

# CIRCULAR

## FTA C 5100.1

BUS AND BUS FACILITIES FORMULA PROGRAM:  
GUIDANCE AND APPLICATION INSTRUCTIONS

NEVADA DEPARTMENT OF TRANSPORTATION





U.S. Department  
of Transportation

**Federal Transit  
Administration**

# CIRCULAR

FTA C 5100.1

May 18, 2015

**Subject: BUS AND BUS FACILITIES FORMULA PROGRAM: GUIDANCE AND APPLICATION INSTRUCTIONS**

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1. PURPOSE. This circular is an issuance of guidance on the Bus and Bus Facilities Formula Program administered by the Federal Transit Administration (FTA) under 49 U.S.C. § 5339. This circular provides guidance for applying for grants under the Bus and Bus Facilities Program and addresses the requirements that must be met in the application for Section 5339 program assistance. This circular incorporates provisions of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21; Pub. L. 112-141), signed into law on July 6, 2012, and includes the most current available guidance on statutory and programmatic requirements for the federal public transportation program as of the date of publication.
2. CANCELLATION. This is a new circular. It does not cancel any existing directive.
3. AUTHORITY.
  - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
  - b. 49 CFR 1.51.
4. WAIVER. Federal Transportation Authority (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 04-16-2015, 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](http://www.fta.dot.gov). The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on “sign up for e-mail updates” for additional information.
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.

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Therese W. McMillian  
Acting Administrator

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**FTA CIRCULAR 5100.1**  
**BUS AND BUS FACILITIES FORMULA PROGRAM: GUIDANCE AND APPLICATION**  
**INSTRUCTIONS**

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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). FTA is headed by an administrator who is appointed by the president of the United States, and FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices. These offices assist transit agencies in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, as well as federally recognized Indian Tribes.

Public transportation means regular, continuing, shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes, but is not limited to, transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferry boats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses and intraterminal or intrafacility shuttle services. 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 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. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, signed into law on July 6, 2012, and effective on October 1, 2012. This circular reflects changes to federal transit law due to MAP-21 as well as changes required by other laws that have become effective since the former Bus and Bus Facilities program was included in a circular that was published in August 2012.
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. **DEFINITIONS.** All definitions in 49 U.S.C. 5302 and 49 U.S.C. 5339 apply to this circular as well as the following definitions:
- a. **Applicant:** In this circular, the term “applicant” is used to identify an entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA. The term “applicant” is used interchangeably with “grant applicant.”
  - b. **Associated Capital Maintenance:** A category of capital project activities that is defined as equipment, tires, tubes, and material, each costing at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.
  - c. **Bus Rapid Transit System (BRT):** A bus system that meets all of the following criteria:
    - (1) Over 50 percent of the route must operate in a separated right-of-way dedicated for transit use during peak periods. Other traffic can make turning movements through the separated right-of-way.
    - (2) The route must have defined stations that are accessible for persons with disabilities, offer shelter from the weather, and provide information on schedules and routes.
    - (3) The route must provide faster passenger travel times through congested intersections by using active signal priority in separated guideway, and either queue-jump lanes or active signal priority in nonseparated guideway.
    - (4) The route must provide short headway, bidirectional service for at least a fourteen-hour span of service on weekdays and a ten-hour span of service on weekends. Short headway service on weekdays consists of either (a) fifteen-minute maximum headways throughout the day, or (b) ten-minute maximum headways during peak periods and twenty-minute maximum headways at all other times. Short headway service on weekends consists of thirty-minute maximum headways for at least ten hours a day.The provider must apply a separate and consistent brand identity to stations and vehicles.
  - d. **Capital Asset:** The term “capital asset” includes equipment, rolling stock, infrastructure, and facilities for use in public transportation and owned or leased by a recipient or

subrecipient of federal financial assistance.

- e. Capital Lease: Any transaction whereby the recipient acquires the right to use a capital asset without obtaining ownership.
- f. Capital Project: A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter III of this circular.
- g. Clean Fuel Bus: A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG), liquefied natural gas, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel, or other low or zero emissions technology that the administrator of the Environmental Protection Agency (EPA) has certified sufficiently reduces harmful emissions.
- h. Designated Recipient: The term “designated recipient” as defined at 49 U.S.C. 5302(4) means: (i) an entity designated, in accordance with the planning process under sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 to urbanized areas of 200,000 or more in population; or (ii) a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- i. Direct Recipient: For purposes of this circular and this program, based on the statute, a direct recipient is a designated recipient that operates fixed route bus service or that allocates funding to fixed route bus operators. “Direct Recipient” is used interchangeably with “eligible recipient,” “recipient,” and “grantee” in this circular.
- j. Electronic Clearing House Operation (ECHO) System: ECHO is an FTA Web-based application system that processes payment requests from FTA grantees.
- k. Electronic Award Management System: A system that grantees and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by grantees to submit financial status reports and milestone progress reports and to submit grant modification requests. This term includes FTA’s Transportation Electronic Award and Management (TEAM) system and its successor.
- l. Equipment: An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes, or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.
- m. Fixed Guideway: The term “fixed guideway” means a public transportation facility (i) using and occupying a separate right-of-way for the exclusive use of public transportation; (ii) using rail; (iii) using a fixed catenary system; (iv) for a passenger ferry system; or (v) for a bus rapid transit system.

- n. Fixed-Route System: Public transportation service provided in vehicles operated along predetermined routes according to a fixed schedule.
- o. Fleet Status Report: A report in FTA's Electronic Grants Management System that identifies rolling stock to be replaced, retired, or disposed. Appendix D of this circular contains a sample Fleet Status Report.
- p. Fleet Management Plan: The management plan includes an inventory of all buses and other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification. The plan also calculates the number of rolling stock needed to operate at peak normal days.
- q. Force Account: The use of a grantee's own labor force to accomplish a capital project.
- r. Governor: The term "governor" means the governor of a state, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and includes the designee of the governor.
- s. Grant: An award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient. This term is used interchangeably with "Grant Agreement."
- t. Intelligent Transportation Systems (ITS): ITS refers to the use of electronics, communications, or information processing as a single component or in combination to improve efficiency or safety of a transit or highway system.
- u. Large Urbanized Area: Any urbanized area (UZA) with a population of at least 200,000 at the time of the most recent decennial census.
- v. Local Governmental Authority: The term "local governmental authority" includes a political subdivision of a state or an authority of at least one state or political subdivision of a state; an Indian tribe; or a public corporation, board, or commission established under the laws of a state.
- w. Master Agreement: The official FTA document containing FTA requirements and other cross-cutting federal requirements applicable to FTA recipients and their project(s). The Master Agreement is incorporated by reference and made part of each FTA grant and amendment thereto.
- x. 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.
- y. Metropolitan Planning Organization (MPO): The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans

and transportation improvement programs for metropolitan planning areas of a state.

- z. National Transit Database (NTD): The NTD was established by Congress to be the nation's primary source for information and statistics on the transit systems of the United States. Over 800 transit providers in urbanized areas and over 1,300 transit providers in rural areas currently report to the NTD through the Internet-based reporting system, either directly or through their state's Department of Transportation. Recipients or beneficiaries of Urbanized Area Formula Program (Section 5307) grants and of Rural Area Formula Program (Section 5311) grants are already required to report to the NTD. Other NTD reporting requirements may be established by FTA as it implements the National Transit Asset Management System described in 49 U.S.C. 5326. Data from the National Transit Database is used by FTA for the apportionment of Urbanized Area Formula Program grants, Rural Area Formula Program grants, Tribal Transit Formula Grants (Section 5311(j)), State of Good Repair Grants (Section 5337), and Bus and Bus Facilities Grants (Section 5339). Data from the NTD is also used to inform Congress, states, and local governments on the condition and performance of public transportation in the United States. More information about the applicability to this program can be found in Chapter III and Chapter V.
- aa. Net Project Cost: The part of a project that reasonably cannot be financed from revenues. 49 U.S.C. 5302(12). Revenues, in this instance, means farebox revenues.
- bb. New Bus Model: The term "new bus model" means a bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model; or has been previously used in public transportation in the United States, but is now being produced with a major change in configuration or components.
- cc. Nonprofit Organization: A corporation or association determined by the secretary of the Treasury to be an organization qualifying under 26 U.S.C. 501(c) as exempt from taxation under 26 U.S.C. 501(a), or which has been determined under state law to be nonprofit and for which the designated state agency has received documentation certifying the status of the nonprofit organization.
- dd. Operating Expenses: Operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as salaries, benefits, fuel, and items having a useful life of less than one year.
- ee. Overhaul: Overhaul is an expense performed as a planned or concentrated preventive maintenance activity and intended to enable the rolling stock to perform to the end of the useful life. For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life.
- ff. Program of Projects (POP): A POP is a list of projects proposed by a designated recipient in cooperation with an MPO to be funded from the UZA's or state's Section 5339 apportionment. A POP may also be required under other FTA programs. The POP includes a brief description of the projects, including any suballocation among public transportation

providers or other eligible subrecipients, total project costs, and federal share for each project.

- gg. Public Transportation: The term “public transportation” means regular, continuing, shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include: intercity passenger rail transportation provided by the entity described in Chapter 243 (i.e., Amtrak—or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intraterminal or intrafacility shuttle services.
- hh. Rebuild: Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit of rolling stock’s useful life, and which results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.
- ii. Rehabilitate: To rebuild revenue vehicles to original specifications of the manufacture. Rehabilitating may include some new components but has less emphasis on structural restoration than would be the case in a remanufacturing operation, focusing on mechanical systems and vehicle interiors. For purposes of this circular and program eligibility, rehabilitating vehicles includes both rebuilding and overhaul activities. See the definitions of “Rebuild” and “Overhaul” above.
- jj. Recipient: For purposes of this circular, the term “recipient” means an entity that receives a grant of Section 5339 program funds directly from FTA. The word “recipient” is used interchangeably with “eligible recipient,” “direct recipient,” and “grantee.” Eligible recipients under Section 5339 are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators.
- kk. Rural Area: The term “rural area” means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an urbanized area by the secretary of Commerce.
- ll. Shared Use: Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time of grant award.
- mm. Small Urbanized Areas: As used in the context of FTA formula grant programs, small urbanized areas are UZAs with a population of at least 50,000 but less than 200,000.
- nn. Spare Parts: See “Associated Capital Maintenance.”
- oo. State: The term “state” means a state of the United States of America.
- pp. Statewide Transportation Improvement Program (STIP): A statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the Long-Range Statewide Transportation Plan, Metropolitan Transportation Plans (MTPs), and Transportation Improvement Program (TIP), and which



is required for projects to be eligible for funding under Title 23 of the U.S. Code and 49 U.S.C. Chapter 53.

- qq. Subrecipient: An entity that receives FTA funds via a pass-through agreement with a direct recipient or other grantee, whereby the original recipient remains responsible for compliance with all terms, conditions, and requirements associated with the grant. For the purposes of this circular, a designated recipient is the only eligible direct recipient that can receive a grant under Section 5339, and that designated recipient has the ability to allocate amounts of the grant to subrecipients that are public agencies or private nonprofit organizations engaged in public transportation.
  - rr. Territory: The term “territory” means the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the United States Virgin Islands.
  - ss. Transit: The term “transit” means public transportation.
  - tt. Transportation Improvement Program (TIP): A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the MTP, and which is required for projects to be eligible for funding under Title 23 of the U.S. Code and 49 U.S.C. Chapter 53.
  - uu. Uniform System of Accounts (USOA): The USOA is a structure of categories and definitions used for NTD reporting to ensure uniform data. The USOA contains various categories of accounts and records for classifying financial (Chart of Accounts) and operating data.
  - vv. Urbanized Area (UZA): A UZA means an area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the secretary of Commerce. A small UZA has a population of 50,000 to 199,999 and a large UZA has a population of 200,000 or more.
  - ww. 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.
5. PROGRAM HISTORY. FTA’s Bus and Bus Facilities Program originated as part of the Section 3 discretionary grant program established by the original transit authorization in 1964. In 1974, with the establishment of the Section 5 formula grant program, discretionary Bus Program funds could only be used for extraordinary costs that could not be funded with Section 5 funds. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (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 discretionary Bus Program. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) officially changed the allocation so that 20 percent of available Section 3 funds would be allocated for bus purposes. The Section 3 program was codified as 49 U.S.C. Section 5309 in 1994 and remained discretionary. The allocation

percentages changed slightly with the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users Act of 2005 (SAFETEA-LU). Otherwise, the program has remained essentially the same since 1987.

MAP-21 established a new Section 5339 Bus and Bus Facilities Formula Program (Bus Program), changing the program from discretionary to formula. Funding is allocated to states and territories and designated recipients in urbanized areas. The purpose of the new Bus Program is to assist eligible recipients in replacing, rehabilitating, and purchasing buses and related equipment; and to construct bus-related facilities, thus allowing grantees to address replacement and capital expansion needs.

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## CHAPTER II

### PROGRAM OVERVIEW

1. STATUTORY AUTHORITY. The Bus and Bus Facilities Program is authorized under the provisions set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21), signed into law on July 6, 2012, as codified at 49 U.S.C. 5339 (“Section 5339”). The secretary may make grants under this section to assist eligible recipients in financing capital projects to replace, rehabilitate, and purchase buses and related equipment, and to construct bus-related facilities.

The Catalog of Federal Domestic Assistance (CFDA) number used in the Bus and Bus Facilities Grants Program is 20.526.

2. PROGRAM GOALS. Pursuant to 49 U.S.C. 5339, Federal Transit Administration (FTA) awards grants under this section to the designated recipients in the large urbanized areas (UZAs) and states for the purpose of financing capital bus and bus-related projects that will support the continuation and expansion of public transportation services in the United States.

3. FTA ROLE IN PROGRAM ADMINISTRATION.

- a. FTA’s headquarters office in Washington, DC, serves a broad, program level role in the administration of the program. FTA headquarters:

- (1) provides overall policy and program guidance for the Bus Program;
- (2) apportions funds annually to states and designated recipients;
- (3) develops and implements financial management procedures;
- (4) initiates and manages program support activities; and
- (5) conducts national program reviews and evaluations.

- b. FTA’s regional offices are responsible for the day-to-day administration of the program. Regional offices:

- (1) review and approve grant applications for designated recipients;
- (2) obligate funds for approved grant applications;
- (3) work with recipients to implement the annual program;
- (4) provide technical assistance;
- (5) receive recipient certifications and amendments to the program of projects;
- (6) monitor and close grants; and

(7) conduct triennial reviews and management reviews every three years or as circumstances warrant, and other reviews as necessary.

4. DESIGNATED RECIPIENT AND STATE ROLE IN PROGRAM ADMINISTRATION. FTA apportions Bus Program funds for urbanized areas to the state and designated recipients, which are responsible for receiving and apportioning FTA funds to eligible projects, and applying for funds on behalf of all eligible subrecipients within the applicable urbanized area or rural areas. FTA will apportion the funds to existing Section 5307 or new 5339 designated recipients for large urbanized areas and to the states for all areas under 200,000.

The state or designated recipient has the principle authority and responsibility for administering Bus Program funds. There are no other eligible direct recipients for the Bus Program under MAP-21. Refer to the current version of Circular 9030.1 for information about the recipient designation process. The state or designated recipient's responsibilities include:

- a. The designated recipient allocates the relevant apportionment among subrecipients in the large urbanized area based on local needs and arrangements, and in coordination with the MPO(s). In UZAs with more than one designated recipient or other recipients, FTA expects local officials, operating through the MPO, and designated recipients to determine the allocation of Section 5339 funds together. The designated recipient(s) and the MPO(s) should determine the subarea allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A suballocation that is based on predetermined fixed percentages, for example, may not adequately represent the needs of transit systems in the UZA.
- b. Designated recipients must provide documentation to FTA showing how the 5339 allocation will be split among the recipients. FTA may request a written agreement signed by a representative of each designated recipient or entity involved.
- c. To assist in making such subarea allocations, any UZA may request the appropriate FTA regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Urbanized Area Formula Program resource.
- d. The state allocates the relevant apportionment among subrecipients in the small urbanized areas or rural areas based on local needs and arrangements;
- e. Identifying and selecting the projects that the MPO or state Department of Transportation (state DOT) will include in a metropolitan transportation plan, Transportation Improvement Program (TIP), Long-range Statewide Transportation Plan, and Statewide Transportation Improvement Program (STIP).
- f. Submitting a grant application to FTA for the Section 5339 Program of Projects (POP).
- g. Reporting on behalf of subrecipients contained in the POP.

- h. Ensuring that subrecipients and projects are in compliance with all applicable federal requirements.

5. DESIGNATED RECIPIENTS, STATES, AND SUBRECIPIENT ELIGIBILITY.

- a. Eligible Recipients. Eligible recipients under this section are designated recipients and states that allocate funds to fixed route bus operators or state or local government agencies that operate fixed route bus service. A designated recipient that receives a grant under this section may allocate amounts of the grant to subrecipients that are public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income. Please note: Eligible projects as authorized in Section 5339(a)(1) and (2) are not limited to projects that support fixed route only. For the complete list of eligible capital projects, please see Chapter III of this circular.

- b. Pass-through Arrangements.

- (1) A Section 5339 designated recipient or state may choose to pass its grant funds through to another entity (subrecipient) to carry out the purposes of the recipient's agreement with FTA. Eligible subrecipients include public agencies or private nonprofit organizations engaged in public transportation, including those providing services open to a segment of the general public, as defined by age, disability, or low income.
- (2) To establish a pass-through agreement, the recipient must enter into a written agreement with the subrecipient that assures FTA that the subrecipient will comply with its obligation to satisfy the requirements of the grant agreement.
- (3) A recipient choosing to pass-through funds must inform the FTA regional office of the arrangement in its grant application or through other documentation.
- (4) The recipient must also inform FTA of any changes in that arrangement during the life of the project.
- (5) Unlike supplemental agreements between the designated recipient (actual recipient) and FTA, a pass-through arrangement to a subrecipient does not relieve the recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

6. FTA OVERSIGHT. Congress has charged FTA with conducting reviews of recipients or requiring that recipients have independent audits conducted on their programs to determine whether the recipients have met the program's requirements and certifications.

Recipients may be subject to a triennial, state management, or other regularly scheduled comprehensive review to evaluate their performance. FTA must ensure that the recipient is carrying out its program in compliance with federal statutory and administrative requirements. These comprehensive reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made.

FTA may also conduct/determine technical capability and capacity, procurement, financial, management, civil rights, drug and alcohol, safety, security, and other compliance reviews and audits, in addition to the triennial review. When FTA evaluations or independent audits identify compliance deficiencies, FTA provides technical assistance to the recipient to facilitate compliance with federal requirements. FTA may reduce or withdraw financial assistance as a result of review findings or withhold further grants until the grantee comes into compliance.

The Single Audit Act, as amended (31 U.S.C. 7501 *et seq.*), implemented by OMB Circular A-133, also requires recipients of federal awards resulting in expenditures of \$750,000 or more to have independent audits conducted annually.

7. RELATIONSHIP TO OTHER PROGRAMS. Other public transportation-related federal programs may provide support for Section 5339 projects, and Section 5339 projects may in turn enhance the effectiveness of these other programs. The following is a brief discussion of existing programs, including programs that were repealed but for which funding remains available, and those programs newly authorized under MAP-21.
  - a. Repealed Programs: MAP-21 repealed a number of public transportation programs that had existed under the previous authorization. Funds that were authorized under these programs remain available for obligation in a grant under the preexisting terms and requirements until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated. The relationship of applicable repealed programs to the Bus Program is described below.

(1) Clean Fuels Grant Program (formerly 49 U.S.C. 5308)

The Clean Fuels Grant Program was a former discretionary grant program that assisted in financing the acquisition of clean fuel rolling stock and clean fuel-related facilities for agencies providing public transportation and operating in an urbanized area designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act, (42 U.S.C. 7407(d)), or a maintenance area for ozone or carbon monoxide.

The program was established under the Transportation Equity Act for the 21st Century (TEA-21) and was repealed under MAP-21. Funds allocated under this program in fiscal year 2012 and prior years will remain available for obligation until they lapse or are expended. Funds apportioned for this program are subject to the program rules and requirements at the time they were apportioned.

Eligible recipients were designated recipients as defined in 49 U.S.C. 5307(a)(2), in UZAs over 200,000 in population, and states for UZAs with populations of less than 200,000, for areas that are designated as nonattainment or maintenance areas for ozone or carbon monoxide. Nonurbanized areas are not eligible recipients under this program.

FTA has implemented this program through a regulation, at 49 CFR part 624. In addition, guidance for the Clean Fuels Program is located in Chapter III of FTA Circular 9300.1, "Capital Investment Program Guidance and Application Instructions."



FTA does not foresee any future allocations of funding under this program. Grants under this program are subject to the applicable requirements of 49 U.S.C. 5307. To be eligible for funding under this program, projects must be included in the TIP and/or STIP.

(2) Discretionary Bus and Bus Facilities Program (formerly 49 U.S.C. 5309)

The Section 5309 Bus and Bus Facilities Program was a former discretionary grant program for bus transit projects. Allocations of funding under this program were made either through congressional direction (“earmarks”) or through a competitive discretionary solicitation of proposals. This program was repealed under MAP-21 and replaced with the Section 5339 Bus and Bus Facilities Formula Program.

From 2010 through 2012, FTA allocated discretionary funding under this program to proposals solicited through several notices of funding availability (NOFAs). The NOFAs identified eligible project types and discretionary selection criteria and were based on specific policy initiatives, including:

- (a) State of Good Repair Initiative;
- (b) Bus Livability Initiative; and
- (c) Veterans Transportation and Community Living Initiative.

Funds awarded in response to these NOFAs are available for obligation until they lapse, and are subject to the program terms and requirements at the time of allocation. Section 5309 Bus and Bus Facilities funds cannot be combined with Section 5339 Bus and Bus Facilities funds in a grant application. Additional information on the Section 5309 Bus and Bus Facilities Program is available in FTA Circular 9300.1.

b. New and Revised Programs Under MAP-21.

(1) Urbanized Area Formula Program (49 U.S.C. 5307)

The Urbanized Area Formula Program (49 U.S.C. 5307) provides funding for capital assistance, planning, and operating assistance for public transportation in urbanized areas as defined by the U.S. Census Bureau. FTA apportions Urbanized Area Formula Program funds to designated recipients for urbanized areas with populations of 200,000 or more. FTA apportions funds to states for urbanized areas with populations between 50,000 and 199,999. Funds are allocated to eligible projects by the state or designated recipient in coordination with the metropolitan and statewide planning processes. FTA has provided guidance for Section 5307 in the most recent version of FTA Circular 9030. Section 5339 funds may be transferred to 5307 but must still meet 5339 eligibility requirements. See Chapter III for more information on transfer provisions.

(2) Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (49 U.S.C. 5309)

The Fixed Guideway Capital Investment Grants Program is a discretionary grant program that funds the construction of new fixed guideway systems or extensions to existing fixed guideway systems and, as amended by MAP-21, projects that will expand the core capacity of existing fixed guideway corridors. States and local governmental authorities are eligible applicants for Section 5309 funds.

Eligible projects include rapid rail (heavy rail), commuter rail, light rail, trolleybus (using overhead catenary), cable car, passenger ferries, and bus rapid transit systems. The Small Starts program also includes corridor-based bus rapid transit systems that do not operate on a separate fixed guideway but include features that emulate the services provided by rail fixed guideway including defined stations, traffic signal priority, and short headway bidirectional services for a substantial part of weekdays and weekend days. The Core Capacity Improvement program provides funds for substantial, corridor-based investments in existing fixed guideway systems that are at capacity or will be in five years. Core Capacity Improvement projects must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent, and must not be state of good repair projects.

Projects become candidates for funding under Capital Investment Grant program by successfully completing steps in the process defined in Section 5309 and obtaining a satisfactory rating under the statutorily defined criteria. For New Starts and Core Capacity Improvement projects, the steps in the process include project development, engineering, and construction. For Small Starts projects, the steps in the process include project development and construction. New Starts and Core Capacity Improvement projects receive construction funds from the 5309 program through a full funding grant agreement (FFGA) that defines the scope of the project and specifies the total multiyear federal commitment to the project. Small Starts projects receive construction funds through either a single-year grant or a multiyear grant agreement (Small Starts Grant Agreement) that defines the scope of the project and specifies the federal commitment to the project.

Section 5339 funds may be used to complement funding awarded under the Fixed Guideway Capital Investment Program, as well as to support the continued capital investment needs of completed projects.

Additional information about the Fixed Guideway Capital Investment program is available at <http://www.fta.dot.gov/12304.html> or the final rule on Major Capital Investment Projects at <http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31540.pdf>.

(3) State of Good Repair Formula Program (49 U.S.C. 5337)

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides funding to urbanized areas with High Intensity Fixed Guideway systems and High Intensity Motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and

rehabilitation projects for existing High Intensity Fixed Guideway systems and High Intensity Motorbus systems that have been in operation for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization Formula Program.

The State of Good Repair funds must be used for capital projects intended to replace and rehabilitate fixed guideway systems and high intensity motorbus systems. Eligible projects include the replacement and rehabilitation of rolling stock, tracks, line equipment and structure, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, operational support equipment (including computer hardware and software), and development and implementation of transit asset management plans.

FTA apportions State of Good Repair funds to designated recipients in the UZAs according to a statutory formula. The formula for High Intensity Fixed Guideway comprises: (1) a modified version of the formula used under SAFETEA-LU, reflecting the new definition of fixed guideway; and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High Intensity Motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles.

Additional information on the Section 5337 State of Good Repair Formula Program will be available in Circular 5300.1.

(4) Rural Area Formula Program (49 U.S.C. 5311)

The Rural Area Formula Program is a formula grant program that provides capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000. FTA apportions these funds under this program to the governor or the governor's designee. Eligible applicants include states and Indian tribes. Eligible subrecipients include nonprofit organizations, operators of public transportation, or intercity bus service that receive funds indirectly through a recipient. Section 5339 Bus and Bus Facilities funds may be transferred to 5311 but must still abide by 5339 eligibility guidelines.

The Tribal Transit Program is a takedown from the Section 5311 program, and funds are allocated by formula and on a discretionary or competitive basis. Formula factors include vehicle revenue miles and the number of low-income individuals residing on tribal lands. Discretionary funds are allocated based on criteria established for the program. Eligible direct recipients are federally recognized Indian tribes in rural areas. The funds are to be allocated for grants to Indian tribes for any purpose eligible under Section 5311, which includes capital, operating, planning, job access and reverse commute projects, and administrative assistance for rural public transit services and rural intercity bus service.

The Appalachian Development Public Transportation Assistance Formula Program is

also a takedown from the Section 5311 program. This program provides formula funds to support public transportation for states in the Appalachian region. Funds are allocated for any purpose eligible under Section 5311.

Additional information on the Section 5311 Rural Area Formula Program is available in the most current version of FTA Circular 9040.1.

(5) Transit-Oriented Development Planning Pilot Program

The Transit-Oriented Development Planning Pilot Program was established by Section 20005(b) of MAP-21. This program provides funding to advance planning efforts that support transit-oriented development (TOD) associated with new fixed guideway and core capacity improvement projects. TOD focuses growth around transit stations to promote ridership, affordable housing near transit, revitalized downtown centers and neighborhoods, and encourage local economic development. Funds from Section 5307 may be used to support planning projects that receive funding under this program, or may be used for capital projects relating to TOD projects.

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## CHAPTER III

### GENERAL PROGRAM INFORMATION

1. APPORTIONMENT OF PROGRAM FUNDS. MAP-21 authorizes funding for the Bus and Bus Facilities formula program. FTA apportions Bus Program funds to states and designated recipients according to a statutory formula. In addition, states and territories (including the District of Columbia and Puerto Rico) receive a fixed allocation, referred to as the National Distribution, before FTA applies the formula. The funds made available for Section 5339 for a given fiscal year are apportioned as follows:
  - a. Of the total made available, a percentage identified within the apportionment notice in the *Federal Register* is set aside for National Distribution for each state, territory and the District of Columbia.
  - b. Of the remaining funds made available, 86.65 percent is allocated to designated recipients for use in urbanized areas (UZAs) of at least 200,000 in population and further subdivided into the categories as follows:
    - (1) 9.2 percent of the funds under (b) are for the incentive tier and are allocated on the basis of bus passenger miles traveled squared, divided by operating costs.
    - (2) 90.8 percent of the funds under (b) are for the nonincentive tier, with 73.39 percent apportioned to UZAs of one million or more in population and 26.61 percent apportioned to UZAs under one million in population.
  - c. Of the remaining funds made available, 13.35 percent is allocated to states for use in UZAs of less than 200,00 in population and further subdivided into the categories as follows:
    - (1) 50 percent of the funds under (c) are allocated to UZAs on the basis of the population of the UZAs; and
    - (2) 50 percent of the funds under (c) are allocated to UZAs on the basis of population multiplied by the population densities of the UZAs.

FTA is required to apportion funds appropriated for the Bus Program for any fiscal year (FY) no later than the tenth day after the date the amounts are appropriated or October 1st of the fiscal year for which the amounts are appropriated, whichever is later. Apportionments are published in the *Federal Register*.

2. APPORTIONMENT DATA. For UZAs with less than 200,000 in population, the formula is based on population and population density. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, as well as population and population density.

FTA obtains population and population density data from the most recent decennial census. FTA obtains all other data used for formula apportionments from the latest report year of

validated data reported in the National Transit Database (NTD). For purposes of the formula, FTA may not use data that is submitted late or data that FTA cannot validate. Transit providers making data submissions should refer to the current editions of the NTD Reporting Manuals and Uniform System of Accounts in reporting to the NTD. Copies of these publications and other NTD policy statements and reporting guidance can be found on the NTD website at <http://www.ntdprogram.gov/> and can be requested from the following address: FTA Office of Budget and Policy, Office of Strategic Planning and Analysis, 1200 New Jersey Avenue SE, Washington, DC 20590; or by telephone at 202-366-4050. The National Transit Institute provides annual workshops on the NTD for persons reporting to the database on behalf of recipients.

3. AVAILABILITY OF FUNDS. Section 5339 funds are available for obligation during the federal fiscal year for which they were apportioned plus three additional years. For example, funds appropriated in fiscal year 2013 are available until September 30, 2016. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all states and designated recipients together with funds made available for the next fiscal year.
4. TRANSFER OF APPORTIONMENTS.
  - a. From the State's National Distribution Allocation: Consistent with 49 U.S.C. 5339(e)(1), the governor of the state may transfer any part of the state's apportionment, specifically the National Distribution allocation, to supplement amounts apportioned to the state under Section 5311(c) or amounts apportioned to the state for areas under 200,000 in population under Section 5307. Transferred funds must be used for eligible Bus Program activities, even if combined in a grant with other Section 5307 or 5311 funding. This transfer is for administrative purposes only and allows 5307 direct recipients to apply directly to FTA for their allocation.
  - b. Notification to FTA. Federal requirements do not mandate FTA approval prior to transfer of an apportionment, but the governor must provide notification to FTA of a transfer for each transaction so that FTA can accurately reflect this transfer decision in overall program budget levels and apportionment records. In addition, the grant application project budget must show the amount of transferred funds.
  - c. Insular Areas. First enacted in 1978, 48 U.S.C. 1469a authorizes federal agencies that make grants to specified insular areas, including the Virgin Islands, to consolidate any and all grants made to an insular area making the new consolidated funds available for programs and purposes authorized for any of the grants that are being consolidated.
5. ELIGIBLE CAPITAL PROJECTS. Eligible capital projects include projects to replace, rehabilitate, and purchase buses and related equipment, and projects to construct bus-related facilities. This includes but is not limited to:
  - a. The acquisition of buses for fleet and service expansion;



- b. Bus maintenance and administrative facilities;
- c. The acquisition of vans for fleet and service expansion, including specialized vans and related facilities used to provide ADA complementary paratransit service:
- d. Transfer facilities;
- e. Bus malls;
- f. Transportation centers;
- g. Intermodal terminals;
- h. Intercity facilities which are part of a joint development project;
- i. Park-and-ride stations;
- j. Acquisition of replacement vehicles;
- k. Bus rebuilds;
- l. Bus overhauls;
- m. Passenger amenities such as passenger shelters and bus stop signs;
- n. Accessory and miscellaneous equipment such as:
  - (1) mobile radio units;
  - (2) supervisory vehicles;
  - (3) fare boxes;
  - (4) computers; and
  - (5) shop and garage equipment.
- o. Clean Fuels Projects. 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.
- p. Introduction of New Technology. Section 5339 funds may be used for transit-related technology, such as innovative and improved products that provide benefits to transit, including 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. Examples of transit-related ITS projects include:

- (1) real-time bus arrival information available to passengers through electronic displays at bus stops;
  - (2) automatic vehicle locators;
  - (3) automated passenger counters;
  - (4) vehicle component monitoring (diagnostics)
  - (5) advanced fare payment methods
  - (6) computer-aided dispatching and real-time ridesharing; and
  - (7) automated information for travelers using more than one mode of transportation.
- q. Costs associated with environmental compliance including engineering and design activities are eligible capital expenses. This includes the preparation of environmental documents.

NOTE: Planning activities, preventive maintenance activities (other than bus overhauls), and mobility management activities are not eligible under the section 5339 Bus Program.

- r. Design and Art in Transit. Under MAP-21 federal transit funds are no longer available to support public art in transit facilities. Art can be incorporated into facility design, landscaping, and historic preservation; for example, through the use of floor or wall tiles that contain artistic designs or patterns, use of color, use of materials, lighting, and the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses.
- s. Leasing of Capital Assets. 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.
- t. 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 a recipient enters a contract for such service, FTA will provide assistance for the capital consumed in the course of the contract. In the case of a contractor 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 these capital assets. FTA refers to the concept of assisting with capital consumed as the “capital cost of contracting.”

Only the costs attributable to the privately owned assets are eligible under this policy. FTA does not provide assistance for any preventive maintenance activities under the Section 5339 Bus Program. With one exception, items purchased with federal, state, or local government assistance are not eligible.

To avoid imposing burdensome accounting rules with regard to contracts for bus, paratransit, and demand-responsive 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 III-1 shows the percentages and the corresponding type of contract service for bus, paratransit, and demand-responsive related services. The percentages are calculations using data from the National Transit Database (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, paratransit, or demand-responsive service.

**EXHIBIT III-1  
PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE WITHOUT  
FURTHER JUSTIFICATION**

<b>Bus and Paratransit-Related Contract Services</b>	<b>Percent of Contract Eligible for 80 Percent Federal Share</b>
<b>Type of Contract</b>	
1. Service Contract (contractor provides maintenance and transit service; 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; recipient provides vehicles and transit service)	100 percent
4. Maintenance/Lease Contract (contractor provides vehicles and maintenance; recipient provides transit service)	100 percent
5. Turnkey Contract (contractor provides vehicles, maintenance, and transit service)	50 percent

- u. Project Administration. Administrative activities of an organization pertaining to the immediate accomplishment or oversight of a project are eligible. Project administration costs must be directly associated with administering the capital project. While there is no cap, the costs must be allowable, reasonable, allocable, and in accordance with the applicable federal costs principles and properly supported. For further guidance on costs principles see 2 CFR part 225 for states and local governments, and 2 CFR part 230 for nonprofit organizations. Eligible project administration costs must be identified in a grant application. General administrative expenses that a designated recipient or state incurs to implement the program (as contrasted with the eligible costs directly related to administering a capital project) are not eligible as a direct cost under the 5339 program.
  - v. Innovative Financing. When integral to a capital investment project, Section 5339 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.
  - w. Bicycle Facilities. When integral to a capital investment project, Section 5339 funds may be used for bicycle facilities as described in 49 U.S.C. 5319. Bicycle infrastructure is eligible, but bicycles are not eligible. For more information on bicycle facilities, please see Section 8 of this chapter.
6. JOINT DEVELOPMENT IMPROVEMENTS. A public transportation project that integrally relates to, and often co-locates with commercial, residential, mixed-use, or other nontransit development. Joint development may include partnerships for public or private development associated with any mode of transit system that is being improved through new construction, renovation, or extension. Joint development may also include intermodal facilities, intercity bus and rail facilities (including outfitting), transit malls, or historic transportation facilities. “Joint development improvements” are an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public entities, and is supportive of the private sector participation provisions of 49 U.S.C. § 5315. Joint development improvements may include intercity bus stations and terminals, including the outfitting of those stations and terminals.
- FTA’s joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See FTA Circular 7050.1 “Federal Transit Administration Guidance on Joint Development” for more information on FTA’s joint development requirements.
7. INTEREST AND DEBT FINANCING AS AN ELIGIBLE PROJECT COST. There are several areas in which interest is an eligible project cost for FTA’s Section 5339 program assistance, with certain limitations.

- a. Bond Interest in Advance Project Authority: This applies to a situation in which a recipient has obligated all of its urbanized area formula funds for capital or planning projects and would like to carry out any part of a project with local funds which FTA may later reimburse under advance project authority. This authority, which is set forth in Section 5307(e), permits FTA to participate in the project costs, including any interest payable by the recipient and earned by the bondholder on bonds issued by the recipient to the extent the recipient has actually expended the proceeds of the bonds in carrying out the portion of the project. The recipient must certify that it has shown reasonable diligence in seeking the most favorable financing terms available in order for interest to be an eligible reimbursable cost.
- b. Buildings and Equipment: Title 2 CFR part 225, formerly Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," allows financing costs (including interest) associated with otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction, or remodeling finished after October 1, 1980, subject to conditions identified below. The term "building" includes the associated real property (land) and fixtures.

Title 2 CFR part 225 allows financing costs (including interest) paid or incurred on or after September 1, 1995, associated with otherwise allowable costs of equipment subject to the conditions cited below. The regulation defines equipment as, "an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5,000."

Conditions associated with the allowable financial costs for buildings and equipment are as follows:

- (1) A bona fide third party external to the governmental unit provides the financing (from other than tax or user fee sources).
  - (2) The assets are used in support of federal awards.
  - (3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the federal Internal Revenue Service under arbitrage requirements are excludable.
  - (4) For debt arrangements over \$1 million, the governmental unit must reduce claims for interest cost by an amount equal to interest earnings on excess cash flow unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more. Interest attributable to fully depreciated assets is unallowable.
- c. FTA will consider other proposals concerning the eligibility of interest case-by-case. FTA will use the guidelines provided in 2 CFR part 225, formerly, OMB Circular A-87, Attachment B, "Selected Items of Cost," in such considerations.

## 8. FEDERAL SHARE OF PROJECT COSTS.

- a. Capital Projects. The federal share for capital projects that receive funding under the Section 5339 program may not exceed 80 percent of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the grantee's revenues.
- b. Exceptions. The federal share may exceed 80 percent for certain projects related to ADA, CAA, and certain bicycle projects as follows:
  - (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act (ADA; 42 U.S.C. 12101 *et seq.*) or the Clean Air Act (CAA; 42 U.S.C. 7401 *et seq.*).
  - (2) Vehicle-related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA, or for meeting the requirements of the ADA, is 90 percent.

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

The grant recipient may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with the ADA or CAA. The federal share is 90 percent of the cost for these itemized elements.

- (3) Bicycle Facilities. As provided by 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.

NOTE: Bicycles themselves are not an eligible capital expense under the Bus and Bus Facilities program, only bicycle access related infrastructure.

9. LOCAL SHARE OF PROJECT COSTS. After the appropriate federal share is established, the applicant must provide the local share of the net project cost in cash (or in-kind) and must document in its grant application the source of the local match:

Title 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government," (the common grant rule) at Section 18.24, "Matching

or Cost Sharing,” describes detailed rules for eligibility, valuation, and accounting for the local matching share.

The local match may include:

- a. Cash from nongovernmental sources other than revenues from providing public transportation services;
- b. Non-farebox revenues from the operation of public transportation service, such as the sale of advertising and concession revenues. A voluntary or mandatory fee that a college, university, or similar institution imposes on all its students for free or discounted transit service is not farebox revenue;
- c. Amounts received under a service agreement with a state or local social service agency or private social service organization;
- d. Undistributed cash surpluses, replacement or depreciation cash funds, reserves available in cash, or new capital.

#### 10. ADDITIONAL LOCAL SHARE INFORMATION.

- a. Revenue Bond Proceeds as Local Share. A recipient of Section 5339 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 UZA provided by the state and affected local governmental authorities during the next three fiscal years, as programmed in the STIP, is not less than the aggregate amount provided by the state and affected local governmental authorities in the UZA during the preceding three fiscal years.
- b. 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 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, and should obtain a letter from the state DOT indicating that TDCs are available for a project prior to submitting a grant application in FTA’s electronic grants management system. FHWA oversees the determination of transportation development credits within each state, and FTA follows the FHWA methodology for calculating these credits as match. FTA will not approve a retroactive application of transportation development credits.

The effect of utilizing transportation development credits means that FTA, in essence, provides 100 percent of the total net project cost. For example, if the actual cost of the asset

the applicant will purchase is \$500,000, FTA's share at 80 percent equals \$400,000. The remaining \$100,000 match is transportation development credits, so additional federal funds are needed to equal \$500,000 or 100 percent of the net project cost.

FTA calculates a project using transportation development credits as shown in the example below:

Actual cost of the asset	\$500,000
	=====
Federal share (80%)	\$400,000
Local share (20%)	<u>\$100,000</u> (from toll revenue credits)
	\$500,000
	=====

In FTA electronic award management system, the recipient will enter the following:

Total project cost	\$500,000
Federal share	\$500,000

FTA requires the recipient to state within the comment section of the FTA electronic award management system that transportation development credits provide, in this example, \$100,000 for the local share and to attach supporting documentation to the grant from the state approving the use and specific amount of transportation development credits.

- c. Use of Program Income as Local Share. Recipients may use program income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use program income as the local share for the grant that generated the income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. In general, program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of advertising and concessions, from social service contract revenue, and from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations, program income does not include interest on grant funds; nor does program income include rebates, credits, discounts, refunds, and interest earned on any of them. FTA Circular 5010, *Grant Management Requirements*, discusses program income in some depth, as does 49 C.F.R 18.25. FTA Circular 5010.1 notes that recipients may retain program income so long as they use it for public transportation purposes, that is, for allowable capital, and operating expenses.

The recipient's accounting system must be capable of identifying program income and the purpose for which the recipient used it. The recipient must account for program income in its accounting system, which FTA subjects to audit. The Federal Financial Report requires the reporting of program income.



- d. Providers of Public Transportation by Vanpool. Section 5323(i)(2) permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the provider in the recipient's service area. This excludes any amounts received from federal, state, or local governments for the purchase of the rolling stock.

A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient that are in excess of the provider's operating costs to acquire rolling stock, provided that the recipient and provider have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area.

The effect of this provision is to allow revenues received in the operation of public transportation service by vanpool that exceed operating expenses to be re-invested in capital equipment and to be counted toward a recipient's local match requirement under a capital cost of contracting grant agreement. If an applicant intends to utilize this provision in a grant, the applicant must inform FTA in advance of submitting the grant and must attach the required agreement to the application in FTA's electronic award management system. The agreement must specify the amount intended to be counted as local match and must identify any amounts under that agreement that have already been applied as local match on any other previous grants. FTA reserves the right to request any additional information necessary to justify the use of this provision in a grant application.

The term "private provider of public transportation" means a private entity providing vanpool service in the service area of a recipient of Section 5339 funds using a commuter highway or vanpool vehicle. These types of vehicles must have the seating capacity of at least six adults (not including the driver) and at least 80 percent of the vehicle's mileage can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

- e. Other Federal Funds. In addition to funds from Section 403 of the Social Security Act, in a very limited number of situations, other federal funds may be eligible for inclusion in the local match. Such use is dependent upon agreement by the federal agency. As an example, Community Development Block Grant funds administered by the Department of Housing and Urban Development (HUD) may be used to provide the local share of federal public transportation projects so long as the public transportation activities are:

- (1) Eligible for assistance under the Community Development Block Grant Program; and
- (2) In compliance with HUD regulations, "Community Development Block Grants," 24 CFR part 570. See 42 U.S.C. 5305(a)(9) and 24 CFR 570.201(g).

Please contact the applicable federal agency to see if their funds can be used as match for FTA funds.

- f. Public-Private Partnerships. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the

scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office. FTA must review and concur on in-kind contributions of any value before federal funds are expended or the value is used as local match. In-kind contributions must also be documented in the grant application.

Credit can only be allowed for the value of the portion of real property used or consumed by the project. If part of a larger parcel is to be used as local match and the remaining subparcel is intended to be used at a future date for future match, the grantee is cautioned to clearly indicate the limits of the subparcel to be used as local match and the appraised amount associated with the subparcel. The remnant subparcel can then follow the same procedure for future local match. If the entire parcel is provided as a local match and no delineation is made related to possible use of the excess subparcel as overmatch, eligibility of the over-match subparcel may be lost. If federal funds were used to purchase the property, only the nonfederal share of such property may be counted as the value of the in-kind contribution, see 49 CFR 18.24(f). Title 49 CFR part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government," (otherwise known as the Common Grant Rule) at Section 18.24, "Matching or Cost Sharing," describes detailed rules for eligibility, valuation, and accounting for the local matching share.

11. ALTERNATIVE FINANCING. Section 5339 recipients, especially those 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.
  - a. Approaches recipients might investigate include:
    - (1) capital leasing arrangements;
    - (2) joint development;
    - (3) state economic development or revolving loan funds;
    - (4) state infrastructure bank loans;
    - (5) state and federal tax credit programs;
    - (6) special tax districts, such as transportation development districts, special benefit districts, and tax increment financing;
    - (7) exchanges of real property; and
    - (8) in-kind contributions.

- b. Recipients with a dedicated funding source (e.g., sales tax proceeds, transportation development district proceeds, tax increment financing proceeds, and other revenue sources including user fees) may wish to consider a direct loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 2002 of MAP-21 (23 U.S.C. 601 *et seq.*). Eligible projects include any transit capital project that is anticipated to meet the threshold size. Threshold sizes for projects are:
- (1) \$50 million; or
  - (2) \$25 million for rural projects and those in cities of 250,000 or less in population; or
  - (3) \$15 million for intelligent transportation system (ITS) projects; or
  - (4) 33 ⅓ percent of the most recently completed fiscal year's FHWA formula apportionment for the state in which the project is located.

TIFIA direct loans or loan guarantees must be repaid with nonfederal funds. Multiple related projects constituting a program of projects may be grouped in order to meet the cost threshold as long as the credit assistance is secured by a common pledge of revenues.

Implementation of the TIFIA program is the responsibility of the secretary of Transportation. The FTA provides staff support for eligible transit loans, transit loan guarantees, and transit standby lines of credit. On July 31, 2012, the DOT issued a Notice of Funding Availability (NOFA), which announced the availability of funding and the revised TIFIA application process under MAP-21. Each potential applicant must submit a detailed Letter of Interest (LOI). The DOT will review submissions, on a rolling basis, to determine whether the project meets the requirements for TIFIA participation. DOT Credit Council provides policy directions and makes recommendations to the secretary regarding the selection of projects for credit assistance with final approval by the secretary.

Contact:

Innovative Program Delivery Office  
TIFIA Joint Program Office (HITJ)  
US Department of Transportation  
1200 New Jersey Avenue, SE  
Room E64-462  
Washington, DC 20590  
Fax: 202-366-0828  
[TIFIAcredit@dot.gov](mailto:TIFIAcredit@dot.gov)

<http://www.fhwa.dot.gov/ipd/tifia/index.htm>

12. DEFERRED LOCAL SHARE. A recipient may request, on a case-by-case basis, that all or a portion of the local share for a project be deferred until 100 percent of the federal funds have been drawn down or other period. A request for the deferral must accompany the grant

application. A recipient that intends to use deferred local share must receive FTA approval prior to the obligation of the grant. FTA will specify the terms and schedule for the deferral.

Approval is contingent upon the deferral resulting in benefits to transit and upon the recipient demonstrating that it has the financial capacity to complete the project. Local share cannot be deferred indefinitely. When FTA approves the use of deferred local share, the local funds must be available and used to match drawn-down federal funds in the time period specified by FTA's approval.

Generally, FTA will not approve retroactive deferral of local share. In exceptional circumstances, FTA may approve retroactive deferral of local share; for example, in response to a catastrophic event such as a hurricane or flood where sources of local funds are temporarily disrupted.

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## CHAPTER IV

### PLANNING AND PROGRAM DEVELOPMENT

1. METROPOLITAN AND STATEWIDE PLANNING REQUIREMENTS. A grant applicant requesting Section 5339 assistance must comply with the planning requirements of 49 U.S.C. 5303, 5304, and 5306. Before Federal Transit Administration (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 and nonmetropolitan transportation planning process specified in 49 CFR part 613 and 23 CFR part 450. 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 Transportation Plan and transportation improvement plan (TIP) developed and approved by the metropolitan planning organization (MPO) and the chief executive officer of a state and in a statewide transportation improvement plan (STIP) that has been approved by FTA and Federal Highway Administration (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 the FTA electronic award management system. Projects listed in the TIP and STIP must be derived from and consistent with the state's long-range plan and MPO metropolitan plan.

Each project in the TIP/STIP must include sufficient descriptive material to identify the project or phase of the project. In addition, each project in the TIP/STIP must indicate reasonably expected resources to carry out the project.

FTA and FHWA are responsible for issuing joint planning regulations implementing Sections 5303, 5304, and 5305. More information on the planning process can be found in:

- a. "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500, and 49 CFR part 613. The regulations outline the requirements for state Departments of Transportation (state DOTs), MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states; and
  - b. FTA Circular 8100.1C ([http://www.fta.dot.gov/documents/FTA\\_C\\_8100.1C.pdf](http://www.fta.dot.gov/documents/FTA_C_8100.1C.pdf)), Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.
2. TRANSPORTATION MANAGEMENT AREAS. Title 49 U.S.C 5303(k) identifies all urbanized areas (UZAs) with a population of over 200,000 individuals as transportation management areas (TMA). The secretary of Transportation shall designate any additional area as a TMA on the request of the governor and the metropolitan planning organization designated for the area.

Joint FTA/FHWA transportation planning regulations contained in 23 CFR part 450 include guidelines for setting the metropolitan planning area boundaries of MPOs, including those that are in, or comprise, TMAs. In some cases, the MPO-established metropolitan planning area boundaries for MPOs that are in, or comprise, TMAs may also include one or more UZAs with populations under 200,000. The governor of a state may allocate formula fund apportionments to small UZAs located within or designated as Transportation Management Areas (TMAs) that are different from the allocations FTA publishes.

Before the enactment of MAP-21, a “designated recipient” was defined as an entity designated, in accordance with the planning process under Sections 5303, 5304, and 5306, by the chief executive officer of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 that are attributable to transportation management areas identified under Section 5303; or a state or regional authority if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation. The reference to TMAs was directed at areas with 200,000 or more in population (large UZAs) identified by the Census Bureau. FTA did not interpret the reference to include areas under 200,000 in population, which the secretary designated as TMAs at the request of the governor and the MPO. Such designations are for planning purposes only.

3. PERFORMANCE-BASED PLANNING. MAP-21 established a broad performance management program that significantly impacts the metropolitan and statewide transportation planning process. The performance management approach presents a transparent, accountable decision-making process for MPOs, states, and providers of public transportation to identify multimodal capital investments and project priorities. MAP-21 includes a number of provisions that attempt to integrate a new performance management approach into the existing metropolitan and statewide planning process described below.

MAP-21 requires MPOs and states to develop their long-range transportation plans and transportation improvement programs through a performance-driven, outcome-based approach to planning for the metropolitan and nonmetropolitan areas of the state.

- a. The metropolitan and statewide transportation planning process should provide for the establishment and use of a performance-based approach to transportation decision making to support the national goals described in Section 150(b) and the general purposes described in Section 5301. In development of their metropolitan transportation plan and long-range statewide transportation plan, MPOs and states must include a description of the transportation system performance measures and respective performance targets that address the performance measures established by the U.S. Department of Transportation (USDOT) under 23 U.S.C. 150(c).
- b. The MPO’s transportation plan and state’s long-range statewide transportation plan should include a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the established performance targets.



- c. The MPO's TIP and state's STIP must demonstrate the linkage between investment priorities and the performance targets by including a discussion of the anticipated effect of the STIP/TIP toward achieving the performance targets established in the transportation plan.

FTA and FHWA issued revised joint planning regulations implementing Sections 5303 and 5304 that address performance-based planning. More information on the planning process can be found in "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500, and 49 CFR part 613. The regulations outline the requirements for state DOTs, MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states.

4. ROLE OF DESIGNATED RECIPIENT AND METROPOLITAN PLANNING ORGANIZATION IN ALLOCATING PROGRAM FUNDS. Under the Section 5339 program, the state or designated recipient is the entity responsible for "receiving and allocating" the amounts made available by Congress and apportioned by FTA to an UZA. Eligible recipients under Section 5339 are designated recipients that operate fixed route bus service or that allocate funding to fixed route bus operators.

Pursuant to 49 U.S.C. 5303(d), an MPO, which in some cases may also serve as the designated recipient of Section 5339 funding, is the forum for cooperative decision making to carry out the transportation planning process.

Both the planning requirements and the statutory provisions of 49 U.S.C. Chapter 53 specify the roles of the MPO and of the designated recipient. While the MPO develops and adopts the TIP, the designated recipient, which may in some cases also be the MPO, has the primary responsibility to develop the program of projects (POP) for the Section 5339 funds apportioned to its large UZA for inclusion in the TIP. In the case of multiple designated recipients or multiple MPOs, the designated recipient or designated recipients must work with the MPO to ensure that the POP requirements are met by inclusion of all projects in the TIP or TIPs. The MPO and the designated recipient have to work cooperatively to develop the TIP and agree on how to spend Section 5339 funds.

5. MULTIPLE DESIGNATED RECIPIENTS IN LARGE UZAS. In those UZAs with more than one designated recipient, FTA expects local officials, operating in consultation with the MPO, to determine the allocation of Section 5339 funds together. The designated recipient(s) and the MPO(s) should determine the subarea allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A subarea allocation that is based on predetermined fixed percentages, for example, is not considered satisfactory in reflecting local needs.

Designated recipients must provide documentation to FTA showing how the Section 5339 allocation will be split among the designated recipients. FTA may request a written agreement signed by a representative of each designated recipient involved.

To assist in making such subarea allocations, any UZA may request the appropriate FTA

regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Bus and Bus Facilities Program resource.

6. PROGRAM OF PROJECTS AND PUBLIC PARTICIPATION REQUIREMENTS. Since Section 5339 recipients must comply with certain Section 5307 grant requirements and since the program has limited direct recipients, FTA expects designated recipients to develop a POP. A POP is a list of projects proposed by the designated recipient to be funded from the UZA's Section 5339 apportionment. If more than one designated recipient will apply for grants for projects in the POP, each grant application must include the portion of the POP included in that grant. The POP includes a description of the projects, including any suballocation among public transportation providers, total project costs, local share, and federal share for each project. Recognizing that states and designated recipients are required to have a POP under other programs such as Section 5307, Section 5339 projects may be included in other program POPs for administrative purposes.
- a. Programming in TIP. Eligibility for FTA Section 5339 requires the MPO to list capital assistance projects in the approved TIP or STIP, or both. The designated recipient is responsible for developing the POP, while the MPO is responsible for placing the projects in the TIP.

Projects included in an FTA grant application must be derived from that part of a metropolitan area's TIP (approved by the MPO, found to be consistent with the metropolitan area's long-range plan by FTA, and approved by the governor) that is within an approved STIP. The first-year program of the approved TIP constitutes a list of "agreed to" projects for FTA grant application purposes. The TIP/STIP public participation and approval processes can serve to satisfy the requirements for public participation under Section 5339. The list of projects the designated recipient proposes for funding from the UZA's Section 5339 apportionment constitutes the POP. Where there are multiple designated recipients or MPOs the UZA's POP may be in several separate parts for the purpose of programming and public participation.

- b. Public Participation Requirements. To receive a grant under Section 5339, a recipient must meet Section 5307(b) requirements concerning public participation in development of a POP and must certify to compliance with these requirements. The requirements are listed in 49 U.S.C. 5307(b)(1) through (7) and are discussed in the paragraphs below. The recipient may satisfy these requirements in whole or in part through the development of the metropolitan TIP and the local coordinated public transit-human service transportation plan.

The state or the designated recipient for a UZA must:

- (1) Make available to the public information concerning the amount of funds available under the Section 5339 program and the POP that the recipient proposes to undertake with such funds;

- (2) Develop a proposed POP for activities the designated recipient will finance, in consultation with interested parties, including private transportation providers and human services organizations representing the employment-related transportation needs of welfare recipients and low income individuals;
  - (3) Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, representatives of welfare recipients and low income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on the proposed program and on the performance of the recipient;
  - (4) Only states are allowed to program the “national distribution” funding pot under Category A and/or B under the new 5339 Bus and Bus Facilities Program. Category A includes projects that are ready to go now and Category B includes projects that are almost ready to go;
  - (5) Provide an opportunity for a public hearing to obtain the views of citizens on the proposed POP;
  - (6) Ensure that the proposed POP provides for the coordination of Section 5339 public transportation services with transportation services assisted with other federal sources;
  - (7) Consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and
  - (8) Make the final POP available to the public (note: where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate processes for the different areas involved).
- c. Budget Constraints, Additional Information. The total federal share for the final POP may not exceed the amount apportioned to the UZA or the amount allocated to the designated recipient from these amounts, plus any Section 5339 carryover funds from previous years.
- d. Required Grantee Information. Grant recipient must provide FTA with the following information for any subrecipient:
- (1) the name of the entity receiving the award;
  - (2) the amount of the award;
  - (3) the location of the entity receiving the award; and
  - (4) the primary location of performance under the award, including the city, state, and congressional district.
- Please refer to further FFATA reporting requirement details in Chapter V.
- e. Revisions to Program of Projects. Prior FTA approval is not required to reallocate funds

among projects included in the approved POP, so long as the single change does not exceed 20 percent of the affected project. Any other changes to the POP require prior approval by FTA.

If appropriate, revisions to the POP should be accompanied by a budget revision to the grant in the electronic grant management system (TEAM or a successor thereto). The recipient should attach the revised POP (after approval if required) to the project management milestones section in the electronic grant management system. In the grantee's milestone progress report, the recipient should reference the date that a new POP was attached. The most recently updated program of projects submitted by the recipient to FTA in its quarterly or annual report or in the course of making revisions will be considered the current approved program of projects, incorporated by reference in the grant agreement.

Below are examples of project and funding revisions that do not change the scope of the approved POP. Unless FTA notifies the designated recipient otherwise, the following levels of notification and FTA approval apply to revisions:

- (1) Revisions Not Requiring Prior FTA Notification or FTA Approval. The recipient may make the following revisions without prior notification to FTA, so long as the original reservation of funds is not impacted:
  - (a) Delete a project from the POP, if the project cost is less than 20 percent of the total of the affected POP;
  - (b) Reallocate funds within an approved POP among approved projects within a local area or from one local area to another. This includes adjustments of local project funding levels to accommodate changes in vehicle or equipment requirements; and
  - (c) Add equipment or property transferred from one subrecipient to another subrecipient listed in the POP, regardless of whether the items were originally funded from a different grant.
- (2) Revisions Requiring Notification to FTA, but Not FTA Approval. The recipient may make the following revisions after notifying FTA:
  - (a) Create new projects that are less than 20 percent of the total of the POP, so long as the designated recipient has confirmed eligibility and confirms the project is consistent with the TIP;
  - (b) Delete or reduce a project by more than 20 percent of the total POP.
- (3) Revisions Requiring FTA Approval. The designated recipient may make the following revisions to an approved POP, and relevant project listing in the TIP and STIP, only after obtaining approval from FTA:
  - (a) Prior FTA approval is required when the federal share of the grant exceeds \$100,000 and the cumulative amount of project funds to be transferred between or among activities, (including all budget revisions since the last one specifically approved by FTA) exceeds 20 percent;

- (b) Prior FTA approval is required if the budget revision would:
1. Change the size or physical characteristics of the activities specified in the grant;
  2. Increase or reduce the number or revenue rolling stock vehicles to be purchased by more than two units.
- (4) Update of Program of Projects. The most recently updated POP submitted by the recipient to FTA in its annual milestone progress report or in the course of making revisions will be considered the approved POP, incorporated by reference in the grant agreement. Only the addition of federal funds or a change in the scope of the approved POP requires amendment of the grant agreement.
7. TRANSFER OF FTA FUNDS FOR HIGHWAY PROJECTS. Section 5339 funds are not available to be transferred between FHWA and FTA for transit or highway projects.
8. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT.
- a. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, facilities, and some equipment. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office must “make the case” by identifying a useful life period for all equipment, rolling stock, and facilities with an acquisition value greater than \$5,000 to be procured with federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the federal interest for the disposition of the project property in later years.
- (1) Determining Useful Life for Project Property. The grantee should identify the method used to determine the useful life. Acceptable methods to determine useful life include but are not limited to:
- (a) Generally accepted accounting principles.
  - (b) Independent evaluation.
  - (c) Manufacturer’s estimated useful life.
  - (d) Internal Revenue Service guidelines.
  - (e) Industry standards.
  - (f) Grantee experience.
  - (g) The grantee’s independent auditor who needs to concur that the useful life is reasonable for depreciation purposes.
  - (h) Proven useful life developed at a federal test facility.

- (2) Rolling Stock 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. The useful life in years refers to total time in revenue transit service, not time spent stockpiled or otherwise unavailable for regular transit use. Minimum useful life for buses and vans 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, heavy-duty transit buses (approximately 30'): at least 10 years of service or an accumulation of at least 350,000 miles.
  - (c) Medium, medium-duty transit buses (approximately 25'-35'): at least seven years of service or an accumulation of at least 200,000 miles.
  - (d) Medium, light-duty transit buses (approximately 25'-35'): at least five years of service or an accumulation of at least 150,000 miles.
  - (e) Medium, light-duty transit buses (approximately 25'-35'): at least five years of service or an accumulation of at least 150,000 miles.
  - (f) Other light-duty vehicles used as equipment and in transport of passengers (revenue service) such as regular and specialized vans, sedans, demo models, light-duty buses, and all bus models exempt from testing in the current 49 CFR part 665: at least four years of service or an accumulation of at least 100,000 miles.
- b. Early Disposition. 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 must 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. Please see FTA's Grant Management Requirements Circular 5010.1 for more information on disposition.
- c. Rolling Stock 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 (50 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, rehabilitate, or add vehicles to the applicant's fleet.

- (1) Bus Fleet. 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 fixed-route 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.”

Buses delivered for future expansion and buses that have been replaced but are in the process of being disposed of should not be included in the calculation of spare ratio.

In each grant application to replace, rehabilitate, or add vehicles, the applicant 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 in the fleet status screen in the FTA electronic award management system. A recipient is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award.

- (2) Contingency Fleet. FTA recognizes two types of vehicles—active and contingency. 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 does 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.

- d. Requirements Related to the Purchase of Vehicles. Recipients requesting funds for the purchase of vehicles must meet certain FTA requirements.

- (1) Fleet Expansion. 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. FTA may request official property records (or a Rolling Stock Status Report), in which future needs (expansion and replacement) are discussed. The source of some of this information may include 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 recipient may also include a map indicating the fleet and service expansion locations.

In planning for service expansion, local criteria should be used to identify 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 explore all areas within the region, including areas that are currently served by transit, since they may have potential for different types of service.

In order to comply with FTA Circular 4702.1B ([http://www.fta.dot.gov/documents/FTA\\_Title\\_VI\\_FINAL.pdf](http://www.fta.dot.gov/documents/FTA_Title_VI_FINAL.pdf)) “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” recipients that operate 50 or more fixed-route vehicles in peak service and are located in an urbanized area of 200,000 or more in population must conduct, prior to implementation, service equity analyses for all major service changes in order to determine whether those changes have a discriminatory impact.

In addition, all providers of fixed-route public transportation are required to adopt systemwide service policies to ensure service design and operations practices do not result in discrimination on the basis of race, color, or national origin. One such policy is related to vehicle assignment. Vehicle assignment refers to the process by which transit vehicles are placed into service in bus depots and on routes throughout the transit provider’s system. Please see FTA Circular 4702.1B, chapter IV, section 4, for additional information.

- (2) Preaward and Post-Delivery Review of Buses. Procurements for revenue service vehicles to transport passengers, other than sedans or unmodified vans, must be reviewed 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/legislation\\_law/12921\\_5424.html](http://www.fta.dot.gov/legislation_law/12921_5424.html). Part 663 requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a preaward and post-delivery review to assure compliance with its bid specifications, Buy America requirements (see Chapter V), and federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than twenty vehicles for use in areas under 200,000 in population or more than ten for large UZAs with a population of 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 ten or more than twenty vehicles, depending on area size.
- (3) Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested consistent with the requirements in 49 CFR part 665 and must obtain a copy of



the resulting test report before FTA funds can be released. FTA provides a Bus Testing section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

MAP-21 amended the bus testing provisions under 49 U.S.C. 5318 to require that FTA establish a pass/fail testing standard. FTA funds will be available to acquire a new bus model only if it has received a passing score. This requirement will take effect after FTA has issued regulations establishing the standard.

- (4) 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, while the latter applies to direct federal procurements. FTA strongly advises recipients to review 49 CFR part 661 as well as FTA Circular 4220.1 ([http://www.fta.dot.gov/legislation\\_law/12349\\_8641.html](http://www.fta.dot.gov/legislation_law/12349_8641.html)), "Third Party Contracting Guidance," before undertaking any procurement. FTA has created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: <http://www.fta.dot.gov/buyamerica>.
- (5) Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must 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 likely to receive the contract is in compliance with part 26.  
  
TVMs must establish and submit to the FTA Office of Civil Rights for approval an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. TVMs that are certified to bid on federally funded transit agency contracts are listed on FTA's website. For further guidance, contact the FTA Office of Civil Rights.
- (6) Vehicle Americans with Disabilities Act (ADA) Requirements. Recipients must ensure that each transit vehicle meets the accessibility requirements and standards for the vehicle type specified in 49 CFR parts 37 and 38, as applicable. Where a vehicle or component departs from the particular technical and scoping requirements, the recipient must obtain a determination of equivalent facilitation, as described in Section 38.2, from the FTA administrator under procedures set forth in Section 37.7(b). Where a specific vehicle type is not addressed by part 38, accessibility requirements must be determined by USDOT in consultation with the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) as specified in Section 38.171(c).

- e. 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 prior FTA approval. FTA is entitled to its share of the remaining federal interest. 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 twelve-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, whichever is more advantageous to the grantee.

- (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” is defined as exchanging a bus for a bus with a similar service life. Under the like-kind exchange policy, proceeds from a vehicle’s sale are not returned to FTA; instead, all proceeds are reinvested 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 Example” 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.

- (4) 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.

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 regarding remanufacture of nonrail vehicles.

- f. Rolling Stock Overhauls. Rolling stock overhauls are the only preventive maintenance capital expense in the section 5339 Bus program. This eligibility for capital assistance applies also to leasing and to contracted service. Overhauls are usually done to make sure rolling stock reaches its useful life. Overhaul does not extend the useful life of rolling stock. This eligibility is in addition to eligibility of rebuilding specifically discussed above in Chapter IV, subsection 8.e. (4) For rolling stock to be overhauled, it must have accumulated at least 40 percent of its useful life.
  - g. 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.
9. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded by Section 5339. 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 (3)(G).
- a. General Philosophy. FTA generally assists in building two kinds of facilities:
    - (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 or rail terminals, stations, shelters, and park-and-ride lots as well as intermodal facilities that include both transit and intercity bus or rail services.
  - b. Useful Life of Facilities. Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of forty-

fifty years for the minimum useful life of a facility. A railroad or highway structure has a minimum useful life of fifty years, and most other buildings and facilities (concrete, steel, and frame construction), forty years. For further information, see FTA Circular 5010.1 ([http://www.fta.dot.gov/images/content\\_images/C\\_5010\\_1D\\_Grant\\_Management\\_Requirements\\_2012\\_Page\\_Changes\\_8-27-2012.pdf](http://www.fta.dot.gov/images/content_images/C_5010_1D_Grant_Management_Requirements_2012_Page_Changes_8-27-2012.pdf)).

- c. Facility ADA Requirements. Recipients must ensure that transit facilities meet the accessibility standards and requirements specified in 49 CFR parts 37, 38, and 39, as applicable. Where any departure from the specific requirements is contemplated, as permitted under 36 CFR part 1191, the recipient must obtain a determination of equivalent facilitation from the FTA administrator under procedures set forth in section 37.9(d).
- d. Shared Use. Shared use of project property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to nontransit use for construction, maintenance, and operation costs.
- e. Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the recipient's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a recipient currently operating twenty vehicles, a request for a bus maintenance garage that will accommodate twenty 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 forty vehicles would not be acceptable, unless the recipient could demonstrate its need, willingness, and ability to expand its fleet to forty 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.
- f. Project Staging. When applying for a grant to build a facility, a recipient must be able to fully describe the project and estimate the cost of the facility. Although planning is not eligible these costs must be included. The next phase is 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.
- g. 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 grant application submitted in the FTA electronic award management system. Planning activities are not an eligible expense under the Section 5339 Bus and Bus Facilities Program, however, costs associated with environmental compliance including engineering and design are eligible capital expenses.

Feasibility studies at varying levels of detail as appropriate and proportionate should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a recipient may choose to reference and summarize pertinent parts of

documents in which results of project studies were reported (e.g., 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 and Bus Boarding and Alighting Areas. A program for bus shelters and bus boarding and alighting areas should be developed for the existing and proposed network based on the operator's shelter criteria and to the extent the construction specifications are within its control, and, in the case of significant increases, should be described in the grant application. Bus shelters and bus boarding and alighting areas must comply with standards for accessibility established by USDOT regulations implementing the transportation provisions of the ADA (49 CFR parts 27, 37 & 38, as amended). A map indicating the transit network and shelter and bus boarding and alighting area 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/feasibility 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.
10. ENVIRONMENTAL CONSIDERATIONS. Prior to projects receiving FTA funding, FTA is required to consider every project's potential impacts on the environment. These environmental reviews are conducted under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321) and related federal environmental laws, such as the National Historic Preservation Act, regulations, and executive orders. The amount of resources required to complete this process (time, documentation, consultant services, etc.) will vary depending on the type of project and its potential to impact the human and natural environment. The following list identifies and briefly describes each level of environmental review that may apply to a project:

- a. Categorical Exclusion (CE): Projects that historically do not result in significant environmental impacts may qualify as a CE and will require little to no documentation. Examples of this type of project are buying a bus or construction of transit facilities primarily within the transportation right-of-way.
- b. Documented Categorical Exclusion (DCE): Projects that historically do not result in significant environmental impacts but are slightly greater in scope than those qualifying as a CE may qualify as a DCE. Examples of this type of project may include real property acquisition or construction of transit facilities with features located outside of the transportation right-of-way.
- c. Environmental Assessment (EA) & Environmental Impact Statement (EIS): Projects that are complex in scope and/or are viewed as controversial by the public may require the preparation of an EA. This level of environmental review provides the public an opportunity to comment and will ultimately determine whether or not the project will result in any significant impacts. If the analysis in an EA concludes that the project will result in significant impacts, or if from the early planning stages it is determined the size and scope of the project will result in significant impacts, an EIS will be required. Most grantees typically need to enlist consultant services when preparing an EA or EIS.

Grantees should consult with FTA early in the grant application process, and prior to expending funds for a planned project for which federal funds are requested, to confirm the appropriate level of environmental review.

Further detail and explanation on the different levels of environmental review can be found in 23 CFR part 771, FTA's Environmental Impact and Related Procedures. Grantees must receive confirmation that their proposed FTA-funded project has complied with the policies and procedures provided in 23 CFR part 771 before the grant application can be approved by FTA and funds can be obligated.

11. AUTHORITY TO UNDERTAKE PROJECTS IN ADVANCE. There are three different authorities by which a recipient may incur costs on a project before grant approval and retain eligibility for reimbursement after grant approval. The first is automatic preaward authority. The second is a letter of no prejudice (LONP). The third is statutory advance construction authority. Certain terms and conditions apply equally to all three authorities; these are discussed below in subsection d.
  - a. Automatic Preaward Authority. FTA typically grants preaward authority in each fiscal year apportionments notice published in the *Federal Register*, and recipients should consult such notices for details of the preaward authority. For design and environmental review, costs may be incurred as of the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project. For property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that qualify for a categorical exclusion pursuant to 23 CFR 771.118(c), costs may be incurred as of the date of the authorization of formula funds or the date of the announcement of the discretionary allocation of funds for the project. For

property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials for projects that require a categorical exclusion pursuant to 23 CFR 771.118(d), an environmental assessment, or an environmental impact statement, costs may be incurred as of the date that FTA completes the environmental review process required by NEPA and its implementing regulations (i.e., through issuance of a Section 771.118(d) categorical exclusion determination, a Finding of No Significant Impact [FONSI], or a Record of Decision [ROD]). For preaward authority triggered by the completion of the NEPA process, the completion of planning and air quality requirements is a prerequisite, as those activities are completed prior to conclusion of the environmental review process. The authorization of State of Good Repair Grants funds triggers automatic preaward authority for design and environmental work on the project within the total amount authorized for the authorization period.

- b. If a grant applicant is concerned that a project may not clearly qualify as a CE, it is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary. A project must also be included in the STIP and TIP prior to incurring expenses under preaward authority.
- c. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Therefore, 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 before incurring expenses under automatic preaward authority with the hope of future reimbursement.
- d. Letter of No Prejudice. For a project not covered by the automatic preaward authority, including projects that will require Section 5339 funds not yet authorized and for which FTA has not extended preaward authority, 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 allows a recipient to incur costs on a project using nonfederal resources with the understanding that the costs incurred after the LONP is issued may be reimbursed for eligible expenses or eligible for credit toward the local match should FTA approve the project for a grant at a later date. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Because project implementation activities may not be initiated prior to NEPA completion, FTA will not issue an LONP for such activities until the NEPA process has been completed with a ROD, FONSI, or CE determination. The project must be in a STIP before a LONP is issued.

Although FTA typically grants automatic preaward authority for Bus and Bus Facilities formula funds as discussed in subparagraph (a) under this section, a LONP is required if a recipient wishes to continue to incur costs after the life of the program's authorization. Each LONP has an expiration date, which is the date beyond which funding cannot be requested retroactively for the project. The standard expiration date of an LONP is five years, after which time the grantee may request a new LONP. In situations such as long-term leases or long-term financing, the LONP may be for an appropriately longer time period.

To obtain an LONP, a recipient must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office. FTA approval of an LONP is made in writing and determined on a case-by-case basis.

- e. Advanced Construction Authority. The statutory authority to undertake projects in advance, also referred to as Advanced Construction Authority (ACA), allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant approval. ACA is slightly different than the policy-driven automatic preaward authority and LONP, which are discussed in subparagraphs (a) and (b) under this section. Under ACA, FTA has already approved the project for funding in the event funding becomes available. When utilizing this preaward authority, a recipient must comply with FTA and federal requirements prior to undertaking the project in order to retain eligibility for reimbursement after grant approval. Under automatic preaward authority or an LONP, FTA has not yet approved the project for funding.

ACA permits a grant applicant to incur project and financing costs such as bond interest before FTA awards a grant for the project. FTA may issue ACA under 49 U.S.C. 5339 of the Bus and Bus Facilities formula grant program provided:

- (1) The recipient has completed a grant application and it is on file with FTA.
- (2) The project has met all federal requirements, including the DOL certification under Section 5333(b).
- (3) FTA has approved the project as eligible for Bus and Bus Facilities formula funds, although the funding is not available.

While an ACA reserves the recipient's right to be reimbursed after FTA has approved the project, ACA does not constitute a commitment of federal funds until the project is converted to a regularly financed project. ACA expires on or before the expiration of the current authorization.

- f. Terms and Conditions Applicable to Automatic Preaward Authority, LONP, and ACA. In general, the terms, conditions, and procedures applicable to recipients having automatic preaward authority, an LONP, or ACA are as follows:
- (1) All federal grant requirements must be met at the appropriate time for a project having automatic preaward authority, an LONP, or ACA to remain eligible for federal funding.
  - (2) These authorities are not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds.
  - (3) These authorities are not a legal or an implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
  - (4) The recipient assumes all the risk.



- (5) All FTA statutory, procedural, and contractual requirements must be met.
- (6) All applicable DOT statutory and regulatory requirements must be met.
- (7) The project must be included in the STIP.
- (8) The recipient must not take any action that prejudices the legal and administrative findings that the FTA administrator must make in order to approve a project.
- (9) Local funds expended by the recipient after the date of the automatic preaward authority, an LONP, or ACA will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).
- (10) Local funds expended by the recipient before the date of the authority will not be eligible for credit toward local match or reimbursement
- (11) The expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of preaward authority for those activities (i.e., the completion of the NEPA process) would compromise FTA's ability to comply with federal environmental laws and may render the project ineligible for FTA funding.
- (12) 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.
- (13) When a grant for the project is subsequently awarded, the Federal Financial Report in the FTA electronic award management system must indicate the use of the automatic preaward authority, LONP, or ACA. More information and updates regarding automatic preaward authority and LONPs can be found in FTA's fiscal year apportionment notice published in the *Federal Register*.

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## CHAPTER V

### PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. CERTIFICATIONS REQUIRED BY 49 U.S.C. 5339. Federal Transit Administration (FTA) recipients must annually certify that they are in compliance with federal transit law as well as cross-cutting federal requirements. FTA advises recipients to review the annual list of Certifications and Assurances, located on FTA's website ([www.fta.dot.gov](http://www.fta.dot.gov)), and on the FTA electronic award management system's website (<http://ftateamweb.fta.dot.gov>). Section 5307(d)(1) lists certain conditions to which Section 5339 recipients must certify as discussed below. The 1 percent takedown for security and transit improvements in 5307(c)(1)(J) and (K) does not apply to Section 5339 funds.
  - a. Consistent with 49 U.S.C. 5307(d)(1)(A), a recipient must certify that it has or will have the legal, financial, and technical capacity to carry out the program. New grantees must submit documentation of capacity prior to receiving a grant. Sample documents are available in Appendix C of this circular.
    - (1) Legal Capacity. Before FTA may award a grant for a Section 5339 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.
      - (a) 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 recipient will certify its authority to apply for subsequent grants in the annual certification process. That affirmation appears on FTA's website at [www.fta.dot.gov](http://www.fta.dot.gov), on the page that lists the current year Certifications and Assurances.

FTA expects the 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 significant change in status will require a new Opinion of Counsel.

- (b) 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 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 in the FTA electronic award management system on the first application must agree with the Designated Signature Authority on subsequent applications.

- (2) Financial Capacity. Before FTA may award a grant for a Section 5339 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 Section 5339 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 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 Section 5339 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 transportation improvement plan (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 Section 5339 grant applicant when FTA approves the statewide transportation improvement plan (STIP) and again when FTA approves projects for Section 5339 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 on 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, and reports on financial operations such as periodic financial statements or single audit reports.

- (3) Technical Capacity. According to 49 U.S.C. 5307(c)(1)(A) before FTA may award a Section 5339 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 Section 5339 grant must demonstrate that it 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 the current version of the FTA Circular 5010, "Grant Management Requirements."
- (4) Satisfactory Continuing Control. According to 49 U.S.C. 5307(c)(1)(B) a recipient must annually certify that it "has or will have satisfactory continuing control over the use of equipment and facilities" through operation, lease, or otherwise.

An FTA recipient must maintain control over federally funded property by ensuring the grantee uses it in public transportation service and disposes of it according to federal requirements. If the recipient leases federally funded property to another party, the lease must provide that the recipient maintains satisfactory continuing control over the use of that property. FTA determines control over FTA-funded facilities and equipment in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and nonrevenue). For more information regarding the disposing of

property, and for safeguards against loss, theft, or damage, see FTA Circular 5010.1, “Grant Management Requirements.”

- (5) Maintenance. According to 49 U.S.C. 5307(c)(1)(C), a recipient must certify it will maintain its federally assisted facilities and equipment.

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5339 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives. Additional guidance is available on FTA’s State of Good Repair and Asset Management website (<http://www.fta.dot.gov/13248.html>).

- (6) Fares Charged to Seniors and Persons with Disabilities During Nonpeak Hours. According to 49 U.S.C. 5307(c)(1)(D), a recipient must certify that the fares charged to elderly individuals and individuals with disabilities, or individuals presenting a Medicare card during nonpeak hours for fixed-route transportation, are not more than 50 percent of the peak hour fare, regardless of whether the service is provided by the recipient or by another entity under contract, lease, or other arrangement. Because a Medicare card does not constitute proof of an individual’s identity, it is reasonable for a transit agency to request confirmation of the individual’s identity, either through secondary photo identification, or by using a photographic identification card issued by the transit agency. It is also reasonable for a transit agency to verify the validity of the Medicare card being presented, and to facilitate the half-fare application process, a transit agency may request that the applicant validate the status of the card at the time the half-fare application is presented.
- (7) Use of Competitive Procurements. According to 49 U.S.C. 5307(c)(1)(E), a recipient must follow procurement requirements specified under 49 U.S.C. 5323 and 49 U.S.C. 5325. This includes the requirements that recipients utilize a competitive procurement process, comply with applicable Buy America laws, and do not use a procurement that uses exclusionary or discriminatory specifications.

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.

There is a link between a recipient’s certification that its procurement procedures follow federal requirements and a positive finding by FTA concerning the applicant or recipient’s technical capacity to administer and manage a grant properly. FTA Circular 4220.1, “Third Party Contracting Guidance,” sets forth the requirements and procedures applicable to third party contracts. A third party contract refers to any purchase order or



contract awarded by a recipient to a vendor or contractor using federal financial assistance awarded by FTA. FTA Circular 4220.1 contains guidelines for the general procurement requirements of the DOT Common Grant Rule, 49 CFR part 18, and also includes specific statutory procurement provisions required by FTA's enabling legislation and other special concerns to FTA. Note that both the Common Grant Rule and FTA Circular 4220.1 prohibit state or local preference provisions in procurements, except in certain restricted circumstances.

Section 5323(h)(2) prohibits the use of FTA grant funds to support exclusionary or discriminatory specifications, and Section 5323(m) provides specific preaward and post-delivery provisions for procuring rolling stock.

In addition to procurement and audit provisions that apply to architectural, engineering, and related services, 49 U.S.C. 5325 includes provisions affecting third party procurements, including the general requirements for competition and prohibitions on the use of exclusionary or discriminatory specifications, requirements for award to other than low bidders, requirements for awards to responsible contractors, special rolling stock limitations, contract term limited to five years, access of federal officials and the comptroller general to project records, authority for design-build projects, and an express federal preemption of any state law requiring bus purchases from in-state dealers.

FTA's Best Practices Procurement Manual at [http://www.fta.dot.gov/funding/thirdpartyprocurement/grants\\_financing\\_6037.html](http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html) provides another useful source of procurement information.

- (8) Domestic Preference for U.S. Property—Buy America. Pursuant to 49 U.S.C. 5307(d)(1)(E), grant applicants and subrecipients must certify that they will comply with applicable Buy America laws as set forth under 49 U.S.C. 5323(j) in carrying out a procurement. FTA's Buy America requirements apply to all third party procurements funded by FTA. These requirements, published at 49 CFR part 661, are different from the federal "Buy American" regulations, published in the Federal Acquisition Regulation at 48 CFR 25.1 and 25.2, which apply to direct federal procurements. FTA strongly recommends that the recipient review FTA's Buy America regulations before undertaking any procurement to ensure compliance with the requirements applicable at the time the recipient will undertake the procurement. Additional information is available on the FTA Buy America website (<http://www.fta.dot.gov/buyamerica>).
- (a) General Requirement. In compliance with 49 U.S.C. 5323(j) and FTA's implementing regulation at 49 CFR part 661, no funds may be obligated by FTA for a grantee project unless all iron, steel, and manufactured products used in the project are produced in the United States. FTA may waive this requirement in certain circumstances, as discussed below.
- (b) Steel and Iron. All steel and iron manufacturing processes must take place in the United States, except metallurgical processes involving refinement of steel

additives. The steel and iron requirements apply to all construction materials made primarily of steel or iron and used in maintenance facilities, rail lines, and bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

- (c) Manufactured Products. For manufactured products used in an FTA-funded project, all of the manufacturing processes for the product must take place in the United States, and all components of the product must be of U.S. origin (49 CFR 661.5(d)).
- (d) Rolling Stock. All buses and rolling stock (including train control, communication, and traction equipment) acquired with FTA funds must consist of at least 60 percent domestic components by cost and final assembly must take place in the United States (49 CFR 661.11).
- (e) Waivers. FTA may issue a waiver from Buy America requirements on one of four grounds:
  - 1. if the FTA administrator determines a waiver is in the public interest;
  - 2. if no responsive or responsible bid offers a product manufactured in the United States;
  - 3. when U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
  - 4. when including domestic material will increase the cost of the overall project by more than 25 percent (49 CFR 661.7).
- (f) Special Waiver for Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America regulations, which incorporated by reference a provision from DOT’s Common Grant Rule (49 CFR 18.36(d)) that set that threshold at \$100,000 or less. This threshold continues to apply for all grants obligated on or before December 25, 2014. On December 26, 2014, however, DOT’s Common Grant Rule in 49 CFR Part 18 was replaced with a new regulation, 2 CFR Part 1201, which incorporates by reference OMB’s Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) (2 CFR Part 200), and contains a higher threshold for simplified acquisitions.

Therefore, for grants obligated on or after December 26, 2014, the threshold is raised to match the simplified acquisition threshold set by OMB’s Uniform Guidance at 2 CFR 200.88, which incorporates by reference the Federal Acquisition Regulation at 48 CFR subpart 2.1 (definitions), and currently is set at \$150,000. This amount will be adjusted periodically for inflation. FTA will continue to base the exemption on the total amount of the contract and not on the individual price of

items being purchased. For example, if a recipient purchases ten items costing \$20,000 each under a single purchase order, the \$200,000 contract would make the procurement subject to Buy America Requirements (49 CFR 661.7).

- (g) Regional Offices Available to Assist. FTA recognizes that Buy America regulations may not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring interpretations of the regulations. For these reasons, recipients should submit Buy America questions or issues not addressed by the regulation to the appropriate FTA regional office.
- (h) Responsibilities. Under 49 CFR 661.13, a recipient's responsibilities are:
1. to adhere to the Buy America clause in its grant agreement with FTA;
  2. to include in its bid specification for procurement within the scope of FTA's regulations an appropriate notice of the Buy America provision. Such specifications must require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12, as appropriate; and
  3. to ensure bidders comply with its original certifications. A bidder or offeror certifying that it will comply with the applicable Buy America requirements may not change its original certification or apply for a waiver of Buy America requirements once the recipient has unsealed a bid. However, 49 CFR 661.13(b) allows a bidder or an offeror to correct an inadvertent error in a certification of noncompliance after a bid has been unsealed, with the burden of establishing the inadvertent error falling upon the bidder.
- (i) Public Participation. According to 49 U.S.C. 5307(c)(1)(F), a recipient must certify that it has complied with the public participation requirements of 49 U.S.C. 5307(b). Chapter IV, Section 6, "Program of Projects and Public Participation Requirements" of this circular discusses this requirement.
- (j) Availability of Local Funds. According to 49 U.S.C. 5307(c)(1)(G), a recipient must certify that the required local funds are available to carry out the project. See Chapter III of this circular for additional information on local share.
- (k) Compliance with Planning Requirements. According to 49 U.S.C. 5307(c)(1)(H), a recipient requesting Section 5339 program assistance must certify that it will comply with the planning requirements of 49 U.S.C. 5303-5306. Further detail on planning requirements may be found in FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."
- (l) Public Comment on Fare and Service Changes. According to 49 U.S.C. 5307(c)(1)(I), the recipient must certify that it has a locally developed process to

solicit and consider public comments before raising a fare or implementing a major reduction of public transportation service.

The recipient is expected to have a written policy that describes the public comment process on increases in the basic fare structure and on major service reductions. The recipient is responsible for defining a major service reduction. The policy should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction and should describe how the recipient will conduct such meetings and how the recipient will consider the results of such meetings in the process of changing fares and service. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. During a triennial review, the recipient should be able to provide evidence that public comments were considered.

2. CERTIFICATION PROCEDURES. Before FTA may award federal funding, the applicant must provide to FTA all certifications and assurances required by federal laws and regulations. Near the beginning of each federal fiscal year, FTA publishes the certifications in the *Federal Register*, highlighting any changes or additions from the previous year. FTA sometimes publishes the certifications and assurances on the same date the formula apportionments are published.
  - a. Action Required. The authorized representative of the recipient and the recipient's attorney must make the requisite certifications in FTA's Electronic Grants Management System by:
    - (1) attesting to the certifications and assurances electronically with a personal identification number (PIN); and
    - (2) selecting electronically each assurance or certification category that will apply to the applicant's grants for the fiscal year; or
    - (3) selecting instead a "Select all" field that signifies the grant applicant will comply with all categories of certifications and assurances that apply to it or its projects.

FTA requires a current attorney's affirmation of the recipient's legal authority to certify compliance with that fiscal year's FTA funding assistance. FTA will not accept the attorney's affirmation from a previous year.

- b. Timing. FTA expects to receive the certifications and assurances electronically from each recipient that has an open grant:
  - (1) within ninety days from the date of publication of the certifications and assurances; or
  - (2) with the first grant application of the fiscal year, whichever comes first.

Absent information to the contrary, certifications and assurances, which remain valid for one year or until FTA publishes the next version, apply to all open grants.

FTA encourages grant applicants and recipients to contact the appropriate FTA regional office for more information about these requirements. Some requirements call for extensive planning that the applicant should address before submitting a grant application.

3. FTA ELECTRONIC AWARD MANAGEMENT SYSTEM. FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Among other things, grantees apply for grants, inquire about the status of grants, file the required federal financial report (FFR) and milestone progress reports (MPR), and submit annual Certifications and Assurances in this system. Note: States are required to report on an annual basis for milestone progress reports and federal financial reports with the exception of construction projects which require quarterly reports. Large urbanized areas (UZAs) are to submit quarterly FFR and MPR reports regardless of project type.

The User Guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants." The U.S. Department of Labor (DOL) receives requests electronically for Transit Employee Protective Certification for projects. DOL will electronically issue the Public Transportation Employee Protective Certifications, entering the certification date and attaching the certification letter into the electronic management system.

This system interfaces directly with other systems such as Grants.Gov and the Electronic Clearing House Operations (ECHO) system. ECHO is an FTA Web-based application that processes FTA recipients' requests for payment. To access the electronic management system, a new applicant must complete the Grantee/Recipient User Access Request form for each user and submit that form to the appropriate FTA regional office. The website containing information about how to apply for a grant is: [http://www.fta.dot.gov/funding/grants\\_financing\\_36.html](http://www.fta.dot.gov/funding/grants_financing_36.html).

4. SYSTEM FOR AWARD MANAGEMENT REQUIREMENTS. The System for Award Management (SAM) is a free website that consolidates federal procurement systems and the Catalog of Federal Domestic Assistance (<https://www.uscontractorregistration.com/>). On July 30, 2012, the Central Contractor Registration (CCR), FedReg, and the Excluded Parties List System (EPLS) were migrated into SAM.

Any organization applying for financial assistance from the federal government must register in SAM and keep its registration current until it submits its final financial report pursuant to the award agreement from FTA or receives its final payment under the project, whichever is later. The recipient must review and update its information in SAM at least annually after the initial registration, and more frequently if required by changes in its information or another provision of a federal or federally assisted agreement, law, regulation, or regulatory guidance.

5. DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENTS. Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet ([www.dnb.com](http://www.dnb.com)). It takes about five weeks to receive a DUNS number after the information requested is imputed in

the “Instructions on How to Obtain a DUNS Number.” As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.

6. DUNS REQUIREMENTS FOR SUBRECIPIENTS. If it is authorized to make subawards under its agreement with FTA, the recipient must notify potential subrecipients that no entity may receive a subaward from the recipient unless the entity has provided its DUNS number to the recipient. The recipient must not make any subaward to an entity unless the entity has provided its DUNS number to the recipient.
7. ELECTRONIC CLEARING HOUSE OPERATION (ECHO) REQUIREMENTS. Grantees are required to establish an ECHO control number (ECN) before FTA is able to disburse funds to the grantee. Department of Treasury regulations, 31 CFR part 205, govern payment to recipients for financing operations under federal assistance 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-Web System Users Manual for Recipients” at: <http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>.
8. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REQUIREMENTS. FTA’s recipients must report the information about each first tier subaward over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the direct recipient makes any subaward or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November, and the prime recipient did not sign subrecipient agreements until February, the FTA grantee would have until March 31 to report the subaward into FSRS. Once the grantee submits an initial report, the grantee can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.
  - a. No report is required until the month after the grantee makes a subaward. For example, if a state DOT received a Section 5339 grant in November and listed sixteen subrecipients in the program of projects but does not consider the subawards to be made until each subrecipient signs a letter of agreement, the state would not have to report any subawards in December, but would report them by the end of the month after the subrecipient signs the agreement. On the other hand, if the state DOT has a standing agreement with subrecipients and considers the subawards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the DOT. If the state allowed subrecipients to use preaward authority, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept subaward reports before the federal obligation is recorded in the system.
  - b. The required data elements in FSRS for each first tier subaward over \$25,000 :
    - (1) Name of entity receiving subaward
    - (2) DBA name

- (3) DUNS of the entity and its parent and DUNS+4
  - (4) Amount of subaward
  - (5) Subaward number (Note: assigned by recipient)
  - (6) CFDA number (Note: The same CFDA associated with the FTA award)
  - (7) Place of performance (including congressional district)
  - (8) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 million and 80 percent of total revenue coming from federal funds)
  - (9) Award title descriptive of the purpose of the funding action
  - (10) Location of the entity (including congressional district)
- c. The amount that is to be reported for each subrecipient is the amount of the total subaward, not payments to date. Payment/drawdown information is not included in the data fields requested.
  - d. After the recipient reports the subaward data in FSRS, the information will be published with the original direct award information on <http://www.usaspending.gov>.
  - e. Information and training materials about FFATA subaward reporting and FSRS are posted on [www.USASpending.Gov/news](http://www.USASpending.Gov/news). To receive new information on changes and updates to [USASpending.gov](http://www.usaspending.gov) as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” Section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Grantees should direct technical questions about the reporting website to the FSRS help desk. FTA regional staff is available to help with FTA grant award information and requirements.
  - f. Subrecipients. So that FTA can comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. 109–282, enacted September 26, 2006, the grant recipient must provide FTA with the following information for any subrecipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award, and the primary location of performance under the award, including the city, state, and congressional district. The grant recipient may choose to submit this information as a separate attachment in the FTA electronic award management system or include the information in the program of projects (POP).
9. NATIONAL TRANSIT DATABASE (NTD) REPORTING. The NTD was established by Congress to be the nation’s primary source for information and statistics on the transit systems of the United States. NTD data is used to support numerous DOT programs and to “help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning” (49 U.S.C. 5335). Recipients (including subrecipients and contractors) of Section 5339 program funds are required by statute to submit data to the NTD.

FTA's implementing regulation for the NTD can be found at 49 CFR part 630. A recipient of FTA grants that is required to report to the NTD must provide a complete report to the NTD of all transit operations, regardless of whether or not those operations are funded in whole or part by FTA. Financial information reported to the NTD must be reported in accordance with the Uniform System of Accounts (USOA). The complete reporting requirements for the NTD, along with information on due dates, extensions, and waivers can be found in the current versions of the NTD Reporting Manuals. The NTD regulation, the USOA, and the most recent versions of the NTD Reporting Manuals can be found on the NTD website at <http://www.ntdprogram.gov/>.

- a. Annual Report. Recipients or beneficiaries of Section 5339 grants must annually report financial and nonfinancial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The NTD Annual Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions and information on due dates, waivers, and extensions.
- b. Monthly Report. Recipients or beneficiaries of Section 5339 grants are required to file monthly reports on transit operations to the NTD. These monthly reports include information on unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, vehicles operated in maximum service, and regular service days for each month. The NTD Monthly Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- c. Waiver. Under certain circumstances, described in NTD Reporting Manuals, grant recipients may apply for reduced NTD reporting requirements. Under a Small Systems Waiver, grantees with fewer than thirty vehicles in maximum (peak) service do not have to report some data items. There are waivers of other data reporting requirements for planning/capital only reporters, reporters that have experienced natural disasters, and for reporters that are not able to generate specific data elements.



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## CHAPTER VI

### STATE AND PROGRAM MANAGEMENT PLANS

1. GENERAL. The State Management Plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5339 program. The Program Management Plan (PMP) is a document that describes the designated recipient's policies and procedures for administering Federal Transit Administration's (FTA) Section 5339 program in a large urbanized area (UZA). A PMP may not be necessary if there is only one designated recipient. The requirements for the PMP are the same as those for the SMP with exception that the PMP is developed by designated recipients in large UZAs whereas the SMP is developed by the state. All recipients may amend an existing or approved SMP/PMP or create a stand-alone section in order to meet the requirement for these documents.
  - a. Each recipient, whether a state or a designated recipient in a large UZA, is required to have an approved SMP/PMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The recipient shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan. Certain contents of the SMP/PMP, such as project selection criteria, should be coordinated with the statewide transportation plan.
  - b. At the state level, the designated recipient may include the required SMP for the Section 5339 program in a single document. Where designated recipients have multiple population areas for which it serves (e.g., the state is the designated recipient for a large UZA[s] and areas under 200,000 in population), the designated recipient may choose to have a single management plan, provided it adequately addresses policies and procedures for each of the areas and subrecipients from the respective population areas know which policies and procedures are relevant to them.
  - c. All public documents developed under a grant from FTA must be prepared and submitted in electronic format.
2. PURPOSE. The SMP/PMP is intended to facilitate both recipient management and FTA oversight by documenting the state's and designated recipient's procedures and policies for administering the Section 5339 program. The SMP/PMP should be a document that is useful to the state, designated recipient, and subrecipients, as well as to FTA. At a minimum, this document must include the recipient's program objectives, policies, procedures, and administrative requirements, in a form readily accessible to potential subrecipients, recipient staff, FTA, and the public. The primary purposes of the SMP/PMP are to serve as the basis for FTA to perform recipient-level management reviews of the program, and to provide public information on the recipient's administration of the Section 5339 program. It may also be used internally by the recipient as a program guide for local project applicants. If the recipient has other relevant documentation that provides the same information requested for the SMP/PMP, such as an annual application instructions manual, it may be included by reference, as an attachment.

3. MANAGEMENT PLAN REVIEWS. FTA conducts oversight reviews to examine each designated recipient's management procedures, and the relationship of the procedures to its management plan. When a state management or triennial review is scheduled, FTA and its contractors examine the SMP or PMP on file as part of a desk review at the regional office to determine whether the procedures in the SMP/PMP satisfy current requirements. At the site visit, the reviewers document whether or not the designated recipient is following its own stated procedures. Review findings relating to the SMP/PMP might include recommendations that the designated recipient revise the SMP/PMP to reflect its actual procedures, or that it change its procedures and document them in revisions to the SMP/PMP.
4. MANAGEMENT PLAN CONTENT. While there is no prescribed format for the SMP/PMP, the plan should address the following topics and provide the information as requested for each topic below.
  - a. Program Goals and Objectives. Describe the philosophy and policy underlying the recipient's management of the Section 5339 program. Include a description of any process that exists for establishing long-term goals for replacing buses, bus equipment, and bus facilities for grant recipients.
  - b. Roles and Responsibilities. Specify the agencies designated to administer the Section 5339 Program. Explain the respective roles and responsibilities of the recipients and their subdivisions, other recipient agencies or review boards, local governments, private providers, local applicants, and other involved parties.
  - c. Coordination. Describe how the recipient coordinates with other agencies at the state or designated recipient level and encourages and enhances coordination at the project level. This could include a description of any recipient-level coordinating mechanisms, legislation, review boards, and state or designated recipient policies that encourage or mandate coordination at the local level.
  - d. Eligible Subrecipients. Describe which entities are eligible to apply for funds, and describe any recipient eligibility requirements that are more restrictive than federal eligibility.
  - e. Local Share and Local Funding Requirements. Describe any recipient policies on provision of local matching share. Include a description of any programs which provide matching funds for Section 5339.
  - f. Project Selection Criteria and Method of Distributing Funds. The National Distribution funds may be transferred to the Section 5307/5311(c) programs or be distributed by the state using a process of their choosing. The state has the flexibility to allocate funding amongst small UZAs using a process of their choosing. A competitive selection process is not required; whether or not the recipient engages in a competitive selection process, the recipient should describe in its SMP/PMP the criteria for selecting projects and distributing funds among various applicants. Whether the recipient uses a formula for allocation, imposes its own limitations on use of the funds, or uses an entirely discretionary selection process, the plan should explain the policy rationale and the methods used.

- g. Annual Program of Projects Development and Approval Process. Describe the recipient's process and timetable for soliciting, reviewing, and approving applications for local projects to be included in the state's annual program of projects (POP) for Section 5339. The SMP/PMP may include instructions to potential subrecipients on how to prepare local project applications.
  - h. Transfer of Funds. The state has the flexibility to transfer funds between small UZAs based on their own defined process. The national distribution funds may be transferred between small UZAs, large UZAs, and rural areas. Describe any policy the state has for transferring funds between rural, small UZAs and large UZAs, or to any area of the state if the state has a statewide program for meeting the objectives of Section 5339.
  - i. Civil Rights. Describe how the recipient meets federal civil rights requirements and monitors subrecipients to ensure compliance with the requirements of Title VI, Equal Employment Opportunity (EEO), and Disadvantaged Business Enterprise (DBE). The management plan must include the program-specific Title VI requirements detailed in Chapter VI, "Other Provisions," including the recipient's efforts to assist minority applicants and to include subrecipients serving significant minority populations. (Inclusion in the SMP/PMP may satisfy certain requirements for one-time submissions in the civil rights areas.)
  - j. Section 504 and ADA Reporting. Describe the recipient's method for monitoring subrecipients' compliance with Section 504 and ADA regulations and for processing the plans, reports, and certifications submitted to it under the provisions of those regulations.
  - k. Program Management. Describe how the recipient administers its program management responsibilities in such areas as procurement, financial management, property management, vehicle use, maintenance and disposition, accounting systems, audit, and closeout. In addition, include any procedures for management or financial reviews and project monitoring or on-site reviews. Describe any standards set by the recipient for matters such as productivity, cost-effectiveness, or service standards. Detail any other reporting requirements.
  - l. Other Provisions. Describe the process by which the recipient complies with other federal requirements such as environmental protection, Buy America (see Chapter V) provisions, preaward and post-delivery reviews, restrictions on lobbying, prohibition of exclusive school transportation, and drug and alcohol testing, including the state's procedures for monitoring compliance by subrecipients.
5. MANAGEMENT PLAN REVISIONS. All recipients must have an SMP/PMP approved by FTA on file with their FTA regional office. An approved SMP/PMP remains valid until FTA approves a later plan submitted by the recipient or an FTA management review results in a specific request to the recipient by FTA for a revised SMP/PMP, or FTA announces significant new program documentation requirements. FTA strongly encourages the recipient to issue timely revisions to the SMP/PMP, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. When the recipient proposes significant

revisions to the SMP/PMP it should give an opportunity to comment at the minimum to potential subrecipients of assistance, potential service providers, other state agencies and representatives of other funding sources, and any relevant state associations and professional organizations.

If revisions are substantive, but not pervasive, the recipient may submit changes and additions in the form of page changes that can be approved by FTA and incorporated into the SMP/PMP on file. If the recipient changes the SMP/PMP significantly, however, it should submit the entire revised plan to FTA for approval. The recipient is responsible for ensuring that FTA has a complete copy of the current SMP/PMP. The recipient may submit minor changes and technical corrections to FTA to update the approved plan, without the need for additional FTA approval. The recipient should reexamine the SMP/PMP to make sure it reflects current requirements of this circular and revise the SMP/PMP by May 1, 2014.

6. EXISTING SMP/PMP. All recipients may amend an existing/approved SMP or PMP or create a stand-alone section in order to meet the requirement for these documents.

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## CHAPTER VII

### OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements, Federal Transit Administration (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. This circular should be used in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (by using the FTA electronic award management 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 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](http://www.fta.dot.gov)), the FTA electronic award management system's website (<http://fateamweb.fta.dot.gov>), and in the references provided throughout this chapter.

Recipients are encouraged to contact the appropriate FTA regional office for more details about these requirements.

2. 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 recipient must enter into an agreement with FTA that the recipient will not engage in charter service unless otherwise 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 bus service website ([http://www.fta.dot.gov/legislation\\_law/12922.html](http://www.fta.dot.gov/legislation_law/12922.html)) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. 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 in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

3. 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 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, 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 (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 public transportation.
    - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities "standing in the shoes" of a public entity as a subrecipient or under a contract or other arrangement) 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) Providers of fixed route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements

described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed route service as defined in 49 CFR 37.121.

- (5) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regard to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
  - (6) 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.
- c. 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 grounds 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) U.S. 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 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration 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) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (December 14, 2005). This Executive Order 13166 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 Executive Order 13166.
  - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Order 5610.2, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice. The DOT order describes the

process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.

- (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 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.
- d. 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 *et seq.*), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. 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).
- f. 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.
- g. Disadvantaged Business Enterprise (DBE) Program. To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
- (1) The recipient agrees and assures that it will comply with MAP-21 Section 1101(b) 23 U.S.C. 101, which directs the secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBE’s. This 10 percent national goal is aspirational and is used by the Department of Transportation to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities.
  - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local

transportation agencies, 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 shall not discriminate on the basis of race, color, sex, or national origin, 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. As required by 49 CFR part 26 and approved by DOT, 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 to the recipient of a failure to implement its approved DBE Program, DOT 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.

4. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (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), and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and, again, FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that 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 for proposed projects in

nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff working in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

5. COMMERCIAL DRIVER'S LICENSE (CDL). All drivers of motor vehicles designed or used to transport more than fifteen 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.
6. DEBARMENT AND SUSPENSION. The purpose of the DOT governmentwide debarment and suspension (nonprocurement) regulations (2 CFR part 1200) 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's (GSA) System for Award Management (SAM) 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. GSA maintains a website, at <https://www.sam.gov>, which is updated in real time as changes to the data occur.
  - a. DOT regulations, "Government-wide Debarment and Suspension (Nonprocurement)," 2 CFR part 1200, incorporating OMB's debarment and suspension guidelines, 2 CFR part 180, 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 SAM list of excluded parties maintained by the GSA and available at <https://www.sam.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.

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.

7. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the Section 5339 Bus and Bus Facilities Program, 5307 Urbanized Area Formula Program, 5309 Fixed Guideway Capital Investment Grants, 5311 Formula Grants for Rural Program, and other programs as determined by the secretary are required by 49 U.S.C. 5331 to establish Drug and Alcohol (D&A) 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. 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, respectively). Establishing a testing program is a condition of FTA funding. For noncompliance with 49 CFR parts 40 and 655, MAP-21 allows the secretary to bar a recipient from receiving FTA assistance in an *amount that the secretary deems appropriate*, which allows FTA more flexibility in enforcing compliance. Where applicable, recipients of FTA funding may instead be required to comply with Federal Railroad Administration (FRA) (49 CFR part 219 – for commuter rail), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR part 382 – for contractors with mixed transit/motor carrier/school bus), and United States Coast Guard (USCG) (46 CFR parts 4 and 16 – for ferryboat) 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 with effective ongoing oversight. 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. Van pool drivers, as volunteers and not employees of a transit system that do not receive remuneration over their actual expenses, are exempt from testing. Also exempt are taxi operations for paratransit transportation where the patron chooses the service through a user subsidy or voucher and the service is not dispatched through the FTA recipient or subrecipient. In addition, maintenance contractors for rural 5311 providers and providers in urbanized areas with populations of less than 200,000 are exempt as well.

FTA's regulation requires testing of employees who perform one or more of five transit safety-sensitive functions, which are 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 ninety days or more); reasonable suspicion; random; post-accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in twelve months after returning to duty). Since an October 2010 amendment to 49 CFR part 40, return-to-duty and follow-up tests are required to be directly observed.

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 and educating 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 prohibited alcohol concentration levels and 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://www.fta.dot.gov/safetysecurity/12533.html>) or through contacting the FTA office of transit safety and oversight, FTA headquarters.

8. **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 antidrug 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 Department of Labor provides a drug-free workplace advisor to assist users in developing tailored policy statements at the following link: <http://www.dol.gov/elaws/asp/drugfree/menu.htm>. 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 ten days of having received the notice. Within thirty 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://www.fta.dot.gov>, or by contacting FTA's office of safety and oversight, FTA headquarters, 1200 New Jersey Ave. SE., Washington, DC 20590.

9. **EMPLOYEE POLITICAL ACTIVITY**. To the extent applicable, the recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. Sections 1501–1508, and Sections 7324–7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 CFR part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment



activities are financed in whole or part with federal funds including a federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. 5323(l)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of other agencies or entities performing related functions) receiving FTA assistance to whom the Hatch Act would otherwise apply.

10. ENERGY CONSERVATION. The recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. 6321 *et seq.* The recipient, to the extent applicable, agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, “Requirements for Energy Assessments,” 49 part 622, subpart C. Only after the completion of an energy assessment will FTA approve assistance for the construction, reconstruction, or modification of buildings for which the recipient submits an application. An energy assessment consists of an analysis of the total energy requirements of a building, within the scope of the proposed construction activity and at a level commensurate with the project size and scope. The energy assessment should consider: overall design of the facility or modification; materials and techniques used in construction or rehabilitation; special or innovative conservation features that may be used; fuel requirements for heating, cooling, and operations essential to the function of the structure projected over the life of the facility and including projected costs of this fuel; and the kind of energy the recipient will use.
11. ENVIRONMENTAL REVIEWS. All projects seeking FTA financial assistance require compliance with the National Environmental Policy Act (NEPA) Implementing Regulations (40 CFR § 1500-1508), FHWA and FTA’s Environmental Impact and Related Procedures (23 CFR § 771), Efficient Environmental Reviews for Project Decisionmaking (23 U.S.C. § 139), and numerous other environmental laws, regulations, and orders such as Section 106 of the National Historic Preservation Act (36 CFR part 800), the Clean Water Act, and the Endangered Species Act. Project sponsors should consult with the FTA regional office early in project development to identify the appropriate class of action (categorical exclusion, environmental assessment, or environmental impact statement) for the NEPA review and any other environmental requirements. Project sponsors should not move forward with any steps to develop the project that would preclude the fair consideration of alternatives (e.g., final design and construction) until FTA concludes the NEPA process by issuing a record of decision (ROD), finding of no significant impact (FONSI), or a categorical exclusion (CE). Property acquisition, other than for the linear right-of-way needed for the project (as determined in close consultation with FTA staff), should not take place until an ROD, FONSI, or CE is issued.
12. ENVIRONMENTAL JUSTICE. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, requires the U.S. DOT and the FTA to make environmental justice (EJ) part of our mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on programs, policies, and activities on minority populations and/or low income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 “Environmental Justice

Policy Guidance for Federal Transit Administration Recipients,” provides FTA recipients and subrecipients with guidance and instructions necessary to carry out the executive order.

13. INTERGOVERNMENTAL REVIEW. Executive Order 12372 and DOT regulations, “Intergovernmental Review of Department of Transportation Programs and Activities” (49 CFR part 17), require that a grant applicant applying for FTA funds comply with a state’s intergovernmental review process. The requirement is to ensure that the appropriate state authorities are informed about and provided an opportunity to comment on projects for which federal assistance is being provided within the state. Many states have their own review procedures, which describe the federal programs and activities that had been selected for intergovernmental review and how applicants satisfy the states’ intergovernmental review requirements.

If there is no intergovernmental review process in the grant applicant’s state, then programming of a project in the TIP/statewide transportation improvement program (STIP), or Unified Planning Work Program (UPWP), as appropriate, will be considered by FTA as meeting the need for intergovernmental review.

If there is an adopted state process of intergovernmental review for an FTA program or activity, FTA requires that the applicant, upon the MPO’s approval of the TIP, notify the single point of contact for the state’s intergovernmental review process that the MPO has approved the TIP and that the applicant has submitted the TIP to the governor for approval and subsequent inclusion in the STIP. The applicant must provide the single point of contact with the name and mailing address of the office to which it is submitting the TIP.

The applicant may wish to transmit to the single point of contact, or request the MPO to transmit, pertinent documents on public transportation projects from the approved TIP. Timely alerting of the single point of contact will allow that entity to review and comment on the projects in the TIP during the STIP development process, if the entity so chooses. In the appropriate places in the FTA electronic award management system, an applicant should indicate whether Executive Order 12372 applies, and the date the state reviewed the application, if applicable.

#### 14. 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 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), formerly Section 13(c) of the Federal Transit Act, as amended). 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-1519, 200 Constitution Avenue, NW, Washington, DC 20210; telephone, 202-693-1193; fax, 202-693-1344.

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.
17. 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 (Uniform Act), as amended (42 U.S.C. 61)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR part 24) and FTA Circular 5010.1.

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR part 24, are DOT-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.gpo.gov/fdsys/pkg/CFR-1999-title49-vol1/pdf/CFR-1999-title49-vol1-part24.pdf> 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. The appraisal, including a review appraisal, must be in compliance with 49 CFR part 24 and FTA Circular 5010.1.

18. 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 complete and submit standard form SF-LLL, sign a certification so stating and must disclose the expenditure of nonfederal 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 nonfederal funds for lobbying, so long as the required disclosures are made.

19. SAFETY. MAP-21 amended 49 U.S.C. 5329 to provide FTA with the authority to establish a new comprehensive framework to oversee the safety of public transportation throughout the United States. The law requires, among other things, that DOT issue a National Public Transportation Safety Plan, establish safety performance criteria for all modes of public transportation, define a “state of good repair,” establish minimum safety performance standards for public transportation vehicles, and a safety certification training program. States are required to strengthen their State Safety Oversight (SSO) programs and submit them to FTA for certification. In addition, public transportation agencies must establish comprehensive agency safety plans for their rail and bus operations. FTA will be issuing regulations and interim guidance to implement these new requirements in consultation with public transportation industry stakeholders.

**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 also focuses on addressing the needs of rural and small urban providers.

20. 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 (“tripper service”). For the purpose

of FTA's school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start program limit the types of vehicles which may be used to transport children participating in a Head Start program. FTA recipients may operate multifunctional school activity vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.

21. SEISMIC DESIGN AND CONSTRUCTION STANDARDS. A grant applicant must assure FTA that any new building or addition to an existing building it designs and constructs with federal assistance is compliant with seismic safety standards. The grant applicant is responsible for knowing before accepting delivery that the building complies with seismic design and construction requirements and, in accordance with DOT implementing regulations, "Seismic Safety," at 49 CFR 41.117(d), and must assure FTA that it will obtain a certificate of compliance with the requirements. A recipient makes this assurance through the FTA annual certification process.
22. SENSITIVE SECURITY INFORMATION. To the extent applicable, the recipient agrees to comply with 49 U.S.C. 40119(b) and implementing DOT regulations, "Protection of Sensitive Security Information," 49 CFR part 15, and with 49 U.S.C. 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 CFR part 1520.
23. STATE SAFETY OVERSIGHT. MAP-21 did not alter 49 U.S.C. 5330, but subsection 20030(e) of MAP-21 provided that Section 5330 would be repealed three years after the effective date of FTA's regulation implementing the new Section 5329 requirements. Until then, the current regulations at 49 CFR part 659 will remain in effect. The existing regulations require oversight of the System Safety Program Plan development and implementation, internal safety and security audits, accident and hazard investigations, and corrective action plan development and implementation.

Until new regulations are in effect, an oversight agency must continue to annually certify to FTA that it has complied with the requirements of 49 CFR part 659. The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA. The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

The current Section 5330 and the amended Section 5329 authorize FTA to withhold up to five percent of an affected state or urbanized area's apportionment if FTA determines the state is not in compliance or is not making adequate efforts to comply with the rule. FTA may restore withheld formula funds if the state is in compliance within two years.

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## APPENDIX A

### INSTRUCTIONS FOR PREPARING A GRANT APPLICATION

#### 1. PREAPPLICATION STAGES.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the FTA electronic award management system. Applicants must have access to FTA's the system in order to enter a grant. If an applicant does not have access to the FTA electronic award management system, 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 Urbanized Area Formula 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 the grant application is submitted in the FTA electronic award management system. 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. ("Civil Rights" see Chapter VII of this circular.) FTA's office of civil rights may request additional information needed to affirm that the proposed project or elements thereof are in compliance with federal civil rights requirements, and/or reports on activities and progress to address findings identified in civil rights compliance reviews and assessments.
- f. Flexible Funding Documentation (If Applicable). A grant applicant seeking the use of flexible funds for its program, or a portion of it, must first make sure that the funds are available locally, in accordance with the specific project selection process for the local area. Once this resource of funds is included in the Transportation Improvement Program (TIP), and incorporated into the STIP, the grant applicant informs the state transportation agency that a grant application is in development to FTA for the use of flexible funds and requests that the

state inform the Federal Highway Administration (FHWA) of the need to transfer the funds to FTA for obligation (in some states, in practice, the Metropolitan Planning Organization [MPO] or FTA notifies the state transportation agency). Once the state highway/transportation agency determines that the state has sufficient obligation authority, the state agency notifies FHWA that the agency will use the funds for public transportation purposes and requests that FHWA transfer funds for the project to FTA. Information showing that these processes are under way should be included in the grant application. The grant applicant should also include the type of flexible funds, the amount, the purpose for which the funds will be used, and where they appear in the STIP.

2. APPLICATION SUBMISSION (FTA ELECTRONIC AWARD MANAGEMENT SYSTEMS INFORMATION). Applicants should submit their grant applications electronically in FTA’s electronic management system database accessible via the Internet. The User Guide, available on the homepage, provides detailed information on how to access and use FTA’s 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. Applicants should enter the following information into the system when preparing an application:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields, including recipient address, contact information, union information, urbanized area (UZA) identification number, congressional district(s), Data Universal Numbering System (DUNS) number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.

Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet ([www.dnb.com](http://www.dnb.com)). It takes about five weeks to receive a DUNS number after the information requested is imputed in the “Instructions on How to Obtain a DUNS Number.” As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.

- b. Project Information. Certain basic information required on the Federal Grant Application Standard Form 424 is incorporated into the project set-up fields. Applicants must identify whether the application is a new grant, or a grant amendment, the project start/end date, Executive Order (EO) 12372 – Intergovernmental Review of Federal Programs – review date, if applicable (see additional information about EO 12372 at <http://www.whitehouse.gov>), and grant project costs.
- c. Project Description. This information must include sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. 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. Sources of funds may also be included in the description.



- d. Information to Support Engineering/Technical Review. For projects involving construction or rehabilitation work, FTA reviews the information provided with the grant application, along with any pertinent documents that may be on record, to make a determination on such things as reasonableness of cost, sufficiency of preliminary engineering (PE) and design work completed, and eligibility of force account costs. For this reason, a grant applicant needs to include enough detail in the descriptive information about these projects to allow a positive determination during the project review period. For facility construction projects, the grant applicant should indicate the level of engineering work completed, and include the results of that work (i.e., appropriate drawings and cost estimates). FTA needs site selection studies and any pertinent information or documentation concerning environmental work performed for projects involving land acquisition and construction. For more information on the documentation requirements for these types of projects, the grant applicant should contact the appropriate regional office.
- e. Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). For the Section 5339 program, all projects using capital or operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) (or other location reference) in the most recently approved STIP on which the project(s) contained in the application is listed. The FTA electronic award management 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.
- f. Budget. The appropriate scopes and ALIs should be used when developing the project budget. 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 the Section 5339 program. The project budget for each grant application that includes transit enhancement funds must include a scope code for transit enhancements and specific budget ALIs for transit enhancements. 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.
- g. Determination of Sufficient Funds. All sources of funds must be identified and confirmed. The grant applicant should periodically examine the status of existing grants to make sure that unused fund balances, consisting of funds with a potential to lapse, are in fact needed to complete those grants. A grantee may deobligate any excess funds during their period of availability so that they may be reobligated into any pending or upcoming grant application. Otherwise excess funds left at the end of the project will be deobligated at closeout and, if lapsed, will be lost to the grantee.

FTA reviews the status of a UZA's apportionment, including prior year carryover balances, as well as current year allocations, to make sure that sufficient funds exist to finance the proposed program. FTA obligates Section 5339 program funds on a first-in, first-out basis to make sure that the oldest funds are obligated before more recent funds. This process prevents the potential of funds lapsing in a given UZA, which would render them no longer available to the area for obligation.

- h. Project Milestones. Every ALI in a grant budget must have associated project milestones. The FTA electronic award management system will auto-populate milestones for some ALIs; for example, rolling stock purchases will have five associated milestones. If does not prepopulate specific milestones for a particular ALI, use the add function to add a minimum two milestones reflecting the estimated start and end dates for that ALI to the grant application. Recipients should include estimated milestone dates for such events as bid advertisement, bid award, and contract completion.
- i. 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 771.118.) Grant applicants should refer to part 771.118(c) and (d) for a listing of the Class II (categorical exclusion) projects. Most projects under the Section 5339 program meet the criteria for a categorical exclusion (CE). The application should include sufficient information for FTA to determine whether a CE applies, such as a description of the project, as well as any maps or figures typically included with the application or as requested by the FTA regional office. However, if a project does not clearly meet the criteria for a CE, a grant applicant should contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.

Under NEPA, FTA must assess the potential environmental impacts resulting from an FTA "action" (for FTA's purposes this generally means a stand-alone FTA-funded project that has independent utility and logical termini). However, a grant application generally includes several ALIs that could be organized to constitute one or more stand-alone actions. For applications containing more than one action, applicants should clearly identify the separate actions and their corresponding ALIs. It is important to keep in mind that not all ALIs are separate actions under NEPA, nor does one grant application necessarily contain only one action. For each action identified the applicant should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (See 23 CFR 771.115 and 771.118.) Grant applicants should refer to part 23 CFR 771.118 (c) and or (d) for a listing of the Class II (categorical exclusion) projects; for actions requiring an EA or EIS, clearly indicate whether an EA or EIS is proposed.

- j. Fleet Status. Applications submitted in requesting new or replacement revenue vehicles should include, on the Fleet Status Report page, a summary of the composition of the applicant's entire fleet including the applicant's spare ratio. In the case of replacement, the applicant should state that the vehicles being replaced have met the minimum useful life criteria. A Sample Fleet Status Report can be located in Appendix C of this circular. 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. The requirements for equipment records that must be maintained by the grantee are detailed in FTA Circular 5010.1

k. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in by the authorized official of the applicant.

l. 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 Bus and Bus Facilities grants containing capital or operating expenses before FTA will approve them. See Chapter VI, “Program Management and Administrative Requirements,” of this circular for more information on DOL certification.

m. 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.

- n. 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 indicate the use of preaward activity require the submission of a Federal Financial Report before grant execution. Execution constitutes acceptance of the grant agreement terms and conditions.

3. APPLICATION CHECKLIST

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

<b>Section 5339 <u>APPLICATION CHECKLIST</u></b>	
<b>Part I—Recipient Information</b>	
	Are annual Certifications & Assurances selected and pinned/signed by the authorized official and attorney?
	Is the Recipient Contact, Designated Signatory, Opinion of Counsel, Authorizing Resolution & other information complete?
	Is UZA/Congressional District information entered and accurate?
	Is union contact information entered and accurate?
	Has Civil Rights Program documentation been approved by FTA?
	Has the applicants DUNS Number been entered in the appropriate field?
<b>Part II—Project Information</b>	
	Does the Project Description include adequate detailed information of the project(s) such as an appropriate project title?
	Is information on any subrecipient(s) and their projects included?
	Is this a new application or grant amendment?
	Does the application include an appropriate Start/End date?
	If a supplemental agreement is applicable, has “yes” been selected?
	Are activities and program dates consistent with STIP dates and the UPWP if planning activities are included?
	Are STIP/UPWP pages attached in the FTA electronic award management system?
	If pre-award authority is applicable, has “yes” been selected?
	If federal debt delinquency is applicable, has “yes” been selected. (If yes, grant applicant must explain in details Section.)
	Has the EO 12372 Review been completed, if applicable?
	Is sufficient information included to evaluate project specific compliance with ADA, Title VI, and DBE requirements?
	Is UZA/Congressional District information entered and accurate?
<b>Part III—Budget</b>	
	Are ALI codes entered under the appropriate scope codes and consistent with project descriptions?
	Are funding percentages and match ratios appropriate?
	Does the funding amount entered in the budget match financial information entered in the “Project Information” field for:

	a. Federal Funds
	b. Local Match
	Does the rolling stock (vehicle) line item contain accurate information such as:
	a. Description
	b. Fuel Type
	Has descriptive information been added in the details Section of each ALI that identifies the items being funded using the line item? If appropriate and necessary.
	Where applicable, have non-add scopes been added showing the funds allocated to Intelligent Transportation Systems, security funds, tribal governments, or other special areas of emphasis?
<b>Part IV—Project Milestones</b>	
	Are a minimum of two milestones listed for each ALI or scope? (If an ALI does not have standard milestones, they may be added.)
	Have estimated completion dates been entered?
<b>Part V—Environmental Findings (NEPA)</b>	
	Has an environmental finding been entered for each ALI or scope?
	For Categorical Exclusion II (d), EA, and EIS, have decision documentation been referenced or attached?
<b>Part VI—Fleet Status (This information is only required if acquiring rolling stock using grant funds.)</b>	
	Has information pertaining to current and future revenue vehicles been entered?
	If applicable, are vehicles entered in the table consistent with the budget?
	If applicable, is the Spare Ratio 20 percent or less?

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 grant 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 User's Manual for Recipients," <https://ftaecho.fta.dot.gov/echologin.asp>.

ECHO Control Number  
(ECN) \_\_\_\_\_

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

Initial Setup  Info. Change  Recipient Information Change

Information from this form is required under the provision of 31 U.S.C. 3322 and 31 CFR 210. Treasury uses this to transmit payment data by electronic means to a company's or a recipient's financial institution. Failure to provide the requested information may delay or prevent the receipt of payments through the Treasury ACH Payment System.

Note: See the bottom for instructions on completing this form.

<b>RECIPIENT INFORMATION</b>	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER: ( )
CONTACT PERSON NAME:	
SIGNATURE OF AUTHORIZED OFFICIAL IN FTA	TELEFAX NUMBER: ( )
DATE: / /	
<b>AGENCY INFORMATION</b>	
NAME: <i>Federal Transit Administration</i>	
ADDRESS: <i>1200 New Jersey Avenue, SE Washington, DC 20590</i>	
CONTACT PERSON NAME:	
<b>FINANCIAL INSTITUTION INFORMATION</b>	
<b>(Note: Have Your Bank Complete This Section)</b>	

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 Form:

- (1) Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, agency will assign 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:

- c. 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.
- d. Financial Institution Information Section: Have your bank fill out this section. They should print or type the name and address of the financial institution who 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 **Saving**), signature and title of representative, date, and telefax number.

- e. 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.
- f. If there are any questions, please call **202-366-9748** and ask for the agency's ACH contact.



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## APPENDIX B

### INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

1. **INTRODUCTION.** This Appendix provides information about the items that appear on an Approved Project Budget and provides instruction for preparing a project budget. A Federal Transit Administration (FTA) grant obligates a recipient to undertake and complete activities defined by the purpose or purposes of a grant and the budget incorporated into the grant agreement. A grant budget is the approved financial plan that FTA and the recipient agree they will follow in carrying out the purposes of the grant.

The recipient will use the FTA electronic award management system to prepare project budgets for FTA's various programs. The User's Guide provides detailed instructions on how to create a project budget within the FTA electronic award management system.

Within a grant, groups of activities often relate 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 grant program and budget may have several scopes.

So that FTA can comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L 109-282), enacted September 26, 2006, a designated recipient must provide FTA with the following information for each subrecipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award, and the primary location of performance under the award, including the city, state, and congressional district. The designated recipient may choose to submit this information as a separate attachment in the FTA electronic award management system or to include the information in the POP.

2. **DEVELOPING THE BUDGET.** FTA uses a scope code to establish the purpose of a group of activities. FTA derives the numbering of both the Scope and Activity levels of information on the Approved Project Budget from the activity codes in the FTA electronic award management system. To find the link to the current scope level codes and activity line items (ALIs), see the main menu of the FTA electronic award management system.
3. **GRANT MODIFICATIONS.** At times, it may be necessary to modify a grant after it has been awarded by revising the budget or amending the grant. The recipient is responsible for controlling and monitoring all grant activities to ensure they are implemented according to the approved budget. The manner in which the applicant initially structures a budget during the grant application phase can facilitate or impede project management, particularly when unforeseen events require changes in the project.

There are three ways to modify a grant after it has been awarded—either through a budget revision, an administrative amendment, or a grant amendment. Whether FTA permits a budget revision (with or without prior FTA approval before incurring costs), or whether the grantee will need an amendment to the project, depends on the effect of the proposed change on the scope of the project. FTA's review of grant modifications will include a determination of whether or not the proposed

change is significant enough to require Department of Labor (DOL) certification of Employee Protective Arrangements. Recipients should contact the FTA regional or metropolitan office for questions relating to grant modification requests, including which type of modification is appropriate for the proposed action.

Grant modifications are electronically submitted, reviewed, and approved in the FTA electronic award management system.

a. Budget Revision.

- (1) General. Budget revisions may be made as long as there is no change in the recipient, purpose, scope codes, and federal funding of the grant, regardless of the fiscal year the funds were appropriated. Budget revisions must be consistent with the activities contained in an approved Statewide Transportation Improvement Program (STIP) and satisfy applicable National Environmental Policy Act (NEPA) requirements. Useful life of new equipment must be addressed in the budget revision, as applicable.
- (2) Procedures. Grantees submit budget revisions in the FTA electronic award management system using the “Revise Project Budget” screen. Budget revision requests must include a reason for the revision. For each ALI being adjusted, either by quantity or dollar amount, grantees must include a brief explanation in the “Details” section for the change being requested. The FTA reviewer will return incomplete budget revisions to the grantee for more information. For assistance with completing budget revisions, please contact the FTA regional or metropolitan office.

Recipients may request budget revisions either before or after incurring costs, depending on the nature of the request. If the budget revision meets the criteria outlined below, FTA concurrence is required before costs associated with the proposed change are incurred.

- (3) Budget Revisions that Require Prior Approval. Under certain circumstances, grantees must obtain FTA approval before incurring costs for proposed budget revisions. At times, FTA review of a proposed budget revision meeting the criteria below may result in a recommendation to complete a grant amendment. The FTA regional or metropolitan office will make this determination during its review.
  - (a) The federal share of the grant exceeds \$100,000 and the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent.
  - (b) Federal funds are transferred between ALIs with different federal matching ratios, such as moving funds from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50. This activity also requires a financial purpose code (FPC) transfer.
  - (c) Changing the federal share of an existing ALI, such as changing an ALI from 80/20 to 85/15 to account for compliance with Americans with Disabilities Act (ADA) or Clean Air Act (CAA) requirements.

- (d) For revenue rolling stock, when the budget revision changes the number of vehicles to be purchased by more than two units, for grants with fewer than ten vehicles, or more than 20 percent from the quantity identified in the original grant.

**Note:** If the change in the number of revenue rolling stock vehicles exceeds 20 percent, the revision must meet FTA's spare ratio requirements, and a bus fleet status report should supported it.

- (e) The budget revision changes the size or physical characteristics of the ALIs without changing the project scope.
- (f) The addition of an ALI to an existing scope included in the grant, provided that the request does not change the amount of federal funds awarded in the original grant or change the scope of the project contained in the grant.
- (g) The addition of an activity within an approved scope requires that the grantee affirm in the budget revision request that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements.

**Note:** If an ALI to an existing scope is added to move a facility project to the next phase of construction, the budget revision may be sent to DOL for informational purposes. In addition, FTA must confirm eligibility of the project to advance to the next phase of construction.

- (4) Examples. The following are examples of situations when a grantee might request a budget revision. **Note:** If the examples below meet one of the criteria outlined above, the grantee must request FTA concurrence prior to incurring the costs for the requested activities.

- (a) Budget revisions to existing Activity Line Items (ALIs). Grant AB-90-234 includes a scope for vehicles (111-00) with the ALI to purchase 40' buses (11.12.01) and a scope for stations stops/terminals (113-00) with the ALI for construction of a bus terminal (11.33.01). The construction costs for the station are expected to be higher than originally anticipated and there is a surplus in the vehicle line item because the vehicle costs were less than anticipated. A grantee may request to move funds from ALI 11.12.01 to 11.33.01 to cover added construction expenses. Following the process described above and after determining if the request meets the threshold for prior FTA approval, the grantee may request to move the excess funds from 11.12.01 to 11.33.01.
- (b) Adding an ALI to an existing scope. The scope for Stations Stops/Terminals exists in the grant and funds are allocated to acquire route signing (11.32.09). However, the grantee determines that it prefers to use the funds to construct passenger shelters (11.33.10), which is an activity within the scope 113-00. The grantee may request a budget revision to add the ALI—11.33.10 and shift the funds from 11.32.09 with prior FTA concurrence. In addition, the grantee must confirm that the approved STIP includes construction of bus shelters and has satisfied applicable NEPA requirements.

b. Administrative Amendment.

- (1) General. An administrative amendment is usually initiated by FTA and may only be used when no change will result in the scope, amount, or purpose of the grant. FTA may use an administrative amendment to change or clarify the terms, conditions, or provisions of a grant agreement. FTA also uses an administrative amendment to change the year or type of funds obligated for a grant, to transfer equipment from one grantee to another, to reflect a change in the grantee or grantee's name, or to deobligate federal funds that the grantee no longer needs to complete the approved project scope or purpose.

c. Grant Amendment.

- (1) General. FTA requires a grant amendment when there is either a change in the scope or an addition of federal funds to an existing grant. Grant amendments are subject to the same application requirements as a new grant request.
- (2) Procedures. Grantees submit grant amendments in the FTA electronic management system using the "Create Amendment" screen. Grant amendments require a revised grant agreement, revised budget, and may require a change in the amount of funds obligated for the grant. An amendment is subject to the same requirements as a new grant request except that the grantee does not need to resubmit the portions of the original grant application that the change did not affect. The grantee must submit a detailed description of the changes and a revised project budget. For example, in the FTA electronic award management system under the project details section of the grant, grantees should include a header (e.g., "Amendment #1") and describe the reason for the amendment and the changes to the grant and budget.
- (3) Change of Scope. FTA requires a grant amendment if the request changes the scope of a grant. Examples and an exception to changes in scope that result in a grant amendment include:
  - (a) Examples.
    1. A change in the quantity of items the grantee will purchase or construct that changes the purpose or intent of the approved grant.
    2. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.
    3. The addition of an ALI that results from an amendment to the approved Transportation Improvement Program (TIP)/STIP.
    4. Budget revisions that result in additions or deletions of scope(s) or ALIs are sent to DOL for information. Grant amendments are sent to DOL for certification.
- (4) Change in Federal Funds. FTA requires a grant amendment if the request changes the total amount of federal funds in the grant. The one exception is if the request does not change the scope of a grant and the only action is the deobligation of funds, an administrative amendment is used to process the grant modification.

4. **FORMAT FOR CAPITAL ASSISTANCE**. Capital expenditures under the Section 5339 Program include those items defined as “capital” in 49 U.S.C. 5302(a). Vehicles can be purchased either for replacement or expansion purposes. Careful attention to use of the appropriate ALI codes enables FTA to report accurately on the use of formula funds, for example in the annual Statistical Summary report. For the current Statistical Summary reports, see [http://www.fta.dot.gov/funding/data/grants\\_financing\\_1090.html](http://www.fta.dot.gov/funding/data/grants_financing_1090.html).

ALIs are six-digit codes. For capital projects, the first digit “1” indicates a capital item. The second digit indicates whether it is for bus (1), fixed guideway projects (other than New Starts) (2), or New Starts (4).

The scope code is generally composed of the first three digits of the related ALIs grouped into it. The three-digit scope is followed by a two-digit sequence number so that the same scope can be used more than once in a budget, if there are multiple projects with similar purposes. Several examples of use of scopes and ALIs follow.

**EXHIBIT B-1**  
**Project Scope—Sample No. 1**

<b>Scope</b>	<b>Quantity</b>
111-010 Bus—Rolling Stock	6
<b>Activity</b> Line Items	
<b>Quantity</b>	
11.12.02 Purchase 35-foot replacement buses with lifts	4
11.13.03 Purchase 30-foot buses with lifts for service expansion	2
11.12.40 Spare Parts/Assoc Capital Maintenance Items	

In the example above, a mix of rolling stock will be purchased, and the scope includes the purchase of associated capital maintenance items (spare parts). If a grant applicant wishes to include radios and fareboxes as part of this purchase, it could also list radios and fareboxes as part of the rolling stock scope. In such a case, the grant applicant would not include the quantities for the radios and fareboxes in the rolling stock total quantity under 111-01, but would indicate it in the activity level description. If a grant applicant proposes to purchase an entirely new fare collection system or radio communications system, the more appropriate classification might appear as follows:

**EXHIBIT B-2**  
**Project Scope—Sample No. 2**

<b>Scope</b>	<b>Quantity</b>
114-00 Bus—Support Equipment and Facilities	45
(Note that in this example the activity code description appropriate to this Scope Code, Bus—Stations/Stops/Terminals has been overwritten to provide a more accurate description.)	

<b>Activity</b>	Line Items	<b>Quantity</b>
11.42.06	Shop Equipment	
11.42.10	Purchase Fare Collection (mobile)	45

<b>Scope</b>	<b>Quantity</b>
116-00 Bus Signal/Communications System	70

<b>Activity</b>	Line Items	<b>Quantity</b>
11.61.01	Design Bus Signal System	
11.62.02	Acquire Communication System	
11.62.03	Purchase Bus Radios	50

From these examples, it is also possible to combine activities that are associated, but which do not necessarily match the first three digits of the scope code under which they appear. A grant applicant that operates a fixed guideway system or engages in a new start project will use scope level numbers that correspond to the Fixed Guideway and New Start segments of the Activity Code Chart, for example, scope code 121-01, 02... for Rail Rolling Stock or 141-01, 02... for New Start Rolling Stock; or 123-01, 02... for Rail Stations and 143-01, 02... for New Start Stations.

- a. Subrecipient Information. The design of the project budget can also accommodate subrecipient information in cases where a recipient such as the state wishes to track each subrecipient's projects separately. In the following examples, the grant applicant is purchasing rolling stock on behalf of two small operators:



**EXHIBIT B-3**  
**Presenting Subrecipient Information—Format Option No. 1**

<b>Scope</b>	<b>Quantity</b>
111-01 Purchase Rolling Stock and Related Equipment	7
<b>Activity</b> Line Items	<b>Quantity</b>
11.12.03 Purchase replacement buses w/lifts for Allegany County	3
11.12.15 Purchase vans w/lifts for Cumberland Transit System	4
11.42.10 Purchase of fareboxes for buses	
11.62.03 Purchase of radios for vans	

**EXHIBIT B-4**  
**Presenting Subrecipient Information—Format Option No. 2**

<b>Scope</b>	<b>Quantity</b>
111-00 Rolling Stock for Allegany County	3
<b>Activity</b> Line Items	<b>Quantity</b>
11.12.03 Purchase replacement buses w/lifts for Allegany County	3
<b>Scope</b>	<b>Quantity</b>
111-01 Rolling Stock for Cumberland Transit System	4
<b>Activity</b> Line Items	<b>Quantity</b>
11.12.15 Purchase vans w/lifts for Cumberland Transit System	4

Under Format Option No.1, FTA would base the determinations regarding budget revisions and scope changes on the quantity total of seven vehicles found at the scope level. Under Format Option No. 2, FTA would base those determinations on the specific scope level quantity for each of the subrecipients—that is, quantities of three and four.

- b. Two Budget Approaches to Large Capital Projects. A grant applicant can also choose which of the two format options above best suit its internal management of projects. For example, a grant applicant developing a Bus Rapid Transit line may wish to develop separate scope level activities

for each station and include the relevant activities under each, or the same grant applicant may wish to group all activity under one scope.

In either case, the project budget can easily accommodate budget revisions, since funds can be transferred between or among various scope level projects and their associated line items.

5. REGIONAL ASSISTANCE. Grant applicants should contact the appropriate FTA regional office for assistance in preparing the project budget for a Section 5339 Program grant application.

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**APPENDIX C**

**FORMS AND REPRESENTATIVE DOCUMENTS**

**Document**

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Proceeds from Sale of Transit Assets .....	D-6
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1. 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, or 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. 5339, either alone or in addition to 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. 5307(a)(2) and required by 49 U.S.C. 5339.)
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 Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute 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)



2. 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 Bus and Bus Facilities Program assistance authorized by 49 U.S.C. 5339, the opinion must state whether the Applicant is the Designated Recipient as defined at 49 U.S.C. 5307(a)(2).)

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 \_\_\_\_\_

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, 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

3. FLEET STATUS REPORT. Shown below is a screen sample of a Fleet Status Report as seen in the FTA electronic award management system:

<b>FLEET STATUS - City of Folsom</b>			
	<b>Before</b>	<b>Change</b>	<b>After</b>
<b>I. Active Fleet</b>			
<b>A. Peak Requirement</b>	13	-2	11
<b>B. Spares</b>	0	0	0
<b>C. Total (A +B)</b>	13	-2	11
<b>D. Spare Ratio (B/A)</b>	0.00%	0.00%	0.00%
<b>II. Inactive Fleet</b>			
<b>A. Other</b>	0	0	0
<b>B. Pending Disposal</b>	0	0	0
<b>C. Total (A+B)</b>	0	0	0
<b>Total (I. C and II. C)</b>	13	-2	11

<b>FLEET STATUS - Paratransit Inc.</b>			
	<b>Before</b>	<b>Change</b>	<b>After</b>
<b>I. Active Fleet</b>			
<b>A. Peak Requirement</b>	160		160
<b>B. Spares</b>	30		30
<b>C. Total (A +B)</b>	190		190
<b>D. Spare Ratio (B/A)</b>	18.75%		18.75%
<b>II. Inactive Fleet</b>			
<b>A. Other</b>	0	0	0
<b>B. Pending Disposal</b>	0	0	0
<b>C. Total (A+B)</b>	0	0	0
<b>Total (I. C and II. C)</b>	190	0	190

#### 4. PROCEEDS FROM THE SALE OF PUBLIC TRANSPORTATION ASSETS.

Pursuant to 49 U.S.C. 5334(h), a recipient may transfer or sell capital assets that it has acquired with FTA assistance. In accordance with 49 U.S.C. 5334(h)(4), the recipient must apply the proceeds of the sale of public transportation assets no longer needed to a subsequent public transportation capital project.

A recipient intending to dispose of an asset in accordance with 49 U.S.C. 5334(h) should inform FTA of its intentions, before disposing of the asset, in order to obtain FTA approval.

When the recipient/applicant next submits a grant application to FTA, it must apply the proceeds to reduce the gross capital costs of the new public transportation project. In the FTA electronic award management system, the grant applicant should indicate the amount of the proceeds in the "Adjustment Amount" field; this shows that the proceeds from the earlier disposition are being applied to the project and that those proceeds are being used to reduce the total eligible cost. If appropriate, the grant applicant may also describe this action in the Project Description or Extended Budget Description text box.

#### EXAMPLE.

Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. The recipient no longer needs the parcel for public transportation purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000. 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, FTA expects the recipient to report the use of the proceeds from the earlier sale of the asset in the following manner:

#### 5. LIKE-KIND EXCHANGE EXAMPLE.

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.

Instead of keeping the bus in service for twelve years, the useful life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.

Since the bus had a minimum useful life of twelve years and FTA determined its depreciation 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.

Assume, for example, the recipient realized \$100,000 from the sale of the six-year-old bus, or \$25,000 less than the straight-line depreciated value of the original vehicle.

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	<u>116,000</u>
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.

6. SAMPLE SUPPLEMENTAL AGREEMENT.

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL TRANSIT ADMINISTRATION  
SUPPLEMENTAL AGREEMENT  
(Attachment to FTA G-15, October 1, 2008)**

It is the practice of the Federal Transit Administration to enter into a formal agreement with the Designated Recipient for projects that the Designated Recipient does not carry out directly. Under this Grant Agreement, the Grant Recipient is not the Designated Recipient. Therefore, the Designated Recipient hereby agrees to permit the Grant Recipient under this Grant Agreement to receive and dispense the federal assistance funds described in this Grant Agreement. The Designated Recipient further agrees that the Grant Recipient shall assume all responsibilities set forth in this Grant Agreement.

The Federal Government and the Grant Recipient under this Grant Agreement hereby agree that the Designated Recipient is not in any manner subject to or responsible for the terms and conditions of this Grant Agreement and is a party to this Grant Agreement only to assign the right to receive and dispense federal funds to the Grant Recipient as described above.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name (Print/Type): \_\_\_\_\_  
Authorized Official  
Federal Transit Administration

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name (Print/Type): \_\_\_\_\_  
Authorized Official  
Designated Recipient

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name (Print/Type): \_\_\_\_\_  
Authorized Official  
Grant Recipient

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**APPENDIX D**

**FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION**

<b>Office</b>	<b>Area Served</b>	<b>Contact Information</b>
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- and New Jersey	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 Fort 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

Office	Area Served	Contact Information
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
New York Metropolitan Office	New York Metropolitan Area	One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia, PA 19103-4124 Telephone: 215-656-7070 Fax: 215-656-7269
Chicago Metropolitan Office	Chicago Metropolitan Office	200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351
Los Angeles Metropolitan Office	Los Angeles Metropolitan Area	888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961
Washington, DC Metropolitan Office	Washington, DC Metropolitan Area	1990 K Street NW, Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545



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## APPENDIX E

### REFERENCES

- a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
- b. Federal-aid highway and surface transportation laws, Title 23, United States Code.
- c. Moving Ahead for Progress in the 21st Century Act (Pub. L. No. 112-141, July 6, 2012).
- d. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005).
- e. Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107, June 9, 1998).
- f. Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914, Dec. 18, 1991).
- g. Federal Public Transportation Act of 1978 (Pub. L. 95-599, Nov. 6, 1978).
- h. Americans with Disabilities Act of 1990, as amended, 42 U.S.C. 12101 *et seq.*
- i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794.
- j. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d.
- k. Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e.
- l. Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*
- m. Section 404 of the Clean Water Act, as amended, 33 U.S.C. 1344.
- n. Policy on Lands, Wildlife, and Waterfowl Refuges, and Historic Sites, 49 U.S.C. 303.
- o. Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f.
- p. Internal Revenue Code, Non-profit Organizations, 26 U.S.C. 501.
- q. Lobbying Restrictions, 31 U.S.C. 1352.
- r. Disadvantaged Business Enterprises, 23 U.S.C. 101 note.
- s. Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.*
- t. Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970, as

- amended, 42 U.S.C. 4601, *et seq.*
- u. Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*
  - v. Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681 *et seq.*
  - w. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
  - x. Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*
  - y. Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. 701 *et seq.*
  - z. DOT regulations, “Organization and Delegation of Powers and Duties,” 49 CFR Part 1.
  - aa. DOT regulations, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” 49 CFR Part 18.
  - bb. DOT regulations, “New Restrictions on Lobbying,” 49 CFR Part 20.
  - cc. 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.
  - dd. DOT regulations, “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs,” 49 CFR Part 24.
  - ee. DOT regulations “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25.
  - ff. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26.
  - gg. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 27.
  - hh. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” 49 CFR Part 29.
  - ii. DOT regulations, “Governmentwide Requirements for Drug-Free Workplace (Financial Assistance),” 49 CFR Part 32.
  - jj. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37.

- kk. DOT regulations, “Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38.
- ll. DOT regulations, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” 49 CFR Part 40.
- mm. FTA regulations, 49 CFR Subtitle B Chapter VI.
- nn. Joint Federal Highway Administration/FTA regulations, “Planning Assistance and Standards,” 23 CFR Part 450 and 49 CFR Part 613.
- oo. Joint Federal Highway Administration/FTA regulations, “Environmental Impact and Related Procedures,” 23 CFR Part 771 and 49 CFR Part 622.
- pp. Federal Motor Carrier Safety Administration regulations, “Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382.
- qq. U.S. Department of Treasury regulations, “Rules and Procedures for Efficient Federal- State Funds Transfers,” 31 CFR Part 205.
- rr. U.S. Environmental Protection Agency regulations, “Determining Conformity of Federal Actions to State or Federal Implementation Plans,” 40 CFR Part 93.
- ss. Executive Order 12372, “Intergovernmental Review of Federal Programs,” July 14, 1982.
- tt. Executive Order 12898, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations,” Feb. 11, 1994.
- uu. Office of Management and Budget Circular A-87, “Cost Principles for State, Local, and Indian Tribal Governments,” codified at 2 CFR Part 225, Aug. 31, 2005.
- vv. Office of Management and Budget Circular A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs,” Oct. 29, 1992.
- ww. Office of Management and Budget Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations,” June 23, 2003.
- xx. Department of Transportation Order to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 FR 18377 (Apr. 15, 1997).
- yy. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons, 70 FR 74087 (Dec. 14, 2005).

- zz. FTA Circular 4220.1, “Third Party Contracting Requirements.”
- aaa. FTA Circular 4702.1, “Title VI Program Guidelines for FTA Recipients.”
- bbb. FTA Circular 5010.1, “Grant Management Requirements.”
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