



U.S. Department
of Transportation

**Federal Transit
Administration**

CIRCULAR

FTA C 9300.1B

November 1, 2008

**Subject: CAPITAL INVESTMENT PROGRAM GUIDANCE AND APPLICATION
INSTRUCTIONS**

1. **PURPOSE.** This circular is a re-issuance of guidance on the administration of the Capital Investment Program under 49 U.S.C. 5309. This revision incorporates provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, and includes the most current available guidance for the Federal public transportation program as of the date of publication.
2. **CANCELLATION.** This circular cancels Federal Transit Administration (FTA) Circular 9300.1A, "Capital Program: Grant Application Instructions," dated October 1, 1998.
3. **AUTHORITY.**
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.51.
4. **WAIVER.** FTA reserves the right to waive any provision of this circular to the extent permitted by Federal law or regulation.
5. **FEDERAL REGISTER NOTICE.** In conjunction with publication of this circular, a *Federal Register* notice was published on September 30, 2008 (73 FR 56888), addressing comments received during the development of the circular.
6. **AMENDMENTS TO THE CIRCULAR.** FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website: www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance; visit the website and click on "sign up for e-mail updates."
7. **ACCESSIBLE FORMATS.** This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk, at: 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

/S/ Original Signed by
James S. Simpson
Administrator

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CAPITAL INVESTMENT PROGRAM CIRCULAR

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CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten modal administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices. These offices assist transit agencies in the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation includes, but is not limited to, buses, heavy rail, light rail, commuter rail, fixed guideway, passenger ferry boats, trolleys, inclined railways, people movers, vans, streetcars and aerial tramways. Public transportation can be either fixed-route or demand-response service.

The Federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of State and local transit providers, primarily through its ten regional offices. These grant recipients are responsible for managing their programs in accordance with Federal requirements, and FTA is responsible for ensuring that recipients follow Federal statutory and administrative requirements.

2. AUTHORIZING LEGISLATION. Most Federal transit laws are codified at title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a Federal program or agency. Congress amends FTA's authorizing legislation every four to six years. FTA's most recent authorizing legislation is the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, signed into law on August 10, 2005. SAFETEA-LU authorizes FTA programs from Federal Fiscal Year (FY) 2006 through FY 2009. FTA has updated this circular to reflect the SAFETEA-LU changes to Federal transit law and to reflect changes required by other laws that have become effective since the circular was last published in 1998.
3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial and technical assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA Headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix D of this circular for specific regional and metropolitan office contact information.

For further information, visit the FTA website: <http://www.fta.dot.gov>, or contact FTA Headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE.
East Building, Fifth Floor
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. **GRANTS.GOV.** FTA posts all competitive grant opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary Federal grant opportunities. Led by the U.S. Department of Health and Human Services (DHHS) and in partnership with Federal grant-making agencies, including 26 agencies, 11 commissions, and several States, Grants.gov is one of 24 government-wide E-government initiatives. It is designed to improve access to government services via the Internet. More information about Grants.gov is available at <http://www.grants.gov>.
5. **DEFINITIONS.** All definitions in 49 U.S.C. 5302(a) and 5309 apply to this circular as well as the following definitions:
 - a. **Alternatives Analysis:** A study conducted as part of the transportation planning process required under 49 U.S.C. 5303 and 5304, which evaluates all reasonable mode and alignment alternatives for addressing a transportation problem in a corridor or subarea. Alternatives analysis results in the selection of a Locally Preferred Alternative (LPA) by the chief executive officers or official boards of the sponsoring governmental agency(ies) and the Metropolitan Planning Organization(s) (MPOs) with jurisdiction, through a public process, and adoption of the LPA as part of the long-range transportation plan required under 49 U.S.C. 5303. An alternatives analysis also provides sufficient information to enable FTA to make the findings of project justification and local financial commitment criteria as required by 49 U.S.C. 5309 for those projects seeking New Starts funding.
 - b. **Bus Rapid Transit (BRT):** A series of coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on urban roadways. The intention of BRT is to reduce bus travel time, improve service reliability, increase the convenience to users, and increase transit ridership.
 - c. **Capital Asset:** Facilities or equipment with a useful life of at least one year, which are eligible for capital assistance.
 - d. **Capital Investment Project:** A project eligible under 49 U.S.C. 5309, including new fixed guideway systems and extensions to existing fixed guideways; fixed guideway modernization; replacement, rehabilitation and purchase of buses and related equipment and the construction of bus-related facilities; and corridor improvements.
 - e. **Capital Lease:** Any transaction whereby the recipient acquires the right to use a capital asset without obtaining ownership.

- f. Clean Diesel Bus: A passenger bus with a diesel engine certified to meet the Environmental Protection Agency's (EPA's) heavy-duty engine emissions standards for model years 2007 and later.
- g. Clean Fuel Bus: A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG), liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel (to the extent allowed under 49 U.S.C. 5308), or other low or zero emissions technology that the Administrator of EPA has certified sufficiently reduces harmful emissions.
- h. Designated Recipient: For the Clean Fuels Grant Program, a designated recipient as defined in 5307(a)(2) for an urbanized area over 200,000 in population, and a State for an urbanized area with a population of less than 200,000, for an area that is designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act (CAA) (42 U.S.C. 7407(d)); or is a maintenance area for ozone or carbon monoxide (49 U.S.C. 5308(a)(4)). All designated recipients are public entities.
- i. Direct Recipient: Any entity that directly receives funds from FTA.
- j. Discretionary Funding: Grant funds distributed at the discretion of the agency as distinct from formula funding.
- k. Eligible Applicant: For capital investment grants, eligible applicants are States or local governmental authorities, including municipalities and other political subdivisions of a State; Indian tribes; public agencies and instrumentalities of one or more States; and certain public corporations, boards, and commissions established under State law.
- l. Equipment: An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. This includes rolling stock and all other such property used in the provision of public transit service.
- m. Facilities: All or any portion of a building or structure including roads, walkways, and parking lots.
- n. Fixed Guideway: Any transit service that uses and occupies a separate right-of-way or rails for the exclusive use of public transportation and other high occupancy vehicles, or uses a fixed catenary system and a right-of-way usable by other forms of transportation. The term includes, but is not limited to, heavy rail, commuter rail, rapid rail, light rail, trolleybus, streetcars, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, that portion of motor bus service operated on exclusive or controlled rights-of-way, and high-occupancy vehicle (HOV) lanes.
- o. Fixed-Route System: Public transportation service provided in vehicles operated along predetermined routes according to a fixed schedule.

- p. Full Funding Grant Agreement (FFGA): A document that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding a New Starts project as required by 49 U.S.C. 5309(d)(1) and (g)(2).
- q. Grant: An award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. Used interchangeably with Grant Agreement.
- r. Intelligent Transportation Systems (ITS): ITS refers to the use of electronics, communications, or information processing used as a single component or in combination to improve efficiency or safety of a transit or highway system.
- s. Joint Development: Public transportation improvements that enhance economic development or incorporate private investment and that otherwise meet the statutory terms found at 49 U.S.C. 5302(a)(1)(G). A *Federal Register* notice (72 FR 5788, Feb. 7, 2007) covers this topic in detail.
- t. Maintenance Area: Any geographic region of the United States that EPA previously designated as a nonattainment area for one or more pollutants pursuant to the Clean Air Act (CAA) Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended (42 U.S.C. 7401 *et seq.*).
- u. Master Agreement: The FTA official document containing substantially all FTA and other cross-cutting Federal requirements applicable to FTA recipients and its projects. The Master Agreement is generally revised annually in October. The Master Agreement is incorporated by reference and made part of each FTA grant, cooperative agreement, and amendment thereto.
- v. Metropolitan Planning Area (MPA): The geographic area determined by agreement between the Metropolitan Planning Organization (MPO) for the metropolitan area and the Governor, for which the metropolitan transportation planning process is carried out.
- w. Minimum Operable Segment (MOS): The purpose of selecting the MOS is to identify a segment of the Locally Preferred Alternative that provides the most cost-effective solution with the greatest benefits for the project. The MOS must be able to function as a stand-alone project and not be dependent on any future segments being constructed.
- x. National Ambient Air Quality Standard (NAAQS): Those standards established pursuant to Section 109 of the Clean Air Act (42 U.S.C. 7401 *et seq.*).
- y. New Fixed Guideway Capital Project: A capital project for a new fixed guideway system or extension to an existing fixed guideway system.

- z. New Start: A new fixed guideway capital project for which the Federal assistance provided or to be provided under Section 5309 is \$75 million or more, or that has a total project cost of \$250 million or more, both in year of expenditure dollars.
- aa. Nonattainment Area: Any geographic region of the United States that has been designated by EPA as a nonattainment area under Section 107 of the Clean Air Act for any pollutants for which National Ambient Air Quality Standards exist. 42 U.S.C. 7401 *et seq.*
- bb. Non-profit Organization: A corporation or association determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. 501(c) which is exempt from taxation under 26 U.S.C. 501(a); or one which has been determined under State law to be non-profit and for which the designated State agency has received documentation certifying the status of the non-profit organization.
- cc. Preventive Maintenance: All maintenance costs related to vehicles and non-vehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.
- dd. Project Construction Grant Agreement (PCGA): An instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).
- ee. Public Transportation: Transportation by a conveyance that provides regular and continuing general or special transportation to the public, but does not include sightseeing, school bus, charter, or intercity bus transportation or intercity passenger rail transportation provided by AMTRAK. The terms “transit,” “mass transportation,” and “public transportation” are used interchangeably in transit law.
- ff. Recipient: As used in this circular, recipient includes any entity that receives funds from FTA, whether as a designated recipient, eligible applicant, or subrecipient.
- gg. Small Start: A capital project that either (a) meets the definition of a fixed guideway for at least 50 percent of the project length in the peak period or (b) is a corridor-based bus project with 10 minute peak/15 minute off-peak headways or better while operating at least 14 hours per weekday, which has at least three of the following four elements: substantial transit stations; traffic signal priority/pre-emption, to the extent, if any, that there are traffic signals on the corridor; low-floor vehicles or level boarding; and branding of the proposed service. The Federal assistance provided or to be provided under Section 5309 must be less than \$75 million and the project must have a total capital cost of less than \$250 million, both in year of expenditure dollars.
- hh. Subrecipient: For Bus and Bus Facilities projects, a subrecipient refers to public agencies (States or local governmental authorities), private companies engaged in

public transportation, or private non-profit organizations that receive a grant under the Bus and Bus Facilities program through a direct recipient.

- ii. Urbanized Area (UZA): Means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.
 - jj. Useful Life: The expected lifetime of project property, or the acceptable period of use in service. Useful life of revenue rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service.
 - kk. Very Small Start: Means a Small Starts project in a corridor with at least 3,000 average weekday existing riders benefiting from the proposed project that has a total capital cost of less than \$50 million, and a capital cost per mile of less than \$3 million, exclusive of rolling stock costs.
6. PROGRAM HISTORY. The Capital Investment Program is authorized by 49 U.S.C. 5309. Under this section, the Secretary of Transportation is authorized to make grants to assist in financing specified capital projects that will benefit the nation's transit systems. The Secretary has delegated that authority to the FTA Administrator.

The New Starts process was first outlined by a Statement of Policy in 1976 and was refined in subsequent Statements of Policy in 1978, 1980, and 1984. In the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), the process called for in the Statements of Policy was enacted into law, and was subsequently modified by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). A Statement of Policy in 1997 and further amendments in the Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, culminated in a final rule on Major Capital Investments (49 CFR Part 611), issued in December 2000, with an effective date of April 2001.

The Fixed Guideway Modernization Program was originally designed to ensure the proper renovation of the nation's older rail transit systems, and the program continues to ensure that as Federal New Starts investment projects age, they can be modernized. This program provides support for heavy and light rail systems and equipment, including the replacement and rehabilitation of existing rail fleets, restoration of rail facilities, such as stations, track, yards, and shops, as well as ferryboat systems.

Before FY 1992, fixed guideway modernization funds were allocated on a discretionary basis. Since the passage of ISTEA in 1991, funds have been allocated by formula. TEA-21 modified the ISTEA formula by increasing the number of funding tiers from four to seven. There were no changes to the formula under SAFETEA-LU. For the first four tiers, funds are allocated based on data used to apportion funds in FY 1997. Funding in the last three tiers is apportioned based on the latest available route miles and revenue vehicle miles on segments at least 7-years-old, as reported to the National Transit Database (NTD). One goal of this formula change was to shift a portion of new fixed guideway modernization funds to cities with relatively newer rail transit systems. The funding in

these three additional tiers is apportioned based on actual route-miles and revenue vehicle-miles on segments at least 7-years-old.

FTA's Bus Program originated as part of the Section 3 discretionary program established by the original transit authorization in 1964. In 1974, with establishment of the Section 5 formula program, the discretionary Bus Program was limited to extraordinary costs that could not be funded with Section 5 funds. STURAA provided that 10 percent of the total available for Section 3 would be allocated for buses. With 10 percent available for any Section 3 purpose, the budget process always allocated 20 percent to the Bus Program. ISTEA officially changed the allocation to 20 percent of available funds of Section 3 for bus purposes. The Section 3 program was codified as Section 5309 in 1994. The allocation percentages changed slightly with SAFETEA-LU. Otherwise, the program has remained essentially the same since 1987.

Section 3010 of SAFETEA-LU made a number of changes to 49 U.S.C. 5309. For example, Section 5309, eligible projects, now includes only new fixed guideway capital projects, fixed guideway modernization, the Bus Program, and projects to develop corridors to support new fixed guideway projects. Projects that were considered eligible under Section 5309 following the passage of TEA-21, including the capital costs of coordinating public transportation with other modes of transportation, the introduction of new technology, and public transportation projects to meet the special needs of elderly persons and persons with disabilities, are no longer specifically listed as eligible projects in Section 5309. However, 5309 Bus Capital projects, or elements of Fixed Guideway Modernization or New Starts projects, that address these areas of interest and are otherwise eligible activities can still be funded under Section 5309. In addition, a number of changes were made to the New Starts Program, including the addition of the Small Starts Program, and that New Starts and Small Starts funds may no longer be used for alternatives analysis. Changes to the Capital Investment Program are addressed in this circular as well as in rulemakings and policy statements specific to the New Starts Program.

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CHAPTER II

PROGRAM OVERVIEW

1. STATUTORY AUTHORITY. The Capital Investment Program is authorized under the provisions set forth in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), enacted on August 10, 2005, as codified at 49 U.S.C. 5309 (“Section 5309”). The Secretary may make grants to assist State and local governmental authorities in financing capital projects for bus and bus facilities, fixed guideway modernization, new fixed guideway systems, and development of corridors to support new fixed guideway systems. In addition, 49 U.S.C. 5339 (“Section 5339”) authorizes funding for the Alternatives Analysis Program, as defined in Section 5309, and 49 U.S.C. 5308 (“Section 5308”) authorizes the Clean Fuels Bus Grant Program.

In accordance with 49 U.S.C. 5309(m) and 5338(b) and (c), Capital Investment Program funds are available in the approximate proportions shown below. Annual appropriations acts may alter the following percentages:

- a. Bus Program—20–22 percent;
- b. Fixed Guideway Modernization—37–40 percent;
- c. New Starts and Small Starts—40–41 percent;
- d. In accordance with 49 U.S.C. 5327(c)(1)(C), up to 1 percent of the funds appropriated under the categories listed above are set aside for Federal Transit Administration (FTA) project oversight activities.

The Catalog of Federal Domestic Assistance (CFDA) numbers used in the Capital Investment Program and related programs for each category are:

- a. Bus Program—20.500;
 - b. Fixed Guideway Modernization—20.500;
 - c. New Starts, Small Starts, and Very Small Starts—20.500;
 - d. Alternatives Analysis—20.522;
 - e. Clean Fuels—20.519.
2. APPORTIONMENTS. FTA is required to apportion funds appropriated for the Urbanized Area Formula Program (Section 5307) for any fiscal year (FY) no later than the tenth day after the date the amounts are appropriated or October 1 of the fiscal year for which the amounts are appropriated, whichever is later. Apportionments are published in the *Federal Register*. FTA includes fixed guideway modernization projects in the *Federal Register*

notice that announces the Urbanized Area Formula apportionments. FTA also publishes Congressional allocations of Bus and New Start funds in the same notice. Please see Chapter III, “Buses and Bus Facilities”; Chapter IV, “Fixed Guideway Modernization”; and Chapter V, “New Starts/Small Starts Program” of this circular for additional specific apportionment information.

3. FUNDS AVAILABILITY. Capital Investment Program funds for buses and New Starts are available for obligation during the fiscal year of apportionment plus two years. For example, funds apportioned in FY 2008 are available until the end of FY 2010 (September 30, 2010). In the case of fixed guideway modernization, funds are available during the fiscal year of apportionment plus three years. Bus and New Starts funds remaining unobligated at the end of the period of availability may be extended by Congress or reprogrammed for other Section 5309 projects. Any fixed guideway modernization funds remaining unobligated at the end of the period of availability are added to the next year’s program apportionment and are reapportioned.
4. PROGRAM GOAL. The Capital Investment Program provides funds to invest in capital equipment and facilities to allow for efficient and improved public transportation services. For bus and bus related facilities, the program provides for extraordinary capital needs that require resources in excess of funds supplied by formula funding or to advance important special emphasis initiatives. For New Starts and Small Starts, the program provides funds to construct new and expand existing fixed guideway systems and comprehensive corridor-based bus systems. For fixed guideway modernization, the program provides funds to rehabilitate and renovate older fixed guideway systems. For all program-funded projects, FTA expects recipient agencies to maintain sufficient funding resources to ensure the recapitalization and operation of the overall transit system.
5. ELIGIBLE PROJECTS. Projects eligible for funding under the Capital Investment Program include those defined in Section 5309, clean fuels buses as defined in Section 5308 when purchased with Section 5309 funds, as well as certain capital items defined in Section 5302(a)(1) when those items are integral to a capital investment project. Eligible projects and activities are divided into two areas: Assets for which FTA Provides Assistance and Additional Eligible Project Activities.
 - a. Assets for which FTA Provides Assistance. Section 5309 authorizes the Secretary to make grants for buses and bus facilities, fixed guideway modernization, New Starts and Small Starts, and the development of corridors to support new fixed guideway capital projects. These encompass “capital investment projects” as defined in this circular.
 - (1) Bus and Bus-related Facilities. The major purchases under this category are buses and other rolling stock, ferry boats, ancillary equipment, and the construction of bus facilities (i.e., maintenance facilities, garages, storage areas, waiting facilities and terminals, transit malls and centers, and transfer facilities and intermodal facilities). This category also includes bus rehabilitation and leasing, park-and-ride facilities, parking lots associated with transit facilities, bus passenger shelters,

and intercity bus stations and terminals which are eligible under Section 5302(a)(1)(G).

- (2) Modernization of Fixed Guideway Systems. This includes infrastructure improvements such as track and right-of-way rehabilitation, modernization of stations and maintenance facilities, rolling stock purchase and rehabilitation, and signal and power modernization. Modernization of ferry terminals and the transit portion of ferry boats are also eligible costs. While funds are apportioned based only on fixed guideway segments that have been in operation seven years or longer, a recipient may use the funds apportioned to it for eligible modernization projects on any part of its fixed guideway system.
 - (3) New Fixed Guideway Capital Projects (New Starts and Small Starts). Capital projects under this category include preliminary engineering (PE), acquisition of real property (including relocation costs), final design and construction, and initial acquisition of rolling stock for the system. Small Starts also includes corridor bus projects that either operate in a separate right-of-way during peak hours or contain significant investment in corridor-based bus improvements.
 - (4) Corridors to Support New Fixed Guideway Projects. These projects may include protecting rights-of-way through acquisition; construction of dedicated bus and high-occupancy vehicle (HOV) lanes; and park-and-ride lots. These projects may also include “nonvehicular” capital improvements that will increase transit use in the corridor. Examples include additional safety features that would encourage riders to use transit, walkways and pathways that make transit more readily available, bus shelters, and joint development projects that would improve the livability of a community and increase the benefits transit offers. These items are eligible categories of expenditures within the New Starts and Small Starts programs when part of a fixed guideway or corridor-based bus project.
- b. Additional Eligible Project Activities. These activities include elements that may be incorporated into a Section 5309 capital investment grant, as applicable. For example, a bus acquisition may include, but is not limited to, buses powered by clean fuels, or that include Intelligent Transportation Systems (ITS) elements. A New Starts, Small Starts, or fixed guideway modernization project may include, but is not limited to, projects to refine security and emergency response plans and projects to incorporate design and art.
- (1) Clean Fuels (Section 5308). Purchases under this category are passenger vehicles used to provide public transportation and powered by compressed natural gas (CNG), liquefied natural gas (LNG), biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel (ultra low sulfur content), or other low or zero emissions technology. Eligible activities also include constructing or leasing clean fuel buses, constructing electrical recharging facilities for such buses, and

constructing new or improving existing public transportation facilities to accommodate clean fuel buses.

- (2) Introduction of New Technology. Section 5309 funds may be used for transit-related technology, such as innovative and improved products that provide benefits to transit, including ITS. ITS refers to the use of electronics, communications, or information processing used as a single component or in combination to improve efficiency or safety of a transit or highway system. Examples of transit-related ITS projects include real-time bus arrival information available to passengers through electronic displays at bus stops, automatic vehicle locators, automated passenger counters, vehicle component monitoring (diagnostics), advanced fare payment methods, computer-aided dispatching and real-time ridesharing, and automated information for travelers using more than one mode of transportation.
- (3) Design and Art in Transit. When integral to a capital investment project, Section 5309 funds may be used to incorporate design and artistic considerations into transit projects as described in FTA Circular 9400.1, "Federal Transit Administration Design and Art in Transit Projects."
- (4) Leasing. When a recipient leases capital assets from another party, leasing costs are eligible for capital assistance, provided leasing is more cost effective than purchase or construction. Leasing costs eligible for capital assistance include finance charges and ancillary costs such as delivery and installation charges. Leasing of capital assets requires compliance with 49 CFR Part 639, "Capital Leases" and Office of Management and Budget (OMB) Circular A-94 which prescribes the discount rates.
- (5) Rail Trackage Agreements. Capital portions of rail trackage rights agreements are eligible for Capital Investment Program assistance.
- (6) Crime Prevention and Security. When integral to a capital investment project, Section 5309 funds may be used for projects designed to enhance the security of the transit environment as described in 49 U.S.C. 5302(a)(1)(J).
- (7) Education and Training. When integral to a capital investment project, Section 5309 funds may be used for education and training through the National Transit Institute, as described in 49 U.S.C. 5315(d).
- (8) Innovative Financing. When integral to a capital investment project, Section 5309 funds may be used to pay for costs incurred to secure or initiate an innovative financing technique except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available at the time of borrowing.
- (9) Public Transportation Improvements. When integral to a capital investment project, Section 5309 funds may be used for projects that enhance economic development or incorporate private investment, including pedestrian and bicycle

access to a public transportation facility, renovation of historic transportation facilities, intercity bus and intercity rail stations and terminals, and establishment of new or enhanced coordination between public transportation and other transportation as described in 49 U.S.C. 5302(a)(1)(G).

- (10) Bicycle Facilities. When integral to a capital investment project, Section 5309 funds may be used for bicycle facilities as described in 49 U.S.C. 5319.
 - (11) Emphasis Areas. From time to time, FTA will establish areas of emphasis to which it will give priority. These emphasis areas are typically aimed at improving customer service, increasing transit capacity, or enhancing transit operations.
 - (12) Preventive Maintenance. Includes maintenance costs related to vehicles and non-vehicles. For general guidance regarding eligible maintenance costs, the recipient should refer to the definition of “maintenance” in the most recent National Transit Database (NTD) reporting manual. To locate the reporting manual, see NTD’s website at: <http://www.ntdprogram.gov>. Examples of expenses not eligible as preventive maintenance are fuel costs and building or vehicle liability insurance, which are not reported to the NTD as maintenance expenses.
 - (13) Capital Cost of Contracting. As defined below.
6. CAPITAL COST OF CONTRACTING. Some FTA recipients turn to an outside source to obtain public transportation service, maintenance service, or vehicles that the recipient will use in public transportation service. When recipients contract for such service, FTA will provide assistance with the capital consumed in the course of the contract. In the case of a contractor’s providing vehicles for public transportation service, the capital consumed is equivalent to the depreciation of the vehicles in use in the public transportation service during the contract period. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the recipient of these capital assets. FTA refers to the concept of assisting with capital consumed as the “capital cost of contracting.” FTA will provide assistance at the 80/20 FTA/local share ratio for the capital cost of contracting.

Only the costs attributable to privately owned assets are eligible under this policy. With one exception, items purchased with Federal, State, or local government assistance are not eligible. The exception is a public transportation vehicle privately owned in which the recipient has invested FTA funds from the Over-the-Road Bus Accessibility Program to finance incremental capital costs of complying with the Americans with Disabilities Act (ADA). Capital consumed for service or maintenance in the provision of service outside the public transportation portion of the contract, such as for charter or school bus service, is not an eligible cost.

In addition, FTA provides assistance for preventive maintenance, which is defined as all maintenance. In some instances, the recipient's contract with outside sources both for maintenance and for public transportation service, the contractor provides both maintenance and vehicles. In such cases, both FTA's capital cost of contracting and preventive maintenance standards will apply.

To avoid imposing burdensome accounting rules, with regard to contracts for bus and paratransit related services, FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80 percent of the resultant amount. EXHIBIT I-1, below, shows the percentages and the corresponding type of contract service for bus and paratransit-related services. The percentages are calculations using data from the NTD. Presented by type of contract, the calculations represent industry averages in counting capital-eligible activities as a share of total cost. The percentages apply whether the service is local, express, shuttle, or paratransit.

EXHIBIT I-1

PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE WITHOUT FURTHER JUSTIFICATION*

(*Based on assumption that contractor provides the assets)

Bus and Paratransit-Related Contract Services	Percent of Contract Eligible for 80 Percent Federal Share
Type of Contract	
1. Service Contract (contractor provides maintenance and transit service; grant recipient provides vehicles)	40 percent
2. Service Contract (contractor provides transit service only; recipient provides vehicles and maintenance)	0 percent
3. Vehicle Maintenance Contract (contractor provides maintenance; grant recipient provides vehicles and transit service)	100 percent
4. Vehicle Lease Contract (contractor provides vehicles; grant recipient provides maintenance and transit service)	100 percent
5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; grant recipient provides transit service)	100 percent
6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50 percent
7. Vehicle/Service Contract (contractor provides vehicles and transit service; grant recipient provides maintenance)	10 percent

The calculations above in EXHIBIT I-1 are based on the assumption that the contractor (or someone other than the recipient) provides the assets. For example, if a contractor provides maintenance, FTA assumes in the calculations that the contractor does so in a facility provided by the contractor. For another example, in a contractor-operated van pool program that qualifies under a Turnkey Contract (see type 6), a van pool driver provides the service rather than a contractor employee, but the recipient does not provide the service.

A recipient may request FTA participation in a higher percentage of the contract than FTA shows in Exhibit I-1, but must provide actual costs.

A recipient applying for assistance with costs that contain any of the capital costs of contracting permutations listed in EXHIBIT I-1 may list costs for the contracted service all in the capital cost of contracting budget category, or the recipient may use both that category and another appropriate category such as preventive maintenance or leasing.

7. FEDERAL/LOCAL MATCHING REQUIREMENTS.

- a. The Federal share of eligible capital costs shall be 80 percent of the net capital project cost, unless the grant recipient requests a lower percentage. All of the local share shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, real property donations, or new capital. Some examples of local match that may be used for the local share include: State or local appropriations, dedicated tax revenues, private donations, toll revenue credits, and net income generated from advertising and concessions. FTA must review and concur on in-kind contribution of any value before Federal funds are expended or the value is used as local match.
- b. Exceptions. The Federal share may exceed 80 percent for certain projects related to the ADA, the Clean Air Act (CAA), and certain bicycle projects as follows:
 - (1) Americans with Disabilities Act (ADA). The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the ADA of 1990 (42 U.S.C. 12101 *et seq*).
 - (2) Clean Air Act (CAA). The Federal share is 90 percent for the cost of vehicle-related equipment or facilities (including clean-fuel or alternative-fuel vehicle-related equipment or facilities) attributable to compliance with the CAA (42 U.S.C. 7401 *et seq*).

When acquiring vehicle-related equipment to be in compliance with the ADA or the CAA, a recipient may choose from two options in calculating the Federal and local shares. In one option—applicable to the purchase of buses, vans, rail vehicles, and equipment for such vehicles—the grant recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with the ADA or the CAA. The Federal share is 90 percent of the cost for these itemized elements.

In the other option—applicable for the purchase of buses and vans—a grant recipient may apply for an 83 percent Federal share of the total vehicle cost. The 83 percent is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the ADA or CAA.

FTA considers vehicle-related equipment to be equipment on and attached to the vehicle.

Facility-related expenses such as building renovations or rehabilitations are eligible projects. The grant recipient needs to itemize the cost of specific, discrete, facility-related items being purchased to be in compliance with the ADA or the CAA. The Federal share is 90 percent of the cost for these itemized elements.

- (3) Bicycle Facilities. As provided in 49 U.S.C. 5319, the Federal share is 90 percent for those bicycle access projects or portions of bicycle access projects designed to:
 - (a) provide access for bicycles to public transportation facilities,
 - (b) provide shelters and parking facilities for bicycles in or around public transportation facilities, or
 - (c) install equipment for transporting bicycles on public transportation vehicles.
- c. Revenue Bond Proceeds as Local Share. A recipient of Section 5309 or Section 5307 funds may use the proceeds from the issuance of revenue bonds as part of the local match for a capital project, with prior FTA approval. Farebox receipts are one type of revenue that may be used to secure the bonds. Use of the proceeds of revenue bonds as local share will be approved only if FTA finds that the aggregate amount of financial support for public transportation in the urbanized area provided by the State and affected local governmental authorities during the next three fiscal years, as programmed in the Statewide Transportation Improvement Program (STIP), is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding three fiscal years.
- d. Debt Service Reserve (DSR). Transit agencies that use debt financing in the form of bonds are often required by the terms of the Bond Indenture to establish a DSR. The Bond Trustee usually exercises control over the DSR fund, including investment of the Fund and disbursements from it, all as described in the Bond Indenture. Bond proceeds are the source of the Fund. Since SAFETEA-LU, FTA funds may be substituted for the bond proceeds if certain conditions, as described in this paragraph, are met. Usually, the DSR remains untouched for the term of the bonds, and is used to make a subsequent debt service payment ONLY if the recipient has insufficient funds to do so. If the DSR is used in this way, the recipient must replenish the DSR from its own funds and within the time frames outlined in the Bond Indenture or be in default. When there is no default, the balances remaining in the DSR are used to make the last debt

service payment to the extent of such balances. Required DSRs may now be funded with FTA grant funds. However, to the extent of FTA funding, and as a condition to its use, any particular DSR may only be used to pay principal and/or interest on the bonds. Therefore, recipients intending to fund a DSR with FTA funds may also wish to include some non-FTA funds, if the terms of the Bond Indenture allow use of DSR for other items such as late fees or Bond Trustee expenses related to default.

- e. Transportation Development Credits (formerly referred to as Toll Revenue Credits). A State may use, as a credit toward a project's local share, certain expenditures it has made with toll revenues. The amount of credit toward local share to be earned by a State is based on revenues generated by toll authorities within the State that are used by the authorities to build, improve, or maintain highways, bridges, or tunnels that serve interstate commerce. A grant recipient wishing to apply the provisions of 23 U.S.C. 120(j) should discuss with its State Department of Transportation (State DOT) the availability of transportation development credits for use as local share in matching FTA grants. The Federal Highway Administration (FHWA) oversees the determination of transportation development credit within each State. FTA will not approve retroactive application of Transportation Development Credits.
- f. Deferral of Payment of Local Share. A grant recipient may request that the local share for a project be deferred until 100 percent of the Federal funds have been drawn down. A request for the deferral must accompany the grant application; FTA will not approve retroactive deferral of local share. Approval is contingent upon the deferral's resulting in benefits to transit and upon the grant recipient's demonstrating that the recipient has the financial capacity to complete the project. Local share cannot be deferred indefinitely. When such deferral occurs, the local funds must be available and used to match drawn-down Federal funds. The deferred local share policy is not applicable to New Starts, Small Starts, or Very Small Starts projects.
- g. Alternative Financing. Grant recipients, especially recipients wishing to undertake major capital projects, are encouraged to explore alternative methods of financing transit projects, in addition to grant funding. Alternative financing can involve combining multiple, nontraditional sources of funding, as well as Federal, State, local, and private funding, in support of transit capital needs. Approaches grant recipients might investigate include: capital leasing arrangements, joint development, State economic development or revolving loan funds, State Infrastructure Bank loans, exchanges of real property, and in-kind contributions. For projects exceeding \$50 million, recipients may wish to consider a loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 1601 of SAFETEA-LU (23 U.S.C. 601 *et seq*). TIFIA loans or loan guarantees must be repaid with non-Federal, dedicated funds or user fees.

8. RELATIONSHIP TO OTHER PROGRAMS.

a. Statewide and Metropolitan Transportation Planning (Sections 5303, 5304, 5306).

Annually, FTA apportions statewide planning program funds to the States for use in the development of their statewide transportation plans and Statewide Transportation Improvement Programs (STIPs) for all areas of the State.

States may suballocate some of their statewide planning funds to Metropolitan Planning Organizations (MPOs) in urbanized areas. States may also use their statewide planning funds for public transportation, research, development, and technology.

FTA also annually apportions Metropolitan Planning Program (MPP) funds to the States. States allocate these funds to their MPOs. MPOs may use MPP funds for planning in urbanized areas.

An applicant for or recipient of Capital Investment Program assistance in an urbanized or metropolitan area must be an active participant in the metropolitan transportation planning process in order to be certain that the transit projects for which assistance is desired are properly evaluated for inclusion in the metropolitan transportation plan, the metropolitan Transportation Improvement Program (TIP), and the STIP. Similarly, applicants for and recipients of Capital Investment Program funds in a nonurbanized area must participate in the statewide transportation planning process to be certain that the transit projects for which assistance is desired are properly evaluated for inclusion in the STIP and, as appropriate, the Long-Range Statewide Transportation Plan.

b. Urbanized Area Formula Assistance Program (Section 5307). Title 49 U.S.C. 5307 provides funding for capital assistance, planning, and operating assistance for public transportation in urbanized areas. FTA apportions these funds to the Governor or the Governor's designee(s) for use in small urbanized areas with populations of less than 200,000. In large urbanized areas, FTA makes these funds available to the designated recipient(s) for capital and planning assistance.

Section 5307 funds may be used for capital expenses, including preventive maintenance for buses purchased with Section 5309 funds and for the capital cost of contracting.

Guidance for Section 5307 is found in FTA Circular 9030.1.

c. Nonurbanized Area Formula Assistance Program (Section 5311). Title 49 U.S.C. 5311 provides funding for capital and operating assistance for public transportation in nonurbanized areas. FTA apportions these funds to the Governor or the Governor's designee.

Many States look to the Section 5309 Bus Program to supplement vehicles acquired under Section 5311 or to construct facilities. FTA encourages States to apply for grants on behalf of nonurbanized areas designated to receive Bus Program funds when funds are available.

Guidance for Section 5311 is found in FTA Circular 9040.

- d. The Elderly Individuals and Individuals with Disabilities Program (Section 5310). Title 49 U.S.C. 5310 authorizes FTA to make grants to States and local governmental authorities for public transportation capital projects planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities.

As with the Section 5311 program, many States look to the Section 5309 Bus Program to supplement vehicles acquired under Section 5310 or to construct facilities. FTA encourages States and designated recipients to apply for Section 5309 Bus Program funds on behalf of non-profit agencies designated to receive bus funds when funds are available.

Guidance for the Section 5310 program can be found in FTA Circular 9070.

- e. FHWA Flexible Funds. Surface Transportation Program (STP) funds and Congestion Mitigation and Air Quality (CMAQ) funds may be transferred from the Federal Highway Administration (FHWA) to FTA formula programs (Section 5307, 5311, and 5310) for use by the recipient for eligible capital projects under those programs. These flexible fund transfers supplement capital funds available to recipients under their FTA formula apportionments or allocations of Section 5309 discretionary funds.

Certain funding statutorily designated for transit projects in FHWA programs, such as Sections 1702 (High Priority) and 1934 (Transportation Improvements) of SAFETEA-LU, are also transferred from FHWA to FTA for administration. FTA awards grants for these projects through the Section 5309 Bus Program and applies the Bus Program requirements to the extent applicable. In addition, Congress sometimes designates FHWA program funding for transit projects during the annual appropriations process. FHWA may allot funds for these projects to FTA for administration. FTA processes these allotted funds as stand alone grants, rather than through the Section 5309 bus program.

Funds are available for obligation based on the period of availability specified in the applicable FHWA provision. In order to ensure the timely availability of FHWA funds upon a recipient's request for payment, FTA does not co-mingle funds transferred or allotted from FHWA in a grant with funds originally appropriated to FTA. Generally, flexible funds transferred to FTA require the same non-Federal matching share that such funds would require if recipients used them for highway purposes and FHWA administered them. If the FTA share is greater than the FHWA share, such as for equipment and facilities to comply with ADA and CAA, the FHWA share is applicable.

- f. State Infrastructure Banks (SIB). The State Infrastructure Bank (SIB) Program, codified at 23 U.S.C. 610, provides that all States, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are authorized to enter into cooperative agreements with the Secretary

of Transportation to establish infrastructure revolving funds eligible to be capitalized with Federal transportation funds authorized for fiscal years 2005–2009.

This program is a continuation and expansion of similar programs created by the National Highway System Act of 1995 (Pub. L. 104–59) and the Transportation Equity Act for the 21st Century (TEA–21). The program gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. The program provides greater flexibility to the States by allowing other types of project assistance in addition to grant assistance. States may use Section 5309 funds to capitalize an SIB as specified at 23 U.S.C. 610(d)(2). Please see www.fhwa.dot.gov for more information.

9. **LEGAL, FINANCIAL, AND TECHNICAL CAPACITY.** FTA may not make a grant or loan under the Capital Investment Program unless it finds that the grant applicant has or will have the legal, financial, and technical capacity to carry out the project.
 - a. **Legal Capacity.** Before FTA may award a grant for a capital investment project, FTA must make a finding that the grant applicant has or will have the legal capacity to carry out the project. In making this finding, FTA generally relies on the grant applicant’s certification that it has or will have the legal capacity to carry out the project. Specifically, the grant applicant must be eligible and authorized under State or local law to request, receive, and spend FTA funds to administer FTA-assisted projects. Officials acting on behalf of the applicant must have appropriate authority designated by State or local law or by the governing body of the applicant. Although FTA does not require recipients to submit an Opinion of Counsel with each grant application, first-time applicants are required to submit an Opinion of Counsel as described below. (An Opinion of Counsel sample is available in Appendix C of this circular). FTA also retains the discretion to require any recipient to submit a legal opinion and other supporting documentation.
 - (1) An Opinion of Counsel identifies the legal authority of the grant applicant, citing, for example, State and local statutes, and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. It is not uncommon for legislation or litigation to be pending; its significance in terms of legal capacity and in terms of ability to complete the project determines whether or not it should be noted in the Opinion of Counsel. While the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the authority to apply for subsequent grants will be certified to in the annual certification process. That affirmation appears on FTA’s website at www.fta.dot.gov, on the page that lists the current year Certifications and Assurances.

FTA expects the grant recipient to notify FTA of any change in local law, litigation, conditions, or any other event that may significantly affect the

recipient's ability to carry out the project. Any change in status will require a new Opinion of Counsel.

- (2) The authority of those officials acting on behalf of a public body grant applicant generally must be demonstrated by a resolution from the governing body of the grant applicant, a statute, or an ordinance showing the grant applicant has authority to file an official grant application, showing who has the authority to act on behalf of the applicant, and supporting the application. A certified copy of the authorizing resolution is required for all FTA grant recipients. A sample format of an Authorizing Resolution is provided in Appendix C of this circular. The authorizing resolution only has to be submitted prior to the grant applicant's first application. For subsequent grant applications, FTA will rely on the annual certifications and assurances. The Designated Signature Authority submitted for the Transportation Electronic Award and Management (TEAM) system on the first application must agree with the Designated Signature Authority on subsequent applications.
- b. Financial Capacity. Before FTA may award a grant for a capital investment project, FTA must make a finding that the grant applicant has or will have the financial capacity to carry out the project. Specifically, an applicant for Capital Investment Program funds must be able to match and manage those funds, to cover cost overruns, to cover operating deficits through long-term stable and reliable sources of revenue, and to maintain and operate federally funded facilities and equipment. Financial capacity and proposed project financing must be made evident. The source of local share must be identified and assurances must be provided that adequate local funds will be available at the time that Federal funds are drawn down. Financial Capacity is also reviewed by FTA's Financial Management Oversight contractors as deemed necessary.

FTA Circular 7008.1, "Financial Capacity Policy," defines the basis upon which FTA will make determinations of a grant applicant's financial capacity to receive a Capital Investment Program grant. The circular refers to two aspects of financial capacity: general financial condition of the transit operator and financial capability. The general financial condition includes historical trends and current experience in financial factors affecting the ability of the grant applicant to operate and maintain the transit system at present levels of service. The information supporting an assessment of financial condition is usually available in audited annual financial statements and other financial reports which address working capital levels, cash balances, capital reserves, the presence and status of depreciation accounts, long-term debt levels, trends in transit costs compared to available revenues, and trends in relevant economic indicators.

Financial capability addresses the sufficiency, stability, and reliability of the grant applicant's revenue sources to meet future operating deficits and to meet future annual capital and operating costs. Financial capability considers the nature of funds pledged to support operating deficits and capital programs, and changes in forecast in fare and nonfare revenues. Capital costs include replacement and rehabilitation of existing

equipment and facilities and new investments. Operating and maintenance costs include those for the present system and any increases caused by capital investment and service expansion.

In considering financial capacity of the grant applicant, FTA takes into account the fact that a financial analysis must be undertaken and a financial plan must be developed before programming a project into the TIP. That analysis, plan, and subsequent inclusion of the project in the TIP reflect the two aspects FTA considers in determining the grant applicant's financial capacity: the financial plan must demonstrate that TIP projects can be carried out while the existing transportation system is being adequately operated and maintained (financial condition); and only projects for which funds can reasonably be expected to be available may be included in the TIP (financial capability).

FTA assesses financial capacity of a Capital Investment Program grant applicant when FTA approves the STIP and again when FTA approves projects for Capital Investment Program funds. The level of detail of the financial capacity assessment will be consistent with the size of the transit system being considered and the scale of the capital investments being proposed. Depending upon the scale of the proposal, FTA may ask the applicant for supporting information such as that contained in the TIP, including: short-range transit plans, capital budgets, financial plans required for New Starts projects, and reports on financial operations such as periodic financial statements or single audit reports.

- c. Technical Capacity. Before FTA may award a Capital Investment Program grant, FTA must make a finding that the grant applicant has or will have the technical capacity to carry out the project. Technical capacity involves the capability of the grant applicant to properly carry out and manage Federal grants. In making this finding, FTA generally relies on its experience with the grant applicant. A first-time grant applicant for a Capital Investment Program grant must demonstrate that the applicant can carry out the project described in the grant application in accordance with the requirements of the grant agreement, and with all applicable laws and regulations, using sound management practices. Thus, a certification that the recipient will comply with all requirements applicable to its grant application and to the grant agreement, when awarded, is required. Guidelines for management practices can be found in FTA Circular 5010.1, "Grant Management Requirements."

CHAPTER III

BUSES AND BUS FACILITIES

1. **INTRODUCTION.** The Bus and Bus-Related Facilities portion of the Capital Investment Program (Bus Program) provides capital assistance for new and replacement vehicles and related equipment and facilities. Funds are allocated on a discretionary basis each year and are primarily intended to support one-time or periodic capital needs left unmet by Federal formula funding or by local or State funding sources.
2. **ALLOCATION OF FUNDS AND PERIOD OF AVAILABILITY.** Funding is appropriated by Congress each fiscal year (FY). These annual appropriations may include funding designations for specific projects or purposes. It is important to note that these Congressional allocations are subject to change by subsequent appropriations or other acts of Congress. FTA may allocate any funds not allocated by Congress on a discretionary basis.

Funds designated for specific Bus Program projects remain available for obligation for three fiscal years, which includes the fiscal year in which the amount is appropriated plus two additional years. For example, funds apportioned in FY 2008 are available until the end of FY 2010 (September 30, 2010). Bus Program funds not obligated in an FTA grant by the end of this period will generally be made available for other authorized bus projects.

FTA is authorized to set aside 1 percent of the Capital Investment Program funds to contract for oversight of major capital projects and to conduct safety, procurement, management, and financial compliance reviews and audits. FTA sets aside the funds for these purposes before apportionment of the Bus Program funds.

3. **ELIGIBLE RECIPIENTS.** States and local governments, as well as subrecipients, such as public agencies, private companies engaged in public transportation and private non-profit organizations, are eligible to receive funds under the Bus Program.
4. **ELIGIBLE PROJECTS.** Examples of capital projects eligible under the Bus Program include:
 - a. the acquisition of vehicles for fleet and service expansion, including clean fuel vehicles;
 - b. rehabilitation of buses;
 - c. maintenance and administrative facilities;
 - d. transfer facilities, bus malls, transportation centers, intermodal terminals, and park-and-ride facilities;

- e. intercity bus stations and terminals that are part of joint development projects in accordance with FTA guidance, published in the *Federal Register*, on the eligibility of joint development improvements under Federal transit law (72 FR 5788, Feb. 7, 2007);
- f. acquisition of replacement vehicles and bus rebuild;
- g. passenger amenities such as passenger shelters and bus stop signs;
- h. accessory and miscellaneous equipment such as mobile radio units, supervisory vehicles, fareboxes, computers, and shop and garage equipment;
- i. Intelligent Transportation Systems (ITS);
- j. ferry vessels and facilities specifically listed in 49 U.S.C. 5309(m);
- k. costs incurred in arranging financing for eligible projects under the bus category as a reimbursement (see Chapter II; Subsection 7.g. of this circular concerning alternative financing); and
- l. fixed guideway bus projects, such as Bus Rapid Transit (BRT) projects. Fixed guideway bus projects do not have to be advanced through the New Starts or Small Starts processes if funded under the Bus Program instead of the New Starts or Small Starts Programs. However, if the project funded under the Bus Program is also being funded under the New Starts or Small Starts Programs, that project must meet all New Starts or Small Starts Program requirements. In this case, the funding from the Bus Program will be counted as part of the total project cost as “other” Federal funds. (See Chapter V, “New Starts/Small Starts Program,” for additional information.)

NOTE: Planning activities are not eligible under the Bus Program. However, costs associated with environmental compliance as part of preliminary engineering (PE) or final design are eligible capital expenses.

5. ENVIRONMENTAL CONSIDERATIONS. FTA’s environmental review process has two primary objectives: to fully disclose the probable environmental impacts resulting from a proposed project and to develop measures that will avoid, minimize, or mitigate adverse environmental effects. Before FTA may approve a Capital Investment Program grant, the environmental review process must be complete, and will involve compliance with a number of laws, regulations, and Executive Orders that usually takes place in the context of the National Environmental Policy Act (NEPA) process.
- a. Projects That Do Not Have Environmental Impacts. Many projects and activities assisted with Bus Program funds do not involve significant environmental impacts. The joint Federal Highway Administration (FHWA)/FTA environmental impact regulations (23 CFR Part 771) use the term “categorical exclusion” (CE) to describe classes of projects that do not involve significant environmental impacts and, therefore, do not require preparation of either an environmental assessment (EA) or an

environmental impact statement (EIS). CEs fall into two categories: those that are listed specifically in the regulation (23 CFR 771.117(c)) and need no further analysis, and those that require additional documentation under 23 CFR 771.117(d) in order to assure their suitability for CE. Recipients should consult each list to determine whether a particular project may be categorically excluded from the need to prepare either an EA or an EIS.

- b. Projects That May Have an Environmental Impact. Projects that involve construction have greater potential for on-site and off-site environmental impacts and are, therefore, subject to additional analysis. Experience has shown, however, that many construction projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible, non-residential land use where the primary access roads are adequate to handle the additional bus traffic. FTA may approve the designation of these construction projects as documented CEs if the recipient provides an administrative record demonstrating that the conditions stated above in this paragraph are met and that no significant adverse effects will result.

For any project not meeting the conditions for a CE, the recipient must, at a minimum, prepare an EA. In addition to documenting the impacts of the proposed project, an EA requires the grant recipient to consider alternatives as required by Section 102(2)(E) of NEPA (42 U.S.C. 4332(2)). An EA is also subject to public comment. Once the EA has been completed, and when warranted, FTA may issue a finding of no significant impact (FONSI) or a mitigated FONSI which concludes the NEPA process.

If, either as a result of an EA or because of certain project characteristics evident at the outset of project planning, significant environmental impacts are identified or known to exist, an EIS will be required. For example, the new construction or extension of a separate roadway for buses or high-occupancy vehicles (HOVs) not located within an existing highway right-of-way would typically require an EIS.

Federal regulations place limitations on project development while the environmental review process is being conducted. Please contact the appropriate FTA regional office for further information.

6. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR Part 93) and the requirements apply in areas that currently violate one or more of the National Ambient Air Quality Standards (NAAQS) (nonattainment areas) and also in areas that once violated the standards, but EPA has since redesignated to attainment status (so-called maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and Transportation Improvement Programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the Metropolitan Planning Organization (MPO). Determining conformity for individual projects is the project sponsor's responsibility. Major transit

infrastructure projects, e.g., new fixed guideway projects and extensions, will be analyzed at both the regional and local scales.

The transportation conformity regulation reserves detailed air quality analysis for large projects which have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with the FTA Regional Office is essential in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The FTA Regional Office can also provide information on selected provisions of other laws that support clean air objectives—for example, FHWA’s Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Over the years, local transit agencies have benefited greatly from this program as a supplementary source of funding for transit. The CMAQ Program has its own eligibility requirements, available on FHWA’s website at <http://www.fhwa.dot.gov/environment/cmaq06gm.htm>.

7. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT. This section contains information concerning program requirements specific to the purchase, maintenance, and operation of vehicles and equipment funded through the Bus Program. Requirements common to all Capital Investment Program applications appear in Chapter VI, “Other Provisions,” of this circular.
 - a. Buses in Service. The following requirements apply to any vehicle acquired with FTA funding under the Bus Program.
 - (1) Commercial Driver’s License (CDL). All drivers of motor vehicles designed to transport 16 or more passengers (including the driver) or of motor vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicle must also have a CDL.
 - (2) Charter Operations. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR Part 604—Charter Service, amended effective April 30, 2008 (73 FR 2326, Jan.14, 2008). Each grant recipient must enter into an agreement with FTA that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of Certifications and Assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter registration website (http://www.fta.dot.gov/laws/leg_reg_179.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register by city, by zip code, or for the entire United States. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered for that city or zip code. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information will void the notice and may subject the transit agency to a complaint from registered charter providers. The rule also provides for more detailed complaint procedures in the hopes of avoiding frivolous complaint filings. Finally, the rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance.

- (3) School Bus Operations. Title 49 U.S.C. 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR Part 605) does permit regular service to be modified to accommodate school students along with the general public (so called “tripper service”). For the purpose of FTA’s school bus regulation, Headstart is a social service, not a school program. Rules for the Headstart Program limit the types of vehicles which may be used to transport children participating in a Headstart Program. FTA recipients may operate multi-functional vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.
- b. Bus Fleets. FTA has established several policies that are meant to ensure that buses purchased or leased with Federal funds are maintained and remain in transit use for a minimum useful life and to ensure that the buses acquired are necessary for regularly scheduled transit revenue service (i.e., to meet peak service requirements with a reasonable allowance for spares).
 - (1) Useful Life Policy. Useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum useful life for buses, vans, trolleys, and ferry boats is determined by years in service or accumulation of miles, whichever comes first, as follows:
 - (a) Large, heavy-duty transit buses including over the road buses (approximately 35’–40’, and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
 - (b) Small size, heavy-duty transit buses (approximately 30’): at least ten years or an accumulation of at least 350,000 miles.
 - (c) Medium-size, medium-duty transit buses (approximately 25’–35’): at least seven years or an accumulation of at least 200,000 miles.

- (d) Medium-size, light-duty transit buses (approximately 25'–35'): at least five years or an accumulation of at least 150,000 miles.
- (e) Other light-duty vehicles used in transport of passengers (revenue service) such as regular and specialized vans, sedans, light-duty buses including all bus models exempt from testing in the current 49 CFR Part 665: at least four years or an accumulation of at least 100,000 miles.
- (f) Trolleys: The term “trolley” is often applied to a wide variety of vehicles. Thus, the useful life depends on the type of “trolley.” FTA classifies “trolleys” and the suggested useful life as described below. For disposition actions, FTA will use these minimum useful life standards:
 - 1 A fixed guideway steel-wheeled “trolley” (streetcar or other light rail vehicle): at least 25 years.
 - 2 A fixed guideway electric trolley-bus with rubber tires obtaining power from overhead catenary: at least 15 years.
 - 3 Simulated trolleys, with rubber tires and internal combustion engine (often termed “trolley-replica buses”): please refer to bus useful life criteria above.
- (g) Ferries: The useful life of a ferry depends on several factors, including the type and use of the ferry. Until a final policy for ferries is determined, FTA offers the following suggested minimum useful lives:
 - 1 Passenger Ferries: 25 years.
 - 2 Other Ferries (without refurbishment): 30 years.
 - 3 Other Ferries (with refurbishment): 60 years.

Grant recipients should specify the expected useful life category in requests for bids when acquiring new vehicles.

FTA calculates the value of vehicles before the end of their minimum useful life on the basis of a formula using straight-line depreciation. Straight-line depreciation is a term most often used to indicate that personal property has declined in service potential. Removal of an FTA-funded vehicle from revenue service before the end of its minimum useful life, except for reasons of fire, collision, or natural disaster, leaves the recipient liable to FTA for the Federal share of the vehicle’s remaining value. In the case of Project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent

of insurance coverage. Consistent with this policy, the suggested vehicle useful life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty.

- (2) Spare Ratio Policies. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage (100 vehicles required and 20 spare vehicles results in a 20 percent spare ratio).

Spare ratios will be taken into account during the review of grant applications proposing to replace, rebuild, or add vehicles. The basis for determining a reasonable spare ratio takes local circumstances into account, but generally, the number of spare vehicles in the active fleet for recipients operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum service.

For purposes of the spare ratio calculation, “vehicles operated in maximum service” is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, and on the week and day that maximum service is provided. It excludes atypical days and one-time special events. Scheduled standby vehicles are permitted to be included as “vehicles operated in maximum service.”

For each grant application to replace, rebuild, or add vehicles, a grant recipient must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, and the recipient’s conformance with FTA’s spare ratio guidelines. A recipient is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered before the grant award.

- (3) Contingency Fleet. Vehicles may be placed in an inactive contingency fleet, or “stored,” in preparation for emergencies. No vehicle may be placed in this inactive contingency fleet unless the vehicle has reached the end of its minimum useful life.

Vehicles held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan, updated as necessary, to support the continuation of a contingency fleet. A contingency plan is not an application requirement, although FTA may request information about the contingency fleet when reviewing grant applications. Contingency plans are also subject to review during FTA’s oversight reviews, including the triennial reviews required for recipients of the Urbanized Area Formula Program (49 U.S.C. 5307). Any rolling stock not supported by a contingency plan will be considered part of the active fleet. Since vehicles in the contingency fleet are not part of the active fleet, they do not count in the calculation of spare ratio.

- c. Requirements Related to the Purchase of Vehicles. Grant recipients requesting funds for the purchase of vehicles must meet certain FTA requirements.
- (1) Rolling Stock Status Report. Grant recipients seeking assistance to undertake fleet and service expansion should describe new markets they intend to serve. The application should address vehicle needs, fleet size, and spare ratio. Official property records (or a Rolling Stock Status Report), in which future needs (expansion and replacement) are discussed, must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and statewide transportation planning processes, in which case summary information and precise reference to the earlier material will be acceptable. Depending on the degree of expansion, the grant recipient may wish to make available a map indicating the fleet and service expansion locations.

In planning for service expansion, local criteria should be used in the identification of feasible opportunities for new or expanded routes. These criteria are often based on demographic measures and are used to identify geographic locations that are good candidates for new transit service. The recipient should take care to explore all areas within the region. Areas that are currently served by transit should also be considered since they may have potential for different types of service.

Candidate areas should then be subjected to a more detailed analysis. Established service design standards suggesting the type and level of service that should be provided (for example, a minimum of 60-minute headways for all routes, or a 12-hour service day) should be included in that analysis. A "Fleet Status" example that may assist the grant recipient in addressing expansion appears in Appendix C of this circular.

- (2) Eligibility of Components for Funding. Normally, vehicle components such as spare parts are considered routine purchases and should be acquired using funding from the Urbanized (Section 5307) or Nonurbanized Area (Section 5311) Formula Programs. However, if the grant recipient can show that it would be cost-effective, a limited number of major "spare part" components may be purchased along with the vehicles under the Capital Investment Program. This policy generally applies only when vehicles are being procured for new transit systems, or for extensions and expansions of existing systems that result in a much larger fleet size. However, the policy may also be applied when acquiring replacement vehicles so long as the grant recipient can show that this approach is cost-effective.
- (3) Pre-Award and Post-Delivery Review of Buses. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement" on FTA's website:

http://www.fta.dot.gov/laws/leg_reg_5423.html. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post-delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas with a population greater than 200,000), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size.

- (4) Bus Testing. Any new model bus, as well as models with significant changes, must be tested at the FTA-sponsored test facility in Altoona, Pennsylvania, before Federal funds may be expended to purchase them. This bus testing requirement at 49 U.S.C. 5318(e) applies to buses and modified vans used in transit service, including new bus and van models using alternative fuels such as methanol, ethanol, and compressed natural gas (CNG).

FTA does not require a vehicle manufacturer to test its model before bidding. However, grant recipients acquiring any new bus model or any bus model with a major change in configuration or components must certify that the model will have been tested and the grant recipient will have received a copy of the test report prepared on the bus model before the final acceptance of the first vehicle.

FTA's Bus Testing regulation, at 49 CFR Part 665, defines a new model bus as one not used in public transportation service in the United States before October 1, 1988, or one used in such service but which, after September 30, 1988, is being produced with a major change in configuration or components. A major change in configuration is defined as a change which may have a significant impact on vehicle handling and stability or structural integrity. A significant impact is an effect that could result in an unsafe vehicle characteristic, such as a dangerous operating condition or failure of a structural element. A major change in components is defined as a change in one or more of the vehicle's major components such as the engine, transmission, suspension, axle, or steering.

Partial testing is allowed for vehicle models that previously have been fully tested but are being produced with significant changes. Only those tests that affect specific components or parts of the vehicle and that may produce significantly different data from previous tests must be performed.

Vehicles are tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. FTA and the manufacturer together pay the bus testing fees.

Bus testing is not required for unmodified mass-produced vans. Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines. Reports on new model buses or buses with significant changes can be obtained from the Pennsylvania Transportation Institute Bus Testing and Research Center, Duncansville, PA 16635. The telephone number is: 814-695-3404, Fax: 814-695-4069.

- (5) Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR Part 661). FTA's Buy America requirements at 49 CFR Part 661 differ from Federal Buy American regulations at 48 CFR Part 25. The former applies to third party contracts funded by FTA. The latter applies to direct Federal procurements. FTA strongly advises recipients to review these regulations, as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement.
 - (6) Disadvantaged Business Enterprises (DBE's). Recipients shall ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid-opening that the manufacturer, which is the apparent contract recipient, is in fact in compliance with Part 26. For further guidance, contact FTA Regional Civil Rights Officers.
- d. Replacing FTA-Funded Vehicles. FTA has established several policies to ensure that vehicles acquired with Federal funds are maintained and remain in transit use for a minimum useful life.
- (1) Replacement at End of Minimum Useful life. A vehicle proposed to be replaced must have achieved at least the minimum useful life. For purposes of bus replacement grant applications, the age of the bus to be replaced is determined by the number of years of service or mileage at the time the proposed replacement bus will be introduced into service, or when the bus was taken out of service.
 - (2) Replacement Before the End of Minimum Useful life. Early replacement of a vehicle prior to the end of its minimum useful life requires FTA approval. If a vehicle is replaced before it has achieved its minimum useful life, the recipient has the option of returning to FTA an amount equal to the remaining Federal interest

in the vehicle or applying the “Like-Kind Exchange” policy (discussed below) and placing an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest in a federally funded vehicle during its minimum useful life, a straight-line depreciation formula is used. For example, a bus with a 12-year minimum useful life, or 500,000 miles, will decrease in value each year by one-twelfth of its original purchase price. Similarly, the Federal interest in the bus decreases each year by one-twelfth of the amount of the Federal grant that was awarded for its purchase. Alternatively, using straight-line depreciation based on mileage, the value decreases for each mile driven by 1/500,000 of the original purchase price, and the Federal interest in the bus decreases by 1/500,000 for each mile driven. The unamortized value of the remaining useful life per unit is the greater value obtained by calculating the straight-line depreciation based on either miles or years.

- (3) Use of Like-Kind Exchange Policy. With prior FTA approval, a vehicle may be traded in or sold before the end of its minimum useful life, if a recipient so chooses. In lieu of returning the Federal share to FTA, a recipient may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. “Like-Kind” means exchanging a bus for a bus or a rail vehicle for a rail vehicle, with similar useful lives. Under the like-kind exchange policy, proceeds from the vehicle sales are not returned to FTA; instead, all proceeds are re-invested in acquisition of the like-kind replacement vehicle. If sales proceeds are less than the amount of the Federal interest in the vehicle at the time it is being replaced, the recipient is responsible for providing the difference, along with the recipient’s local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest of the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.

See, “Example of Like-Kind Exchange Transaction for Transit Bus,” in Appendix C of this circular for a sample calculation for the like-kind replacement of a heavy-duty bus, illustrating the sale of a bus at the bus’s mid-life.

- e. Rebuilding Policies. A recipient may choose to rebuild a vehicle rather than dispose of it. The vehicle to be rebuilt should be at the end of its minimum useful life, as previously described, and in need of major structural and/or mechanical rebuilding. The age of the bus is determined by its years or mileage in service at the time the rebuilding begins. The minimum extension of useful life for a bus is four years. Bus rebuilding work must be procured competitively from private sector sources, unless there are mitigating circumstances. In-house rebuilding must not interfere with normal maintenance activities.

With few exceptions, a vehicle rebuilt with FTA funds must be brought into compliance with the Americans with Disabilities Act (ADA) if that vehicle is not already in compliance. For additional information, see 49 CFR 37.75 for remanufacture of non-rail vehicles.

- f. Requirements Related to Accessories and Miscellaneous Equipment. A grant application may include certain miscellaneous items separate from the costs of a bus procurement or facilities project. For example, a recipient may apply for mobile radios, bus stop signs or shelters, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The application must explain the rationale or need for each request. FTA does not require a separate justification if, for example, a farebox or radio is included in the cost of a new bus, or shop equipment is included in the cost of a new maintenance facility.
8. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded through the Bus Program. Requirements common to all Capital Investment Program applications appear in Chapter VI, "Other Provisions," of this circular.
- a. General Philosophy. FTA generally assists in building two kinds of facilities under the Bus Program:
 - (1) facilities that support transit operations, such as maintenance garages and administrative buildings; and
 - (2) facilities that provide passenger amenities and extend into the built environment, such as bus terminals, stations, shelters, and park-and-ride lots as well as intermodal facilities that include both transit and intercity bus services.
 - b. Useful Life of Facilities. Determining the useful life of a facility must take into consideration factors such as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of 40–50 years for the minimum useful life of a bus terminal, station, or intermodal facility. Based on any of the methods identified in FTA Circular 5010, "Grants Management Requirements" section on "Useful Life of Project Property," a railroad or highway structure has a minimum useful life of 50 years, and most other buildings and facilities (concrete, steel, and frame construction) 40 years.
 - c. Mixed-Use Projects. Recipients often choose to pursue projects that have both transit and non-transit elements; or they may construct a transit facility and, at a later date, incorporate non-transit elements. FTA encourages full use of real property and facilities purchased and constructed with Federal funds. Joint Development is an eligible capital expense under 49 U.S.C. 5302(a)(1)(G). FTA's Joint Development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. For further information, see FTA's website for the *Federal Register* notice, 72 FR 5788, February 7, 2007, adopting

Final Agency Guidance on the Eligibility of Joint Development Improvements Under Federal Transit Law. FTA's approach to reviewing projects containing both transit and non-transit elements is reflected in the following examples:

- (1) A project designed to improve pedestrian access in the immediate vicinity of and connecting to a transit bus station may be eligible for Capital Investment Program funding. The grant recipient should explain how the project benefits public transportation.
 - (2) A recipient may lease portions of an FTA-funded facility to other entities in accordance with FTA's joint development guidance (72 FR 5788, Feb. 7, 2007). For example, a recipient may lease part of a bus facility's lobby for use as a small concession stand. It is important to note that certain revenue that a recipient derives from leasing may be considered by FTA to be "program income" according to the standard established in 49 CFR 18.25, and, therefore, may in turn be used for capital or operating expenses.
 - (3) A recipient may use FTA funds to construct, renovate, or improve an intercity bus or rail station or terminal provided the terminal meets the eligibility criteria of 49 U.S.C. 5302(a)(1)(G).
- d. Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the grant recipient's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a grant recipient currently operating 20 vehicles, a request for a bus maintenance garage that will accommodate 20 vehicles and have space for a 10 to 25 percent vehicle increase would be considered an acceptable grant request. For the same transit agency, a grant request for a garage accommodating 40 vehicles would not be acceptable, unless the grant recipient could demonstrate its need, willingness, and ability to expand its fleet to 40 vehicles in a relatively short time. In either case, however, the purchase of enough land for the future expansion of the fleet and supporting facilities may be justifiable.
- e. Project Staging. When applying for a grant to build a facility, a grant recipient must be able to fully describe the project and estimate the cost of the facility. Prior planning for the project may include a feasibility study/needs assessment for the project that provides preliminary cost estimates, funding sources, and possible site locations. The first request for funds would be for engineering and design, which would include costs for development of an environmental document, and real estate appraisals. Once FTA has reviewed and approved the environmental documentation, funds may be requested for land acquisition and construction.
- f. Planning Justifications. There must be a planning basis for every project or for every group of projects. Accordingly, FTA requires recipients to include the planning justification in the Transportation Electronic Award and Management (TEAM) system grant application. Planning activities are eligible under the Section 5307 Urbanized Area Formula Program. Feasibility studies at varying levels of detail should be

undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a grant recipient may choose to reference and summarize pertinent parts of documents in which results of project studies were reported (for example, transportation plans, unified planning work programs (UPWPs), and management systems). FTA may request copies of studies or summaries of study results upon reviewing a grant application. The paragraphs that follow provide additional guidance for various kinds of facilities projects:

- (1) Passenger Shelters. A program for bus shelters should be developed for the existing and proposed network based on the operator's shelter criteria, and, in the case of significant increases, should be described in the grant application. A map indicating the transit network and shelter location should be developed and available upon request.
 - (2) Transfer Facility or Transportation Center. The basis for a new transfer facility or transportation center should be documented in a planning study. Elements would include a determination of transit demand and other uses, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, an evaluation and selection of sites if a new facility is warranted, preliminary concept design and cost estimate of the transit transfer facility, development of a staging and financing plan, and environmental documentation for the new facility.
 - (3) Park-and-Ride Facilities. The basis for a new park-and-ride lot should be documented in a feasibility study. Generally, activities would include an evaluation of demand and service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.
 - (4) Maintenance and Administrative Facilities. The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a feasibility study. Activities would include an evaluation of the condition and adequacy of the existing facility, development of site evaluation criteria, identification and evaluation of alternative sites based upon site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.
9. CLEAN FUELS GRANT PROGRAM. Section 3010 of SAFETEA-LU amended 49 U.S.C. 5308, commonly referred to as the Clean Fuels Grant Program, from a formula-based to a discretionary grant program.

The purpose of the program is two-fold. First, the program was developed to assist nonattainment and maintenance areas in achieving or maintaining the National Ambient Air Quality Standards (NAAQSs) for ozone and carbon monoxide (CO). Second, the

program supports emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.

Additionally, buses purchased through the Section 5309 Bus Program may be clean fuel vehicles.

Congress may allocate funds appropriated for Section 5308 to specific projects. If discretionary funds are available, FTA will issue a Notice of Funding Availability and solicit applications. FTA has issued a final rule for the program at 49 CFR Part 624.

- a. Funds Availability. Funds are available to an eligible project for the year of apportionment plus two years after the fiscal year for which the amount is made available or appropriated. Any amount that remains unobligated at the end of the three-year period will be added to the amount made available in the following fiscal year.
- b. Eligible Recipients. Designated recipients, for urbanized areas with a population of 200,000 or more; and States, for urbanized areas with a population of less than 200,000, in nonattainment or maintenance areas, are eligible to apply for Clean Fuels funds.

An eligible recipient operates in an area that is either a nonattainment area or a maintenance area for ozone or carbon monoxide.

- c. Eligible Projects. An eligible project means a project in a nonattainment or maintenance area and includes:
 - (1) purchasing or leasing clean fuel buses and constructing new or improving existing public transportation facilities to accommodate clean fuel buses;
 - (2) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses;
 - (3) constructing new or improved existing public transportation facilities to accommodate clean fuel buses; and
 - (4) at the discretion of the Secretary, may include projects located in nonattainment or maintenance areas relating to clean fuel, bio-diesel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

The vehicles must be powered by clean natural gas (CNG), liquefied natural gas (LNG), biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell, or clean diesel, to the extent allowed under 49 U.S.C. 5308.

Although purchase of clean diesel buses is an eligible project, funding is limited to not more than 25 percent of the amount made available each fiscal year for the Clean Fuels Grant Program.

- d. Federal Share. The Federal share of eligible project expenses for the base vehicle is 80 percent. The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the Clean Air Act, 42 U.S.C. 7401 *et seq.*
- (1) The Federal share for eligible projects undertaken for the purpose of complying with or maintaining compliance with the CAA is limited to 90 percent of the net incremental cost of the project or activity. For example, a recipient constructing a new maintenance facility may want to include a fueling station for CNG buses. The maintenance facility is not eligible for the 90 percent Federal share, but the cost of adding the station is eligible. Recipients should provide documentation with the grant application supporting these requests.

For administrative simplicity, FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases. The 83 percent is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the Clean Air Act. The 83 percent Federal share does not apply to facilities, for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed on a case-by-case basis as part of the grant application process.

- (2) The Federal share for capital costs not attributable to compliance with the CAA is 80 percent.

CHAPTER IV

FIXED GUIDEWAY MODERNIZATION

1. INTRODUCTION AND BACKGROUND. This chapter discusses those aspects of the Capital Investment Program that pertain specifically to fixed guideway modernization and identifies the application requirements particular to fixed guideway modernization projects. The grant applicant is directed also to Chapter VI, "Other Provisions," of this circular, which identifies the requirements common to all Capital Investment Program applications. Funding for fixed guideway modernization is apportioned by statutory formula.
2. APPORTIONMENTS SCHEDULE. FTA publishes the fiscal year's (FY's) apportionments for fixed guideway modernization every year in the *Federal Register*; at the same time it publishes the apportionments of Urbanized Area Formula (Section 5307) Program funds. FTA apportions the Urbanized Area Formula funds within 10 days of the enactment of the annual U.S. Department of Transportation Appropriations Act or on October 10, whichever is later.
3. LENGTH OF TIME FUNDS ARE AVAILABLE. Fixed guideway modernization funds are available to the urbanized area during the fiscal year in which they are apportioned plus three additional years. Any of the apportioned funds remaining unobligated to the urbanized area after that period will revert to FTA and will be added to the amount available for apportionment to fixed guideway modernization projects in the next fiscal year.
4. FORMULA APPORTIONMENT. The formula apportionment contains seven tiers. The allocation of funding under the first tier is a fixed amount. The second, third, and fourth tiers are apportionments based on the number of fixed guideway revenue miles of service and number of fixed guideway route miles for segments of fixed guideway systems used to determine apportionments for FY 1997. The fifth, sixth, and seventh tiers are apportionments based on the latest available route miles and revenue vehicle miles on segments at least 7-years-old as reported to the National Transit Database (NTD). In accordance with 49 U.S.C. 5337, the fixed guideway modernization formula allocates funds by seven tiers as follows:
 - a. Tier 1. The first \$497,700,000 is apportioned to the following urbanized areas: Baltimore \$8,372,000; Boston \$38,948,000; Chicago/Northwestern Indiana \$78,169,000; Cleveland \$9,509,500; New Orleans \$1,730,588; New York \$176,034,461; Northeastern New Jersey \$50,604,653; Philadelphia/Southern New Jersey \$58,924,764; Pittsburgh \$13,662,463; San Francisco \$33,989,571; Southwestern Connecticut \$27,755,000.
 - b. Tier 2. The next \$70,000,000 is apportioned as follows: Tier 2A: 50 percent to areas identified in Tier 1; and Tier 2B: 50 percent to other urbanized areas that received funding for fixed guideway modernization in FY 1997. The apportionments for both

Tiers 2A and 2B are based on the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for fixed guideway modernization in FY 1997.

- c. Tier 3. The next \$5,700,000 is apportioned as follows: Pittsburgh, 61.76 percent; Cleveland, 10.73 percent; New Orleans, 5.79 percent; the remaining 21.72 percent is apportioned to areas in Tier 2B on the basis of the fixed guideway tier formula factors used in FY 1997.
 - d. Tier 4. The next \$186,600,000 is apportioned to all eligible areas on the basis of the fixed guideway tier formula factors used in FY 1997.
 - e. Tier 5. The next \$70,000,000 is apportioned as follows: 65 percent to the urbanized areas specified in Tier I, and 35 percent to all other urbanized areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least 7-years-old as reported to the NTD.
 - f. Tier 6. The next \$50,000,000 will be apportioned as follows: 60 percent to the urbanized areas specified in Tier I, and 40 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years as of the FY the funds are made available. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least 7-years-old as reported to the NTD.
 - g. Tier 7. Any remaining amounts will be apportioned as follows: 50 percent to the urbanized areas specified in Tier I, and 50 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least 7-years-old as reported to the NTD. While systems must generally be in urbanized areas over 200,000 to qualify, Morgantown, West Virginia, is included by a special provision in the law.
5. SET-ASIDE FOR PROJECT MANAGEMENT OVERSIGHT. FTA is authorized to set aside 1 percent of the Capital Investment Program funds to contract for oversight of major capital projects and to conduct safety, procurement, management, and financial compliance reviews and audits. FTA sets aside the funds for these purposes before apportionment of the fixed guideway modernization funds.
 6. ELIGIBLE RECIPIENTS. Eligible recipients include public entities in the urbanized areas to which funds are apportioned.
 7. ELIGIBLE PROJECTS. Capital projects to modernize or improve fixed guideway systems to maintain a state of good repair are eligible for funding. Projects include, but are not limited to, the purchase and rehabilitation of rolling stock (including railcars, locomotives, work trains, and ferryboats), track, line equipment and structures, signals and

communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, and operational support equipment (including computer hardware and software).

NOTE: While funds are apportioned based only on fixed guideway segments that have been in operation seven years or longer, a recipient may use the funds apportioned to it for eligible modernization projects on any part of its fixed guideway system.

8. RELATIONSHIP TO URBANIZED AREA FORMULA FUNDING. Fixed guideway modernization projects may also employ Urbanized Area Formula Program funding authorized by 49 U.S.C. 5307. When a project uses both Capital Investment Program funding and Urbanized Area Formula Program funding, it may be efficient to submit the grant applications at the same time. The grant applicant should discuss the best approach with the appropriate FTA Regional Office.
9. REQUIREMENTS OF FIXED GUIDEWAY MODERNIZATION PROJECTS.
 - a. Inclusion in the Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP). A fixed guideway modernization project in an urbanized area must be included in the TIP approved by the Metropolitan Planning Organization (MPO) and in the STIP developed by the State Department of Transportation (State DOT) and approved by FTA and the Federal Highway Administration (FHWA), either individually or in a project grouping in accordance with 23 CFR 450.216 and 450.324.
 - b. Environmental Considerations.
 - (1) Categorical Exclusions (CEs). Most fixed guideway modernization projects do not involve significant environmental impacts and, therefore, do not require extensive environmental documentation. In the FHWA/FTA environmental regulation (23 CFR Part 771), such a project is called a CE because it is categorically excluded from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS). CEs fall into two categories, those that are listed specifically in 23 CFR 771.117(c) and need no further analysis, and those that require additional documentation (23 CFR 771.117(d)) in order to assure their suitability for CE. Applicants should consult each list to determine whether a particular project may be categorically excluded from the need to prepare either an EA or an EIS.
 - (2) CEs on the “(d) List.” Even though some fixed guideway modernization projects involve more construction and greater potential for off-site impacts, these projects may, nevertheless, qualify as documented CEs. Experience has shown that these types of projects can be completed without having significant environmental impacts if they are carefully designed and located. FTA may approve the designation of these projects as documented CEs if the grant applicant provides documentation demonstrating that no significant adverse environmental effects

will occur. In some cases, FTA will be able to approve a documented CE based only on the grant applicant's project description showing that no significant environmental impacts will occur. In other cases, FTA may require the grant applicant to conduct limited environmental studies (such as an analysis of the impact of bridge reconstruction on surrounding wetlands and the river itself) before the project is approved as a documented CE. If a grant applicant proposes to rehabilitate a historic transportation facility, the applicant must negotiate an agreement with the requisite historic preservation agencies before FTA can approve the project as a documented CE.

If the number or nature of the environmental impacts precludes FTA from approving a CE or documented CE for the project, the grant applicant must then prepare and seek public comment on an EA, which evaluates the impacts and discusses alternatives as required by Section 102(2)(E) of the National Environmental Policy Act (NEPA). After the applicant has completed the EA public comment process, FTA will review the record to determine if a finding of no significant impact (FONSI) is appropriate.

If at any time during the preparation and review of CE documentation or an EA it becomes apparent that the project will have significant environmental or community impacts, FTA will require the preparation of an EIS. Fixed guideway modernization projects have only rarely required EISs. In some cases, the applicant can and should consider the selection of a more appropriate site for the project and thereby avoid the need for an EIS, but relocating the project is not always possible. For example, a fixed guideway modernization project involving substantial reconstruction of an existing guideway and relocation of stations may be similar to a New Starts project in terms of its impacts, particularly if the project establishes or restores high capacity transit service in one or more communities unaccustomed to such service.

Federal regulations place limitations on project development while the NEPA process is being conducted. Grant applicants should contact the appropriate FTA regional office for further information.

- c. Clean Air Act (CAA) Compliance. CAA conformity requirements are covered in Chapter VI. Fixed guideway modernization projects are generally exempt from these conformity requirements, unless FTA determines otherwise. This exemption is justified because fixed guideway modernization projects generally have neutral effects on the air quality of the project area and are intended to maintain the current level of transit service. Examples include: purchase of new rail cars; rehabilitation of track and trackbed; reconstruction of power, signal, and communication systems; renovation of terminals, stations, and storage and maintenance facilities; and new construction of certain types of facilities. The complete list of exempt projects is found in 40 CFR 93.126. The grant applicant should consult with the appropriate FTA Regional Office

to ensure that the specific project is consistent with the exemption in the Environmental Protection Agency (EPA) transportation conformity regulation.

d. Requirements Related to Fixed Guideway Rolling Stock.

- (1) Useful life Policy. In the case of rail vehicles acquired with FTA assistance, FTA has established a minimum useful life of 25 years. Useful life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. The useful life in years refers to total time in normal transit service, not time spent stockpiled or otherwise unavailable for regular transit use. A recipient that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The rationality of such methodologies will be subject to examination, particularly if the recipient proposes to retire a vehicle before FTA's useful life requirement in years has expired.

Regardless of the reasons, when a recipient removes a vehicle financed by FTA from service before expiration of its minimum useful life, the recipient is legally obligated to FTA for an amount equal to the Federal share of the vehicle's remaining value, as explained further below. The value of a vehicle before the end of its minimum useful life is calculated on the basis of straight-line depreciation.

(2) Replacement Policies.

- (a) Replacement at End of Minimum Useful Life. Before a recipient may replace an old rail vehicle with a new rail vehicle, the old vehicle must have reached or exceeded its 25-year minimum useful life. For purposes of a rail vehicle replacement project, the age of the vehicle to be replaced is its age at the time the new vehicle is introduced into service. FTA's 25-year useful life requirement is a minimum standard.
- (b) Early Disposition Policy. If a vehicle is replaced before the end of its minimum useful life, the grant applicant has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or using FTA's Like-Kind Exchange policy (discussed below) and putting an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.
- (c) Use of Like-Kind Exchange Policy. With prior FTA approval, a vehicle may be traded in or sold before the end of its minimum useful life, if a recipient so chooses. In lieu of returning the Federal share to FTA, a recipient may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-Kind" means exchanging a bus for a bus or a rail vehicle for a rail vehicle, with similar service lives. Under the like-kind exchange policy, proceeds from the vehicle sales are not returned to FTA; instead, all proceeds are re-invested in acquisition of the like-kind replacement vehicle. If sales proceeds are less than the amount of the Federal

interest in the vehicle at the time it is being replaced, the recipient is responsible for providing the difference, along with the recipient's local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest of the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.

See, "Example of Like-Kind Exchange Transaction for Transit Bus," in Appendix C for a sample calculation for the like-kind replacement of a vehicle at mid-life.

- (3) Rebuilding. "Rebuilding costs," defined as rehabilitation and mid-life overhaul, are eligible for capital assistance. Any rail vehicle that will be rebuilt must have an accumulated useful life of at least 12 years (mid-life rebuild) or must have reached the end of its minimum useful life (end-of-life rebuild). The minimum extension of useful life is 10 years.
 - (4) Spare Ratio Policy. Spare ratio for bus fleets can be determined using the calculations involving buses discussed in Chapter III. Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as the acceptable spare ratio for rail fleets. Nevertheless, rail operators should be aware that the grant applicant's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined as part of the grant application review whenever FTA assistance is requested to purchase rail vehicles. As in the calculation of the spare ratio for bus fleets, scheduled standby fixed guideway vehicles are permitted to be included as "vehicles operated in maximum service."
- e. Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements" on FTA's website: http://www.fta.dot.gov/laws/leg_reg_5424.html. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post-delivery review to assure compliance with its bid specifications, Buy America requirements, Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas).

- f. Procurement Activities Before a Grant is Awarded. Under some circumstances, grant applicants for fixed guideway modernization funds that want to proceed with a transit project before Federal funds are obligated may use pre-award authority to incur costs using the grant applicant's non-Federal funds with the understanding that the costs incurred may be reimbursable if an FTA grant is awarded for the project. Such actions before FTA approval of a grant may include a grant applicant's contracting with a third party for equipment or services. Grant applicants are advised to follow FTA Circular 4220, "Third Party Contracting Requirements," when contracting in advance of FTA approval of the grant application, in order to avoid reimbursement problems if Federal funds become available. Project activities in advance of Federal funds, such as letters of no prejudice (LONP), are the topic of Chapter VI, Section 14 of this circular. Pre-award authority is not available prior to completion of the appropriate environmental analysis and inclusion of the project in a STIP.
- g. Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR Part 661). FTA's Buy America requirements of 49 CFR Part 661 differ from Federal Buy American regulations located at 48 CFR Part 25. The former applies to third party contracts funded by FTA. The latter applies to direct Federal procurements. FTA strongly advises its recipients to review these regulations, as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement.
- h. Major Capital Projects. On occasion, a fixed guideway modernization project will be identified as a major capital project. FTA defines a major capital project as:
- (1) any New Start,
 - (2) rail rehabilitation or modernization with a total project cost in excess of \$100 million, or
 - (3) any project the FTA Administrator identifies as a major capital project because the Project Management Oversight Program will benefit the agency or the recipient.

In the event a fixed guideway modernization project is identified as a major capital investment project, an applicant must carry out a project management plan (PMP) and must apply value engineering techniques to the project. The elements of a PMP appear in 49 U.S.C. 5327(a). FTA regulations describing basic requirements, to include grant requirements of a PMP, can be found at 49 CFR Part 633. If a project is identified as a major capital investment project, the applicant must submit the PMP in time for FTA to review the applicant's plan in conjunction with its fixed guideway modernization grant application. Within 60 days of receiving the PMP, FTA will make a determination either to approve or disapprove the plan, or FTA will notify the grant applicant that it was unable to complete the review. If FTA disapproves a PMP, FTA will provide its reasons for disapproval to the applicant.

For more information about major capital investment projects, the grant applicant should refer to Chapter V, “New Starts/Small Starts Program,” and, in particular, Sections 12 and 13 of this circular, concerning PMPs and value engineering.

CHAPTER V

NEW STARTS/SMALL STARTS PROGRAM

1. INTRODUCTION AND BACKGROUND. FTA uses the term “New Starts” to mean a project that involves building a new fixed guideway system or extending an existing fixed guideway that will have a total cost of \$250 million or more, or for which the project sponsor is requesting more than \$75 million in Section 5309 New Starts funds. A New Starts project can be a light rail line, rapid rail (heavy rail), commuter rail, automated fixed guideway system (such as a “people mover”), or a busway/high-occupancy vehicle (HOV) facility, or an extension of any of these. New Starts projects generally cost many millions of dollars, and their development involves complex analyses of possible changes in local travel patterns, economic development conditions, and environmental quality that could occur if the New Starts project were to be built.

A “Small Start” means a project requesting less than \$75 million in Section 5309 New Starts funding, with a total project cost of less than \$250 million. Small Starts projects must either (a) meet the definition of a fixed guideway for at least 50 percent of the project length in the peak period or (b) be a corridor-based bus project with 10 minute peak/15 minute off-peak headways or better while operating at least 14 hours per weekday with at least three of the following four elements: substantial transit stations, traffic signal priority/pre-emption, to the extent, if any, that there are traffic signals on the corridor, low-floor vehicles or level boarding, and branding of the proposed service.

A “Very Small Start,” as a subset of Small Starts, must meet all the eligibility requirements of Small Starts plus be in corridors with at least 3,000 average weekday existing riders who will benefit from the proposed project; and a total capital cost less than \$50 million (including all project elements) and less than \$3 million per mile, exclusive of rolling stock.

In addition to the information found in this circular, the reader is directed to the New Starts rule at 49 CFR Part 611, as well as FTA’s New Starts website

http://www.fta.dot.gov/planning/planning_environment_5221.html, for the most up-to-date guidance and requirements for the New Starts Program.

2. ALLOCATION OF FUNDS AND PERIOD OF AVAILABILITY. Funding is appropriated by Congress each fiscal year (FY). These annual appropriations may include funding designations for specific projects or purposes. It is important to note that these allocations are subject to change by subsequent appropriations or other acts of Congress. Within its discretion, FTA may allocate any New Starts funds appropriated but not allocated by Congress.

Funds designated for specific New Starts/Small Starts projects remain available for obligation for three fiscal years, which includes the fiscal year in which the amount is appropriated plus two additional years. For example, funds apportioned in FY 2008 are

available until the end of FY 2010 (September 30, 2010). New Starts/Small Starts program funds not obligated in an FTA grant by the end of this period will generally be made available for other projects.

FTA is authorized to set aside 1 percent of the Capital Investment Program funds to contract for oversight of major capital projects and to conduct safety, procurement, management, and financial compliance reviews and audits. FTA sets aside the funds for these purposes before apportionment of the New Starts Program funds.

3. **ELIGIBLE APPLICANTS.** Public agencies, including States; municipalities and other subdivisions of States; public agencies and the combination of one or more States; and public corporations, boards, and commissions established under State law are eligible applicants for New Starts/Small Starts funds.
4. **ELIGIBLE PROJECTS.** Eligible projects include New Starts, Small Starts, and Very Small Starts, as defined above. These projects may include intercity bus and intercity rail stations and terminals that are part of joint development projects, in accordance with FTA guidance on the eligibility of joint development improvements under Federal transit law, published in the *Federal Register* (72 FR 5788, Feb. 7, 2007). In addition, the Secretary may make grants to assist State and local governmental authorities in financing the development of corridors to support fixed guideway systems, including protecting rights-of-way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park-and-ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased public transportation usage in the corridor.

Candidates for Capital Investment Program funding must successfully complete the appropriate steps in the capital investment planning and project development process. Proposed projects competing for New Starts or Small Starts funds are evaluated on the basis of how well they meet project justification and local financial commitment criteria identified by 49 U.S.C. 5309 (d) and (e). The grant applicant is encouraged to make contact with the appropriate Regional Office to discuss the process.

While funds from the Metropolitan Planning Program (MPP), State Planning and Research Program (SPRP), Urbanized Area Formula Program, Alternatives Analysis Program, flexible Federal Highway Administration (FHWA) funds, and State and local resources can be used in project planning activities, Capital Investment Program funding can only be used once FTA has approved the project into preliminary engineering (PE). Since applications for Federal grant funding for New Starts, Small Starts, and Very Small Starts are similar to other Capital Investment Program applications, a grant applicant should refer to Chapter VI, "Other Provisions," of this circular. The similarity with other projects has several notable exceptions: (a) FTA has a formal rating process for evaluating competing New Starts, Small Starts, and Very Small Starts projects; (b) New Starts projects often require more detailed environmental documentation under the National Environmental Policy Act (NEPA), such as an environmental assessment (EA) or environmental impact statement (EIS); (c) New Starts and Small Starts projects require submission of a project

management plan (PMP) and the use of value engineering; and (d) New Starts projects in construction require execution of a Full Funding Grant Agreement (FFGA) between FTA and the applicant, and Small Starts and Very Small Starts projects in construction may require execution of a Project Construction Grant Agreement (PCGA) between FTA and the applicant.

Section 5309 New Starts funds cannot be used for any activity, including a NEPA-related activity, which occurs prior to the approval of a New Starts project into PE or a Small Starts project into project development. Section 5339 (Alternatives Analysis Program), Section 5307 (Urbanized Area Formula program), and flexible highway funds are available for NEPA work conducted prior to PE approval (for New Starts) or project development approval (for Small Starts). Section 5309 New Starts funds, however, as well as Section 5307 and flexible highway funds, can be used for NEPA work conducted after PE approval (for New Starts) or project development approval (for Small Starts).

Because a New Starts or Small Starts project may entail construction of bus facilities and acquisition of buses, acquisition of rail or other fixed guideway vehicles, or construction of a new fixed guideway system or its extension, the reader is reminded to consult the other chapters in this circular that pertain to the components of the grant application at hand. When, for example, buses are to be purchased as part of a New Starts, Small Starts, or Very Small Starts project, grant application requirements associated with bus acquisitions apply, and the grant applicant should refer to Chapter III, "Buses and Bus Facilities."

5. PLANNING AND PROJECT DEVELOPMENT PROCESS. In order to ensure that New Starts and Small Starts projects meet the requirements of 49 U.S.C. 5309, FTA requires project applicants to undertake a defined planning and project development process as described in the joint FTA and FHWA planning and environmental regulations (23 CFR Part 450, 49 CFR Part 613, 23 CFR Part 771). The planning regulations were updated in 2007. The full text of the regulations can be found in the *Federal Register*, (72 FR 7261, Feb. 14, 2007).
 - a. Objectives. Local transportation planning agencies and implementing agencies such as State transportation departments, transit operators, and other units of general purpose local government develop transportation plans, programs, and projects. The planning process is designed to provide the following:
 - (1) a mechanism for identifying regional transportation needs and developing strategies to meet these needs;
 - (2) a logical structure to help local decision makers develop regional transportation plans and advance projects from initial conception through design and construction;
 - (3) sound technical information on costs, benefits, and impacts so that local decision makers can make informed choices from among myriad possible alternatives; and

- (4) a forum for collaborative decisionmaking by local transportation, land use, and resource agencies, with appropriate involvement of interest groups and the general public.
- b. Phases. The capital investment process involves specific phases of activity leading from project conception to revenue operation. For New Starts projects, these phases include:
- (1) Systems Planning at a regional level,
 - (2) Alternatives analysis at a corridor level,
 - (3) Preliminary engineering,
 - (4) Final Design, and
 - (5) Construction.

For Small Starts and Very Small Starts projects, the PE and final design phases are merged into one phase referred to as project development. The other phases are the same as for New Starts projects.

As proposals advance through the alternatives analysis phase, the participating State and local planning and implementing agencies, working in collaboration, may drop alternatives from consideration as information on costs, benefits, and impacts is developed. This narrows the range of available alternatives until eventually one alternative or strategy (the Locally Preferred Alternative (LPA)) is selected for implementation and advancement into PE (for New Starts projects) or project development (for Small Starts and Very Small Starts projects).

In each phase, local agencies undertake the technical studies to develop the proposals. FTA monitors the work, providing technical assistance and oversight. Local officials must obtain FTA approval to advance a project proposal into PE and final design (New Starts) or project development (Small Starts and Very Small Starts). Even if no FTA funds are used for the planning stages of a proposed project (systems planning and alternatives analysis), FTA strongly encourages local agencies to work early and closely with FTA to ensure development of the appropriate studies and resulting documents to avoid delays. FTA cannot approve funds for the later stages of project development if the earlier stages have not met the requirements of 49 U.S.C. 5309 for New Starts and Small Starts projects.

- c. Description of Each Phase.
- (1) Systems Planning. “Planning” refers to the continuing, cooperative, and comprehensive urban transportation planning process that exists in each urbanized area of the country. The process is carried out by the designated Metropolitan

Planning Organization (MPO) in cooperation with the State government and operators of publicly owned transit services.

During planning, local officials conduct assessments of transportation conditions throughout the region. Regional goals and objectives are developed or updated, data on regional traffic patterns are collected, and future land use and travel are projected. A wide range of multimodal alternatives is examined leading to the adoption of policies, plans, and Transportation Improvement Programs (TIPs). Transportation plans and programs must be financially constrained and, in nonattainment areas, must conform to State implementation plans for air quality. "Financially constrained" or "fiscal constraint," as defined in 23 CFR 450.104, means that the metropolitan transportation plan, TIP, and Statewide Transportation Improvement Program (STIP) includes sufficient information for demonstrating that projects in the metropolitan transportation plan, TIP, and STIP can be implemented using committed, available, or reasonably available revenue sources, with reasonable assurance that the federally supported transportation system is being adequately operated and maintained.

For the TIP and the STIP, financial constraint/fiscal constraint applies to each program year. Additionally, projects in air quality nonattainment and maintenance areas can be included in the first two years of the TIP and STIP only if funds are "available" or "committed." The Federal share requested for these projects should not exceed the amounts the locality can reasonably expect on the basis of history and current FTA and FHWA statutory authorizations.

Planning can be financed from a variety of sources including Urbanized Area Formula Program funds, MPP funds, and SPRP funds administered by FTA. Planning is also supported with FHWA planning funds. Flexible funds (e.g., Surface Transportation Program (STP), National Highway System, Congestion Mitigation and Air Quality (CMAQ) may be used for certain planning activities (See Chapter II, Subsection 8.e. of this circular regarding flexible funds). Section 5309 funds may not be used for planning activities.

- (2) Alternatives Analysis. Where the regional planning process identifies the likely need for a major capital investment to adequately address transportation problems in a given corridor, local stakeholders will typically initiate an alternatives analysis to determine which of several alternative improvements best meets these corridor needs. The purpose of the alternatives analysis is to identify and compare the costs, benefits, and impacts of an array of transportation alternatives as a means of providing local decision makers with the information necessary to determine and implement the most appropriate transportation solutions in priority corridors. Broad consensus is reached on the type of improvement(s) that best meets the locally defined goals and objectives for the specific corridor. The alternatives considered are subject to various analyses of the pertinent issues in order to make

an intelligent selection of a preferred transportation design concept and scope from the alternatives available.

Key elements of the alternatives analysis include: a description of the transportation problem in the corridor, a specification of an evaluation framework for assessing the performance of potential alternatives that would address the problem, a definition of the alternatives to be considered, and an evaluation of the alternatives in terms of how they best meet local goals and objectives and have the most realistic opportunity for funding. The outcome of this process is the selection of a locally preferred alternative (LPA). The MPO reviews and modifies the regional long-range transportation plan as appropriate to include the LPA.

Requests to initiate PE for New Starts projects and project development for Small Starts and Very Small Starts projects may only be submitted to FTA after the LPA has been adopted into the fiscally constrained long-range transportation plan.

Alternatives Analysis is not an eligible project under 49 U.S.C. 5309; however, it is eligible under 49 U.S.C. 5339.

- (3) Preliminary Engineering (PE). FTA can approve the initiation of PE for a New Starts project only when the project meets certain specified criteria as described in 49 U.S.C. 5309(d). FTA must determine that a New Starts project is justified based on a comprehensive review that considers mobility improvements, cost-effectiveness, operating efficiencies, environmental benefits, economic development, transit supportive land use, and other factors. FTA must also determine that the New Starts project is supported by an acceptable degree of local financial commitment. Lastly, FTA must determine whether the project sponsor demonstrates the technical capacity to undertake the next phase of project development.

During PE, the local agency refines the design of the LPA; develops more precise estimates of costs and impacts, completes the environmental process required under NEPA, updates and further develops the project management plan to ensure construction quality and financial control, and works to obtain funding commitments of non-Federal funds. FTA defines the PE phase within the New Starts Program as the process of finalizing the project definition (scope, cost, and financial plan) such that all cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the FTA New Starts financial contribution needed to implement the project.

NOTE: For Small Starts projects, the PE and final design phases are merged into one phase referred to as project development. The other phases are the same as for New Starts projects. FTA can approve the initiation of project development for a Small Starts project only when the project meets certain specified criteria as described in 49 U.S.C. 5309(e). FTA must determine that a Small Starts project is

justified based on a review of cost-effectiveness, transit supportive land use, and economic development. FTA must also determine that the Small Starts project is supported by an acceptable degree of local financial commitment. Lastly, FTA must determine whether the project sponsor demonstrates the technical capacity to undertake the next phase of project development.

When project development of a Small Starts project is sufficiently advanced that the capital cost estimate and project impacts are well established, FTA may enter into a PCGA for a Small Starts project. The PCGA binds the local agency to complete construction of the project within a fixed time schedule, sets a fixed ceiling on the total Federal contribution, and establishes a schedule for Federal contributions.

- (4) Final Design. Local agencies acquire right-of-way and produce the plans, specifications, and estimates necessary to construct the project. When final design of a New Starts project is sufficiently advanced that the capital cost estimate and project impacts are well established, FTA may enter into an FFGA with the applicant for a New Starts project. The FFGA binds the local agency to complete construction of the project within a fixed time schedule, sets a fixed ceiling on the total Federal contribution, and establishes a schedule for Federal contributions.
- (5) Construction. Construction includes physical construction, procurement of vehicles and equipment, project administration, testing of equipment (for example, signal equipment or rolling stock), integrated testing, system certification, pre-revenue service, and start-up.

Start-up cost is defined as cost occurring as a result of the testing and start-up phase of a project, which provides the linkage between Construction and Revenue Service. The purpose of this phase is to accept the newly constructed or modernized transit project after it is verified that the project meets the contractual specifications by performing system, performance, and integration testing. State Safety Oversight certification, where required, must be obtained before revenue service commences.

6. ENVIRONMENTAL PROTECTION. Regulations governing the preparation and review of environmental documents can be found at 23 CFR Part 771. FTA takes an expansive view of environmental analysis and typically includes in its analysis NEPA requirements as well as the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, and Section 4(f) of the Department of Transportation (DOT) Act, 49 U.S.C. 303(b) and 303(c). The following discussion provides supplementary information about environmental requirements specific to New Starts projects.

Many New Starts projects (including Small Starts and Very Small Starts) involve significant environmental impacts. Before FTA may award capital assistance for final design and construction of a New Starts/Small Starts project, the social, economic, and environmental impacts of the project, as well as reasonable alternatives to the proposed

project, must be analyzed and documented in an EIS or an EA, as required by the regulations unless the project qualifies as a categorical exclusion (CE). New Starts projects that normally require an EIS include:

- a. new construction or extension of fixed-rail transit facilities such as heavy (rapid) rail, light rail, commuter rail, streetcars, and automated guideway transit facilities; and
- b. new construction or extension of a separate roadway for buses or high-occupancy vehicles (HOVs) not located within an existing highway facility.

An EIS is prepared in two phases, draft and final. The draft EIS can be prepared during alternatives analysis and serves as the basis for a decision on general mode (i.e., type of fixed guideway) and alignment. Otherwise, the draft EIS can be prepared during PE. The draft EIS must identify the impacts of the alternatives, reflect coordination with appropriate Federal, State, and local resource agencies on the impacts, and discuss avoidance, minimization, and mitigation of any adverse impacts. The draft EIS must be provided to agencies with jurisdiction or an interest in the project and to the general public for review and comment.

The final EIS, which identifies the preferred alternative, must be completed during PE. As appropriate, the final EIS must address the comments received in one of the following ways: changing the project location or design; committing to specific mitigation measures or environmental enhancements; or including a written justification in the final EIS of the applicant's reasons for not changing the project in response to a specific comment.

Joint FHWA/FTA environmental regulations state that until FTA issues a record of decision (ROD), no action concerning the proposal shall be taken which would (1) have an adverse environmental impact; or (2) limit the choice of reasonable alternatives. If FTA is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within FTA's jurisdiction that would meet either of the criteria listed above, FTA will promptly notify the applicant that FTA will take appropriate action to ensure that the objectives and procedures of NEPA are achieved. While work on a required program EIS is in progress and the action is not covered by an existing program statement, FTA will not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action: a) is justified independently of the program; b) is itself accompanied by an adequate EIS; and c) will not prejudice the ultimate decision on the program. FTA may not issue a ROD until 30 days after the final EIS is filed with the Environmental Protection Agency (EPA) and it publishes a notice of availability in the *Federal Register*.

Some New Starts projects require little new right-of-way and, therefore, have less potential for off-site impacts. Examples include commuter rail on an existing freight rail line where train frequencies will be increased only marginally, or conversion of an existing highway median to HOV/bus lanes. For these kinds of projects, the grant applicant must prepare an EA which, like an EIS, analyzes the impacts of the proposed project, evaluates alternatives (location or design), and reflects coordination with other appropriate agencies. An EA is

subject to public comment and FTA review to determine if a finding of no significant impact (FONSI) is appropriate. If no significant environmental impacts are identified during the preparation of an EA, FTA will complete the environmental review process by issuing a FONSI. However, if significant environmental impacts are identified during the preparation of an EA, the more rigorous EIS process must be followed.

The grant applicant should note particularly that FTA will not award Federal assistance to support the final design or construction of a project until FTA takes one of the following actions: determines that the project qualifies for a CE or documented CE (as defined in 23 CFR 771.117(c) and 771.117(d)), issues a FONSI, or approves the final EIS and issues a ROD. FTA strongly encourages local agencies to work early and closely with FTA to facilitate complete and expeditious NEPA review and documentation.

7. CLEAN AIR ACT COMPLIANCE. New Starts projects (including Small Starts and Very Small Starts), including extensions of existing fixed guideway systems, may have consequences for air quality at both the regional and local levels and must be analyzed according to the requirements of EPA's transportation conformity regulation in nonattainment and maintenance areas. At the regional or corridor scale, the effects of a New Starts project on mode share and travel patterns within the region should be assessed in the development of the metropolitan transportation plan and TIP. The regional emissions analyses for the plan and TIP are conducted by the MPO, but the grant applicant or project sponsor is responsible for providing a sufficient description of the project design concept and scope to permit an assessment of the proposed project's effects on the area's transportation network. Both the MPO and FTA must make conformity determinations for the plan and TIP. Past analyses of New Starts projects in the context of the long-range transportation plan have shown small but positive impacts on the regional emissions burden. The potential for greater emission reductions from a New Starts project depends to a great extent on the implementation of complementary measures to support transit use in the region or corridor, such as travel demand management actions and land-use controls to support transit.

Certain parts of a fixed guideway project, however, may cause localized adverse air quality impacts; for example, large parking lots or structures at stations or terminals may lead to elevated levels of carbon monoxide (CO) during periods of peak use. The localized effects of these projects are usually assessed by means of air quality dispersion modeling. Air quality dispersion modeling is typically done during the environmental analysis phase of the New Starts project when decisions concerning design and location are being made. Results of the air quality analysis and the project-level conformity determination are contained in the EA or final EIS for the project.

In general, a New Starts project is treated as a regionally significant project for purposes of the air quality conformity requirements in nonattainment and maintenance areas. As a result, a New Starts project will usually be required to comply with the most technical or extensive requirements of EPA's conformity regulation. A grant applicant should consult with the FTA Regional Office to become familiar with Clean Air Act (CAA) requirements.

8. AVAILABLE FUNDING AND THE NEED FOR PRIORITIES. In any given year, the amount of New Starts funds available is less than the amount of funds requested by grant applicants. Therefore, FTA will evaluate a New Starts project on its merits, and rank projects against one another.

FTA's role in establishing priorities for New Starts funding derives from 49 U.S.C. 5309(k)(1), which requires the Secretary of Transportation to transmit each February with the President's budget, a recommendation for the allocation of New Starts funding to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The required "Report on Funding Recommendations," identifies the most worthy New Starts and Small Starts projects that merit funding in the following fiscal year. FTA's criteria for making New Starts and Small Starts funding recommendations are described below in Section 9.

New Starts and Small Starts projects may also be eligible for funding—in whole or in part—under the Urbanized Area Formula Program (Section 5307) or Fixed Guideway Modernization Formula Program and, in the case of fixed guideway bus projects, under the Capital Investment Bus and Bus Facilities Program. (See FTA Circular 9030.1 for information on the Urbanized Area Formula Program, Chapter III of this circular for information on the Bus Program, and Chapter IV of this circular for information on Fixed Guideway Modernization).

The first priority for available funds is for those projects to which FTA has already awarded an FFGA or PCGA, or issued a "Letter of Intent" to obligate funds from future available appropriations.

9. FTA EVALUATION AND RATING PROCESS. In its annual "Report on Funding Recommendations," FTA uses a number of evaluation criteria to evaluate and rate projects requesting Federal grant funds, and presents to Congress its findings and recommendations for allocating New Starts funds. Criteria currently used include:
 - a. Project justification—Mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, transit supportive land use, economic development, and other factors.
 - b. Local financial commitment—The proposed non-Federal share of total project costs from sources other than the Section 5309 New Starts Program, the soundness of the capital finance plan, and the ability of the sponsoring agency to fund operation and maintenance of the entire system as planned once the guideway project is built.
 - c. Other factors—FTA may consider other factors if they are well documented and convincingly demonstrate benefits which are not otherwise captured by the other project justification criteria and measures. Examples of other factors include: environmental justice considerations and equity issues; opportunities for increased access to employment for low-income people and welfare to work initiatives; consideration of innovative financing, procurement, and construction techniques,

including design-build turnkey applications; whether a proposed project is a principal element of a congestion management strategy, in general, and an auto pricing strategy in particular; the extent to which the project addresses significant transportation problems or opportunities in a corridor; and any other factor which the New Starts project sponsor believes articulates the benefits of the proposed major transit capital investment but which is not captured within the other project justification criteria.

In addition, “readiness” is taken into consideration—the ability of the applicant to expend funds soon after they are appropriated by Congress and obligated by FTA.

The information used to address the New Starts/Small Starts project evaluation and rating criteria is developed as part of the local planning and project development process. From time to time FTA may issue policy statements that modify or clarify the project evaluation and rating criteria. For the most current information, visit FTA’s website: www.fta.dot.gov.

10. LETTER OF INTENT. At its discretion, FTA may issue a “Letter of Intent” to allocate a specific amount of New Starts funds for a project from a future available budget authority, in accordance with 49 U.S.C. 5309(g)(1). As a practical matter, a Letter of Intent serves to set aside the specified amount of funding for a particular New Starts or Small Starts project well in advance of that project being ready for construction under an FFGA or PCGA. When a Letter of Intent is issued for a fixed guideway project, the amount stipulated under the letter must be sufficient to complete at least an operable segment. FTA must provide 60-days’ notice to the House Committee on Transportation and Infrastructure, the Senate Committee on Banking, Housing, and Urban Affairs, and the House and Senate Committees on Appropriations before issuing a Letter of Intent. A Letter of Intent, in itself, is not an obligation of Federal funding nor is it an administrative commitment. All New Starts funds are subject to the availability of appropriations.
11. TIMING OF THE PROJECT DEVELOPMENT PROCESS. The length of time required for the process depends upon several factors, including:
 - a. Nature of the corridor;
 - b. Complexity of the project alternatives;
 - c. Magnitude and nature of potential environmental impacts;
 - d. Status of local planning data bases, e.g., socioeconomic, transportation systems data;
 - e. Quality of local analysis tools, e.g., travel demand forecasting, cost estimation;
 - f. Competence and motivation of local agency staff; and
 - g. Presence or absence of local consensus on how to proceed.

12. PROJECT MANAGEMENT PLAN (PMP). As a condition of Federal assistance, a grant applicant for a major capital investment project must prepare a PMP. A major capital investment project is defined as: any New Starts project or any fixed guideway modernization project generally valued at more than \$100 million, or any other project the Federal Transit Administrator determines to be a major capital investment project. A grant applicant for a New Starts project must submit the PMP in time for FTA to review the applicant's plan in conjunction with its New Starts grant application. Within 60 days of receiving the PMP, FTA will make a determination either to approve or disapprove the plan, or FTA will notify the grant applicant that it was unable to complete the review. If FTA disapproves a PMP, FTA must provide its reasons for disapproval to the applicant.

The grant applicant should refer to 49 U.S.C. 5327 (Project Management Oversight) and 49 CFR Part 633 (Project Management Oversight rule) to determine the amount of detail that must be provided. Generally, the PMP must address the following matters:

- a. Adequate staff with clear reporting relationships and responsibilities;
- b. Budget that covers the project management organization, its consultants, and other support costs;
- c. Construction schedule;
- d. Document control and recordkeeping system;
- e. Change order procedures;
- f. Appropriate organizational structures, management skills, and staffing levels throughout construction;
- g. Quality control and quality assurance functions;
- h. Materials testing policies and procedures;
- i. Internal plan implementation and reporting;
- j. Criteria and procedures for testing the operational system;
- k. Periodic updates of the plan;
- l. Commitment to make monthly budget and schedule submissions about the project; and
- m. Safety and Security Management, as required by FTA Circular 5800.1.

The grant applicant must agree to carry out the PMP approved by FTA; however, the PMP is a dynamic document for managing engineering, design, construction, and start-up of a project, and periodic updating is expected as the applicant implements the project. At the grant application stage, FTA expects the PMP to provide sufficient detail to demonstrate

the grant applicant's technical capacity and capability to carry out the project. The plan for managing later stages of the project may be laid out in general terms with a description of how and when the details will be developed, but the grant applicant must demonstrate that the plan will be developed and implemented as necessary to stay ahead of the implementation of the project.

13. VALUE ENGINEERING REQUIREMENTS. FTA encourages the application of value engineering (VE) to the planning, design, and construction of all federally assisted construction projects, and FTA policy requires its use on major capital projects.

VE is the systematic application of recognized techniques that identifies the function of a product or service, establishes a value for that function, and provides the necessary function reliably at the lowest overall cost. In all instances, the required function should be achieved at the lowest possible life-cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

Typically, a neutral multidisciplinary team, usually of five to seven people, conducts the VE review. Teams may include, for example, electrical engineers, civil engineers, systems engineers, electronic traction experts, signal engineers, maintenance experts, and operations experts.

The training of applicant staff members in VE techniques is an eligible project cost. Applicants are encouraged to use independent consultants with expertise in VE to prepare VE studies.

VE on a project should be performed early in the design process before major decisions have been completely incorporated into the design, at or near the end of PE. Some large or complex projects may need to conduct two VEs. After every VE review, applicants must provide information to the FTA Regional Office about the changes recommended by the VE team and the expected savings or other benefits.

14. FULL FUNDING GRANT AGREEMENT (FFGA)/PROJECT CONSTRUCTION GRANT AGREEMENT (PCGA). FTA uses an FFGA or a PCGA in providing Federal financial assistance for construction of New Starts and Small Starts projects, respectively. The Federal Transit Administrator also has the discretion to use an FFGA in awarding Federal assistance for other major capital projects. FTA cannot enter into an FFGA/PCGA for a New Starts/Small Starts project unless that project is authorized for final design and construction. The FFGA/PCGA defines the project, including cost and schedule; commits to a maximum level of Federal financial assistance (subject to Congressional appropriations); establishes the terms and conditions of Federal financial participation; covers the period of time for completion of the project; and helps to manage the project in accordance with Federal law. The FFGA/PCGA assures the applicant of predictable Federal financial support for the project (subject to Congressional appropriations) while placing a ceiling on the amount of that Federal support.

NEPA, the National Historic Preservation Act, Section 4(f) of the DOT Act of 1966, and FTA's implementing regulations prohibit FTA from taking any major action before completing the required environmental review processes. Hence, FTA will not enter into a FFGA/PCGA until the environmental review process is complete (CE, FONSI, or ROD).

Questions regarding FFGAs/PCGAs should be addressed to FTA regional offices.

15. BUY AMERICA. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR Part 661). FTA's Buy America requirements of 49 CFR Part 661 differ from Federal Buy American regulations codified at 48 CFR Part 25. The former applies to third party contracts funded by FTA. The latter applies to direct Federal procurements. FTA strongly advises its applicants to review these regulations, as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement.
16. USEFUL LIFE OF PROJECT PROPERTY. FTA provides a useful life policy for rolling stock, trolleys, ferries, and facilities. The useful life of rail vehicles is at least 25 years. At time of grant application, the recipient may propose an alternative useful life to be reviewed by FTA. A recipient that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The rationality of such methodologies will be subject to examination, particularly if the recipient proposes to retire a rail vehicle before FTA's useful life requirement in years has expired.
17. TECHNICAL ASSISTANCE. FTA offers a wide variety of training courses, guidance manuals, and other forms of technical assistance for New Starts/Small Starts planning and project development. Information on available technical assistance can be obtained from regional offices.

CHAPTER VI

OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements and guidance provided in this circular, FTA recipients are held to a number of FTA-specific and other Federal requirements. This chapter provides a summarized, alphabetical listing of those requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. Readers should use this chapter in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (via the Transportation Electronic Award and Management (TEAM) system) to establish or renew their funding relationship with FTA. The Master Agreement and the Certifications and Assurances represent the recipients' legal affirmation to abide by FTA and other Federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized throughout this chapter, as a reminder to grant recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement, the Certifications and Assurances on the FTA public website www.fta.dot.gov, the TEAM website (<http://ftateamweb.fta.dot.gov>), and in the references provided throughout this chapter.

Recipients are encouraged to contact the appropriate FTA Regional Office for more detail about these requirements. Some requirements call for extensive planning and should be addressed long before the applicant submits a grant application, and Regional Office staff can guide a grant recipient toward efficient action.

2. BUY AMERICA. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR Part 661). FTA's Buy America requirements of 49 CFR Part 661 differ from Federal Buy American regulations located at 48 CFR Part 25. The former applies to third party contracts funded by FTA. The latter applies to direct Federal procurements. FTA strongly advises its applicants to review these regulations, as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement.
3. CHARTER BUS SERVICES. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR Part 604—Charter Service, amended effective April 30, 2008 (73 FR 2326, Jan. 14, 2008). Each grant recipient must enter into an agreement with FTA that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of Certifications and Assurances. Charter service is defined based on whether a third party requests the service

or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter registration website (http://www.fta.dot.gov/laws/leg_reg_179.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register by city, by zip code, or for the entire United States. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered for that city or zip code. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information will void the notice and may subject the transit agency to a complaint from registered charter providers. The rule also provides for more detailed complaint procedures in the hopes of avoiding frivolous complaint filings. Finally, the rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance.

4. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
 - b. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
 - (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance;
 - (2) Department of Transportation (DOT) regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR Part 21;
 - (3) FTA Circular 4702.1 “Title VI and Title VI—Dependent Guidelines for FTA Recipients.” This document provides FTA recipients and subrecipients with

guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR Part 21), DOT's Order 5610.2 on Environmental Justice (62 FR 18377, Apr. 15, 1997), and DOT Policy Guidance Concerning Recipient's Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, Dec. 14, 2005);

- (4) DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. This Order describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities; and
 - (5) DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficient (LEP) Persons. This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.
- c. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations FTA may issue.
 - d. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 CFR Part 25, and with any implementing directives that DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
 - e. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services' (DHHS') implementing regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," (45 CFR Part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act" (29 CFR Part 1625), which prohibit employment discrimination against individuals on the basis of age.
 - f. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier

of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

- (1) Section 504 of the Rehabilitation Act of 1973 (Section 504), as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
 - (2) The Americans with Disabilities Act of 1990 (ADA, as amended (42 U.S.C. 12101 *et seq.*)), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities as well as imposes specific requirements on public and private providers of transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR Parts 27, 37, and 38. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities, including a private non-profit entity “standing in the shoes” of the State or designated recipient as a subrecipient providing fixed-route service, to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- g. Disadvantaged Business Enterprise (DBE). To the extent required by Federal law, regulation, or directive, the recipient agrees to take the following measures to make it possible for DBEs to participate in the project:
- (1) The recipient agrees and assures that it will comply with SAFETEA-LU Section 1101(b) (23 U.S.C. 101 note), which requires DOT to ensure that not less than 10 percent of funds authorized for highway and transit financial assistance programs be expended through small business concerns owned and controlled by socially and economically disadvantaged individuals.
 - (2) The recipient agrees and assures that it will comply with DOT regulations, 49 CFR Part 26—Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Among other provisions, this regulation requires certain recipients of DOT Federal financial assistance, namely State and local transportation agencies which meet a prescribed threshold, to

establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

- (3) The recipient agrees and assures that it will not discriminate on the basis of race, color, sex, national origin, or disability in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from DOT, or in the administration of its DBE program, and will comply with the requirements of 49 CFR Part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR Part 26 to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from DOT/FTA. As required by 49 CFR Part 26 and approved by DOT/FTA, the recipient's DBE Program is incorporated by reference and made part of the grant agreement or cooperative agreement. The recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the grant agreement or cooperative agreement. Upon notification by DOT/FTA to the recipient of a failure to implement its approved DBE program, DOT/FTA may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, (31 U.S.C. 3801 *et seq.*).

For further guidance, refer to the Federal laws, regulations, and Executive Orders cited in this chapter. FTA's Regional Civil Rights Officers or Headquarters Civil Rights Staff will also provide current guidance upon request.

5. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR Part 93), and they apply in areas that currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas) and also in areas that once violated the standards but have since been redesignated to attainment status by EPA (so-called maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and Transportation Improvement Programs (TIP). Determining conformity for transportation plans and TIPs is the responsibility of the Metropolitan Planning Organization (MPO). Determining conformity for individual projects is the project sponsor's responsibility. Major transit infrastructure projects, e.g., new fixed guideway projects and extensions, will be analyzed at both the regional and local scale.

The transportation conformity regulation reserves detailed air quality analysis for large projects which have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential

in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The FTA Regional Office can also provide information on selected provisions of other laws that support clean air objectives, such as the Federal Highway Administration's (FHWA's) Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Over the years, local transit agencies have benefited greatly from this program as a supplementary source of funding for transit. The CMAQ Program has its own eligibility requirements, available on FHWA's website at

<http://www.fhwa.dot.gov/environment/cmaq06gm.htm>.

6. **COMMERCIAL DRIVER'S LICENSE (CDL)**. All drivers of motor vehicles designed to transport 16 or more passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.

7. **DEBARMENT AND SUSPENSION**. The purpose of the Government-wide Debarment and Suspension (Nonprocurement) regulations (49 CFR Part 29) is to ensure that Federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration (GSA) maintains a website, at **<https://www.epls.gov>**, which is updated in real time as changes to the data occur. GSA's Excluded Parties List System (EPLS) provides a single comprehensive list of individuals and firms excluded by Federal government agencies from receiving Federal contracts or federally approved subcontracts and from certain types of Federal financial and nonfinancial assistance and benefits.
 - a. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 49 CFR Part 29, requires disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for federally required audit services (such as those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
 - b. Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.
 - c. The awarding party must verify that the person is not excluded or disqualified by:
 - (1) Checking the Excluded Parties List System (EPLS) maintained by the GSA and available at **<http://epls.gov>** (**NOTE:** Strongly recommended by FTA);
 - (2) Collecting a certification from the prospective awardee; or

- (3) Adding a clause or condition to the third party contract or subagreement with that awardee.
- d. In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under the these regulations.
8. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Investment Program, 5311 Nonurbanized Area Formula Program, and other programs as determined by the Secretary are required by 49 U.S.C. 5331 to establish Drug and Alcohol Testing Programs. The purpose of the testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Grant recipients must also certify annually that they are in compliance with DOT and FTA regulations concerning drug and alcohol testing (49 CFR Parts 40 and 655). Compliance with the regulations is a condition of FTA funding. Where applicable, recipients of FTA funding are required to comply with Federal Railroad Administration (FRA) (49 CFR Part 219), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR Part 382) and United States Coast Guard (USCG) (46 CFR Parts 4 and 16) regulations concerning drug and alcohol programs.

FTA's regulation (49 CFR Part 655) applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides [public] transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes subrecipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations. FTA's regulation does not apply to construction phases of funded projects. Contractors that supply newly manufactured equipment are excluded, as are facility construction workers. The regulation applies to the testing, start-up, and actual revenue operations of FTA-funded transit systems.

FTA's regulation requires testing of employees who perform a safety-sensitive function, which is defined at 49 CFR 655.4. The regulation requires the following six types of testing for illegal drug use and alcohol misuse: pre-employment (including transfer from a non-safety-sensitive position to a safety-sensitive position, and removal from the random pool for 90 days or more); reasonable suspicion; random; post-accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in 12 months after returning to duty).

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring

training, educating, and evaluating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR Part 655 Subpart D establishes alcohol concentration levels and prohibited behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration. Technical assistance materials and training information to help recipients implement the rules are available at FTA's website <http://transit-safety.volpe.dot.gov/DrugAndAlcohol/default.asp> or through contacting the FTA Office of Safety and Security, FTA Headquarters.

9. DRUG-FREE WORKPLACE. In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR Part 32, each recipient is required to maintain a Drug-Free Workplace for all employees and to have an anti-drug policy and awareness program. The recipient must agree that it will provide a Drug-Free Workplace and comply with all requirements of 49 CFR Part 32. These provisions apply only to FTA's direct recipients and do not extend to subrecipients.

The recipient is required to provide a written Drug-Free Workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations.

The ongoing Drug-Free Awareness Program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a Drug-Free Workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within 10 days of having received the notice. Within 30 days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the Drug-Free Workplace and Drug and Alcohol Testing rules are available on FTA's website <http://transit-safety.volpe.dot.gov/DrugAndAlcohol/default.asp> or by contacting FTA's Office of Safety and Security, FTA Headquarters, 1200 New Jersey Ave. SE., Washington, DC 20590.

10. ENVIRONMENTAL REVIEWS. The environmental review requirements are discussed in Chapters III, IV, and V of this circular as they apply to specific types of projects. Generally, recipients should screen potential projects when they are first identified to make an initial determination as to which projects clearly meet the FHWA/FTA criteria for categorical exclusions (CEs) and which projects may require an environmental assessment (EA) or an environmental impact statement (EIS). This should be coordinated with the

FTA Regional Office early in project development so that any necessary environmental analysis and review will not delay implementation. Any steps to develop the project will not be authorized (e.g., property acquisition, final design, and construction) until FTA makes a final environmental finding for the project (a record of decision (ROD), a finding of no significant impact (FONSI), or a CE.

11. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the Secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor and in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining “adequate assurance” that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign the Master Agreement.
- b. Transit Employee Protection. Before FTA may award a grant for capital or operating assistance, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance (49 U.S.C. 5333(b), originally Section 13(c) of the Urban Mass Transportation Act (UMT) Act of 1964). Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the law.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Employment Standards Administration, U.S. Department of Labor, Room N-5112, 200 Constitution Avenue NW., Washington, DC 20210; telephone 202-693-0126; fax 202-693-1342.

12. LEASE VERSUS BUY CONSIDERATIONS. A recipient may use capital funds to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. Recipients with pre-award authority must conduct the cost comparison before entering into the lease. Recipients should refer to FTA regulations for further details on conducting the cost effectiveness comparison (49 CFR Part 639).

Recipients should submit the cost comparison to the appropriate FTA Regional Office for review before entering into the lease or before approval of the grant which supports the lease. The cost comparison should be retained on file for later review or audit. Some types of capital leases call for more than a single up-front payment but still load the payment into the early years of an extended lease. If the payment is made over three or four years

instead of in a single lump-sum, the recipient must be able to complete the acquisition with local funds in the event FTA funds are not available in later years.

When a recipient receives a Congressional earmark for a project and proposes to enter into a capital lease for some element of the project, the recipient should submit the cost comparison for FTA approval as part of the grant application. Recipients should review the Office of Management and Budget (OMB) Circular A-94 for the necessary discount rate to be used in making the cost effectiveness determination. The circular can be found at <http://www.whitehouse.gov/omb/circulars/index.html>.

13. PRE-AWARD AND POST-DELIVERY REVIEWS. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements" on FTA's website:

http://www.fta.dot.gov/laws/leg_reg_5424.html. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post-delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas).

14. PRE-AWARD AUTHORITY.

- a. General. Pre-award authority allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant approval. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. Pre-award spending authority permits a recipient to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects.

The authorization of formula funds or appropriation of funds for discretionary projects and publication of those projects in FTA's annual *Federal Register* notice of Apportionments and Allocations triggers automatic pre-award authority for design and environmental work on the project. Following authorization of formula funds or appropriation and publication of discretionary projects, pre-award authority for other capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental record of decision (ROD), a finding of no significant impact (FONSI), or a determination that the

project is categorically excluded. The project must also be included in the Statewide Transportation Improvement Plan (STIP) prior to the exercise of pre-award authority.

FTA strongly encourages all recipients to consult with the appropriate FTA Regional Office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and Federal requirements.

- b. Conditions. In general, all Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. Specifically:
- (1) Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or an implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (2) All FTA statutory, procedural, and contractual requirements must be met.
 - (3) The recipient must take no action that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.
 - (4) Local funds expended by the recipient after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s). Local funds expended by the recipient before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (i.e., the completion of the National Environmental Policy Act (NEPA) process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.
 - (5) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall cost scope of activities and the prevailing statutory provisions and Congressional direction with respect to the Federal/local match ratio at the time the funds are obligated.
 - (6) For funds to which the pre-award authority applies, the authority expires when the funds remain unobligated or lapse at the end of the fiscal year.
 - (7) When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority.
 - (8) More information and updates regarding pre-award authority can be found in FTA's annual apportionment notice published in the *Federal Register*.

- c. For a project not covered by the automatic pre-award authority, including Capital Investment Program New Starts projects not yet under a Full Funding Grant Agreement (FFGA) or Project Construction Grant Agreement (PCGA) and bus projects that have not been announced via a *Federal Register* notice, a grant applicant that seeks to proceed with a transit project in advance of the availability of Federal funds may request that FTA issue a Letter of No Prejudice (LONP) for that project. An LONP permits a grant applicant to incur costs on a project using non-Federal resources with the understanding that the costs incurred after the LONP is issued may be reimbursable as eligible expenses or eligible for credit toward local matching share if the project should be approved for funding by FTA at a later date. Each LONP has an expiration date, which is the date beyond which funding cannot be requested retroactively for the project. The period covered by an LONP generally does not exceed five years. The conditions under which LONP authority may be used are the same as those for pre-award authority as described in the paragraphs above.
15. PRESIDENTIAL COIN ACT. In accordance with Pub. L. 109–145, beginning January 1, 2008, all transit systems that receive operational subsidies or any disbursement of funds from the Federal Government shall be fully capable of accepting and dispensing \$1 coins and must display signs and notices denoting such capability on the premises where coins or currency are accepted or dispensed, including on each vending machine.
16. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.

The most comprehensive FTA document regarding private sector participation requirements is a report titled “Private Enterprise Participation in Transportation Planning and Service Delivery.” The report is available on FTA’s website at:

http://www.fta.dot.gov/documents/Private_Enterprise_Brochure.doc or
http://www.fta.dot.gov/laws/leg_reg_180.html.

17. PROCUREMENT REQUIREMENTS. An applicant seeking Federal assistance pursuant to Federal transit laws as codified at 49 U.S.C. 5301 *et seq.*, to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third party procurement requirements. Procurement requirements can be found in 49 U.S.C. 5325, as well as in DOT regulations found in 49 CFR Part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) (the “common rule” or the “common grant rule”), which establish uniform administrative rules for Federal grants, Cooperative Agreements, and subawards to State, local, and Indian tribal governments. Provisions of the common rule pertaining to procurement requirements for FTA recipients are set forth at 49 CFR 18.36. Those requirements, as well as other

FTA specific provisions, are also set forth in FTA's Master Agreement (FTA MA(15) October 1, 2008, as amended) at Section 15, Procurement, updated annually with the issuance of each new Master Agreement. Finally, FTA has published additional guidance relative to recipients' compliance with third party procurement requirements in FTA Circular 4220.1 and its "Best Practices Procurement Manual," which can be found at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html. The regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process including planning, solicitation, award, administration, and documentation of all federally funded contracts.

Each recipient seeking FTA funds to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36, that its procurements and procurement system will comply with all applicable third party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any recipient failing to provide this certification, or that is found by FTA to have procurement practices and procurement systems that do not comply with Federal laws, regulations, and directives governing federally financed procurements, may be determined ineligible for award of Federal assistance.

18. **PROJECT INCLUSION IN TIP AND STIP.** Before FTA may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide planning process specified in 49 CFR Part 613 and 23 CFR Part 450. That is, all transit projects for which Federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan TIP approved by the MPO and the chief executive officer of a State and in a STIP that has been approved by FTA and FHWA. Projects not within metropolitan planning boundaries are required only to be in the STIP. The grant application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers or other identifying numbers and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s) within the appropriate section of TEAM. Section 5309 funds may be shown at a program level or project level in the TIP/STIP depending on local practice. Projects listed in the TIP and STIP must be derived from and consistent with the State's long range plan.
19. **PUBLIC HEARING REQUIREMENTS.** The public hearing requirements established in 49 U.S.C. 5323(b) will be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a public hearing on every draft EIS. FTA will also require a public hearing on EAs that have a high probability of being elevated to an EIS, thus ensuring that the applicant has complied with the public hearing requirement to be included in the environmental record for the project.

For projects not subject to NEPA requirements (i.e., categorical exclusions), 49 U.S.C. 5323(b) states that any application for a capital project that will "substantially affect a community, or the public transportation service of a community" shall include a certification that the applicant has:

- a. Provided an adequate opportunity for public review and comment on the project;
- b. After providing notice, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- c. Considered the economic, social, and environmental effects of the project; and
- d. Found that the project is consistent with official plans for developing the community.

Title 49 U.S.C. 5323(b)(2) further states, “Notice of a hearing . . . (A) shall include a concise description of the proposed project; and (B) shall be published in a newspaper of general circulation in the geographic area the project will serve.”

Title 49 U.S.C. 5323(b) must be read in concert with 49 U.S.C. 5324(b) which states that FTA must review the public comments and hearing transcript to ascertain that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that FTA must make a written finding to this effect.

FTA notes the public hearing requirements of 49 U.S.C. 5323(b) are separate and apart from the requirements for public participation in statewide and metropolitan transportation planning. All capital projects financially supported by FTA are subject to statewide transportation planning requirements and, in metropolitan areas, to metropolitan transportation planning requirements. FTA and FHWA have codified procedures for compliance with the statewide and metropolitan transportation planning statutory mandates—including the mandates for public participation in the development of long-range plans and TIPs—in the agencies’ joint planning regulations. (See, 23 CFR Part 450 and 49 CFR Part 613). The practical effect of these statewide and metropolitan transportation planning requirements is to provide the opportunity for the public to be informed about and comment on transportation investment decisions, regardless of whether that project will “substantially” affect a particular community and its public transportation service. These provisions apply to all projects for which FTA funds are being sought, regardless of whether they are considered a CE (such as bus purchases) or a documented CE.

20. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use Federal financial assistance in a project which will require the acquisition of real property, the applicant must provide assurances—required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR Part 24).

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR Part 24, are government-wide regulations that apply to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is

specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced persons. Recipients in the process of planning a federally assisted project that will require the displacement of persons should be aware of the regulatory need for relocation planning during the early stages of project development.

Title 49 CFR Part 24 is available from the Government Printing Office website at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html or on FHWA's website at: <http://www.fhwa.dot.gov/realestate/49cfr.htm>. Also, recipients should be aware of State laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contributed in-kind property must be appraised at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property.

21. RESTRICTIONS ON LOBBYING. Federal financial assistance may not be used to influence any Member of Congress or an officer or employee of any agency in connection with the making of any Federal contract, grant, or Cooperative Agreement. The State, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of non-Federal funds for such purposes (49 CFR Part 20).

Other Federal laws also govern lobbying activities. For example, Federal funds may not be used for lobbying Congressional Representatives or Senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using non-Federal funds for lobbying, so long as the required disclosures are made.

22. SAFETY AND SECURITY. FTA's authority in the area of transit safety is set forth in 49 U.S.C. 5329. Under this section, FTA may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under Chapter 53 in order to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it. FTA also may require local jurisdictions to submit a plan for eliminating, mitigating, or correcting the deficiency. Finally, FTA may withhold further financial assistance from any recipient that fails to correct any safety and security deficiency.

NOTE: FTA has entered into a Memorandum of Understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and Federal commitment

to bus safety, and supports a model bus safety program to which all the signatories of this agreement have agreed to subscribe. The program will also focus on addressing the needs of rural and small urban providers. The MOU is available on the APTA website at http://www.apta.com/services/safety/model_bus_program.cfm.

23. SCHOOL BUS TRANSPORTATION. Title 49 U.S.C. 5323(f) prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR Part 605) does permit regular service to be modified to accommodate school students along with the general public (so called “tripper service”). For the purpose of FTA’s school bus regulation, Headstart is a social service, not a school program. Rules for the Headstart Program limit the types of vehicles which may be used to transport children participating in a Headstart Program. FTA recipients may operate multi-functional vehicles which meet the safety requirements for school transportation, but may not provide exclusive school service.

APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA

1. PRE-APPLICATION STAGE.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the Transportation Electronic Award and Management (TEAM) system. Applicants must have access to FTA's TEAM system in order to enter a grant. If an applicant does not have access to TEAM, the applicant's representative should contact the appropriate FTA Regional Office for assistance. Contact information for FTA's regional offices can be found in Appendix D of this circular.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a federally approved Statewide Transportation Improvement Program (STIP) for capital projects or a Unified Planning Work Program (UPWP) for planning projects.
- c. Environmental Determination. The impact that a proposed FTA assisted project will have on the environment must be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the Capital Investment Program, or any other FTA grant program, must annually submit Certifications and Assurances that are applicable to the grant applicant's active and new grants during the fiscal year (FY). The Certifications and Assurances should be examined annually for changes, deletions, and additions.
- e. Civil Rights Submissions. Civil Rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, DBE Goals, and Americans with Disabilities Act (ADA) Paratransit Plan. FTA's Regional Civil Rights Officer must verify that all required Civil Rights submissions are current at the time that the grant application is entered into TEAM. The required documentation must be submitted before the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of Civil Rights submissions in the event a question concerning compliance should arise. (See Chapter VI, "Other Provisions," of this circular.) The Office of Civil Rights may also request additional information needed to affirm that the proposed project or elements thereof are in compliance with Federal civil rights requirements.

2. APPLICATION STAGE (TEAM INFORMATION). Applicants should submit their grant applications electronically through the TEAM system. TEAM is a database accessible via the Internet. The TEAM User Guide, which is available on the TEAM homepage at <http://ftateamweb.fta.dot.gov/fta-flash2b.html>, provides detailed information on how to

access and use FTA's TEAM system. The User Guide covers the creation, submission, award, and execution of a grant application; reporting requirements, grant amendments, budget revisions, and close-out procedures are also addressed. Information that should be entered into TEAM when preparing an application includes:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields in TEAM, including recipient address, contact information, union information, urbanized area (UZA) identification number, Congressional district(s), Date Universal Numbering System (DUNS) Number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.
- b. Project Information. Applicants should identify whether the application is a new grant, a grant amendment, or a budget revision. The project start/end date, program date, Executive Order 12372 review date found at <http://www.whitehouse.gov/news/orders>, Metropolitan Planning Organization (MPO) concurrence date (if applicable), and grant project costs must be identified.
 - (1) Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. The project description should also identify any subrecipients funded through the grant application and the projects being implemented by each subrecipient. There is a project description field as well as a specific text field for this information associated with each activity line item (ALI). Project activities must be sufficiently described to assist the reviewer in determining eligibility under the program.
 - (2) Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). All projects for capital funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and the Federal Highway Administration (FHWA). FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) in the most recently approved STIP on which the project(s) contained in the application is listed. The electronic system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities, the UPWP date should be entered here, if possible, or in the project details section.
 - (3) Earmarks. If the funding is being provided pursuant to a Congressional designation of funds ("earmark") under the Capital Investment Program, the applicant must identify the earmark being used and in what amount.
- c. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All sources of funds must be identified and confirmed. All rolling stock procurements must include vehicle description and fuel type; expansion activities must include discussion on vehicle needs. The project budget should reflect the precise

activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for specific funding programs. The grant budget may also include non-add scopes. A non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Non-add scopes are used for Intelligent Transportation Systems (ITS), security funds, funding allocated to tribal governments, and other special emphasis areas.

- d. Project Milestones. Estimated completion dates for all milestones should be provided; revenue vehicles have particular milestone requirements. If milestones are not pre-populated by the TEAM system for a particular ALI, use the add function to add milestones for that ALI to the grant application.
- e. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See, 23 CFR 771.115 and 771.117.) Grant applicants should refer to Part 771.117(c) and (d) for a listing of the Class II (categorical exclusion (CE)) projects. Many Capital Program projects meet the criteria for a CE and require no further action. However, if a project does not clearly meet the criteria for a CE, a grant applicant is strongly encouraged to contact FTA's Regional Office for assistance in determining the appropriate environmental review process and level of documentation necessary. Refer to Chapters III, IV, and V of this circular for more information on the environmental review process.
- f. Fleet Status. Applications submitted in TEAM requesting new or replacement revenue vehicles should include, on the Fleet Status Report page, a summary of the composition of the applicant's fleet. In the case of replacement, the applicant should state that the vehicles being replaced have met the minimum useful life criteria.

Official property records (or a Rolling Stock Status Report) must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and statewide transportation planning processes, in which case summary information and precise reference to the earlier material will be acceptable.

- g. Application Submission. Once FTA deems the activities eligible, and determines that all pre-application requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in TEAM by the authorized official of the applicant.
- h. Department of Labor Certification. Once the grant application has been submitted by the recipient, the application is forwarded to the Department of Labor (DOL). DOL must certify all Capital Program grants before FTA will approve them. Refer to Chapter VI, "Other Provisions," of this circular for more information on DOL certification.

- i. Congressional Notification Process. Consistent with Section 188 of Division K of the FY 2008 Consolidated Appropriations Act, FTA must notify Congress not less than 3 full business days before awarding discretionary grants over \$500,000. Subsequent appropriations acts should be reviewed for changes to this mandate. In addition, FTA provides Congressional Representatives with courtesy notification for all grants that contain earmarked funds.
- j. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements and other Federal requirements have been met, FTA awards and obligates funds requested in the grant.
- k. Grant Execution. After FTA has approved and awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. Grants that include pre-award activity require the submission of a Financial Status Report before grant execution.

3. APPLICATION CHECKLIST.

- a. The following checklist is intended to assist applicants in preparing a complete application.

Part I—Recipient Information		Part IV—Budget	
1.	Are Annual Certifications & Assurances pinned?	1.	Are ALI codes entered under the appropriate scope codes?
2.	Is the Recipient Contact, designated signator, Opinion of Counsel, Authorizing Resolution & other information complete?	2.	Have funding percentages been verified to ensure that Federal funds are not over the allowable share?
3.	Is UZA/Congressional District information entered and accurate?	3.	Does the funding amount entered in the budget match financial information entered in the “Project Information” field?
4.	Is union contact information entered and accurate?	a.	Federal Funds
5.	Has Civil Rights Program Documentation been approved by FTA?	b.	Local Match
6.	Has the applicant’s DUNS Number been entered in the appropriate field?	4.	Does the rolling stock (vehicle) line item contain accurate information such as:
Part II—Project Details		a.	Description
1.	Does the Project Description include adequate descriptive information of the project(s)? Is information on any	b.	Fuel Type

	subrecipients and their projects included?			
Part III—Project Information Have the following fields been completed if applicable:		5.	Details (Extended Budget Description)	
1.	New Application or Amendment?		a	Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item? For example, if vehicles are being replaced, a statement that the vehicles have met the applicable useful life criteria should be included in the extended budget description.
2.	Start/End Date?	6.	Where applicable, have non-add scopes been added to it that show the funds allocated to tribal governments or other areas of emphasis?	
3.	Program Date (STIP date)(UPWP if planning activities included)?	Part V—Project Milestones		
4.	Have control totals been entered?	1.	Are milestones listed for each ALI? (If an ALI does not have milestones, they must be added.)	
5.	If pre-award authority is applicable, has “yes” been selected?	2.	Have estimated completion dates been entered?	
6.	Has the EO 12372 Review been completed, if applicable?	Part VI—Environmental Findings (NEPA)		
7.	Has the earmark information been entered, if applicable?	1.	Has an environmental finding been entered for each ALI?	

4. ECHO INFORMATION.

- a. Office of Management and Budget (OMB) Circulars A-102, A-110, and 31 CFR Part 205, govern payment to recipients for financing operations under Federal grants and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA "ECHO System Users Manual for Recipients" at:

<http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>

ECHO Control Number
(ECN) _____

(For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

RECIPIENT INFORMATION	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER: ()
CONTACT PERSON NAME:	
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ()
	DATE: / /
AGENCY INFORMATION	
NAME: <i>Federal Transit Administration</i>	
ADDRESS: <i>400 Seventh Street SW., Room 9422, TBP-24, Washington, DC 20590</i>	
CONTACT PERSON NAME:	<i>202-366-9748</i>
FINANCIAL INSTITUTION INFORMATION (Note: Have Your Bank Complete This Section)	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()

NINE DIGIT ROUTING TRANSIT NUMBER: _____		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF REPRESENTATIVE:	DATE: //	FAX NUMBER: ()

b. Instructions for Completing ECHO Form:

- (1) Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, Agency will assign an ECHO Control Number.
- (2) Check appropriate box(es):
 - (a) Initial Setup.
 - (b) Change in Bank Information.
 - (c) Change in Recipient Information.
- (3) Fill out information in the appropriate section(s) listed below:
- (4) **Recipient Information Section**—Print or type the name of the recipient and address that will receive ECHO/ACH payments. Also include a contact person's name, date, telephone, and telefax numbers.
- (5) **Financial Institution Information Section**—Have your bank fill out this section. They should print or type the name and address of the financial institution that will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (recipient) account title, depositor (recipient) account number, and type of account (type can **ONLY** be designated as **Checking** or **Savings**), signature and title of representative, date, and telefax number.
- (6) Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.
- (7) If there are any questions, please call **202-366-1004** and ask for the agency's ACH contact.

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APPENDIX B

SECTION 5309 BUDGET INFORMATION

1. **BACKGROUND.** FTA has developed a single budget format of project scopes and activity line items that can be used for each of the FTA programs. A sample Approved Project Budget for each category of capital program funds is provided in the pages following this Budget Information section. The most recent scope and activity line item (ALI) Chart is available on the TEAM-Web homepage.
2. **OVERVIEW OF PROJECT BUDGET DOCUMENT.** Within a grant, there are often groups of activities related logically to each other; a group of related activities is called a project. Several projects form an overall program. A recipient may apply for a program of projects (POP) in a single grant. The project budget is designed to group activities for a single project or a POP within scopes. A scope includes related activities that have the same broad purpose:
 - a. **Scope and Activity Levels.** Grant applicants are referred to the FTA Scope & Activity Line Item (ALI) Codes Chart which is available on the TEAM homepage. The numbering of both the scope and activity levels of information on the Approved Project Budget is derived from the activity codes in TEAM.
 - b. **Sources of Federal Financial Assistance.** The final section of the budget form, Sources of Federal Financial Assistance, outlines by urbanized area how funding for the grant has been obligated by FTA. If a grant is being funded for the first time, no dollar amounts will appear in the "Previously Approved" column. This column is used only when a grant is being amended, to reflect the original amount of a grant. Since FTA's grants database is designed to store grant information in the context of "amendments," beginning with amendment "00," even the initial increment of funding for a grant is designated in the next column, the "Amendment Amount" column. The "Amendment Amount" column will be the same as the amount that appears in the "Total" column, if no additional funds are being added to the budget.
3. **PREPARING A PROJECT BUDGET.** The grant applicant should complete a project budget following the examples provided for each category of program funds. FTA will complete the information under the heading, "Sources of Federal Financial Assistance."

FTA Circular 5010 describes FTA's policies for approving budget revisions and grant amendments based on scopes and ALIs in an approved budget. When establishing a new project budget, recipients and FTA regional staff consider whether scopes should be broad or narrow based on the nature of the projects(s) and how much future flexibility the recipient may need to revise the budget.

Sample Budget for Bus Program Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-04-0001-00
Budget Number:	1—Budget Approved
Project Information:	purchase vans & rehab admin/maint facility

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
111-00 BUS—ROLLING STOCK	9	\$257,590.00	\$321,987.00
<u>ACTIVITY</u>			
11.12.15 BUY REPLACEMENT VAN	9	\$257,590.00	\$321,987.00
<u>SCOPE</u>			
114-00 BUS: SUPPORT EQUIP AND FACILITIES	0	\$21,631.00	\$27,039.00
<u>ACTIVITY</u>			
11.42.08 ACQUIRE—ADP SOFTWARE	0	\$9,596.00	\$11,995.00
11.42.20 ACQUIRE—MISC SUPPORT EQUIPMENT	0	\$1,552.00	\$1,940.00
11.44.03 REHAB/RENOVATE—ADMIN/MAINT FACILITY	0	\$10,483.00	\$13,104.00
<u>SCOPE</u>			
116-00 SIGNAL & COMM EQUIPMENT (BUS)	0	\$12,041.00	\$15,052.00
<u>ACTIVITY</u>			

11.62.03 PURCHASE RADIOS	0	\$4,192.00	\$5,241.00
11.62.20 PURCHASE MISC COMMUNICATIONS EQUIP	0	\$7,849.00	\$9,811.00
Estimated Total Eligible Cost:			\$364,078.00
Federal Share:			\$291,262.00
Local Share:			\$72,816.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Alternative Fuel Codes

11.12.15	BUY REPLACEMENT VAN	Gasoline
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Sample Budget for Fixed Guideway Modernization Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-05-0061
Budget Number:	4—Budget Approved
Project Information:	Fixed Guideway Modernization

Part 3: Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
121-00 RAIL—ROLLING STOCK	7	\$18,042,010.00	\$22,552,512.00
<u>ACTIVITY</u>			
12.15.20 REBUILD LIGHT RAIL CARS	7	\$18,042,010.00	\$22,552,512.00
<u>SCOPE</u>			
122-00 FIXED GUIDEWAY IMPROVEMENT PROGRAM	0	\$16,689,889.00	\$20,862,362.00
<u>ACTIVITY</u>			
12.24.03 REHAB/RENOV LINE EQUIP/STRUCTURES	0	\$14,892,800.00	\$18,616,000.00
12.71.02 FINAL DESIGN—3RD PARTY	0	\$409,526.00	\$511,908.00
12.72.08 FORCE ACCT CONSTRUCTION	0	\$363,563.00	\$454,454.00
12.72.11 FORCE ACCT—OTHER	0	\$0.00	\$0.00
12.79.00 PROJECT ADMINISTRATION (FIXED GUIDEWAY)	0	\$1,024,000.00	\$1,280,000.00
<u>SCOPE</u>			
127-00 OTHER CAPITAL ITEMS (FIXED GUIDEWAY)	0	\$7,600,000.00	\$9,500,000.00

<u>ACTIVITY</u>			
12.71.10 INFRASTRUCTURE INSPECTION PROGRAM	0	\$200,000.00	\$250,000.00
12.71.11 DEBT SERVICE PAYMENTS	0	\$7,400,000.00	\$9,250,000.00
Estimated Total Eligible Cost:			\$52,914,874.00
Federal Share:			\$42,331,899.00
Local Share:			\$10,582,975.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Alternative Fuel Codes

12.15.20	REBUILD LIGHT RAIL CARS	Electric Propulsion
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Sample Budget for New Starts Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-03-0001-00
Budget Number:	1—Budget Approved
Project Information:	New Starts Capital Projects

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
140-10 GUIDEWAY & TRACK ELEMENTS	0	\$2,770,399.00	\$5,806,640.00
<u>ACTIVITY</u>			
14.01.10 GUIDEWAY & TRACK ELEMENTS	0	\$2,770,399.00	\$5,806,640.00
<u>SCOPE</u>			
140-20 STATIONS, STOPS, TERMINALS, INTERMODAL	0	\$4,509,761.00	\$9,452,270.00
<u>ACTIVITY</u>			
14.02.20 STATIONS, STOPS, TERMINALS, INTERMODAL	0	\$4,509,761.00	\$9,452,270.00
<u>SCOPE</u>			
140-40 SITEWORK & SPECIAL CONDITIONS	0	\$9,301,897.00	\$19,496,390.00
<u>ACTIVITY</u>			
14.04.40 SITEWORK & SPECIAL CONDITIONS	0	\$9,301,897.00	\$19,496,390.00

<u>SCOPE</u>			
140-50 SYSTEMS	0	\$2,929,977.00	\$6,141,110.00
<u>ACTIVITY</u>			
14.05.50 SYSTEMS	0	\$2,929,977.00	\$6,141,110.00
<u>SCOPE</u>			
140-80 PROFESSIONAL SERVICES	0	\$5,432,966.00	\$11,387,270.00
<u>ACTIVITY</u>			
14.08.80 PROFESSIONAL SERVICES	0	\$5,432,966.00	\$11,387,270.00
Estimated Total Eligible Cost:			\$52,283,680.00
Federal Share:			\$24,945,000.00
Local Share:			\$27,338,680.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Sample Budget for Clean Fuels Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-58-0001-00
Budget Number:	1—Budget Approved
Project Information:	CLEAN FUEL BUS

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
111-00 BUS—ROLLING STOCK	1	\$453,420.00	\$566,775.00
<u>ACTIVITY</u>			
11.12.01 BUY REPLACEMENT 40-FT BUS	1	\$453,420.00	\$566,775.00
Estimated Total Eligible Cost:			\$566,775.00
Federal Share:			\$453,420.00
Local Share:			\$113,355.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Alternative Fuel Codes

11.12.01	BUY REPLACEMENT 40-FT BUS	Hybrid Electric
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APPENDIX C

SAMPLE DOCUMENTS AND OTHER EXAMPLES

- **Authorizing Resolution (SAMPLE)**
- **Fleet Status**
- **Opinion of Counsel**
- **Project Milestone Schedule**
- **Proceeds from Sale of Assets**

(SAMPLE) AUTHORIZING RESOLUTION

Resolution No. _____

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for Federal transportation assistance authorized by 49 U.S.C. chapter 53; Title 23 United States Code; and other Federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transit Administrator has been delegated authority to award Federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for Federal financial assistance will impose certain obligations upon the Applicant, and may require the Applicant to provide the local share of the project cost;

WHEREAS, the Applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for Federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration for Federal assistance authorized by 49 U.S.C. chapter 53; Title 23, United States Code; or other Federal statutes authorizing a project administered by the Federal Transit Administration. (If the Applicant is requesting Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, either alone or in addition other Federal assistance administered by the Federal Transit Administration, the resolution should state whether the Applicant is the Designated Recipient as defined by 49 U.S.C. Section 5307(a)(2), or whether the Applicant has received authority from the Designated Recipient to apply for Urbanized Area Formula Program assistance).

2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transit Administration requires before awarding a Federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute the grant and cooperative agreements with the Federal Transit Administration on behalf of (Legal Name of Applicant).

CERTIFICATION

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the

(Governing Body of the Applicant) held on (Month, Day, Year)

[If the Applicant has an official seal, impress here.]

(Signature of Recording Officer)

(Title of Recording Officer)

(Date)

(Name of Recipient)

FLEET STATUS

Example reflects a fleet expansion of three vehicles.

	Before Grant <u>Approval</u>	Amount of <u>Change</u>	After Grant <u>Approval</u>
I. Active Fleet			
A. Peak Requirement	_____43_____	_____3_____	_____46_____
B. Spares	_____6_____	_____0_____	_____6_____
C. Total (A+B)	_____49_____	_____3_____	_____52_____
D. Spare Ratio (B/A)	_____13.95%_____	_____0.00%_____	_____13.04%_____
II. Inactive Fleet			
A. Contingency Reserve	_____0_____	_____0_____	_____0_____
B. Pending Disposal	_____5_____	_____0_____	_____5_____
C. Total (A+B)	_____5_____	_____0_____	_____5_____
III. Total Fleet			
(I.C.+II.C)	_____54_____	_____3_____	_____57_____

Example of Like-Kind Exchange Transaction for Transit Bus

When Federal Interest is Re-invested in Replacement Transit Bus

1. A recipient purchased a new bus in 2005 for \$250,000; 80 percent of the total price, or \$200,000, was Federal funding while 20 percent, or \$50,000, was local. Thus, there was an initial \$200,000 "Federal interest" in the new vehicle.

2. Instead of keeping the bus in service for 12 years, the minimum useful life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.
3. Since the bus had a minimum useful life of 12 years and its depreciation was determined on a "straight-line" basis, the depreciated value of the vehicle after six years was half the original price, or \$125,000. The remaining Federal interest was 80 percent of that figure, \$100,000.
4. Assume, for example, the recipient realized \$100,000 from the sale of the 6-year-old bus, or \$25,000 less than the straight-line depreciated value of the original vehicle.
5. If the recipient were to purchase a new bus in 2011 for \$270,000, the transaction would look like this:

Net project cost calculation:	
Gross project cost of new bus	\$270,000
Less straight-line depreciated value of replaced bus.	- 125,000
Net project cost	\$145,000
Federal share 80%	116,000
Local share 20%	29,000
Sources of funds for new bus:	
Net sales proceeds from replaced bus	\$100,000
New local cash	
Straight-line depreciated value shortfall	\$25,000
Local share of net project cost	\$29,000
Federal share	\$116,000
TOTAL	\$270,000

The Federal interest in the new bus is \$216,000 (\$100,000 transferred from the old vehicle and \$116,000 in the new).

If the recipient had received more than \$125,000 in proceeds, all the proceeds (minus reasonable sales costs) would still have been applied as the Federal share to the new vehicle. FTA is entitled to have applied to the new vehicle the greater of the straight-line depreciation or the fair market value as evidenced by the sales proceeds.

(SAMPLE) OPINION OF COUNSEL

Name of Applicant

Address of Applicant

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for Federal transportation assistance authorized by 49 U.S.C. chapter 53; Title 23 United States Code; and other Federal statutes authorizing activities administered by the Federal Transit Administration.

(If the Applicant intends to use this opinion to qualify for Urbanized Area Formula Program assistance authorized by 49 U.S.C. Section 5307, the opinion must state whether the Applicant is the Designated Recipient as defined at 49 U.S.C. Section 5307(a)(2) or whether the Applicant has received authority from the Designated Recipient to apply for and receive Urbanized Area Formula Program assistance.)

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which Federal assistance is sought is set forth below:

1. _____ is authorized by (cite and quote from legal authority) to provide and assist transportation by _____

2. The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (cite source and provide a copy of, for example, of the local ordinance passed by City Council or other governing body authorizing funding for the local share),

3. I have reviewed the pertinent Federal, State, and local laws, and I have concluded that there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find that there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

Legal Counsel

(RECIPIENT)

(SAMPLE) PROJECT MILESTONE SCHEDULE

PROJECT NO.: XX-90-0162
MOST RECENT AMENDMENT NO.: N/A

TOTAL FTA SHARE:
\$3,300,000

MILESTONE SCHEDULE:

<u>Line Item Description</u>	<u>Milestone Description</u>	<u>Date</u>
<i>Capital Assistance:</i>		
Purchase 10 30-ft. buses	Bids advertised	Dec. 2004
	Contract	March 2005
	First bus delivery, acceptance	May 2005
	Last bus delivery, acceptance	March 2005
	Contract complete (final payment made)	May 2005
Purchase/install communications equipment	Bids advertised	April 2005
	Contract awarded	June 2005
	Contract complete	Sept. 2005
Engineering design for new facility	Request for proposals	Jan. 2006
	Contract awarded	March 2006
	Design completed	June 2006
	Contract closed (Final payment made)	July 2006
<i>Planning Assistance:</i>		
Needs Assessment for Maintenance Facility	RFP advertised	Dec. 2005
	Contract awarded	March 2006
	Study completed	July 2006
<i>Operating Assistance:</i>		
Op. Asst. for FY 2006	Final Disbursement	Sept. 2006

**PROCEEDS FROM THE SALE OF ASSETS
NO LONGER NEEDED FOR TRANSIT PURPOSES**

Title 49 U.S.C. 5334(h)(4) permits a recipient to apply the proceeds from the disposition of an asset no longer needed for transit purposes to a subsequent capital project. Section 5334(h)(4) reads, in pertinent part:

“(A) In general.—When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

(B) Use.—The net income from asset sales, uses or leases (including lease renewals) under this subsection shall be used by the recipient to reduce the gross project costs of other capital projects carried out under this chapter.”

A recipient intending to dispose of an asset in accordance with this section of transit law should inform FTA of its intentions before disposing of the asset. When the recipient receives proceeds from the disposition of the asset, the recipient is expected to establish in the recipient’s accounting system a record of liability (demonstrating that these funds are owed), which will be removed when the recipient uses the proceeds for a subsequent transit project.

When the recipient applies for a grant from FTA and applies the proceeds to the new transit project, the recipient should show the past transaction on the Grant Application screen of TEAM. The recipient should fill in the line “adjustment amount” to show that the proceeds (or a portion of the proceeds) from the earlier disposition are being applied to the project and are being used to reduce the total project cost (gross project cost). If appropriate, the recipient may also describe in the Extended Text Screen the actions the recipient has taken or intends to take.

EXAMPLE.

Recipient Disposes of Asset. Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. Assume the parcel is no longer needed for transit purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000.

Recipient Applies Proceeds to Subsequent FTA-Assisted Transit Project. Assume the recipient applies to FTA for assistance in purchasing a bus. The estimated cost of the bus is \$250,000. On the electronic application screen, the recipient is expected to report the use of the proceeds from the earlier sale of the asset in the following manner:

EXAMPLE

APPLICATION INFORMATION USING PROCEEDS FROM SALE OF ASSETS

(In Accordance with Section 5334(g)(4))

Project Control Totals:

Total Cost \$250,000

Adjustment Amount	\$50,000	<i>(proceeds from sale of asset)</i>
Eligible Project Cost	\$200,000	<i>(Net Project Cost)</i>
Total FTA Amount	\$160,000	<i>(80 percent of \$200,000)</i>
Total State Amount		<i>(not applicable for the example)</i>
Total Local Amount	\$40,000	<i>(20 percent of \$200,000)</i>

Other Fed. Funds: *(not applicable for the example)*

Special Condition Amount: *(not applicable for the example)*

APPENDIX D

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region I	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont	Volpe National Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865
Region II	New York, New Jersey, and Connecticut (Rail)	One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136
Region III	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia	1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260
Region IV	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U. S. Virgin Islands	230 Peachtree Street NW. Suite 800 Atlanta, Georgia 30303 Phone: 404-865-5600 Fax: 404-865-5605
Region V	Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin	200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351
Region VI	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas	819 Taylor St Room 8A36 Forth Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575
Region VII	Iowa, Kansas, Missouri, and Nebraska	901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
Region VIII	Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming	12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 Fax: 720-963-3333
Region IX	Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands	201 Mission St. Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726
Region X	Alaska, Washington, Oregon, and Idaho	Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959
Lower Manhattan Recovery Office	Lower Manhattan	1 Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505
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