

**Written Statement of
Peter M. Rogoff, Administrator
Federal Transit Administration
Before the
House Committee on Oversight and Government Reform
April 21, 2010**

Chairman Towns, Ranking Member Issa, and Members of the Committee:

Thank you for the opportunity to appear before you today to discuss the Federal Transit Administration's (FTA) audit of the Tri-State Oversight Committee (TOC) and the Washington Metropolitan Area Transportation Authority (WMATA).

Before I summarize some of the highlights of our audit report, I want to point out that this audit was very different from past audits conducted by FTA. Because FTA currently lacks the legal authority to establish national safety standards that would govern agencies like WMATA, FTA limits the focus of our audits to the State Safety Oversight (SSO) agency, which in this case is the TOC. At the request of Senator Mikulski and Secretary Ray LaHood, and with the encouragement of WMATA's interim Chief Safety Officer, this audit, for the first time, took a hard look at WMATA's own safety program.

FTA's audit uncovered a number of troubling facts about WMATA and TOC. The audit concludes that these two agencies face serious challenges that could compromise the safety of WMATA's riders, if left unaddressed. While each of these agencies has effected recent improvements, a great deal more needs to be done to ensure that those advances become a permanent feature within the safety culture.

Our audit resulted in 21 findings and recommendations: 11 findings to TOC and 10 recommendations to WMATA.

Before I highlight the findings and recommendations made by FTA, I want to convey to you three important messages.

First, the findings in our audit are merely symptoms of a larger problem. Each finding and recommendation in our report reveals a hole or vulnerability in the very systems that have been implemented to ensure the safety of WMATA passengers and employees. Without a strong and daily commitment to safety from everyone at WMATA, from executive leadership down to the most junior employee, these systems cannot succeed. Addressing each of our recommendations, one by one, will not solve the whole safety problem. The overarching safety problem will only be solved through a top-to-bottom change in the safety culture and focus at WMATA.

Second, I want to emphasize that, under current law, FTA does not have the legal authority to compel WMATA to take specific corrective action to address our recommendations. As I have testified before, FTA is not empowered legally to issue national safety regulations for transit systems. And with few exceptions, State Safety Organizations, like the TOC, similarly have no

legal authority to compel transit agencies like WMATA to respond to ***their*** safety findings. They don't have to respond to them in a timely way. In fact, they don't have to respond to them at all.

Over the 15 years that the SSO regulations have been in place, only a few states have developed comprehensive state-level regulations and granted an SSO with authority to enforce them. While there is no federal impediment preventing states from developing independent authority, the vast majority of states have not done so. This is precisely the reason why Secretary LaHood, on behalf of President Obama, transmitted a transit safety reform bill to the Congress back in December 2009. I want to thank Chairman Dodd, Subcommittee Chairman Menendez, Senator Mikulski, and Senator Cardin for their assistance in getting this bill introduced. I also want to thank Representative Edwards for serving as an original co-sponsor of the House bill along with Chairman Oberstar and Subcommittee Chairman DeFazio.

The WMATA crash last summer certainly accelerated our efforts within the Obama Administration to develop and transmit our transit safety reform bill. But, WMATA is not the only transit system that has had accidents recently or safety lapses. We have been greatly concerned because the Chicago Transit Authority, the MTA (formerly MUNI) system in San Francisco, the "T" in Boston, and rail systems elsewhere have also experienced accidents or safety incidents. While we believe the situation at WMATA is particularly urgent, we believe that some of the deficiencies and vulnerabilities identified in our audit of WMATA and TOC are similar to problems that exist at other transit operators and State Safety Oversight organizations across America.

That is why it is so imperative to public safety that Congress enact our rail transit safety reform bill ***now***. The U.S. Department of Transportation cannot move forward to address these problems in any meaningful way while we lack the authority to issue national safety regulations and to conduct direct safety oversight of rail transit agencies and operators. Just a few weeks ago, Secretary LaHood used his statutory authority to prohibit texting while driving nationwide for commercial truck and bus drivers. But even a simple common-sense safety measure like that will not automatically apply to employees operating the rail transit portions of systems, such as WMATA, until Congress changes the law. So, on behalf of the President and Secretary LaHood, I must ask you collectively to do all you can to rapidly move this legislation to the President's desk.

Third, we must remember that, despite WMATA's safety challenges, every Washington area commuter is safer traveling on WMATA than they are traveling on our highways. Thus, we cannot allow any degradation in WMATA's reliability and performance such that commuters opt to abandon Metro in favor of our already congested highways. We must also caution against any proposals that will reduce significantly WMATA's existing capacity, forcing more commuters onto our highways. Any actions or proposals pushing WMATA riders onto our highways simply will degrade safety and worsen congestion in the region.

Moving on to the results of our audit of WMATA and TOC, I will first provide a brief summary of FTA's State Safety Oversight Program and then I will summarize some of the findings from our audit that concern us most. As I summarize our findings, you will see that there are common challenges faced by both TOC and WMATA in the areas of: inadequate management

of resources, inadequate expertise, inadequate authority, and inadequate communication. Should this Committee wish to review our findings in more detail, we have provided every Member a complete copy of the audit report and the report can be found on our public website at http://www.fta.dot.gov/news/speeches/news_events_11396.html.

FTA's State Safety Oversight Program

Congress authorized FTA's State Safety Oversight (SSO) program in 1991, in the Intermodal Surface Transportation Efficiency Act of 1991. FTA published a final rule in 1995, with a phased-in effectiveness period. States with rail transit agencies had to come into compliance with all of the rule's requirements by January 1, 1998. The SSO regulations use a framework of shared safety oversight responsibility that is unique among all of the operating administrations within the Department of Transportation. The SSO program is designed to work through the states to establish minimum safety requirements for the rail transit industry, must designate an oversight agency, and must develop a Program Standard. The Program Standard requires each rail transit agency to prepare and implement a System Safety Program Plan (SSPP). Under FTA's SSO regulations the designated SSO agency must hold each rail transit agency accountable for implementing its safety program.

FTA's regulations also require states to review and approve annually the rail transit agency's SSPP. And, once every three years, SSO agencies must conduct on-site reviews to assess the rail transit agency's implementation of its SSPP and to determine whether these plans need to be updated. States are also required to review and approve accident investigation reports and corrective action plans, participate in the rail transit agency's hazard management program, and oversee the rail transit agency's implementation of its internal safety and security audit program.

While I mention FTA's current authority to regulate SSO's, it is important to note that FTA's authority is indirect, at best, in relation to the actual operations of the rail transit systems. In fact, the establishment of any safety standards is left to the decision-making of each individual SSO, which results in a hodge-podge of non-uniform and inconsistent requirements across the country. Implementation of the resulting SSO safety requirements and program standards also suffer greatly because such enforcement is only as effective as the state specific SSO administering and monitoring those requirements. This does not provide for a uniform, nationwide, assurance of safety. It is one of many reasons this Administration finds the status quo unacceptable and has proposed legislative reforms designed to enhance the SSO program through the establishment of consistent, uniform, national safety standards.

Inadequate Management of Resources

This audit of TOC and WMATA revealed that each agency faces resource management challenges that limit its ability to effectively oversee and implement a safety program in accordance with FTA's State Safety Oversight regulations. For example, at the time of our audit we learned that out of 41 positions in WMATA's Safety Department, 25 percent are vacant. We also were told by WMATA representatives that recent accidents have placed additional burdens on the Safety Department's ability to carry out its daily activities. In addition, WMATA officials noted that unfilled vacancies limit the Safety Department's ability to ensure its SSPP is

implemented. This is a key point because part of the SSPP is the hazard management program, which is at the core of an effective safety program.

A hazard management program fosters hazard identification and analysis, which provide the rail transit agency an opportunity to proactively eliminate hazards before an accident. For WMATA, however, its representatives stated that due to a lack of resources, a formal hazard analysis is not routinely performed on system-wide issues. Furthermore, WMATA personnel also pointed out that WMATA's Board of Directors rarely requests formal hazard analysis or other information on how operating, maintenance or budget decisions may have safety impacts or how the agency is addressing safety-related concerns. This is exemplified by the fact that at the time of the audit, WMATA and TOC representatives were unable to identify the agency's top ten safety concerns or hazards.

Similarly, WMATA officials explained that the Safety Department's Division of Regulatory Compliance, which is responsible for hazard analysis, has experienced reductions in work force and on-going budget issues. As a result, all four analyst positions within the Regulatory Compliance Division have been vacant for over a year.

TOC fares no better when it comes to resource allocation. Since its inception in 1997, TOC has experienced considerable turnover among its members. Only one TOC member has served on TOC for three years, two other members have served for less than two years, and one member has served for less than one year. Further, with the exception of one Virginia representative, each member serves on the TOC as a collateral duty and TOC membership was not included in TOC member employee job descriptions with their home agencies. Only recently did the Virginia member begin dedicating full-time effort to TOC. Equally troubling, the home jurisdictions provide no training for serving on TOC, and a background in rail transit or system safety is not required.

Since there is a steep learning curve required to understand WMATA's operations and issues, part-time involvement of new members who change from year to year does not give TOC a strong foundation to carry out its oversight mission. We made this finding in past audits and the Government Accountability Office made a similar finding when it recommended that the jurisdictions provide one or more TOC full-time members to enhance responsiveness to WMATA requests, and to provide dedicated, on-site support at WMATA. Virginia has made this commitment and the other TOC jurisdictions must also dedicate full-time specialized employees to carry out the SSO activities.

We also find that the safety program management in all three jurisdictions has failed to assess the level of resources needed to meet TOC responsibilities. The jurisdictions must conduct an assessment and use the results of that assessment to establish resource commitments from each jurisdiction for the next three calendar years.

For WMATA, we recommend that management conduct an assessment to identify and prioritize the resources necessary to adequately administer its safety program and use the results of the assessment to ensure adequate staffing levels within the Safety Department.

Inadequate Expertise

During audit interviews, representatives from WMATA's Safety Department stated that the department lacks sufficient skills to conduct ongoing hazard analyses. In fact, over the last five years, TOC and FTA have made repeated findings regarding the inability of WMATA's Safety Department to work with other WMATA departments to develop and manage an effective internal audit program. For example, in FTA's audit of TOC in 2005, FTA raised a concern about WMATA's ability to identify, elevate, and address safety deficiencies. In 2007, when FTA again audited TOC, FTA found TOC deficient in ensuring that WMATA conducts internal safety audits according to approved schedules. As this 2009 audit was being conducted, WMATA personnel, noting similar deficiencies, explained that they did not have the expertise to provide training on how to conduct internal safety audits and would need to rely on outside contractor support.

Furthermore, during audits in 2005 and 2007, FTA determined that TOC was not ensuring that WMATA conducted internal safety audits according to approved schedules and requirements. Independent reviews conducted by TOC in 2004 and 2007 identified the same deficiency. WMATA began its new internal safety audit cycle in 2009 by submitting an audit schedule and audit checklists to TOC. WMATA failed, however, to meet approved schedules and has not performed the audits in an on-going manner as required by TOC Program Standards and Procedures and FTA's State Safety Oversight regulations.

When the Safety Department does conduct an audit, it does so primarily to assess compliance with Occupational Safety and Health Administration and Environmental Protection Agency rules and requirements and to ensure the use of appropriate Personal Protective Equipment at work sites. WMATA's Safety Department does not routinely design and execute methodologies to effectively review documentation, interview personnel, and conduct field observations to determine compliance with specific operating rules and procedures. Further, our audit revealed that there is general confusion within the Safety Department as to why it would need to conduct or manage internal audits of other departments.

Given this, FTA is concerned that over the last decade WMATA has failed to develop an effective internal safety audit process even after repeated warnings by FTA and TOC. While TOC has monitored this process, and noted its deficiencies, FTA finds that TOC must take a more active role in ensuring that WMATA develops the necessary expertise within its Safety Department to implement this critical process. We also find that TOC must evaluate the technical and professional skills that TOC representatives need to effectively carry out their oversight duties.

Inadequate TOC Authority

Throughout the course of our audit, we identified several deficiencies regarding the implementation of the State Safety Oversight regulations, as well as on-going challenges in maintaining the quality of the oversight relationship.

The TOC jurisdictions—the District of Columbia, the Commonwealth of Virginia, and the State of Maryland—have structured TOC as a committee created by Memorandum of Understanding. While the TOC members and the home jurisdictions are committed to implementing the State Safety Oversight requirements, the jurisdictions have not provided TOC with the authority to ensure that WMATA effectively implements its SSPP. For example, until recently, TOC had limited interaction with WMATA’s executive leadership. Instead, TOC members corresponded primarily with the Chief Safety Officer and held working meetings with lower level staff at WMATA. Also, because TOC lacks authority to compel action by WMATA, requests for information were provided late or not at all, TOC members were denied access to the right-of-way, and TOC members were excluded from key meetings.

We find that TOC must determine the best method for quickly and professionally responding to safety issues that arise at WMATA. We ask the jurisdictions to consider vesting the full-time TOC positions with decision-making authority to act in specific safety situations with WMATA.

Inadequate Communication

Most troubling about the findings in this audit is the clear indication that both TOC and WMATA suffer from inadequate communication within their organizations and between the two agencies. This defect impacts how quickly TOC can react to safety findings, how WMATA communicates internally regarding safety issues identified by TOC, and how the agencies communicate with one another.

TOC Communication

When specific compliance issues emerge at WMATA, TOC members often must obtain the authority to act from higher level executives in their own separate agencies. This creates challenges for TOC members because there is no formal process to manage conflicts of law or policy that arise among the three jurisdictions. Thus, our audit revealed that it is difficult for TOC members to speak as a unified entity. This is further exacerbated by the fact that most of TOC is part-time. The one full-time member of TOC conducts various meetings with WMATA and then has to debrief the part-time members regarding his activities. Our audit shows that the part-time involvement of a majority of the committee, who change from year-to-year, is not an effective communication strategy and does not give TOC a strong foundation for developing institutional knowledge to carry out its oversight mission.

WMATA Communication

Throughout FTA’s audit, evidence indicates that WMATA’s Safety Department is not “plugged in” to critical conversations, decision-making meetings and reporting systems that provide information on hazards and potential safety concerns throughout the agency. Key documents, reports, and decision are not consistently shared with the Safety Department. For example, the Safety Department does not receive and review available monthly reports from Rail Operation, Quality, or Maintenance. On numerous occasions during the audit interviews, Safety Department representatives indicated that they were learning, for the first time, that information of a safety nature was being documented by operating departments.

The lack of communication from operating and maintenance departments to the Safety Department, coupled with the lack of communication of top safety priorities from the Safety Department to the General Manager presents a disconnect in the flow of critical safety information within and throughout WMATA.

Communication between WMATA and TOC

It should not be surprising that communication lapses in TOC and WMATA lead to communication failures between the agencies. During this audit, WMATA staff told us that it believes that TOC, at times, appeared to be using the media in a punitive manner to resolve differences of opinion with WMATA. WMATA managers stated that, in a few instances recently, media reporters were better informed regarding a conflict with TOC than WMATA's own senior leadership. TOC members disagree with WMATA on this point, but they acknowledge media coverage has been largely helpful to TOC because, as noted earlier, TOC has had problems in the past with WMATA's responsiveness to TOC's specific requests.

TOC representatives stated that when TOC members disagreed with the decision of the Chief Safety Officer, or did not believe that enough work had been done in a specific area, there was no process in place to bring these concerns directly to the General Manager for action. (At FTA's recommendation, TOC did conduct an annual meeting with the General Manager, but minutes show that these meetings were introductory and general in nature.) WMATA's General Manager and Board of Directors have since taken action to ensure greater responsiveness to TOC.

As a result of this audit, FTA is requiring TOC to develop a procedure to ensure that critical safety concerns are elevated to the highest levels in each jurisdiction and WMATA for immediate action. We also recommend that WMATA develop an internal process to require communication of safety-related information across all WMATA departments.

Conclusion

In conclusion, I want to take a moment to explain how the Obama Administration's transit safety reform bill would address many of the deficiencies that we found at WMATA and TOC.

First, our legislative proposal would provide FTA, as the delegate of the Secretary of Transportation, direct oversight authority over transit agencies and operators. The bill would grant us the authority to issue notice and comment regulations, and to enforce those regulations.

Our legislative proposal would allow FTA to set minimum, national standards in areas such as track worker protection, transit rail car crashworthiness, on-board event recorders or the institution of safety management systems to ensure critical safety issues receive the attention they deserve. Under our legislative proposal, FTA would be empowered with tools similar to those available to agencies like the Federal Aviation Administration (FAA), allowing the FAA to compel the compliance of regulated parties. While State Safety Oversight agencies would have the opportunity to enforce Federal regulations on FTA's behalf, they would only be

allowed to do so if they had the staff strength, expertise, and legislative authority as determined by FTA.

Moreover, our legislative proposal would provide Federal funds to SSOs for hiring, training, inspections, and other safety-related activities. Rather than having SSOs that are understaffed and undertrained, FTA would provide resources to ensure that they are up to the task.

Finally, our legislative proposal is built around the goal of getting every rail transit provider, including WMATA, to embrace a state-of-the-art Safety Management System (SMS). An effective SMS is one where all employees, from the lowest to the highest rungs of the operation, are keeping their eyes and ears on safety concerns. When operating under an SMS model, employees at every level of the organization should be routinely reporting their observations and concerns in a non-threatening environment to agency experts who regularly analyze and address the most critical safety concerns first. It's an environment where communication is constant and safety is paramount. That is our vision for safer rail transit systems across the nation. We ask for your help in getting us there by passing President Obama's transit safety legislation promptly.

I thank you again for the opportunity to be here today to summarize our audit findings, and I would be happy to answer any questions you may have.