



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Docket No. FTA- 2013-0010

Urbanized Area Formula Program: Final Circular

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of availability of final circular

SUMMARY: The Federal Transit Administration (FTA) has placed in the docket and on its website, guidance, in the form of a Circular, to assist recipients in their implementation of the Urbanized Area Formula Program. The purpose of this Circular is to provide recipients of FTA financial assistance with instructions and guidance on the program's administration and the grant application process.

EFFECTIVE DATE: The effective date of the Circular is [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: For program matters, Adam Schildge, Office of Project Management, Federal Transit Administration, 1200 New Jersey Ave. SE; (202) 366-0778 or Adam.Schildge@dot.gov. For legal matters, Rita Maristch or Candace Key, Office of Chief Counsel, same address; (215) 656-7100; (202) 366-4011, respectively, or Rita.Maristch@dot.gov; Candace.Key@dot.gov.

SUPPLEMENTARY INFORMATION:

Availability of final circular

This notice provides a summary of changes to the Urbanized Area Formula Program Circular 9030.1E, and responses to comments. The final Circular itself is not included in this notice; instead, an electronic version may be found on FTA's Web site, at

www.fta.dot.gov, and in the docket, at www.regulations.gov. Paper copies of the final Circular may be obtained by contacting FTA’s Administrative Services Help Desk, at (202) 366-4865.

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I. Overview

FTA is updating its Circular 9030.1D, “Urbanized Area Formula Program: Program Guidance and Application Instructions,” last revised on May 10, 2010, to incorporate changes made to the section 5307 Urbanized Area Formula Program (section 5307 Program) by the Moving Ahead for Progress in the 21st Century Act (MAP-21, Pub. L. 112-141), signed into law on July 6, 2012. The section 5307 Program authorizes Federal financial assistance for public transportation in urbanized areas for capital and

planning projects, job access and reverse commute projects, and, in some cases, operating assistance. This notice provides a summary of changes to FTA Circular 9030.1D and addresses comments received in response to the proposed Circular that was published in the Federal Register on April 22, 2013. 78 FR 23818. The final Circular, 9030.1E, “Urbanized Area Formula Program: Program Guidance and Application Instructions,” becomes effective upon publication, and will supersede FTA Circular 9030.1D.

MAP-21 made several significant changes to the laws authorizing the Federal transit programs. Many of the changes have cross-cutting impacts across all of FTA’s programs and further several important goals of the Department of Transportation (DOT). Most notably, MAP-21 grants FTA significant new authority to oversee and regulate the safety of public transportation systems throughout the United States. The Act also puts new emphasis on restoring and replacing the Nation’s aging public transportation infrastructure by establishing a new State of Good Repair Formula Program and new asset management requirements. In addition, it aligns Federal funding with key performance goals and tracks recipients’ progress towards these goals. Finally, MAP-21 improves the efficiency of program administration through program consolidation and streamlining. For example, job access and reverse commute activities, previously included in a separate Federal transit assistance program, have been consolidated in the section 5307 Program and the section 5311 Formula Grants for Rural Areas Program.

The final Circular reflects changes in the law to the section 5307 Program and, where applicable, changes to other programs and provisions. The final Circular has also been reorganized and revised to improve clarity and to achieve consistency with FTA’s other guidance documents. FTA expects the additional updates and clarification provided

by the final Circular to provide recipients with the guidance and direction they need to properly apply for funding and comply with the requirements of the section 5307 Program.

The final Circular will apply to all new grants made on or after the effective date of the final Circular with FY 2013 or later funds. The requirements of the section 5307 Program under the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Pub. L. 109-59 (2005) and the guidance provided in the old Circular, 9030.1D, will continue to apply to grants made with FY 2012 or earlier funds after the effective date of the final Circular. In accordance with FTA's Master Agreement, MAP-21 cross cutting provisions will apply to each new grant, despite funding year.

Chapter-by-Chapter Analysis

A. General Comments

A total of 58 commenters responded to the proposed Circular. The majority of the comments received pertained to eligibility and other requirements for job access and reverse commute projects. A number of commenters made suggestions or recommendations that were outside the scope of this Circular. For example, comments were made about the process for recipient oversight assessments, and reporting requirements for the National Transit Database. In addition, a number of commenters suggested that FTA reference updated FTA guidance documents on others issues in this Circular, requested minor clarifications to statements or terms that did not impact the substance of the Circular, and commented on other issues that were not directly relevant to section 5307 program requirements.

Several commenters suggested that FTA clarify language regarding particular points of guidance provided in the previous Circular that had either been misinterpreted by grantees or pertain to issues that arise under relatively uncommon circumstances. Where possible, FTA has made edits to clarify the language in the Circular. For example, FTA revised language that provided guidance on the provision which allows up to 10 percent of an apportionment to be used for paratransit operations as a capital project. This provision does not preclude paratransit operations from being eligible to receive additional funding for operating expenses under standard operating expense eligibilities. In other cases, FTA inserted clarifying language from other circulars when a cross-cutting provision was mentioned.

B. Chapter I – Introduction and Background

Chapter I of the final Circular is an introductory chapter that covers general information about FTA, provides a brief history of the 5307 Program (49 U.S.C. 5307), including changes MAP-21 made to the section 5307 Program, and defines terms applicable across all FTA programs. The final Circular includes the following statutory definitions:

- Associated transit improvements (previously “transit enhancements”)
- Bus rapid transit (BRT) system
- Commuter highway vehicle or vanpool vehicle
- Disability
- Fixed guideway
- Job access and reverse commute project
- Low income individual

- Private provider of public transportation by vanpool
- Public transportation
- Regional transportation planning organization
- Senior

Definitions have also been added to this section for terms that are unclear or currently undefined in Federal transit law, regulation or guidance. Where applicable, we have used the same definitions found in statute, rulemakings or other circulars to ensure consistency.

There were several comments that suggested revisions to the definitions section. One commenter suggested that FTA revise the definitions of “capital asset” and “operating expenses” to account for variations of these definitions in State laws. FTA believes that the definition of terms must be applied uniformly to its Federal transit assistance programs for purposes of administration and, therefore, declines to accept the suggested revisions. Another commenter suggested that FTA clarify whether the definition of “force account” requires grantees to use force accounts for work completed by in-house staff in the process of supervising contractor work. FTA clarified the definition of force account to state that force account does not include project administration, preventive maintenance, mobility management, or other non-traditional capital project types. FTA has also included a reference to Circular 5010.1D, “Grant Management Requirements,” which provides additional guidance on force accounts.

C. Chapter II – Program Overview

Chapter II covers general information about the 5307 Program, including revisions to the section entitled “Statutory Authority,” to add references to MAP-21. As

a result of MAP-21, section 5307 Program funds are available for certain new and redefined activities, including job access and reverse commute projects, operating costs, and associated transit improvements.

The Circular includes a new section entitled “Census Designation of Urbanized Areas” (UZA). This section describes the designation of UZAs based on the 2010 Census. Beginning in fiscal year (FY) 2013, FTA incorporated the results of the 2010 Census into its formula apportionments. The 2010 Census data shows that the number of UZAs increased from 465 in 2000 to 497 in 2010, and the total population residing in UZAs increased from 195 to 223 million—an increase of approximately 12 percent. As a result, some UZAs have crossed statutorily-mandated population thresholds resulting in changes to the amount of formula funds that those areas can receive, and possibly resulting in changes to eligible uses of those funds.

The section entitled “FTA’s Role in Program Administration” was revised to clarify that funds are apportioned to States and designated recipients (DR), only: States for small UZAs; and DRs for large UZAs. One commenter suggested that a regional body be permitted to serve as a designated recipient for small UZAs. Federal law does not allow a regional planning organization to serve as a designated recipient for the purpose of allocating apportioned funds to small UZAs. Only governors have the authority to approve the allocation of funds in small UZAs. Therefore, FTA treats the State as the designated recipient for these areas and expects them to approve the individual allocations for the small UZAs.

A new section was added to this chapter entitled, “Direct Recipient and Sub-recipient Eligibility.” This section clarifies the process for selecting and establishing a

direct recipient, and clarifies the process for allocating funds to direct recipients and for sub-awarding funds to subrecipients. Direct recipients must be public entities that are legally eligible to apply for FTA funding. If certain requirements are met, a public agency may apply for some or all of a UZA's apportionment.

One commenter suggested that FTA allow private for-profit transit operators to be eligible subrecipients under the section 5307 Program. In addition, several commenters, particularly those located in newly- classified urbanized areas as a result of the 2010 Census, requested that FTA consider allowing non-profits to be eligible subrecipients under the section 5307 program. Historically, the only eligible subrecipients under this program have been public entities otherwise eligible to be direct recipients. However, FTA proposed and is continuing its position that non-profit agencies be eligible subrecipients for job access and reverse commute projects only. This is described in more detail in Section E of this notice and Chapter IV of the Circular. Outside of this allowance, private for-profit and non-profit operators may receive 5307 funding through a contracted service arrangement with an eligible FTA recipient.

A Section 5307 recipient, whether a designated recipient or direct recipient, may choose to pass its grant funds through to another eligible entity (sub-recipient) to carry out a project eligible under Section 5307. Designated recipients must inform FTA of specific allocations for direct recipients in a "split letter," which establishes the allocation of section 5307 funds in a large UZA. With respect to associated transit improvement projects, one commenter suggested that the split letter include the agencies undertaking associated transit improvements, and not specific projects. The Circular explicitly states that specific projects do not need to be identified. However, FTA made a minor change

to the circular language to clarify that a designated recipient's sub-area allocation documentation should identify the use of funds for eligible associated transit improvements and how the requirement will be met.

Added to the final Circular was further clarification of subrecipient arrangements that may arise as a result of revisions to urbanized area boundaries based on the U.S. Census. Designated recipients and direct recipients may enter into a contract for service with private non-profits who once provided public transportation service in a rural area that has been re-designated as an urbanized area. FTA acknowledges that some localities may consider other alternatives, including providing the service directly.

Also included in this Chapter in the section entitled "Relationship to Other Programs," is discussion on the relationship between the section 5307 Program and the Safe, Accountable, Efficient Transportation Equity Act, a Legacy for Users (Pub. L. 109-59, SAFETEA-LU) programs that were repealed by MAP-21, including the following:

- Clean Fuels Grant Program (former section 5308)
- Bus and Bus Facilities Discretionary Program (former section 5309(b)(3))
- Job Access and Reverse Commute Program (former section 5316)
- New Freedom Program (former section 5317)
- Paul S. Sarbanes Transit in the Parks Program (former section 5320)
- Alternatives Analysis Program (former section 5339)

Funds previously authorized for programs that were repealed by MAP-21 may remain available for obligation unless Congress rescinds or redirects them to other programs.

Funds made available to carry out the above programs are subject to the program rules and requirements at the time funds were appropriated.

This section also discusses the relations between the section 5307 Program and programs that were either added or amended by MAP 21, including the following:

- Fixed Guideway Capital Investment Program (section 5309, New and Small Starts, and Core Capacity Improvements)
- Public Transportation Emergency Relief Program (section 5324)
- Bus and Bus Facilities Formula Program (section 5339)
- State of Good Repair Formula Program (section 5337)
- Rural Area Formula Program (section 5311)
- Transit Oriented Development Pilot Program (section 20005(b) of MAP-21)
- Transportation Alternatives Program (23 U.S.C. 213(b))
- Federal Lands Access Program (23 U.S.C. 204).

Once commenter requested clarification of the transfer provision described under the discussion of the section 5339 Bus and Bus Facilities Formula Program. Under the section 5339 Bus and Bus Facilities formula program, a portion of the funds are allocated through an initial national distribution to States. The remaining funds are apportioned consistent with the formula under section 5336 (other than subsection (b)) to States and UZAs on the basis of population, vehicle revenue miles and passenger miles. In general, section 5307 Program requirements apply to section 5339 grants. The Governor of a State or the Governor's designee may transfer funds apportioned under the national distribution only to supplement amounts apportioned under the Rural Area (section 5311(c)) or section 5307 Program. The law does not allow section 5339 funds apportioned pursuant to the section 5336 formula to be transferred to the section 5307 or 5311 programs. FTA

revised the final Circular to address this comment. Further information on section 5339 will be published in a separate proposed Circular for notice and comment.

D. Chapter III – General Program Information

This chapter discusses in more detail the apportionments for the section 5307 Program. It also discusses the Federal share of projects costs, local share, other sources of financing, and the new Passenger Ferry Discretionary Grant Program. Discussion of eligible projects was moved from chapter III in the previous Circular, to chapter IV in the final Circular.

The section entitled “Apportionment of Program Funds,” provides the revised apportionment calculations, including the new set-asides and formula calculations established by MAP-21. Section 5336(h) of title 49, U.S.C., now provides that 3.07 percent of section 5307 funds available for apportionment are allocated on the basis of low-income persons residing in UZAs, with 25 percent of these funds allocated to areas below 200,000 in population and the remaining 75 percent allocated to areas 200,000 and over in population. MAP-21 also increased the percentage of funds allocated on the basis of Small Transit Intensive Cities (STIC) factors from 1 to 1.5 percent. Finally, MAP-21 established a new 0.5 percent takedown from the 5307 program for the State Safety Oversight Grant Program and a \$30 million takedown for the new Passenger Ferry Discretionary Grant Program.

Generally, MAP-21 extended the number of years that apportioned funds remain available for obligation from 4 to 6 years. As a result, apportioned funds are now available for obligation for a total of 6 years, including the year of apportionment.

One commenter requested clarification on whether the Governor of a State is permitted to redirect funds apportioned to a large UZA within 90 days of lapsing. This is not permitted under MAP-21, nor was it permitted under SAFETEA-LU. However, to better articulate the transfer provisions found in section 5336(e), FTA has clarified the language in the circular to reflect that a Governor may use any 5307 program funds from the Governor's apportionment that remain available for obligation beginning ninety days before the expiration of their period of availability in any area within the state (including large UZA's) for purposes eligible under the Urbanized Area Formula Program without prior consultation. The Governor may not redirect funds apportioned to a large UZA, unless the funds are transferred to the State by the designated recipient in accordance with the procedures identified in the final Circular.

This chapter also provides a brief introduction of the new Passenger Ferry Grants Discretionary Program. Each fiscal year, a total of \$30 million is authorized to be set aside from the 5307 program to support passenger ferry projects that will be selected on a competitive basis. One commenter suggested that consideration be given to making the application process for discretionary ferry grants as streamlined as possible to reduce the administrative burden on transit operators who are preparing proposals. It was also requested that funding be made predictable, to the extent possible. FTA has coordinated extensively with the passenger ferry industry in developing the Passenger Ferry Discretionary Program. By statute, funds are allocated on a competitive basis, and cannot be entirely predictable due to the differences in the applications submitted from year to year.

Generally, and consistent with MAP-21, the final Circular does not change the local match requirements – there is a 20 percent local match requirement for capital assistance and a 50 percent requirement for operating assistance. However, MAP-21 expanded the category of funds that can be used as local match. In addition to those sources of local match previously authorized under SAFETEA-LU, local match may also be derived from the following newly authorized sources:

- Amounts appropriated or otherwise made available to a department of or agency of the Government (other than DOT), such as Community Development Block Grant Funds administered by the Department of Housing and Urban Development.
- Any amount expended by providers of public transportation by vanpool for the acquisition of rolling stock to be used in the recipient's service area, excluding any amounts the provider may have received in Federal, State or local government assistance for such acquisition. The provider is required to have a binding agreement with the public transportation agency to provide service in the relevant UZA.

The final Circular has been revised to clarify that the Federal share of vehicle acquisition for purposes of complying with the Clean Air Act or the Americans with Disabilities Act, is 85 percent. The Federal share is 90 percent for vehicle related equipment and facilities. One commenter identified a discrepancy in the *Federal Register* notice accompanying the proposed circular regarding the eligibility of clean fuel buses as clean air act projects. The statement in the *Federal Register* notice was incorrect. Clean fuel buses remain eligible Clean Air Act projects and are eligible for an increased Federal share. However, biodiesel is no longer considered a clean fuel.

Lastly, the section entitled “Alternative Financing” includes discussion of updated eligibility criteria for capital projects seeking Transportation Infrastructure Finance and Innovation Act (TIFIA) financing, pursuant to section 2002 of MAP-21 (23 U.S.C. 601 et seq). Eligible projects include any transit capital project which is anticipated to meet the minimum statutory monetary threshold size for TIFIA financing.

E. Chapter IV – Eligible Projects and Requirements

In the final Circular, project eligibility and requirements was moved from chapter III into a new chapter IV. This chapter discusses the types of projects and activities that may be funded under the 5307 program. One commenter suggested that FTA clarify whether the list of eligible projects provided in the proposed Circular was exhaustive, and to include reference to bus rapid transit projects in this list. FTA accepts this suggestion and has revised the final Circular accordingly. In response to other comments received, FTA also made a number of clarifying edits which are reflected in the final Circular.

Most of the comments received on the proposed Circular pertained to the section entitled “Job Access and Reverse Commute Projects.” MAP-21 repealed the Job Access and Reverse Commute (JARC) Program, (former section 5316); however, job access and reverse commute projects are now eligible under the section 5307 Program. Job access and reverse commute projects are transportation projects “to finance planning, capital, and operating costs that support the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, including transportation projects that facilitate the provision of public transportation services from urbanized areas and rural areas to suburban employment locations.” 49 U.S.C. 5302(9).

Under the former section 5316 JARC Program, funds were apportioned to States and designated recipients which were then required to expend those funds on eligible JARC projects. Under the section 5307 Program, designated recipients are not required to expend funds on job access and reverse commute projects. Job access reverse commute projects are now similar to other types of projects that are eligible under the section 5307 Program. Several commenters requested that FTA require designated recipients to continue to fund existing JARC projects, or that they conduct an analysis or otherwise demonstrate that the needs of the target population are being met without funding for such services. The law does not authorize FTA to require recipients to spend funds on JARC projects, nor does FTA have the statutory authority to require that an analysis be completed prior to allocating funds. Designated recipients have the authority to determine how program funds are allocated in their urbanized area. The metropolitan planning process and the statutory requirement for a program of projects (POP) provide opportunities for public review and comment on which projects are selected for funding. As stated in the final Circular, FTA strongly encourages recipients to conduct proactive outreach to representatives of human services transportation providers, representatives of low-income populations, and welfare recipients in developing the program of projects.

In the proposed Circular, FTA proposed that the car loan program and the voucher program, which were previously eligible under the section 5316 JARC Program, no longer be eligible JARC projects under the section 5307 Program. Numerous commenters requested that JARC activities eligible under the former section 5316 JARC Program also be eligible under the section 5307 Program, including car loan and voucher programs that would not otherwise be consistent with the definition of public

transportation. FTA concurs that all categories of projects that were previously eligible under the former section 5316 JARC Program remain eligible for funding under the section 5307 Program. All other section 5307 Program requirements would apply to such projects as well.

Each potential project must be for the “development” or “maintenance” of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment-related activities and also must be otherwise eligible under the 5307 Program. FTA defines “development of transportation services” to mean new projects that were not in service on October 1, 2012. New JARC projects may include the expansion or extension of an existing service, so long as the new service was designed to support the target populations; however, such projects are not required to be designed for the sole use of the target populations.

One commenter requested clarification on whether JARC projects in large UZAs were eligible for operating assistance, where operating assistance may otherwise be restricted or prohibited. Consistent with the definition of “job access reverse commute project,” provided in the final Circular, such projects may include operating assistance in a large UZA, where operating assistance is otherwise not an eligible expense. Operating assistance for eligible job access and reverse commute projects are not limited by the “100-bus” special rule for operating assistance pursuant to 49 U.S.C. 5307(a)(2).

One commenter requested that FTA clarify the planning requirements for JARC projects. Previously, under the section 5316 JARC Program, recipients were required to engage in a coordinated planning process. There is no longer a statutory requirement that recipients engage in a coordinated planning process for JARC projects that are eligible

under the section 5307 Program and funded with FY 2013 funds and beyond. However, the coordinated planning process is still required for projects that are funded with section 5316 funds appropriated prior to FY 2013. Unobligated FY 2012 and prior JARC program funds remain available to FTA for obligation until Congress rescinds or redirects the funds to other programs. Recipients must obligate apportioned FY 2012 and prior JARC program funds through the period of availability and must follow the SAFETEA-LU requirements. For example, section 5316 JARC projects must still be derived from a human service public transportation coordinated plan and must also be selected by the designated recipient through an area-wide or statewide competitive selection process.

Although current law does not require JARC projects to be developed through a coordinated planning process, the project must be identified by the MPO and designated recipient as a JARC project in the designated recipient's annual Program of Projects, which must be developed in consultation with interested parties, published with the opportunity for comments, and subject to a public hearing.

Consistent with their prior eligibility under the section 5316 JARC Program, the final Circular reflects FTA's policy to include private non-profits as eligible sub-recipients for JARC projects. Several commenters commended FTA for allowing private non-profits as sub-recipients for JARC projects. Subrecipients will still be required to comply with the section 5307 and other Federal grant requirements for such projects. Relatedly, one commenter suggested that FTA clarify whether recipients may contract for service for JARC projects. Consistent with other types of projects eligible under this program, recipients have the option of contracting for service with private operators. Information on contracting for service is provided in detail elsewhere in the circular.

One commenter noted that under SAFETEA-LU, National Transit Database (NTD) reporting was not required of JARC subrecipients, and requested that FTA make subrecipients exempt from this requirement if they are receiving section 5307 Program funds for JARC projects. While FTA appreciates the comment and the potential burden that this requirement may pose on recipients of funding for JARC projects, by statute all 5307 recipients and subrecipients must report to the NTD. (49 U.S.C. 5335(b)) Operators of services with fewer than 30 vehicles may submit a streamlined report. Recipients that do not operate public transportation may submit a pro-forma NTD report, such as those submitted by State DOTs that use 5307 funds only for planning.

One commenter proposed also that subrecipients not be required to provide non-peak discounts, noting that under SAFETEA-LU, non-peak discounts were not required of JARC subrecipients. The commenter proposed that in order to be consistent with the previous JARC guidance and to reduce the administrative burden on non-profits who do not provide traditional transit services, FTA make subrecipients exempt from this requirement if they are receiving section 5307 Program funds for JARC project purposes only. While FTA appreciates the comment and the potential burden that this requirement may pose on recipients of funding for JARC projects, FTA cannot waive the half fare requirement as it is established by statute.(49 U.S.C. 5307 (c)(1)(D))

Associated transit improvements are also eligible under the section 5307 Program. However, under MAP-21, “public art” is no longer an eligible associated transit improvement (formerly “transit enhancement”). Incorporation of design and artistic considerations into public transportation projects may still be an allowable cost, so long as it is an integral part of the project. For example, an artist may be employed as part of

the construction design team, or art can be incorporated into functional elements such as walls, seating, lighting, or railings.

One commenter requested that "transit-oriented carsharing" should be an eligible expense under the associated transit improvements category and others. Some expenses associated with car sharing may be eligible projects under the JARC program. Eligible uses of funds for associated transit improvements are enumerated in law and addressed in the final Circular.

This chapter also includes a section entitled "Operating Assistance." Recipients in UZAs under 200,000 in population may use 5307 program funds for operating assistance at a 50 percent Federal share. There is no cap on the amount that can be used in these areas for operating assistance. Unless specifically authorized, recipients in UZAs of 200,000 or more in population are not permitted to use program funds for operating assistance.

Under MAP-21, a special rule (49 U.S.C. 5307 (a)(2)) allows recipients in UZAs with populations of 200,000 or above and that operate 100 or fewer buses in fixed route service during peak hours, to receive a grant for operating assistance subject to the following criteria:

- Public transportation systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak service hours may receive operating assistance in an amount not to exceed 50 percent of the share of the apportionment that is attributable to such systems within the UZA, as measured by vehicle revenue hours.

- Public transportation systems that operate 75 or fewer buses in fixed route service during peak service hours may receive operating assistance in an amount not to exceed 75 percent of the share of the apportionment that is attributable to such systems within the UZA, as measured by vehicle revenue hours.

One commenter suggested that operators that only provide demand-response service should also be eligible for operating assistance under this new provision. By law, this provision is only applicable to providers of fixed route service. FTA does not have the legal authority to extend applicability to providers that only provide demand response service. One commenter requested that small transit operators be permitted to receive operating assistance without the proposed operating cap if their services are in portions of large UZAs that are outside of the service area boundaries of the local metropolitan transit authority. The eligibility for operating assistance in a large UZA is defined in statute and includes only the new 100-bus provision and eligible JARC projects, subject to the eligibility requirements described in the circular. FTA does not have the authority to permit further exceptions to these requirements.

The final Circular also clarifies that “revenues”, as used to determine eligible operating costs, are farebox revenues. FTA has made this definition consistent throughout the circular, including deleting park and ride lot revenues from the sample operating expense worksheet.

Not included in the final Circular is the section on Debt Service Reserve because MAP-21 repealed the 5307 debt service reserve pilot program at 49 U.S.C. 5323(e)(4)(A), as amended by SAFETEA-LU.

F. Chapter V – Planning and Program Development

This new chapter replaces the chapter in the previous Circular entitled “Coordinated Planning.” Under SAFETEA-LU, certain eligible projects were required to be developed under a locally developed, coordinated planning process. Under MAP-21, coordinated planning is only a requirement of eligibility under the section 5310 program. However, 5307 recipients who apply for section 5310 funds are still required to participate in the local planning process for coordinated public transit-human services. Moreover, FTA strongly encourages 5307 recipients to engage in a coordinated planning process.

One commenter stated that FTA appeared to establish a new certification requirement in the section of the Circular that discusses the coordinated planning process, and requested clarification as to which entity is responsible for this certification. FTA removed the language, which was intended to refer to existing certification requirements that are discussed elsewhere in FTA guidance and is not the subject of this Circular.

This chapter includes a revised discussion of Transportation Management Areas (TMAs) for planning purposes. The statutory definition of a TMA is a UZA with a population of over 200,000 individuals. There is also reference to the joint FTA/FHWA transportation planning regulations at 23 CFR part 40, which include guidelines on determining the boundaries of a of a Metropolitan Planning Area (MPA).

The Performance Based Planning Section in this chapter is a new addition to the Circular and discusses the requirements of MAP-21’s new broad performance management program which supports the seven national performance goals. The performance management framework attempts to improve project decision-making

through performance-based planning and programming and through fostering a transparent and accountable decision-making process for MPOs, States, and providers of public transportation.

The section entitled “Availability of FHWA Flexible Funds for Transit Projects” clarifies the availability of FHWA funds for eligible transit projects. FHWA flexible funds may be available to FTA recipients for planning and capital projects, and operating expenses. This section also clarifies the requirements for transfer of Congestion Mitigation and Air Quality (CMAQ) Improvement Program funds for transit purposes.

This chapter also includes a section entitled “Associated Transit Improvements.” MAP-21 changed the term “transit enhancements” to “associated transit improvements.” An associated transit improvement is a project “designed to enhance public transportation service or use and that [is] physically or functionally related to transit facilities.” This section of the proposed circular discusses the requirements to expend a percentage of a UZA’s 5307 program funds on associated transit improvements and also discusses eligible projects.

At least one percent of large UZA’s apportionment must be expended on associated transit improvements. One commenter noted that this requirement is too burdensome for small transit agencies. This is a statutory requirement and cannot be waived by FTA (49 U.S.C. 5307 (c)(1)(K)). Recipients may expend funds for associated transit improvements on a wide variety of project types, including landscaping and streetscaping, to improve the public environment in which transit operates. This requirement can be met at the UZA level if other providers have eligible projects and does not apply in UZAs with populations of under 200,000.

Also, at least one percent of a UZA's apportioned funds must be expended on transportation security projects unless it is decided that the expenditure is not necessary. Eligible projects are limited to those explicitly stated in statute.

Previously, FTA applied the one percent requirement for transportation security projects at the recipient level. One commenter supported the proposed change to the calculation of the one percent expenditure requirement for public transportation security projects allowing this requirement to be applied at the urbanized area level, rather than at the grant level. This commenter requested that this change apply first in the fiscal year after the final Circular is adopted. In general, policy changes reflected in the final Circular will take effect immediately upon publication. Changes that affect procedures or steps required for allocating funds or receiving a grant will take effect at the next time that such procedures are initiated, whether that occurs in the current fiscal year or the next. For example, if a recipient has initiated the TIP or POP approval process under the prior requirements, the new requirements will apply in the next fiscal year.

This chapter also includes a section on "Undertaking Projects in Advance." The final Circular revises this section to explain the different authorities that allow a recipient to incur costs on a project before grant approval, while still retaining their eligibility for reimbursement after grant approval. The three types of authorities are pre-award authority, letters of no prejudice (LONP), and advanced construction authority (ACA). This section discusses the distinction among these three authorities and the terms and conditions that apply equally to all three.

A few commenters suggested that the POP only be required to contain information relating to the designated recipient and that information required by the

Circular may not be available. Several commenters noted that the roles of the MPO and designated recipient may differ among UZAs, and suggested that FTA provide flexibility by allowing an MPO to communicate suballocations to FTA rather than the designated recipients. FTA allows for flexibility by allowing multiple designated recipients to submit their POPs to FTA in multiple parts. If an MPO is responsible for determining the suballocation, the MPO may be assigned as the designated recipient and given the formal role of determining suballocations.

Another commenter requested that FTA retain flexibility in allowing fixed allocation percentages for sub-area allocations when they have been determined to be the most appropriate method by the MPO members. FTA has made a minor change to the Circular language to indicate that the use of a fixed percentage may not be appropriate, rather than "is not considered satisfactory."

This chapter has also been revised to clarify that recipients should consult with FTA regarding the proper level of environmental review prior to expending funds for a project.

Lastly, two commenters suggested that, in cases of loss through a natural disaster, the Circular state that FTA's requirement for early disposition reimbursement may be waived. While FTA has the authority to grant such a waiver, it has not determined that such a waiver will be granted in the future, and does not want to create an expectation that such a waiver will be granted.

G. Chapter VI – Program Management and Administrative Requirements

The proposed circular updates this section to add the requirement that recipients certify compliance with 49 U.S.C. 5329(d), which requires recipients and States to develop and implement a Public Transportation Agency Safety Plan.

The final Circular reflects three major changes to this Chapter. First, all references to FTA’s current Electronic Grants Management System (commonly known as “TEAM”) have been removed in consideration of a new system, currently under development. That system is now generically identified as the Electronic Award Management System in this circular. Second, a new section was added to discuss the Federal Funding Accountability and Transparency Act (FFATA) Requirement which requires recipients report information about each first tier sub-award over \$25,000 by the end of the month following the month the direct recipient makes any sub-award or obligation.

Lastly, the final Circular clarifies the discussion in the proposed circular on NTD Reporting regarding waivers. The proposed circular stated that FTA would no longer issue any NTD waivers. However, FTA has implemented a reduced reporting requirement for small systems. Where, under certain circumstances described in NTD Reporting Manuals, grant recipients may apply for reduced NTD reporting requirements. For instance, under the Small Systems Waiver, grantees with fewer than 30 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.

H. Chapter VII – Other Provisions

This section of the Circular was revised pursuant to the changes to the State Safety Oversight (SSO) Program and the requirements of 49 CFR 659 made by MAP-21. Section 5330, which authorizes the SSO Program, will be repealed three years from the effective date of the new regulations implementing the new section 5329 safety requirements. Until then, the current requirements of 49 CFR 659 will continue to apply.

I. Tables, Graphs, and Illustrations

There were no changes made to this section of the Circular.

J. Appendices

There were no substantive changes made to this section of the Circular.

Peter Rogoff
Administrator

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