

January 16, 2014

**Subject: URBANIZED AREA FORMULA PROGRAM: PROGRAM GUIDANCE
AND APPLICATION INSTRUCTIONS**

1. **PURPOSE.** This circular is a reissuance of guidance on the administration and preparation of grant applications for the Urbanized Area Formula Program under 49 U.S.C. 5307. This revision incorporates provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21; Pub. L. 112-141 (2012)), and includes the most current available guidance as of the date of publication.
2. **CANCELLATION.** This cancels FTA Circular 9030.1D, "Urbanized Area Formula Program: Grant Application Instructions," dated May 1, 2010.
3. **AUTHORITY.**
 - a. Federal Transit Laws, Title 49, United States Code, Chapter 53.
 - b. 49 CFR 1.51.
4. **WAIVER.** FTA reserves the right to waive any provisions of this circular to the extent permitted by federal law or regulation.
5. **FEDERAL REGISTER NOTICE.** In conjunction with publication of this circular, a *Federal Register* notice was published on January 16, 2014 (79 FR 2930), addressing comments received during the development of the circular.
6. **AMENDMENTS TO THE CIRCULAR.** FTA reserves the right to update this circular to reflect changes in other revised or new guidance and regulations that undergo notice and comment, without further notice and comment on this circular. FTA will post updates on our website at www.fta.dot.gov. The website allows the public to register for notification when FTA issues *Federal Register* notices or new guidance. Please visit the website and click on "Connect with FTA" for more information.
7. **ACCESSIBLE FORMATS.** This document is available in accessible formats upon request. To obtain paper copies of this circular as well as information regarding these accessible formats, call FTA's Administrative Services Help Desk at 202-366-4865. Individuals with hearing impairments may contact the Federal Relay Service at 1-800-877-8339 for assistance with the call.

_____/S/ Original signed by_____
Peter M. Rogoff
Administrator

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OPI: Office of Program
Management

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SECTION 5307 PROGRAM CIRCULAR

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I. INTRODUCTION AND BACKGROUND

1. **THE FEDERAL TRANSIT ADMINISTRATION (FTA).** The Federal Transit Administration (FTA) is one of ten modal administrations within the U.S. Department of Transportation (DOT), and is headed by an administrator appointed by the president of the United States. The FTA functions through a headquarters office in Washington, DC, ten regional offices, and five metropolitan offices. These offices assist transit agencies in all fifty states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and federally recognized Indian tribes.

Public transportation means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income. Public transportation generally includes transportation services provided by buses, heavy rail, light rail, commuter rail, fixed guideway, bus rapid transit, passenger ferryboats, trolleys, inclined railways, people movers, vans, streetcars, jitneys, and aerial tramways. Public transportation can be either fixed-route or demand-response service, but excludes intercity passenger rail provided by Amtrak, intercity bus service, charter bus service, school bus service, sightseeing services, courtesy shuttle services provided by individual businesses, and intraterminal or intrafacility shuttle services.

The federal government, through FTA, provides financial assistance to develop new transit systems and improve, maintain, and operate existing systems. FTA oversees thousands of grants to hundreds of state and local transit providers, primarily through its ten regional offices. These recipients are responsible for managing their programs in accordance with federal requirements, and FTA is responsible for ensuring that recipients follow federal statutory and administrative requirements.

2. **AUTHORIZING LEGISLATION.** Most federal transit laws are codified at Title 49 U.S.C. Chapter 53. Authorizing legislation is substantive legislation enacted by Congress that establishes or continues the legal operation of a federal program or agency. FTA's most recent authorizing legislation is the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, signed into law on July 6, 2012, and effective on October 1, 2012. This circular reflects changes to federal transit law as well as changes required by other laws that have become effective since the circular was last published in May 2010.
3. **HOW TO CONTACT FTA.** FTA's regional and metropolitan offices are responsible for providing financial assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA's headquarters offices. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which the recipient is located. See Appendix F, "FTA Regional and Metropolitan Contact Information," of this circular for more information.

Visit FTA's website, <http://www.fta.dot.gov>, or contact FTA headquarters at the following address and phone number:

Federal Transit Administration
Office of Communications and Congressional Affairs
1200 New Jersey Avenue SE
East Building
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. DEFINITIONS. All definitions in 49 U.S.C. 5302 and 5307 apply to this circular, as well as the following definitions:
- a. Applicant. In this circular, the term “applicant” is used to identify an entity that is seeking, but has not yet been awarded, specific federal financial assistance directly from FTA. The term “applicant” is used interchangeably with “grant applicant.”
 - b. Associated Capital Maintenance. A category of capital project activities that is defined as equipment, tires, tubes, and material, each costing at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used; and the reconstruction of equipment and material, each of which after reconstruction will have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.
 - c. Associated Transit Improvement. With respect to any project or area to be served by a project, 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. As defined in 5302(1), eligible projects are: historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service; bus shelters; landscaping and streetscaping, including benches, trash receptacles, and street lights; pedestrian access and walkways; bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles; signage; or enhanced access for persons with disabilities to public transportation.
 - d. Bus Rapid Transit System. A bus transit system in which the majority of each line operates in a separated right-of-way dedicated for public transportation use during peak periods; and includes features that emulate the services provided by rail-fixed guideway public transportation systems, including (i) defined stations; (ii) traffic signal priority for public transportation vehicles; (iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and (iv) any other features the secretary of the Department of Transportation may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail-fixed guideway public transportation systems.
 - e. Capital Asset. Facilities or equipment with a useful life of at least one year.

- f. Capital Lease. Any transaction whereby the recipient acquires the right to use a capital asset without obtaining full ownership regardless of the tax status of the transaction.
- g. Capital Project. A category of reimbursable project expenses that includes all activities identified in 49 U.S.C. 5302(3). Eligible activities under this project category are explained in Chapter IV of this circular.
- h. Clean Fuel Bus. A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG), liquefied natural gas, propane, batteries, alcohol-based fuels, hybrid electric, fuel cell, clean diesel, or other low or zero emissions technology that the administrator of the Environmental Protection Agency (EPA) has certified sufficiently reduces harmful emissions.
- i. Coordinated Plan. See “Locally Developed, Coordinated Public Transit–Human Services Transportation Plan.”
- j. Cost of Project Property. This is the net invoice unit price, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the intended purpose. Other charges, such as the cost of inspection, installation, transportation, taxes, duty, or in-transit insurance, should be treated in accordance with the grantee’s regular accounting practices, in the same or as separate line items.
- k. Designated Recipient. The term “designated recipient” means: (i) an entity designated, in accordance with the planning process under Sections 5303 and 5304, by the governor of a state, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under Section 5336 to urbanized areas of 200,000 or more in population; or (ii) a state or regional authority, if the authority is responsible under the laws of a state for a capital project and for financing and directly providing public transportation.
- l. Direct Recipient. For purposes of this circular, a direct recipient is an eligible entity authorized by a designated recipient or state to receive Urbanized Area Formula Program funds directly from FTA.
- m. Electronic Clearing House Operation (ECHO) System. ECHO is an FTA Web-based application system that processes payment requests from FTA grantees.
- n. Electronic Award Management System. A system that grantees and FTA use to manage grant applications, including the review, approval, and management of all grants. This system is used by grantees to submit financial status reports and milestone progress reports and to submit grant modification requests; this term includes FTA’s transportation electronic award and management (TEAM) system and its successor.
- o. Equipment. An article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost that equals or exceeds the lesser of the capitalization level established by the governmental unit for financial statement purposes,

or \$5,000. Equipment includes rolling stock and all other such property used in the provision of public transit service.

- p. Fixed Guideway. The term “fixed guideway” means a public transportation facility (i) using and occupying a separate right-of-way for the exclusive use of public transportation; (ii) using rail; (iii) using a fixed catenary system; (iv) for a passenger ferry system; or (v) for a bus rapid transit system.
- q. Fleet Management Plan. The management plan includes an inventory of all buses among other items, such as operating policies, peak vehicle requirements, maintenance and overhaul programs, system and service expansions, rolling stock procurements and related schedules, and spare ratio justification. The plan also calculates the number of rolling stock needed to operate at peak normal days.
- r. Fleet Status Report. A report in FTA’s electronic award management system that identifies rolling stock to be replaced, retired, or disposed. Appendix D of this circular contains a sample Fleet Status Report.
- s. Force Account. The use of a grantee’s own labor force to accomplish a capital project. Force account does not include grant or project administration, preventive maintenance, mobility management, or other nontraditional capital project types. Further guidance on force account work is available in FTA Circular 5010.1D.
- t. Governor. The term “governor” means the governor of a state, the mayor of the District of Columbia, and the chief executive officer of a territory of the United States; and includes the designee of the governor.
- u. Grant. An award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient. Used interchangeably with Grant Agreement.
- v. Grant Application. A complete application for an award of financial assistance in the form of money, or property in lieu of money, by the federal government to an eligible recipient.
- w. Growing States. States forecasted to expand in population size based upon annual population estimates and estimates determined by the decennial census. See 49 U.S.C. 5340(c)(1).
- x. High Density States. States with population densities in excess of 370 persons per square mile. See 49 U.S.C. 5340(d)(1).
- y. Intelligent Transportation Systems (ITS). Intelligent transportation systems refers to the use of electronics, communications, or information processing used as a single component or in combination to improve efficiency or safety of a transit or highway system.

- z. Job Access and Reverse Commute Project. A category of reimbursable project expenses that includes activities identified under 49 U.S.C. 5302(9), as explained in Chapter IV of this circular.
- aa. Large Urbanized Area. An urbanized area (UZA) with a population of at least 200,000 at the time of the last decennial census.
- bb. Local Governmental Authority. The term “local governmental authority” includes a political subdivision of a state; an authority of at least one state or political subdivision of a state; an Indian tribe; and a public corporation, board, or commission established under the laws of a state.
- cc. Locally Developed, Coordinated Public Transit–Human Services Transportation Plan. A plan that identifies the transportation needs of individuals with disabilities, older adults, and people with low incomes; provides strategies for meeting those local needs; and prioritizes transportation services for funding and implementation.
- dd. Low-Income Individual. The term “low-income individual” means an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that Section, for a family of the size involved.
- ee. Master Agreement. The official FTA document containing FTA and other cross-cutting federal requirements applicable to the FTA recipient and its project(s). The Master Agreement is incorporated by reference and made part of each FTA grant, and amendment thereto.
- ff. Metropolitan Planning Area. The geographic area determined by agreement between the metropolitan planning organization (MPO) for the metropolitan area and the governor of the state, within which the metropolitan transportation planning process is carried out.
- gg. Metropolitan Planning Organization (MPO). The policy board of an organization designated in cooperation with the state and public transportation operators to carry out the metropolitan planning process, including development of long-range transportation plans and transportation improvement programs for metropolitan planning areas of a state.
- hh. Mobility Management. Mobility management is a capital project activity that consists of short-range planning and management activities and projects for improving coordination among public transportation and other transportation service providers carried out by a recipient or sub-recipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. Chapter 53 (other than 49 U.S.C. 5309). Mobility management is a type of capital project.
- ii. National Transit Database (NTD). The NTD is FTA’s primary source for information and statistics collected from transit systems that receive FTA formula funding under the Urbanized Area Formula Program (Sec. 5307) or Rural Area Formula Program (Sec.

5311). Public transportation systems receiving funds from these programs are required by statute to report to the NTD.

- jj. Net Project Cost. The part of a project that reasonably cannot be financed from revenues. See 49 U.S.C. 5302(12). Revenues, in this instance, means farebox revenues.
- kk. New Bus Model. The term “new bus model” means a bus model (including a model using alternative fuel) that has not been used in public transportation in the United States before the date of production of the model; or has been used in public transportation in the United States, but is being produced with a major change in configuration or components.
- ll. Operating Expenses. Operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.
- mm. Overhaul. Overhaul is a capital expense performed as a planned or concentrated preventive maintenance activity and intended to enable the rolling stock to perform to the end of the original useful life.
- nn. Passenger Ferry. A passenger ferry is a vessel providing regular and continuing shared-ride service that regularly accommodates walk-on passengers not traveling in motor vehicles. Passenger ferries may or may not also accommodate private passenger vehicles with the walk-on passengers. A passenger ferry is a type of fixed guideway public transportation and excludes sightseeing service.
- oo. Preventive Maintenance. All maintenance costs related to vehicles and nonvehicles. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.
- pp. Private Nonprofit Organization. A corporation or association determined by the secretary of Treasury to be an organization qualifying under 26 U.S.C. 501(c) as exempt from taxation under 26 U.S.C. 501(a), or which has been determined under state law to be private nonprofit and for which the designated state agency has received documentation certifying the status of the private nonprofit organization.
- qq. Program of Projects (POP). A program of projects (POP) is a list of projects proposed by a designated recipient in cooperation with a metropolitan planning organization to be funded from the urbanized area’s Section 5307 apportionment. The POP includes a brief description of the projects, including any sub-allocation among public transportation providers, total project costs, and federal share for each project.
- rr. Public Transportation. The term “public transportation” means regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and does not include: intercity passenger rail transportation provided by the entity described in Chapter

243 (or a successor to such entity); intercity bus service; charter bus service; school bus service; sightseeing service; courtesy shuttle service for patrons of one or more specific establishments; or intraterminal or intrafacility shuttle services.

- ss. Rebuild. Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit of rolling stock's useful life, and which results in an extended useful life for the unit of rolling stock consistent with the extent of the rebuilding.
- tt. Recipient. For purposes of this circular, the term "recipient" means an entity that receives a grant of Urbanized Area Formula Program funds directly from FTA. In this circular, the word "recipient" is used interchangeably with "direct recipient," and "grantee."
- uu. Rural Area. The term "rural area" means an area encompassing a population of less than 50,000 people that has not been designated in the most recent decennial census as an "urbanized area" by the secretary of the Department of Commerce.
- vv. Senior. The term "senior" means an individual who is 65 years of age or older.
- ww. Shared Use. Those instances in which a project partner, separate from the transit agency or grantee, occupies part of a larger facility and pays for its pro rata share of the construction, maintenance, and operation costs. Shared uses are declared at the time of grant award.
- xx. Small Transit Intensive City (STIC). An urbanized area with less than 200,000 in population at the time of the last decennial census that provides public transportation service FTA has determined meets or exceeds the industry average for all UZAs with a population of at least 200,000 but not more than 999,999 in one or more of the following performance criteria: passenger miles traveled per vehicle revenue mile; passenger miles traveled per vehicle revenue hour; vehicle revenue miles per capita; vehicle revenue hours per capita; passenger miles traveled per capita; and passengers per capita. See 49 U.S.C. 5336(j)(1).
- yy. Small Urbanized Areas. As used in the context of FTA formula grant programs small urbanized areas are UZAs with a population of at least 50,000 but less than 200,000.
- zz. State. The term "state" means a state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.
- aaa. Statewide Transportation Improvement Program (STIP). A statewide prioritized listing/program of federally funded transportation projects covering a period of four years that is consistent with the long-range statewide transportation plan, metropolitan transportation plans (MTPs), and transportation improvement program (TIP), and required for projects to be eligible for funding under title 23 of the U.S. Code and 49 U.S.C. Chapter 53.

- bbb. Sub-Recipient. An entity that receives FTA funds via a pass-through agreement with a direct recipient or designated recipient, whereby the original recipient remains responsible for compliance with all terms, conditions, and requirements associated with the grant.
- ccc. Transit. The term “transit” means public transportation.
- ddd. Transportation Improvement Program (TIP). A prioritized listing/program of transportation projects covering a period of four years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the MTP, and required for projects to be eligible for funding under title 23 of the U.S. Code and 49 U.S.C. Chapter 53.
- eee. Triennial Review. The process by which FTA meets its statutory obligation to review and evaluate completely every three years the performance of a recipient of Urbanized Area Formula Program funds and how the recipient meets statutory and administrative requirements, especially those requirements included in the annual certifications and assurances. In addition to evaluating compliance with federal law, the review gives FTA an opportunity to provide technical assistance on the latest FTA requirements.
- fff. Unified Planning Work Program (UPWP). A program of work identifying the planning priorities and activities to be carried out within a metropolitan planning area (MPA) during the next one- or two-year period. At a minimum, a UPWP includes a description of the transportation planning work and resulting products, the organization that will be responsible for performing the work, time frames for completing the work, the cost of the work, and the source(s) of funds.
- ggg. Uniform System of Accounts (USOA). The USOA is a structure of categories and definitions used for NTD reporting to ensure uniform data. The USOA contains various categories of accounts and records for classifying financial (Chart of Accounts) and operating data.
- hhh. Urbanized Area (UZA). An area encompassing a population of not less than 50,000 people that has been defined and designated in the most recent decennial census as an “urbanized area” by the secretary of the Department of Commerce.
- iii. Useful Life. The expected lifetime of project property, or the acceptable period of use in service. Useful life is used interchangeably with “service life.” **Note:** Land does not depreciate and therefore does not have a useful life.
5. PROGRAM HISTORY. Section 103(a) of the National Mass Transportation Assistance Act of 1974, Pub. L. 93-503, amended former Section 5 of the Urban Mass Transportation Act to authorize funding for the “Urban Mass Transit Program,” a formula program for UZAs that provided federal assistance for both capital and operating projects, with a “maintenance of effort” requirement on the recipient as a prerequisite for access to operating assistance. The Surface Transportation Assistance Act of 1978, Pub. L. 95-599, continued funding for capital and operating assistance under this program, and amended the maintenance of effort

requirement to permit reductions in state and local funding of operating expenses if those reductions were offset by an increase in operating revenues through fare increases without reducing service levels.

The Surface Transportation Assistance Act of 1982, Pub. L. 97-424, amended Section 9 of the Urban Mass Transportation Act to establish a new Block Grant Program providing federal assistance by formula to UZAs for capital and operating projects. Because the Act did not authorize additional funding for the Section 5 Urban Mass Transit Program, the new Block Grant Program essentially superseded, without repealing, the Section 5 Urban Mass Transit Program. Unlike the Urban Mass Transit Program, Block Grant funds used for operating expenses did not have a “maintenance of effort” requirement, but there was a limit on the percentage of Block Grant funding that could be used for operations.

The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA), Pub. L. 100-17, authorized Block Grant Program assistance to designated recipients for capital and operating projects in UZAs. STURAA imposed limits on a grantee’s use of its apportionments for operating expenses based on the 1982 apportionments.

The Intermodal Surface Transportation and Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, retained the STURAA restrictions on use of apportioned funds for operating expenses. However, ISTEA permitted increases in amounts available based in part on the Consumer Price Index, and provided greater increases for all UZAs. ISTEA also designated 1 percent of funds be used for transit enhancements.

In 1994, Pub. L. 103-272 codified Section 9 of the Urban Mass Transportation Act, “Block Grants,” at 49 U.S.C. 5307. Upon enactment of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, in 1998, the heading for 49 U.S.C. 5307 was changed to “Urbanized Area Formula Grants.” Under this program, funding was no longer available to support operations in UZAs with a population of 200,000 or more. For UZAs with a population of less than 200,000, there was no limitation on the amount of a recipient’s apportionment that could be used for operating expenses. Subsequent legislation authorized operating expenses in a few limited exceptions for certain UZAs and parts thereof with populations of 200,000 or more. This continued under the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

In 2005, the enactment of SAFETEA-LU expanded eligible activities. Capital investments in bus and bus-related projects such as replacement of buses, overhaul of buses, acquisition of crime prevention and security equipment, mobility management, and construction of passenger and maintenance facilities became eligible reimbursable expenses under the Urbanized Area Formula Program (Section 5307). Capital investments in new and existing fixed guideway systems including rolling stock, overhaul and rebuilding of vehicles, track, signals, communications, and computer hardware and software were also eligible reimbursable expenses under the program. Further, the program also considered all costs involving preventive maintenance, certain crime prevention activities, security-related activities, and some Americans with Disabilities Act of 1990 (ADA) complementary paratransit service expenses as capital costs.

In 2012, MAP-21 modified the program's formula for the apportionment of funds by increasing the amount of funding apportioned under the Small Transit Intensive Cities formula from 1 percent to 1.5 percent of the funds made available for the program. It also added a new apportionment component based on a UZA's low-income population, in an amount equal to 3.07 percent of the amount made available for the program. Operating assistance remained eligible in UZAs with populations less than 200,000; however, previously authorized exemptions for specific UZAs over 200,000 were repealed and replaced with a single nationwide exemption for fixed route transit operators that operate fewer than one hundred buses in peak service. Qualifying operators are eligible for operating assistance in an amount based on an individual operator's percentage of all public transportation service in the UZA.

MAP-21 also expanded eligible activities to include job access and reverse commute projects, which provide nontraditional transportation services intended to serve the employment-related transportation needs of welfare recipients and low-income individuals. These projects were previously eligible under the repealed Section 5316 Job Access and Reverse Commute Program. In addition, MAP-21 created a discretionary passenger ferry grant program under Section 5307.

In addition to the changes made by MAP-21 to the Urbanized Area Formula Program, MAP-21 directed FTA to establish and implement broad public transportation safety and asset management regulations, which will apply to all recipients of FTA funding once finalized.

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II. PROGRAM OVERVIEW

1. **STATUTORY AUTHORITY**. The Urbanized Area Formula Program, codified at 49 U.S.C. 5307 (“Section 5307”), is authorized under the provisions set forth in the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141. Under this program, the secretary may make grants to assist states and local governmental authorities in financing capital and planning projects, job access and reverse commute projects, associated transit improvements, and certain operating costs, as described in Chapter IV of this circular. Certain provisions of Section 5307 may also be incorporated in the program circulars for the Section 5337 State of Good Repair Program and the Section 5339 Bus and Bus Facilities Program. The Catalog of Federal Domestic Assistance (CFDA) number for the Urbanized Area Formula Program is 20.507.
2. **PROGRAM GOALS**. Pursuant to 49 U.S.C. 5307, FTA apportions Urbanized Area Formula Program funds to urbanized areas (UZAs) and to states for public transportation capital projects, operating assistance, job access and reverse commute projects, and for transportation-related planning. To support the continuation and expansion of public transportation services in the United States, Section 5307 supports public transportation by:
 - a. assisting in the planning, engineering, design, construction, evaluation, and maintenance of public transportation projects, equipment, and facilities;
 - b. facilitating cooperation between public transportation companies and private companies engaged in public transportation to encourage the planning and establishment of areawide public transportation systems needed for economical and desirable urban development;
 - c. encouraging mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development;
 - d. providing financial assistance to states and local governments to help carry out national goals related to mobility for all, including elderly individuals, individuals with disabilities, and economically disadvantaged individuals;
 - e. investing in bus and bus-related activities such as replacement, overhaul, and rebuilding of buses; and
 - f. investing in crime prevention, public transportation safety, and security equipment.
3. **PROGRAM MEASURES**. The Government Performance and Results Act (GPRA), Pub. L. 103-62, (1993), requires FTA and other federal agencies to “establish performance goals to define the level of performance” and to “establish performance indicators to be used in measuring relevant outputs, service level, and outcomes” for each of its programs. The performance measures described below are designed to fulfill FTA’s obligations under GPRA.

FTA reports on program measures in conjunction with GPRA. The following indicators are targeted to capture overarching program information as part of the annual report that each grantee submits to FTA.

The measures FTA established for the Urbanized Area Formula Program are:

- a. Ridership: Average percent change in public transportation boardings per public transportation market of the 150 largest public transportation localities.
 - b. Accessibility: Percent of bus fleets and rail stations that are in compliance with the Americans with Disabilities Act of 1990 (ADA).
 - c. Condition: Improvement in the average condition of bus and rail fleets.
4. CENSUS DESIGNATION OF URBANIZED AREAS. FTA apportions Urbanized Area Formula Program funds for public transportation in UZAs. UZAs are designated by the U.S. Bureau of the Census based on the results of each decennial census, and represent concentrated geographic areas with populations of at least 50,000. The Urbanized Area Formula Program provides grants for public transportation in urbanized areas, and establishes distinct requirements and eligibilities for UZAs over and under 200,000 in population.

UZAs generally correspond to U.S. cities and their densely populated suburbs. Most urbanized areas include multiple independent jurisdictions, and some include multiple cities, if those cities are linked by a densely populated area. The criteria for qualification as a UZA are based on geographic and demographic factors determined by the Bureau of the Census. The specific factors used to determine which adjacent areas are included in a UZA are subject to change in each decennial census.

Once published, these population counts and boundaries are used by FTA for funding apportionments and program eligibility determinations until the Census Bureau designates new UZAs as a result of the next decennial census.

As a result of the 2010 census, the total number of UZAs increased from 465 in 2000 to 497 in 2010. The 2010 census population counts resulted in five UZAs crossing over one million in population, one UZA falling under the one million population threshold, twenty-seven UZAs crossing into the 200,000 to 999,999 population category, thirty-six UZAs that became newly qualified UZAs with populations between 50,000 and 199,999, and four former UZAs that are now areas under 50,000 in population.

| Category | Census 2010 Number of UZAs | Census 2010 Total Population |
|----------------------|----------------------------|------------------------------|
| UZAs over 1 million | 42 | 135,639,208 |
| UZAS 200,000-999,999 | 137 | 56,845,584 |
| UZAs 50,000-199,999 | 318 | 30,817,308 |
| Total | 497 | 223,302,100 |

5. FTA ROLE IN PROGRAM ADMINISTRATION.

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

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

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

- (1) review and approve grant applications for designated and direct recipients;
- (2) obligate funds for approved grant applications;
- (3) work with recipients to implement the annual program;
- (4) provide technical assistance;
- (5) receive recipient certifications and amendments to the program of projects;
- (6) monitor and close grants; and
- (7) conduct triennial reviews and state management reviews every three years or as circumstances warrant, and other reviews as necessary.

6. DESIGNATED RECIPIENT ROLE IN PROGRAM ADMINISTRATION. FTA apportions funds for urbanized areas to states and designated recipients, which are responsible for receiving and apportioning FTA funds to eligible projects within the applicable urbanized area or areas.

The state or designated recipient has the principal authority and responsibility for administering Urbanized Area Formula Program funds within a UZA. A state is responsible for administering the program on behalf of all UZAs under 200,000 in population, or portions thereof, that are located within its boundaries. A designated recipient is responsible for administering the program on behalf of a UZA with a population of 200,000 or more.

The state or designated recipient's responsibilities include:

- a. Allocating the relevant apportionment among recipients in the urbanized area or areas based on local needs and arrangements, and in coordination with the MPO(s);
- b. Identifying and selecting the projects (capital, operating, job access and reverse commute, or planning) that the MPO or state department of transportation (state DOT) will include in a metropolitan transportation plan, transportation improvement program (TIP), long-range statewide transportation plan, statewide transportation improvement program (STIP), and/or unified planning work program (UPWP);

- c. Submitting a grant application for the Section 5307 program of projects (POP) and/or authorizing other eligible applicants to apply for all or part of the apportionment, and notifying FTA of such authorizations;
- d. Ensuring that the annual POP complies with the requirements that at least 1 percent of the apportionment is used for associated transit improvements and that at least 1 percent is used for public transportation security projects unless all security needs are certified to have been met; and
- e. Each designated recipient must verify that appropriate documentation of designation is on file with FTA and, if not, provide such documentation.

For UZAs with populations of at least 200,000, a designated recipient must be selected in accordance with the local planning process, as detailed in the following section.

7. RECIPIENT DESIGNATION PROCESS. As described above, a requirement for funding under Section 5307 is the selection of a designated recipient for Section 5307 in a UZA. The recipient(s) so designated in each UZA must be a governmental authority and have the legal authority to receive and dispense federal funds in the UZA.
- a. FTA encourages the designation of a single designated recipient for each UZA 200,000 or more in population, including such UZAs that span more than one state, in order to streamline the administration of the program and foster coordination. However, nothing precludes the designation of multiple designated recipients.
 - b. The governor of a state or the governor's official designee may also designate a single recipient for multiple contiguous large UZAs. In cases where a UZA extends into more than one state, and the public transportation providers are also located in more than one state, the governor of each state must participate in the process to designate a recipient.
 - c. The governor or the governor's designee performs the role of the designated recipient for UZAs under 200,000 in population, and for the state's portion of any multi-state UZAs under 200,000 in population. Although the governor may authorize a local entity, such as a metropolitan planning organization, to develop and recommend funding allocations, the governor must approve the final allocation of program funds for these areas. Additionally, the governor may authorize eligible public transportation operators to apply directly to FTA for grants as direct recipients.
 - d. Designations for UZAs of 200,000 or more in population become effective when the governor of a state officially notifies the appropriate FTA regional administrator(s) in writing of that designation, and remains in effect until changed by the governor of a state by official written notice of re-designation to the appropriate FTA regional administrator. The written designation notice must include:
 - (1) A letter expressing the governor's concurrence; and

- (2) Documentation of concurrence in the selection of the designated recipient by the providers of publicly owned public transportation service in the UZA, and an appropriately certified resolution of the metropolitan planning organization (MPO) concurring in the designation.
- e. For each designated recipient, the state must submit an Opinion of Counsel certifying the entity's legal capacity to perform the functions of a designated recipient.

8. DIRECT RECIPIENT AND SUB-RECIPIENT ELIGIBILITY

- a. Applicants Other than Designated Recipients. A state or designated recipient may authorize another public entity to be a "direct recipient" for Section 5307 funds. A direct recipient is a public entity that is legally eligible under federal transit law to apply for and receive grants directly from FTA. The designated recipient may make this authorization one time or at the time of each application submission, at the option of the designated recipient.

The designated recipient must inform FTA of the arrangement in a "split letter," which establishes the allocation of Section 5307 funds in a large UZA. A state must inform FTA of such arrangements in an annual apportionment letter for funds attributable to small UZAs. Once an agency has been authorized to apply to FTA as a direct recipient, it is not necessary to repeat this authorization upon each future allocation of program funds.

A public agency other than the designated recipient may apply for some or all of the UZA's Section 5307 apportionment if:

- (1) The state or designated recipient authorizes the public agency to do so;
- (2) The public agency submits an independent grant application; and
- (3) Upon award of the grant, the designated recipient and the public agency execute a supplemental agreement, which releases the designated recipient from any liability under the grant agreement. The supplemental agreement permits the grant recipient (e.g., direct recipient) to receive and expend the federal funds and sets forth that the grant recipient assumes all responsibilities of the grant agreement. This supplemental agreement is required for all grantees in UZAs under 200,000 in population, as well as for all recipients in UZAs with populations of at least 200,000 that are not a designated recipient. A sample supplemental agreement is provided in Appendix D of this circular.

The amount of funds available to direct recipients is determined cooperatively by public transit providers, the MPO, and the designated recipient(s) for the UZA, in adherence with federal planning requirements and communicated to FTA by the designated recipient. FTA can only make grants to direct recipients after the designated recipient provides a split or suballocation letter to the FTA regional office.

- b. Sub-Recipient Arrangements. A Section 5307 recipient, whether a designated recipient or direct recipient, may choose to pass its grant funds through to another entity (sub-recipient) to carry out a project eligible under Section 5307.

For example, sub-recipient arrangements may be utilized to allocate funding to projects undertaken by a smaller cooperating agency on behalf of a designated or direct recipient, or to a private nonprofit organization that is responsible for a job access and reverse commute project within or near the service area of a designated or direct recipient.

Unlike supplemental agreements between a direct recipient and FTA, a sub-recipient arrangement does not relieve the original recipient of its responsibilities to carry out the terms and conditions of the grant agreement.

(1) Eligible sub-recipients:

- (a) are public entities otherwise eligible to become direct recipients under Section 5307, or
- (b) may be private nonprofit operators for purposes of carrying out eligible job access and reverse commute projects.

(2) To establish a sub-recipient arrangement, the recipient must:

- (a) enter into a written agreement with the sub-recipient that assures FTA that the sub-recipient will comply with its obligation to satisfy the requirements of the grant agreement;
- (b) inform the FTA regional office of the arrangement in its grant application or through other documentation; and
- (c) inform FTA of any changes in that arrangement during the life of the project.

If public transportation service within a UZA is provided by a private nonprofit organization, an FTA designated or direct recipient may choose to enter into a contracted service arrangement to fund the service using Section 5307 funds. This situation may occur after the Census Bureau revises its UZA boundaries as a result of the decennial census. For example, the revised boundaries may result in a formerly rural transit service being incorporated into a UZA. Such an arrangement would be subject to federal procurement laws and regulations, including the requirement for a competitive procurement. Further information on competitive procurement requirements is available in FTA Circular 5010.

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

FTA performs a triennial review at least once every three years to evaluate the performance of each recipient of Section 5307 funds. FTA must ensure that the recipient is carrying out its program in compliance with federal statutory and administrative requirements. Triennial reviews of recipient performance allow FTA to determine if the recipient is complying with the certifications it has made.

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

The Single Audit Act of 1984, as amended in 1996 (31 U.S.C. 7501 *et seq.*), and OMB Circular A-133 (“Audits of State, Local Governments, and Non-Profit Organizations”) provide audit requirements for ensuring that funds granted by the federal government to nonfederal entities are expended properly.

All nonfederal entities that expend \$500,000 or more of federal awards in a year are required to obtain an annual audit in accordance with the Single Audit Act Amendments of 1996, (31 U.S.C. 7502), OMB Circular A-133, the OMB Circular Compliance Supplement and Government Auditing Standards. A single audit is intended to provide a cost-effective audit for nonfederal entities in that one audit is conducted in lieu of multiple audits of individual programs.

10. RELATIONSHIP TO OTHER PROGRAMS. Other federal transportation programs may provide support for Section 5307 projects, and Section 5307 projects may in turn enhance the effectiveness of these programs. The following is a brief discussion of existing programs, including programs that were repealed, but for which funding remains available, and those newly authorized under MAP-21.

a. Repealed Programs: MAP-21 repealed a number of public transportation programs that existed under the previous authorization. Funds that were authorized under these programs remain available for obligation in a grant until the applicable statutory period of availability expires, or until the funds are fully expended, rescinded by Congress, or otherwise reallocated. The relationship of each of these repealed programs to the Urbanized Area Formula Program is described below.

(1) Clean Fuels Grant Program (Section 5308).

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

The program was established under the Transportation Equity Act for the 21st Century (TEA-21) and was repealed under MAP-21. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation unless Congress rescinds or redirects them to other programs. Funds available to carry out this program are subject to the program rules and requirements at the time they were appropriated.

Eligible recipients were designated recipients in UZAs 200,000 or more in population, and states for UZAs with populations of less than 200,000—for areas that are designated as nonattainment or maintenance areas for ozone or carbon monoxide. Nonurbanized areas were not eligible recipients under this program.

(2) Section 5309 Bus and Bus Facilities Program.

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

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

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

Funds awarded in response to these NOFAs are available for obligation to the project selected until they lapse, and are subject to the program terms and requirements at the time of allocation. Additional information on the Section 5309 Bus and Bus Facilities Program is available in the most current version of FTA Circular 9300.1.

(3) Job Access and Reverse Commute Program (JARC) (Section 5316).

The Section 5316 Job Access and Reverse Commute Program (JARC) was a former formula grant program for projects that improve access to employment-related transportation services for welfare recipients and eligible low-income individuals, and that transport residents of urbanized and nonurbanized areas to suburban employment opportunities. MAP-21 repealed this program. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation until Congress rescinds or redirects the funds to other programs. Funds remain subject to the program requirements at the time they were apportioned.

All projects selected for funding must have been derived from a locally developed, coordinated public transit–human services transportation plan. Program funds are available for capital, planning, and operating expenses for eligible projects. Up to 10 percent of the recipient’s total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance.

Although the Section 5316 JARC program was repealed under MAP-21, job access and reverse commute projects are now an eligible project activity under the Urbanized Area Formula Program. Please see Chapter IV, Eligible Project Types and Requirements, for a list of project types and requirements under Section 5307.

Guidance for funds apportioned under the Section 5316 JARC Program is contained in FTA Circular 9050.1, “The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions.”

(4) Paul S. Sarbanes Transit in Parks Program (Section 5320).

The Paul S. Sarbanes Transit in Parks Program was a former discretionary grant program that provided funding for “alternative transportation” projects within or in the vicinity of federal lands. The goals of the program were to enhance the protection of America’s national parks, refuges, forests, and other federal lands and to increase the enjoyment of visitors. This program was established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act – A Legacy for Users (Pub. L. 109-59, SAFETEA-LU) and repealed by MAP-21.

FTA announced the final allocation of discretionary Transit in Parks funds in February 2013. Unobligated funds under this program remain available for obligation until Congress rescinds or redirects them to other program, and are subject to the program requirements at the time they were made available. Projects undertaken outside of federal lands must comply with all metropolitan and statewide and nonmetropolitan planning requirements.

FTA carries out the Transit in Parks program in consultation with the Department of the Interior (DOI) and other federal land management agencies. Funding for projects previously eligible under the Transit in Parks program is now available under the Federal Lands Access Program and the Federal Lands Transportation Program, which are managed by the Federal Highway Administration. These programs are described in additional detail below.

In addition, Section 5307 funds may be used to support projects previously funded under the Transit in Parks program. For example, an UZA may contain a national park, monument, memorial, or historic sites, a national wildlife refuge, or another federal land unit that has received funding for a public transportation project or a qualifying associated transit improvement activity under this program.

(5) New Freedom Program (Section 5317).

The New Freedom Program (Section 5317) was a formula grant program that provided funding for capital and operating expenses to support new public transportation services and new public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 (ADA). The purpose of the New Freedom formula grant program was to provide additional resources to overcome existing barriers facing Americans with disabilities seeking integration into the workforce and full participation in society.

MAP-21 repealed the New Freedom Program. Unobligated fiscal year 2012 and prior years program funds will remain available for obligation until Congress rescinds or redirects them to other programs. Program funds are subject to the requirements existing at the time they were apportioned.

All projects selected for funding must have been derived from a locally developed, coordinated public transit–human services transportation plan. Local transit providers are expected to participate in the development of this transportation plan. Program funds are available for capital and operating expenses for eligible projects. Up to 10 percent of the recipient’s total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance.

Although MAP-21 repealed the Section 5317 New Freedom Program, similar project activities are eligible under the Section 5310 Enhanced Mobility of Seniors and Individuals with Disabilities Formula Program. Program information is available in FTA Circular 9070.1.

Guidance for funds apportioned under the Section 5317 New Freedom Program is contained in FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions.”

(6) Alternatives Analysis Program (Section 5339).

The Alternatives Analysis Program (Section 5339) was a discretionary grant program that provided funding for the evaluation of public transportation and multimodal alternatives and general alignment options for identified transportation needs in a particular travel corridor. The transportation planning process of Alternatives Analysis included an assessment of a wide range of public transportation or multimodal alternatives, which provided information to enable the secretary to make a finding of project justification and local financial commitment and supported the selection of a locally preferred alternative.

Grants under the Alternatives Analysis program were intended to enable the local metropolitan planning organization to adopt a locally preferred alternative as part of the long-range transportation plan, and to enable recipients to fulfill project

development requirements under FTA's Section 5309 Fixed Guideway Capital Investment Program. This discretionary grant program was established under SAFETEA-LU and repealed by MAP-21.

a. New and Revised Programs Under MAP-21.

(1) Fixed Guideway Capital Investment Program – New and Small Starts and Core Capacity Improvements (Section 5309)

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

Eligible projects include rapid rail (heavy rail), commuter rail, light rail, hybrid rail, trolley bus (using overhead catenary), cable car, passenger ferries, and bus rapid transit system (BRT). The Small Starts program also includes corridor-based bus rapid transit systems. The majority of the BRT must operate in a separated right-of-way dedicated for public transportation use during peak hours. BRT features must emulate the services provided by rail-fixed guideway including defined stations, traffic signal priority, and short headway bidirectional services for a substantial part of weekdays and weekend days. The Core Capacity Improvement program provides funds for substantial, corridor-based investments in existing fixed guideway systems that are at capacity or will be in five years. Core Capacity Improvement projects must increase the capacity of the existing fixed guideway system in the corridor by at least 10 percent.

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

Section 5307 funds may be used to complement funding awarded under the Fixed Guideway Capital Investment Program, as well as to support the continued capital investment needs of completed projects.

Additional information about the Fixed Guideway Capital Investment Program is available in the most current version of FTA Circular 9300.1.

(2) Bus and Bus Facilities Formula Program (Section 5339).

The Section 5339 Bus and Bus Facilities Program is a formula grant program that provides funding to states and UZAs for bus-related capital projects. This program was established under MAP-21, which concurrently repealed the Section 5309 Bus and Bus Facilities discretionary grant 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 5336 (other than subsection (b) to states and UZAs on the basis of population, vehicle revenue miles and passenger miles. Section 5307 requirements apply to Section 5339 grants. The governor of a state or the governor's designee may transfer funds apportioned under the nation distribution to supplement amounts apportioned under the Rural Area (Section 5311(c)) or Urbanized Areas Formula (5307) programs. However, 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.

Additional information on the Section 5339 Bus and Bus Facilities Formula Program, including transfer provisions to Section 5307, can be found in the successor to FTA Circular 9100, which is expected to be published as FTA Circular 5100.

(3) Public Transportation Emergency Relief Program (Section 5324).

MAP-21 authorized the Section 5324 Public Transportation Emergency Relief Program (ER program). The ER program allows FTA to make grants to public transportation agencies that have experienced serious damage to transit assets as a result of an emergency. Emergency is defined as a natural disaster that affects a wide area, such as a flood, hurricane, tidal wave, earthquake, severe storm, or landslide, or a catastrophic failure from an external cause, as a result of which the governor of a state has declared an emergency and the secretary has concurred, or the president has declared a major disaster.

FTA may make grants under the ER program for capital projects to protect, repair, reconstruct, or replace equipment and facilities of a public transportation system that the secretary determines is in danger of suffering serious damage or has suffered serious damage as a result of a declared emergency. In addition, FTA may reimburse operating expenses that are outside the scope of an affected recipient's normal operations, including but not limited to evacuations; rescue operations; bus, ferry, or rail service to replace inoperable service or to detour around damaged areas; additional service to accommodate an influx of passengers or evacuees; returning evacuees to their homes after the disaster or emergency; and the net project costs related to reestablishing, expanding, or relocating public transportation service before, during, or after an emergency or major disaster.

(4) Grants under this program, or those made under Sections 5307 or 5311 to address a declared emergency, are subject to the terms and conditions that FTA determines are

necessary. FTA will not provide funding for any expenses that are reimbursed by the Federal Emergency Management Agency (FEMA). This program is implemented by regulation under 49 CFR 602. State of Good Repair Formula Program (Section 5337).

The Section 5337 State of Good Repair Formula Program is a formula grant program that provides funding to UZAs with fixed guideway systems and high intensity motorbus systems. The program helps maintain these public transportation systems in a state of good repair by financing replacement and rehabilitation projects for existing fixed guideway systems and high intensity motorbus systems that have been operating for at least seven years. This program was established under MAP-21, which concurrently repealed the Section 5309 Fixed Guideway Modernization formula grant program.

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

FTA apportions state of good repair funds to designated recipients in the UZAs according to a statutory formula. The high intensity fixed guideway formula is applicable to fixed guideway projects using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a BRT system and comprises: (1) a modified version of the formula used under the now repealed fixed guideway rail modernization program, and (2) vehicle revenue miles and directional route miles that are attributable to a UZA. High intensity motorbus apportionments are 60 percent based on vehicle revenue miles and 40 percent based on directional route miles.

Additional information on the Section 5337 State of Good Repair Formula Program is available in a separate FTA Circular.

(5) Rural Area Formula Program (Section 5311).

The Rural Area Formula Program is a formula grant program that provides capital, planning, and operating assistance to states to support public transportation in rural areas with populations less than 50,000, where many residents often rely on public transportation to reach their destinations. FTA apportions these funds under this program to the governor or the governor's designee. Eligible applicants include states and Indian tribes. Eligible sub-recipients include private nonprofit organizations and operators of public transportation or intercity bus service that receive funds indirectly through a recipient.

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

The Appalachian Development Public Transportation Assistance Formula Program is also funded from amounts made available to carry out Section 5311. This program provides formula funds to support public transportation for states in the Appalachian region. Funds are allocated for any purpose eligible under Section 5311. Additional information on the Section 5311 Rural Area Formula Program is available in the most current version of FTA Circular 9040.1.

(6) Transit-Oriented Development Planning Pilot Program

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

(7) Transportation Alternatives Program (FHWA – 23 U.S.C. 213(b))

The Transportation Alternatives Program (TAP) was authorized under Section 1122 of Moving Ahead for Progress in the 21st Century Act (MAP-21) (23 U.S.C. 213(b), 101(a)(29)). The TAP provides funding for programs and projects defined as transportation alternatives, including on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving nondriver access to public transportation and enhanced mobility, community improvement activities, and environmental mitigation; recreational trail program projects; safe routes to school projects; projects for the planning, design, or construction of boulevards and other roadways largely in the right-of-way of former interstate system routes or other divided highways; and workforce development, training, and education activities that are in accordance with 23 U.S.C. 504(e).

The TAP is administered by the Federal Highway Administration (FHWA). Funds are allocated to states based on each state's proportional share of fiscal year 2009

transportation enhancements funding. States are responsible for administering the program within the state and for allocating funds to urbanized and rural areas according to a statutory formula based on population. In UZAs with a population of 200,000 or more, projects are selected by the MPO. In rural and small urbanized areas, projects are selected by the state through a competitive process.

(8) Federal Lands Access Program (FHWA – 23 U.S.C. 204)

The Federal Lands Access Program is a grant program established under MAP-21 and administered by the Federal Highway Administration. This program provides funding to states and local governments for projects to improve transportation facilities that provide access to, are adjacent to, or are located within federal lands, and for which ownership or maintenance responsibility is vested in the state or local government.

The Access Program provides funding to supplement state and local resources for public roads, transit systems, and other transportation facilities, with an emphasis on high-use recreation sites and economic generators. The program is designed to provide flexibility for a wide range of transportation projects in the fifty states, the District of Columbia, and Puerto Rico. Funds are allocated according to a statutory formula, which is based in part on the proportion of federal lands that exist within each state. A programming decisions committee (PDC) within each state makes programming decisions and is responsible for developing a multiyear program of projects.

The PDC in each state is comprised of a representative from FHWA, the state, and of affected local governments. The PDC is required to consult with public transit agencies that operate in the vicinity of federal lands in developing its list of projects. Eligible transit projects include all planning, capital, and operating assistance projects eligible under FTA's grant programs.

The Access Program complements the FHWA Federal Lands Transportation Program (FLTP), which provides funding for transportation facilities owned or maintained by federal land management agencies.

(9) Federal Highway Administration "Flexible" Programs

Certain FHWA transportation programs, such as the Surface Transportation Program (STP) or Congestion Management and Air Quality Program (CMAQ), allow recipients to transfer funds to FTA for public transportation projects that are eligible under the FHWA program and under Section 5307. When such "flexible" fund transfers are made for eligible transit projects, FTA will administer these funds in a separate Section 5307 grant. Guidance on the eligibility of these funds for transfer and associated requirements is provided in Chapter V of this Circular, "Availability of FHWA 'Flexible' Funds for Transit Projects."

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III. GENERAL PROGRAM INFORMATION

1. APPORTIONMENT OF PROGRAM FUNDS. Section 5338 of Title 49, U.S.C. authorizes funding for the Urbanized Area Formula Program from the mass transit account of the highway trust fund. Each fiscal year, FTA apportions urbanized area funds to states and designated recipients according to a statutory formula using the latest available U.S. decennial census data and other information reported by the Bureau of the Census and the National Transit Database. FTA publishes Section 5307 apportionments in the *Federal Register* along with formula apportionments and allocations for other FTA programs.

The funds made available for Section 5307 for a given fiscal year under Section 5338(a)(2)(c) are allocated, apportioned, or set aside as follows:

- a. Of the total made available, \$30,000,000 is set aside for discretionary Passenger Ferry Grants in accordance with Section 5307(h);
- b. Of the total made available, 3.07 percent of the total is allocated to UZAs based on the number of eligible low-income individuals, in accordance with Section 5307(j).
- c. Of the amounts not apportioned under (a) and (b) above, 1.5 percent is set aside for allocation to UZAs according to the Small Transit Intensive Cities (STIC) provision;
- d. Of the total made available, 0.5 percent are set aside for allocation to states for the State Safety Oversight Program in accordance with Section 5329(e)(6); and
- e. Of the total made available, 0.75 percent are set aside for oversight pursuant to Section 5338(i)(1)(B).
- f. Of the amounts not allocated or set aside under (a) through (e) above, the remainder of Section 5307 appropriations is apportioned among two basic categories as follows:
 - (1) 90.68 percent to UZAs of at least 200,000 in population, and
 - (2) 9.32 percent to UZAs less than 200,000 in population.

In addition to the funds apportioned above, FTA also apportions funds to states and UZAs based on the Section 5340 Growing States and High-Density States formula. FTA publishes a single combined apportionment for Sections 5307 and 5340.

2. APPORTIONMENT DATA. For UZAs with populations of fewer than 200,000, the formula is based on total population and population density according to the most recent decennial census. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, fixed guideway revenue vehicle miles, fixed guideway route miles, fixed guideway passenger miles, as well as population and population density.

UZAs under 200,000 in population may also receive funding under the small transit intensive cities (STIC) provision, which allocates funds based on a set of performance factors. To qualify for STIC funding, a UZA must have transit service that meets or exceeds the industry average in one or more performance categories for all UZAs with a population of at least 200,000 but not more than 999,999.

FTA also apportions funds to states and UZAs on the basis of low-income population. These funds are apportioned based on the proportion that a UZAs population bears to the total low-income population for all large or small UZAs. Low-income population totals are published annually by the Census Bureau based on the most recent American Community Survey (ACS) counts. The ACS is the Census Bureau's ongoing sample-based study of the population, which supplements the decennial census. In addition to the funds made available under Section 5307, FTA apportions funds to states for use in urbanized areas according to the Section 5340 Growing States and High-Density States. FTA combines these Section 5340 funds and the low-income allocation together with the funds apportioned by the Section 5307 formula into a single Section 5307 apportionment.

FTA obtains population and population density data from the most recently available decennial census at the time of apportionment. FTA obtains all other data used for formula apportionments from the latest report year of validated data reported in the National Transit Database (NTD). For purposes of the formula, FTA may not use data that is submitted late or data that FTA cannot validate. Transit providers making data submissions should refer to the current editions of the NTD Reporting Manuals and Uniform System of Accounts in reporting to the NTD. Copies of these publications and other NTD policy statements and reporting guidance can be found on the NTD website at <http://www.ntdprogram.gov/> and from the following address: FTA Office of Budget and Policy, 1200 New Jersey Avenue SE, Washington, DC 20590; or by telephone at 202-366-4050. FTA's Office of Budget and Policy provides annual workshops on the NTD for persons reporting to the database on behalf of recipients.

3. AVAILABILITY OF FUNDS. Section 5307 funds are available for obligation during the federal fiscal year for which they were apportioned plus five additional years. For example, funds appropriated in fiscal year 2013 are available until September 30, 2018. Any funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned among all UZAs together with funds made available for the next fiscal year.
4. PASSENGER FERRY DISCRETIONARY PROGRAM. MAP-21 established a new Passenger Ferry Grant program under 49 U.S.C. 5307(h). A total of \$30 million is set aside each fiscal year 2013 and 2014 from the Urbanized Area Formula Program to support passenger ferry projects. Funding will be awarded based on a competitive selection, based on criteria published in a Notice of Funding Availability (NOFA) in the *Federal Register*. FTA will publish additional guidance specific to the Passenger Ferry Discretionary Grant Program in the future.

FTA posts all competitive grant opportunities on the federal government's centralized source for information on discretionary grants, Grants.gov. More information about Grants.gov is available at <http://www.grants.gov/>.

5. TRANSFER OF APPORTIONMENTS.

- a. From the State's Apportionment: Consistent with 49 U.S.C. 5336(f)(1), the governor may transfer any part of the state's Urbanized Area Formula Program apportionment for small UZAs with less than 200,000 in population to nonurbanized areas including Indian tribes in nonurbanized areas to supplement funds apportioned to the state under the Rural Area Formula Program, 49 U.S.C. 5311(c)(3). Consistent with 49 U.S.C. 5336(f)(1), the governor may make such transfers only after consultation with responsible local officials and publicly owned providers of public transportation service in each area to which FTA originally apportioned the funding. In addition, the governor may transfer such amounts apportioned to UZAs under 200,000 in population to and among other UZAs within the state with populations of under 200,000.
- b. Lapsing funds: The 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.
- c. From the Formula Grants for Rural Areas Program to Supplement the Urbanized Area Formula Program. The governor may transfer funds from the state's apportionment under the Formula Grants for Rural Areas Program (Section 5311) to supplement funds apportioned to the state under the Urbanized Area Formula Program for small UZAs under 200,000 in population. A recipient may use amounts so transferred for any expenditures capital and operating assistance eligible under the Rural Area Program.
- d. From Larger Urbanized Areas to the Governor of the State. A designated recipient in a large UZA with a population of 200,000 or more may transfer its Urbanized Area Formula Program or a portion of it, to the governor, who in turn is to allocate it to large and small UZAs in the state for eligible purposes under the Urbanized Area Formula Program. Note that there is no statutory provision allowing the transfer of funds apportioned to a large UZA directly to another UZA without going through the governor's apportionment. To transfer funds from a large UZA 200,000 or more in population to the governor, the following process is applicable:
 - (1) The designated recipient, after consultation with all potential recipients in the UZA, writes to the FTA regional office of the designated recipient's intent to transfer a part of its apportionment to the governor. This letter must identify the amount of the apportionment the designated recipient will transfer; the fiscal year FTA apportioned the funds; and confirm that the designated recipient has consulted with all potential recipients of the originally apportioned funds. All the designated recipients in a UZA must sign this letter;

- (2) The governor and the designated recipient, either separately or together, notifies the FTA regional office in writing of the governor's willingness to accept the apportionment; confirms that the governor will use the apportionment only according to Urbanized Area Formula Program requirements; and
 - (3) After receipt of these letters and verification that the apportionment is available for transfer (i.e., the funds have been apportioned, have not been otherwise committed, etc.), FTA, in writing, notifies both the designated recipient and the governor that the apportionment is available to the governor for allocation in compliance with the Urbanized Area Formula Program upon FTA's receipt of an appropriate grant application.
- e. Limitations: Transfers of apportionments are subject to the capital and operating assistance limitations applicable to the original apportionment of such amounts.
 - f. Notification to FTA: Federal requirements do not mandate prior FTA approval, but the governor must provide notification to FTA of a transfer for each transaction, so that FTA can accurately reflect the transfer decision in overall program budget levels and UZA apportionment records prior to grant award. The grant application project budget must show the amount of transferred funds.

6. FEDERAL SHARE OF PROJECT COSTS.

- a. Planning and Capital Projects. Except as provided for in b. below, the federal share for planning and capital projects that receive funding under the Section 5307 Program may not exceed 80 percent of the net project cost. Net project cost is that portion of the cost of a project that cannot reasonably be financed from the grantee's revenues.
- b. Exceptions. The federal share may exceed 80 percent for certain projects related to ADA, CAA, and certain bicycle projects as follows:
 - (1) Vehicles. The federal share is 85 percent for the acquisition of vehicles for purposes of complying with or maintaining compliance with the Americans with Disabilities Act of 1990 (ADA; 42 U.S.C. 12101 *et seq.*) or the Clean Air Act (CAA; 42 U.S.C. 7401 *et seq.*). A revenue vehicle that complies with 49 CFR part 38 may be funded at 85 percent federal share.
 - (2) Vehicle-Related Equipment and Facilities. The federal share for project costs for acquiring vehicle-related equipment or facilities (including clean fuel or alternative fuel vehicle-related equipment or facilities) for purposes of complying or maintaining compliance with the CAA, or required by the ADA, is 90 percent.

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

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

- (3) Bicycle Facilities. As provided by 49 U.S.C. 5319, the federal share is 90 percent for those bicycle access projects or portions of bicycle access projects designed to:
 - (a) provide access for bicycles to public transportation facilities,
 - (b) provide shelters and parking facilities for bicycles in or around public transportation facilities, or
 - (c) install equipment for transporting bicycles on public transportation vehicles.
 - (4) Bicycle Enhancement Projects. When the project involves bicycle access to public transportation and the grant or any portion of the grant is made with the funds required to be expended under the 1 percent for “associated transit improvement” requirement as provided by 49 U.S.C. 5307(c)(1)(K), the federal share will be 95 percent.
 - c. Operating Assistance. The federal share may not exceed 50 percent of the net operating cost, which is determined after deducting fares and other system-generated revenues and ineligible costs as described in Chapter IV, Section 4, of this circular.
7. LOCAL SHARE OF PROJECT COSTS. After the appropriate federal share is established, the applicant must provide the local share of the net project cost in cash (or in-kind) and must document in its grant application the source of the local match.

Title 49 CFR part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Government,” (the common grant rule) at Section 18.24, “Matching or Cost Sharing,” describes detailed rules for eligibility, valuation, and accounting for the local matching share.

The local match may include:

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

- e. Amounts appropriated or otherwise made available to a department or agency of the government (other than the Department of Transportation) that are eligible to be expended for transportation; and
- f. In-kind contribution such as the market value of in-kind contributions integral to the project may be counted as a contribution toward local share. See more specific discussion of use of real property as an in-kind contribution in section 8(i), below.

8. ADDITIONAL SOURCES OF LOCAL SHARE

- a. Revenue Bond Proceeds as Local Share. A recipient of Section 5307 funds may use the proceeds from the issuance of revenue bonds as part of the local match for a capital project, with prior FTA approval. Farebox receipts are one type of revenue that may be used to secure the bonds. Use of the proceeds of revenue bonds as local share will be approved only if FTA finds that the aggregate amount of financial support for public transportation in the UZA provided by the state and affected local governmental authorities during the next three fiscal years, as programmed in the STIP, is not less than the aggregate amount provided by the state and affected local governmental authorities in the UZA during the preceding three fiscal years.
- b. Transportation Development Credits (formerly referred to as Toll Revenue Credits). A state may use, as a credit toward a project's local share, certain expenditures it has made with toll revenues. The amount of credit toward local share to be earned by a state is based on revenues generated by toll authorities within the state that are used by the authorities to build, improve, or maintain highways, bridges, or tunnels that serve interstate commerce. A recipient wishing to apply the provisions of 23 U.S.C. 120(i) should discuss with its state department of transportation (state DOT) the availability of transportation development credits for use as local share in matching FTA grants, and should obtain a letter from the state DOT indicating that TDCs are available for a project prior to submitting a grant application in FTA's electronic award management system. FHWA oversees the determination of transportation development credits within each state.

FTA will not approve a retroactive application of transportation development credits.

The effect of utilizing transportation development credits means that FTA, in essence, provides 100 percent of the total net project cost. For example, if the actual cost of the asset the applicant will purchase is \$500,000, FTA's share at 80 percent equals \$400,000. The remaining \$100,000 match is transportation development credits, so additional federal funds are needed to equal \$500,000 or 100 percent of the net project cost. Note, however, Section 120(i) does not make federal funds available above the amount for which the grantee is eligible.

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

Actual cost of the asset \$500,000

| | |
|---------------------|--|
| ===== | |
| Federal share (80%) | \$400,000 |
| Local share (20%) | <u>\$100,000</u> (from toll revenue credits) |
| | \$500,000 |
| ===== | |

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

| | |
|--------------------|-----------|
| Total project cost | \$500,000 |
| Federal Share | \$500,000 |

FTA requires the recipient to state within the comment section of the FTA electronic award management system that transportation development credits will, in this example, provide \$100,000 for the local share.

- c. Use of Program Income as Local Share. Recipients may use program income generated by an earlier grant as the local share for a subsequent eligible public transportation project. Recipients may not use program income as the local share for the grant that generated the income. Program income means gross income received by the grantee or subgrantee directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. In general, program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of advertising and concessions, from social service contract revenue, and from the sale of commodities or items fabricated under a grant agreement. Except as otherwise provided in regulations, program income does not include interest on grant funds; nor does program income include rebates, credits, discounts, refunds, and interest earned on any of them.

FTA Circular 5010.1, "Grant Management Requirements," discusses program income in some depth, as does 49 CFR 18.25. FTA Circular 5010.1 notes that recipients may retain program income so long as they use it for public transportation purposes—that is, for allowable capital and operating expenses. For additional information on program income, please refer to FTA Circular 5010.1.

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

In a grant application requesting operating assistance, the applicant must deduct farebox revenues from operating costs to arrive at the net project cost of an operating assistance project. See Appendix C, "Operating Assistance Projects," of this circular for assistance in calculating the net project cost of a grant requesting operating assistance. In no event may the applicant use farebox revenue as local share for the project that generated those revenues, although the applicant may use farebox revenue to support bonds issued to finance capital projects.

- d. Funds Other Than Program Income. Revenue derived from an activity that is not federally assisted is not program income.

Generally, FTA does not consider sales proceeds from the disposition of FTA-funded equipment and excess real property to be program income. Recipients may retain sales proceeds as program income only if the sale of the asset, as in some joint development activities, achieves the purpose of the grant. Recipients may retain sales proceeds to undertake a like-kind exchange also (see Appendix D of this circular), but the sales proceeds are not program income and recipients must not use them as local share.

With prior FTA approval, grantees may exercise the provisions of 49 U.S.C. 5334(h)(4), Proceeds from the Sale of Transit Assets, retain the proceeds from the sale of federally funded assets that they no longer need for public transportation purposes, and reduce the gross project cost of subsequent federally assisted public transportation capital projects. Thus, recipients may not use such proceeds as local share. The provisions of 49 U.S.C. 5334(h)(4), however, do not apply to vehicles that have not reached their minimum useful life. See FTA Circular 5010.1, "Grant Management Requirements," for further discussion regarding use of such proceeds.

- e. Proceeds Related to Social Security Act Funds as Local Share. Section 403(a)(5)(C)(vii) of the Social Security Act, codified at 42 U.S.C. 603(a)(5)(C)(vii), Welfare-to-Work grant prohibits the use of Temporary Assistance for Needy Families (TANF) block grant funds as local share for other federally assisted projects. Consistent with 49 U.S.C. 5307(d)(4), however, federal transit law expressly authorizes recipients to use TANF funds as the local share for Section 5307 projects.
- f. Funds Made Available Under the Federal Lands Transportation Program (FLTP). The FLTP program, as authorized under 23 U.S.C. 203, provides funding directly to federal land management agencies, including the National Park Service, the USDA Forest Service, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the U.S. Army Corps of Engineers, for transportation projects on or near federal lands. Eligible projects include capital projects and operating assistance for facilities or equipment, including federally owned roads and transit systems. Funds apportioned under this program may be used as a form of local match for other FHWA and FTA programs. For example, a recipient may partner with the Forest Service or National Park Service to install bus shelters or other transit improvements on federal lands within the recipient's service area.
- g. Providers of Public Transportation by Vanpool. Section 5323(i)(2) permits recipients to count as local match amounts that are expended by a private provider of the public transportation by vanpool for the acquisition of rolling stock to be used by the provider in the recipient's service area. This excludes any amounts received from federal, state, or local governments for the purchase of the rolling stock.

A private provider of public transportation by vanpool may use revenues it receives in the provision of public transportation service in the service area of a recipient that are in excess of the provider's operating costs to acquire rolling stock, provided that the

recipient and provider have entered into a legally binding agreement requiring the provider to use the rolling stock in the recipient's service area.

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

The term "private provider of public transportation" means a private entity providing vanpool service in the service area of a recipient of Section 5307 funds using a commuter highway or vanpool vehicle. These types of vehicles must have the seating capacity of at least six adults (not including the driver) and at least 80 percent of the vehicle's mileage can be reasonably expected to be for the purposes of transporting commuters in connection with travel between their residences and their place of employment.

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

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

Profit from operations not related to public transportation may be included in the local match to the extent that such revenues are applied to cover eligible operating expenses.

Federal and local matching funds may only be applied to eligible operating expenses incurred on the accrual basis of accounting in providing public transportation services during the project period.

- i. Joint Development: "Joint development" is an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public entities, and is supportive of the private sector participation provisions of 49 U.S.C. 5315.

FTA encourages the full use of real property and facilities purchased and constructed with federal funds to pursue joint development. FTA's joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See Final Agency Guidance on the Eligibility of Joint Development Improvements (72 FR 5788, Feb. 7, 2007); also available at www.fta.dot.gov. FTA anticipates publishing updated guidance on joint development in the near future. Until FTA issues new joint development guidance, please refer to the February 2007 *Federal Register* notice and consult with your regional office.

- j. In-Kind Contributions of Real Estate Property. Grantees may use in-kind contributions of real property as part of the local matching share so long as the property to be donated is needed to carry out the scope of the approved project. The property can be owned and donated by the grantee or by a third party. The in-kind contribution allowance will be based on the current market value as independently appraised. Appraisals for property being donated, regardless of appraised value, must be submitted to the FTA regional or metropolitan office. FTA must review and concur on in-kind contributions of any value before federal funds are expended or the value is used as local match.

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

9. DEFERRED LOCAL SHARE. A recipient may request on a case-by-case basis that all or a portion of the local share for a project be deferred until up to 100 percent of the federal funds have been drawn down or other period. A request for the deferral must accompany the grant application. A recipient that intends to use deferred local share must receive FTA approval prior to the obligation of the grant. FTA will specify the terms and schedule for the deferral.

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

Generally, FTA will not approve retroactive deferral of local share. In exceptional circumstances, FTA may approve retroactive deferral of local share—for example, in

response to a catastrophic event such as a hurricane or flood where sources of local funds are temporarily disrupted.

10. **ALTERNATIVE FINANCING.** Section 5307 recipients, especially those wishing to undertake major capital projects, are encouraged to explore alternative methods of financing transit projects, in addition to grant funding. Alternative financing can involve combining multiple, nontraditional sources of funding as well as federal, state, local, and private funding, in support of transit capital needs.

a. Approaches recipients might investigate include:

- (1) capital leasing arrangements;
- (2) joint development;
- (3) state economic development or revolving loan funds;
- (4) state infrastructure bank loans;
- (5) state and federal tax credit programs;
- (6) special tax districts, such as transportation development districts, special benefit districts, and tax increment financing;
- (7) exchanges of real property; and
- (8) in-kind contributions.

b. Recipients with a dedicated funding source (e.g., sales tax proceeds, transportation development district proceeds, tax increment financing proceeds, and other revenue sources including user fees) may wish to consider a direct loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 2002 of MAP-21 (23 U.S.C. 601 *et seq.*). Eligible projects include any transit capital project which is anticipated to meet the threshold size. Threshold sizes for projects are:

- (1) \$50 million; or
- (2) \$25 million for rural projects and those in cities of 250,000 or less in population; or
- (3) \$15 million for intelligent transportation system (ITS) projects; or
- (4) 33 ⅓ percent of the most recently completed fiscal year's FHWA formula apportionment for the state in which the project is located.

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

- c. The TIFIA program is administered by FHWA's Office of Innovation Program Delivery formerly known as the TIFIA Joint Program Office. FTA provides staff support to this office for transit transactions. All transactions begin by submitting a letter of interest to office identified in the annual Notice of Funds Availability. Projects are processed on a first-come, first-served basis. Funding decisions are made by the secretary following Credit Council recommendation.

Contact:

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

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

IV. ELIGIBLE PROJECTS AND REQUIREMENTS

1. PLANNING PROJECTS. Section 5307 funds are available for the planning, engineering, design, and evaluation of public transportation projects and for other technical transportation-related studies. Eligible activities include, but are not limited to: studies relating to management, operations, capital requirements, and economic feasibility; work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment; plans and specifications; evaluation of previously funded projects; job access and reverse commute projects; and other similar or related activities before and in preparation for the construction, acquisition, or improved operation of public transportation systems, facilities, and equipment.

FTA encourages recipients to use Section 5307 funds for technical studies of special interest to the transit agency, such as maintenance plan development, operational service planning, transit asset management plans, public transportation safety plans, and management and operation planning studies. FTA also encourages recipients to use program funds to supplement regular formula planning funds when the planning resources authorized by 49 U.S.C. 5305(d) are insufficient to meet such needs. Similarly, where the federal government proposes a high-cost study, such as one for major capital investments, recipients may use Section 5307 funds to supplement available formula planning funds and Federal Highway Administration (FHWA) planning funds.

All planning projects carried out within the metropolitan transportation planning process that use FTA or FHWA funds must be included in the unified planning work program (UPWP), as approved by the MPO. The UPWP must include a list of the proposed planning projects, project scopes, and related costs.

For more information on planning activities, please refer to FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."

2. CAPITAL PROJECTS. Capital projects eligible under the Urbanized Area Formula Program include all projects included under 49 U.S.C. 5302(3), as explained below. In general, capital project expenses involve purchasing, leasing, constructing, maintaining, or repairing facilities, rolling stock, and equipment for use in a public transportation system. Capital project costs may include all direct costs and indirect costs associated with the project (provided that the grantee has an approved cost allocation plan or indirect cost proposal).

The examples of eligible activities, below, indicate the breadth of capital projects eligible under the Section 5307 Program. This list is intended to be illustrative, not exhaustive. Please contact the appropriate FTA regional office regarding the eligibility of other projects.

Projects eligible for capital funding include but are not limited to:

- a. Bus and Bus-Related Activities.

- (1) Replacement of buses;
 - (2) Overhaul of buses (includes paratransit vehicles);
 - (3) Rebuilding of buses;
 - (4) Expansion of bus fleets;
 - (5) Purchase and installation of service and support equipment;
 - (6) Accessory and miscellaneous equipment such as mobile radio units, bus stop signs, supervisory vehicles, fareboxes, computers, and shop and garage equipment;
 - (7) Construction of maintenance facilities, including land acquisition, design, engineering, and demolition;
 - (8) Rehabilitation of maintenance facilities, including design and engineering, land acquisition, and relocation;
 - (9) Construction of other facilities, for example, transfer facilities, intermodal terminals and bus shelters, including design and engineering, and land acquisition;
 - (10) Construction, renovation, and improvements of intercity bus and intercity rail stations and terminals;
 - (11) The introduction of new technology, through innovative and improved products, into public transportation; and
 - (12) Capital support equipment, including computer hardware, software, bus diagnostic equipment, and other equipment that enhances operating efficiency.
- b. Fixed Guideway Systems.
- (1) Rolling stock, including rail cars, locomotives, work trains, bus rapid transit vehicles, and ferryboats;
 - (2) Overhaul of vehicles;
 - (3) Rebuilding of vehicles;
 - (4) Track;
 - (5) Line equipment;
 - (6) Line structures;
 - (7) Passenger stations, depots, and terminals, including ferry terminals;
 - (8) Signals and communications;

- (9) Power equipment and substations;
 - (10) Projects to improve safety and security;
 - (11) Operational support, including computer hardware and software;
 - (12) Systems extensions or new system construction, including engineering, demolition, etc.; and
 - (13) Land acquisition, design, and construction for fixed guideways.
- c. Associated Transit Improvements. The term “associated transit improvements” includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to public transportation facilities. This category of projects was formerly known as “transit enhancements.”
- (1) The following public transportation projects and project elements qualify as associated transit improvement projects:
 - (a) Historic preservation, rehabilitation, and operation of historic public transportation buildings, structures, and facilities (including historic bus and railroad facilities) intended for use in public transportation service;
 - (b) Bus shelters;
 - (c) Landscaping and streetscaping, including benches, trash receptacles, and street lights;
 - (d) Pedestrian access and walkways;
 - (e) Bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles;
 - (f) Signage; or
 - (g) Enhanced access for people with disabilities to public transportation. Associated transit improvement projects or elements of projects designed to enhance access for people with disabilities are required to exceed the minimum requirements of the ADA.
 - (2) Bicycle and pedestrian paths within a certain distance from a transit stop or station are eligible capital projects and qualify as associated transit improvements. Pedestrian paths located within 0.5 miles of a transit stop or station and bicycle paths located within three miles of a transit stop or station are eligible capital projects. Projects outside this distance may be eligible if they are within the distance that a person could be expected to safely and conveniently walk or bicycle to the particular stop or station.

- (3) MAP-21 amends the definition of transit enhancements (now “associated transit improvements” under 49 U.S.C. 5302) so as to remove public art from the eligible projects specifically listed in law. However, art can be integrated into facility design, landscaping, and historic preservation, and funded as a capital expense. Art also can be integrated through the use of floor or wall tiles that contain artist-designed and fabricated elements, use of color, use of materials, lighting, and in the overall design of a facility. In addition, eligible capital projects include incidental expenses related to acquisition or construction, including design costs. Therefore, the incidental costs of incorporating art into facilities and including an artist on a design team continue to be eligible expenses. Procuring sculptures or other items not integral to the facility is no longer an eligible expense.
- (4) The following requirements are associated with associated transit improvements:
- (a) In a large UZA (population of 200,000 or more), the designated recipient must certify that not less than 1 percent of the amount apportioned to the UZA for a given fiscal year is spent on projects that qualify as associated transit improvements; and
 - (b) In a large UZA with more than one recipient, it is the designated recipient’s responsibility to work with other public transportation operators to ensure that 1 percent of the UZA’s apportionment is used for associated transit improvements. Recipients are not individually required to expend 1 percent of their suballocation for associated transit improvements, provided that this requirement is met collectively by the recipients within the UZA. A designated recipient’s sub-area allocation documentation should identify the use of funds for eligible associated transit improvements and how this requirement will be met.
- d. Vehicle-Related Equipment to Comply with the Americans with Disabilities Act of 1990. Examples of vehicle-related equipment for compliance with the Americans with Disabilities Act of 1990 (ADA) include:
- (1) Low floor vehicles and components that allow for level boarding of all passengers.
 - (2) Lifts, ramps, and other level-change mechanisms attached to or within the vehicle. **Note:** Throughout 49 CFR part 38, reference is continually made to “level-change mechanisms (e.g., lift or ramp).” A kneeling mechanism by itself is not a level-change mechanism; however, it may be necessary in order to minimize the slope of a vehicle boarding ramp in order to meet ADA requirements.
 - (3) Securement devices (nonrail vehicles only). **Note:** Securement devices are not required for rail vehicles.
 - (4) Seats that fold to create wheelchair space. **Note:** Folding seats are permitted in the securement area; however, the securement area may be devoid of seating. Per 49 CFR 38.23(d)(2), “Securement areas may have fold-down seats to accommodate other

- passengers when a wheelchair or mobility aid user is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space required.”
- (5) Audible communication systems at doors and within seating areas.
 - (6) Visual monitoring systems at doors and within seating areas to observe when assistance is requested or necessary for the use of securement systems, ramps, and lifts per 49 CFR 37.165(f).
 - (7) Call systems for alerting drivers and other employees to provide assistance.
 - (8) Variable passenger information displays at doors and within seating areas.
 - (9) For railcars equipped with restrooms, restroom features specific to accessibility (dimensions, fixtures).
 - (10) Features specific to accessibility (signs, barriers between cars, handrails).
 - (11) Other vehicle-related equipment specifically required by 49 CFR part 38.
- e. Facility and Vehicle Projects to Comply with the Americans with Disabilities Act of 1990. Applications to FTA requesting a federal share of 90 percent for purchasing vehicle-related equipment or facilities for ADA compliance must separately account for the project elements that provide for the compliance with the requirements. The application must also account for the other vehicle-related equipment or facility project elements that the recipient does not directly attribute to ADA compliance. Examples of vehicle-related equipment or facilities projects for compliance with ADA include, but are not limited to:
- (1) Level boarding passenger platforms to enter a vehicle (applies to full platforms);
 - (2) Lifts and ramps at a station, either attached or mobile;
 - (3) Passenger elevators on a path of travel within a station;
 - (4) Platform edge and pathway markings;
 - (5) Accessible passenger ticketing elements;
 - (6) Accessible doors and door systems;
 - (7) Audible communication systems;
 - (8) Variable passenger information displays;
 - (9) Fixed passenger signage with accessible features;
 - (10) Passenger rest room features that are specific to accessibility;

- (11) Station features that are specific to accessibility; and
 - (12) ADA-related features of other facilities, including administrative facilities and vehicle maintenance facilities.
- f. Extended warranty is an eligible capital cost. FTA's Best Practices Procurement Manual encourages grantees to evaluate the cost of an extended warranty in an analysis separate from the equipment acquisitions cost in order to make a good business decision.
- g. Mobility management is intended to build coordination among public transportation providers and other transportation service providers carried out by a recipient or sub-recipient through an agreement (see 49 U.S.C. 5302(K)(i)). Mobility management does not include the costs of operating public transportation services, fuel, driver salaries, and other nonadministrative operating expenses directly related to the operation of vehicles.

Mobility management includes:

- (1) The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, older adults, and low-income individuals;
- (2) Support for short-term management activities to plan and implement coordinated services;
- (3) The support of state and local coordination policy bodies and councils;
- (4) The operation of transportation brokerages to coordinate providers, funding agencies, and customers;
- (5) The provision of coordination services, including employer-oriented transportation management organizations, transportation management associations, business improvement districts or other like organizations, and human service organizations' customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;
- (6) The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- (7) Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of geographic information systems (GIS) mapping, global positioning system (GPS) technology, coordinated vehicle scheduling, dispatching and monitoring technologies, as well as technologies to track costs and billing in a coordinated system and single smart customer payment systems.

h. Acquisition and Reconstruction of “Associated Capital Maintenance” Items. The acquisition and reconstruction of associated capital maintenance items are capital expenses, subject to the following provisions:

- (1) Equipment, tires, tubes, and material must cost at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment, tires, tubes, and material are to be used.
- (2) The type of rolling stock for which the recipient is procuring the equipment and material determines the threshold minimum cost of each item eligible for acquisition. This definition is equally applicable to all rolling stock, whether highway or rail operated.

For example, if a recipient desires to purchase associated capital maintenance items for a fleet of 40-foot, heavy-duty public transportation buses with an average fleet age of four years, the cost of each item requested can be no less than 0.5 percent of the straight line depreciated value of an average vehicle of the agency’s 40-foot heavy-duty bus fleet, or comparable four-year-old bus.

Assuming that an average fleet bus or comparable four-year-old bus costs \$300,000 when new, then its depreciated value is \$200,000 [$\$300,000 - (4/12 \times \$300,000)$], and the cost of each associated capital maintenance item must be equal to or exceed \$1,000 ($.005 \times \$200,000$).

- (3) The word “item” refers to a specific unit which a supplier customarily offers, such as an engine, transmission, generator, axle assembly, or compressor. This definition also includes repair or rebuild kits.
- (4) Repair, rebuild, or refurbishing kits that are readily available from suppliers are eligible for acquisition with FTA funding under this provision if the cost of the complete kit meets the 0.5 percent test.
- (5) FTA treats acquisition of sets or groups of like items similarly to acquisition of kits, described above. Recipients may procure sets of brakes, seats, windows, or other like items providing the total cost of the set meets the 0.5 of 1 percent test.
- (6) Associated capital maintenance items relate to items for revenue rolling stock only and do not include facilities, facility equipment, or nonrevenue vehicles. Rolling stock means buses, vans, cars, rail cars, trolley cars and buses, ferryboats, and vehicles used for guideways and inclined planes.
- (7) Reconstruction or rebuilding of equipment and material, each of which after reconstruction must have a fair market value of at least 0.5 percent of the current fair market value of rolling stock comparable to the rolling stock for which the equipment and material will be used.

(8) In some instances, a recipient may have the personnel and facilities available to manufacture or reconstruct a replacement item in-house. Such activities are eligible for FTA capital assistance under the associated capital maintenance provisions provided that:

- (a) manufacturing the item in-house, including material, burden labor, and overhead, is cost-effective when compared with purchasing the item from a commercial source; or
- (b) the required part is unavailable commercially, or obtaining it from an outside source requires an excessively long lead time that the recipient cannot tolerate.

Otherwise the recipient should acquire such items by contract.

(9) An eligible capital activity includes a recipient's rebuilding of any item of equipment, such as generators, starters, and so forth, for use on rolling stock provided that, after rebuild, the item meets the 0.5 percent threshold test.

(10) A grant applicant may find that it can simplify its application by applying for FTA assistance under the preventive maintenance category rather than applying for capital assistance for associated capital maintenance items. The choice of how best to structure the grant application rests with the grant applicant. FTA cautions the grant applicant not to count the same costs twice.

- i. Preventive Maintenance. Preventive maintenance costs are all maintenance costs related to vehicles, equipment, and facilities. Please see Appendix E for a description of eligible preventive maintenance activities.
- j. Transit-Oriented Development. FTA encourages land use policies that promote investment in transit-oriented development (TOD) projects, which are compact, mixed-use development near transit facilities with high-quality walking environments. TOD projects help create sustainable communities where people of all ages and incomes have transportation and housing choices, and increasing location efficiency where people can walk, bike, and take transit.

Eligible activities that could foster TOD include but are not limited to: construction, renovation and improvement of intercity bus or rail facilities; transportation-related furniture, fixtures, or equipment; transit facilities that incorporate community services; walkways; incorporation of open space in facility designs; real estate acquisition for transit projects; project development activities; and other related professional services. TOD benefits transit by increasing ridership, reducing congestion, and providing value for both the public and private sectors while creating a sense of community and place.

- k. Joint Development Projects. "Joint development" is an eligible capital expense under 49 U.S.C. 5302(3)(G), and the term commonly refers to the coordinated development of public transportation facilities with other, nontransit development, including commercial and residential development. Coordinated development often involves private and public

entities, and is supportive of the private sector participation provisions of 49 U.S.C. § 5315.

FTA encourages the full use of real property and facilities purchased and constructed with federal funds to pursue joint development. FTA's joint development policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. See Final Agency Guidance on the Eligibility of Joint Development Improvements (72 FR 5788, Feb. 7, 2007); also available at www.fta.dot.gov. FTA anticipates publishing updated guidance on joint development in the near future. Until FTA issues new joint development guidance, please refer to the February 2007 *Federal Register* notice and consult with your regional office.

- l. Technology Introduction. Recipients may use Section 5307 funds for capital projects that introduce new technology. FTA encourages suppliers to produce and public transportation providers to introduce new technology in public transportation service, in the form of innovative and improved products.
- m. Projects to Comply with the Clean Air Act (CAA). The following projects are eligible in any area of the country, and are specifically eligible in order to comply with CAA for nonattainment or maintenance areas and include:
 - (1) purchasing or leasing clean fuel buses including buses that employ a lightweight composite primary structure;
 - (2) constructing or leasing clean fuel buses or electrical recharging facilities and related equipment for such buses;
 - (3) constructing new or improved existing public transportation facilities to accommodate clean fuel buses; and
 - (4) at the discretion of the secretary, may include projects located in nonattainment or maintenance areas relating to clean fuel, hybrid electric, or zero emissions technology buses that exhibit equivalent or superior emissions reductions to existing clean fuel or hybrid electric technologies.

The vehicles must be powered by clean natural gas (CNG), liquefied natural gas (LNG), batteries, or by hybrid electric or fuel cell systems.
- n. ADA Complementary Paratransit Service. Recipients operating fixed route systems may use up to 10 percent of their annual formula apportionment (the 10 percent applies to annual formula apportionments under Sections 5307 and 5311), at the capital project 80/20 federal/local share ratio, to pay for complementary paratransit services in accordance with 49 CFR part 37, Subpart F, for grant recipients that are in compliance with U.S. DOT regulations at 49 CFR parts 27, 37, and 38 implementing the transportation provisions of the Americans with Disabilities Act of 1990 (ADA).

- (1) **ADA Compliance:** Eligibility for using this expanded definition of capital depends on compliance with ADA requirements. FTA recipients must certify compliance with the ADA annually, and are subject to compliance review activities conducted by FTA to monitor compliance and correct deficiencies. Entities whose compliance is in question, due to volume of complaints, compliance review findings, or triennial review findings, will be subject to review and approval prior to using capital funds to operate ADA paratransit service.
 - (2) **UZAs with More than One Recipient:** When a UZA has more than one recipient, it is the designated recipient's responsibility to work with public transportation operators to allocate the 10 percent of the UZA's apportionment that may be used for ADA paratransit purposes. Recipients' subarea allocation documentation should include language regarding the use of the ADA paratransit provision.
- o. **Leasing Capital Assets.** A recipient may use capital funds to lease capital assets from another party in cases where it is determined that leasing would be more cost effective than either purchasing or constructing the asset. Recipients with preaward authority must conduct the cost comparison before entering into the lease and should contact the appropriate FTA regional office regarding the cost comparison. Recipients must comply with 49 CFR part 639 including these specific procedures:
- (1) Section 639.11 requires the grantee to demonstrate that the lease of a capital asset is more cost effective than the purchase or construction of the asset.
 - (2) Section 639.23 requires the calculation of the purchase or construction cost and Section 639.25 requires the calculation of the lease cost. These two calculations are used to determine which approach is the most cost effective.

Leasing costs eligible for capital assistance include finance charges, including interest; ancillary costs such as delivery and installation charges; and maintenance costs. For additional information about leasing capital assets see FTA Circular 5010.1, "Grant Management Requirements."

Recipients should submit the cost comparison to the appropriate FTA regional office for review before entering into the lease or before approval of the grant which supports the lease. The cost comparison should be retained on file for later review or audit. Some types of capital leases call for more than a single up-front payment but still load the payment into the early years of an extended lease. If the payment is made over several years instead of in a single lump-sum, the recipient must be able to complete the acquisition with local funds in the event FTA funds are not available in later years.

When a recipient receives funding for a project and proposes to enter into a capital lease for some element of the project, the recipient should submit the cost comparison for FTA approval as part of the grant application. Recipients should review the Office of Management and Budget (OMB) Circular A-94 for the necessary discount rate to be used in making the cost effectiveness determination. The circular can be found at <http://www.whitehouse.gov/omb/circulars/index.html>.

- p. Capital Cost of Contracting. Some FTA recipients turn to an outside source to obtain public transportation service, maintenance service, or vehicles that the recipient will use in public transportation service. When a recipient enters a contract for such service, FTA will provide assistance for the capital consumed in the course of the contract. In the case of a contractor providing vehicles for public transportation service, the capital consumed is equivalent to the depreciation of the vehicles in use in the public transportation service during the contract period. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the recipient these capital assets. FTA refers to the concept of assisting with capital consumed as the “capital cost of contracting.”

Only the costs attributable to the privately owned assets are eligible under this policy. With one exception, items purchased with federal, state, or local government assistance are not eligible. The exception is a public transportation vehicle privately owned in which the recipient has invested FTA funds from the Over-the-Road Bus Accessibility Program to finance incremental capital costs of complying with ADA. Capital consumed for service or maintenance in the provision of service outside the public transportation portion of the contract, such as for charter or school bus service, is not an eligible cost.

In addition, FTA provides assistance for preventive maintenance, which is defined as all maintenance. In some instances, the recipient contracts with outside sources for both maintenance and public transportation service, and the contractor provides both maintenance and vehicles. In such cases, both FTA’s capital cost of contracting and preventive maintenance standards will apply.

To avoid imposing burdensome accounting rules with regard to contracts for bus, paratransit, and demand-responsive related services, FTA will allow the recipient to consider a percentage of leased service or contracted maintenance capital costs without further justification and will provide assistance for 80 percent of the resultant amount. EXHIBIT IV-1, below, shows the percentages and the corresponding type of contract service for bus, paratransit, and demand-responsive related services. The percentages are calculations using data from the National Transit Database (NTD). Presented by type of contract, the calculations represent industry averages in counting capital-eligible activities as a share of total cost. The percentages apply whether the service is local, express, shuttle, paratransit, or demand-responsive service.

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

| Bus and Paratransit-Related Contract Services | Percent of Contract Eligible for 80 Percent Federal Share |
|--|--|
| Type of Contract | |
| 1. Service Contract (contractor provides maintenance and transit service; recipient provides vehicles) | 40 percent |
| 2. Service Contract (contractor provides transit service only; recipient provides vehicles and maintenance) | 0 percent |
| 3. Vehicle Maintenance Contract (contractor provides maintenance; recipient provides vehicles and transit service) | 100 percent |
| 4. Vehicle Lease Contract (contractor provides vehicles; recipient provides maintenance and transit service) | 100 percent |
| 5. Maintenance/Lease Contract (contractor provides vehicles and maintenance; recipient provides transit service) | 100 percent |
| 6. Turnkey Contract (contractor provides vehicles, maintenance, and transit service) | 50 percent |
| 7. Vehicle/Service Contract (contractor provides vehicles and transit service; recipient provides maintenance) | 10 percent |

Some of the calculations above in EXHIBIT IV-1 are based on the assumption that the contractor (or someone other than the recipient) provides the assets. For example, if a contractor provides maintenance, FTA assumes in the calculations that the contractor does so in a facility provided by the contractor. For another example, in a contractor-operated vanpool program that qualifies under a Turnkey Contract (see type 6), a vanpool driver may provide the service rather than a contractor employee, but because the recipient does not provide the service, these costs are treated as part of the contract.

A recipient may request FTA participation at a higher percentage of the contract than FTA shows in Exhibit IV-1, but must provide substantiation of the actual costs in order to do so.

A recipient applying for assistance with costs that contain any of the capital costs of contracting permutations listed in EXHIBIT IV-1 may list costs for the contracted

service in the capital cost of contracting budget category, or the recipient may use both that category and another appropriate category such as preventive maintenance or leasing, so long as the total of the costs do not exceed the amount of the contract.

In the case where the grantee owns the facilities (constructed with FTA funds) from which the contractor operates, the vehicles (purchased with FTA funds) are maintained by the contractor, and the service contractor is responsible for maintenance of the facility and vehicles within the scope of the service contract, the grantee will need to calculate the proportion of the contract that actually represents allowable capital costs. These include (1) all vehicle maintenance costs, and (2) all costs to maintain the grantee's facilities, because such costs are eligible as preventive maintenance. In this case, because the facility is already owned by the grantee, depreciation of the facility cannot be included as an eligible cost, because to do so would be double counting because FTA and grantee funds have already been used to cover the capital costs of the maintenance facility itself. Because the facility is owned by the grantee, although capital cost of contracting does apply, the eligible amount will have to be determined based on the contract. The amount of the contract costs attributed to the vehicle maintenance and facility maintenance is eligible for federal capital funds at 80 percent as an eligible preventive maintenance expense.

Costs of a contract which remain after application of capital cost of contracting are operating expenses and may, depending on the size of the UZA, recipient, or purpose of the service, be eligible for federal operating assistance. For example, in a UZA with a population of under 200,000, 50 percent of a turnkey contract (type 6) would be eligible for federal capital assistance at a matching ratio of 80 percent federal. The remaining 50 percent of the costs of the contract, less any fares received, would be eligible for federal operating assistance at a matching ratio of 50 percent federal. The same costs of a contract may not be double counted and receive both capital and operating assistance. Thus, if a maintenance/lease contract (type 5) is treated as a capital expense under capital cost of contracting, none of these expenses would be reimbursable as an operating expense.

- q. Rail Trackage Agreements. Capital portions of rail trackage rights agreements are eligible for Section 5307 capital assistance.
- r. Crime Prevention and Security Projects. Eligible capital projects related to crime prevention and security activities include, but are not limited to:
 - (1) Increased lighting in or adjacent to a public transportation system.
 - (2) Increased camera surveillance of an area in or adjacent to a public transportation system.
 - (3) Providing emergency telephone lines in or adjacent to a public transportation system to contact law enforcement or security personnel.

(4) Any other capital project intended to increase security and safety of public transportation.

- s. Project Administration. Administrative activities of an organization pertaining to the immediate accomplishment or oversight of a project are eligible. Project administration costs must be directly associated with administering the capital project. Although there is no cap, the costs must be allowable, reasonable, allocable, and in accordance with the applicable federal costs principles and properly supported. For further guidance on costs principles, see 2 CFR part 225 for states and local governments, and 2 CFR part 230 for private nonprofit organizations. Eligible project administration costs must be identified in a grant application. General administrative expenses that a designated recipient or state incurs to implement the program (as contrasted with the eligible costs directly related to administering a capital project) are not eligible as a direct cost under the Section 5307 program.

3. EMPLOYEE TRAINING EXPENSES.

- a. Education and Training. Pursuant to 49 U.S.C. 5322(d), up to 0.5 of 1 percent of Section 5307 and 5309 funds are available to a state or public transportation authority recipient in a fiscal year to use for tuition and direct educational expenses at the National Transit Institute for education and training of state and local transportation employees, at a federal share not to exceed 80 percent.

States, but not other recipients, may also use these funds for tuition and direct educational expenses through grants and contracts with public and private agencies, and other institutions and individuals.

Direct educational expenses include supplies, tuition, and travel to and from training. Overtime pay is an employment expense, not an educational expense and is not an eligible expense. The grant applicant should include proposed training activities it will support with Section 5307 funds in its Section 5307 application. In addition, the MPO must reflect proposed training in the transportation improvement program (TIP) and the statewide transportation improvement program (STIP).

Recipients are also advised that training and educational expenses, such as travel expenses relating to staff attendance at FTA-sponsored workshops, may also qualify for reimbursement as an operating expense at a 50 percent federal share.

- b. Public Transportation Safety Certification Training. Recipients of 5307 and 5311 funds may expend not more than 0.5 percent of their formula funds for the costs of participating in a Public Transportation Safety Certification Training Program established under Section 5329(c) by employees who are directly responsible for safety oversight. These costs require a 20 percent local matching share.

4. OPERATING ASSISTANCE. FTA provides funding to eligible recipients for costs incurred in the operation of public transportation service. In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating

expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.

a. Eligible Recipients of Operating Assistance.

- (1) Recipients in Small UZAs: Recipients in UZAs with populations of less than 200,000 may use Section 5307 funds for operating assistance. There is no limitation on the amount of their apportionment that recipients in these UZAs may use for operating assistance.
- (2) Recipients in Large UZAs: Recipients in UZAs with populations of 200,000 or more may not use Section 5307 funds for operating assistance unless identified by FTA as being eligible under Section 5307(a)(2).

Under Section 5307(a)(2), public transportation operators that operate 100 or fewer buses in fixed route service during peak service hours may use a variable percentage of their UZA's 5307 apportionment for operating assistance. Eligible agencies may use program funds for operating assistance, excluding rail-fixed guideway, up to the amount published by FTA for a given fiscal year. The use of program funds for operating assistance is subject to metropolitan and statewide planning requirements and requires that funds be allocated to a recipient for this purpose by the designated recipient for a UZA. If an agency provides public transportation across multiple UZAs, that agency will receive an operating cap for each UZA. Operating assistance caps for eligible operators are published by FTA in the *Federal Register*.

The amount available to the eligible operators is based on the following:

- (a) Systems that operate a minimum of 76 buses and a maximum of 100 buses in fixed route service during peak hour service 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.
- (b) Systems that operate 75 or fewer buses in fixed route service during peak hour service 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.

The amount available (operating cap) is calculated by dividing the UZA's apportionment by the total number of vehicle revenue hours reported in the UZA from all public operators and multiplying this quotient by the number of total vehicle revenue hours operated in the UZA by the eligible system, and then by either 50 or 75 percent as indicated above.

- b. Expenses Eligible for Operating Assistance. Eligible operating expenses are direct labor, material, and overhead expenses incurred during a specified project period, most often one local fiscal year. Costs are calculated on the accrual basis of accounting by the

operator providing public transportation services in the UZA. Expenses for contractual services directly related to the management and operations of public transportation services, which are otherwise not reimbursed, are included. Cost principles established in 2 CFR part 225 (formerly OMB Circular A-87) must be used as guidelines for determining the eligibility of specific types of expenses. The following are representative of operating expenses eligible for FTA operating assistance:

- (1) Fuel, wages, and other expenses incurred in the operation of public transportation services to or within the UZA;
 - (2) Pension benefits and contributions to a pension plan, only if actually paid and only up to a maximum of the current year accrual;
 - (3) Self-insurance costs are limited to the extent of actual contribution to a reserve for an approved self-insurance program;
 - (4) Purchase of service contracts for public transportation services (except that certain portions of a service contract may be treated as a capital expense under the Capital Cost of Contracting);
 - (5) Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses. The recipient must properly document the loan agreement and open it to audit;
 - (6) Operating expenses associated with special public transportation services for people with disabilities (some of these costs may be supported with capital funds);
 - (7) Amortization of leasehold improvements may be eligible; recipients should discuss this with the FTA regional office;
 - (8) For private operators, a reasonable return on investment (profit) is an eligible expense; and
 - (9) Eligible public transportation security operating assistance projects (for UZAs with a population of 200,000 or less) include, but are not limited to:
 - (a) staff salaries for personnel exclusively involved with security;
 - (b) contracts for security services; and
 - (c) any other operating projects intended to increase the security and safety of an existing or planned public transportation system.
 - (10) Indirect costs provided that there is an approved cost allocation plan before incurring costs.
- c. Operating Expenses Not Eligible for FTA Assistance. To find standards for determining eligible and ineligible expenses, see 2 CFR part 225, formerly OMB Circular A-87, "Cost

Principles for State and Local Governments.” In practice, when recipients apply for FTA Urbanized Area Formula Program funding, eligible operating expenses are derived as the remainder when various categories of ineligible expenses are subtracted from total operating expenses.

Ineligible expenses are actual or estimated expenses during the project-specified time period for activities not related to the provision of public transportation or within the recipient’s UZA. Recipients may not include ineligible expenses in the computation of net project cost. Such activities in UZAs might include, but are not limited to, the following:

- (1) Charter bus operations;
- (2) Sightseeing services;
- (3) Freight haulage;
- (4) School bus operations (i.e., operations for the exclusive transportation of school students, not the carrying of students in regularly scheduled public transportation services);
- (5) Intercity transportation other than commuter service;
- (6) Public transportation services wholly outside of the UZA;
- (7) Expenses for contingencies including contributions to a capital reserve account or fund;
- (8) Capitalized costs or expenses recognized as part of and reimbursable under another FTA project;
- (9) Expenses incurred by a governor, a designated recipient, or other agency in its capacity as an intermediary for providing Urbanized Area Formula Program funds between FTA and the public transportation operating entity;
- (10) Indirect public transportation-related functions or activities of state, regional, or local entities performed as a normal or direct aspect of general public administration;
- (11) For private operators of public transportation, provision for federal, state, or local income taxes;
- (12) Depreciation accrued by public operators, depreciation on facilities or equipment purchased with public (federal, state, or local) capital assistance, depreciation of an intangible asset, depreciation in excess of the rate otherwise used for income tax purposes, or both;
- (13) Interest expense on long-term borrowing and debt retirement;

- (14) Lobbying expenses;
 - (15) Revenue items that directly offset public transportation expenses (referred to as contra-items), such as the following:
 - (16) Interest income earned on working capital;
 - (17) Proceeds from the sale of equipment in excess of the depreciated value (private operators only);
 - (18) Cash discounts and refunds that directly offset accrued expenses;
 - (19) Insurance claims and reimbursements that directly offset accrued liabilities; and
 - (20) State fuel tax rebates to public operators.
5. JOB ACCESS AND REVERSE COMMUTE PROJECTS. MAP-21 created a new eligible project category for “job access and reverse commute projects” under Section 5307. This category includes all types of projects that were formerly eligible under the Section 5316 Job Access and Reverse Commute Program. Examples of eligible projects are listed in paragraph (e) below. There is no requirement or limit to the amount of Section 5307 funds that can be used for these projects.

Although private nonprofit organizations are not eligible sub-recipients for other Section 5307 funds, private nonprofit organizations may receive funding for job access and reverse commute projects as a sub-recipient of an FTA designated recipient or direct recipient.

A job access and reverse commute project is defined in 49 U.S.C. 5302(9) as:

“a transportation project to finance the 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.”

Consistent with this definition, job access and reverse commute 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 is not limited by the “100 bus” special rule for operating assistance established by MAP-21 under 5307(a)(2).

In order for a job access and reverse commute project to receive funding under Section 5307, it must meet the following requirements:

- a. New and Existing Services. Eligible job access and reverse commute projects must provide for the development or maintenance of eligible job access and reverse commute services. Recipients may not reclassify existing public transportation services that have

not received funding under the former Section 5316 program as job access and reverse commute services in order to qualify for operating assistance. In order to be eligible as a job access and reverse commute project, a proposed project must qualify as either a “development project” or “maintenance project” as follows:

- (1) Development Projects. “Development of transportation services” means new projects that meet the statutory definition and were not in service as of the date MAP-21 became effective October 1, 2012. This includes projects that expand the service area or hours of operation for an existing service. Projects for the development of new qualifying job access and reverse commute projects must be identified as such in the recipient’s program of projects (POP).
 - (2) Maintenance Projects. “Maintenance of transportation services” means projects that continue and maintain job access and reverse commute projects and services that received funding under the former Section 5316 program.
- b. Reverse Commute Projects. Reverse commute projects are a category of job access and reverse commute projects that provide transportation services from urbanized and rural areas to suburban employment locations. Generally, these services increase the capacity of public transportation services operating in the reverse direction of existing peak services. Reverse commute projects may only qualify as job access and reverse commute projects under Section 5307 if they meet all other requirements, including having been designed to transport welfare recipients and eligible low-income individuals to and from jobs and employment related activities.
 - c. Welfare Recipients and Eligible Low-Income Individuals. Projects funded as “job access and reverse commute projects” must be designed to provide transportation for welfare recipients and eligible low-income individuals. The term “low-income individual” is defined as an individual whose family income is at or below 150 percent of the poverty line, as that term is defined in Section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)), including any revision required by that Section, for a family of the size involved. Projects that serve the general public without specific route or design characteristics intended to respond to the needs of these populations may not be eligible as job access and reverse commute project. However, job access and reverse commute projects do not need to be designed exclusively for these populations.
 - d. Planning and Program Development. In order for an entity to receive Section 5307 funding for a job access and reverse commute project, the project must be identified by the recipient as a job access and reverse commute project in the recipient’s POP, which must be made available for public review and comment.

In addition, FTA encourages recipients to ensure that projects meet the employment-related transportation needs of welfare recipients and low income individuals, either by deriving such projects from a locally coordinated public transportation/human services planning process that involves low-income communities and their stakeholders, or by an alternative process that engages low income community stakeholders in the identification and development of the project.

- e. Eligible Projects. Projects that comply with the requirements above may include, but are not limited to:
- (1) Late-night and weekend service;
 - (2) Guaranteed ride home service;
 - (3) Shuttle service;
 - (4) Expanding fixed route public transit routes, including hours of service or coverage;
 - (5) Demand-responsive van service;
 - (6) Ridesharing and carpooling activities;
 - (7) Transit-related aspects of bicycling (e.g., adding bicycle racks to vehicles to support individuals that bicycle a portion of their commute, providing secure bicycle parking at transit stations, or infrastructure and operating expenses for bicycle sharing programs in the vicinity of transit stations, not including the acquisition of bicycles);
 - (8) Promotion, through marketing efforts, of the: (i) use of transit by low-income individuals and welfare recipients with nontraditional work schedules; (ii) use of transit voucher program by appropriate agencies for welfare recipients and other low-income individuals; (iii) development of employer-provided transportation such as shuttles, ridesharing, carpooling; or (iv) use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986;
 - (9) Supporting the administration and expenses related to voucher programs. This activity is intended to supplement existing transportation services by expanding the number of providers available or the number of passengers receiving transportation services. Vouchers can be used as an administrative mechanism for payment to providers of alternative transportation services. Job access and reverse commute projects can provide vouchers to low-income individuals to purchase rides, including (i) mileage reimbursement as part of a volunteer driver program, (ii) a taxi trip, or (iii) trips provided by a human service agency. Providers of transportation can then submit the voucher to the FTA recipient or sub-recipient administering the project for payment based on predetermined rates or contractual arrangements. Transit passes for use on fixed route or Americans with Disabilities Act of 1990 (ADA) complementary paratransit service are not eligible. Vouchers are an operational expense which requires a 50 percent local match;
 - (10) Supporting local car loan programs that assist individuals in purchasing and maintaining vehicles for shared rides, including the provision of capital loan guarantees for such car loan programs, provided the Federal interest in the loan guarantee fund is maintained and the funds continue to be used for subsequent loan guarantees or are returned to the government upon the release of funds from each guarantee;

- (11) Implementing intelligent transportation systems (ITS), including customer trip information technology, vehicle position monitoring systems, or geographic information systems (GIS) software;
 - (12) Integrating automated regional public transit and human service transportation information, scheduling, and dispatch functions;
 - (13) Subsidizing the costs associated with adding reverse commute bus, train, carpool van routes or service from urbanized and nonurbanized areas to suburban workplaces;
 - (14) Subsidizing the purchase or lease by a private nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;
 - (15) Otherwise facilitating the provision of public transportation service to suburban employment opportunities; and
 - (16) Supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management techniques may enhance transportation access for populations beyond those serviced by one agency or organization within a community. For example, under mobility management, a private nonprofit agency could receive job access and reverse commute funding to support the administrative costs of sharing services it provides to its own clientele with other low-income individuals and coordinate usage of vehicles with other private nonprofits, but not the operating costs of the service. As described under “Capital Projects,” mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service.
6. INTEREST AND DEBT FINANCING AS AN ELIGIBLE COST. There are several areas in which interest is an eligible project cost for FTA’s Section 5307 program assistance, with certain limitations.
- a. Bond Interest in Advance Project Authority. This applies to a situation in which a recipient has obligated all of its Urbanized Area Formula Program funds for capital or planning projects and would like to carry out any part of a project with local funds which FTA may later reimburse under advance project authority. This authority, which is set forth in 5307(e), permits FTA to participate in the project costs, including any interest payable by the recipient and earned by the bondholder on bonds issued by the recipient to the extent the recipient has actually expended the proceeds of the bonds in carrying out the portion of the project. The recipient must certify that it has shown reasonable diligence in seeking the most favorable financing terms available in order for interest to be an eligible reimbursable cost.
 - b. Buildings and Equipment. Office of Management and Budget (OMB) regulations at 2 CFR part 225, formerly OMB Circular A-87, “Cost Principles for State, Local, and

Indian Tribal Governments,” allow financing costs (including interest) associated with otherwise allowable costs of building acquisition, construction, or fabrication; reconstruction; or remodeling finished after October 1, 1980, subject to conditions identified below. The term “building” includes the associated real property (land) and fixtures.

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

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

- (1) A bona fide third party external to the governmental unit provides the financing (from other than tax or user fee sources).
 - (2) The assets are used in support of federal awards.
 - (3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the federal Internal Revenue Service under arbitrage requirements are excludable.
 - (4) For debt arrangements over \$1 million, unless the governmental unit makes an initial equity contribution to the asset purchase of 25 percent or more, the governmental unit must reduce claims for interest cost by an amount equal to interest earnings on excess cash flow.
 - (5) Interest attributable to fully depreciated assets is unallowable.
- c. Working Capital. Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses are eligible operating costs.
 - d. Leasing. Leasing costs eligible for capital assistance include finance charges, including interest. **Note:** Leasing arrangements include certificates of participation (COPs) and cross-border leasing as well as traditional leasing of capital assets.
 - e. Capital Cost of Contracting. Interest on facilities and equipment is eligible for reimbursement by FTA when a recipient enters into a contract with a third party for service or maintenance.

- f. Other Interest Costs. FTA will consider other proposals concerning the eligibility of interest case-by-case. FTA will use the guidelines provided in 2 CFR part 225, formerly, OMB Circular A-87, Attachment B, "Selected Items of Cost," in such considerations.

V. PLANNING & PROJECT DEVELOPMENT

1. **METROPOLITAN AND STATEWIDE AND NONMETROPOLITAN TRANSPORTATION PLANNING REQUIREMENTS.** A grant applicant requesting Section 5307 assistance must comply with the planning requirements of 49 U.S.C. 5303, 5304, and 5306. Before FTA may make grants to recipients, adequate planning must take place. The project proposed must be a product of the metropolitan planning process and/or the statewide and nonmetropolitan transportation planning process specified in 49 CFR part 613 and 23 CFR part 450.

MAP-21 contains new language regarding the structure of metropolitan planning organizations (MPOs) that requires MPOs that serve areas designated as a transportation management area (TMA) include representation by providers of public transportation. Composed of local elected officials, appropriate state officials, and officials of public agencies that operate major modes of transportation in the region (including representation by providers of public transportation), the MPO is responsible for the development and adoption of the metropolitan transportation plan (twenty-year horizon) and the shorter term (four years) transportation improvement program (TIP).

All transit projects for which federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan transportation plan and TIP developed and approved by the MPO and the governor of a state, and must be included in a statewide transportation improvement plan (STIP) that has been approved by FTA and FHWA. Projects listed in the TIP must be consistent with the MPO metropolitan transportation plan and projects listed in the STIP must be consistent with the long-range statewide transportation plan.

Projects funded under other FTA programs outside of the metropolitan planning boundaries, such as under the Formula Grants for Rural Areas Program (49 U.S.C. 5311), are only required to be in the STIP. The grant application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers or other identifying numbers and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s) within the appropriate Section of the FTA electronic award management system.

Planning projects must be included in the unified planning work program (UPWP). In addition, MPOs may include planning projects in the TIP for informational purposes.

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

FTA and FHWA will issue revised joint planning regulations implementing Sections 5303, 5304, and 5306 as amended by MAP-21. More information on the planning process can be found in the following regulations and guidance documents:

- a. "Statewide Transportation Planning" and "Metropolitan Transportation Planning," 23 CFR parts 450 and 500 and 49 CFR part 613. The regulations outline the requirements for state departments of transportation (state DOTs), MPOs, and public transportation operators to conduct a continuing, comprehensive, and coordinated transportation planning and programming process in metropolitan areas and states; and
 - b. FTA Circular 8100.1, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants.
2. TRANSPORTATION MANAGEMENT AREAS. Title 49 U.S.C. 5303(k) defines all UZAs with a population of more than 200,000 individuals as transportation management areas (TMA). The secretary of Transportation shall designate any additional area as a TMA on the request of the governor and the MPO designated for the area.

Joint FTA/Federal Highway Administration (FHWA) transportation planning regulations contained in 23 CFR part 450.312 include guidelines on determining the boundaries of a metropolitan planning area (MPA), which is determined by agreement between the MPO and the governor. The MPA boundaries at a minimum should include the entire existing UZA (as defined by the Bureau of the Census) plus the contiguous area expected to become urbanized within a twenty-year forecast period for the metropolitan transportation plan. An MPA boundary may encompass more than one UZA. The apportionment of funding under Section 5307 is based entirely on census-defined UZAs and is not affected by the designation or boundaries of MPAs or TMAs.

3. PERFORMANCE-BASED PLANNING. MAP-21 establishes a broad performance management program that brings significant changes to both the metropolitan transportation planning and statewide and nonmetropolitan transportation planning processes. The performance management framework attempts to improve project decision making through performance-based planning and programming and to foster a transparent and accountable decision-making process for MPOs, states, and providers of public transportation.

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

- a. The metropolitan and statewide transportation planning process should provide for the establishment and use of a performance-based approach to transportation decision making to support the national goals described in 23 U.S.C. 150(b) and the general purposes described in 49 U.S.C. 5301. In the development of the metropolitan transportation plan and long-range statewide transportation plan, MPOs and states must include performance targets that address the transit safety and transit state of good repair performance measures established by the USDOT under 23 U.S.C. 150(c) and 49 U.S.C. 5329.
- b. The MPO's and state DOT's long-range transportation plans should also include a system performance report and subsequent updates evaluating the condition and performance of the transportation system with respect to the established performance targets.

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

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

4. ROLE OF THE DESIGNATED RECIPIENT AND METROPOLITAN PLANNING ORGANIZATION IN ALLOCATING PROGRAM FUNDS. Under the Section 5307 Program, the state or designated recipient is responsible for "receiving and apportioning" the amounts made available by Congress and apportioned by the FTA to an urbanized area. The state or designated recipient receives and apportions the amounts within the UZA to the state, regional authorities, or to other public agencies.

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

Both the planning requirements and the statutory provisions of 49 U.S.C. Chapter 53 specify the roles of the MPO and of the designated recipient. Although the MPO develops and adopts the TIP, the designated recipient, which may in some cases also be the MPO, is responsible for developing the program of projects (POP) for the Section 5307 funds apportioned to a UZA for inclusion in the TIP.

In a small UZA (population less than 200,000), the TIP may take the place of the POP once it is adopted by the state into the STIP. If the TIP does not contain sufficient detail about the projects, the operators and MPO may develop the POP and present it to the state.

In the case of multiple designated recipients or multiple MPOs, the designated recipient or designated recipients must work with the MPO to ensure that the POP requirements are met by inclusion of all projects in the TIP or TIPs. The MPO and the designated recipient must work cooperatively to develop the TIP and agree on how to spend Section 5307 funds.

5. SUB-AREA ALLOCATION. In UZAs with more than one designated recipient or other recipients, FTA expects local officials, operating through the MPO, and designated recipients to determine the allocation of Section 5307 funds together. The designated recipient(s) and the MPO(s) should determine the sub-area allocation fairly and rationally through a process based on local needs and agreeable to the designated recipients. A sub-allocation that is based on predetermined fixed percentages, for example, may not adequately represent the needs of transit systems in the UZA.

Designated recipients must provide documentation to FTA showing how the 5307 allocation will be split among the recipients. FTA may request a written agreement signed by a representative of each designated recipient or entity involved.

To assist in making such subarea allocations, any UZA may request the appropriate FTA regional office to coordinate with FTA headquarters staff in providing the necessary disaggregate data used in apportioning the total UZA's share of the entire Urbanized Area Formula Program resource.

6. PROGRAM OF PROJECTS AND PUBLIC PARTICIPATION REQUIREMENTS. A POP is a list of projects proposed by the designated recipient to be funded from the UZA's Section 5307 apportionment. If more than one recipient will apply for grants for projects in the POP, each grant application must include the portion of the POP that identifies the projects to be funded in the grant. The POP must include a description of each project to be funded from the UZA's apportionment, including any suballocation among public transportation providers, total project costs, local share, and federal share for each project. Where there are multiple designated recipients or MPOs for a UZA, the POP may be presented in several separate parts for the purpose of programming and public participation. As stated above, eligibility for funding under most FTA and FHWA programs also requires the MPO to list projects in the approved TIP and STIP for metropolitan areas or the approved STIP for nonmetropolitan areas.
 - a. Sub-recipients. FTA and their grantees must comply with the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. 109-282, enacted September 26, 2006, as amended by Section 6202 of Public Law 110-252, and implemented by 2 CFR part 170. In order to do so, grant recipients must provide FTA with the following information for any sub-recipient: the name of the entity receiving the award, the amount of the award, the location of the entity receiving the award and the primary location of performance under the award, including the city, state, and congressional district. The grant recipient is required to submit this information and may choose to submit this information as a separate attachment in the FTA electronic award management system or include the information in the POP.
 - b. Programming in TIP or UPWP. Eligibility for most FTA and FHWA programs, including Section 5307, requires the MPO to list capital and operating assistance projects in the approved TIP or STIP, or both. The MPO must include planning projects in a UPWP. However, the MPO may include planning projects in the TIP and STIP for information purposes. The designated recipient is responsible for developing the POP whereas the MPO is responsible for placing the projects in the TIP or UPWP.

Projects included in an FTA grant application must be derived from that part of a metropolitan area's TIP (approved by the MPO, found to be consistent with the metropolitan area's long-range plan by FTA, and approved by the governor) that is within an approved STIP. The first-year program of the approved TIP constitutes a list of "agreed to" projects for FTA grant application purposes. The TIP/STIP public participation and approval processes carried out by the MPO can serve to satisfy the requirements for public participation under Section 5307. The list of projects the

designated recipient proposes for funding from the UZA's Section 5307 apportionment constitutes the POP.

Although operating assistance that does not involve funding from FTA or FHWA does not need to be listed in the TIP, demonstration of the reasonable availability of funding to adequately operate and maintain the system must be documented in the financial plan that accompanies the TIP. Capital projects may be selected from years one, two, three, or four of the TIP in accordance with the TIP project selection process described in 23 CFR 450.324.

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

Either the designated recipient for a UZA or each individual direct recipient must:

- (1) Make available to the public information concerning the amount of funds available under the Section 5307 Program and the POP that the recipient proposes to undertake with such funds;
- (2) Develop a proposed POP for activities the designated recipient will finance, in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals;
- (3) Publish the proposed POP in sufficient detail and in such a manner as to afford affected members of the public, private transportation providers, representatives of welfare recipients and low-income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on the proposed program and on the performance of the recipient;
- (4) Provide an opportunity for a public hearing to obtain the views of the public on the proposed POP;
- (5) Ensure that the proposed POP provides for the coordination of Section 5307 public transportation services with transportation services assisted with other federal sources;
- (6) Consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, in preparing the final POP; and

(7) Make the final POP available to the public. **Note:** Where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate process for the different areas involved.

- d. Satisfying the Requirement for Public Participation in Development of the POP using the Transportation Improvement Program Process. Federal transit law and joint FHWA/FTA planning regulations governing the metropolitan planning process require a locality to include the public and solicit comment when the locality develops its metropolitan long-range (twenty-year) transportation plan and its (four-year) metropolitan TIP. Accordingly, FTA has determined that when a recipient follows the procedures of the public involvement process outlined in the FHWA/FTA planning regulations, the recipient satisfies the public participation requirements associated with development of the POP that recipients of Section 5307 funds must meet. See 23 CFR part 450 and 49 CFR part 613 (specifically Subpart B, “Statewide Transportation Planning,” and Subpart C, “Metropolitan Transportation Planning and Programming”).

A recipient that chooses to integrate the two should coordinate with the MPO and make sure the public knows that the recipient is using the public participation process associated with TIP development to satisfy the public hearing requirements of Section 5307(b). The recipient must ensure the TIP document explicitly states that public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP requirements of the Section 5307 Program. Furthermore, if recipients intend to follow such an ongoing practice, FTA encourages them to include such a reference in the metropolitan planning agreement required between public transportation operators, MPOs, and states, as called for in 23 CFR 450.314. Regulations at 23 CFR 450.316 provide a detailed description of the public participation plan.

- e. Substitute (Contingency) Projects. A grant application for Section 5307 funds may include substitute projects; see Appendix B of this circular for further information. Substitute projects may be drawn from years one, two, three, or four of the approved TIP. Applicants must include any substitute projects in the grant application (not the grant budget) and the project must meet the same requirements as other projects in the grant application (e.g., environmental, clean air, civil rights, labor protection requirements, etc.). Although the grant applicant must provide budget information about a substitute project in the grant application, it must not include these figures in the total project cost. If the state postpones or drops a project within the grant application, the recipient may move the substitute project from “below the line” into the grant budget, with written notification and explanation to FTA. If the applicant draws the project from years two, three, or four of the TIP, the applicant must advance it to year one through the local project selection process before FTA may approve the budget revision. The grant applicant must provide FTA with the project selection documentation.
- f. Budget Constraints, Additional Information. The total federal share for the final POP may not exceed the amount apportioned to the UZA or the amount allocated to the grant applicant by the designated recipient from these amounts, plus any Section 5307 carryover funds for previous years, funds transferred from other UZAs from the Section

5311 program, or for flexible funding from FHWA. Apportioned funds transferred to another UZA or to the Section 5311 program should be deducted from those available to the donating area.

7. COORDINATED PLANNING. Three former FTA formula programs, the Elderly Individuals and Individuals with Disabilities (Section 5310), Job Access and Reverse Commute (JARC) (Section 5316), and New Freedom (Section 5317) programs, previously required that eligible projects be derived from a locally developed, coordinated public transit-human services transportation plan.

This coordinated planning process was intended to create an inventory of area transportation services, identify gaps in transportation service for the affected transportation-disadvantaged populations, ascertain opportunities for human services program coordination, and establish funding priorities for those projects. This process was designed to be highly participatory by involving affected low income, persons with disabilities, and older adult populations in the development and approval of this plan.

Under MAP-21, the Section 5316 JARC program was repealed and a new eligibility was created for job access and reverse commute projects under Sections 5307 and 5311. In addition, the Section 5317 program was repealed and a new eligibility was created for these project types under Section 5310. Beginning with funding apportioned for fiscal year 2013, the requirement that eligible projects be derived from a locally developed, coordinated public transit-human services transportation plan only applies to the Section 5310 program.

Although the coordinated planning process is no longer required for job access and reverse commute projects, FTA encourages public transit systems in all areas to continue to participate in the coordinated public transit-human service transportation planning process in order to identify and develop job access and reverse commute projects for funding under Section 5307. This process gives affected populations direct participation in the formulation and approval of projects that are intended to serve them, and provides an opportunity for a variety of public, private and private nonprofit transportation providers, non-DOT transportation programs, and other community interests to likewise share their knowledge and participate in formulating projects and identify opportunities for coordination.

In addition, recipients should be aware that several other FTA requirements can be met through the use of the coordinated planning process. For example, Section 5307(b)(5) requires that recipients ensure that the proposed program of projects assisted under Section 5307 provides for the coordination of public transportation with transportation services assisted from other U.S. government sources. Additionally, the metropolitan planning requirements under Section 5303(g)(3)(B)(ii) require that recipients conduct planning in coordination with non-DOT funded nonemergency transportation services.

Public transit systems in UZAs in which a recipient is applying for funds under Section 5310 are required to continue to participate in the coordinated public transit-human service transportation planning process.

MPOs and recipients may choose to address this requirement through this existing coordinated planning process. Alternatively, MPOs and recipients may develop a process that meets this coordination requirement, and which includes a process for analyzing and documenting efforts to achieve efficiencies and service effectiveness through transportation coordination efforts.

The local coordinated planning process may also include consideration of the intercity bus transportation needs of the targeted population of seniors, individuals with disabilities, and low income individuals. Identification of unmet intercity mobility needs of human service agency clients during the local coordinated planning process may help the state with its intercity bus needs assessment as described in Chapter VIII of FTA Circular 9040.1, "Nonurbanized Area Formula Program Guidance and Application Instructions." FTA encourages states to include intercity bus mobility needs in the coordinated planning process for Section 5310, and for any unobligated funds under Sections 5316 and 5317. Although intercity bus service other than commuter service is not eligible under Section 5307, the needs for intermodal connectivity and urban/rural connections for the targeted populations may be a relevant factor in the coordinated planning process for urbanized areas.

Although the coordination of service takes place at the local level, the state may facilitate coordination through participation in statewide interagency coordinating councils and statewide coordinated planning activities.

FTA Circular 9070.1 provides more detailed guidance on the requirements for locally developed, coordinated public-transit human services transportation plans.

8. AVAILABILITY OF FHWA "FLEXIBLE FUNDS" FOR TRANSIT PROJECTS

- a. Authority. "Flexible" or "flex" funds are amounts authorized by Section 104(f) of title 23, United States Code, and 49 U.S.C. 5334(i), to be transferred between FHWA and FTA for eligible highway or transit projects, respectively. Flexible funding authority facilitates a multimodal approach to meeting transportation needs at both the statewide and local levels by giving the local area the option of choosing which federal surface transportation funds should be used for a particular project or activity based on local planning priorities. Funding transfers are permitted only for projects contained in an approved metropolitan TIP and/or STIP. In addition, like all other funds available under FTA's urbanized area formula program, flex funds should only be used toward projects and activities identified in the final program of projects.
- b. Share Requirements. Pursuant to Section 104(f)(1)(B) of title 23, United States Code, and 49 U.S.C. 5334(i)(2), flexible funds transferred to FTA require the same nonfederal matching share that such funds would require if used for the original FHWA program from which the funds were derived. For example, Surface Transportation Program (STP) funds (23 U.S.C. 133) are not covered by Section 5323(i)(1)(A), which allows for an 85 percent federal share of the net project cost of vehicle acquisitions for purposes of complying with the ADA or Clean Air Act. Regardless, the law requires that the FHWA share apply. In some cases, the federal share of FHWA funds flexed to FTA may be subject to the upward sliding scale adjustment for states containing public lands.

- c. Use. FHWA funds that are authorized for transit projects may be transferred to FTA and used for eligible public transportation purposes, which may include planning activities, capital projects and activities, and operating expenses. FHWA flexible funds that are transferred to FTA should be administered and managed under the applicable FTA program requirements and must be obligated in a separate grant. However, to facilitate project delivery, flexible funds for eligible public transportation and public transportation-related projects may be administered by FHWA, rather than transferring the funds to FTA. When a project is eligible for flexible funding, the recipient should base its decision to have funds administered by FHWA or FTA on the nature of the project, the agencies involved in implementation, and the recipient's preference to follow either FHWA or FTA administrative procedures and requirements. Regardless of which agency administers the funding, all transit projects are subject to the transit employee protection requirements at 49 U.S.C. 5333.

Although flexible funds transferred to FTA should be administered under the applicable FTA program requirements, flex funds may only be used for the purposes for which they were originally authorized. For example, Surface Transportation Program (STP) funds are not authorized to be used for transit operating expenses and, therefore, may not be used for operating assistance on public transportation projects once transferred to a Section 5307 recipient, even though, in some instances, operating assistance is an eligible use of funds under Section 5307. However, certain public information and promotion expenses for vanpool programs, which are normally considered operating expenses by FTA, are permitted under STP and may be undertaken using flex funds. In addition, CMAQ funds may be used for operating assistance under certain circumstances as indicated under Section (g)(3) below.

Flex funds transferred for capital purposes in the Formula Grants programs that are lapsing or that have lapsed will be credited to the state governor's apportionment balance to benefit the entire state for later approved transit projects, and not necessarily for the sole use of the original recipient UZA. The governor will have the authority to decide transit projects for which the lapsed funds will be used. The FTA regional office will notify the appropriate state DOT by letter that lapsed funds have been credited. The governor or the governor's designee must inform the regional office in writing of his/her decision on the use of the funds. The governor may elect to direct that the funds be used for the original project or for another eligible project in the UZA for which they were originally transferred, or he/she may direct that the funds be made available for a different eligible project somewhere else in the state.

- d. Transfer to FHWA. FTA Section 5307 funds apportioned for fiscal year 2013 and subsequent fiscal years may not be transferred to FHWA.
- e. Planning. FHWA funds authorized for the following programs may be transferred to FTA and used for authorized planning purposes:
- (1) Metropolitan Transportation Planning, 23 U.S.C. 134; and
 - (2) Statewide and Nonmetropolitan Transportation Planning, 23 U.S.C. 135.

In 1997, FHWA and FTA instituted a transportation planning fund process called the Consolidated Planning Grant (CPG). The purpose of the CPG is to combine FHWA and FTA metropolitan and state planning funds into a single grant for ease of grantee administration. Under this process, FHWA, at the request of a state DOT transfers to FTA the metropolitan and state planning funds it has made available to the state. FTA then consolidates these funds with its metropolitan and state planning funds available to the same state and awards all the funds under a single grant. CPGs can include FTA funds being transferred to FHWA as well.

- f. Planning Projects, Capital Projects, and Operating Expenses. FHWA funds authorized for the following programs may be transferred to a recipient of 5307 funds and used for planning, capital projects and activities, and operating expenses, if originally eligible for those purposes:
- (1) Surface Transportation Program (STP), 23 U.S.C. 133;
 - (2) National Highway Performance Program (NHPP), 23 U.S.C. 119;
 - (3) Congestion Mitigation and Air Quality Improvement Program (CMAQ), 23 U.S.C. 149; and
 - (4) Transportation Alternatives (TAP), 23 U.S.C. 213.
- g. Congestion Mitigation and Air Quality (CMAQ) Improvement Program, 23 U.S.C. 149. States can use CMAQ funds apportioned under 23 U.S.C. 104(b)(2) for public transportation or highway projects that are likely to result in emissions reductions.
- (1) Eligible projects. Eligible CMAQ activities may include: public transportation vehicle acquisitions; construction of new facilities or improvements to facilities that increase transit capacity; and mobility improvements resulting from the provision of transit traveler information.
 - (2) Federal share. The federal share for CMAQ funds is governed by 23 U.S.C. 120. It is generally 80 percent, subject to the upward sliding scale adjustment for states containing public lands. Certain safety projects that include an air quality or congestion relief component (e.g., carpool/vanpool projects), as provided in 23 U.S.C. 120(c), may have a federal share of 100 percent, but this provision is limited to 10 percent of the total funds apportioned to a state under 23 U.S.C. 104.
 - (3) Operating Assistance. Section 120(m) of title 49, United States Code, authorizes states to obligate funds apportioned under 23 U.S.C. 104(b)(4) for operating costs. In June, 2013, FHWA published interim guidance on CMAQ operating assistance under MAP-21 and is available at: http://www.fhwa.dot.gov/environment/air_quality/cmaq/policy_and_guidance/cmaq13ig.cfm. This guidance is controlling until such time as FHWA issues its final guidance.

9. ASSOCIATED TRANSIT IMPROVEMENTS. In UZAs with populations of at least 200,000, the designated recipient or designated recipients are responsible for certifying that no less than 1 percent of a fiscal year's apportionment is expended for projects that qualify as associated transit improvements. Where there are multiple designated recipients, the designated recipients must jointly coordinate the use of the 1 percent requirement for associated transit improvement projects and must include a list of the qualifying projects in the letter to FTA's regional office identifying the split of the UZA apportionment. If a list of qualifying projects is not available at this time, the letter should at a minimum indicate how this requirement will be met by indicating the amount each recipient will expend for qualifying projects.

A UZA may choose to spend more than 1 percent on associated transit improvement projects; however, expenditures for items that are not otherwise eligible projects—in particular, operating costs for historic public transportation facilities—may not exceed 1 percent of the UZA's fiscal year apportionment. In addition, projects that are eligible for an increased federal share, such as bicycle projects included as associated transit improvements, may only receive the increased local share for expenses necessary to meet the one percent minimum.

a. Associated Transit Improvement Report

Recipients must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement (ATI) funds during the previous fiscal year and the amount spent. The recipient must attach the report in TEAM in the federal fiscal year's final quarterly report.

b. The report should include:

- (1) grantee name;
- (2) UZA name and number;
- (3) FTA project number;
- (4) project category;
- (5) brief description of improvement and progress towards project implementation;
- (6) activity line code from approved budget; and
- (7) amount awarded by FTA for the project.

c. Alternatively, the designated recipient or MPO may submit this report on behalf of all recipients in a UZA; however, the report must include all of the information listed in the paragraph above.

10. PUBLIC TRANSPORTATION SECURITY PROJECTS. In each UZA to which funds are apportioned under Section 5307, designated recipients and recipients must certify that either: (1) recipients in the urbanized area will collectively expend at least 1 percent of the amount apportioned to the UZA for a fiscal year on “public transportation security projects,” or (2) that such expenditures for security projects are unnecessary. If a recipient certifies that such expenditures are unnecessary, the recipient should include a brief explanation of how this was determined in their grant application.

11. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT.

- a. Useful Life of Project Property. FTA provides a useful life policy for rolling stock, trolleys, ferries, facilities, and some equipment. Where a useful life policy has not been defined by FTA, the grantee, in consultation with the FTA regional or metropolitan office, must “make the case” by identifying a useful life period for all equipment, rolling stock, and facilities with an acquisition value greater than \$5,000 to be procured with federal funds. In the grant application, the grantee shall propose and identify a useful life for the capital asset to be purchased with federal funds. FTA approval of the grant represents FTA concurrence of the final determination of useful life for the purpose of project property acquisition. This in turn will identify the useful life of the federal interest for the disposition of the project property in later years. For additional information on useful life policy for a bus, van, trolley, rail rolling stock, and ferries, and to determine the useful life of such project property, please refer to FTA’s Grant Management Requirements Circular 5010.1.
- b. Early Disposition. FTA calculates the value of vehicles before the end of their minimum useful life on the basis of a formula using straight-line depreciation. Straight-line depreciation is a term most often used to indicate that personal property has declined in service potential. Removal of an FTA-funded vehicle from revenue service before the end of its minimum useful life, except for reasons of fire, collision, or natural disaster, leaves the recipient liable to FTA for the federal share of the vehicle’s remaining value. In the case of project equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value must be calculated on the basis of the condition of the equipment or supplies immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. Consistent with this policy, the suggested vehicle useful life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty. Please see FTA’s Grant Management Requirements Circular 5010.1 for more information on disposition.
- c. Rolling Stock Spare Ratio Policies. Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage (one hundred vehicles required for full service and twenty spare vehicles results in a 20 percent spare ratio). Spare ratios will be taken into account during the review of grant applications proposing to replace, rebuild, or add vehicles to the applicant’s fleet. The number of spare buses in the active fleet for grantees operating fifty or more fixed route revenue vehicles should not exceed 20 percent of the number of

vehicles operated in maximum fixed route service. Please see FTA's Grant Management Requirements Circular 5010.1 for more information on rolling stock spare ratio policies.

- d. Fleet Expansion. Recipients seeking assistance to undertake fleet and service expansion should describe new markets they intend to serve, or whether the expansion is necessary to meet demands for service in existing markets. The application should address vehicle needs, fleet size, and spare ratio. FTA may request official property records (or a rolling stock status report), in which future needs (expansion and replacement) are discussed. Information may include documentation developed during the metropolitan and statewide transportation planning processes in which case summary information and precise reference to the earlier material will be acceptable. The recipient may also include a map indicating the fleet and service expansion locations.

In planning for service expansion, local criteria should be used to identify feasible opportunities for new or expanded routes. These criteria are often based on demographic measures and are used to identify geographic locations that are good candidates for new transit service. The recipient should explore all areas within the region, including areas that are currently served by transit, since they may have potential for different types of service.

In order to comply with FTA C 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," recipients that operate fifty or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population must conduct, prior to implementation, service equity analyses for all major service changes in order to determine whether those changes have a discriminatory impact.

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

- e. Pre-Award and Post-Delivery Review of Buses. Procurements for revenue service vehicles to transport passengers, other than sedans or unmodified vans, must be reviewed in accordance with 49 CFR part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases." Additional guidance is available in the FTA Grant Management Requirements Circular 5010.1 and in the manual, "Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement" on FTA's website: http://www.fta.dot.gov/legislation_law/12921_5424.html.
- f. Bus Testing. Recipients must ensure that buses and vans acquired with FTA funds are tested consistent with 49 CFR part 665 and must obtain a copy of the resulting test report before FTA funds can be released. FTA provides a "Bus Testing" section on its website that provides an overview of the program and assists with understanding applicable procedures and policies: <http://www.fta.dot.gov/bustesting>.

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

- g. Buy America. With certain exceptions, FTA may not obligate funds for a public transportation project unless the steel, iron, and manufactured goods used in the project are produced in the United States (49 CFR part 661). FTA's Buy America requirements at 49 CFR part 661 differ from federal Buy American regulations at 48 CFR part 25. The former applies to third party contracts funded by FTA whereas the latter applies to direct federal procurements. FTA strongly advises recipients to review 49 CFR part 661 as well as FTA Circular 4220.1, "Third Party Contracting Guidance," before undertaking any procurement. FTA has created a Buy America website to provide an overview of these requirements as well as policies, procedures, and letters of interpretation: <http://www.fta.dot.gov/buyamerica>.
- h. Transit Vehicle Manufacturer Disadvantaged Business Enterprises (DBE) Program Requirement. Recipients must ensure that each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certifies that it has complied with the requirements of 49 CFR part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with part 26.
- TVMs must establish and submit to the FTA Office of Civil Rights for approval an annual overall percentage goal. In setting this overall goal, manufacturers should be guided, to the extent applicable, by the principles underlying 49 CFR 26.45. TVMs that are certified to bid on federally funded transit agency contracts are listed on FTA's website. For further guidance, contact the FTA Office of Civil Rights.
- i. Americans with Disabilities Act of 1990 (ADA). Recipients must ensure that each transit vehicle meets the accessibility requirements and standards for the vehicle type specified in 49 CFR parts 37 and 38, as applicable. Where a vehicle or component departs from the particular technical and scoping requirements, the recipient must obtain a determination of equivalent facilitation, as described in Section 38.2, from the FTA administrator under procedures set forth in Section 37.7(b). Where a specific vehicle type is not addressed by part 38, accessibility requirements must be determined by the U.S. Department of Transportation in consultation with the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) as specified in Section 38.171(c).
- j. Rebuilding Policies. A recipient may choose to rebuild a vehicle rather than dispose of it. Please see FTA's Grant Management Requirements Circular 5010.1 for additional information on rebuilding and overhaul policies.

- k. Requirements Related to Accessories and Miscellaneous Equipment. A grant application may include certain miscellaneous items separate from the costs of a bus procurement or facilities project. For example, a recipient may apply for mobile radios, bus stop signs or shelters, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The application must explain the rationale or need for each request. FTA does not require a separate justification if, for example, a farebox or radio is included in the cost of a new bus, or shop equipment is included in the cost of a new maintenance facility.

12. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded by Section 5307.

- a. General Philosophy. FTA generally assists in building two kinds of facilities:
 - (1) facilities that support transit operations, such as maintenance garages and administrative buildings; and
 - (2) facilities that provide passenger amenities and extend into the built environment, such as bus or rail terminals, stations, shelters, and park-and-ride lots as well as intermodal facilities that include both transit and intercity bus or rail services.
- b. Useful Life of Facilities. Determining the useful life of a facility must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, and technological developments. As such, FTA establishes a range of forty to fifty years for the minimum useful life of a facility. A railroad or highway structure has a minimum useful life of fifty years, and most other buildings and facilities (concrete, steel, and frame construction) have forty years. For further information, see FTA Circular 5010.1.
- c. American with Disabilities Act of 1990 (ADA). Recipients must ensure that transit facilities meet the accessibility standards and requirements specified in 49 CFR parts 37, 38, and 39, as applicable. Where any departure from the specific requirements is contemplated, as permitted under 36 CFR part 1191, the recipient must obtain a determination of equivalent facilitation from the FTA administrator under procedures set forth in Section 37.9(d).
- d. Shared Use. Shared use of project property requires prior written FTA approval except when it involves coordinated public transit human services transportation. Shared use projects should be clearly identified and sufficient detail provided to FTA at the time of grant review to determine allocable costs related to nontransit use for construction, maintenance, and operation costs.
- e. Facility Size. FTA's general policy is to provide assistance for facilities that are adequate for the recipient's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a recipient currently operating twenty vehicles, a request for a bus maintenance garage that will accommodate twenty vehicles and have space for a 10 to 25 percent vehicle increase would be considered an acceptable grant request. For the same

transit agency, a grant request for a garage accommodating forty vehicles would not be acceptable, unless the recipient could demonstrate its need, willingness, and ability to expand its fleet to forty vehicles in a relatively short time. In either case, however, the purchase of enough land for the future expansion of the fleet and supporting facilities may be justifiable.

- f. Project Staging. When applying for a grant to build a facility, a recipient must be able to fully describe the project and estimate the cost of the facility. Planning for the project may include a feasibility study/needs assessment for the project that provides preliminary cost estimates, funding sources, and possible site locations and related environmental work. The next phase is engineering and design, which could include costs for development of an environmental document specific to the project, and real estate appraisals. Once FTA has reviewed and approved the environmental documentation, funds may be requested for land acquisition and construction.
- g. Planning Justifications. There must be a planning basis for every project or group of projects. Accordingly, FTA requires recipients to include the planning justification in the grant application submitted in FTA's electronic management system. Planning activities are eligible under the Section 5307 Urbanized Area Formula Program. Feasibility studies at varying levels of detail as appropriate and proportionate should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a recipient may choose to reference and summarize pertinent parts of documents in which results of project studies were reported (e.g., transportation plans, unified planning work programs [UPWPs], and management systems). FTA may request copies of studies or summaries of study results upon reviewing a grant application. The paragraphs that follow provide additional guidance for various kinds of facilities projects.
- h. Passenger Shelters and Bus Boarding and Alighting Areas. A program for bus shelters and bus boarding and alighting areas should be developed for the existing and proposed network based on the operator's shelter criteria and to the extent the construction specifications are within its control, and, in the case of significant increases, should be described in the grant application. Bus shelters and bus boarding and alighting areas must comply with standards for accessibility established by U.S. DOT regulations implementing the transportation provisions of the ADA (49 CFR parts 27, 37, and 38, as amended). A map indicating the transit network and shelter and bus boarding and alighting area location should be developed and available upon request.
- i. Transfer Facility or Transportation Center. The basis for a new transfer facility or transportation center should be documented in a planning/feasibility study. Elements would include a determination of transit demand and other uses, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, an evaluation and selection of sites if a new facility is warranted, preliminary concept design and cost estimate of the transit transfer facility, development of a staging and financing plan, and environmental documentation for the new facility.
- j. Park-and-Ride Facilities. The basis for a new park-and-ride lot should be documented in a feasibility study. Generally, activities would include an evaluation of demand and

service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.

- k. Maintenance and Administrative Facilities. The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a feasibility study. Activities would include an evaluation of the condition and adequacy of the existing facility, if any, development of site evaluation criteria, identification and evaluation of alternative sites based on site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.

13. TRANSIT ASSET MANAGEMENT REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit asset management practices and procedures. The intent of the statute is to promote coordinated capital investments aimed at bringing transit systems into and maintaining a state of good repair. On October 3, 2013, FTA published an advanced notice of proposed rulemaking (ANPRM) on the national public transportation safety plan, the public transportation agency safety plan, the public transportation safety certification training program, and transit asset management. Following consideration of public comments received on the ANPRM, FTA will publish a rule on transit asset management.

14. PUBLIC TRANSPORTATION SAFETY REQUIREMENTS. Under MAP-21, FTA is required to establish regulations for public transportation operators regarding transit agency safety plans and system requirements. The intent of the statute is to increase the safety of public transportation systems for employees, customers and the general public. On October 3, 2013, FTA published an advanced notice of proposed rulemaking (ANPRM) on the national public transportation safety plan, the public transportation agency safety plan, the public transportation safety certification training program, and transit asset management. Following consideration of public comments received on the ANPRM, FTA will publish a rule on public transportation safety requirements.

15. ENVIRONMENTAL CONSIDERATIONS. Prior to projects receiving FTA funding, FTA is required to consider every project's potential impacts on the environment. These environmental reviews are conducted under the National Environmental Policy Act (NEPA) and related federal environmental laws, such as the National Historic Preservation Act, regulations, and executive orders. The amount of resources required to complete this process (time, documentation, consultant services, etc.) will vary depending on the type of project and its potential to impact the human and natural environment. The following list identifies and briefly describes each level of environmental review that may apply to a project:

- a. Categorical Exclusion (CE). Projects that historically do not result in significant environmental impacts may qualify as a CE and would require little to no documentation as described further in 23 CFR 771.118. Examples of this type of project are buying a bus or construction of transit facilities primarily within the transportation right-of-way.

- b. Documented Categorical Exclusion (DCE). Projects that historically do not result in significant environmental impacts but are slightly greater in scope than those qualifying as a CE may qualify as a DCE. Examples of this type of project may include real property acquisition or construction of transit facilities with features located outside of the transportation right-of-way.
- c. Environmental Assessment (EA) and Environmental Impact Statement (EIS). Projects that are complex in scope and/or are viewed as controversial by the public may require the preparation of an EA. This level of environmental review provides the public an opportunity to comment and will ultimately determine whether or not the project will result in any significant impacts. If the analysis in an EA concludes that the project will result in significant impacts, or if from the early planning stages it is determined the size and scope of the project will result in significant impacts, an EIS will be required. Most grantees typically need to enlist consultant services when preparing an EA or EIS.

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

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

16. UNDERTAKING PROJECTS IN ADVANCE. There are three different authorities under the Urbanized Area Formula Program in which a recipient may incur costs on a project (e.g., award a contract or begin work) before grant approval and retain eligibility for reimbursement after grant approval. The first is automatic pre-award authority which FTA typically authorizes in each of its fiscal year apportionments notice. A letter of no prejudice (LONP) is a second authority and a third is advanced construction authority (ACA). When utilizing pre-award authority, a recipient must comply with all FTA and federal requirements prior to undertaking the project, including federal planning requirements, in order to retain eligibility for reimbursement after grant approval.
 - a. Automatic Pre-Award Authority. The authorization of Urbanized Area Formula Program grant funds triggers automatic pre-award authority for design and environmental work on the project. FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the Urbanized Area Formula grant program. FTA provides automatic pre-award authority for planning and operating assistance under the Urbanized Area Formula grant program without regard to the period of the authorization. Following authorization, automatic pre-award authority for capital projects including property acquisition, demolition, construction, and acquisition of vehicles, equipment, or construction materials is triggered by completion of the environmental review process with FTA's signing of an environmental record of decision (ROD), a finding of no significant impact (FONSI), or a determination that the project qualifies as a categorical exclusion (CE). Grantees may incur costs under pre-award

authority for projects that clearly meet the criteria for a CE; however, if a project is subsequently found not to qualify as a CE, it will be ineligible for FTA assistance. If a grant applicant is concerned that a project may not clearly qualify as a CE, they are strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary. A project must also be included in the STIP prior to incurring expenses under pre-award authority.

The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Therefore, FTA strongly encourages all recipients to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and federal requirements before incurring expenses under automatic pre-award authority with the hope of future reimbursement.

- b. Letter of No Prejudice. For a project not covered by the automatic pre-award authority, including projects that will require Urbanized Area Formula funds not yet authorized and for which FTA has not extended pre-award authority, a grant applicant that seeks to proceed with a transit project in advance of the availability of federal funds may request that FTA issue a Letter of No Prejudice (LONP) for that project. A LONP allows a recipient to incur costs on a project using nonfederal resources with the understanding that the costs incurred after the LONP is issued may be reimbursed for eligible expenses or eligible for credit toward the local match should FTA approve the project for a grant at a later date. The recipient assumes all risk and is responsible for ensuring that all applicable federal program and grant requirements are met to retain eligibility. Because project implementation activities may not be initiated prior to National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) completion, FTA will not issue an LONP for such activities until the NEPA process has been completed with a record of decision (ROD), finding of no significant impact (FONSI), or categorical exclusion (CE) determination.

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

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

- c. Advanced Construction Authority. The statutory authority to undertake projects in advance, also referred to as advanced construction authority (ACA), allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent

reimbursement after grant approval. ACA is slightly different than the policy-driven automatic pre-award authority and LONP, which are discussed in subparagraphs (a) and (b) under this section. Under ACA, FTA has already approved the project for funding in the event funding becomes available. Under automatic pre-award authority or a LONP, FTA has not yet approved the project for funding.

- (1) ACA permits a grant applicant to incur project and financing costs such as bond interest before FTA awards a grant for the project. FTA may issue ACA under 49 U.S.C. 5307 of the Urbanized Area Formula grant program provided—
 - (a) the recipient has completed a grant application and it is on file with FTA.
 - (b) the project has met all federal requirements, including the DOL certification under Section 5333(b).
 - (c) FTA has approved the project as eligible for Urbanized Area Formula funds, although the funding is not available.

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

- d. Terms and Conditions Applicable to Automatic Pre-award Authority, LONP, and ACA. In general, the terms, conditions and procedures applicable to recipients having automatic pre-award authority, a LONP, or ACA are as follows:
 - (1) All federal grant requirements must be met at the appropriate time for a project having automatic pre-award authority, a LONP, or ACA to remain eligible for federal funding.
 - (2) These authorities are not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate federal funds.
 - (3) These authorities are not a legal or an implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (4) The recipient assumes all the risk.
 - (5) All FTA statutory, procedural, and contractual requirements must be met.
 - (6) All applicable DOT statutory and regulatory requirements must be met.
 - (7) The recipient must not take any action that prejudices the legal and administrative findings that the FTA administrator must make in order to approve a project.

- (8) Local funds expended by the recipient after the date of the automatic pre-award authority, a LONP, or ACA will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s).
- (9) Local funds expended by the recipient before the date of the authority will not be eligible for credit toward local match or reimbursement.
- (10) Applicants may incur costs for credit or reimbursement under pre-award authority if certain conditions are met for activities such as land acquisition, demolition, or construction after the date of pre-award authority. FTA's policy for pre-award authority and list of permissible activities and conditions for grant programs are outlined annually in FTA's Annual Apportionment Notice.
- (11) The federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall cost scope of activities and the prevailing statutory provisions and congressional direction with respect to the federal/local match ratio at the time the funds are obligated.
- (12) When a grant for the project is subsequently awarded, the federal financial report in the FTA electronic award management system must indicate the use of the automatic pre-award authority, LONP, or ACA. More information and updates regarding automatic pre-award authority and LONPs can be found in FTA's fiscal year apportionment notice published in the *Federal Register*.

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VI. PROGRAM MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

1. **CERTIFICATIONS REQUIRED BY 49 U.S.C. 5307.** FTA recipients must annually certify that they are in compliance with federal transit law as well as federal cross-cutting requirements. FTA advises recipients to review the annual list of Certifications and Assurances, located on FTA's website (www.fta.dot.gov), and on the FTA electronic award management system website (<http://ftatamweb.fta.dot.gov>). Section 5307(d)(1) lists the conditions to which Section 5307 recipients must certify, as discussed below.
 - a. Consistent with 49 U.S.C. 5307(c)(1)(A), a recipient must certify that it has or will have the legal, financial, and technical capacity to carry out the program. New grantees must submit documentation of capacity prior to receiving a grant. Sample documents are available in Appendix D of this circular.
 - (1) **Legal Capacity.** Before FTA may award a grant for a Section 5307 project, FTA must make a finding that the grant applicant has or will have the legal capacity to carry out the project. In making this finding, FTA generally relies on the grant applicant's certification that it has or will have the legal capacity to carry out the project. Specifically, the grant applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer FTA-assisted projects. Officials acting on behalf of the applicant must have appropriate authority designated by state or local law or by the governing body of the applicant. Although FTA does not require recipients to submit an Opinion of Counsel with each grant application, first-time applicants are required to submit an Opinion of Counsel as described below. (An Opinion of Counsel sample is available in Appendix D of this circular.) FTA also retains the discretion to require any recipient to submit a legal opinion and other supporting documentation.
 - (a) An Opinion of Counsel identifies the legal authority of the grant applicant, citing, for example, state and local statutes, and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. It is not uncommon for legislation or litigation to be pending; its significance in terms of legal capacity and in terms of ability to complete the project determines whether or not it should be noted in the Opinion of Counsel. Although the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the recipient will certify its authority to apply for subsequent grants in the annual certification process. That affirmation appears on FTA's website at www.fta.dot.gov, on the page that lists the current year Certifications and Assurances.

FTA expects the recipient to notify FTA of any change in local law, litigation, conditions, or any other event that may significantly affect the recipient's ability to carry out the project. Any significant change in status will require a new Opinion of Counsel.
 - (b) In general, the authority of those officials acting on behalf of a public body grant applicant must be demonstrated by a resolution from the governing body of the

grant applicant, a statute, or an ordinance showing that the grant applicant has authority to file an official grant application, showing who has the authority to act on behalf of the applicant, and supporting the application. A certified copy of the authorizing resolution is required for all FTA recipients. A sample format of an authorizing resolution is provided in Appendix D of this circular. The authorizing resolution only has to be submitted prior to the grant applicant's first application. For subsequent grant applications, FTA will rely on the annual certifications and assurances. The designated signature authority submitted in the FTA electronic award management system on the first application must agree with the designated signature authority on subsequent applications.

- (2) Financial Capacity. Before FTA may award a grant for a Section 5307 project, FTA must make a finding that the grant applicant has or will have the financial capacity to carry out the project. Specifically, an applicant for Section 5307 funds must be able to match and manage those funds, to cover cost overruns, to cover operating deficits through long-term stable and reliable sources of revenue, and to maintain and operate federally funded facilities and equipment. Financial capacity and proposed project financing must be made evident. The source of local share must be identified and assurances must be provided that adequate local funds will be available at the time federal funds are drawn down. Financial capacity is also reviewed by FTA's Financial Management Oversight contractors as deemed necessary.

FTA Circular 7008.1, "Financial Capacity Policy," defines the basis on which FTA will make determinations of a grant applicant's financial capacity to receive a Section 5307 grant. The circular refers to two aspects of financial capacity: general financial condition of the transit operator and financial capability. The general financial condition includes historical trends and current experience in financial factors affecting the ability of the grant applicant to operate and maintain the transit system at present levels of service. The information supporting an assessment of financial condition is usually available in audited annual financial statements and other financial reports that address working capital levels, cash balances, capital reserves, the presence and status of depreciation accounts, long-term debt levels, trends in transit costs compared to available revenues, and trends in relevant economic indicators.

Financial capability addresses the sufficiency, stability, and reliability of the grant applicant's revenue sources to meet future operating deficits and to meet future annual capital and operating costs. Financial capability considers the nature of funds pledged to support operating deficits and capital programs, and changes in forecast in fare and nonfare revenues. Capital costs include replacement and rehabilitation of existing equipment and facilities and new investments. Operating and maintenance costs include those for the present system and any increases caused by capital investment and service expansion.

In considering financial capacity of the grant applicant, FTA takes into account the fact that a financial analysis must be undertaken and a financial plan must be

developed before programming a project into the TIP. That analysis, plan, and subsequent inclusion of the project in the TIP reflect the two aspects FTA considers in determining the grant applicant's financial capacity: the financial plan must demonstrate that TIP projects can be carried out while the existing transportation system is being adequately operated and maintained (financial condition); and only projects for which funds can reasonably be expected to be available may be included in the TIP (financial capability).

FTA assesses financial capacity of a Section 5307 grant applicant when FTA approves the STIP and again when FTA approves projects for Section 5307 funds. The level of detail of the financial capacity assessment will be consistent with the size of the transit system being considered and the scale of the capital investments being proposed. Depending on the scale of the proposal, FTA may ask the applicant for supporting information such as that contained in the TIP, including: short-range transit plans, capital budgets, financial plans required for New Starts projects, and reports on financial operations such as periodic financial statements or single audit reports.

- (3) Technical Capacity. According to 49 U.S.C. 5307(c)(1)(A), before FTA may award a Section 5307 grant, FTA must make a finding that the grant applicant has or will have the technical capacity to carry out the project. Technical capacity involves the capability of the grant applicant to properly carry out and manage federal grants. In making this finding, FTA generally relies on its experience with the grant applicant. A first-time grant applicant for a Section 5307 grant must demonstrate that it can carry out the project described in the grant application in accordance with the requirements of the grant agreement, and with all applicable laws and regulations, using sound management practices. Thus, FTA requires a certification that the recipient will comply with all requirements applicable to its grant application and to the grant agreement, when awarded. Guidelines for grant management practices can be found in FTA Circular 5010.1, "Grant Management Requirements."
- (4) Satisfactory Continuing Control. According to 49 U.S.C. 5307(c)(1)(B), a recipient must annually certify that it "has or will have satisfactory continuing control over the use of equipment and facilities" through operation, lease, or otherwise.

An FTA recipient must maintain control over federally funded property by ensuring the grantee uses it in public transportation service and disposes of it according to federal requirements. If the recipient leases federally funded property to another party, the lease must provide that the recipient maintains satisfactory continuing control over the use of that property. FTA determines control over FTA-funded facilities and equipment in two areas: real property (land) and facilities; and personal property (equipment and rolling stock, both revenue and nonrevenue). For more information regarding the disposing of property, and for safeguards against loss, theft, or damage, see FTA Circular 5010.1, "Grant Management Requirements."

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

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5307 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives. Additional guidance is available on FTA's State of Good Repair and Asset Management website (<http://www.fta.dot.gov/13248.html>).

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

Recipients must use competitive procurement procedures as determined by FTA and will not use procurements employing exclusionary or discriminatory specifications. Any recipient failing to provide this certification or that is found by FTA to have procurement practices and procurement systems that do not comply with federal laws, regulations, and directives governing federally financed procurements may be determined ineligible for award of federal assistance.

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

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

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

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

FTA's Best Practices Procurement Manual at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_financing_6037.html provides another useful source of procurement information.

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

bridges. These items include, but are not limited to, structural steel or iron, steel or iron beams and columns, running rail, and contact rail. These requirements do not apply to steel or iron used as components or subcomponents of other manufactured products or rolling stock.

- (c) Manufactured Products. For manufactured products used in an FTA-funded project, all of the manufacturing processes for the product must take place in the United States, and all components of the product must be of U.S. origin (49 CFR 661.5(d)).
- (d) Rolling Stock. All buses and rolling stock (including train control, communication, and traction equipment) acquired with FTA funds must consist of at least 60 percent domestic components by cost and final assembly must take place in the United States (49 CFR 661.11).
- (e) Waivers. FTA may issue a waiver from Buy America requirements on one of four grounds:
 - 1. if the FTA administrator determines a waiver is in the public interest;
 - 2. if no responsive or responsible bid offers a product manufactured in the United States;
 - 3. when U.S. manufacturers do not produce products in a sufficient and reasonably available amount or of a satisfactory quality; or
 - 4. when including domestic material will increase the cost of the overall project by more than 25 percent (49 CFR 661.7).
- (f) Special Waiver for Small Purchases. FTA has issued a general public interest waiver that exempts “small purchases” from Buy America requirements. Currently, DOT’s Common Grant Rule (49 CFR 18.36(d)) sets that threshold at \$100,000 or less. FTA bases the exemption on the total amount of the contract and not on the individual price of items being purchased. For example, if a recipient purchases ten items costing \$15,000 each under a single purchase order, the \$150,000 contract would make the procurement subject to Buy America requirements (49 CFR 661.7).
- (g) Regional Offices Available to Assist. FTA recognizes that Buy America regulations may not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring interpretations of the regulations. For these reasons, recipients should submit Buy America questions or issues not addressed by the regulation to the appropriate FTA regional office.
- (h) Responsibilities. Under 49 CFR 661.13, a recipient’s responsibilities are:

1. to adhere to the Buy America clause in its grant agreement with FTA;
 2. to include in its bid specification for procurement within the scope of FTA's regulations an appropriate notice of the Buy America provision. Such specifications must require, as a condition of responsiveness, that the bidder or offeror submit with the bid a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12, as appropriate; and
 3. to ensure bidders comply with its original certifications. A bidder or offeror certifying that it will comply with the applicable Buy America requirements may not change its original certification or apply for a waiver of Buy America requirements once the recipient has unsealed a bid. However, 49 CFR 661.13(b) allows a bidder or an offeror to correct an inadvertent error in a certification of noncompliance after a bid has been unsealed, with the burden of establishing the inadvertent error falling upon the bidder.
- (9) Public Participation. According to 49 U.S.C. 5307(c)(1)(F), a recipient must certify that it has complied with the public participation requirements of 49 U.S.C. 5307(b). Chapter V, Section 6, "Program of Projects and Public Participation Requirements," of this circular discusses this requirement.
- (10) Availability of Local Funds. According to 49 U.S.C. 5307(c)(1)(G), a recipient must certify that the required local funds are available to carry out the project. See Chapter III of this circular for additional information on local share.
- (11) Compliance with Planning Requirements. According to 49 U.S.C. 5307(c)(1)(H), a recipient requesting Section 5307 program assistance must certify that it will comply with the planning requirements of 49 U.S.C. 5303 and 5304. Further detail on planning requirements may be found in FTA Circular 8100.1, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants."
- (12) Public Comment on Fare and Service Changes. According to 49 U.S.C. 5307(c)(1)(I), the recipient must certify that it has a locally developed process to solicit and consider public comment before raising a fare or implementing a major reduction of public transportation service.

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

Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.”

- (13) Expenditure on Public Transportation Security Projects. According to 5307(c)(1)(J), each designated recipient of Section 5307 program funds must certify that of the amount apportioned to its UZA in a fiscal year, the recipients within the UZA will collectively expend at least 1 percent on “public transportation security projects,” or the designated recipient(s) must certify that such expenditures for security projects are unnecessary. This certification may also be provided by the MPO in coordination with eligible recipients in the UZA.

FTA monitors compliance with the Section 5307 1 percent security spending requirement during the grant review and approval process and through the triennial review process, when FTA reviews a table of Public Transportation Security Expenditures completed by the recipient.

- (14) Expenditure on Associated Transit Improvements. In large UZAs (with populations of 200,000 or more), 49 U.S.C. 5307(c)(1)(K) establishes a minimum annual expenditure requirement of 1 percent for public transportation projects and project elements that qualify as associated transit improvements under the Section 5307 program. The term “associated transit improvement” includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to public transportation facilities. Eligible associated transit improvement projects are listed in Chapter III.

- (a) Requirements. When several recipients receive Section 5307 funding within a large UZA, the recipients together must spend not less than 1 percent of the UZA’s fiscal year apportionment on projects and project elements that qualify as associated transit improvements. Each individual recipient is not required to spend 1 percent of its Section 5307 program funds on associated transit improvements, provided that this requirement is met by the recipients as a whole.

The designated recipient or recipients have the responsibility for selecting (programming) all 49 U.S.C. 5307 projects including associated transit improvements, but the MPO has the responsibility for placing the project in the TIP. Where there are multiple designated recipients, they must coordinate the use of the 1 percent for associated transit improvements and include the transit improvements in the letter to FTA regarding the split of the UZA apportionment. A UZA may spend more than 1 percent of its apportionment for associated transit improvements, except that items that are only eligible as improvements—in particular, operating costs for historic facilities—may only be assisted with the associated transit improvement funds.

- (b) Associated Transit Improvement Report. The recipient must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement funds during the previous fiscal year and

the amount spent. The recipient must submit the report in the federal fiscal year's final quarterly report, using ALI codes from the approved project budget.

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

FTA requires a current attorney's affirmation of the recipient's legal authority to certify compliance with that fiscal year's FTA funding assistance. FTA will not accept the attorney's affirmation from a previous year.
 - b. **Timing.** FTA expects to receive the certifications and assurances electronically from each recipient that has an open grant:
 - (1) within 90 days from the date of publication of the certifications and assurances; or
 - (2) with the first grant application of the fiscal year, whichever comes first.

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

FTA encourages grant applicants and recipients to contact the appropriate FTA regional office for more information about these requirements. Some requirements call for extensive planning that the applicant should address before submitting a grant application.
3. **FTA ELECTRONIC AWARD MANAGEMENT SYSTEM.** FTA provides a streamlined electronic interface between grantees and FTA that allows complete electronic grant application submission, review, approval, and management of all grants. Among other things, grantees apply for grants, inquire about the status of grants, file the required federal financial status and milestone progress reports, and submit annual Certifications and Assurances in

this system. A user guide can be found at FTA's website in the "Grants and Financing" section under "Apply for and Manage Grants."

The U.S. Department of Labor (DOL) receives requests electronically for Transit Employee Protective Certification for projects through the FTA electronic award management system. DOL will electronically issue the Public Transportation Employee Protective Certifications, entering the certification date and attaching the certification letter into the FTA electronic award management system.

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

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

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

5. **DATA UNIVERSAL NUMBERING SYSTEM (DUNS) REGISTRATION REQUIREMENT.** Any organization applying for a grant or cooperative agreement from the federal government must have a DUNS number. This is a nine-digit identification number that provides a unique identification for single business entities. Grant applicants that currently do not have a DUNS number can obtain one for free from Dun and Bradstreet (www.dnb.com). It takes about five weeks to receive a DUNS number after the information requested is imputed in the "Instructions on How to Obtain a DUNS Number." As soon as the DUNS number is received, the applicant must inform an FTA regional office and update the grantee profile to include the number.
6. **SUB-RECIPIENTS DUNS REQUIREMENT.** If it is authorized to make sub-awards under its agreement with FTA, the recipient must notify potential sub-recipients that no entity may receive a sub-award from the recipient unless the entity has provided its DUNS number to the recipient. The recipient must not make any subaward to an entity unless the entity has provided its DUNS number to the recipient.

7. ELECTRONIC CLEARING HOUSE OPERATION (ECHO) REQUIREMENTS. Grantees are required to establish an ECHO control number (ECN) before FTA is able to disburse funds to the grantee. Department of Treasury regulations, 31 CFR part 205, govern payment to recipients for financing operations under federal assistance and other programs. These regulations require that payment to a recipient be limited to the minimum amounts needed and timed so as to be in accord only with the actual, immediate cash requirements of the recipient in carrying out the approved project. For further information regarding cash management procedures, refer to the FTA “ECHO-Web System User’s Manual for Recipients” at: <http://www.fta.dot.gov/documents/ECHOWebGranteeUserManual.pdf>.
8. FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA) REQUIREMENT. FTA’s recipients must report the information about each first tier sub-award over \$25,000 (funds passed through to other public agencies or private nonprofit organizations) by the end of the month following the month the direct recipient makes any sub-award or obligation (not the month after FTA awarded the direct grant). For example, if FTA awarded the grant in November, and the prime recipient did not sign sub-recipient agreements until February, the FTA grantee would have until March 31 to report the sub-award into the federal sub-recipient reporting system (FSRS). Once the grantee submits an initial report, the grantee can revise it later to add additional sub-awards as they are made, or to change data previously submitted to reflect adjustments in sub-awards.
 - a. No report is required until the month after the grantee makes a sub-award. For example, if a recipient received a Section 5307 grant in November and listed three sub-recipients in the program of projects, but does not consider the sub-awards to be made until each sub-recipient signs a letter of agreement, the recipient would not have to report any sub-awards in December, but would report them by the end of the month after the sub-recipient signs the agreement. On the other hand, if the recipient has a standing agreement with sub-recipients and considers the sub-awards to be made at the time of the FTA grant award, the report would be due in FSRS by the end of the month after FTA obligated the grant to the recipient. If the recipient allows sub-recipients to incur costs for projects in advance of obligation, the deadline would be based on the date of the FTA obligation, since FSRS cannot accept sub-award reports before the federal obligation is recorded in the system.
 - b. FTA grant recipients that use funds to purchase vehicles from a statewide contract and then provide the vehicles to sub-recipients have a subaward relationship with these sub-recipients and should submit a subaward report for each sub-recipient that is receiving vehicles from the statewide purchase. Grant recipients should enter the cost of the vehicles being transferred to the sub-recipient as a proxy for the sub-award amount in their sub-award report. Recipients that are awarded grants directly from FTA and use these funds to purchase vehicles from a statewide contract for their own use do not have a sub-award relationship with another organization and do not need to submit FFATA sub-award reports.

- c. The required data elements in FSRS for each first tier sub-award over \$25,000 :
- (1) Name of entity receiving sub-award
Doing Business As (DBA) Name
 - (2) DUNS of the entity and its parent and DUNS+4 (is used to identify specific units within a larger entity)
 - (3) Amount of Sub-Award
 - (4) Sub-award Number (Note: assigned by recipient)
 - (5) CFDA Number (Note: The same CFDA associated with the FTA award)
 - (6) Place of performance (including congressional district)
 - (7) Total compensation and names of top five executives, if required (Note: Not typically required, with thresholds of \$25 million and 80 percent of total revenue coming from federal funds)
 - (8) Award title descriptive of the purpose of the funding action
 - (9) Location of the entity (including congressional district)
- d. The amount that is to be reported for each sub-recipient is the amount of the total sub-award, not payments to date. Payment/drawdown information is not included in the data fields requested.
- e. After the recipient reports the sub-award data in FSRS, the information will be published with the original direct award information on <http://www.usaspending.gov>.
- f. Information and training materials about FFATA sub-award reporting and FSRS are posted on www.USASpending.Gov/news. To receive new information on changes and updates to [USASpending.gov](http://www.USASpending.gov) as soon as it becomes available, subscribe by visiting <http://www.usaspending.gov/> and adding your email address under the “What’s New” section. User manuals and data dictionaries are available on <http://www.fsr.gov>. Grantees should direct technical questions about the reporting website to the FSRS help desk. FTA regional staff are available to help with FTA grant award information and requirements.
9. NATIONAL TRANSIT DATABASE (NTD) REPORTING. The NTD was established by Congress to be the nation’s primary source for information and statistics on the transit systems of the United States. NTD data are used to support numerous DOT programs and to “help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning” (49 U.S.C. 5335). Recipients (including sub-recipients and contractors) of Section 5307 program funds are required by statute to submit data to the NTD.

FTA’s implementing regulation can be found at 49 CFR part 630. A recipient of FTA grants that is required to report to the NTD must provide a complete report to the NTD of all transit operations, regardless of whether or not those operations are funded in whole or part by FTA. Financial information reported to the NTD must be reported in accordance with the Uniform System of Accounts (USOA). The complete reporting requirements for the NTD, along with

information on due dates, extensions, and waivers can be found in the current versions of the NTD Reporting Manuals. The NTD regulation, the USOA, and the most recent versions of the NTD Reporting Manuals can be found on the NTD website at <http://www.ntdprogram.gov/>.

- a. Annual Report. Recipients or beneficiaries of Section 5307 grants must annually report financial and nonfinancial data in accordance with the USOA as well as other data on operations, organizational relationships, available resources, and capital assets. The NTD Annual Reporting Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- b. Monthly Report. Recipients or beneficiaries of Section 5307 grants are required to file monthly reports on transit operations to the NTD. These monthly reports include information on unlinked passenger trips, vehicle revenue miles, vehicle revenue hours, vehicles operated in maximum service, and regular service days for each month. The NTD Monthly Reporting Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- c. Safety and Security Report. Recipients or beneficiaries of Section 5307 grants are required to file monthly safety and security reports. These monthly reports include information on fatalities, injuries, collisions, derailments, fires, hazardous material spills, evacuations, arrests, and significant security events. The NTD Safety & Security Manual, published by FTA each year, contains the specific reporting requirements, detailed reporting instructions, and information on due dates, waivers, and extensions.
- d. Waiver. Under certain circumstances, described in NTD reporting manuals, grant recipients may apply for reduced NTD reporting requirements. Under a small systems waiver, grantees with less than thirty vehicles in maximum (peak) service do not have to report some data items. There are waivers of other data reporting requirements for planning/capital only reporters, reporters that have experienced natural disasters, and for reporters that are not able to generate specific data elements.

VII. OTHER PROVISIONS

1. **INTRODUCTION**. In addition to the program-specific requirements, FTA recipients are held to a number of FTA-specific and other federal requirements. This chapter provides a summarized, alphabetical listing of those requirements and provides citations to the actual statutory or regulatory text. If there is a conflict between the summary information provided in this chapter and the statute or regulation, the language of the statute or regulation controls. This circular should be used in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (by using the FTA electronic award management system) to establish or renew their funding relationship with FTA.

The Master Agreement and the Certifications and Assurances represent the recipients' legal affirmation to abide by FTA and other federal requirements that are applicable to their grant programs.

Some of the topics covered in the Master Agreement and the Certifications and Assurances are summarized throughout this chapter, as a reminder to recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement, the Certifications and Assurances on the FTA public website www.fta.dot.gov, the FTA electronic award management system's website (<http://ftateamweb.fta.dot.gov>), and in the references provided throughout this chapter.

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

2. **CHARTER BUS SERVICES**. Title 49 U.S.C. 5323(d) limits charter service provided by federally assisted public transportation operators. FTA regulations specify these limitations in 49 CFR part 604, Charter Service, amended effective April 30, 2008 (73 FR 2326, January 14, 2008). Each recipient must enter into an agreement with FTA stating that the recipient will not engage in charter service unless permitted by FTA charter service regulations. FTA includes that agreement in its annual publication of Certifications and Assurances. Charter service is defined based on whether a third party requests the service or whether the transit agency initiates the service. If a third party requests service, FTA will utilize four characteristics of charter service to determine whether the proposed service meets the definition of charter. If a transit agency initiates the service, FTA will look at whether the transit agency also charges a premium fare or accepts a subsidy from a third party.

In addition, the charter rule established a new electronic database. Interested private operators must register at the FTA charter bus service website (http://www.fta.dot.gov/legislation_law/12922.html) in order to receive notice from transit agencies regarding potential charter trips. Private operators may register their geographic area by zip code. When a transit agency receives a request for charter service that does not fit within one of the other exceptions outlined in the rule, and it is interested in performing the service, it must send notice to all private operators registered in the recipient's geographic service area. The notice sent by the transit agency must conform strictly to the requirements of the rule, as additional information may void the notice and may subject the transit agency

to a complaint from registered charter providers. The rule also provides for a detailed complaint process for addressing potentially frivolous complaint filings, in addition to complaints against transit agencies that violate the regulation, and a complaint process for removing private registered providers if they are abusing the process. The rule contains hearing procedures, appeal procedures, and several appendices to assist transit agencies with compliance, including a penalty matrix and a series of frequently asked questions and answers.

3. CIVIL RIGHTS. The recipient agrees to comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:
 - a. Nondiscrimination in Federal Public Transportation Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub-recipient at any tier under the project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibit discrimination in employment or business opportunity.
 - b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.
 - (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of federal financial assistance.
 - (2) The ADA, as amended (42 U.S.C. 12101 *et seq.*), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38, and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities “standing in the shoes” of a public entity as a sub-recipient or under a contract or other arrangement) providing fixed route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
 - (4) Providers of fixed route service must generally utilize accessible vehicles. Private entities may utilize nonaccessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed route service as defined in 49 CFR 37.121.

- (5) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regards to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
 - (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other federal agencies.
- c. Nondiscrimination—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each sub-recipient at any tier of the project, with all of the following requirements under Title VI of the Civil Rights Act of 1964:
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.) provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
 - (2) U.S. Department of Transportation (DOT) regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964,” 49 CFR part 21.
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005).
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (December 14, 2005). This Executive Order 13166 guidance clarifies the responsibilities of recipients of federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166.
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out DOT Order 5610.2, Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice. The DOT Order describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.

- (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the office of the secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities.
- d. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each sub-recipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ (DHHS) implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
- g. Disadvantaged Business Enterprise (DBE) Program. To the extent required by federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:
- (1) The recipient agrees and assures that it will comply with Section 1101(b) of MAP-21 (23 U.S.C. 101 note), which directs the secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBE’s. This 10 percent national goal is aspirational and is used by DOT to help monitor and evaluate DBE participation in DOT-assisted contracting opportunities .
 - (2) The recipient agrees and assures that it will comply with DOT regulation, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT federal financial assistance, namely state and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

- (3) The recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin, in the award and performance of any third party contract, or sub-agreement supported with federal assistance derived from DOT, or in the administration of its DBE program, and will comply with the requirements of 49 CFR part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with federal assistance derived from DOT. As required by 49 CFR part 26 and approved by DOT, the recipient's DBE program is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The recipient agrees that implementation of this DBE program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification by DOT to the recipient of a failure to implement its approved DBE program, DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act (31 U.S.C. 3801 *et seq.*).

For further guidance, refer to the federal laws, regulations, and executive orders cited in this chapter. FTA's regional civil rights officers or headquarters civil rights staff will also provide current guidance upon request.

4. CLEAN AIR ACT (CAA). The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity rule. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR part 93), and they apply in nonattainment and maintenance areas only—areas that, either: (1) currently violate one or more of the National Ambient Air Quality Standards (NAAQSs) (nonattainment areas); or (2) once violated the standards but have since been redesignated to attainment status by EPA (maintenance areas). The transportation conformity process applies not only to federally funded projects but also to long-range transportation plans and transportation improvement programs (TIPs). Determining conformity for transportation plans and TIPs is the responsibility of the MPO, and FHWA and FTA must review the conformity determination and issue a statement saying that the plan and/or TIP conforms. Determining conformity for individual projects is the project sponsor's responsibility, and, again, FTA and/or FHWA must review this determination and issue a statement, usually in the context of the environmental decision document, saying that the project conforms.

The transportation conformity regulation reserves detailed air quality analysis for large projects that have the potential to create new violations or make existing violations worse. There is also a list of exempt highway and transit projects in the regulation that does not require any analysis, which can be found at 40 CFR 93.126. Many transit projects are exempt from the conformity requirements and can be processed expeditiously. Regardless of the type of project being considered, early consultation with FTA is essential for proposed projects in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The planning and environmental staff working in FTA regional offices are the best points of contact for air quality and transportation conformity issues.

5. COMMERCIAL DRIVER'S LICENSE (CDL). All drivers of motor vehicles designed or used to transport more than fifteen passengers (including the driver) or of vehicles which have a gross combination weight rating of 26,001 pounds or more must have a CDL. Mechanics that drive the vehicles must also have a CDL.
6. DEBARMENT AND SUSPENSION. The purpose of the DOT governmentwide debarment and suspension (nonprocurement) regulations (2 CFR part 1200) is to ensure that federal assistance funds are not provided to anyone who has been debarred, suspended, determined ineligible, or voluntarily excluded from participation in federally assisted transactions. The U.S. General Services Administration's (GSA) system for award management (SAM) provides a single comprehensive list of individuals and firms excluded by federal government agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. GSA maintains a website, <https://www.sam.gov>, which is updated in real time as changes to the data occur.
 - a. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 1200, incorporating OMB's debarment and suspension guidelines, 2 CFR part 180, requires disclosure of the status of persons and entities participating in:
 - (1) Third party contracts or subagreements of \$25,000 or more at any tier;
 - (2) Third party contracts of any amount for federally required audit services (e.g., those required under the Single Audit Act Amendments); and
 - (3) Third party contracts or subagreements requiring official DOT approval.
 - b. Both participants in third party contracts of any tier and subagreements of any tier are expected to assure the status of persons participating therein.
 - c. The awarding party must verify that the person is not excluded or disqualified by:
 - (1) Checking the SAM list of excluded parties maintained by the GSA and available at <http://www.sam.gov>. **Note:** strongly recommended by FTA;
 - (2) Collecting a certification from the prospective awardee; or
 - (3) Adding a clause or condition to the third party contract or subagreement with that awardee.

In addition, the recipient and awardees participating in lower tier transactions must extend these requirements to their awardees. The prospective awardee in turn must notify the recipient or third party contractor (person at the next higher tier) if it knows whether or not it or any of its principals are presently excluded or disqualified under the these regulations.

7. DRUG AND ALCOHOL TESTING. In the interest of safety in transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Investment Program, 5311 Rural Area Formula Program, and other programs as determined by the secretary are required by 49 U.S.C. 5331 to establish drug and alcohol (D&A) testing programs. In the MAP-21 legislation, although the 5316 Job Access and Reverse Commute (JARC) and 5317 New Freedom Programs (NF) were consolidated into the applicable formula programs (5307 and 5311), pursuant to Section 5331(b)(1)(A), FTA intends for those recipients solely engaged in JARC and NF activities to continue to be exempt from D&A testing applicability as this is not currently considered a safety sensitive function per 49 CFR 655.4. This exemption is applicable if the recipients receive JARC and NF only.

The purpose of the Drug and Alcohol testing program is to help prevent accidents, fatalities, and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions. Recipients must also certify annually that they are in compliance with DOT and FTA regulations concerning D&A testing (49 CFR parts 40 and 655 respectively). Establishing a testing program is a condition of FTA funding. For noncompliance with Parts 40 and 655, MAP-21 allows the secretary to bar a recipient from receiving FTA assistance in an *amount that the secretary deems appropriate*. Where applicable, recipients of FTA funding may instead be required to comply with Federal Railroad Administration (FRA) (49 CFR part 219—for commuter rail), Federal Motor Carrier Safety Administration (FMCSA) (49 CFR part 382—for contractors with mixed transit/motor carrier/school bus), and United States Coast Guard (USCG) (46 CFR parts 4 and 16—for ferryboat) regulations concerning drug and alcohol programs.

FTA's regulation (49 CFR part 655) applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides [public] transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes sub-recipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations with effective ongoing oversight. FTA's regulation does not apply to construction phases of funded projects. Contractors that supply newly manufactured equipment are excluded, as are facility construction workers. The regulation applies to the testing, startup, and actual revenue operations of FTA-funded transit systems. Van pool drivers, as volunteers and not employees of a transit system that do not receive remuneration over their actual expenses, are exempt from testing. Also exempt are taxi operations for paratransit transportation where the patron chooses the service through a user subsidy or voucher and the service is not dispatched through the FTA recipient or sub-recipient. In addition, maintenance contractors for rural 5311 providers and providers in urbanized areas with populations of less than 200,000 are exempt as well.

FTA's regulation requires testing of employees who perform one or more of five transit safety-sensitive functions, which are defined at 49 CFR 655.4. The regulation requires the following six types of testing for illegal drug use and alcohol misuse: pre-employment (including transfer from a non-safety-sensitive position to a safety-sensitive position, and removal from the random pool for ninety days or more); reasonable suspicion; random; post-

accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in twelve months after returning to duty). Since an October 2010 amendment to 49 CFR part 40, return-to-duty and follow-up tests are required to be directly observed.

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes prohibited alcohol concentration levels and behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration.

Technical assistance materials and training information to help recipients implement the rules are available at FTA's website (<http://www.fta.dot.gov/safetysecurity/12533.html>) or through contacting the FTA office of transit safety and oversight, FTA headquarters.

8. **DRUG-FREE WORKPLACE.** In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an antidrug policy and awareness program. The recipient must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32. These provisions apply only to FTA's direct recipients and do not extend to sub-recipients.

The recipient is required to provide a written drug-free workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations. The Department of Labor provides a drug-free workplace advisor to assist users in developing tailored policy statements at the following link: <http://www.dol.elaws/drugfree.htm>. The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within thirty days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help recipients implement the drug-free workplace and D&A testing rules are available on FTA's website (<http://www.fta.dot.gov>) or by contacting FTA's office of safety and oversight, FTA headquarters, 1200 New Jersey Ave. SE, Washington, DC 20590.

9. **EMPLOYEE POLITICAL ACTIVITY.** To the extent applicable, the recipient agrees to comply with the provisions of the Hatch Act, 5 U.S.C. Sections 1501–1508, and Sections

7324–7326, and U.S. Office of Personnel Management regulations, “Political Activity of State or Local Officers or Employees,” 5 CFR part 151. The Hatch Act limits the political activities of state and local agencies and their officers and employees, whose principal employment activities are financed in whole or part with federal funds including a federal grant, cooperative agreement, or loan. Nevertheless, in accordance with 49 U.S.C. 5323(1)(2) and 23 U.S.C. 142(g), the Hatch Act does not apply to a nonsupervisory employee of a public transportation system (or of other agencies or entities performing related functions) receiving FTA assistance to whom the Hatch Act would otherwise apply.

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

environmental effects on our programs, policies, and activities on minority populations and/or low-income populations. Environmental justice at FTA includes incorporating environmental justice and nondiscrimination principles into transportation planning and decision-making processes as well as project-specific environmental reviews. FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients” provides FTA recipients and sub-recipients with guidance and instructions necessary to carry out the executive order.

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

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

If there is an adopted state process of intergovernmental review for an FTA program or activity, FTA requires that the applicant, upon the MPO’s approval of the TIP, notify the single point of contact for the state’s intergovernmental review process that the MPO has approved the TIP and that the applicant has submitted the TIP to the governor for approval and subsequent inclusion in the STIP.

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

14. LABOR PROTECTIONS.

- a. Davis-Bacon Act. For FTA programs, 49 U.S.C. 5333(a) imposes Davis-Bacon Act prevailing wage requirements. This provision applies only to construction projects. In the event that a project involves construction, Section 5333(a) requires the secretary to ensure that all laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed with the assistance of loans or grants under Chapter 53 be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the secretary of Labor and in accordance with the Davis-

Bacon Act, as amended. The secretary may not approve any such loan or grant without first obtaining assurance that required labor standards would be maintained upon the construction work. This assurance is obtained when recipients accept grant funds and sign the Master Agreement.

- b. Transit Employee Protection. Before FTA may award a grant for capital or operating assistance, fair and equitable arrangements must be made to protect the interests of transit employees affected by the proposed FTA assistance (49 U.S.C. 5333(b), formerly Section 13(c) of the Federal Transit Act as amended. Those arrangements must be certified by the secretary of Labor as meeting the requirements of the law.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Division of Statutory Programs, Employment Standards Administration, U.S. Department of Labor, Room N-1519, 200 Constitution Avenue NW, Washington, DC 20210; telephone 202-693-1193; fax 202-693-1344.

15. PRESIDENTIAL COIN ACT. In accordance with Pub. L. 109-145, beginning January 1, 2008, all transit systems that receive operational subsidies or any disbursement of funds from the federal government shall be fully capable of accepting and dispensing \$1 coins and must display signs and notices denoting such capability on the premises where coins or currency are accepted or dispensed, including on each vending machine.
16. PRIVATE SECTOR PARTICIPATION. Federal law requires the public to be involved in the transportation planning process, and specifically requires that private providers be provided an opportunity to be consulted in developing transportation plans and programs in both urbanized and rural areas. Public involvement processes must be proactive and provide complete information, timely public notice, full public access to key decisions, and opportunities for early and continuing involvement throughout the transportation planning and programming process.
17. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use federal financial assistance in a project that will require the acquisition of real property, the applicant must provide assurances—required by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), as amended (42 U.S.C. chapter 61)—that it will comply with the Uniform Act and with DOT implementing regulations (49 CFR part 24) and FTA Circular 5010.1.

The “Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs” regulations, at 49 CFR part 24, are DOT-wide regulations that apply to all federal or federally assisted activities that involve the acquisition of real property or the displacement of people. As such, the regulation is specific in naming certain actions that must be taken to achieve uniformity in the treatment of property owners and displaced persons. Recipients in the process of planning a federally assisted project that will require the displacement of persons should be aware of the regulatory need for relocation planning during the early stages of project development.

Title 49 CFR part 24 is available from the Government Printing Office website at: http://www.access.gpo.gov/nara/cfr/waisidx_99/49cfr24_99.html or on FHWA's website at: <http://www.fhwa.dot.gov/realstate/49cfr.htm>. Also, recipients should be aware of state laws regarding compensation for real property and requirements for relocation of people and personal property.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase any property proposed as local matching share. The contributed in-kind property must be appraised at its current market value and when incorporated into the project will be subject to the same reporting and disposition requirements required of all project property. The appraisal, including a review appraisal, must be in compliance with 49 CFR part 24 and Circular 5010.1.

18. **RESTRICTIONS ON LOBBYING.** Federal financial assistance may not be used to influence any member of Congress or an officer or employee of any agency in connection with the making of any federal contract, grant, or cooperative agreement. The state, sub-recipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must complete and submit standard form SF-LLL, sign a certification so stating and must disclose the expenditure of nonfederal funds for such purposes (49 CFR part 20).

Other federal laws also govern lobbying activities. For example, federal funds may not be used for lobbying congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C. 1352). These laws do not prohibit general advocacy for transit. Providing information to legislators about the services a recipient provides in the community is not prohibited, nor is using nonfederal funds for lobbying, so long as the required disclosures are made.

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

Note: FTA has entered into a Memorandum of Understanding (MOU) with the American Association of State Highway and Transportation Officials (AASHTO), the American Public Transportation Association (APTA), and the Community Transportation Association of America (CTAA) that supports the transit industry and federal commitment to bus safety, and supports a model bus safety program to which all the signatories of this agreement have

agreed to subscribe. The program also focuses on addressing the needs of rural and small urban providers.

20. SCHOOL BUS TRANSPORTATION. Section 5323(f) of title 49 U.S.C. prohibits the use of FTA funds for exclusive school bus transportation for school students and school personnel. The implementing regulation (49 CFR part 605) does permit regular service to be modified to accommodate school students along with the general public (“tripper service”). For the purpose of FTA’s school bus regulation, Head Start is considered a social service, not a school program. Rules for the Head Start Program limit the types of vehicles which may be used to transport children participating in a Head Start Program. FTA recipients may operate multifunctional school activity vehicles that meet the safety requirements for school transportation, but may not provide exclusive school service.
21. SEISMIC DESIGN AND CONSTRUCTION STANDARDS. A grant applicant must assure FTA that any new building or addition to an existing building it designs and constructs with federal assistance is compliant with seismic safety standards. The grant applicant is responsible to know before accepting delivery that the building complies with seismic design and construction requirements and, in accordance with DOT implementing regulations, “Seismic Safety,” at 49 CFR 41.117(d), and must assure FTA that it will obtain a certificate of compliance with the requirements. A recipient makes this assurance through the FTA annual certification process.
22. SENSITIVE SECURITY INFORMATION. To the extent applicable, the recipient agrees to comply with 49 U.S.C. 40119(b) and implementing DOT regulations, “Protection of Sensitive Security Information,” 49 CFR part 15, and with 49 U.S.C. 114(s) and implementing Department of Homeland Security, Transportation Security Administration regulations, “Protection of Sensitive Security Information,” 49 CFR part 1520.
23. STATE SAFETY OVERSIGHT. MAP-21 did not amend 49 U.S.C. 5330, but subsection 20030(e) of MAP-21 provided that Section 5330 would be repealed three years after the effective date of FTA’s regulation implementing the new Section 5329 requirements. Until then, the current regulations at 49 CFR Part 659 will remain in effect. The existing regulations require oversight of the system safety program plan development and implementation, internal safety and security audits, accident and hazard investigations, and corrective action plan development and implementation. Until new regulations are in effect, an oversight agency must continue to annually certify to FTA that it has complied with the requirements of 49 CFR Part 659. The oversight agency must submit each certification electronically to FTA using a reporting system specified by FTA. The oversight agency must maintain a signed copy of each annual certification to FTA, subject to audit by FTA.

Section 5330 and Section 5329 authorize FTA to withhold up to 5 percent of an affected state or UZA’s apportionment if FTA determines the state is not in compliance or is not making adequate efforts to comply with the rule. FTA may restore withheld formula funds if the state is in compliance within two years.

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A. APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION

1. PREAPPLICATION STAGES.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the FTA electronic management system. Applicants must have access to the system in order to enter a grant. If an applicant does not have access to the FTA electronic award management system, the applicant's representative should contact the appropriate FTA regional office for assistance. Contact information for FTA's regional offices can be found in Appendix F of this circular.
- b. Planning. Before grant application submission, project planning requirements should be complete and properly documented. Project activities to be funded should be included in a federally approved statewide transportation improvement program (STIP) for capital projects or a unified planning work program (UPWP) for planning projects.
- c. Environmental Determination. The impact that a proposed FTA-assisted project will have on the environment must be evaluated and documented in accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), before grant application.
- d. Annual Submission of Certifications and Assurances. A grant applicant applying for assistance under the Urbanized Area Formula Program, or any other FTA grant program, must annually submit Certifications and Assurances that are applicable to the grant applicant's active and new grants during the fiscal year. The Certifications and Assurances should be examined annually for changes, deletions, and additions.
- e. Civil Rights Submissions. Civil rights submissions that may be required include a Title VI Plan, Equal Employment Opportunity (EEO) Program, Disadvantaged Business Enterprise (DBE) Program, DBE Goals, and Americans with Disabilities Act of 1990 (ADA) Paratransit Plan. FTA's regional civil rights officer must verify that all required civil rights submissions are current at the time the grant application is submitted in the FTA electronic award management system. The required documentation must be submitted before the official submission of the grant. A grant applicant should maintain readily available records of FTA approvals of civil rights submissions in the event a question concerning compliance should arise. ("Civil Rights" see Chapter VII of this circular.) FTA's office of civil rights may request additional information needed to affirm that the proposed project or elements thereof are in compliance with federal civil rights requirements, and/or reports on activities and progress to address findings identified in civil rights compliance reviews and assessments.
- f. Flexible Funding Documentation (if Applicable). A grant applicant seeking the use of flexible funds for its program, or a portion of it, must first make sure that the funds are available locally, in accordance with the specific project selection process for the local area. Once this resource of funds is included in the TIP, and incorporated into the STIP,

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

2. APPLICATION SUBMISSION (FTA ELECTRONIC AWARD MANAGEMENT SYSTEMS INFORMATION). Applicants should submit their grant applications electronically. The user guide, available on the home page, provides detailed information on how to access and use FTA's system. The user guide covers the creation, submission, award, and execution of a grant application; reporting requirements; grant amendments; budget revisions; and close-out procedures. Applicants should enter the following information into the system when preparing an application:

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

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

- b. Project Information. Certain basic information required on the federal Grant Application Standard Form 424 is incorporated into the project setup fields. Applicants must identify whether the application is a new grant, or a grant amendment, the project start/end date, and, per Executive Order 12372 Intergovernmental Review of Federal Programs, review date if applicable (see additional information about EO 12372 and grant project costs in Chapter VII of this circular).
- c. Project Description. This information must be in sufficient detail for FTA to obtain a general understanding of the nature and purpose of the planned activities. There is a project description field as well as a specific text field for this information associated with each activity line item (ALI). Project activities must be sufficiently described to

assist the reviewer in determining eligibility under the program. Sources of funds may also be included in the description.

- d. Information to Support Engineering/Technical Review. For projects involving construction or rehabilitation work, FTA reviews the information provided with the grant application, along with any pertinent documents that may be on record, to make a determination on such things as reasonableness of cost, sufficiency of preliminary engineering (PE) and design work completed, and eligibility of force account costs. For this reason, a grant applicant needs to include enough detail in the descriptive information about these projects to allow a positive determination during the project review period. For facility construction projects, the grant applicant should indicate the level of engineering work completed, and include the results of that work (i.e., appropriate drawings and cost estimates). FTA needs site selection studies and any pertinent information or documentation concerning environmental work performed for projects involving land acquisition and construction. For more information on the documentation requirements for these types of projects, the grant applicant should contact the appropriate regional office.
- e. Program Date and Page of Statewide Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). All projects using capital or operating funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and FHWA. FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) (or other location reference) in the most recently approved STIP on which the project(s) contained in the application is listed. The FTA electronic award management system has a field designated "program date" where the date of the most recent FTA/FHWA STIP approval should be entered. If the grant includes planning activities, the UPWP date should be entered here, if possible, or in the project details section.
- f. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All rolling stock procurements must include vehicle description and fuel type; expansion activities must include discussion on vehicle needs. The project budget should reflect the precise activities for which the grant funds will be used, and the budget should be prepared in accordance with requirements for the Section 5307 program. The project budget for each grant application that includes associated transit improvement funds must include a scope code for associated transit improvements and specific budget ALIs for associated transit improvements. The grant budget may also include non-add scopes. A non-add scope does not affect the total funds in the budget; it simply allows FTA to query the funding amounts upon request. Non-add scopes are used for intelligent transportation systems (ITS), security funds, funding allocated to tribal governments, and other special emphasis areas.
- g. Determination of Sufficient Funds. All sources of funds must be identified and confirmed. The grant applicant should periodically examine the status of existing grants to make sure that unused fund balances, consisting of funds with a potential to lapse, are in fact needed to complete those grants. A grantee may deobligate any excess funds

during their period of availability so that they may be reobligated into any pending or upcoming grant application. Otherwise excess funds left at the end of the project will be deobligated at closeout and, if lapsed, will be lost to the grantee.

FTA reviews the status of a UZA's apportionment, including prior year carryover balances, as well as current year allocations, to make sure that sufficient funds exist to finance the proposed program. FTA obligates Section 5307 program funds on a first-in, first-out basis to make sure that the oldest funds are obligated before more recent funds. This process prevents the potential of funds lapsing in a given UZA, which would render them no longer available to the area for obligation.

- h. Project Milestones. Every ALI in a grant budget must have associated project milestones. The FTA electronic award management system will automatically generate milestones for some ALIs; for example, rolling stock purchases will have five associated milestones. If it does not prepopulate specific milestones for a particular ALI, use the add function to add a minimum two milestones reflecting the estimated start and end dates for that ALI to the grant application. Recipients should include estimated milestone dates for such events as bid advertisement, bid award, and contract completion.
- i. Environmental Findings. The application should include a proposed classification of each ALI in accordance with FHWA/FTA Environmental Impact and Related Procedures. (see 23 CFR 771). Grant applicants should refer to part 771.118 for a listing of FTA's categorical exclusions. Most projects under the Section 5307 program meet the criteria for a categorical exclusion (CE) and require no further action. However, if a project does not clearly meet the criteria for a CE, a grant applicant is strongly encouraged to contact FTA's regional office for assistance in determining the appropriate environmental review process and level of documentation necessary.
- j. Fleet Status. Applications submitted in requesting new or replacement revenue vehicles should include, on the Fleet Status Report page, a summary of the composition of the applicant's entire fleet including the applicant's spare ratio. In the case of replacement, the applicant should state that the vehicles being replaced have met the minimum useful life criteria. A Sample Fleet Status Report can be located in Appendix D of this circular. Official property records (or a Rolling Stock Status Report) must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and statewide transportation planning processes, in which case summary information and precise reference to the earlier material will be acceptable. The requirements for equipment records that must be maintained by the grantee are detailed in FTA C 5010.1
- k. ADA 10%. Up to 10 percent of a recipient's section 5307 program apportionment may be used towards the provision of nonfixed route paratransit transportation services in accordance with section 223 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12143) with a federal share of up to 80 percent. To be eligible, recipients must be in compliance with applicable requirements of that Act, for both fixed route and demand responsive service. If an application includes ADA paratransit operations as a capital expense and there is more than one grant recipient in the UZA, the application should

include documentation of the designated recipient's sub-area allocation regarding the use of the ADA paratransit provision and the project budget should also include the appropriate ALI for the capital activity. FTA will reserve funds under a financial purpose code specific to the activity that will govern drawdown requests for this purpose. ADA paratransit operations remain an eligible operating expense, at a 50 percent federal share, for grantees otherwise eligible for operating assistance (e.g. those located in small UZAs or with fewer than 100 buses in maximum fixed route service).

- l. Application Submission. Once FTA deems the activities eligible, and determines that all preapplication requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in by the authorized official of the applicant.
- m. Department of Labor Certification. Once the grant application has been submitted by the recipient, the application is forwarded to the Department of Labor (DOL). DOL must certify all Urbanized Area Formula grants containing capital or operating expenses before FTA will approve them. See Chapter VII , "Other Provisions" of this circular for more information on DOL certification.
- n. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements and other federal requirements have been met, FTA awards and obligates funds requested in the grant.
- o. Grant Execution. After FTA has approved and awarded the grant, the applicant must execute the award before funds can be drawn down from the grant. Grants that indicate the use of pre-award activity require the submission of a federal financial report before grant execution. Execution constitutes acceptance of the grant agreement terms and conditions.

3. **APPLICATION CHECKLIST.**

Applicants should use the following checklist in preparing a complete application:

| Section 5307 <u>APPLICATION CHECKLIST</u> | |
|---|---|
| Part I—Recipient Information | |
| | Are annual Certifications and Assurances selected and pinned/signed by the authorized official and attorney? |
| | Is the Recipient Contact, Designated Signatory, Opinion of Counsel, Authorizing Resolution, and other information complete? |
| | Is UZA/congressional district information entered and accurate? |
| | Is union contact information entered and accurate? |
| | Has civil rights program documentation been approved by FTA? |
| | Has the applicants DUNS number been entered in the appropriate field? |
| Part II—Project Information | |
| | Does the project description include adequate detailed information of the project(s) such as an appropriate project title? |
| | Is information on any sub-recipient(s) and their projects included? |
| | Is this a new application or grant amendment? |
| | Does the application include an appropriate start/end date? |
| | If a supplemental agreement is applicable, has “yes” been selected? |
| | Are activities and program dates consistent with STIP dates and the UPWP if planning activities are included? |
| | Are STIP/UPWP approval dates and page numbers or location identifiers included in the application? |
| | If pre-award authority is applicable, has “yes” been selected? |
| | If federal debt delinquency is applicable, has “yes” been selected? (If yes, grant applicant must explain in details section.) |
| | Has the EO 12372 review been completed, if applicable? |
| | Is sufficient information included to evaluate project specific compliance with ADA, Title VI, and DBE requirements? |
| | Is UZA/congressional district information entered and accurate? |
| Part III—Budget | |
| | Are ALI codes entered under the appropriate scope codes and consistent with project descriptions? |
| | Are funding percentages and match ratios acceptable? |
| | Does the funding amount entered in the budget match financial information entered in the “Project Information” field for: |
| | a. Federal funds |
| | b. Local match |
| | Does the rolling stock (vehicle) line item contain accurate information such as: |
| | a. Description |
| | b. Fuel type |
| | Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item? If appropriate and necessary. |
| | Will the applicant expend 1 percent of the Section 5307 funds in this application for security purposes? (If yes, list security-related projects in the project budget and summarize them in the non-add scopes. If no, select the reason.) |
| | If applicable, has the applicant expended 1 percent of Section 5307 funds for associated transit improvements in areas over 200,000 in population? |
| | Where applicable, have non-add scopes been added showing the funds allocated to intelligent transportation systems, security funds, tribal governments, or other special areas of emphasis? |
| Part IV—Project Milestones | |
| | Are a minimum of two milestones listed for each ALI or scope? (If an ALI does not have standard milestones, they may be added.) |
| | Have estimated completion dates been entered? |
| Part V—Environmental Findings (NEPA) | |
| | Has an environmental finding been entered for each ALI or scope? |
| | For Categorical Exclusion II (d), EA, and EIS, has decision documentation been referenced or attached? |
| Part VI—Fleet Status | |
| | Has information pertaining to current and future revenue vehicles been entered? |

| | |
|--|--|
| | If applicable, are vehicles entered in the table consistent with the budget? |
| | If applicable, is the spare ratio 20 percent or less? |

B. APPENDIX B

INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

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

The recipient will use the FTA electronic award management system to prepare project budgets. The user's guide provides detailed instructions on how to create a project budget within the FTA electronic award management system.

Within a grant, groups of activities often relate logically to each other; a group of related activities is called a project. Several projects form an overall program. A recipient may apply for a program of projects (POP) in a single grant. The project budget is designed to group activities for a single project or a POP within scopes. A scope includes related activities that have the same broad purpose. A grant program and budget may have several scopes.

2. **DEVELOPING THE BUDGET.** FTA uses a scope code to establish the purpose of a group of activities. FTA derives the numbering of both the scope and activity levels of information on the approved project budget from the activity codes in the FTA electronic award management system. To find the link to the current scope level codes and activity line items (ALIs), see the main menu of the FTA electronic award management system. Examples of formats for capital and operating assistance follow.

a) Format for Capital Assistance.

(1) Capital expenditures under the Section 5307 Program include those items defined as "capital" in 49 U.S.C. 5302(a). Vehicles can be purchased either for replacement or expansion purposes. Careful attention to use of the appropriate ALI codes enables FTA to report accurately on the use of formula and discretionary funds, for example in the annual statistical summary report.

For capital projects, the recipient should first select the appropriate scope code. Then for each scope, an ALI or ALIs should be selected.

EXHIBIT B-1 Project Scope—Sample No. 1

| Scope | Quantity |
|---------------------------|----------|
| 111-010 Bus—Rolling Stock | 6 |

| Activity | Line Items | Quantity |
|-----------------|---|-----------------|
| 11.12.02 | Purchase 35-foot replacement buses with lifts | 4 |
| 11.13.03 | Purchase 30-foot buses with lifts for service expansion | 2 |
| 11.12.40 | Spare Parts/Assoc Capital Maintenance Items | |

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

EXHIBIT B-2
Project Scope—Sample No. 2

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

| Activity | Line Items | Quantity |
|-----------------|-----------------------------------|-----------------|
| 11.42.06 | Shop Equipment | |
| 11.42.10 | Purchase Fare Collection (mobile) | 45 |

| Scope | Quantity |
|---|-----------------|
| 116-00 Bus Signal/Communications System | 70 |

| Activity | Line Items | Quantity |
|-----------------|------------------------------|-----------------|
| 11.61.01 | Design Bus Signal System | |
| 11.62.02 | Acquire Communication System | |
| 11.62.03 | Purchase Bus Radios | 50 |

From these examples, it is also possible to combine activities that are associated, but which do not necessarily match the first three digits of the scope code under which they appear. A grant applicant that operates a fixed guideway system or engages in a new start project will use scope level numbers that correspond to the fixed guideway and new start segments of the

activity code chart; for example, scope code 121-01, 02...for Rail Rolling Stock or 141-01, 02...for New Start Rolling Stock; or 123-01, 02...for Rail Stations and 143-01, 02...for New Start Stations.

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

EXHIBIT B-3
Presenting Sub-recipient Information—Format Option No. 1

| Scope | Quantity |
|---|-----------------|
| 111-01 Purchase Rolling Stock and Related Equipment | 7 |

| Activity | Line Items | Quantity |
|-----------------|--|-----------------|
| 11.12.03 | Purchase replacement buses w/lifts for Allegany County | 3 |
| 11.12.15 | Purchase vans w/lifts for Cumberland Transit System | 4 |

EXHIBIT B-4
Presenting Sub-recipient Information—Format Option No. 2

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

Under format option number 1, FTA would base the determinations regarding budget revisions and scope changes on the quantity total of seven vehicles found at the scope level. Under format option number 2, FTA would base those determinations on the specific scope level quantity for each of the sub-recipients—that is, quantities of three and four.

- b. Two Budget Approaches to Large Capital Projects. A grant applicant can also choose which of the two format options above best suit its internal management of projects. For example, a grant applicant developing a bus rapid transit line may wish to develop separate scope level activities for each station and include the relevant activities under each, or the same grant applicant may wish to group all activity under one scope.

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

- b) Format for Operating Assistance.

(1) Scope 300 represents operating assistance. The ALI codes for operating expenses—30.09.01 and 30.80.01—appear on page eight of the ALI chart. ALI 30.09.01 is used for the 50 percent federal share of operating assistance. The ALI 30.80.01 is used for the Congestion Mitigation and Air Quality (CMAQ) Improvement Program operating assistance for new service (three-year limit) and FTA finances it up to 80 percent federal share. The scope for operating expenses is the first two digits, 300. If funding is being

requested for more than one local fiscal year for the same grant applicant, FTA suggests that the applicant break down the funding at the activity level. For example:

Scope

300-00 Operating Assistance

Activity Line Items

30.09.01 Operating Assistance for the period 7/1/13—6/30/14

30.09.01 Operating Assistance for the period 7/1/14—6/30/15

Designated recipients requesting operating assistance on behalf of more than one operator may choose to separate operating assistance funding at either the scope level or the activity level.

3. **BUDGET MODIFICATIONS**. At times, it may be necessary to modify a grant after it has been awarded by revising the budget or amending the grant. The recipient is responsible for controlling and monitoring all grant activities to ensure they are implemented according to the approved budget. The manner in which the applicant initially structures a budget during the grant application phase can facilitate or impede project management, particularly when unforeseen events require changes in the project.

There are three ways to modify a grant after it has been awarded: through a budget revision, an administrative amendment, or a grant amendment. Whether FTA permits a budget revision (with or without prior FTA approval before incurring costs) or whether the grantee will need an amendment to the project depends on the effect of the proposed change on the scope of the project. FTA's review of grant modifications will include a determination of whether or not the proposed change is significant enough to require Department of Labor (DOL) certification of employee protective arrangements. Recipients should contact the FTA regional or metropolitan office for questions relating to grant modification requests, including which type of modification is appropriate for the proposed action.

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

- a. **Budget Revision**.

- (1) **General**. Budget revisions may be made as long as there is no change in the recipient, purpose, scope codes, and federal funding of the grant, regardless of the fiscal year the funds were appropriated. Budget revisions must be consistent with the activities contained in an approved statewide transportation improvement program (STIP) and satisfy applicable National Environmental Policy Act (NEPA) requirements. Useful life of new equipment must be addressed in the budget revision, as applicable.

- (2) Procedures. Grantees submit budget revisions in the FTA electronic award management system using the “Revise Project Budget” screen. Budget revision requests must include a reason for the revision. For each ALI being adjusted, either by quantity or dollar amount, grantees must include a brief explanation in the “Details” section for the change being requested. The FTA reviewer will return incomplete budget revisions to the grantee for more information. For assistance with completing budget revisions, please contact the FTA regional or metropolitan office.

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

- (3) Budget Revisions that Require Prior Approval. Under certain circumstances, grantees must obtain FTA approval before incurring costs for proposed budget revisions. At times, FTA review of a proposed budget revision meeting the criteria below may result in a recommendation to undertake a grant amendment. The FTA regional or metropolitan office will make this determination during its review.

- (a) The federal share of the grant exceeds \$100,000 and the change in the cumulative amount of funds allocated to each scope from the originally approved scope exceeds 20 percent.
- (b) Federal funds are transferred between ALIs with different federal matching ratios, such as moving funds from a capital activity with a match ratio of 80/20 to an operating activity with a match ratio of 50/50. This activity also requires a financial purpose code (FPC) transfer.
- (c) Changing the federal share of an existing ALI, such as changing an ALI from 80/20 to 85/15 to account for compliance with Americans with Disabilities Act of 1990 (ADA) or Clean Air Act (CAA) requirements.
- (d) For revenue rolling stock, when the budget revision changes the number of vehicles to be purchased by more than two units, for grants with less than ten vehicles, or more than 20 percent from the quantity identified in the original grant.

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

- (e) The budget revision changes the size or physical characteristics of the ALIs without changing the project scope.
- (f) The addition of an ALI to an existing scope included in the grant, provided that the request does not change the amount of federal funds awarded in the original grant or change the scope of the project contained in the grant.

- (g) The addition of an activity within an approved scope requires that the grantee affirm in the budget revision request that the new activity is consistent with the approved STIP and, if applicable, has satisfied NEPA requirements.

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

- (4) Financial Purpose Code Transfers. When a budget revision includes a transfer of funds between capital/operating/planning activities, FTA must make a financial purpose code (FPC) change before FTA permits the grantee to draw funds for this purpose. FPC transfers of any kind require prior FTA concurrence and regional office notification to FTA's office of accounting.
- (5) Examples. The following are examples of situations when a grantee might request a budget revision. **Note:** If the examples below meet one of the criteria outlined above, the grantee must request FTA concurrence prior to incurring the costs for the requested activities.
- (a) Budget revisions to existing activity line items (ALIs). Grant AB-90-234 includes a scope for vehicles (111-00) with the ALI to purchase 40-foot buses (11.12.01) and a scope for stations stops/terminals (113-00) with the ALI for construction of a bus terminal (11.33.01). The construction costs for the station are expected to be higher than originally anticipated and there is a surplus in the vehicle line item because the vehicle costs were less than anticipated. A grantee may request to move funds from ALI 11.12.01 to 11.33.01 to cover added construction expenses. Following the process described above and after determining if the request meets the threshold for prior FTA approval, the grantee may request to move the excess funds from 11.12.01 to 11.33.01.
- (b) Budget revisions that require an FPC transfer. Grant AB-90-234 has an approved budget for \$250,000 in federal funds for operating assistance (30.09.01) at a 50 percent federal/50 percent local funding ratio, and \$50,000 in federal funds for the purchase of vans (11.12.15) at an 80 percent federal/20 percent local funding ratio. The grantee has \$5,000 in federal funds remaining under operating assistance and would like to use the remaining operating funds toward the purchase of vans, a capital line item. With prior concurrence from FTA, this can be accomplished through a budget revision. Because these two scopes have different funding ratios, the local share must be adjusted to ensure the correct funding ratio is maintained for each ALI.
- (c) Adding an ALI to an existing scope. The scope for stations stops/terminals exists in the grant and funds are allocated to acquire route signing (11.32.09). However, the grantee determines that it prefers to use the funds to construct passenger shelters (11.33.10), which is an activity within the scope 113-00. The grantee may request a budget revision to add the ALI 11.33.10 and shift the funds from

11.32.09 with prior FTA concurrence. In addition, the grantee must confirm that the approved STIP includes construction of bus shelters and has satisfied applicable NEPA requirements.

- (6) Operating Assistance Changes. A grantee may use a budget revision to reflect time period changes, adjustments, or extensions to the operating period provided the total amount of federal funds previously awarded under the grant remains unchanged.

b. Administrative Amendment.

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

c. Grant Amendment.

- (1) General. FTA requires a grant amendment when there is either a change in the scope or an addition of federal funds to an existing grant. Grant amendments are subject to the same application requirements as a new grant request.
- (2) Procedures. Grantees submit grant amendments in the FTA electronic award management system using the "Create Amendment" screen. Grant amendments require a revised grant agreement, revised budget, and may require a change in the amount of funds obligated for the grant. An amendment is subject to the same requirements as a new grant request except that the grantee does not need to resubmit the portions of the original grant application that the change did not affect. The grantee must submit a detailed description of the changes and a revised project budget. For example, in the FTA electronic award management system under the project details section of the grant, grantees should include a header (e.g., "Amendment #1") and describe the reason for the amendment and the changes to the grant and budget.
- (3) Change of Scope. FTA requires a grant amendment if the request changes the scope of a grant. Examples and an exception to changes in scope that result in a grant amendment include:
- (a) Examples.
1. A change in the quantity of items the grantee will purchase or construct that changes the purpose or intent of the approved grant.

2. The addition of a new project scope code or the deletion a project scope code if the deletion affects the intent or objectives of the grant.
 3. The addition of an ALI that results from an amendment to the approved TIP/STIP.
 4. Budget revisions that result in additions or deletions of scope(s) or ALIs are sent to DOL for information. Grant amendments are sent to DOL for certification.
- (4) Change in Federal Funds. FTA requires a grant amendment if the request changes the total amount of federal funds in the grant. The one exception is if the request does not change the scope of a grant and the only action is the deobligation of funds, an administrative amendment is used to process the grant modification.
4. REGIONAL ASSISTANCE. Grant applicants should contact the appropriate FTA regional office for assistance in preparing the project budget for a Section 5307 Program grant application.

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C. APPENDIX C

OPERATING ASSISTANCE PROJECTS

1. APPENDIX CONTENTS. For applicants eligible to receive Section 5307 operating assistance, the following paragraphs present budget information to determine which operating expenses are eligible for federal funding. The discussion provides information on certain revenue and expense items of particular relevance to operating assistance projects. For further assistance, the applicant should review the cost principles and standards discussed in Office of Management and Budget (OMB) Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," 2 CFR part 225.

The Federal Transit Administration (FTA) reserves the authority to request any applicant to provide documentation in support of expense and other financial information indicated in an operating assistance application on a case-by-case basis. In the event that an audit reveals an overpayment or an inappropriate payment of operating assistance funds, the recipient will be required to reimburse FTA.

2. OPERATING EXPENSE WORKSHEET. FTA provides an operating expense worksheet for applicants to determine the amounts of available Urbanized Area Formula Program funds that the applicant may actually request. The use of this worksheet ensures consistency in the manner FTA calculates operating expenses and provides an audit trail, which may have long-term benefits to the recipient. FTA does not require the applicant to submit this worksheet as part of its application; however, the applicant must maintain records to support charges to a project.

The operating expense worksheet developed in support of the funding request should contain several basic line items, as follows:

- a. Eligible Operating Expenses. Eligible operating expenses are limited to direct labor, material, and overhead expenses incurred on an accrual basis by an operator to provide public transportation service in the UZA, usually during the specified project time period. Expenses for contracted services directly incidental to the management and operation of transportation services and not otherwise reimbursed are also included. Include expenses incurred to provide human services transportation under contract.
- b. Less Eliminations. These lines represent the ineligible expenses, nonpublic transportation expenses, revenue/offset items (contra-expenses), and other exclusions. Ineligible expenses include such items as entertainment, fines and penalties, and charitable donations. Additionally nonpublic transportation expenses such as charter, school bus, sightseeing, and maintenance of nontransit vehicles are ineligible expenses. Contra-expenses are revenue items that directly offset transit expenses and are therefore eliminated from total expenses. Common types of contra-expenses are earned interest, proceeds from the sale of equipment in excess of the depreciated value, cash discounts and refunds, insurance claims, and reimbursements which directly offset accrued liabilities.

- c. Eligible Operating Expenses. Eligible operating expenses form the remainder when various categories of noneligible expenses are subtracted from total expenses. (Line 1 – Line 2 = Line 3)
- d. Farebox Revenues and Revenues Applied to Eligible Expenses Not Includable as Local Share. Recipients must represent all funds used to cover eligible operating expenses in the worksheet. This line represents those revenues used to cover eligible expenses that recipients cannot include in “local share”—in other words, “nonmatchable” revenue. This category includes public transportation farebox revenues. (Line 4)
- e. Net Project Cost. This line represents the difference between lines (3) and (4)—that is, the amount of eligible operating expenses to be covered by the local and FTA shares. (Line 5)
- f. Local Share. Local share (that is, the share of project costs not financed by FTA) includes all local and state funds contributed to meeting net project cost. This includes cash from nongovernment sources other than revenue from providing public transportation services; revenues from the sale of advertising and concessions; and amounts received under a service agreement with a state or local social service agency or private social service agency. Only those funds actually applied to eligible operating expenses incurred on an accrual basis in providing public transportation services during the project period may be considered local match. (Line 6)
- g. Net Expenses Before Applying FTA Funds. This amount represents the difference between “net project cost” and “local share,” and it should represent the amount of eligible operating expenses not otherwise covered by public transportation revenues or local share funds. (Line 7)
- h. Maximum FTA Share. This is the amount determined to be the maximum FTA share, based on the worksheet. FTA share can be up to 50 percent of the net project cost. If local share is less than or equal to 50 percent of net project cost, FTA can match it dollar-for-dollar with FTA operating assistance, subject to the availability of Urbanized Area Formula Program funds, the local programming of projects, and the eligibility of operating expenses. If the local share is greater than 50 percent of net project cost, FTA operating assistance will cover only the amount in line 7, “net expenses before applying FTA funds.” (Line 8)

The worksheet should describe as fully and accurately as possible the actual or projected accrual of public transportation operating expenses, the identification of expenses eligible for FTA assistance, the application of public transportation revenues to cover such expenses, the application of state and local government funds, other sources of local share, and the resulting eligibility for FTA operating assistance.

Where an applicant applies on behalf of two or more individual public transportation operators under one operating assistance project, the worksheet should represent aggregated statements of project time period revenues and expenses.

The applicant should also retain appropriate documentation in support of the worksheet to demonstrate the proper allocation of revenues to nonoperating expenses, the availability of local share funds, and such other reconciliations as may be necessary to clarify estimates or projections of financial conditions during the project time period. FTA does not require certifications of worksheets based on estimates or projections.

In preparing the worksheets, applicants should itemize entries under each revenue and expense category. Applicants may, of course, expand the number of lines provided in the attached format whenever necessary to accommodate additional entries. It is particularly important that the itemization of revenues and expenses be sufficient to permit verification of calculations of eligible operating expenses, net project cost, local share and eligible FTA assistance during any subsequent audit pursuant to 49 U.S.C. 5307 and to OMB Circular A-133, "Audits of States, Local Governments, and Non Profit Organizations."

SAMPLE OPERATING EXPENSE WORKSHEET

For the Period: _____

Public Transportation Operator(s): _____

Applicant: _____

Designated Recipient: _____

(A) Total Operating Expenses (Itemize)

_____ \$ _____
_____ \$ _____
_____ \$ _____
_____ \$ _____

TOTAL OPERATING EXPENSES \$_(1)

(B) Less Eliminations

(1) Less Ineligible Expenses (Itemize)

_____ \$ _____
_____ \$ _____

(2) Less Nonpublic Transportation Expenses (Itemize)

_____ \$ _____
_____ \$ _____

SAMPLE OPERATING EXPENSE WORKSHEET (cont.)

(3) Less Revenue/Offset items (Contra-Expenses) (Itemize)

| | |
|----|-------|
| \$ | _____ |
| \$ | _____ |

(4) Less Other Exclusions (Itemize)
(e.g., costs already attributed to preventive maintenance)

| | |
|----|-------|
| \$ | _____ |
| \$ | _____ |

| | |
|--------------------|---------|
| TOTAL ELIMINATIONS | \$__(2) |
|--------------------|---------|

| | |
|---|---------|
| (C) Eligible Operating Expenses (Line 1– Line 2) | \$__(3) |
|---|---------|

| | |
|---------------------------|---------|
| (D) Less Farebox Revenues | \$__(4) |
|---------------------------|---------|

| | |
|--|---------|
| (E) NET PROJECT COST (Line 3 – Line 4) | \$__(5) |
|--|---------|

| | |
|--|---------|
| (F) Local Share (Itemize) | |
| (Human Services contract revenue)_____ | |
| (local sales tax)____ | |
| _____ | \$__(6) |

| | |
|---|---------|
| (G) Net Expenses Before Applying FTA Funds (Line 5 – Line 6) | \$__(7) |
|---|---------|

| | |
|-----------------------|---------|
| (H) Maximum FTA Share | \$__(8) |
|-----------------------|---------|

| | |
|---|---------|
| (I) FTA Funds Requested (this amount must not exceed line 6) | \$__(9) |
|---|---------|

D. APPENDIX D

FORMS AND REPRESENTATIVE DOCUMENTS

| <u>Document</u> | <u>Page</u> |
|---|--------------------|
| Sample Authorizing Resolution | D-2 |
| Sample Opinion of Counsel | D-4 |
| Fleet Status Report as Seen in the FTA Electronic Award Management System (Screen Sample)..... | D-5 |
| Proceeds from Sale of Transit Assets | D-6 |
| Like-Kind Exchange Example (Calculation Tool) | D-7 |
| Supplemental Agreement | D-8 |

1. SAMPLE AUTHORIZING RESOLUTION.

Resolution No. _____

Resolution authorizing the filing of applications with the Federal Transit Administration, an operating administration of the United States Department of Transportation, for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code, or other federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transit Administrator has been delegated authority to award federal financial assistance for a transportation project;

WHEREAS, the grant or cooperative agreement for federal financial assistance will impose certain obligations upon the applicant, and may require the applicant to provide the local share of the project cost;

WHEREAS, the applicant has or will provide all annual certifications and assurances to the Federal Transit Administration required for the project;

NOW, THEREFORE, BE IT RESOLVED BY (Governing Body of Applicant)

1. That (Title of Designated Official) is authorized to execute and file an application for federal assistance on behalf of (Legal Name of Applicant) with the Federal Transit Administration for federal assistance authorized by 49 U.S.C. Chapter 53, title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration. (If the applicant is requesting Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, either alone or in addition to other federal assistance administered by the Federal Transit Administration, the resolution should state whether the applicant is the designated recipient as defined by 49 U.S.C. 5307(a)(2), or whether the applicant has received authority from the designated recipient to apply for Urbanized Area Formula Program assistance.)
2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a federal assistance grant or cooperative agreement.
3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of (Legal Name of Applicant).

CERTIFICATION

The undersigned duly qualified (Title of Designated Official), acting on behalf of the (Legal Name of Applicant), certifies that the foregoing is a true and correct copy of a resolution adopted at a legally convened meeting of the

(Governing Body of the Applicant) held on (Month, Day, Year)

[If the Applicant has an official seal, impress here.]

(Signature of Recording Officer)

(Title of Recording Officer)

(Date)

2. SAMPLE OPINION OF COUNSEL.

Name of Applicant
Address of Applicant

Dear (Responsible Official for Applicant):

This communication will serve as the requisite opinion of counsel to be filed with the Federal Transit Administration, United States Department of Transportation, in connection with the application of (Name of Applicant) for federal transportation assistance authorized by 49 U.S.C. Chapter 53; title 23, United States Code; and other federal statutes authorizing activities administered by the Federal Transit Administration.

(If the applicant intends to use this opinion to qualify for Urbanized Area Formula Program assistance authorized by 49 U.S.C. 5307, the opinion must state whether the applicant is the designated recipient as defined at 49 U.S.C. 5307(a)(2) or whether the applicant has received authority from the designated recipient to apply for and receive Urbanized Area Formula Program assistance).

Citations to laws, regulations, etc. establishing the legal authority of (Name of Applicant) to carry out transportation projects for which federal assistance is sought is set forth below:

1. _____ is authorized by (cite and quote from legal authority) to provide and assist transportation _____

2. The authority of (Name of Applicant) to provide funds for the local share of the project is set forth in (cite source and provide a copy of, for example, the local ordinance passed by city council or other governing body authorizing funding for the local share)

3. I have reviewed the pertinent federal, state, and local laws, and I have concluded that there is no legal impediment to your filing an application for the project for which (Name of Applicant) seeks assistance. Furthermore, as a result of my examination, I find that there is no pending or threatened litigation or other action which might in any way adversely affect the proposed project or the capability of (Name of Applicant) to carry out the project.

Sincerely,

Legal Counsel

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

| | | Before | Change | After |
|---------------------------|----------------------|--------|--------|-------|
| I. Active Fleet | A. Peak Requirement | 53 | 0 | 53 |
| | B. Spares | 8 | 0 | 8 |
| | C. Total (A+B) | 61 | 0 | 61 |
| | D. Spare Ratio (B/A) | 15.1% | 0% | 15.1% |
| II. Inactive Fleet | | | | |
| | A. Contingency | 5 | 0 | 5 |
| | B. Pending Disposal | 0 | 0 | 0 |
| | C. Total (A+B) | 5 | 0 | 5 |
| III. Total (I.C and II.C) | | 66 | 0 | 66 |

4. PROCEEDS FROM THE SALE OF PUBLIC TRANSPORTATION ASSETS.

Pursuant to 49 U.S.C. 5334(h), a recipient may transfer or sell capital assets that it has acquired with FTA assistance with FTA approval. In accordance with 49 U.S.C. 5334(h)(4), the recipient must apply the proceeds from the sale of a public transportation asset that is no longer needed to a subsequent public transportation capital project. If the recipient cannot use the funds towards another eligible capital project, it must return to FTA its share of the proceeds.

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

EXAMPLE.

Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. The recipient no longer needs the parcel for public transportation purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000. The recipient applies to FTA for assistance in purchasing a bus. The estimated cost of the bus is \$250,000. On the electronic application screen, FTA expects the recipient to report the use of the proceeds from the earlier sale of the asset in the following manner:

5. LIKE-KIND EXCHANGE EXAMPLE.

A recipient purchased a new bus in 2005 for \$250,000; 80 percent of the total price, or \$200,000, was federal funding whereas 20 percent, or \$50,000, was local. Thus, there was an initial \$200,000 “federal interest” in the new vehicle.

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

Because the bus had a minimum useful life of twelve years and FTA determined its depreciation on a “straight-line” basis, the depreciated value of the vehicle after six years was half the original price, or \$125,000. The remaining federal interest was 80 percent of that figure, \$100,000.

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

If the recipient were to purchase a new bus in 2011 for \$270,000, the transaction would look like this:

Net project cost calculation:

| | |
|--|-----------|
| Gross project cost of new bus | \$270,000 |
| Less straight-line depreciated value of replaced bus. | - 125,000 |
| Net project cost | \$145,000 |
| Federal share 80% | 116,000 |
| Local share 20% | 29,000 |

Sources of funds for new bus:

| | |
|--|----------------|
| Net sales proceeds from replaced bus | \$ 100,000 |
| New local cash | |
| Straight-line depreciated value shortfall | 25,000 |
| Local share of net project cost | 29,000 |
| Federal share | <u>116,000</u> |
| TOTAL | \$270,000 |

The federal interest in the new bus is \$216,000 (\$100,000 transferred from the old vehicle and \$116,000 in the new).

If the recipient had received more than \$125,000 in proceeds, all the proceeds (minus reasonable sales costs) would still have been applied as the federal share to the new vehicle. FTA is entitled to have applied to the new vehicle the greater of the straight-line depreciation or the fair market value as evidenced by the sales proceeds.

6. SAMPLE SUPPLEMENTAL AGREEMENT.

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

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

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

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

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

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

E. APPENDIX E

PREVENTIVE MAINTENANCE

Preventive maintenance, according to Federal Transit Administration (FTA) policy, is currently defined as all maintenance. Specifically, it is defined as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such asset. If a recipient purchases service instead of providing the operating service itself and the contract includes maintenance for that purchased service, then the recipient may apply for preventive maintenance capital assistance under the capital cost of contracting policy.

Preventive maintenance is an operating expense that is eligible as a capital project at an 80/20 federal/local match; capital maintenance expenses are eligible under most FTA funding programs.

FTA cautions recipients not to confuse the fact that maintenance items often considered operating expenses may be eligible for FTA capital assistance. Generally accepted accounting principles and the recipient's accounting system determine those costs that the recipient is to account for as operating costs. The National Transit Database (NTD), <http://www.ntdprogram.gov/>, follows generally accepted accounting principles, so a recipient reporting to the NTD must report the operating costs the recipient has incurred as operating costs regardless of the costs' eligibility for FTA capital assistance. Recipients may not count the same costs twice.

The Uniform System of Accounts (USOA) is the basic reference document for the NTD. It contains the accounting structure required by FTA laws. The NTD consolidates seven detailed functions from the USOA as basic function 041—Vehicle Maintenance and consolidates thirteen detailed functions from the USOA as basic function 042—Nonvehicle Maintenance. All of the activities included in basic functions 041 and 042 are maintenance, and thus eligible capital assistance projects. Vehicle maintenance is all of the activities associated with ensuring revenue vehicles and service vehicles are operable, cleaned, fueled (not including fuel cost), inspected, and repaired.

There are seven detailed functions in the Maintenance Administration—Vehicles function (041).

1. Maintenance Administration—Vehicles (041)
 - a. Includes preparing maintenance records, analyzing data for vehicle performance and training vehicle maintenance personnel.
2. Servicing revenue vehicles (051)
 - a. Includes providing supervision and clerical support for servicing revenue vehicles, refueling, interior cleaning, and exterior washing of revenue vehicles.

3. Inspection and maintenance of revenue vehicles (061)
 - a. Includes performing scheduled preventive maintenance on vehicle components, vehicle overhaul, performing minor repairs, traveling to vehicle breakdowns to repair or tow revenue vehicles, rebuilding and overhauling repairable components, performing major repairs on revenue vehicles (e.g., body work, reupholstering, unit rebuilds), and replacing major repairable units of revenue vehicles (e.g., engines, transmissions, and air conditioners). Does not include vehicle rebuild.
4. Accident repairs of revenue vehicles (062)
 - a. Includes repairing damage as a result of collisions, floods, and accidental fires.
5. Vandalism repairs of revenue vehicles (071)
 - a. Includes repairing all special damage as a resulting from willful or malicious destruction or defacement.
6. Servicing and fueling of service vehicles (081)
 - a. Includes fueling, interior cleaning, and exterior washing of service vehicles, refueling, and adding oil and water to service vehicles.
7. Inspection and maintenance of service vehicles (091)
 - a. Includes inspecting service vehicle components on a scheduled preventive maintenance basis, vehicle overhaul, minor repairs, going to vehicle breakdowns for tow or repair, rebuilding and overhauling repairable components, performing major repairs on service vehicles (e.g., body work, reupholstering, unit rebuilds), and replacing major repairable units of service (e.g., engines, transmissions, and air conditioners). Does not include vehicle rebuild.

There are thirteen detailed functions in the basic Nonvehicle Maintenance function (042).

1. Maintenance administration—nonvehicles (042)
 - a. Including preparing transit way and structures maintenance records and providing supervision/clerical support for the administration of transit way and structures maintenance and other buildings, grounds, and equipment maintenance.
2. Maintenance of vehicle movement control systems (101)
 - a. Including inspecting, cleaning, repairing, and replacing all components of vehicle movement control systems.
3. Maintenance of fare collection and counting equipment (111)
 - a. Including inspecting, repairing, and replacing all components of fare collection and counting equipment, such as on vehicle fareboxes, ticket vending machines, fare gates, vaults and money counters, changers, and sorters.
4. Maintenance of roadway and track (121)

- a. Including inspecting, cleaning, repairing, clearing, and replacing all components of roadway and track.
5. Maintenance of structures, tunnels, bridges, and subways (122)
 - a. Including inspecting, cleaning, repairing, and replacing all components of structures, tunnels, bridges, and subways.
 6. Maintenance of passenger stations (123)
 - a. Including inspecting, repairing, and replacing components of passenger station building and equipment providing custodial services for passenger station building and grounds.
 7. Maintenance of operating station buildings, grounds, and equipment (124)
 - a. Including inspecting, repairing, and replacing components of operating station buildings and equipment providing custodial services for operating station buildings and grounds.
 8. Maintenance of garage and shop buildings, grounds, and equipment (125)
 - a. Including inspecting, repairing, and replacing components of garage and shop buildings and equipment providing custodial services for garage and shop buildings and grounds.
 9. Maintenance of communication systems (126)
 - a. Including inspecting, cleaning, repairing, and replacing all components of communication system other than vehicle movement control systems.
 10. Maintenance of general administration, buildings, grounds, and equipment (127)
 - a. Including inspecting, repairing, and replacing components of buildings and equipment used for general administration.
 11. Accident repairs of buildings, grounds, and equipment (128)
 - a. Including repairing all damage to buildings, grounds, and equipment resulting from collisions with stationary or moving objects, floods, accidentally ignited fires, etc.
 12. Vandalism repairs of buildings, grounds, and equipment (131)
 - a. Includes repairing all damage as a result of willful or malicious destruction or defacement of buildings, grounds, and equipment.
 13. Operation and maintenance of electric power facilities (141)
 - a. Includes supervising, monitoring, and operating electric power generation and distribution facilities for third rail, overhead lines, cable systems, etc.

For NTD reporting purposes, inspection and maintenance of revenue or service vehicles, work on repairable units such as engine rebuilds, and overhauls are an operating expense only if they meet the criteria established by FTA in determining when an item is an operating or a capital expenditure. If the total labor and materials necessary for the rebuild or overhaul are less than a unit value of \$5,000 or a lesser capitalization level used by the agency, such as \$3,000, then this is an operating expense reported on the operating expenses form of the NTD (F-30). If more than \$5,000, then the rebuild or overhaul expenses are a capital expenditure on the uses of capital form of the NTD (F-20).

According to FTA Circular 5010.1, "Grant Management Requirements," overhaul is maintenance that does not add to the useful life of the vehicle. This eligibility for capital assistance also applies to leasing and to contracted service. Rolling stock to be overhauled must have an accumulated at least 40 percent of its service life, as per FTA Circular 5010.1.

FTA Circular 5010.1 states that in order for a bus to be rebuilt it should be at the end of its minimum useful life and in need of major structural and/or mechanical rebuilding. Rebuilding is a recondition at the end of useful life that creates additional useful life. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins. In order for a rail car to be rebuilt it must have reached the end of its minimum useful life for an end of life rebuild. The minimum extension of useful life is ten years for rail cars, as per FTA Circular 5010.1. The eligibility of this major capital rebuild work is in addition to the eligibility of vehicle overhauls.

Under 49 CFR 37.75 and 37.83, any public entity that remanufactures a bus or rail vehicle for use in fixed route service, so as to extend its useful life for five years or more, must be made readily accessible to and useable by persons with disabilities, including wheelchair users. Rebuilding a vehicle is also an eligible capital cost under the category of preventive maintenance.

A grant application for preventive maintenance must include a time period over which the recipient incurred the maintenance costs or expects to incur them. Maintenance costs can only be claimed for the current year or the immediately preceding year. FTA reserves the right to review a recipient's cost for maintenance as reported currently in the NTD when FTA receives an application for assistance with preventive maintenance.

F. APPENDIX F

FTA REGIONAL AND METROPOLITAN CONTACT INFORMATION

| <u>Office</u> | <u>Area Served</u> | <u>Contact Information</u> |
|---------------|---|---|
| Region I | Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont | Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA 02142-1093 Phone: 617-494-2055 Fax: 617-494-2865 |
| Region II | New York and New Jersey | One Bowling Green Room 429 New York, NY 10004-1415 Phone: 212-668-2170 Fax: 212-668-2136 |
| Region III | Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia | 1760 Market St Suite 500 Philadelphia, PA 19103-4124 Phone: 215-656-7100 Fax: 215-656-7260 |
| Region IV | Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and U.S. Virgin Islands | 230 Peachtree Street NW Suite 800 Atlanta, GA 30303 Phone: 404-865-5600 Fax: 404-865-5605 |
| Region V | Illinois, Indiana, Minnesota, Michigan, Ohio, and Wisconsin | 200 W Adams St Suite 320 Chicago, IL 60606 Phone: 312-353-2789 Fax: 312-886-0351 |
| Region VI | Arkansas, Louisiana, New Mexico, Oklahoma, and Texas | 819 Taylor St Room 8A36 Fort Worth, TX 76102 Phone: 817-978-0550 Fax: 817-978-0575 |
| Region VII | Iowa, Kansas, Missouri, and Nebraska | 901 Locust, Suite 404 Kansas City, MO 64106 Phone: 816-329-3920 Fax: 816-329-3921 |
| Region VIII | Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming | 12300 W Dakota Ave. Suite 310 Lakewood, CO 80228-2583 Phone: 720-963-3300 |

| <u>Office</u> | <u>Area Served</u> | <u>Contact Information</u> |
|------------------------------------|---|--|
| | | Fax: 720-963-3333 |
| Region IX | Arizona, California, Hawaii, Nevada, Guam, American Samoa, and Northern Mariana Islands | 201 Mission St Room 1650 San Francisco, CA 94105-1839 Phone: 415-744-3133 Fax: 415-744-2726 |
| Region X | Alaska, Washington, Oregon, and Idaho | Jackson Federal Building 915 Second Ave, Suite 3142 Seattle, WA 98174-1002 Phone: 206-220-7954 Fax: 206-220-7959 |
| Lower Manhattan Recovery Office | Lower Manhattan | One Bowling Green, Room 436 New York, NY 10004 Phone: 212-668-1770 Fax: 212-668-2505 |
| New York Metropolitan Office | New York Metropolitan Area | One Bowling Green, Room 428 New York, NY 10004-1415 Telephone: 212-668-2201 Fax: 212-668-2136 |
| | | |
| Chicago Metropolitan Office | Chicago Metropolitan Office | 200 West Adams Street Suite 2410 (24th floor) Chicago, IL 60606 Telephone: 312-886-1616 Fax: 312-886-0351 |
| Los Angeles Metropolitan Office | Los Angeles Metropolitan Area | 888 S. Figueroa, Suite 1850 Los Angeles, CA 90012 Telephone: 213-202-3950 Fax: 213-202-3961 |
| Washington, DC Metropolitan Office | Washington, DC Metropolitan Area | 1990 K Street NW Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545 |

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