

Asset Disposition Guidance

Transit Property Disposition Options for Affordable Housing

1/31/2024



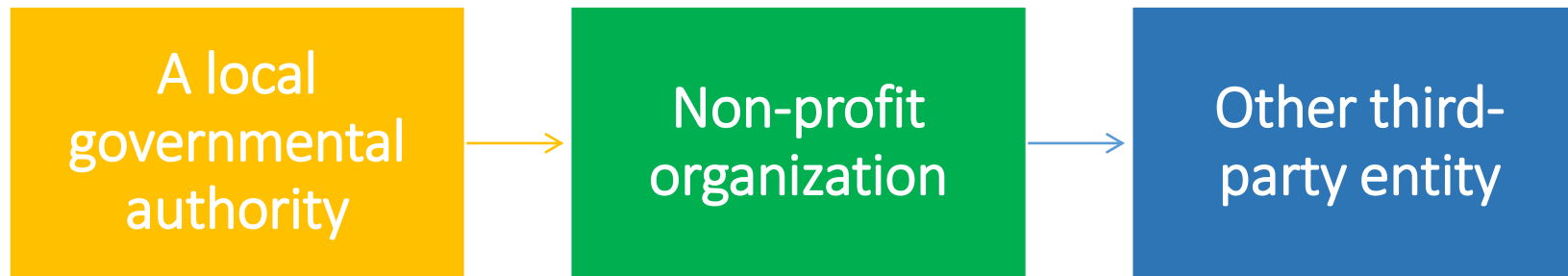
U.S. Department of Transportation
Federal Transit Administration

Agenda

- Overview
 - Purpose of FAQs
 - Definitions
- Statutory Requirements
- Third-Party Transfers
- Approval Process
 - Demonstrating Qualifications
- Important Links
- Contact Information

What is the new asset disposition option?

- The National Defense Authorization Act for FY2022 added a new disposition option for assets (property) acquired with federal assistance that are no longer needed for the originally authorized purpose.
- FTA may now authorize the transfer of property to:



- ... if, among other factors, it will be a necessary component of a transit-oriented development (TOD) project that includes affordable housing.
- The provision became effective on December 27, 2021. Assets disposed of prior to this date cannot use this provision.

What is the purpose of the asset disposition interim guidance FAQs?

- Serve as interim guidance, before final guidance is incorporated into circulars
- Provide useful guidance, including:
 - Definitions for key terms
 - TOD
 - Asset
 - Third-party entity
 - Necessary component
 - The statutory requirements related to this new provision
 - How to use this provision
 - What is the effective date for assets to be transferred under this provision
 - How to apply, qualify, and use this provision
 - How to determine fair market value
 - What if a third-party does not meet requirements during 30-year term

Definitions

<p>How does FTA define TOD?</p>	<ul style="list-style-type: none">• No statutory definition for TOD• Real property development that includes a mix of commercial, residential, office and entertainment uses centered around or located near a transit station that is served by reliable public transit with a mix of other transportation options.
<p>What is considered an “asset”?</p>	<ul style="list-style-type: none">• An “asset”, as it relates to TOD, should be read to mean “real property”• Defined in 49 C.F.R. § 262.3 to include: "land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment"
<p>How is a “third party entity” defined?</p>	<ul style="list-style-type: none">• Not defined in statute• May include private developers, companies, or organizations with a demonstrated satisfactory history of construction or operation of affordable housing development.• Would not include a local government authority or non-profit organization
<p>What constitutes a “necessary component” of a TOD project?</p>	<ul style="list-style-type: none">• If the proposed project would not proceed without the asset or would be significantly smaller in scope.

What are the statutory requirements to use this new provision?



The asset is a necessary component of a proposed TOD project;



The TOD project will increase transit ridership;



At least 40% of the housing units in the TOD are legally binding affordable housing units restricted to tenants and owners with incomes \leq 60% of the area median income

- At least 20% of these units must be restricted to tenants and owners with incomes \leq 30% of the area median income

What are the statutory requirements to use this new provision?



The asset will remain in use for **at least 30 years** after the date the asset is transferred; and

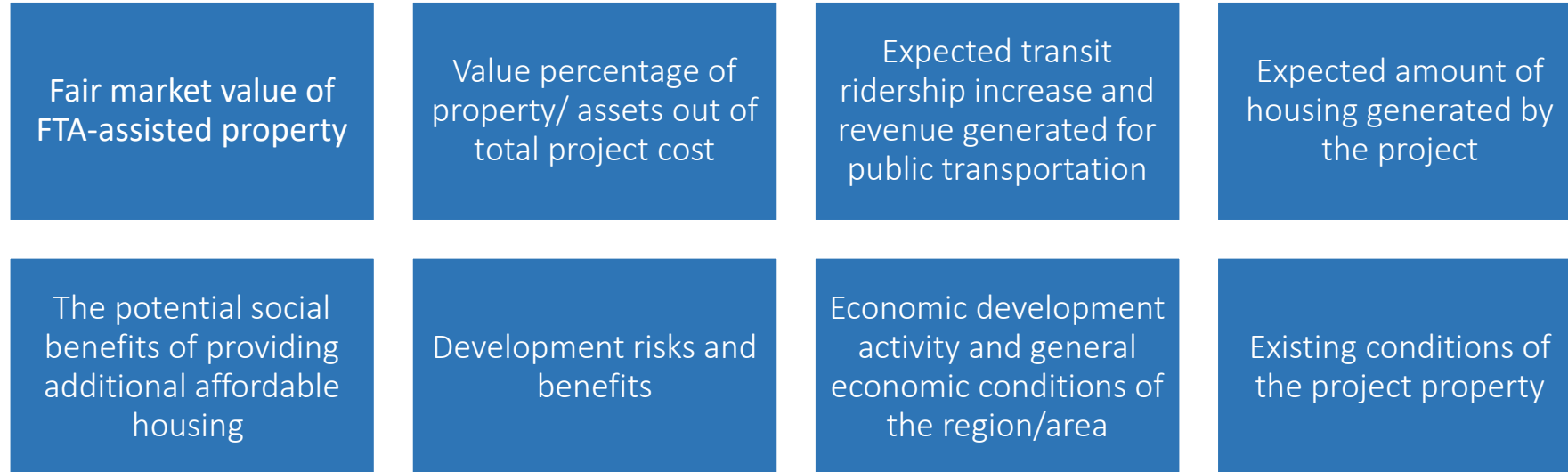


With respect to a transfer to a **third-party entity**:

- A local government authority or nonprofit organization is unable/unwilling to receive the property; and
- The overall benefit of the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset; and
- The third party has demonstrated a satisfactory history of construction or operation of an affordable housing development.

How does FTA determine that the overall benefit of allowing the third-party transfer is greater than the interest of the government in liquidation?

- FTA will consider the fair market value of the asset, amongst other factors.
- FTA will not prescribe or develop specific studies or analyses. Though a baseline market analysis is not required, it can help recipients identify the following information



Will Special Purpose Entities created with a non-profit for the purpose of utilizing Low-Income Housing Tax Credits be treated as non-profits, rather than third-party entities?

- A third-party can partner with a public or nonprofit entity to create a Special Purpose Entity to use Low-Income Housing Tax Credits for a project
- Ownership may be transferred to a for-profit entity and be recognized as transferred to a non-profit for the use of this disposition option if the public or nonprofit entity demonstrates it retains control over the property, by proving any of the following:
 1. A fee simple interest in the project property
 2. Ownership of $\geq 51\%$ of the general partner interests in a limited partnership or $\geq 51\%$ of the managing member interests in a limited liability company with all powers of the general partner or managing member
 3. Ownership of a lesser percentage of the general partner or managing member interests but holding control rights
 4. Ownership of $\geq 51\%$ or more of all ownership interests in a limited partnership or limited liability company and holding certain control rights

What if the asset is transferred but the local governmental authority, non-profit organization, or third-party entity fails to meet any of the criteria during the 30-year agreement term?

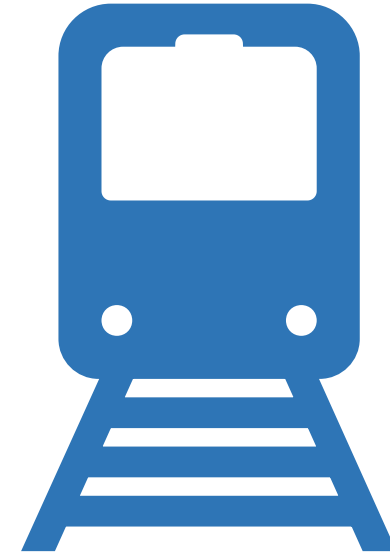
- Recipient would pay FTA a percentage of the fair market value at the time of transfer or at the time the noncompliance commences, whichever is greater.
- Percentage owed will be based on the:
 - Federal contribution to the original acquisition
 - Number of years that the asset was used for TOD and affordable housing in accordance with the statute
- Parties may also arrange for a return of the asset, if the circumstances and timeframe allow without significant difficulty or added expense.

How will FTA “approve” transactions using this disposition method?

- FTA recipients interested in using this provision should **send their FTA Regional Office a request letter**
- Include **documentation demonstrating that the disposition meets the legal requirements** at the time of transfer and for the subsequent 30-year period
- Any active awards related to the assets must include the disposition request, approval, and related documentation.

How can an FTA recipient demonstrate that a TOD project will increase ridership?

- Increased ridership tied to affordable housing
- At least 20% of the development's total floor area ratio (FAR) must be dedicated to affordable housing
- FTA recommends that at least 50% of the TOD's FAR is dedicated to housing or other community benefits (e.g., community centers, educational services, etc.)



How does an FTA recipient demonstrate qualifications for transfer to a third-party?

Local government authority or nonprofit organization is unable to receive the property

- To propose transferring the asset to a third-party entity, the recipient must attest in writing that a local government authority or nonprofit organization is unable or unwilling to receive the property*
- The attestation should be supported with a description of the recipients' efforts supporting this representation

Satisfactory history of construction and/or operation of affordable housing development

- In their request to the Regional Office, recipients should include information on a third party's past affordable housing projects sufficient to demonstrate a likelihood of success for the proposed TOD (e.g., project delivered on time, within budget, occupancy rates, etc.)

*Per 49 USC § 5334(h)(1)(B)(v)(I)

Important Links

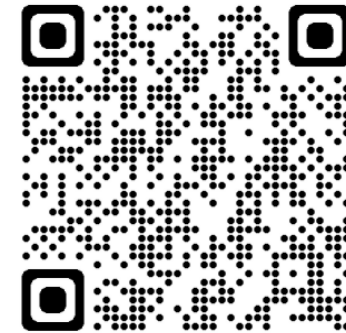
Guidance:

<https://www.transit.dot.gov/funding/funding-finance-resources/interim-asset-disposition-guidance>



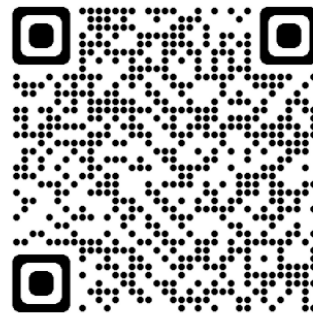
Federal Register Notice:

<https://www.regulations.gov/document/FTA-2022-0029-0001>



Transit-Oriented Development:

<https://www.transit.dot.gov/TOD>



Thank you!

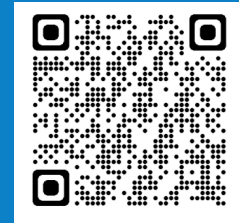
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Guidance



FR Notice



TOD



U.S. Department of Transportation
Federal Transit Administration

FTA Mission, Vision, Values



Mission

Improve America's Communities through Public Transportation



Vision

A Better Quality of Life for All Built on Public Transportation Excellence

Values

Service

Provide reliable, transparent, responsive, and anticipatory services to meet stakeholder needs

Integrity

Commitment to the highest professional and ethical standards

Innovation

Foster new ideas, concepts, and solutions for improved outcomes

Sustainability

Optimize decisions, resources, and systems to make long-term positive impacts on the environment, infrastructure, and safety

Equity

Remove barriers for systemically underserved communities to access all aspects of economic, social, and civic life