should also make it clear to all prospective project programs, and to all who seek funding for project planning and development, that various FRA capital grant programs are subject to statutorily mandated employee protections that cover railroad workers and provide certain rights and benefits for railroad workers, and that such obligations must be factored into project planning and development. Those employee protections should be finalized and implemented immediately so that those performing project planning, and their prospective partners will be aware of their obligations.

The Federal Register notice requesting comments specifically asks for feedback on “FRA’s definition of Project Sponsor.” 87 Fed. Reg. 38451, 338542 (2022). RLA, RRRRA and RUIA statutory coverage and railroad employee protections are essential and FRA should include these requirements in the definition of “Project Sponsor” – so that the entity responsible for implementing a capital project, applicant, or grantee is aware of these obligations from the outset.

Section IV(a) describes Systems Planning and discusses how projects may be multimodal or “have multiple purposes and may also be identified through other highway or transit planning processes.” Section 21201(n) of the Infrastructure Investment and Jobs Act (P.L. 117-58) provides an important framework for employee protections in multimodal grants. The FRA should incorporate this framework into guidance for all grants involving multimodal projects.

Section IV(b) states “For railroad projects that may be utilized by multiple operators (*i.e.* “shared infrastructure”), the Project Sponsor should consider and coordinate the needs of the various operators during project planning. The agency’s guidance should incorporate that all operators of rail infrastructure funded by FRA grants must be RLA, RRRRA and RUIA covered and that railroad employee protections apply.

Section IV(b)(ii) requires Project Sponsors to show documentation that they have “the support of participant stakeholders (*e.g.* host railroads and funding partners).” Railroad labor organizations must be included in this section as stakeholders. BMWED also recommends adding: (1) “The role of labor to be used throughout the project from initial construction to established maintenance”; and (2) an acknowledgement of that the entity is RLA, RRRRA and RUIA covered and that railroad employee protections apply to the list of items that Project Sponsors must identify at this stage in Section IV(b)(ii)(A).

Section V(c)(9)(b) states that Major Projects will have to “describe the construction management approaches, policies, responsibilities, and procedures for... contractor organization, skills, and staffing levels, and railroad labor forces required throughout the construction phase...” BMWED represents the railroad maintenance of way employees who inspect, install, construct,

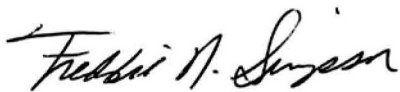
repair and maintain railroad tracks, and railroad bridges. Rail labor should be included in developing Construction Management plans under this provision – not merely the subject of these plans.

The FY22 Notice of Funding Opportunity (NOFO)¹ for the Mega Program (known statutorily as the National Infrastructure Project Assistance program) is an excellent model that FRA should look to for addressing labor’s involvement in FRA grants. Specifically, BMWED applauds DOT for including factors like “Criterion #3: Economic Impacts, Freight Movement, and Job Creation” (where Project Sponsors will be scored for how well they can demonstrate “the creation of good-paying jobs with a free and fair choice to join a union and the incorporation of strong labor standards and practices, such as project labor agreements, use of registered apprenticeships or other joint labor-management training programs, and the use of an appropriately credentialed workforce.”) and “Criterion #5: Equity, Multimodal Options, and Quality of Life” (where DOT will consider the extent to which Project Sponsors have engaged with stakeholders like labor unions).

It is not enough to include RLA, RRRRA and RUIA statutory coverage and railroad employee protections in a footnote, appendix, or reference to another document under the Administrative and National Policy Requirements section of a NOFO. Project Sponsors must be aware of these obligations from the outset, rail labor must be incorporated into the planning and development of projects receiving FRA funding (especially Major Projects), and Project Sponsors should be evaluated for how well they can demonstrate the creation of good-paying jobs with a free and fair choice to join a union and the incorporation of strong labor standards.

BMWED thanks FRA for its commitment to addressing these issues. Our union is ready to work with DOT to advance these recommendations as well as to provide any assistance in implementing the Infrastructure Investment and Jobs Act to ensure the projects administered by DOT create good union-jobs and provide strong labor protections.

Respectfully submitted,

A handwritten signature in black ink that reads "Freddie N. Simpson". The signature is written in a cursive style with a large initial 'F' and 'S'.

Freddie N. Simpson
President

¹ <https://www.transportation.gov/grants/multimodal-project-discretionary-grant-notice-funding-opportunity>