



## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2013-0026]

### Enhanced Mobility of Seniors and Individuals with Disabilities: 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 grantees in implementing the Enhanced Mobility for Seniors and Individuals with Disabilities Program. The Moving Ahead for Progress in the 21<sup>st</sup> Century Act blended the New Freedom Program and the Elderly Individuals and Individuals with Disabilities Program into a new Enhanced Mobility for Seniors and Individuals with Disabilities Program. FTA is updating the circular due to these changes in the law.

**DATES:** The final circular becomes effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** For program questions, Gilbert Williams, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E44-409, Washington, D.C., 20590, phone: (202) 366-0797, fax: (202) 366-7951, or e-mail, [Gilbert.Williams@dot.gov](mailto:Gilbert.Williams@dot.gov). For legal questions, Bonnie Graves, Office of Chief Counsel, same address, Room E56-306, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

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**I. Overview**

FTA is updating Circular 9070.1F, “Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions,” last revised in 2007, in order to incorporate changes in the law subsequent to passage of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21, Pub. L. 112-141). MAP-21 blended the previous “Section 5310 program” and the New Freedom Program (49 U.S.C. 5317, authorized by the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (SAFETEA-LU), and repealed by MAP-21).

On July 11, 2013, FTA issued a notice of availability of the proposed circular in the **Federal Register** (78 FR 41824) and requested public comment on the proposed circular. The comment period closed on September 9, 2013. FTA received comments from 53 entities, including trade associations, State DOTs, metropolitan planning organizations, public transportation providers, human service agencies, and individuals. This notice addresses the

comments received and explains changes FTA made to the proposed circular in response to comments.

The new Section 5310 program, as amended by MAP-21, authorizes grants for the activities previously authorized under two separate grant programs: Section 5310, formula grants for the special needs of elderly individuals and individuals with disabilities; and Section 5317, New Freedom program. The new Section 5310 program authorizes four types of projects: public transportation projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable or inappropriate; public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990; public transportation projects that improve access to fixed route service and decrease reliance by people with disabilities on complementary paratransit; and alternatives to public transportation that assist seniors and people with disabilities with transportation. Notably, the “alternatives to public transportation” language now applies to seniors as well as to people with disabilities, and projects no longer have to be “new” to be eligible for funding. Newly eligible under Section 5310 are projects that improve access to fixed route service. The objective of this eligible activity is to remove barriers, including improving access to public rights-of-way and installing elevators in rail stations that are not required by the ADA to have elevators, so people who use wheelchairs or have other mobility impairments have greater access to bus stops and rail stations.

Several aspects of the new Section 5310 program carry forward language from the previous Section 5310 and 5317 (New Freedom) programs. For example, projects funded under the new Section 5310 must be part of a program of projects that is annually submitted to FTA. Recipients of Section 5310 funds may coordinate and assist with meal delivery services for

homebound people, as long as the service does not interfere with the provision of transportation services. The Federal share of costs remains at 80 percent for capital projects and 50 percent for operating. Consistent with previous law, facilities or equipment may be transferred to other recipients under certain conditions. Further, the requirement for coordinated planning is retained, and projects must be included in the coordinated plan. In addition, seniors and people with disabilities must be included in the development and approval of the coordinated plan.

Under MAP-21, funding for the new Section 5310 program is no longer only apportioned to States; it is now apportioned in the same way that Section 5317 (New Freedom) funds were apportioned under the previous authorization, except the senior population (age 65 and over) is now included in the formula. The law specifies that 60 percent of the funds are apportioned to designated recipients in large urbanized areas with a population of 200,000 or more in a ratio reflecting the number of seniors and people with disabilities in each such urbanized area; 20 percent of the funds are apportioned to the States in a ratio reflecting the number of seniors and people with disabilities in urbanized areas with a population of less than 200,000; and 20 percent of the funds are apportioned to the States in a ratio reflecting the number of seniors and people with disabilities in rural areas with a population of less than 50,000 in each State.

The competitive selection process, required under the previous New Freedom program, is no longer mandatory. However, whether or not a State or a designated recipient uses a competitive selection process to award funds to subrecipients, the State or designated recipient must certify that funds allocated to subrecipients are allocated on a fair and equitable basis.

## **II. Chapter-by-Chapter Analysis**

### **A. Chapter I – Introduction and Background**

Chapter I of the proposed circular is an introductory chapter and covers general information about FTA and how to contact us, briefly reviews the authorizing legislation for FTA programs generally, includes definitions applicable to the Section 5310 program, and provides a brief history of the Section 5310 program. Where applicable, we have used the same definitions found in statute, rulemakings, and other circulars to ensure consistency.

FTA received three comments on this chapter, all related to definitions. One commenter suggested that FTA clarify the definition of “public transportation,” since some providers are not public transportation agencies, but are non-profit human service agencies that also provide transportation services. In MAP-21, Congress amended the definition of public transportation to include service that is open to a segment of the general public defined by age, disability or low-income. This definition includes service provided by non-profit agencies. One commenter suggested we add a definition of “direct recipient” and we have done so. We have also added the statutory definition of “designated recipient.” The commenter also suggested we add definitions for “selection of projects” and “competitive selection process.” We believe these do not require definitions and are adequately described in the circular. Finally, one commenter noted that the Older Americans Act defines “elderly” as 60 years of age or older. Federal transit law at 49 U.S.C. 5302(18) defines “senior” as an individual who is 65 years of age or older. We would note that public transportation providers may define “senior” to include individuals under age 65, as a lower age would be inclusive of those over age 65. For purposes of the formula, funds are distributed based on the number of people over age 65 in a particular area.

#### B. Chapter II – Program Overview

Section 5310(h) requires FTA to submit a report to Congress making recommendations on the establishment of performance measures for grants under Section 5310. The law requires

the report to be developed in consultation with national non-profit organizations that provide technical assistance and advocacy on issues related to transportation services for seniors and individuals with disabilities. In addition, Section 5335(c) requires all FTA grant recipients, including grant recipients under Section 5310, to report an asset inventory or condition assessment conducted by the recipient to the National Transit Database (NTD). In the notice announcing the availability of the proposed circular, FTA asked for comment on performance measures and reporting requirements, proposed in section 3 of chapter II.

FTA received a number of comments on its proposal. Commenters were generally concerned about the amount of data that would be collected from traditional Section 5310 subrecipients, as well as how that data would be collected. Some commenters suggested various performance measures, and two commenters suggested that there be two sets of performance measures: one for traditional Section 5310 projects and one for other Section 5310 projects.

In light of the requirement that FTA develop a report on performance measures in consultation with national non-profit organizations that provide technical assistance and advocacy on issues related to transportation services for seniors and individuals with disabilities, and that we did not receive comments from such organizations, FTA conducted additional outreach on this topic. Easter Seals Project Action coordinated an online dialogue from March 31 through April 18, 2014 (<http://fta5310grant.ideascale.com/>) to get additional comments on the measures required by 49 U.S.C. 5310(g): modifications to the geographic coverage of transportation service, the quality of transportation service, or service times that increase the availability of transportation services for seniors and individuals with disabilities; ridership; and accessibility improvements. FTA is in the process of reviewing the additional comments and

expects to make recommendations regarding performance measures in response to this outreach effort.

In this final circular, FTA has retained the existing performance measures for traditional Section 5310 projects, as well as the existing measures for what used to be New Freedom projects. This will allow for consistency and a continuation of previous reporting requirements as FTA considers new performance measures.

The asset inventory reporting required by 49 U.S.C. 5335(c) will not take effect until FTA amends the National Transit Database (NTD) reporting manual, via a notice in the **Federal Register**. FTA invites interested stakeholders to submit comments when the notice is published.

### C. Chapter III – General Program Information

FTA received a number of comments on this chapter, but many of the comments relate to provisions in the law that FTA cannot change. For example, several commenters objected to available funds being apportioned 60 percent to large urbanized areas, 20 percent to small urbanized areas and 20 percent to rural areas, and asked for more flexibility in apportioning funds. This formula is established by Congress in 49 U.S.C. 5310(c), and FTA has no discretion to change it. However, the law does allow funds apportioned for small urbanized and rural areas to be transferred to another area of the State if the Governor of the State certifies that all of the objectives of the Section 5310 program are being met in the specified areas. For example, if all objectives of the Section 5310 program are being met in rural areas, funds designated for rural areas may be transferred to urbanized areas of less than 200,000 in population. Funds apportioned to small urbanized and rural areas may also be transferred for use anywhere in the State, including large urbanized areas, if the State has established a statewide program for meeting the objectives of the Section 5310 program. A recipient may transfer apportioned funds

only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large UZAs may not be transferred to other areas.

One commenter asked how the disability calculation will be made for apportionment purposes. Consistent with 49 U.S.C. 5310(c), FTA uses Census Bureau data, specifically the American Community Survey's 5-year data sets, which are updated annually, to determine the number of seniors and people with disabilities in a particular area.

Another subject on which commenters had questions – and on which FTA has no discretion – was when an entity would be able to apply to FTA directly for Section 5310 funds as opposed to being a subrecipient of a designated recipient. In large urbanized areas, the Section 5310 designated recipient may allocate funds to a Section 5307 designated recipient as a result of its coordinated planning and selection processes, and that Section 5307 designated recipient may apply to FTA directly for Section 5310 funds. This is consistent with the previous New Freedom program, and there would be no other eligible direct recipients in large urbanized areas beyond these program designated recipients. There was a change in the law related to small urbanized and rural areas. The previous New Freedom program (at 49 U.S.C. 5317(c)(3)) permitted States to transfer New Freedom funds to Section 5307 for administration of competitively selected New Freedom projects within a Section 5307 grant to an eligible recipient under that program. This provision is not in the new Section 5310 program. Therefore, the State is the only eligible direct recipient for Section 5310 funds in rural areas and small urbanized areas, and because the language in the proposed circular was consistent with the law, FTA is not making any changes to section 4 of chapter III, Eligible Direct Recipients.

Several commenters had questions about the requirement that 55 percent of an area's apportionment be available for "traditional Section 5310 projects." The new Section 5310 program essentially maintains the status quo for traditional Section 5310 projects – those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate. These projects are carried out by private non-profit organizations, including human service agencies; or a State or local governmental authority that is approved by a State to coordinate services for seniors and individuals with disabilities, or certifies that there are no non-profit organizations readily available in the area to provide the service. Eligible subrecipients for other Section 5310 activities include a State or local governmental authority, a private non-profit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.

Consistent with the Section 5310 program under previous authorizations, for traditional Section 5310 projects, the State or designated recipient applies for Section 5310 funds on behalf of private non-profit agencies (such as human service agencies) and eligible local governmental authorities within the rural area of the State or the urbanized area. This provision ensures continued support for non-profit providers of public transportation, and maintains the status quo for these projects. For the remaining Section 5310 funds available (at most, 45 percent) to a rural or urbanized area, the designated recipient applies to FTA on behalf of itself and eligible subrecipients.

Commenters asked FTA to clarify when the 55 percent of funds available for traditional Section 5310 projects would be available for ADA complementary paratransit. As we stated in the **Federal Register** notice accompanying the proposed circular, based on historical uses of

Section 5310 funds, FTA proposed including the eligibility of rolling stock for and acquisition of ADA complementary paratransit service as traditional Section 5310 projects when carried out by eligible subrecipients, so long as the projects are planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable or inappropriate, and the projects are included in the area's coordinated plan. Some States have historically used Section 5310 funds for vehicle and service acquisition for ADA complementary paratransit service, in particular where the State has required coordination efforts among human service transportation providers. Therefore, vehicle and service acquisition will continue to be eligible activities under the Section 5310 program as traditional Section 5310 projects when the requirements listed above are met. Operating expenses for ADA paratransit service are not eligible expenses under any part of the Section 5310 program, except as acquisition of service, permitted under 49 U.S.C. 5310(b)(4). We have amended the circular for clarity.

If a recipient, through the coordinated planning process, elects to expand ADA service beyond the required service components (geographic area, additional hours, etc.) and requires additional vehicles to do so, those additional vehicles would be eligible under the 45 percent "other eligible projects" as a project that exceeds ADA minimum requirements. Similarly, accessibility improvements to rail stations are eligible as long as they exceed ADA minimum requirements. For example, installing an elevator in an older station where elevators are not required, or installing a second elevator at a station in order to provide more reliable access would be eligible under "other eligible projects."

Some commenters asked whether States could blend their rural and small urbanized area apportionments for purposes of allocating funds between traditional Section 5310 projects and

other eligible projects. For example, if the State had two small urbanized areas in addition to the rural area, could it allocate 55 percent of the total apportionment for the three areas to the rural area, thus allowing the small urbanized areas to use their apportionments for other eligible projects? The law requires that the amount available for capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate or unavailable “shall be not less than 55 percent of the funds apportioned to the recipient” under Section 5310. FTA apportions funds to States for rural areas, and separately apportions funds to States for small urbanized areas. Therefore, the allocation between traditional Section 5310 projects and other projects must be a minimum 55/45 split in each area that receives an apportionment.

One commenter requested that FTA allow the pass through of administrative funds from the designated recipient to one or more subrecipients for administration, planning, or technical assistance purposes. We have amended section 12 of chapter III to include language allowing this pass through of funds.

Three commenters asked that FTA remove the word “capital” in section 16, Federal/Local Matching Requirements when describing non-cash or in-kind match. FTA agrees that non-cash and in-kind match may be operating or capital costs, and we have removed the word “capital.” In response to comments, we have also removed the word “new” when describing eligible projects, and added the word “seniors” to include alternative transportation available for both seniors and individuals with disabilities.

Finally, one commenter suggested that FTA should not specifically identify taxi operators as being eligible subrecipients in certain circumstances, but should state for-profit operators are eligible. Providers of public transportation, whether for-profit or non-profit, are eligible

subrecipients. However, public transportation is a shared-ride service, and most taxi companies provide exclusive ride service. We included this information in the circular in order to address a frequently asked question of the former New Freedom program. Entities that provide exclusive ride service may be eligible participants in the Section 5310 program, but only as contractors, not as subrecipients.

FTA has made amendments to Chapter III in response to comments described above, as well as clarifying edits.

#### D. Chapter IV – Program Development

FTA received only two comments on this chapter, and both commenters requested that FTA revise section 7, Certifications and Assurances, to reflect the fact that the designated recipient is responsible for submitting the certifications and assurances in large urbanized areas. This was an oversight in the proposed circular and we have revised the language.

#### E. Chapter V – Coordinated Planning

This chapter describes the required coordinated planning process. Several commenters requested that FTA maintain flexibility in how a project appears in a coordinated plan. We have added language in the circular to clarify that projects may be identified in the plan as strategies, activities, and/or specific projects addressing service gaps or transportation coordination objectives articulated and prioritized within the plan. For example, a coordinated plan may identify a service gap, such as the absence of accessible transportation service after 10:00 p.m., when the transit system's fixed route service ends. Examples of strategies to address this service gap may be non-specific, such as adding late-night service options; or may be more specific, such as contracting for accessible taxi service or extending ADA complementary paratransit hours past the fixed route service end time. Either approach allows designated recipients to meet

the identified service gap. Alternatively, the plan may include a specific project if the people developing the coordinated plan prefer to include a specific project to meet this need. The level of specificity in the coordinated plan is a local decision. However, FTA expects the program of projects that accompanies the grant to clearly identify the gaps or strategies a particular project is addressing; this should be done by providing the page number in the coordinated plan that correlates to the gap or strategy for a particular project.

Another area of comment involved addition of the word “approved” in the sentence, “a coordinated plan . . . developed and approved through a process that included participation by seniors, individuals with disabilities . . .” The addition of the word “approved” is a change in the law. FTA inadvertently left out the words “and approved” in several places in the circular; we have amended the text to be clear that the people developing the coordinated plan – including seniors and individuals with disabilities – must also approve that plan. This ensures that the people who are identifying the needs and establishing the priorities in the plan will also have a voice in approving that plan. One commenter asked how “approved” is different from “adopted.” In this instance, we believe these terms are synonymous – an adopted plan is by definition one that is approved.

Some commenters asked about the relationship between the coordinated plan and the project selection process, particularly when the project selection process is competitive. Under previous law, a competitive selection process was required for Section 5317 (New Freedom); under MAP-21 it is optional. Regardless of how a specific contractor or subrecipient is selected to carry out the project, projects should be funded in accordance with the priorities identified in the coordinated plan.

One commenter asked if each individual rural project must be included in the Statewide Transportation Improvement Program (STIP). Depending on the projects resulting from the coordinated planning and selection process, a single line item on the STIP for capital or operating projects may be sufficient. However, given the expanded project and subrecipient eligibility under MAP-21, a designated recipient and State may need to consider more detailed programming, such as categorizing the projects based on the types of projects (capital or operating) and/or types of subrecipients, e.g., non-profit, public entity, etc.

Finally, one commenter asked if a current four-year coordinated plan is in place, could the plan be updated to meet the new MAP-21 requirements? FTA recognizes that some entities may need to modify existing coordinated plans to address the specific needs of seniors and individuals with disabilities and/or be approved by seniors and individuals with disabilities. Modifications to existing plans are acceptable.

FTA has made clarifying edits to Chapter V to address the above comments.

#### F. Chapter VI – Program Management and Administrative Requirements

The vast majority of comments received for Chapter VI related to the proposed reporting requirements. FTA had proposed meeting the requirements of 49 U.S.C. 5335(c) by combining all of the performance measure and asset inventory reporting requirements into a single requirement, and allow States and designated recipients to report on behalf of their subrecipients under a single, unified reporting system. While some commenters supported this approach, most commenters expressed concern that such reporting would be burdensome on small Section 5310 non-profit providers. As discussed in the Chapter II summary, above, FTA is retaining the existing performance measures for the program (including the measures for the former New Freedom program) while we review comments received as a result of additional outreach with

non-profit agencies. In addition, the National Transit Database (NTD) reporting requirement will only be effective after FTA conducts a rulemaking on this requirement.

The remaining comments were related to vehicle use. One commenter asked that FTA define the word “incidental” and provide examples of permissible incidental use. Incidental use means occasional or infrequent use of vehicles that does not interfere with the project activities originally funded. Examples are provided in section 5, Vehicle Use, and include meal delivery as well as use for other Federal programs, as when the recipient is coordinating service with other entities that provide transportation for seniors or individuals with disabilities. Operating assistance available under Section 5310 may not be used for such incidental purposes.

#### G. Chapter VII – State and Program Management Plans

FTA proposed only minor changes to Chapter VII, generally to address the change from a State-managed program to a program managed by designated recipients as well as States. FTA received one comment on this chapter. In section 1, General, the commenter asked FTA to be more specific about the State Management Plan and Program Management Plan contents that should be coordinated with the STIP and TIP. We have amended the language for clarity. We would note, however, that there is flexibility in the coordination of the STIP and the State Management Plan, as well as the TIP and the Program Management Plan. Each State and urbanized area has different needs and as such the management plan will be different; therefore, FTA has elected not to be too specific in what must be included in the management plan.

#### H. Chapter VIII – Other Provisions

This chapter describes cross-cutting FTA and Federal requirements that apply to the Section 5310 program. Two commenters suggested modifying the Title VI program requirements for Section 5310 subrecipients. FTA’s Title VI program circular states that Section

5310 non-profits that serve only their own clientele (closed door service) are required to submit a Title VI Program every three years, but it is a streamlined Program that includes only basic information. Interested stakeholders are invited to visit [http://www.fta.dot.gov/legislation\\_law/12349\\_14792.html](http://www.fta.dot.gov/legislation_law/12349_14792.html) and review page IV-1 of the Title VI circular. One commenter suggested that typical categorical exclusions be included in the Environmental Review section of this chapter. Operating assistance and most vehicle acquisitions will be categorically excluded, but many other capital projects may not be. We recommend recipients consult with their FTA regional office if they have specific questions related to environmental reviews. One commenter suggested that FTA include the human service transportation exception to the charter service prohibition in the circular. We have added this text to the section on Charter Bus Services.

#### I. Appendices

One commenter suggested that FTA remove the union contact information from the checklist in Appendix A, since labor protections do not apply to the Section 5310 program. We have made that change. We have not made any other substantive edits to the appendices.

Issued in Washington, DC, 2nd day of June 2014.

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Dorval R. Carter, Jr.,  
Chief Counsel.

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