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# Congress of the United States

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October 8, 2004

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BY FACSIMILE

Steven A. Diaz, Esq.  
Law Office of Steven A. Diaz  
2300 M Street, N.W. #800  
Washington, DC 20037

Dear Mr. Diaz:

This letter follows up on the September 30, 2004 hearing of the Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs, entitled "How Can We Maximize Private Sector Participation in Transportation? – Part II." As discussed during the hearing, please respond to the enclosed followup questions for the hearing record.

Please hand-deliver the agency's response to the Subcommittee majority staff in B-377 Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building not later than noon on October 29, 2004. If you have any questions about this request, please call Subcommittee Staff Director Barbara Kahlow on 226-3058. Thank you for your attention to this request.

Sincerely,



Doug Ose  
Chairman

Subcommittee on Energy Policy, Natural  
Resources and Regulatory Affairs

Enclosure

cc: The Honorable Tom Davis  
The Honorable John Tierney

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Q1. Fiduciary Responsibility. In your written testimony, you stated, “Although it is sometimes said that the Federal Transit Administration is ‘not a regulatory agency’ it defies common sense to say that billions of dollars of federally appropriated funds are simply given out with no concomitant Federal fiduciary obligation” (p. 4). I agree that the Federal Transit Administration (FTA) has a fiduciary responsibility to assure that Federal grant funds are expended in accordance with Federal law. What are your views of the appropriate oversight role for each Federal grantor agency, including FTA?

Q2. DOT Implementation and Enforcement.

- a. The Department of Transportation’s (DOT’s) FTA has not yet issued implementing rules for the 1994 private sector participation requirements for mass transit. As a consequence, grantees may be unclear of precisely what is expected from them. Do you recommend that FTA issue an implementing rule for these statutory provisions, and do you think that such rules would underpin FTA’s enforcement actions?
- b. Would any new nonbinding guidance be adequate and enforceable? If not, why not?
- c. What is your view of FTA’s enforcement to date of the statutory requirements for private sector participation in mass transit? Would enforcement actions by FTA help existing private sector providers?