Commuter Rail Coalition

March 1, 2021

The Honorable Peter B. Buttigieg
Secretary
US Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Re: **Adjustment to Rail Passenger Transportation Liability Cap**

Dear Mr. Secretary:

We are writing on behalf of the Commuter Rail Coalition (CRC), an association of nearly two dozen commuter rail transportation agencies and private sector members formed in 2019 to advocate for federal legislation, policies and regulatory actions in support of the commuter rail industry. The CRC is the only association in the US solely focused on commuter railroads.

Federal statutory law established a cap on passenger rail liability (Pub. L. 114–94, div. A, title XI, § 11415(b), 129 Stat. 1689 (Dec. 4, 2015), codified at 49 U.S.C. § 28103). Further, the statute currently provides that the liability cap be adjusted every five years by the Department of Transportation to reflect changes to the Consumer Price Index (49 U.S.C. § 28103(a)(2)). This past Friday, February 26th, the US DOT published a notice in the Federal Register (86 Fed. Reg. 11,571 (February 25, 2021) adjusting the cap from $294,278,983 to $322,864,228.

<u>We are writing to request a minimum 120-day delay in implementation of that increase, and to describe the market failure already jeopardizing agencies' access to required liability coverage.</u>

As background: commuter rail agencies typically must assemble a package of liability insurance from multiple sources by obtaining commercial general liability insurance and, beyond that, additional policies to address excess limits to able to respond to claims up to the statutory cap. While the cap increase will result in significant cost implications for publicly funded passenger rail services, the implementation window is one that commuter rail agencies may not be able to satisfy in 30 days' time.

Factors outside of the commuter rail industry – namely with other sectors experiencing significant losses due to natural disasters exacerbated by climate change and other occurrences - have driven insurance companies from the marketplace. Hurricanes, once-in-a-century snowstorms in Texas, wildfires in Australia: the result of these losses has translated into a marketplace for excess liability insurers that is unprofitable and unpredictable, and many insurance companies are no longer willing to offer this coverage.

And while the commuter rail industry has had an excellent safety history, this seemingly has no bearing on market capacity to insure railroads, nor on escalating premiums. Market instability has made insurance coverage not only much more expensive, but even more troubling, it has caused many long-time insurers to flee the market and left commuter rail agencies uncertain if they will be able to secure converages at the required levels.

PO Box 235 • Alexandria, VA 22313

www.commuterrailcoalition.org

It has long been impossible to purchase from a domestic insurer more than the first block of $50 million in railroad liability coverage, and now the international market is contracting. Therefore, the increase in the cap published in the Federal Register on Friday means all of this additional coverage must be purchased from foreign markets.

A number of our member agencies are currently receiving bids as part of their regularly-scheduled excess liability insurance annual renewal process, typically a four- to six-month exercise. They are again reporting challenges in this renewal as outlined above, namely, increased premiums (some as high as 200 percent annual increases) and fewer bidders. In some cases, no bids were received for portions of their coverages, forcing them to actively seek out contracts that have been sometimes three to four times the previous “market rate” (with one agency reporting they were charged more than ten times the market rate per million to complete their “tower”).

The newly-proposed liability cap will be challenging to satisfy in this distressed marketplace, and likely impossible to accomplish in 30 days. The marketplace will be further stressed by the fact that all US passenger rail agencies will be simultaneously seeking increased coverages. With the departure of many insurance companies from the excess market, and those remaining reducing the amount of risk they are willing to insure, we are concerned that coverages may not be available for everyone. Without a complete tower of insurance coverage a commuter rail agency would be forced to cease operations.

Mr. Secretary, it is not the case that we as an industry are unwilling to purchase excess liability insurance up to the federal cap; we are now in a position where we simply may not be **able** to do so, despite all of our best efforts to further enhance operating safety and mitigate the risks within our control. The process for seeking insurance coverage involves extensive documentation and submittals and repeated reviews by insurers that under the best of circumstances would normally involve more than 30 days. With the marketplace already distressed, and the availability of coverage minimal, the small window for compliance is a complicating factor we may not be able to overcome. We ask that you allow for an additional 120 days so that commuter rail agencies can attempt to secure this additional coverage.

If we can provide any further information for your review of this matter, please contact us at: 312 -322-6575 (Derwinski) or 219-395-4663 (Noland). Also, Commuter Rail Coalition Executive Director KellyAnne Gallagher can be reached at: 202-689-9280.

Very truly yours,

James M. Derwinski
Chair, Commuter Rail Coalition
CEO and Executive Director, Metra Commuter Rail

Michael Noland
Vice Chairman, Commuter Rail Coalition
President, South Shore Line/NICTD

cc. Mr. Amit Bose, Acting Administrator, Federal Railroad Administration
Ms. Nuria Fernandez, Acting Administrator, Federal Transit Administration