



DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA-2023-0009]

Grant Programs for Urbanized Areas: Program Guidance and Application

Instructions, Proposed Circular

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of proposed circular and request for comments.

SUMMARY: The Federal Transit Administration (FTA) is seeking public comment on a new, consolidated circular entitled, “Grant Programs for Urbanized Areas: Program Guidance and Application Instructions” which consolidates and replaces the circulars for the Urbanized Area Formula Grants Program, the State of Good Repair Grants Program, and the Urbanized Area formula component of the Grants for Buses and Bus Facilities Program. The update and consolidation of the circulars incorporate provisions from the Fixing America’s Surface Transportation (FAST) Act; the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL); the Uniform Administrative Requirements for Federal awards to non-Federal entities; and current FTA policies and procedures.

DATES: Comments must be submitted by [INSERT DATE 60 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 docket number FTA-2023-0009. All electronic

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

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

- 1) Federal eRulemaking Portal: Go to <https://www.regulations.gov/> and follow the online instructions for submitting comments.
- 2) 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.
- 3) 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.
- 4) Fax: 202-493-2251.

Instructions: You must include the agency name (Federal Transit Administration) and Docket number (FTA-2023-0009) for this notice at the beginning 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. Note that all comments received will be posted without change to <https://www.regulations.gov/> including any personal information provided and will be available to internet users. For information on DOT's compliance with the Privacy Act, please visit <https://www.transportation.gov/privacy>.

Docket: For access to the docket to read background documents and comments received, go to <https://www.regulations.gov/> at any time or to the U.S. Department of Transportation, 1200 New Jersey Ave SE, Docket Operations, M-30, West Building Ground Floor, Room W12-140, Washington, DC 20590 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program questions, Latrina Trotman, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E46-301, Washington, DC, 20590, phone: (202) 366-2328, or e-mail, Latrina.Trotman@dot.gov. For legal questions, Jerry Stenquist, Office of Chief Counsel, same address, Room E56-314, phone: (202) 493-8020, or e-mail, Jerry.Stenquist@dot.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview
- II. Chapter-by-Chapter Analysis
 - A. Chapter I – Introduction and Background
 - B. Chapter II – Program Overviews
 - C. Chapter III – General Program Information
 - D. Chapter IV – Eligible Projects and Requirements
 - E. Chapter V – Planning & Project Development
 - F. Chapter VI – Program Management and Administrative Requirements
 - G. Appendices

I. Overview

The Federal Transit Administration’s (FTA) proposed circular titled, “Grant Programs for Urbanized Areas: Program Guidance and Application Instructions” is a consolidation of guidance for the administration and preparation of grant applications for the Urbanized Area Formula Grants Program under 49 U.S.C. 5307 (FTA Circular C 9030.1), State of Good Repair Grants Program under 49 U.S.C. 5337 (FTA Circular C 5300.1), and the Urbanized Area component of the Grants for Buses and Bus Facilities Program under 49 U.S.C. 5339(a) (FTA Circular C 5100.1). Additionally, this circular incorporates provisions of the FAST Act (Pub. L. 114-94) and BIL (Pub. L. 117-58) and includes program-specific guidance for these formula programs. Additional requirements

for all grant programs are identified in FTA's Award Management Requirements Circular C 5010.1. The proposed circular is posted on <https://www.regulations.gov> in Docket FTA-2023-0009.

The proposed circular consolidates and summarizes programmatic information, streamlines pre-existing guidance from the three program circulars, and reduces duplication of information provided between the Urbanized Area Formula Programs circular and FTA's other topic-specific circulars, including by moving certain text applicable to most or all of FTA's grant programs to FTA's Award Management Requirements Circular C 5010.1. Furthermore, the proposed circular clarifies a number of policy issues as interpreted and applied by FTA. These clarifications address topics in the existing program circulars, including: reallocations or transfers of apportionments; consolidation of grants to insular areas; intermodal use of formula funds; eligible projects and activities for each formula program; operating assistance limitations and exceptions; capital cost of contracting; the role of transportation network companies in providing public transportation services; period of availability to obligate funds flexed to the FTA formula programs from the Federal Highway Administration (FHWA); planning requirements; pre-award authority; and requirements pertaining to fares charged to seniors and persons with disabilities.

II. Chapter-by-Chapter Analysis

A. Chapter I – Introduction and Background

Due to the consolidation of the three program circulars, definitions and program descriptions were compared and revised for consistency with proposed updates to Circular C 5010.1E "Award Management Requirements," Circular C 9040.1G "Formula Grants for Rural Areas," and Circular C 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities." FTA proposes to amend the definitions section for

consistency, clarification, and to reflect changes to statute and other authorities.

Specifically, FTA has updated the following terms:

- “Capital Asset” is modified for consistency with Generally Accepted Accounting Principles (GAAP), Governmental Accounting Standards Board (GASB), Financial Accounting Standards Board (FASB), and FTA’s Uniform System of Accounts.
- “Clean Fuel Bus” now recognizes other low or no emissions technologies besides full electric and hybrid electric buses.
- “Fleet Management Plan” is modified to explicitly clarify that the management plan includes an inventory of all rolling stock.
- “Mobility Management” is modified to explicitly exclude the operation of public transportation service as a mobility management activity, consistent with the definition in 49 U.S.C. 5302.
- “Rehabilitate” is expanded to include applicability to facilities and amended to clarify that not all rehabilitative activities must be a restoration to original condition to more accurately reflect the term’s broad usage in 49 U.S.C. 5337 and 5339.
- “Urbanized Area” is updated to reflect changes in designation by the Census Bureau, which no longer utilizes “Urbanized Area” but “Urban Area” (UZA), as defined by the Secretary of Commerce.
- “Useful Life” now applies to real property and other capital assets. Because useful life depends on depreciation and estimated time in use, consideration of useful life changes according to the type of asset in question.

B. Chapter II – Programs Overview

FTA proposes several updates to its program guidance within Chapter II to reflect statutory and regulatory changes, including information disseminated by the Census Bureau. The proposed circular further addresses administrative procedure in apportioning and distributing funds, including the roles of designated recipients (DR), state recipients, subrecipients, and private contractors.

The proposed circular includes information related to private contractors such as transportation network companies (TNCs) and taxi service; these entities are not eligible subrecipients under sections 5307, 5337 and 5339(a) but may be contracted to perform public transit activities through eligible recipients for shared-ride on-demand service to the general public or to a segment of the public for certain eligible transit services.

C. Chapter III – General Program Information

The proposed circular contains several updates regarding the apportionment of program funds for Sections 5307, 5337, and 5339 to reflect statutory and regulatory changes. Specifically, the percentages of Section 5307 funds available for state safety oversight programs and small transit intensive cities have been amended. Furthermore, the proposed circular includes additional formula factors for apportionments for the Section 5307 and 5339 programs. Chapter III also clarifies and highlights recipients' flexibility to reallocate or transfer apportionments, including consolidating formula program funds for use in insular areas. Lastly, the circular sets forth the circumstances in which certain human resources and training supportive services are eligible costs under 49 U.S.C. 5314(b)(4) to assist individuals in the enrollment and completion of workforce training, including child and dependent care, tools, work clothing, costs of apprenticeship, and required pre-employment training.

D. Chapter IV – Eligible Projects and Requirements

The proposed circular contains several changes to the programs' eligibility and requirements to include additional flexibilities provided by law. Specifically, FTA

proposes additional flexibility in financial assistance eligibility, namely that Section 5307 funds that are apportioned to a UZA based on service metrics for a variety of public transportation modes may be expended on eligible activities for other modes.

Additionally, funds apportioned under 49 U.S.C. 5340 may be expended on the same activities that are eligible under Section 5307 for each recipient. FTA further clarifies that Section 5337 funds apportioned to a UZA based on the presence of high intensity motorbus may also be expended on high intensity fixed guideway projects. Lastly, the proposed circular explains that while funds are apportioned based on the presence of high intensity motorbus and high intensity fixed guideway segments in revenue service for at least seven years, the funds may be used on any part of a recipient's fixed guideway or high intensity motorbus system.

The proposed circular includes guidance on additional flexibility in program eligibility provided by the FAST Act and BIL, including additional eligibility for a recipient to use up to 20 percent of its annual Section 5307 apportionment at the capital project 80/20 Federal/local share ratio to pay for complementary paratransit services, providing for innovative procurement tools for acquiring rolling stock, accounting for the expansion of transit facilities to accommodate clean fuel vehicles, and providing funding for programs addressing public transportation human resource needs.

The proposed circular reemphasizes procedural safeguards in accounting for the capital cost of contracting to prevent recipients from utilizing this method for publicly funded assets and thus receiving reimbursement for the asset from two or more public sources and potentially resulting in overlapping federal interests. The capital cost of contracting language is also modified to clarify the exclusion of Section 5337 and 5339(a) funds from use toward capital cost of contracting except for what is specifically eligible under both programs (e.g., leasing of vehicles, equipment, and facilities for Sections 5337 and 5339, and maintenance for Section 5337).

FTA also proposes updating language to account for multiple modifications to the special operations rule for large UZAs due to statutory changes, including applicability of vehicles in demand-response service and an exception to the special rule that allows up to a ten percent greater operating assistance cap for recipients. In addition, FTA updated the list of operating expenses eligible for FTA operating assistance, including public transportation security operating assistance projects. The proposed circular also modifies the list of eligible activities for Job Access and Reverse Commute (JARC) projects.

E. Chapter V – Planning & Project Development

The proposed circular amends various provisions regarding planning and project development, including clarifications of how transportation improvement programs and statewide transportation improvement programs should address projects outside of UZAs but within the metropolitan planning area. The circular explicitly identifies MPOs as the responsible party for the development and adoption of the metropolitan transportation plan and transportation improvement program, clarifying that each must cover a minimum twenty-year horizon and four-year horizon, respectively.

FTA proposes to remove language in the Section 5339 circular that restricts application for funds directly to designated recipients only on behalf of subrecipients, as section 3017 of the FAST Act authorized state and local government entities operating fixed route bus service to be direct recipients of FTA grants, regardless of their status as designated recipients.

The proposed section titled “Program of Projects and Public Participation Requirements” clarifies that recipients must submit the appropriate documentation demonstrating recipients complied with a local project selection process through an amendment to the relative Transportation Improvement Program (TIP)/Statewide Transportation Improvement Program (STIP). The section also clarifies that recipients must provide FTA with documentation of their amendment of a Program of Projects, TIP,

and STIP to reflect applicable changes when the recipient proposes an award modification deviating from an applicable Program of Projects, TIP, or STIP.

In the section titled, “Availability of FHWA Flexible Funds for Transit Projects,” FTA describes how recipients may flex funds from FHWA to FTA, which may only be used for activities eligible under both the transferring and receiving programs. Funds transferred to FTA must be administered under applicable FTA program requirements. This section includes a list of FHWA programs from which funds may be flexed for planning, capital, or operating projects, and has been updated to reflect changes in the law since the last circular update.

The proposed circular seeks to further reduce the administrative burden on recipients by consolidating reporting requirements, including allowing information reporting on the spending toward associated transit improvements, required under 49 U.S.C. 5307(c)(1)(K), to be included within other federally-required reports.

Under “Public Transportation Security Projects,” the proposed circular notes that some security projects may also satisfy the separate requirement that each recipient in a UZA of 200,000 people or more use 0.75 percent of Section 5307 funds on safety projects.

In the section on “Transit Asset Management Requirements,” FTA updated its guidance to reflect changes in 49 U.S.C. 5326 and 49 CFR 625, including clarifying the relationship between transit asset management (TAM) plans and recipients’ use of Section 5337 funds.

In the section titled “Public Transportation Safety Requirements,” the proposed circular contains updates reflecting statutory and regulatory updates, including 49 U.S.C. 5329 requirements for a National Public Transportation Safety Plan (49 CFR 670), requirements for Public Transportation Safety Certification Training Programs (49 CFR

672), requirements for Public Transportation Agency Safety Plans (49 CFR 673), and requirements for State Safety Oversight Agencies (49 CFR 674).

The circular includes proposed language addressing pre-award authority, including providing automatic pre-award authority for certain types of capital expenses. The proposed circular also clarifies that recipients may incur capital expenses under pre-award authority for projects that clearly meet the criteria for a categorical exclusion under 23 CFR 771.118, though they do so at their own risk.

F. Chapter VI – Program Management and Administrative Requirements

FTA proposes updates to reflect statutory changes and to expand the explanation of various certifications required for the Urbanized Area Formula Grant Programs. Specifically, the proposed circular more comprehensively describes the requirement and circumstances under which Section 5307 recipients must charge seniors and persons with disabilities during nonpeak hours no more than half the peak fare.

G. Appendices

FTA proposes consolidating and revising various appendices within the three formula circulars as they are shown within the new proposed circular. As such, appendices have been relabeled, updated, or removed. For example, the proposed “Appendix B: Preventive Maintenance (Section 5307 and 5337)” was previously Appendix E in the current Section 5307 circular (C 9030.1).

After a review and consideration of the comments provided on this proposed circular, FTA will publish the final circular on its website.

Nuria I. Fernandez,

Administrator.