



## Solution

# Potential Federal Policies for Improving WMATA

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## Summary

- The Federal Government has unique authority over Washington Metropolitan Area Transit Authority (WMATA) due to it being established by the Federal Government, with the purpose of ensuring access to the nation's capital.
- Due to the Federal Government's authority over WMATA, it can leverage federal watchdogs like the Government Accountability Office (GAO) to investigate practices within the organization that may contribute to poor performance or unethical behavior that comes at the expense of rider safety.
- Federal funding is structured in such a way that political objectives for American companies, labor protection, or project costs are given precedence over system performance and cost-efficiency. Changing some of these provisions could help incentivize performance.

## Introduction

The WMATA is currently facing significant challenges in terms of operating within its budget, and adhering to federal conditions for receiving federal subsidies. While the American Action Forum's [previous report on the WMATA](#) explained that the most significant challenges are related to the funding incentives at the state and local levels, there are opportunities for federal policy to address some of the policies that contribute to a lack of incentives for performance at WMATA.

## The Federal Government's Unique Authority over WMATA

If the Federal Government asserted authority over specific transit systems in the country, it would certainly be an unwelcome expansion of federal authority in state matters. However, WMATA is a somewhat unique case, because it was founded and funded by the Federal Government through the [National Capital Transportation Act](#) (NCTA, 1960, 1965, and 1969). Under the NCTA, it was the intent of the Federal Government to establish a rapid transit system in the nation's capital for the purpose of ensuring the "effective performance of the functions of the United States Government." The NCTA's most notable contribution is the transit authority that became WMATA, but it also addressed other transit matters such as highways.

Because of WMATA essentially being a product of the Federal Government, and essentially established in large part to ensure the functioning of the U.S. government, the Federal Government has the authority to intervene in the operations of WMATA. Although not passed into law, there have been [bills proposed](#) that would have altered the WMATA Compact that was drafted (as directed under the NCTA) by Virginia, Maryland, and the District. In 2007, there was an attempt to establish an "Office of the Inspector General" as defined by the federal government within WMATA to address accountability issues, as well as amend the WMATA compact, but the

bill also would have expanded federal subsidies to WMATA, which was unpopular. However, the jurisdiction of the federal government to address WMATA issues is established.

WMATA has been the subject of reviews from federal watchdogs, notably the GAO, which reported on WMATA in 2015 and 2017. Despite being a regional transit authority, the federal government does have some privilege over WMATA, as WMATA could potentially impede the ability of the Federal Government to operate.

## Five Small Policies to Pursue

While the biggest and most necessary changes to WMATA need to be focused on how WMATA is subsidized from states and how it generates its own revenue, there are some small steps the Federal Government could take to boost transparency in WMATA and help eliminate some bad incentives.

### *1 – GAO Review of WMATA’s Workforce Policies*

When it comes to researching WMATA’s workforce, very little information is available. With the majority of the workforce covered by a collective bargaining agreement and represented by a union, we know little about employment and pay patterns in WMATA’s workforce. How often are workers hired, fired, given raises, or are promoted? Are WMATA employees operating within the full scope of the law? How often are reports **being falsified** at the expense of rider safety? Do the policies for how WMATA can take disciplinary action result in protecting bad employees while limiting opportunities for good ones? These are valid questions that have come up repeatedly since it came to light that a WMATA employee’s **falsified inspection reports** contributed to the death of a rider in 2015. Holding the employee accountable was challenging because he was not the only employee who had done so, and arbiters opposed efforts to punish only one employee.

If policies or the work culture within the WMATA are rewarding unethical practices, which may be contributing to the system’s high cost, poor performance, and lack of safety, the GAO is the best outfit to determine that. This would not be unusual for the GAO since it already reviews the policies regarding federal civilian employees to ensure taxpayer money is spent accountably. A GAO report on WMATA’s workforce policies would ensure that any policy action at any level in the future is done with the best information possible.

### *2 – Get Rid of the “Buy America” Requirements*

As part of the **Surface Transportation Assistance Act** of 1982, specifically Section 165, transit systems that receive federal grants (like WMATA) are required to procure their materials from American companies, whose supply chains are American. This policy, though, comes at the expense of American taxpayers and transit consumers. A well-functioning private company would be expected to grow profits by reducing costs through using the most cost-efficient inputs, whether they are made at home or abroad. Limiting the range of products that a transit authority can purchase to domestically made products leads to higher procurement costs for the system, as potentially inexpensive resources cannot be purchased if they are foreign and do not fit the Buy America criteria.

Compounding the problem of restricting purchases for a transit authority, there is also an economic impact that reduces competition. Materials producers that fit the criteria for Buy America have an inherent advantage over ones that do not. They may be worse performing than their competitors, but the law helps keep them supplied with customers. Ultimately, the cost of this inefficiency is borne by taxpayers who fund federal grants, and customers of transit systems who must now pay higher fares.

### *3 – Find Alternatives to Minimum Capital Cost Requirements for Federal Grants*

WMATA is expected to receive [\\$317 million](#) in federal grants in 2017. The qualifications for these grants vary greatly by the type of project, but also by the cost. The amount of money sought in a grant, such as a [5309 Capital Investment Grant](#), is restricted by the size of the project. If a transit authority is seeking more than \$100 million in funds from a Federal Transit Authority (FTA) 5309 grant, it must also have an estimated capital investment requirement exceeding \$300 million. Structuring grants in this way creates incentives for transit authorities to steer away from well-designed and cost-effective projects that may not be eligible for much funding and instead pursue high-cost projects that are less effective but receive larger federal grants.

To remedy the incentives for higher-cost projects that FTA grants can create, the FTA should consider alternative metrics so that transit systems can use good performance in lieu of the capital cost requirements. A transit authority that is seeking more than \$100 million in grant funds for a project under \$300 million should be able to use a record of performance in lieu of the minimum capital cost (for example, system costs per vehicle revenue hour). This then steers federal funds towards projects that are more likely to use the money effectively, bolsters the competition for federal funding, and creates incentives for cost-cutting to earn funding.

### *4 – Review “fiscal constraint” requirements*

Each metropolitan planning organization (MPO) is required to develop a Transportation Investment Program (TIP), which state departments of transportation collect and develop into State Transportation Investment Programs (STIP). Projects that are included in TIPs and STIPs are eligible for federal funding such as 5309 Capital Investment Grants. Sec. 450.324 in the joint FTA/Federal Highway Association (FHWA) regulations for Statewide and Metropolitan Transportation Planning (23 CFR 450) require that metropolitan transportation plans, TIPs, and STIPs be “fiscally constrained.” Metropolitan transportation plans, TIPs, and STIPs are deemed fiscally constrained if they include sufficient financial information to demonstrate that transit authorities can implement projects in the TIP and STIP using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained. For TIPs and STIPs, financial constraint applies to each program year.

However, the fiscal constraint requirement fails to assure that proposed projects have realistic price tags. “Reasonably available revenue sources” leaves room for stretched interpretation and potentially results in project proposals that may never recoup their costs. The definition should be reviewed and altered to ensure that ill-advised projects do not receive federal funding.

### *5 – Look for Opportunities to Change Labor Requirements for Federal Grants*

In the [Urban Mass Transportation Act](#) of 1964 (UMTA), and again in 1970, the Federal Government made it illegal to disburse federal transit funds to transit authorities that could not prove they were protecting the rights of workers. While it is important to ensure that federal funds are not being disbursed to organizations that engage in unethical employment practices, the UMTA took this to the next level by outlining specific

requirements of transit authorities, which greatly restrict WMATA's ability to effectively manage its own workers. Some of these requirements, which may have made more sense in 1964, are worth reevaluating in 2017.

One odd provision in the UMTA, which is now [codified in law](#), is that transit authorities must prioritize reemployment for employees who have lost their job or been laid off. Such a requirement restricts the hiring and firing practices of a company, since firing a poor-performing employee may make little difference if the transit authority must consider hiring them again in the future. This creates an incentive for transit authorities to simply hire more personnel, rather than replace existing personnel with more productive employees.

Another odd requirement is that a transit authority must assure employment to existing workers if it is acquired by another organization. This greatly discourages privatization, since a private organization that may see opportunities for making a transit system profitable, say through automation, cannot do so by eliminating positions. [Previous AAF research](#) showed that labor is around 80 percent of most transit authority's expenses, suggesting that any serious effort to reduce transit costs must involve reducing labor expenses.

The current structure of labor protections required for transit authorities to receive federal funds creates an incentive to engage in contracts with unions (to prove satisfaction of FTA and Department of Labor requirements), which bolsters the negotiating power of unions, and greatly restricts a transit authority's ability to manage its workforce.

## Conclusion

Even though an effective reform of WMATA hinges largely on the policies of Virginia, Maryland, and D.C. to get the right incentives for performance, there is still opportunity for federal policies to improve the D.C.-area transit system. Some of these are policies are applicable to all transit systems, but the federal government has unique authority over WMATA because it established the D.C. transit system in part to ensure access to the capital for federal workers.

The federal government could exercise its ability to influence WMATA operations. This includes requesting GAO reports, and eliminating provisions of FTA grants that raise costs for labor and procurement. The government's default position of bailing out WMATA should only be a last resort, if ever even considered, since such policies only serve to entrench an inefficient funding model that fails to value success.