

# Optimizing State Safety Oversight of the WMATA Metro Rail System

White Paper

April 20, 2010



*presented by*

**The District of Columbia, the State of Maryland, and the Commonwealth of Virginia**



## 1. Background

The Tri-State Oversight Committee (TOC) is the designated State Safety Oversight (SSO) program for the Washington Metropolitan Area Transit Authority (WMATA) Metro Rail system. Under a Memorandum of Understanding (MOU), the three jurisdictions that WMATA serves (the State of Maryland, the Commonwealth of Virginia, and the District of Columbia) each appoint representatives to serve on the TOC.

The current structure and function of the TOC has presented challenges in the implementation of the SSO program. First, TOC is not a legal entity, but was created by the three member jurisdictions through an MOU in 1997. Thus, members are foremost employees of their respective jurisdictions under separate bureaucracies with distinct rules dictating TOC staff-level decisions, all of which hinder decision-making and ensure that TOC often cannot effectively respond to critical oversight issues in a timely manner. Second, TOC members lack policymaking authority, having to seek permission from superiors at the transportation agencies they work for prior to taking action, which creates the potential for conflicts of interest.

The purpose of this White Paper is to describe the elements of an “ideal” SSO program for the oversight of WMATA.<sup>1</sup> This paper proposes: (a) alternatives to the TOC through a new framework and structure for independent safety oversight; and (b) actions that would improve the TOC in the interim prior to establishment of such long term solutions. In describing these elements, this White Paper is not constrained by the resources (financial, technical, and otherwise) of the affected jurisdictions.

Through the WMATA safety oversight reforms outlined below, this paper is intended to address for TOC the policy, structure, and governance level findings of the March 4, 2010 Federal Transit Administration (FTA) Audit Report:

**Finding #1:** Assess the level of resources necessary from each jurisdiction (District of Columbia, Maryland and Virginia) to meet TOC’s responsibilities. Use the results of the assessment to establish resource commitments from each jurisdiction to TOC for the next three calendar years. Resources should be committed and onboard before the beginning of the next Federal audit cycle.

**Finding #2:** Evaluate the technical and professional skills that TOC representatives need to effectively carry out their oversight duties. To the extent that TOC representatives do not currently possess these skills, ensure training is provided as soon as practicable to each TOC member.

**Finding #3:** Determine the best method to respond quickly and professionally, as WMATA safety situations arise and require coordinated action. Consider whether full-time TOC positions can be vested with decision-making authority to act in specific safety situations with WMATA.

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<sup>1</sup> Note that this paper prescribes means to enhance operational and occupational safety on the WMATA rail transit system, and does not focus on homeland security, emergency preparedness, or public safety. While the TOC is responsible for the oversight of both safety and security, this White Paper focuses on safety issues at WMATA. Although security measures and policing are important components of a successful transit system, the problem being addressed here has more to do with accidents and other issues indicative of operations and oversight mechanisms within the jurisdiction of transit agencies at the local, state, and federal levels. It is possible that DHS may someday assume responsibility for transit security issues since it has the legal authority to do so.

**Finding #4:** Identify and formalize a mechanism to ensure that critical unresolved WMATA safety concerns identified by TOC members are elevated to the highest levels of each TOC jurisdictional agency and WMATA for immediate action.

Appendix A identifies FTA Audit Finding(s) that are addressed by each of the reforms.

Additionally, while this White Paper describes an idealized TOC SSO program for WMATA within the framework of 49 Code of Federal Regulations, Part 659 (“Part 659”), it is also designed to allow flexibility for the program to adhere to future oversight requirements, such as legislation currently proposed in Congress. Although the proposed legislation (H.R. 4643 / S. 3015, *The Public Transportation Safety Act of 2010*) would significantly overhaul the oversight of rail transit, any legislative solution to the existing issues with oversight of WMATA and other rail transit systems will not occur in the short term. However, it is the intent of the three member jurisdictions that elements of any new state safety oversight program and interim actions facilitate movement of the existing oversight program under Part 659 toward meeting any new oversight requirements, such as those set forth in H.R. 4643 / S. 3015.

## 2. Goals for Improving the WMATA Safety Oversight Program

The recommended set of actions outlined below define how Maryland, Virginia, and the District of Columbia are taking the initiative to address significant policy issues confronting the TOC, WMATA, and public confidence in operational and occupational safety on the Metro Rail system. Our objective is to strengthen the oversight of safety on the Metro Rail system by putting in place a program capable of meeting or even exceeding the proposed federal requirements outlined in H.R. 4643 / S. 3015 and addressing the aforementioned FTA Audit.

The following recommendations were devised and analyzed to achieve three goals shared by Maryland, Virginia, and the District of Columbia:

- TRANSPARENCY – The process for safety oversight must be conducted in plain view of the public to the greatest extent possible, and the safety oversight body should be held accountable for its decisions, processes, and policies.
- INDEPENDENCE – Safety oversight of WMATA should be conducted independently and separate from the financial management of WMATA by the TOC jurisdictions.
- AUTHORITY – The safety oversight body should have the power to implement its decisions effectively and efficiently.

## 3. WMATA Safety Oversight Program Reforms

Because urgent action is needed to enhance transit safety on the WMATA metro rail system, the three jurisdictions should take action to implement measures in the short- and long-term. Even if H.R. 4643 / S. 3015 is enacted in the near future, the Federal Transit Administration (FTA)’s rulemaking process and appropriations of federal funds for the rail transit safety program may take years to complete. In the same way, legally establishing a new SSO program for the

oversight of WMATA in accordance with H.R. 4643 / S. 3015, would likely entail actions that will consume years to complete. In the interim, actions should be taken that do not require time-consuming procedures or negotiations, yet ensure that safety standards and enforcement procedures are in place to help focus WMATA on meeting its obligations to its riders and employees, and to establish a procedure that is transparent, independent, and with the authority to improve safety. To this end, this paper proposes that the three jurisdictions' WMATA Safety Oversight Program enhancement strategy be carried out in two phases:

1. PHASE ONE: Creation of a strengthened Interim TOC Oversight Program;
2. PHASE TWO: Federal oversight of WMATA's safety oversight functions or legal creation of a Metro Safety Commission.

The next step beyond Phase One may be shaped by such events as enactment of the federal Public Transportation Safety Act, promulgation of FTA guidance, execution of a Presidential Executive Order, WMATA Board decisions that improve transit safety, or a determination by the jurisdictional leadership that a combination of these events have altered the original plan to enter into a second phase. Maryland, Virginia, and the District of Columbia would then evaluate the existing TOC structure and may take either of the two following Phase Two options or other options as appropriate, into consideration.

### **3.1. PHASE ONE – *Interim Program***<sup>2</sup>

Planning for and implementing Phase Two will likely entail actions that will consume years to complete. Resources, as described below and rules of participation will have to be formalized through binding agreements, and may require legislative action on the local, state, and federal levels. The current budgetary challenges on the three jurisdictions due to the economic recession may further constrain the ability of the jurisdictions to take Phase Two actions sooner rather than later. Because urgent action is needed to enhance transit safety on the WMATA metro rail system, the three jurisdictions should undertake short-term actions prior to the establishment of the MSC by implementing an enhanced Interim TOC Oversight Program that should include the following elements, at minimum:

- **TOC Policy Committee**<sup>3</sup> – Because all issues, from policy to staff-level, must currently be facilitated and processed by the three jurisdictions under three different sets of rules and regulations, a TOC Policy Committee should be established to formulate uniform policies and protocols for the TOC to bring oversight issues and requests before senior leadership in the home jurisdictions, respond to public information requests in a consistent and timely manner, and establish operating rules of engagement for all TOC members. This Committee should consist of 3 members and 3 alternates appointed by the Governors/Mayor of the three jurisdictions, and be granted authority and policy-making discretion through a formalized agreement.

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<sup>2</sup> By implementing the Interim Program to improve safety, FTA Audit Findings # 1, 2, 3, and 4 would be addressed.

<sup>3</sup> Creating a TOC Policy Committee would address FTA Audit Findings # 1, 3, and 4.

- **Providing the TOC Chair with Additional Executive Authority**<sup>4</sup> – Granting additional authority to the Chair to act in specific safety situations with WMATA that require coordinated action would allow the TOC to respond quickly and professionally and implement executive decisions more efficiently and effectively. In this way, the TOC would be held accountable for decisions it makes or fails to make.
- **Requiring the Chair to be Full Time Staff and Extending the Terms of the Chair and Vice Chair**<sup>5</sup> – The FTA Audit noted that since its inception in 1997, TOC has experienced considerable turnover among its members, a minority of whom are committed to TOC full-time. In addition, the rotation of the Committee Chair and Vice Chair positions on a yearly basis poses problems associated with lack of continuity. Requiring the Chair to be committed to TOC full-time and extending the term of the Chair to 2 or 3 years would enhance the ability of the TOC to provide consistency and continuity in its oversight duties.
- **Monthly Reporting and Performance Reviews**<sup>6</sup> – To increase transparency and accountability, a process should be established to require the TOC to report on a monthly basis to member entities in the TOC Policy Committee, its jurisdictions and the WMATA board. The TOC should also undergo rigorous, regular performance reviews.<sup>7</sup>

### 3.2. PHASE TWO – Long-Term Program

Phase Two would entail the three jurisdictions, with the assistance of the Interim TOC and the FTA, (a) evaluating the existing TOC structure in light of Congressional, federal administrative, WMATA, or jurisdictional actions, (b) analyzing the federal program based on final FTA guidance, and (c) collectively determining the impact of offering the federal government an opportunity to administer the safety program as a demonstration project, maintaining control over administration of the program, or other long-term alternatives as appropriate. Though these considerations and decisions would be made at a future date, it should nonetheless be governed by the assurance that the goals of transparency, independence, and authority are met.

#### 3.2.1. *Federal Oversight of WMATA Safety*<sup>8</sup>

If H.R. 4643 / S. 3015 is enacted and provides for certain states like those in the National Capitol Region to partner with the federal government to directly oversee transit systems,

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<sup>4</sup> Providing the TOC Chair with additional executive authority would address FTA Audit Finding # 3.

<sup>5</sup> Requiring the TOC Chair to be full time staff and extending the terms of the Chair and Vice Chair would address FTA Audit Finding # 3.

<sup>6</sup> Monthly reporting and performance reviews would address FTA Audit Findings # 2 and 4.

<sup>7</sup> Such performance reviews may be modeled on the StateStat program (see <http://www.statestat.maryland.gov/>).

<sup>8</sup> Allowing the federal government to provide oversight of WMATA's safety functions would not address FTA Audit Findings # 1, 2, 3, and 4 because doing so would not require (1) resource commitments from each jurisdiction, (2) oversight members from each jurisdiction to possess certain technical and professional skills, (3) methods for the jurisdictions to respond to WMATA safety situations quickly, professionally, and in a coordinated fashion, and (4) a mechanism to elevate critical unresolved WMATA safety concerns to the highest levels of each jurisdictional agency.

it may be beneficial to have the FTA be more involved in the safety oversight functions of the WMATA system. A number of critical financial, political, operational, and policy issues should be examined, however, prior to the federal government assuming any responsibility for the safety oversight of WMATA. Since it is unlikely that the federal government will agree to directly oversee transit safety without significant concessions by the SSO agency that they replace, states would need assurances from the FTA that their financial exposure will be limited as a result of such federal oversight.

### 3.2.2. *Metro Safety Commission*<sup>9</sup>

The alternative would involve the legal creation of a Metro Safety Commission (MSC). The MSC would consist of three members and three alternates – one member and one alternate representing each jurisdiction appointed by the jurisdiction’s Governors or Mayor. The MSC would provide for the safety oversight of the WMATA Metro Rail system, having the power to conduct and enforce the safety oversight of Metro, sue and be sued, and hire and fire staff. In this way, the MSC would ensure that all issues identified, from policy to staff-level, are no longer facilitated and processed by the three jurisdictions individually. The MSC, under its legal authority, would promulgate its own policies, rules, and regulations that dictate staff-level decisions and ensure that the MSC can effectively respond to critical oversight issues in a timely manner.

- **MSC Board Membership**<sup>10</sup> - MSC members should be appointed by the Governors of Maryland and Virginia and the Mayor of the District of Columbia in a mutually-agreeable, formalized process that is consistent amongst the three jurisdictions. Members should consist of high-level executive branch personnel with policymaking authority that is independent of both WMATA and the jurisdictions’ transportation agencies.<sup>11</sup> These members would set a coordinated MSC policy that is agreed upon by the three jurisdictions’ representatives and formalized to facilitate more effective and efficient decision-making on such oversight programmatic and multi-jurisdictional issues as public information/media and Freedom of Information Act (FOIA) requests.<sup>12</sup>
- **MSC Program Director**<sup>13</sup> - The MSC should hire a full-time MSC Director (the Director) who would report directly to the MSC and conduct and manage the oversight program. The Director would have the authority to facilitate the oversight program and conduct meetings, reviews, and inspections in accordance with program requirements. To the extent that the Director requires technical and administrative assistance in the facilitation of the oversight program, he or she should hire staff

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<sup>9</sup> By creating the MSC as an independent transparent entity with the authority to improve safety, FTA Audit Findings # 1, 2, 3, and 4 would be addressed.

<sup>10</sup> Establishing the MSC with such membership would address FTA Audit Findings # 1, 3 and 4.

<sup>11</sup> This includes, but is not limited to, the Maryland Department of Transportation, the Maryland Transit Administration, the Virginia Department of Rail and Public Transportation, and the District Department of Transportation.

<sup>12</sup> FOIA requests would be better handled under the MSC since the MSC would be an independent entity and follow a FOIA structure developed in relationship to personnel.

<sup>13</sup> Creating the MSC Director position would address FTA Audit Findings # 1, 2, and 3.

- members and technical consultants as necessary to fulfill the requirements of the program, but within the budget framework set forth by the appointed MSC members.
- The oversight program activities that the Director facilitates should include, but is not limited to: (a) oversight of WMATA's Internal Safety and Security Audit Program; (b) review and approval of all required program documentation, including the System Safety Program Plan and Security & Emergency Preparedness Plan; (c) investigation of accidents and incidents; (d) review, approval, and tracking of corrective action plans (CAPs); (e) oversight of WMATA's Hazard Management Program, including monitoring hazardous conditions on an ongoing basis; and (f) evaluation of hazardous conditions through periodic on-site reviews and inspections of WMATA facilities and equipment, and the WMATA right-of-way.
  - At minimum, the Director should have general expertise in the following areas: (a) rail system safety or industrial safety; (b) rail transit operations and/or maintenance; (c) transportation engineering; (d) emergency management and/or response; and/or (e) other skill sets as appropriate.
  - **MSC Staff**<sup>14</sup> - MSC staff hired by the Director should have experience in the following areas: (a) rail system safety or industrial safety; (b) rail transit operations and/or maintenance; (c) transportation engineering; (d) emergency management and/or response; and/or (e) other skill sets as appropriate.
  - **Legal Independence**<sup>15</sup> - The MSC, Director, and MSC staff should be completely independent from WMATA, the WMATA Board of Directors, and the jurisdictions' transportation agencies. In order to avoid real or perceived conflicts of interest, it is essential that the appointed MSC members, Director, and staff be fully independent from the transit agency they oversee and those transportation agencies that may be perceived to hold financial or political influence over them.
  - **Funding**<sup>16</sup> – The MSC should be supported annually off the top of what the three member jurisdictions and federal government give to WMATA as provided by the WMATA Compact. It should also be funded from federal and local sources that become available for transit safety purposes.
  - **MSC Pilot Program**<sup>17</sup> – H.R. 4643 / S. 3015 should be amended to authorize the FTA to establish a pilot transit safety program in the WMATA region with initial funds allocated to the program. This pilot program would be a means to plan for and implement the MSC as a demonstration project for the nation to model, and if successful, would give it an advantage should robust federal funding for rail transit safety be made available through federal appropriations.

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<sup>14</sup> MSC Staff with these skills would address FTA Audit Findings # 1, 2, and 3.

<sup>15</sup> Establishing such legal independence for the MSC would address FTA Audit Findings # 1, 3, and 4.

<sup>16</sup> This funding structure for the MSC would address FTA Audit Findings # 1 and 3.

<sup>17</sup> A MSC Pilot Program would address FTA Audit Findings # 1, 2, 3, and 4.

## 4. Program Needs for Phase One and Phase Two

Whether the Interim TOC, MSC, or FTA administers the operational safety oversight program over the WMATA Metro Rail system, enhanced standards and enforcement procedures should be in place to help focus WMATA on meeting its obligations to its riders and employees. The status quo is not a viable option. An Interim TOC Oversight Program, a legally-authorized Metro Safety Commission, and direct federal oversight would have to assure the riders, employees, and taxpayers that operational safety on the Metro Rail system is overseen by an independent and transparent entity with the authority to improve safety and enforce its rules. Such an entity would have, at minimum, the following resources, expertise, experience, and training, and perform the activities listed below.

### 4.1. Phase One

Resources devoted to any safety oversight program over the Metro Rail system should, at minimum, better ensure consistent and effective oversight of WMATA. This includes:

#### 4.1.1. Resources

- **Full Funding of Program Needs**<sup>18</sup> - Safety oversight should be funded in a manner commensurate with the oversight of the second-largest rail transit system in the United States. To facilitate the ongoing oversight activities conducted by employees and contractors, the Interim TOC Oversight Program should be funded accordingly from local, state, and federal sources.
- **Independent Headquarters**<sup>19</sup> - The Interim TOC Oversight Program should be provided an office located near a Metro Rail line to facilitate regular interface with WMATA, federal agencies, and easy, centralized access to other local governments and entities.
- **Communications**<sup>20</sup> – Any safety oversight program over the Metro Rail system should work to increase transparency by developing its own program website, holding open meetings, and providing a single source for the flow of communications. The TOC should publish reports, issue statements, and post relevant safety and security information. The website should also provide a method for reporting safety or security concerns.

#### 4.1.2. Expertise, Experience, and Training

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<sup>18</sup> Full funding of the oversight program would address FTA Audit Findings # 1 and 3.

<sup>19</sup> An independent headquarters would address FTA Audit Findings # 1 and 3.

<sup>20</sup> Increasing transparency in communications would address FTA Audit Finding # 1.

Minimum levels of experience and expertise should also be established for safety oversight program staff, whether they are State or Federal employees, and consultants to ensure that the individuals engaged in oversight activities have appropriate skill sets.

- **Consultant**<sup>21</sup> – A technical consultant should be hired as required to provide necessary technical expertise. To the extent that there is a lack of technical expertise or experience in subject matter areas necessary for the implementation of the oversight program, the safety oversight program should employ the services of a technical consultant within the framework of the program budget.
- **Training and Certifications**<sup>22</sup> – All oversight program staff, including any Committee members, as well as consultants, must complete any training and/or certification programs required by program policy, and/or federal and state requirements.

#### **4.1.3. Oversight Program Activities**

Minimum levels of safety oversight program activities should also be established to ensure that the program is meaningful and relevant to the three jurisdictions, WMATA, and the public riding and working on the Metro Rail system.

- **Program Standards and Procedures**<sup>23</sup> – Any oversight program should continue to promulgate oversight program requirements through the Program Standards and Procedures for which TOC Policy Committee members should have final approval. WMATA must comply with these requirements, so any oversight program must also be able to enforce its decisions, policies and regulations.
- **Frequent Interactions with WMATA Leadership**<sup>24</sup> – The WMATA General Manager and Board of Directors should meet with the appointed Interim TOC Oversight Program on a regular basis to discuss policy and other outstanding issues. This would entail a monthly reporting process and issues briefings with the WMATA Board on a regular basis as needed. It would also require program leadership to facilitate staff-level meetings between program staff and WMATA managers, including and the General Manager.

## **4.2. Phase Two**

In the case of the federal government providing direct oversight of safety at WMATA, no local or state resources are anticipated to be required. On the other hand, a Metro Safety Commission would need the following resources and expertise in addition to the Phase One requirements provided above:

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<sup>21</sup> Employing the services of a technical consultant would address FTA Audit Findings # 1 and 2.

<sup>22</sup> Requiring training and/or certification would address FTA Audit Findings # 1 and 2.

<sup>23</sup> Enforceable, coordinated program standards and procedures would address FTA Audit Findings # 3 and 4.

<sup>24</sup> Regular reporting, briefings, and meetings with the WMATA General Manager and Board of Directors would address FTA Audit Finding # 4.

- **Personnel and Procurement Standards**<sup>25</sup> – Any safety oversight program over the Metro Rail system should adopt federal procurement standards or standards acceptable to meet public procurement and personnel practices.
- **Director and Staff**<sup>26</sup> – At minimum, any Director should have general expertise in, and staff should have experience in the following areas: (a) rail system safety or industrial safety; (b) rail transit operations and/or maintenance; (c) transportation engineering; (d) emergency management and/or response; and/or (e) other skill sets as appropriate.

## **5. WMATA Structure and Governance**

One of several limitations of the WMATA Compact is that it inhibits the input of member jurisdictions. Members of the WMATA Board of Directors are appointed from the three jurisdictions and the three jurisdictions contribute funds to WMATA through the Compact. As such, Maryland, Virginia, and the District of Columbia themselves should hold greater control over the discharge of the roles and responsibilities of WMATA. To this end, the WMATA structure and governance should be evaluated to optimize the role of the Board, as well as the relationship and authority that Maryland, Virginia, and Washington, D.C. could have in the role of WMATA. Each may well benefit from direct representation on the WMATA Board of Directors so long as they contribute funds to WMATA through the Compact or other means.

The jurisdictions will be undertaking this evaluation in the near future, and will follow up this White Paper with actions that should be taken by the three jurisdictions as a region, or individually as the District of Columbia, the State of Maryland, or the Commonwealth of Virginia. Whatever the three jurisdictions do together or individually, they will work together to optimize their role in improving the delivery of transit services from WMATA to the citizens of the Washington metropolitan area.

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<sup>25</sup> Adopting procurement and personnel standards in this way would address FTA Audit Finding # 3.

<sup>26</sup> Setting Director and staff competencies in this way would address FTA Audit Finding # 2.

**APPENDIX A**

**FTA Audit Findings Addressed by Recommended Reforms**

	<b>FTA Audit Finding #1</b>	<b>FTA Audit Finding #2</b>	<b>FTA Audit Finding #3</b>	<b>FTA Audit Finding #4</b>
<i>PHASE ONE: INTERIM TOC OVERSIGHT PROGRAM</i>	✓	✓	✓	✓
• <b>TOC Policy Committee</b>	✓		✓	✓
• <b>Providing the TOC Chair with Additional Executive Authority</b>			✓	
• <b>Requiring the Chair to be Full Time Staff and Extending the Terms of the Chair and Vice Chair</b>			✓	
• <b>Monthly Reporting and Performance Reviews</b>		✓		✓
<i>PHASE TWO: FEDERAL OVERSIGHT OF WMATA SAFETY</i>				
<i>PHASE TWO: METRO SAFETY COMMISSION</i>	✓	✓	✓	✓
• <b>MSC Board Membership</b>	✓		✓	✓
• <b>MSC Program Director</b>	✓	✓	✓	
• <b>MSC Staff</b>	✓	✓	✓	
• <b>Legal Independence</b>	✓		✓	✓
• <b>Funding</b>	✓		✓	
• <b>MSC Pilot Program</b>	✓	✓	✓	✓
<i>RESOURCES</i>				
• <b>Full Funding of Program Needs</b>	✓		✓	
• <b>Independent Headquarters</b>	✓		✓	
• <b>Communications</b>	✓			
• <b>Personnel and Procurement Standards</b>			✓	
<i>EXPERTISE, EXPERIENCE, AND TRAINING</i>				
• <b>Director and Staff</b>		✓		
• <b>Consultant</b>	✓	✓		
• <b>Training and Certifications</b>	✓	✓		
<i>OVERSIGHT PROGRAM ACTIVITIES</i>				
• <b>Program Standards and Procedures</b>			✓	✓
• <b>Frequent and Meaningful Interactions with WMATA Leadership</b>				✓