



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

**[Docket No. FTA-2019-0002]**

#### **Joint Development: Proposed Updated Circular**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of availability of update to joint development circular and request for comments.

**SUMMARY:** The Federal Transit Administration (FTA) has placed in the docket and on its website proposed changes to an existing Circular (7050.1A) on joint development projects using FTA funds or FTA-funded property. The purpose of these proposed changes is to increase flexibility for project sponsors to pursue joint development projects, reduce FTA oversight of joint development agreements negotiated between project sponsors and their partners, streamline FTA's project eligibility review process, and clarify prior guidance in FTA Circular 7050.1A: *FTA Guidance on Joint Development*. If proposed changes are approved, the revised document will be renumbered as Circular 7050.1B: *FTA Guidance on Joint Development*. By this notice, FTA seeks public comment on proposed changes, which are at pages III-6, VI-1, VI-2, VI-4, VI-5, and VI-6 of the Circular.

**DATES:** Comments must be submitted by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Late filed comments will be considered to the extent practicable.

**ADDRESSES:** Please submit your comments by only one of the following methods, identifying your submission by DOT Docket Number FTA-2019-0002. All electronic

submissions must be made to the U.S. Government electronic site at

<http://www.regulations.gov>.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

Hand Delivery or Courier: West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.

Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2019-0002) for this notice at the beginning of each submission of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA received your comments, include a self-addressed stamped postcard. All comments received will be posted without change to [www.regulations.gov](http://www.regulations.gov) including any personal information provided and will be available to internet users. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) or <http://DocketsInfo.dot.gov>.

Docket: For access to the docket to read background documents and comments received, go to [www.regulations.gov](http://www.regulations.gov) at any time or to the U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M-30, West Building Ground Floor, Room

W12-140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. Eastern Standard Time, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For policy guidance questions, Daniel Schned, Office of Budget and Policy, Federal Transit Administration, 1200 New Jersey Ave. SE., Room E52-314, Washington, DC 20590, phone: (202) 366-1652, or email, *daniel.schned@dot.gov*. For legal questions, Kathryn Loster, Office of Chief Counsel, 200 West Adams Street, Suite 320, Chicago, IL 60606, phone: (312) 353-3869; or email: *kathryn.loster@dot.gov*.

**SUPPLEMENTARY INFORMATION:** This notice provides a summary of the proposed changes to Circular 7050.1A. The Circular itself is not included in this notice; instead, an electronic version may be found on FTA's website at [www.transit.dot.gov](http://www.transit.dot.gov), and in the docket at [www.regulations.gov](http://www.regulations.gov). Paper copies of the Circular may be obtained by contacting FTA's Administrative Services Help Desk at (202) 366-4865.

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## **I. Overview**

The proposed changes to Circular 7050.1A regarding joint development affect: (1) the minimum threshold for the statutory "fair share of revenue" requirement; and (2) the submission and review process for FTA-assisted joint development projects.

## **II. Proposed Changes to Circular 7050.1A**

### *A. Fair Share of Revenue*

Section 5302(3)(G)(iii) of title 49, United States Code, requires FTA-assisted joint development projects to provide a “fair share of revenue that will be used for public transportation.” Prior to the October 1, 2014 effective date of Circular 7050.1A, FTA generally deferred to a project sponsor’s assessment of a “fair share” of revenue, and did not require any specific amount of revenue for transit from a joint development project. FTA defined “fair share of revenue” in Circular 7050.1A to incorporate a minimum threshold that a joint development project must produce revenue for transit purposes that at least equals the federal government’s initial investment in the joint development project. (79 Fed. Reg. 50,728; 50,731-32).

Over time, FTA has found that defining a fair share of revenue minimum threshold unnecessarily limits the pool of potential projects by reducing flexibility for project sponsors and their partners to determine what amounts to a fair share of revenue. Accordingly, FTA proposes to no longer define a minimum revenue threshold, or set a monetary requirement from a joint development project for transit purposes.

Although FTA proposes to allow the amount and form of revenue received by the project sponsor to be negotiated between the joint development parties, consistent with Circular 7050.1A, the project sponsor must continue to report to FTA the amount and source of the revenue it will receive, and the revenue must be used for transit purposes.

### *B. Submission and Review Process*

Circular 7050.1A prescribes a process by which project proposals are submitted to FTA for review. Currently, formal project proposals must include: (1) a completed project request form that contains pertinent information about the joint development

project, including how the eligibility criteria are to be satisfied, (2) all proposed agreements between the project sponsor and project partners, (3) an executed certificate of compliance, and (4) two forms identifying other required and supplemental documentation, including a baseline market analysis to demonstrate a good faith effort to provide a fair share of revenue to the project sponsor.

FTA proposes to update the project request form to reflect the changes described in Section (A) above. The revised project request form will be published on FTA's website at [www.transit.dot.gov/jointdevelopment](http://www.transit.dot.gov/jointdevelopment).

FTA has also determined that elimination of the fair share of revenue minimum threshold makes the submission of a baseline market analysis and certificate of compliance unnecessary. Accordingly, FTA proposes to no longer require project sponsors to submit either document. FTA encourages project sponsors to conduct baseline market analyses to better understand current market conditions and evaluate the viability of joint development projects.

The proposed changes will streamline the review of FTA-assisted joint development projects by reducing the amount of paperwork that project sponsors must prepare and FTA must review.

FTA recommends that interested stakeholders review the proposed changes to the Circular carefully and provide comment on any impacts these proposed changes may have on future joint development projects.

K. Jane Williams,  
Acting Administrator.

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