



U.S. Department
of Transportation

**Federal Transit
Administration**

PROPOSED CIRCULAR

FTA C 9300.xx

Date

**Subject: CAPITAL INVESTMENT PROGRAM GUIDANCE AND APPLICATION
INSTRUCTIONS**

1. **PURPOSE.** This circular is a re-issuance of guidance on the administration of the Capital Investment Program under 49 U.S.C. 5309. This revision incorporates provisions of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), [Public Law 109-59] and includes the most up-to-date available guidance for the program.
2. **CANCELLATION.** This circular, when final, will cancel Federal Transit Administration (FTA) Circular 9300.1A, “Capital Program: Grant Application Instructions,” dated October 1, 1998.
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 provision of this circular to the extent permitted by Federal law or regulation.
5. **FEDERAL REGISTER NOTICE.** (This will be inserted when the final circular is adopted).
6. **AMENDMENTS TO THE CIRCULAR.** FTA reserves the right to amend this circular in order to update references to requirements contained in other revised or new guidance and regulations that undergo notice and comment procedures, without further notice and comment on this circular.
7. **ACCESSIBLE FORMATS.** This document is available in accessible format upon request. Paper copies of this circular as well as information regarding accessible formats may be obtained by calling FTA’s Administrative Services Help Desk, at: 202-366-4865. The Federal Relay Service (FRS) is a Government system to support individuals with hearing

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/ S /Original signed by
James S. Simpson
Administrator

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CAPITAL INVESTMENT PROGRAM CIRCULAR

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CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION (FTA). FTA is one of ten operating administrations within the U.S. Department of Transportation (DOT). Headed by an Administrator appointed by the President of the United States, FTA functions through a Washington, DC, headquarters office, ten regional offices, and five metropolitan offices. These offices assist transit agencies in the States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa.

Public transportation includes, but is not limited to, buses, heavy rail, light rail, commuter rail, fixed guideway, passenger ferry boats, trolleys, inclined railways, people movers, vans, and aerial tramways. Public transportation can be either fixed-route or demand-response service.

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 grant 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. Congress amends FTA's authorizing legislation every four to six years. FTA's most recent authorizing legislation is the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, signed into law on August 10, 2005. SAFETEA-LU authorizes FTA programs from Federal Fiscal Year (FY) 2006 through FY 2009. Changes have been added to this circular to reflect the SAFETEA-LU changes to Federal transit law and to reflect changes required by other laws that have become effective since the circular was last published in 1998.
3. HOW TO CONTACT FTA. FTA's regional and metropolitan offices are responsible for the provision of financial and technical assistance to FTA recipients and oversight of grant implementation for most FTA programs. Certain specific programs are the responsibility of FTA headquarters. Inquiries should be directed to either the regional or metropolitan office responsible for the geographic area in which you are located. See Appendix D for specific regional and metropolitan contact information.

For further information, visit the FTA 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, Fifth Floor
Washington, DC 20590
Phone: 202-366-4043
Fax: 202-366-3472

4. GRANTS.GOV. FTA posts all competitive grant opportunities on Grants.gov. Grants.gov is the one website for information on all discretionary Federal grant opportunities. Led by the U.S. Department of Health and Human Services (DHHS) and in partnership with Federal grant-making agencies, including 26 agencies, 11 commissions, and several States, Grants.gov is one of 24 government-wide E-government initiatives. It is designed to improve access to government services via the Internet. More information about Grants.gov is available at <http://www.grants.gov>.
5. DEFINITIONS. All definitions in 49 U.S.C. 5302(a) and 5309 apply to this circular, as well as the following definitions:
 - a. Alternatives Analysis: A study conducted as part of the transportation planning process required under 49 U.S.C. Sections 5303 and 5304, which evaluates all reasonable mode and alignment alternatives for addressing a transportation problem in a corridor or subarea. Alternatives Analysis results in the selection of a Locally Preferred Alternative (LPA) by the chief executive officers or official boards of the sponsoring governmental agency(ies) and the Metropolitan Planning Organization(s) (MPOs) with jurisdiction and through a public process. An alternatives analysis also provides sufficient information to enable FTA to evaluate and rate a potential New Starts project against the project justification and local financial commitment criteria as required by 49 CFR Part 611 for those projects seeking New Starts funding.
 - b. Bus Rapid Transit (BRT): A series of coordinated improvements in a transit system's infrastructure, equipment, operations, and technology that give preferential treatment to buses on urban roadways. The intention of BRT is to reduce bus travel time, improve service reliability, increase the convenience of users, and increase transit ridership.
 - c. Capital Investment Project: A project eligible under 49 U.S.C. 5309, including new fixed guideway systems and extensions to existing fixed guideways, fixed guideway modernization; replacement, rehabilitation and purchase of buses and related equipment and the construction of bus-related facilities; and corridor improvements.
 - d. Clean Diesel Bus: A passenger bus with a diesel engine certified to meet the Environmental Protection Agency's (EPA's) heavy-duty engine emissions standards for model years 2007 and later.
 - e. Clean Fuel Bus: A passenger bus used to provide public transportation that is powered by compressed natural gas (CNG); liquefied natural gas; biodiesel fuels; batteries; alcohol-based fuels; hybrid electric; fuel cell; clean diesel (to the extent allowed under

49 U.S.C. 5308); or other low or zero emissions technology that the Administrator of EPA has certified sufficiently reduces harmful emissions.

- f. Designated Recipient: For the Clean Fuels Grant Program, a designated recipient as defined in 5307(a)(2) for an urbanized area over 200,000 in population, and a State for an urbanized area with a population of less than 200,000, for an area that is designated as a nonattainment area for ozone or carbon monoxide under Section 107(d) of the Clean Air Act (CAA) (47 U.S.C. 7407(d)); or is a maintenance area for ozone or carbon monoxide. 49 U.S.C. 5308(a)(4). All designated recipients are public entities.
- g. Eligible Applicant: For capital investment grants States, or local governmental authorities, including municipalities and other political subdivisions of a State; Indian tribes; public agencies and instrumentalities of one or more States; and certain public corporations, boards, and commissions established under State law.
- h. Fixed Guideway: Any transit service that uses and occupies a separate right-of-way or rails for the exclusive use of public transportation and other high occupancy vehicles, or uses a fixed catenary system and a right-of-way usable by other forms of transportation. The term includes, but is not limited to, heavy rail, commuter rail, light rail, trolleybus, aerial tramway, inclined plane, cable car, automated guideway transit, ferryboats, that portion of motor bus service operated on exclusive or controlled rights-of-way, and high-occupancy vehicle (HOV) lanes.
- i. Fixed-Route System: Public transportation service provided in vehicles operated along pre-determined routes according to a fixed schedule.
- j. Full Funding Grant Agreement (FFGA): A document that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding a New Starts project as required by 49 U.S.C. 5309(d)(1) and (g)(2).
- k. Joint Development: Public transportation improvements that enhance economic development or incorporate private investment and that otherwise meet the statutory terms found at 49 USC 5302(a)(1)(G). A *Federal Register* notice (72 FR 5788, February 7, 2007) covers this topic in detail.
- l. Maintenance Area: Any geographic region of the United States that EPA previously designated as a nonattainment area for one or more pollutants pursuant to the CAA Amendments of 1990, and subsequently redesignated as an attainment area subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended, (42 U.S.C. 7401 et seq.)
- m. Master Agreement: The FTA official document containing substantially all FTA and other cross-cutting Federal requirements applicable to FTA recipients and their projects. The Master Agreement is generally revised annually. The Master Agreement is incorporated by reference and made part of each FTA grant, cooperative agreement, and amendment thereto.

- n. Metropolitan Planning Area (MPA): The geographic area determined by agreement between by the Metropolitan Planning Organization (MPO) for the metropolitan area and the Governor, for which the metropolitan transportation planning process is carried out.
- o. Minimum Operable Segment (MOS): The purpose of selecting the MOS is to identify a segment of the Locally Preferred Alternative that provides the most cost-effective solution with the greatest benefits for the project. The MOS must be able to function as a stand-alone and not be dependent on any future segments being constructed.
- p. National Ambient Air Quality Standard (NAAQS): Those standards established pursuant to Section 109 of the CAA (42 U.S.C. 7401 et seq.)
- q. New Fixed Guideway Capital Project: A minimum operable segment of a capital project for a new fixed guideway system or extension to an existing fixed guideway system.
- r. New Start: A new fixed guideway capital project for which the Federal assistance provided or to be provided under Section 5309 is \$75 million or more, or that has a total project cost of \$250 million or more, both in year of expenditure dollars.
- s. Nonattainment Area: Any geographic region of the United States that has been designated by EPA as a nonattainment area under Section 107 of the CAA for any pollutants for which NAAQS exist. 42 U.S.C. 7401 et seq.
- t. Non-profit Organization: A corporation or association determined by the Secretary of the Treasury to be an organization described by 26 U.S.C. 501(c) which is exempt from taxation under 26 U.S.C. 501(a) or one which has been determined under State law to be non-profit and for which the designated State agency has received documentation certifying the status of the non-profit organization.
- u. Project Construction Grant Agreement (PCGA): An instrument that defines the scope of a project, the Federal financial contribution, and other terms and conditions for funding Small Starts projects as required by 49 U.S.C. 5309(e)(7).
- v. Recipient: An entity that receives funds directly from FTA, whether as a designated recipient or as an eligible applicant. By statute all recipients are States or local governmental authorities; see 49 USC 5309(b).
- w. Small Start: A new fixed guideway capital project for which the Federal assistance provided or to be provided under Section 5309 is less than \$75 million and has a total project cost of less than \$250 million, both in year of expenditure dollars.

- x. Subrecipient: For Bus and Bus Facilities projects, a subrecipient refers to public agencies (States or local governmental authorities), private companies engaged in public transportation, or private non-profit organizations that receive a grant under the Bus and Bus Facilities program indirectly through a recipient.
 - y. Urbanized Area (UZA): means a geographic area with a population of 50,000 or more, as designated by the Bureau of the Census.
 - z. Very Small Starts: Project that are demonstrably cost effective and must either (a) meet the definition of a fixed guideway for at least 50 percent of the project length in the peak period, (b) be a **new** fixed guideway project, or (c) be **new** corridor-based bus projects with **all of** the following minimum elements: substantial transit stations, traffic signal priority/pre-emption, to the extent, if any, that there are traffic signals on the corridor, low-floor vehicles or level boarding, branding of the proposed service and 10 minute peak/15 minute off peak headways or better while operating at least 14 hours per weekday.
6. PROGRAM HISTORY. The Capital Investment Program is authorized by 49 U.S.C. 5309. Under this section, the Secretary of Transportation is authorized to make grants to assist in financing specified capital projects that will benefit the nation's transit systems. The Secretary has delegated that authority to the FTA Administrator.

The New Starts process was first outlined by a Statement of Policy in 1976 and was refined in subsequent Statements of Policy in 1978, 1980, and 1984. In the Surface Transportation and Uniform Relocation Assistance Act of 1987, the process called for in the Statements of Policy was enacted into law, and was subsequently modified by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). A Statement of Policy in 1997 and further amendments in the Transportation Equity Act for the 21st Century (TEA-21), enacted in 1998, culminated in a final rule on Major Capital Investments (49 CFR Part 611), issued in December 2000, with an effective date of April 2001.

The Fixed Guideway Modernization Program was originally designed to ensure the proper renovation of the nation's older rail transit systems, and the program continues to ensure that as Federal New Starts investment projects age, they can be modernized. This program provides support for heavy and light rail systems and equipment, as well as ferryboat systems, including the replacement and rehabilitation of existing rail fleets, and restoration of rail facilities, such as stations, track, yards, and shops.

Before FY 1992, fixed guideway modernization funds were allocated on a discretionary basis. Since the passage of ISTEA in 1991, funds have been allocated by formula. TEA-21 modified the ISTEA formula by increasing the number of funding tiers from four to seven. There were no changes to the formula under SAFETEA-LU. For the first four tiers, funds are allocated based on data used to apportion funds in FY 1997. Funding in the last three tiers is apportioned based on the latest available route miles and revenue vehicle

miles on segments at least 7-years-old, as reported to the National Transit Database. One goal of this formula change was to shift a portion of new fixed guideway modernization funds to cities with relatively newer rail transit systems. The funding in these three additional tiers is apportioned based on actual route-miles and revenue vehicle-miles on segments at least 7- years-old.

FTA's Bus Program originated as part of the Section 3 discretionary program established by the original transit authorization in 1964. In 1974, with establishment of the Section 5 formula program, the discretionary Bus Program was limited to extraordinary costs that could not be funded with Section 5 funds. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) provided that 10 percent of the total available for Section 3 would be allocated for buses. With 10 percent available for any Section 3 purpose, the budget process always allocated 20 percent to the Bus Program. ISTEA officially changed the allocation to 20 percent of available funds of Section 3 for bus purposes. The Section 3 program was codified as Section 5309 in 1994. The allocation percentages changed slightly with SAFETEA-LU. Otherwise, the program has remained essentially the same since 1987.

Section 3010 of SAFETEA-LU made a number of changes to 49 U.S.C. 5309. For example, Section 5309 eligible projects now include only new fixed guideway capital projects, fixed guideway modernization, the Bus Program, and projects to develop corridors to support new fixed guideway projects. Projects that were considered eligible under Section 5309 following the passage of TEA-21, including the capital costs of coordinating public transportation with other modes of transportation, the introduction of new technology, and public transportation projects to meet the special needs of elderly persons and persons with disabilities, are no longer specifically listed as eligible projects in Section 5309. However, 5309 Bus Capital projects (or elements of Fixed Guideway Modernization or New Starts projects) that address these areas of interest and are otherwise eligible activities can still be funded under Section 5309. In addition, a number of changes were made to the New Starts Program., including the addition of the "Small Starts" Program. Changes to the Capital Investment Program are addressed in this circular as well as in rulemakings and policy statements specific to the New Starts Program.

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CHAPTER II

PROGRAM OVERVIEW

1. STATUTORY AUTHORITY. The Capital Investment Program is authorized under the provisions set forth in the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), enacted on August 10, 2005, as codified at 49 U.S.C. 5309 (“Section 5309”). The Secretary may make grants to assist State and local governmental authorities in financing capital projects for bus and bus facilities, fixed guideway modernization, new fixed guideway systems, and development of corridors to support new fixed guideway systems. In addition, 49 U.S.C. 5339 (“Section 5339”) authorizes funding for the Alternatives Analysis Program, as defined in Section 5309, and 49 U.S.C. 5308 (“Section 5308”) authorizes the Clean Fuels Bus Grant Program.

In accordance with 49 U.S.C. 5309(m) and 5338(b) and (c), Capital Investment Program funds are available in the approximate proportions shown below. Annual appropriations acts may alter the following percentages:

- a. Bus Program—20–22 percent;
- b. Fixed Guideway Modernization—37–40 percent;
- c. New Starts and Small Starts—40–41 percent;
- d. In accordance with 49 U.S.C. 5327(c)(1)(C), up to 1 percent of the funds appropriated under the categories listed above are set aside for Federal Transit Administration (FTA) project oversight activities.

The Catalog of Federal Domestic Assistance (CFDA) numbers used in the Capital Investment Program for each category are:

- e. Bus Program—20.500;
 - f. Fixed Guideway Modernization—20.500;
 - g. New Starts, Small Starts and Very Small Starts—20.500;
 - h. Alternatives Analysis—20.522;
 - i. Clean Fuels—20.519.
2. PROGRAM GOAL. The Capital Investment Program provides funds to invest in capital equipment and facilities to allow for efficient and improved public transportation services. For bus and bus related facilities, the program provides for extraordinary capital needs that require resources in excess of funds supplied by formula funding or to advance important special emphasis initiatives; for New Starts and Small Starts, the program provides funds to

construct new and expand existing fixed guideway systems; for fixed guideway modernization, the program provides funds to rehabilitate and renovate older fixed guideway systems.

3. ELIGIBLE PROJECTS. Projects eligible for funding under the Capital Investment Program include those defined in Section 5309, clean fuels buses as defined in Section 5308 when purchased with Section 5309 funds, as well as certain capital items defined in Section 5302(a)(1) when those items are integral to a capital investment project. Eligible projects and activities are divided into two areas: Assets for which FTA Provides Assistance and Additional Eligible Project Activities.
 - a. Assets for which FTA Provides Assistance. Section 5309 authorizes the Secretary to make grants for buses and bus facilities, fixed guideway modernization, New Starts and Small Starts, and the development of corridors to support new fixed guideway capital projects. These encompass “capital investment projects” as defined in this circular.
 - (1) Bus and Bus-related Facilities. The major purchases under this category are buses and other rolling stock, ferry boats, ancillary equipment, and the construction of bus facilities (i.e., maintenance facilities, garages, storage areas, waiting facilities and terminals, transit malls and centers, and transfer facilities and intermodal facilities). This category also includes bus rehabilitation and leasing, park-and-ride facilities, parking lots associated with transit facilities, and bus passenger shelters.
 - (2) Modernization of Fixed Guideway Systems. This includes infrastructure improvements such as track and right of way rehabilitation, modernization of stations and maintenance facilities, rolling stock purchase and rehabilitation, and signal and power modernization. Modernization of ferry terminals and the transit portion of ferry boats are also eligible costs.
 - (3) New Fixed Guideway Capital Projects (New Starts and Small Starts). Capital projects under this category include preliminary engineering (PE), acquisition of real property (including relocation costs), final design and construction, and initial acquisition of rolling stock for the system. Small Starts also includes corridor bus projects that either operate in a separate right of way during peak hours or contain significant investment in corridor-based bus improvements.
 - (4) Corridors to Support New Fixed Guideway Projects. These projects may include protecting rights-of-way through acquisition; construction of dedicated bus and high-occupancy vehicle (HOV) lanes; and park and ride lots. These projects may also include “nonvehicular” capital improvements that will increase transit use in the corridor. Examples include additional safety features that would encourage riders to use transit, walkways and pathways that make transit more readily available, bus shelters, and joint development projects that would improve the livability of a community and increase the benefits transit offers. These projects are eligible under both the New Starts and Small Starts programs.

- b. Additional Eligible Project Activities. These activities include elements that may be incorporated into a Section 5309 capital investment grant, as applicable. For example, a bus acquisition may include but is not limited to, buses powered by clean fuels, or that include ITS elements. A New Starts, Small Starts, or fixed guideway modernization project may include, but is not limited to, projects to refine security and emergency response plans and projects to incorporate design and art.
- (1) Clean Fuels (Section 5308). Purchases under this category are passenger vehicles used to provide public transportation and powered by compressed natural gas (CNG); liquefied natural gas; biodiesel fuels; batteries; alcohol based fuels; hybrid electric; fuel cell; clean diesel (ultra low sulfur content); or other low or zero emissions technology. This category also includes constructing or leasing clean fuel buses or electrical recharging facilities for such buses or constructing new or improving existing public transportation facilities to accommodate clean fuel buses.
 - (2) Introduction of New Technology. When integral to a capital investment project, Section 5309 funds may be used for transit-related technology, such as innovative and improved products that provide benefits to transit, including intelligent transportation systems (ITS). ITS refers to the use of electronics, communications, or information processing used singly or in combination to improve efficiency or safety of a transit or highway system. Examples of transit-related ITS projects include real-time bus arrival information available to passengers through electronic displays at bus stops, automatic vehicle locations, automated passenger counters, vehicle component monitoring (diagnostics), advanced fare payment methods, computer-aided dispatching and real-time ridesharing, and automated information for travelers using more than one mode of transportation.
 - (3) Design and Art in Transit. When integral to a capital investment project, Section 5309 funds may be used to incorporate design and artistic considerations into transit projects as described in the most recent version of FTA Circular 9400.1, “Federal Transit Administration Design and Art in Transit Projects”.
 - (4) Leasing. When a recipient leases capital assets from another party, leasing costs are eligible for capital assistance, provided leasing is more cost effective than purchase or construction. Leasing costs eligible for capital assistance include finance charges and ancillary costs such as delivery and installation charges. Leasing of capital assets requires compliance with 49 CFR Part 639 “Capital Leases” and OMB Circular A-94 which prescribes the discount factors.
 - (5) Rail Trackage Agreements. Capital portions of rail trackage rights agreements are eligible for Capital Investment Program assistance.
 - (6) Crime Prevention and Security. When integral to a capital investment project, Section 5309 funds may be used for projects designed to enhance the security of the transit environment as described in 49 U.S.C. 5302(a)(1)(J).

- (7) Education and Training. When integral to a capital investment project, Section 5309 funds may be used for education and training purposes as described in 49 U.S.C. 5315(d).
 - (8) Innovative Financing. When integral to a capital investment project, Section 5309 funds may be used to pay for costs incurred to secure or initiate an innovative financing technique except that eligible costs may not be more than the cost of the most favorable financing terms reasonable available at the time of borrowing.
 - (9) Public Transportation Improvements. When integral to a capital investment project, Section 5309 funds may be used for projects that enhance economic development or incorporate private investment, including pedestrian and bicycle access to a public transportation facility, renovation of historic transportation facilities, and establishment of new or enhanced coordination between public transportation and other transportation as described in 49 U.S.C. 5302(a)(1)(G).
 - (10) Bicycle Facilities. When integral to a capital investment project, Section 5309 funds may be used for bicycle facilities as described in 49 U.S.C. 5319.
 - (11) Emphasis Areas. From time to time, FTA will establish areas of emphasis to which it will give priority. These emphasis areas are typically aimed at improving customer service, increasing transit capacity, or enhancing transit operations.
4. APPORTIONMENTS. FTA is required to apportion funds appropriated for the Urbanized Area Formula Program (Section 5307) for any fiscal year no later than the tenth day following the date on which the funds are appropriated by Congress, or on October 10 of the fiscal year, whichever is later. Apportionments are published in the Federal Register. FTA includes fixed guideway modernization projects in the Federal Register Notice that announces the urbanized area formula apportionments. FTA also publishes Congressional allocations of Bus and New Start funds in the same notice. Please see Chapter III, Bus Program; Chapter IV, Fixed Guideway Modernization; and Chapter V, New Starts for additional specific apportionment information.
 5. FUNDS AVAILABILITY. Capital Investment Program funds for Bus and New Starts are available for obligation during the fiscal year of apportionment plus two years. For example, funds apportioned in fiscal year 2007 are available until the end of fiscal year 2009 (September 30, 2009). In the case of fixed guideway modernization, funds are available during the fiscal year of apportionment plus three years. Bus and New Starts funds remaining unobligated at the end of the period of availability may be extended by Congress or reprogrammed for other Section 5309 projects. Any fixed guideway modernization funds remaining unobligated at the end of the period of availability are added to the next year's program apportionment and are reapportioned.
 6. FEDERAL/LOCAL MATCHING REQUIREMENTS.

- a. The Federal share of eligible capital costs shall be 80 percent of the net capital project cost, unless the grant recipient requests a lower percentage. All of the local share shall be provided from an undistributed cash surplus, a replacement or depreciation cash fund or reserve, real property donations or new capital. Some examples of local match that may be used for the local share include: State or local appropriations; dedicated tax revenues; private donations; toll revenue credits; and net income generated from advertising and concessions. FTA must review and concur in-kind contribution of any value before Federal funds are expended or the value is used as local match.
- b. Exceptions. The Federal share may exceed 80 percent for certain projects related to the Americans with Disabilities Act (ADA), the Clean Air Act (CAA), and certain bicycle projects as follows:
 - (1) Americans with Disabilities Act (ADA). The Federal share is 90 percent for the cost of vehicle-related equipment or facilities attributable to compliance with the Americans with Disabilities Act of 1990 (49 U.S.C. 12101 et seq.)
 - (2) Clean Air Act (CAA). The Federal share is 90 percent for the cost of vehicle-related equipment or facilities (including clean-fuel or alternative-fuel vehicle-related equipment or facilities) attributable to compliance with the Clean Air Act (42 U.S.C. 7401 et seq.)

When acquiring vehicle-related equipment to be in compliance with the ADA and the CAA, a recipient may choose from two options in calculating the Federal and local shares. In one option—applicable to the purchase of buses, vans, rail vehicles, and equipment for such vehicles—the grant applicant may itemize the cost of specific, discrete, vehicle-related equipment being purchased to be in compliance with the ADA and the CAA. The Federal share is 90 percent of the cost for these itemized elements.

In the other option, applicable for the purchase of buses and vans, a grant applicant may apply for an 83 percent Federal share of the total vehicle cost. The 83 percent is a blended figure representing 80 percent of the vehicle and 90 percent of the vehicle-related equipment to be acquired in compliance with the ADA and CAA.

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

FTA will consider facility-related expenses on a case-by-case basis. Recipients should contact the appropriate FTA Regional Office for more information. Facility related expenses such as building renovations or rehabs are eligible projects.

- (3) Bicycle Facilities. As provided in 49 U.S.C. Section 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, or;
 - (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.
- c. Revenue Bond Proceeds as Local Share. A recipient of Section 5309 or 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 urbanized area provided by the State and affected local governmental authorities during the next three fiscal years, as programmed in the Statewide Transportation Improvement Program (STIP), is not less than the aggregate amount provided by the State and affected local governmental authorities in the urbanized area during the preceding three fiscal years.
- d. Debt Service Reserve. Transit agencies that use debt financing in the form of bonds are often required by the terms of the Bond Indenture to establish a Debt Service Reserve (DSR). The Bond Trustee is required to establish a DSR with the proceeds of the bond issue. Usually, the DSR remains untouched for the term of the bonds, and is used to make a subsequent debt service payment ONLY if the recipient has insufficient funds to do so. If the DSR is used in this way, the recipient must replenish the DSR from its own funds and within the time frames outlined in the Bond Indenture or be in default. When there is no default, the balances remaining in the DSR are used to make the last debt service payment to the extent of such balances. Required DSRs may now be funded with FTA grant funds. However to the extent of FTA funding, any particular DSR may only be used to pay principal and/or interest on the bonds. Therefore, recipients intending to fund a DSR with FTA funds may also wish to include some non-FTA funds if the terms of the Bond Indenture allow use of DSR for other items such as late fees or Bond Trustee expenses related to default.
- e. Credit for Toll Revenue Expenditures. A State may use, as a credit toward a project's local share, certain expenditures the State 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 grant applicant wishing to apply the provisions of 23 U.S.C. Section 120(j) should discuss with its State Department of Transportation (DOT) the availability of toll credits for use as local share in matching FTA grants. The Federal Highway Administration (FHWA) oversees the determination of toll revenue credit within each State.
- f. Deferral of Payment of Local Share. A grant applicant may request that the local share for a project be deferred until 100 percent of the Federal funds have been drawn down. A request for the deferral should accompany the grant application. Approval is

contingent upon the deferral's resulting in benefits to transit and upon the grant applicant's demonstrating that the applicant has the financial capacity to complete the project. The deferred local share policy is not applicable to New Starts, Small Starts, and Very Small Starts projects. A grant applicant requesting deferred local share should refer to the Federal Register Notice, "Policy Statements on Local Share Issues," (57 FR 30880, July 10, 1992). See also the most recent annual *Federal Register* Notice of FTA apportionments and allocations

- g. Alternative Financing. Grant applicants, especially applicants 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, Federal, State, local, and private in support of transit capital needs. Some approaches grant applicants might investigate include: capital leasing arrangements, joint development, State economic development or revolving loan funds, State Infrastructure Bank loans, exchanges of real property, and in-kind contributions. For projects exceeding \$50 million, recipients may wish to consider a loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), as amended by Section 1601 of SAFETEA-LU, (23 U.S.C. 601 et seq.) TIFIA loans or loan guarantees must be repaid with non-Federal, dedicated funds or user fees.

7. RELATIONSHIP TO OTHER PROGRAMS.

- a. Statewide & Metropolitan Transportation Planning (Sections 5303, 5304, 5306). Annually, FTA apportions statewide planning program funds to the States for use in the development of their statewide transportation plans and STIPs for all areas of the State.

States may suballocate some of their statewide planning funds to Metropolitan Planning Organizations (MPOs) in urbanized areas. States may also use their statewide planning funds for public transportation, research, development, and technology uses.

FTA also annually apportions Metropolitan Planning Program (MPP) funds to the State. States allocate these funds to their MPOs. MPOs may use the MPP funds for planning in urbanized areas.

An applicant for or recipient of Capital Investment Program assistance in an urbanized area should be an active participant in the metropolitan transportation planning process in order to be certain that the transit projects for which assistance is desired are properly evaluated for inclusion in the metropolitan transportation plan, the metropolitan Transportation Improvement Program (TIP) and the STIP. Applicants for and recipients of Capital Investment Program assistance in a metropolitan area should participate in the local MPO's planning activities, specifically in the development of the metropolitan transportation plan and the development of the TIP to ensure that proposed projects are adequately considered for inclusion in the TIP and STIP. Applicants for and recipients of Capital Investment Program funds in a nonurbanized area are encouraged to participate in the statewide planning process.

- b. Urbanized Area Formula Assistance Program (Section 5307). Title 49 U.S.C. 5307 provides funding for capital assistance, planning, and operating assistance for public transportation in urbanized areas. FTA apportions these funds to the Governor or the Governor's designee(s) for use in small urbanized areas with populations of less than 200,000. In large urbanized areas, FTA makes these funds available to the designated recipient(s) for capital and planning assistance.

Section 5307 funds may be used for capital expenses, including preventive maintenance for buses purchased with Section 5309 funds and for the capital cost of contracting.

Guidance for Section 5307 is found in the current FTA Circular 9030.1.

- c. Nonurbanized Area Formula Assistance Program (Section 5311). Title 49 U.S.C. 5311 provides funding for capital assistance, planning, and operating assistance for public transportation in nonurbanized areas. FTA apportions these funds to the Governor or the Governor's designee.

Many States look to the Section 5309 Bus Capital Program to supplement vehicles acquired under Section 5310 and Section 5311 or to construct facilities. While distribution of capital program funds is often determined according to Congressional direction, FTA encourages States to apply on behalf of nonurbanized areas.

Guidance for Section 5311 is found in the current FTA Circular 9040.

- d. The Elderly Individuals and Individuals with Disabilities Program (Section 5310). Title 49 U.S.C. Section 5310 authorizes FTA to make grants to States and local governmental authorities for public transportation capital projects, planned, designed, and carried out to meet the special needs of elderly individuals and individuals with disabilities.

As with the Section 5311 program, many States look to the Section 5309 Bus Capital Program to supplement vehicles acquired under Section 5310 and Section 5311 or to construct facilities. While distribution of capital program funds is often determined according to Congressional direction, FTA encourages States to apply on behalf of nonurbanized areas.

Guidance for the Section 5310 Program can be found in the current FTA Circular 9070.

- e. FHWA Flexible Funds. The Surface Transportation Program (STP) funds, among others, are a source of flexible funding for both highway and transit projects. At the State's discretion, funds allocated under the STP for highways and transit in rural areas may be used for any capital transit project eligible for assistance under 49 U.S.C. Chapter 53, and for vehicles and facilities, whether publicly or privately owned, that are used to provide intercity passenger service by bus. Certain other program funds, for example, Congestion Mitigation and Air Quality (CMAQ) Improvement Program, may also be used for either highway or transit projects. These flexible funding sources may

be used to supplement FTA formula programs, and are transferred from FHWA into the Section 5307, 5311, or 5310 programs for eligible capital projects, or in the case of CMAQ, to support operating costs of new service for up to three years and may supplement FTA program funds for the same or related projects. Flexible fund transfers may be a potential source of additional funding for capital projects where formula and Section 5309 resources are insufficient.

- f. State Infrastructure Banks (SIB). The State Infrastructure Bank (SIB) Program, codified at 23 U.S.C. 190, provides that all States, Puerto Rico, the District of Columbia, American Samoa, Guam, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands are authorized to enter into cooperative agreements with the Secretary of Transportation to establish financial entities that provide various types of transportation infrastructure credit assistance for fiscal years 2005–2009.

This program is a continuation and expansion of similar programs created by the National Highway System Act of 1995 (Pub. L. 104–59) and the Transportation Equity Act for the 21st Century (TEA–21). It gives States the capacity to increase the efficiency of their transportation investment and significantly leverage Federal resources by attracting non-Federal public and private investment. The program provides greater flexibility to the States by allowing other types of project assistance in addition to grant assistance. States may use Section 5309 funds to capitalize an SIB as specified at 23 U.S.C. 190(d)(2).

8. LEGAL, FINANCIAL, AND TECHNICAL CAPACITY. FTA may not make a grant or loan under the Capital Investment Program unless it finds that the grant applicant has or will have the legal, financial and technical capacity to carry out the project.
 - a. Legal Capacity. Before FTA may award a grant for a capital investment 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 grant applicant must have appropriate authority designated by State or local law or by the governing body of the grant applicant. Although FTA does not require grant applicants to submit an Opinion of Counsel with each grant application, first-time applicants are required to submit an Opinion of Counsel as described below. FTA also retains the discretion to require any grant applicant to submit a legal opinion and other supporting documentation.
 - (1) 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. While the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the authority to apply for subsequent grants will be certified to 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. (See, e.g., <http://www.fta.dot.gov/documents/07 - Attachment C - FY2007 Certs and Assurances.doc>).

- (2) The grant applicant is expected 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 change in status will require a new Opinion of Counsel.
 - (3) The authority of those officials acting on behalf of a public body grant applicant generally must be demonstrated by a resolution from the governing body of the grant applicant, a statute, or an ordinance showing 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 the grant applicant's first application. A sample format is provided in Chapter IX as Example "Authorizing." For subsequent grant applications, FTA will rely on the annual certification as shown in Appendix C. The Designated Signature Authority submitted for TEAM must agree.
- b. Financial Capacity. Before FTA may award a grant for a capital investment 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 Capital Investment Program 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 that Federal funds are drawn down. The financial capacity of a grant applicant that has previously received a Federal grant will be revealed in its requisite annual independent organization-wide audit required by Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" dated June 30, 1997.

The most current FTA Circular 7008.1, "FTA Financial Capacity Policy," defines the basis upon which FTA will make determinations of a grant applicant's financial capacity to receive a Capital Investment Program grant. The directive refers to two aspects of financial capacity: One is the general financial condition of the transit operator and the second is 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 documented in audited annual financial statements and other financial reports which address working capital levels, current assets versus current liabilities, capital accounts, debt levels, trends in transit costs compared to available revenues, and trends in relevant economic indicators.

The second aspect of financial capacity is financial capability. 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 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 and plan, and the 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 Capital Investment Program grant applicant when FTA approves the STIP and again when FTA selects projects for Capital Investment Program 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 upon the scale of the proposal, FTA may ask the applicant for supporting information such as that contained in the TIP, short-range transit plans, three-to-five year projection of capital and operating revenues and expenses, capital budgets, reports on financial operations such as periodic financial statements and audit reports, or identification of State and local tax revenues.

- c. Technical Capacity. Before FTA may award a Capital Investment Program 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 Capital Investment Program grant must demonstrate that the applicant 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, a certification that the grant applicant will comply with all requirements applicable to its grant application and to the grant agreement, when

awarded, is required. Guidelines for management practices can be found in the most current FTA Circular 5010.1, "Grant Management Guidelines."

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CHAPTER III

BUSES AND RELATED ACQUISITIONS

1. **INTRODUCTION.** The Bus and Bus-Related Facilities portion of the Capital Investment Program (Bus Program) provides capital assistance for new and replacement vehicles and related equipment and facilities. Funds are allocated on a discretionary basis by Congress each year and are primarily intended to support one-time or periodic capital needs left unmet by Federal formula funding or by local or State sources of funding.
2. **ALLOCATION OF FUNDS AND PERIOD OF AVAILABILITY.** Funding is appropriated by Congress each fiscal year. These annual appropriations may include funding designations for specific projects or purposes. It is important to note that these allocations are subject to change by subsequent appropriations or other acts of Congress. The Federal Transit Administration (FTA) may allocate any funds not allocated by Congress on a discretionary basis.

Funds designated for specific bus program projects remain available for obligation for three fiscal years, which includes the fiscal year in which the amount is appropriated plus two additional years. For example, funds apportioned in fiscal year 2007 are available until the end of fiscal year 2009 (September 30, 2009). Bus program funds not obligated in an FTA grant by the end of this period will generally be made available for other projects.

3. **ELIGIBLE PROJECTS.** Some examples of projects eligible under the Bus Program include:
 - a. the acquisition of vehicles for fleet and service expansion, including clean fuel vehicles;
 - b. maintenance and administrative facilities;
 - c. transfer facilities, bus malls, transportation centers, intermodal terminals, and park-and-ride stations;
 - d. acquisition of replacement vehicles and bus rebuild;
 - e. passenger amenities such as passenger shelters and bus stop signs;
 - f. accessory and miscellaneous equipment such as mobile radio units, supervisory vehicles, fareboxes, computers, and shop and garage equipment;
 - g. Intelligent Transportation Systems (ITS); and
 - h. Ferry vessels and facilities specifically listed in 49 U.S.C. 5309(m).

- i. Costs incurred in arranging innovative financing for eligible projects under the bus category as a reimbursement. (See Chapter II; paragraph 7(g) concerning innovative financing.)
 - j. Fixed guideway bus projects, such as Bus Rapid Transit (BRT) projects. Fixed guideway bus projects do not have to be advanced through the New Starts or Small Starts processes if funded under the Bus Program instead of the New Starts or Small Starts Programs. However, if the project funded under the Bus Program is also being funded under the New Starts or Small Starts Programs, that project must meet all New Starts or Small Starts Program requirements. In this case, the funding from the Bus Program will be counted as part of the total project cost as “other” Federal funds. (See Chapter V for additional information on the New Starts and Small Starts Programs).
4. ENVIRONMENTAL CONSIDERATIONS. FTA’s environmental review process has two primary objectives: to fully disclose the probable environmental impacts resulting from a proposed project and to develop measures that will avoid, minimize, or mitigate adverse environmental effects. Before FTA may approve a Capital Investment Program grant, FTA must make a finding that either no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect.

Chapter VI, paragraph 7, describes FTA’s environmental review procedures and the related Capital Investment Program application requirements. The discussion here provides supplementary information specific to the Bus Program.

- a. Projects That Do Not Have Environmental Impacts. Many projects and activities assisted with Bus Program funds do not involve significant environmental impacts. The joint Federal Highway Administration (FHWA)/FTA environmental regulations (23 CFR Part 771 and 49 CFR Part 622) use the term “Categorical Exclusion (CE)” to describe those projects that, based on past experience with similar actions, do not involve significant environmental impacts and therefore do not require the additional analysis characteristic of Environmental Assessments (EAs) or Environmental Impact Statements (EIS). Categorical Exclusions fall into two categories, those that are listed (23 CFR 771.117(c)) and do not need further analysis, and those that require additional documentation (23 CFR 771.117(d)). Consistent with the regulations, projects predetermined to be listed Categorical Exclusions include:
 - (1) the acquisition of buses to replace old buses;
 - (2) the acquisition of buses for minor fleet expansions where use of these buses can be accommodated by existing facilities;
 - (3) bus rehabilitation;
 - (4) alterations to buses or facilities to make them accessible for the elderly and persons with disabilities;

- (5) purchase and installation of bus operating or maintenance equipment to be located within an existing facility, with no significant impacts off the project site;
 - (6) installation of fencing, signs, pavement markings, small passenger shelters, and traffic signals where no substantial land acquisition or traffic disruption will occur; and
 - (7) construction of pedestrian and bicycle lanes, paths, and facilities.
- b. Projects That May Have an Environmental Impact. Projects that involve more construction have greater potential for on-site and off-site environmental impacts and must therefore be subjected to additional analysis. Examples include new construction or expansion of:
- (1) bus terminals and transfer facilities;
 - (2) bus storage and maintenance garages;
 - (3) office or administrative facilities; and
 - (4) park-and-ride facilities; and
 - (5) fixed-route ferry service.

For projects like these, the grant applicant must prepare and submit to FTA environmental documentation accompanied by the appropriate technical analysis.

Experience has shown that many construction projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible, non-residential land use where the primary access roads are adequate to handle the additional bus traffic. FTA may approve the designation of these construction projects as documented categorical exclusions (DCE) if the grant applicant provides an administrative record clearly demonstrating that the conditions stated above are met and that no significant adverse effects will result.

For any project not meeting the conditions for a CE, the grant applicant must, at a minimum, prepare an EA. In addition to documenting the impacts of the proposed project, an EA requires that the grant applicant consider alternatives to the proposed site or to the facility's design. An EA is also subject to public comment. Once the EA has been completed, FTA may issue a Finding of No Significant Impact (FONSI) if the contents of the EA support that conclusion.

If, either as a result of an EA or because of certain project characteristics evident at the outset of project planning, significant environmental impacts are identified or known to exist, an Environmental Impact Statement (EIS) will be required. For example, the new

construction or extension of a separate roadway for buses or high-occupancy vehicles not located within an existing highway right-of-way would typically require an EIS.

Federal regulations place limitations on project development while the environmental review process is being conducted. These limitations are described in Chapter VI, paragraph 7.

5. CLEAN AIR ACT. The principal Clean Air Act (CAA) requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR Part 93) and the requirements apply in areas that currently violate one or more of the National Ambient Air Quality Standards (NAAQS) (nonattainment areas) and also in areas that once violated the standards but have since been redesignated to attainment status by EPA (so-called 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 Metropolitan Planning Organization (MPO). Determining conformity for individual projects is the project sponsor's responsibility. Major transit infrastructure projects, e.g., new fixed guideway projects and extensions, will be analyzed at both the regional and local scales.

The transportation conformity regulation reserves detailed air quality analysis for large projects which 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 do not require any analysis. 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 the FTA regional office is essential in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The FTA Regional Office can also provide information on selected provisions of other laws that support clean air objectives—for example, FHWA's Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Over the years, local transit agencies have benefited greatly from this program as a supplementary source of funding for transit. The CMAQ Program has its own eligibility requirements with which FTA's Regional Offices are familiar.

6. REQUIREMENTS RELATED TO VEHICLES AND EQUIPMENT. This section contains information concerning program requirements specific to the purchase, maintenance, and operation of vehicles and equipment funded through the Bus Program. Requirements common to all Capital Investment Program applications appear in Chapter VI.
 - a. Buses in Service. The following requirements apply to any vehicle acquired with FTA funding under the Bus Program.
 - (1) Commercial Driver's License. All drivers of vehicles designed to transport 16 or more passengers (including the driver) or of vehicles which have a gross

combination weight rating of 26,001 pounds or more must have a commercial driver's license (CDL). Mechanics that drive the vehicle must also have a CDL.

- (2) Charter Operations. Title 49 U.S.C. 5323(d) places limits on the charter services that federally-funded public transportation operators may provide. The charter service regulation (49 CFR Part 604) prohibits FTA recipients from providing any charter service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide. The charter service regulation applies to both buses and vans. Any Section 5309 recipient desiring to provide charter service must publish a notice annually and determine whether there are any private charter operators willing and able to provide the service. The State or designated recipient may conduct this process for itself and subrecipients or delegate this responsibility for the subrecipients to any or all of the subrecipients. The State and designated recipients must sign a charter agreement as part of the annual Certifications and Assurances, and obtain and retain signed charter agreements from their subrecipients. [NOTE: FTA issued a notice of proposed rulemaking for charter bus in the Federal Register (72 FR 7525, February 15, 2007). Interested parties are encouraged to visit <http://www.regulations.gov> and enter the docket number FTA-2007-22657 for more information. This paragraph may change if the final rule is issued before issuance of a final FTA Circular 9300].
 - (3) School Bus Operations. Title 49 U.S.C. 5323(f) 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 (so called "tripper service"). For the purpose of FTA's school bus regulation, Headstart is a social service, not a school program. Rules for the Headstart Program limit the types of vehicles which may be used to transport children participating in a Headstart Program. FTA recipients may operate multi-functional vehicles which meet the safety requirements for school transportation, but may not provide exclusive school service.
- b. Bus Fleets. FTA has established several policies that are meant to ensure that buses purchased or leased with Federal funds are maintained and remain in transit use for a minimum normal service life and to ensure that the buses acquired are necessary for regularly scheduled transit revenue service (i.e., to meet peak service requirements with a reasonable allowance for spares).
- (1) Service Life Policy. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses and vans have been established as follows:

- (a) Large, heavy-duty transit buses (approximately 35'–40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
- (b) Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.
- (c) Medium-size, medium-duty transit buses (approximately 30'): seven years or 200,000 miles.
- (d) Medium-size, light-duty transit buses (approximately 25–35'): five years or 150,000 miles.
- (e) Other light-duty vehicles such as small buses and regular and specialized vans: four years or 100,000 miles.

Grant applicants should specify the expected service life category in requests for bids when acquiring new vehicles.

FTA calculates the value of vehicles before the end of their minimum normal service 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 normal service 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. Consistent with this policy, the suggested vehicle service life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty.

- (2) 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 (100 vehicles required and 20 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. The basis for determining a reasonable spare ratio takes local circumstances into account, but generally, the number of spare vehicles in the active fleet for recipients operating 50 or more revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum service.

For purposes of the spare ratio calculation, "vehicles operated in maximum service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, and on the week and day that maximum service is

provided. It excludes atypical days and one-time special events. Scheduled standby vehicles are permitted to be included as “vehicles operated in maximum service.”

For each grant application to replace, rebuild, or add vehicles, a grant applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, and the applicant’s conformance with FTA’s spare ratio guidelines. An applicant is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered before the grant award. A fleet status report must be submitted with each grant application to acquire rolling stock. Examples of how to enter this information in an application appear in Appendix B.

- (3) Contingency Fleet. Vehicles may be placed in an inactive contingency fleet, or “stored,” in preparation for emergencies. No vehicle may be placed in this inactive contingency fleet unless the vehicle has reached the end of its minimum normal service life. Service Life is discussed in paragraph 6(b)(1) above.

Vehicles held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan, updated as necessary, to support the continuation of a contingency fleet. A contingency plan is not an application requirement, although FTA may request information about the contingency fleet when reviewing grant applications. Contingency plans are also subject to review during FTA’s oversight reviews, including the triennial reviews required for recipients of the Urbanized Area Formula Program (5307). Any rolling stock not supported by a contingency plan will be considered part of the active fleet. Since vehicles in the contingency fleet are not part of the active fleet, they do not count in the calculation of spare ratio.

- c. Requirements Related to the Purchase of Vehicles. Grant applicants requesting funds for the purchase of vehicles must meet certain FTA requirements.
 - (1) Fleet and Service Expansion. Grant applicants seeking assistance to undertake fleet and service expansion should describe new markets they intend to serve. Vehicle needs, fleet size, projected ridership, operating costs, revenues, and spare ratio should be addressed. A fleet management plan in which future needs, projected ridership, and spare ratio are discussed must be available upon request by FTA. The source of some of this information may be documentation developed during the metropolitan and statewide planning processes, in which case summary information and precise reference to the earlier material will be acceptable. Depending on the degree of expansion, the grant applicant may wish to make available a map indicating the fleet and service expansion locations.

In planning for service expansion local criteria should be used in the identification of 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. Care should be taken to explore all areas within the region. Areas that are currently served by transit should also be considered, since they may have potential for different types of service.

Candidate areas should then be subjected to a more detailed analysis. Established service design standards suggesting the type and level of service that should be provided (for example, a minimum of 60-minute headways for all routes, or a 12-hour service day) should be included in that analysis. Representative fleet status and fleet replacement exhibits that may assist the grant applicant in addressing expansion appear in Chapter IX.

- (2) Eligibility of Components for Funding. Normally, vehicle components, such as spare parts, are considered routine purchases and should be acquired using funding from the Urbanized (Section 5307) or Nonurbanized Area Formula (Section 5311) Programs. However, if the grant applicant can show that it would be cost-effective, a limited number of major “spare part” components may be purchased along with the vehicles under the Capital Investment Program. This policy generally only applies when vehicles are being procured for new transit systems, or for extensions and expansions of existing systems that result in a much larger fleet size. However, the policy may also be applied when acquiring replacement vehicles so long as the grant applicant can show that this approach is cost-effective.
- (3) Pre-Award and Post-Delivery Review of Buses. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR Part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.” Additional guidance is available in the manual, “Conducting Pre-Award and Post-Delivery Reviews for Bus Procurement” on FTA’s website: http://www.fta.dot.gov/laws/leg_reg_5423.html. The regulation requires any recipient or subrecipient who purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas, areas with a population greater than 200,000), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size.
- (4) Bus Testing. Any new model bus, as well as models with significant changes, must be tested at the FTA-sponsored test facility in Altoona, Pennsylvania, before Federal funds may be expended to purchase them. This bus testing requirement at

49 U.S.C. 5318(e) applies to buses and modified vans used in transit service, including new bus and van models using alternative fuels such as methanol, ethanol, and compressed natural gas (CNG).

FTA does not require a vehicle manufacturer to test its model before bidding. However, grant applicants acquiring any new bus model or any bus model with a major change in configuration or components must certify that the model will have been tested and the grant applicant will have received a copy of the test report prepared on the bus model before the final acceptance of the first vehicle.

FTA Bust Testing Regulation, “Bus Testing,” (49 CFR Part 665) define a new model bus as one not used in public transportation service in the United States before October 1, 1988, or one used in such service but which, after September 30, 1988, is being produced with a major change in configuration or components. A major change in configuration is defined as a change which may have a significant impact on vehicle handling and stability or structural integrity. A significant impact is an effect that could result in an unsafe vehicle characteristic, such as a dangerous operating condition or failure of a structural element. A major change in components is defined as a change in one or more of the vehicle’s major components such as the engine, transmission, suspension, axle, or steering.

Partial testing is allowed for vehicle models that previously have been fully tested but are being produced with significant changes. Only those tests that affect specific components or parts of the vehicle and that may produce significantly different data from previous tests must be performed.

Vehicles are tested for maintainability, reliability, safety, performance, structural integrity, fuel economy, and noise. FTA and the manufacturer together pay the bus-testing fees.

Bus testing is not required for unmodified mass-produced vans. Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines. Reports on new model buses or buses with significant changes can be obtained from the Pennsylvania Transportation Institute Bus Testing and Research Center, Duncansville, PA 16635. The telephone number is: 814-695-3404, Fax: 814-695-4069.

- (5) Buy America. Title 49 U.S.C. 5323(j) provides that, with exceptions, Federal funds may not be obligated for public transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Buy America requirements apply to all purchases, including materials or supplies

funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

FTA cautions that its Buy America regulation that applies to third party procurements, published at 49 CFR Part 661, differs from Federal “Buy American Act” regulations that apply to direct Federal procurements, published in the Federal Acquisition Regulation at 48 CFR Chapter 1, Subparts 25.1 and 25.2. The recipient is strongly advised to review these regulations before undertaking any procurement to assure compliance with the requirements applicable at the time the procurement will be undertaken.

A manufacturer or supplier of steel, iron, or manufactured goods may be permitted to correct, after bid opening, an incomplete certification or a certification of noncompliance under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. In addition, 49 U.S.C. 5323(j)(9) now allows a party adversely affected by an FTA action the right to seek review.

- (6) Disadvantaged Business Enterprises. Recipients shall ensure that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of 49 CFR Part 26, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs”. Grantee 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 which is the apparent awardee is in fact in compliance with Part 26. For further guidance, contact Regional Civil Rights Officers.
- d. Presidential Coin Act. In accordance with Public Law 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.
- e. Replacing FTA-Funded Vehicles. FTA has established several policies to ensure that vehicles acquired with Federal funds are maintained and remain in transit use for a minimum normal service life, as defined in paragraph (b)(6) above.
 - (1) Replacement Policies.
 - (a) Replacement at End of Minimum Normal Service Life. A vehicle proposed to be replaced must have achieved at least the minimum normal service life. For purposes of bus replacement grant applications, the age of the bus to be replaced is determined by the number of years of service or mileage at the time the proposed new bus will be introduced into service. A fleet roster must

accompany a grant application for which funds are requested to replace vehicles.

- (b) Replacement before the End of Minimum Normal Service Life: Early replacement of a vehicle prior to the end of its minimum normal service life requires FTA approval. If a vehicle is replaced before it has achieved its minimum normal service life, the recipient has the option of returning to FTA, an amount equal to the remaining Federal interest in the vehicle or applying the “Like-Kind Exchange” policy (discussed below) and placing an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest in a federally-funded vehicle during its minimum normal service life, a straight-line depreciation formula is used. For example, a bus with a 12-year minimum normal service life will decrease in value each year by one-twelfth of its original purchase price. Similarly, the Federal interest in the bus decreases each year by one-twelfth of the amount of the Federal grant that was awarded for its purchase.

- (c) Use of Like-Kind Exchange Policy. As an alternative to returning the Federal interest to FTA, a recipient may request of FTA to trade-in or sell a vehicle before the end of its minimum normal service life if the recipient uses the proceeds from the sale to acquire a replacement vehicle of like-kind. “Like-kind” means exchanging a vehicle for another vehicle with similar service characteristics and service life. Under the Like-Kind Exchange Policy, proceeds from the vehicle sale are not returned to FTA; instead, all proceeds must be invested in acquisition of the like-kind replacement vehicle(s). If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the recipient is responsible for providing the difference, along with the recipient’s local share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the Federal interest, the investment of all the proceeds in acquisition of the like-kind replacement vehicle results in reduction of the gross project cost.

Grant applicants interested in buying a replacement vehicle before the end of the minimum normal service life of the vehicle to be replaced should refer to the FTA Federal Register Notice, “Change in Policy on Sale and Replacement of Transit Vehicles,” (57 FR 39328, August 28, 1992). Also, in Chapter IX, “Examples,” there is a sample calculation for the like-kind replacement of a heavy-duty bus, illustrating the sale of a bus at the bus’s mid-life. The sample appears as “Like-kind.”

- (2) Rebuilding Policies. A recipient may choose to rebuild a vehicle rather than dispose of it. The vehicle to be rebuilt should be at the end of its minimum normal service life, as previously described, and in need of major structural and/or

mechanical rebuilding. The age of the bus is determined by its years or mileage in service at the time the rebuilding begins. The minimum extension of useful life is four years. Bus rebuilding work must be procured competitively from private-sector sources, unless there are mitigating circumstances. In-house rebuilding must not interfere with normal maintenance activities.

With few exceptions, a vehicle rebuilt with FTA funds must be brought into compliance with the Americans with Disabilities Act (ADA) if that vehicle is not already in compliance. For additional information, see 49 CFR 37.75 for remanufacture of non-rail vehicles.

- f. 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 should 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.
7. REQUIREMENTS RELATED TO FACILITIES. This section contains information concerning program requirements specific to the construction or acquisition of facilities funded through the Bus Program. Requirements common to all Capital Investment Program applications appear in Chapter VI.
 - a. General Philosophy. FTA generally assists in building two kinds of facilities under the Bus Program:
 - (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 terminals, stations, shelters, park-and-ride lots and intermodal facilities.
 - b. Mixed-Use Projects. Recipients often choose to pursue projects that have both transit and non-transit elements; or they may construct a transit facility and, at a later date, incorporate non-transit elements. While projects of this sort do not preclude FTA participation, FTA will participate in only those portions of a project that are physically connected or functionally related to transit. FTA's approach to reviewing projects containing both transit and non-transit elements is reflected in the following examples:
 - (1) FTA funds may not be used to support parking for shoppers or for sports events unrelated to transit. To ensure that Federal funds appropriated for transit purposes are used for transit purposes as Congress intended, FTA may require a recipient to reserve FTA-assisted parking areas solely for transit users. However, incidental

use of parking areas may be acceptable. An example of acceptable incidental use would be weekend use by shoppers of a parking area restricted for transit users during the work week. Incident use occurs only where the transit improvement is used for a transit purpose and occasional use of the transit improvement for non-transit purposes does not interfere with transit operations and service.

- (2) A project designed to improve pedestrian access in the immediate vicinity of and connecting to a transit bus station may be eligible for Capital Investment Program funding. The grant applicant should explain how the project helps to maintain or increase transit use.
- (3) A grant applicant seeking to build an exclusive busway on an urban street must clearly separate project costs related to transit from project costs unrelated to transit in the grant application. FTA funds may not be used for construction of public facilities not related to public transportation.
- (4) A recipient may lease portions of an FTA-funded facility to other entities in accord with FTA's incidental use policy or in accord with FTA's joint development policy. For example, a recipient may lease part of a bus facility's lobby for use as a small concession stand, or lease excess, existing space. It is important to note that any revenue a recipient derives from leasing is considered by FTA to be "program income" and therefore may in turn be used for transit purposes.
- (5) A recipient may build a joint use facility, that is one with a shared party wall where a well-defined portion of the facility is paid for entirely with local or non-FTA funds and has a use compatible with the transit use proposed for the FTA-funded portion of the facility. Joint use facilities may not include school buses or charter bus uses and the operating costs of such facilities must be apportioned to each user on a rotational basis, such as square footage. Joint uses must be identified at the time of grant award.

FTA's Joint Development Policy describes additional opportunities to incorporate commercial, residential, industrial, or mixed-use elements into eligible projects. For further information, visit

<http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/E7-1977.pdf>

- c. **Facility Size.** FTA's general policy is to provide assistance for facilities that are adequate for the grant applicant's present needs and that will meet, in a realistic way, its needs of the future. Thus, for a grant applicant currently operating 20 vehicles, a request for a bus maintenance garage that will accommodate 20 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 40 vehicles would not be acceptable, unless the grant applicant could demonstrate its need, willingness, and ability to expand its fleet to 40 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.

- d. Project Staging. When applying for a grant to build a facility, a grant applicant must be able to fully describe the project and estimate the cost of the facility. Often, the best method for proceeding is first to request funds for site selection, feasibility analysis, and environmental compliance. Actions which commit a grantee to a final locational choice should not be made before FTA makes an environmental finding. Grantees can then undertake facility design and engineering and, where allowable under FTA's requirements related to environmental review, for acquisition of real estate. The recipient may then apply to amend the grant to add funds for construction at a later date when those costs can be accurately estimated.
- e. Planning Justifications. There must be a planning basis for every project or for every group of projects. Feasibility studies at varying levels of detail should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a grant applicant may choose to reference and summarize pertinent parts of documents in which results of project studies were reported (for example, transportation plans, unified planning work programs, 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.
 - (1) Passenger Shelters. A program for bus shelters should be developed for the existing and proposed network based on the operator's shelter criteria, and, in the case of significant increases, should be described in the grant application. A map indicating the transit network and shelter location should be developed and available upon request.
 - (2) Transfer Facility or Transportation Center. The basis for a new transfer facility or transportation center should be documented in a planning study. Elements would include a determination of transit demand and other use, 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.
 - (3) 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.
 - (4) 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, development of site evaluation criteria, identification and evaluation of alternative sites based upon site evaluation and design requirements, final site selection and preliminary concept building design, environmental documentation, and the development of a staging and financing plan.

8. CLEAN FUELS GRANT PROGRAM. Section 3010 of SAFETEA-LU amended 49 U.S.C. 5308, commonly referred to as the Clean Fuels Grant Program, from a formula-based to a discretionary grant program.

The purpose of the program is two-fold. First, the program was developed to assist nonattainment and maintenance areas Ozone or Carbon Monoxide Maintenance Area in achieving or maintaining the NAAQS for ozone and carbon monoxide (CO). Second, the program supports emerging clean fuel and advanced propulsion technologies for transit buses and markets for those technologies.

Additionally, buses purchased through the Section 5309 Bus Program may be clean fuel vehicles.

Congress may allocate funds appropriated for Section 5308 to specific projects. If discretionary funds are available, FTA will issue a Notice of Funding Availability and solicit applications. FTA has issued a final rule for the program at 49 CFR Part 624.

- a. Eligible Recipients. Designated recipients, for urbanized areas with a population of 200,000 or more and States, for urbanized areas with a population of less than 200,000, in nonattainment or maintenance areas, are eligible to apply for Clean Fuels funds.
- b. An eligible recipient operates in an area that is either an ozone or carbon monoxide nonattainment area or a maintenance area for ozone or carbon monoxide.
- c. Eligible Projects. An eligible project means a project in a nonattainment or maintenance area and includes:
 - (1) purchasing or leasing clean fuel buses and constructing new or improving existing public transportation facilities to accommodate clean fuel buses;
 - (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, bio-diesel, 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 CNG; liquefied natural gas (LNG); biodiesel fuels; batteries; alcohol-based fuels; hybrid electric; fuel cell; and clean diesel, to the extent allowed under 49 U.S.C. 5308.

Although purchase of clean diesel buses is an eligible project, funding is limited to not more than 25 percent of the amount made available each fiscal year for the Clean Fuels Grant Program.

- d. Funds Availability. Funds are available to an eligible project for the year of apportionment plus two years after the fiscal year for which the amount is made available or appropriated. Any amount that remains unobligated at the end of the three year period will be added to the amount made available in the following fiscal year.
- e. Federal Share. The Federal share of eligible project expenses may not exceed 90 percent of the net cost of the project.
 - (1) The Federal share for eligible projects undertaken for the purpose of complying with or maintaining compliance with the CAA is limited to 90 percent of the net incremental cost of the project or activity. For example, a recipient constructing a new maintenance facility may want to include a fueling station for CNG buses. The maintenance facility is not eligible for the 90 percent Federal share but the cost of adding the station is eligible. Alternatively, for administrative simplicity FTA allows recipients to compute the Federal share at 83 percent for eligible vehicle purchases.

Beginning with FY 2006, recipients could apply for the 90 percent share of the actual incremental costs of vehicle-related facilities improvements related to ADA or CAA compliance. FTA is requesting that recipients provide documentation supporting these requests. The 83 percent Federal share does not apply to facilities for which the costs are more variable. The eligibility of facility-related cost elements at the 90 percent share will be reviewed on a case-by-case basis as part of the grant application process.
 - (2) The Federal share for capital costs not attributable to compliance with the CAA is 80 percent.

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CHAPTER IV

FIXED GUIDEWAY MODERNIZATION

1. **INTRODUCTION AND BACKGROUND.** This chapter discusses those aspects of the Capital Investment Program that pertain specifically to fixed guideway modernization and identifies the application requirements particular to fixed guideway modernization projects. The grant applicant is directed also to Chapter VI, which identifies the requirements common to all Capital Investment Program applications. Funding for fixed guideway modernization is allocated by Congress in 49 U.S.C. 5309(m)(1)(B) and apportioned in 49 U.S.C. 5337.
 - a. **Apportionments Schedule.** The Federal Transit Administration (FTA) publishes the fiscal year's apportionments for fixed guideway modernization every year in the Federal Register, at the same time it publishes the apportionments of Urbanized Area Formula (Section 5307) Program funds. FTA apportions the Urbanized Area Formula funds within 10 days of the enactment of the annual U.S. Department of Transportation Appropriations Act or on October 10, whichever is later.
 - b. **Length of Time Funds are Available.** Fixed guideway modernization funds are available to the recipient during the fiscal year in which they are apportioned plus three additional years. Any of the apportioned funds remaining unobligated to a recipient after that period will revert to FTA and will be added to the amount available for apportionment to fixed guideway modernization projects in the next fiscal year.
2. **ELIGIBLE PROJECTS.** Capital projects to modernize or improve fixed guideway systems are eligible for funding. Projects include, but are not limited to, the purchase and rehabilitation of rolling stock (including railcars, locomotives, work trains, and ferryboats), track, line equipment, and structures, signals and communications, power equipment and substations, passenger stations and terminals, security equipment and systems, maintenance facilities and equipment, and operational support equipment (including computer hardware and software).

NOTE: A system must be at least 7-years-old in order to be eligible for fixed guideway modernization funds.

3. **ELIGIBLE RECIPIENTS.** The formula apportionment contains seven tiers. The allocation of funding under the first tier is a fixed amount. The second, third, and fourth tiers are apportionments based on the number of fixed guideway revenue miles of service and number of fixed guideway route miles for segments of fixed guideway systems used to determine apportionments for fiscal year 1997. The fifth, sixth, and seventh tiers are apportionments based on the latest available route miles and revenue vehicle miles on segments at least 7-years-old as reported to the National Transit Database. In accordance with 49 U.S.C. 5337, the fixed guideway modernization formula allocates funds by seven tiers as follows:

- a. Tier 1. The first \$497,700,000 is apportioned to the following urbanized areas: Baltimore \$8,372,000; Boston \$38,948,000; Chicago/Northwestern Indiana \$78,169,000; Cleveland \$9,509,500; New Orleans \$1,730,588; New York \$176,034,461; Northeastern New Jersey \$50,604,653; Philadelphia/Southern New Jersey \$58,924,764; Pittsburgh \$13,662,463; San Francisco \$33,989,571; Southwestern Connecticut \$27,755,000.
 - b. Tier 2. The next \$70,000,000 is apportioned as follows: Tier 2A: 50 percent to areas identified in Tier 1; and Tier 2B: 50 percent to other urbanized areas that received funding for fixed guideway modernization in fiscal year 1997. The apportionments for both Tiers 2A and 2B are based on the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for fixed guideway modernization in fiscal year 1997.
 - c. Tier 3. The next \$5,700,000 is apportioned as follows: Pittsburgh, 61.76 percent; Cleveland, 10.73 percent; New Orleans, 5.79 percent; the remaining 21.72 percent is apportioned to areas in Tier 2B on the basis of the fixed guideway tier formula factors used in fiscal year 1997.
 - d. Tier 4. The next \$186,600,000 is apportioned to all eligible areas on the basis of the fixed guideway tier formula factors used in fiscal year 1997.
 - e. Tier 5. The next \$70,000,000 is apportioned as follows: 65 percent to the urbanized areas specified in Tier I, and 35 percent to all other urbanized areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least 7-years-old as reported to the National Transit Database.
 - f. Tier 6. The next \$50,000,000 will be apportioned as follows: 60 percent to the urbanized areas specified in Tier I, and 30 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years as of the fiscal year the funds are made available. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least 7-years-old as reported to the National Transit Database.
 - g. Tier 7. Any remaining amounts will be apportioned as follows: 50 percent to the urbanized areas specified in Tier I, and 50 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least 7-years-old as reported to the National Transit Database. While systems must generally be in urbanized areas over 200,000 to qualify, Morgantown, West Virginia, is included by a special provision in the law.
4. SET-ASIDE FOR PROJECT MANAGEMENT OVERSIGHT. FTA is authorized to set aside 1 percent of the Capital Investment Program funds to contract for oversight of major

capital projects and to conduct safety, procurement, management, and financial compliance reviews and audits. FTA sets aside the funds for these purposes before apportionment of the fixed guideway modernization funds.

5. RELATIONSHIP TO URBANIZED AREA FORMULA FUNDING. Fixed guideway modernization projects may also employ Urbanized Area Formula Program funding authorized by 49 U.S.C. 5307. When a project uses both Capital Investment Program funding and Urbanized Area Formula Program funding, it may be efficient to submit the grant applications at the same time. The grant applicant should discuss the best approach with the appropriate FTA Regional Office.
6. REQUIREMENTS OF FIXED GUIDEWAY MODERNIZATION PROJECTS.
 - a. Inclusion in the TIP and Statewide Transportation Improvement Program (STIP). A fixed guideway modernization project in an urbanized area must be included in the transportation improvement program (TIP) approved by the MPO and in the state transportation improvement program (STIP) developed by the State DOT and approved by FTA and FHWA, either individually or in a project grouping in accordance with 23 CFR 450.216 and 450.324.
 - b. Environmental Considerations. Chapter VI, paragraph 4 describes FTA's environmental protection procedures and the related Capital Investment Program application requirements. The discussion here provides supplementary information specific to fixed guideway modernization.
 - (1) Categorical Exclusions. Most fixed guideway modernization projects do not involve significant environmental impacts and therefore do not require extensive environmental documentation. In the FHWA/FTA environmental regulation (23 CFR part 771), such a project is called a "categorical exclusion" (CE) because it is categorically excluded from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS). Most CEs require minimal documentation describing the project and its location. The purpose of the documentation is to demonstrate that the project fits the CE category and that no unusual circumstance that would cause a significant environmental or community impact exists. The following fixed guideway modernization projects are normally CEs:
 - (a) the purchase of vehicles to replace old vehicles;
 - (b) the purchase of vehicles for fleet expansions where maintenance, storage, and use of the new vehicles will be accommodated in existing facilities;
 - (c) rehabilitation of vehicles;
 - (d) alterations to vehicles or facilities to make them accessible for elderly persons and persons with disabilities;

- (e) installation or replacement of bicycle securing devices, racks, bicycle lockers, and other improvements in bicycle access to transit, on vehicles or in facilities;
 - (f) track and railbed maintenance and improvements within the existing right-of-way, including traction power, communications, and signal systems;
 - (g) purchase and installation of operating or maintenance equipment to be located within an existing facility with no significant impacts off-site;
 - (h) installation of fencing, signs, pavement markings, small passenger shelters, and traffic signals where no substantial land acquisition or traffic disruption will occur; and
 - (i) construction of pedestrian and bicycle lanes, paths, and facilities at stations, terminals, or other locations.
- (2) Other Possible Categorical Exclusions. Even though the following fixed guideway modernization projects involve more construction and greater potential for off-site impacts, these projects may qualify as documented CEs:
- (a) rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities;
 - (b) bridge rehabilitation, reconstruction, or replacement;
 - (c) construction of park-and-ride facilities associated with existing fixed guideways;
 - (d) construction of grade separation to replace existing at-grade street crossings;
 - (e) modernization of a busway, transitway, or transit mall by resurfacing, restoration, rehabilitation or reconstruction;
 - (f) traffic safety or operational improvement to a busway, transitway, or transit mall.

Experience has shown that the projects listed above that involve construction can be built and operated without having significant environmental or community impacts if they are carefully designed and located. FTA may approve the designation of these projects as DCEs if the grant applicant provides documentation clearly demonstrating that no significant adverse environmental effects will occur. In some cases, FTA will be able to approve a DCE based only on the grant applicant's project description showing that no significant environmental impacts will occur. In other cases, FTA may require the grant applicant to conduct limited environmental studies (such as an analysis of the

impact of bridge reconstruction on surrounding wetlands and the river itself) before the project is approved as a DCE. If a grant applicant proposes to rehabilitate a historic transportation facility, the applicant must negotiate an agreement with the requisite historic preservation agencies before FTA can approve the project as a DCE.

If the number or nature of the environmental and community impacts precludes FTA from approving a CE or DCE for the project, the grant applicant then must prepare and seek public comment on an EA, which evaluates the impacts and discusses alternatives to the applicant's proposed site or design. FTA will generally require an EA if: (1) the proposed project requires the consideration of alternatives because, for example, the preferred site is parkland or wetlands or a historic site; (2) the proximity of residential areas or community facilities such as a school to the preferred site warrants public involvement in the project; or (3) more than just a few impact areas (e.g. traffic, noise, air quality) require detailed analysis. After the applicant has completed the EA public comment process, FTA will review the record to determine if a Finding of No Significant Impact (FONSI) is appropriate.

If at any time during the preparation and review of CE documentation or an EA, it becomes apparent that the project will have significant environmental or community impacts, FTA will require the preparation of an EIS. Fixed guideway modernization projects have only rarely required EISs, though some have. In some cases, the applicant can and should consider the selection of a more appropriate site for the project and thereby avoid the need for an EIS, but relocating the project is not always possible. For example, a fixed guideway modernization project involving substantial reconstruction of an existing guideway and relocation of stations may be similar to a New Starts project in terms of its impacts, particularly if the project establishes or restores high capacity transit service in one or more communities unaccustomed to such service. As with a New Starts project, FTA will require the grant applicant to prepare an EIS whenever significant environmental impacts are identified for a fixed guideway modernization project.

Federal regulations place limitations on project development while the National Environmental Policy Act (NEPA) process is being conducted. Grant applicants should refer to Chapter VI where these limitations are discussed.

- c. Clean Air Act Compliance. The Clean Air Act (CAA) conformity requirements are covered in Chapter VI, paragraph 8. What follows is specific to fixed guideway modernization activities. Practically all of these activities are exempt from the conformity requirements either because they produce no emissions or because they increase existing emission levels very little. Examples include: purchase of new rail cars; rehabilitation of track and trackbed; reconstruction of power, signal and communication systems; renovation of terminals, stations and storage and maintenance

facilities; and new construction of certain types of facilities. The complete list of exempt projects is found in 40 CFR 93.126. The grant applicant should consult with the appropriate FTA Regional Office to ensure that the specific project is consistent with the exemption in the Environmental Protection Agency (EPA) transportation conformity regulation.

In nonattainment and maintenance areas, an applicant seeking funding must comply with the CAA's conformity requirements contained in 40 CFR Part 93. Fixed guideway modernization projects are generally exempt from these conformity requirements, unless FTA determines otherwise. This exemption is justified because fixed guideway modernization projects generally have neutral effects on the air quality of the project area and are intended to maintain the current level of transit service. Examples of exempt project activities include: upgrading of track, trackbed, and signal systems within existing rail rights-of-way; new construction or renovation of rail storage, maintenance facilities and ancillary structures; rail car rehabilitation; and purchase of new vehicles as replacements or for a minor expansion of the fleet.

d. Requirements Related to Fixed Guideway Rolling Stock.

- (1) Service Life Policy. FTA has established several policies over the years meant to ensure that the recipient obtains adequate use of vehicles acquired with FTA assistance. In the case of rail vehicles acquired with FTA assistance, FTA has established a minimum normal service life of 25 years. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. The service life in years refers to total time in normal transit service, not time spent stockpiled or otherwise unavailable for regular transit use. A recipient that regularly measures lifespan by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the recipient proposes to retire a vehicle before FTA's service life requirement has expired.

Regardless of the reasons, when a recipient removes a vehicle financed by FTA from service before expiration of its minimum normal service life, the recipient is legally obligated to FTA for an amount equal to the Federal share of the vehicle's remaining value, as explained further below. The value of a vehicle before the end of its minimum normal service life is calculated on the basis of straight-line depreciation.

- (2) Replacement Policies.

- (a) Replacement at End of Minimum Normal Service Life. Before a recipient may replace an old rail vehicle with a new rail vehicle, the old vehicle must have reached or exceeded its 25-year minimum normal service life. For purposes of a rail vehicle replacement project, the age of the vehicle to be replaced is its

age at the time the new vehicle is introduced into service. FTA's 25-year service life requirement is a minimum standard.

- (b) Early Disposition Policy. If a vehicle is replaced before the end of its minimum normal service life, the grant applicant has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or using FTA's Like-Kind Exchange policy (discussed below) and putting an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.
 - (c) Use of Like-Kind Exchange Policy. With prior FTA approval, a passenger vehicle may be traded-in or sold before the end of its minimum normal service life, if a recipient so chooses. Moreover, a recipient may elect to use the trade-in value or the sales proceeds from the vehicle to acquire a replacement vehicle of like kind. "Like-kind" means, for example, a bus for a bus with a similar service life or a rail vehicle for a rail vehicle, etc. Under the Like-Kind Exchange policy, proceeds from the vehicle sale are not returned to FTA; instead, all proceeds must be invested in the acquisition of like-kind replacement vehicles. If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the recipient is responsible for providing the difference, along with the recipient's local share of the cost of the replacement vehicle.
 - (d) Grant applicants interested in buying a replacement vehicle before the end of the minimum normal service life of the vehicle to be replaced should refer to the FTA Federal Register Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," (57 FR 39328, August 28, 1992). A sample calculation for the like-kind replacement of a vehicle at mid-life appears as "Like-Kind" in Appendix C.
- (3) Rebuilding. "Rebuilding costs," defined as rehabilitation and mid-life overhaul, are eligible for capital assistance. Any rail vehicle that will be rebuilt must have an accumulated service life of at least 12 years (mid-life rebuild) or must have reached the end of its minimum normal service life (end-of-life rebuild). The minimum extension of useful life is ten years.
- (4) Spare Ratio Policy. Spare ratio for bus fleets can be determined using the calculations involving buses discussed in Chapter III at paragraph 8(a)(5). Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as the acceptable spare ratio for rail fleets. Nevertheless, rail operators should be aware that the grant applicant's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined as part of the grant application review whenever FTA assistance is requested to purchase rail vehicles. As in the calculation of the spare ratio for bus fleets, scheduled standby

fixed guideway vehicles are permitted to be included as “vehicles operated in maximum service.”

- e. Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR Part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.” Additional guidance is available in the manual, “Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements” on FTA’s website: http://www.fta.dot.gov/laws/leg_reg_5424.html. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size.
- f. Procurement Activities Before a Grant is Awarded. Grant applicants for fixed guideway modernization funds that want to proceed with a transit project before Federal funds are obligated may use pre-award authority to incur costs using the grant applicant’s non-Federal funds with the understanding that the costs incurred may be reimbursable if an FTA grant is awarded for the project. Such actions before FTA approval of a grant may include a grant applicant’s contracting with a third party for equipment or services. Grant applicants are advised to follow the most current FTA Circular 4220, “Third Party Contracting Requirements,” when contracting in advance of FTA approval of the grant application, in order to avoid reimbursement problems if Federal funds become available. Project activities in advance of Federal funds, such as letters of no prejudice, are the topic of Chapter VI, paragraph 21. The reader’s attention is directed also to paragraph (g) below concerning Buy America and to Chapter VI, paragraph 11, concerning “Pre-award and Post-delivery Reviews.” Pre-award authority is not available prior to completion of the appropriate environmental analysis and inclusion of the project in a STIP. See Chapter VI.
- g. Buy America. Title 49 U.S.C. 5323(j) provides that, with exceptions, Federal funds may not be obligated for public transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

FTA cautions that its Buy America regulation that applies to third party procurements, published at 49 CFR Part 661, differs from Federal “Buy American Act” regulations

that apply to direct Federal procurements, published in the Federal Acquisition Regulation at 48 CFR Chapter 1, Subparts 25.1 and 25.2. The recipient is strongly advised to review these regulations before undertaking any procurement to assure compliance with the requirements applicable at the time the procurement will be undertaken.

A manufacturer or supplier of steel, iron, or manufactured goods may be permitted to correct, after bid opening, an incomplete certification or a certification of noncompliance under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. In addition, 49 U.S.C. 5323(j)(9) now allows a party adversely affected by an FTA action the right to seek review.

- h. Major Capital Projects. On occasion, a fixed guideway modernization project will be identified as a major capital project. FTA defines a major capital project as:
- (1) any New Start,
 - (2) rail rehabilitation or modernization with a total project cost in excess of \$100 million, or
 - (3) any project the FTA Administrator identifies as a major capital project because the Project Management Oversight Program will benefit the agency or the recipient.

In the event a fixed guideway modernization project is identified as a major capital investment project, an applicant must carry out a project management plan and must apply value engineering techniques to the project. The elements of a project management plan appear in 49 U.S.C. 5327(a). FTA regulations describing the requirements of a project management plan can be found at 49 CFR Part 633. For more information about major capital investments, the grant applicant should refer to Chapter V, "New Starts," and, in particular, paragraphs 10 and 11, concerning project management plans and value engineering.

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CHAPTER V

NEW STARTS/SMALL STARTS PROGRAM

1. INTRODUCTION AND BACKGROUND. The Federal Transit Administration (FTA) uses the term “New Starts” to mean a project that involves building a new fixed guideway system or extending an existing fixed guideway that will have a total cost of \$250 million or more, or for which the project sponsor is requesting more than \$75 million in Federal funds. The New Starts project can be a light rail line, rapid rail (heavy rail), commuter rail, automated fixed guideway system (such as a “people mover”), or a busway/high-occupancy vehicle (HOV) facility, or an extension of any of these. New Starts projects generally cost many millions of dollars, and their development involves complex analyses of possible changes in local travel patterns, economic development conditions, and environmental quality that could occur if the New Starts project were to be built. New Starts project development is often conducted in a dynamic political and institutional setting; for example, city officials who voted in the project’s early phases to support project development may be out of office when the vote to begin construction is scheduled, and the new incumbents may vote differently.

FTA uses the term “Small Starts” to mean a project requesting less than \$75 million in Section 5309 Capital Investment Program funding, with a total project cost of less than \$250 million. Small Starts projects have either a fixed guideway along at least 50 percent of the corridor or are corridor-based bus projects with certain required elements including substantial transit stations, traffic signal priority/pre-emption, low floor vehicles, branding of the proposed service, and 10 minute peak/15 minute off peak or better service frequencies for at least 14 hours per day.

In addition to the information found in this circular, the reader is directed to the New Starts rule at 49 CFR Part 611, as well as FTA’s New Starts website http://www.fta.dot.gov/planning/planning_environment_5221.html, for the most up-to-date guidance and requirements for the New Starts Program.

2. ELIGIBLE PROJECTS. Eligible projects include New Starts and Small Starts and Very Small Starts, as defined above. In addition, the Secretary may make grants to assist State and local governmental authorities in financing the development of corridors to support fixed guideway systems, including protecting rights of way through acquisition, construction of dedicated bus and high occupancy vehicle lanes and park and ride lots, and other nonvehicular capital improvements that the Secretary may decide would result in increased public transportation usage in the corridor.

Alternatives analysis projects for FY 2006 and beyond are not eligible projects under Section 5309. These projects are funded out of Sections 5339 and 5307, and planning funds.

Projects become candidates for Capital Investment Grant funding by successfully completing the appropriate steps in the capital investment planning and project development process. Competing New Starts and Small Starts projects are evaluated on the basis of how well they meet project justification and local financial commitment criteria listed in 49 U.S.C. 5309 (d) and (e). The grant applicant is encouraged to make contact with the appropriate Regional Office to discuss the process.

While funds from the Metropolitan Planning Program (MPP), State Planning and Research Program (SPRP), Urbanized Area Formula Program, Alternatives Analysis Program, flexible Federal Highway Administration funds, and State and local resources can be used in project planning activities, Capital Investment Program funding can only be used once planning is completed and a Locally Preferred Alternative (LPA) has been selected to advance into further development. Since applications for grants for New Starts or Small Starts or Very Small Starts projects are similar to other Capital Investment Program applications, a grant applicant will need to refer to Chapter VI, "Other Provisions." The similarity with other projects has several notable exceptions: (a) New Starts projects often require more detailed environmental documentation under the National Environmental Policy Act (NEPA), such as an Environmental Assessment (EA) or Environmental Impact Statement (EIS); (b) FTA has a formal rating process for evaluating competing New Starts and Small Starts and Very Small Starts projects; (c) New Starts and Small Starts projects require submission of a project management plan and the use of value engineering; and (d) New Starts projects in construction require execution of a Full Funding Grant Agreement (FFGA) between FTA and the recipient, and Small Starts and Very Small Starts projects in construction require execution of a Project Construction Grant Agreement (PCGA) between FTA and the recipient.

Because a New Starts or Small Starts project may entail construction of bus facilities and acquisition of buses, acquisition of rail or other fixed guideway vehicles, or construction of a new fixed guideway system or its extension, the reader is reminded to consult the other chapters in this circular that pertain to the components of the grant application at hand. When, for example, buses are to be purchased as part of a New Starts or Small Starts or Very Small Starts project, grant application requirements associated with bus acquisitions apply, and the grant applicant should refer to Chapter III, "Buses and Related Acquisitions."

3. **ELIGIBLE APPLICANTS**. Public agencies, including States; municipalities and other subdivisions of States; public agencies and the combination of one or more States; and public corporations, boards, and commissions established under State law are eligible applicants for New Starts/Small Starts funds.
4. **PLANNING AND PROJECT DEVELOPMENT PROCESS**. In order to ensure that New Starts and Small Starts projects meet the requirements of 49 U.S.C. 5309, FTA requires project applicants to undertake a defined planning and project development process as described in the joint FTA and Federal Highway Administration planning and environmental regulations (23 CFR Part 450, 49 CFR Part 613, 23 CFR 771). These

regulations were updated in 2007. The full text of the regulations can be found in the Federal Register, (72 FR 7261, February 14, 2007).

- a. Objectives. Local transportation planning agencies and implementing agencies such as State transportation departments, transit operators, and other units of general purpose local government develop transportation plans, programs, and projects. The planning process is designed to provide the following:
 - (1) a mechanism for identifying regional transportation needs and developing strategies to meet these needs;
 - (2) a logical structure to help local decision-makers develop regional transportation plans and advance projects from initial conception through design and construction;
 - (3) sound technical information on costs, benefits, and impacts so that local decision makers can make informed choices from among myriad possible alternatives; and
 - (4) a forum for collaborative decision-making by local transportation, land use, and resource agencies, with appropriate involvement of interest groups and the general public.
- b. Phases. The capital investment process involves specific phases of activity leading from project conception to revenue operation. For New Starts projects, these phases include:
 - (1) Systems Planning at a regional level,
 - (2) Alternatives Analysis at a corridor level,
 - (3) Preliminary Engineering,
 - (4) Final Design,
 - (5) Construction.

For Small Starts and Very Small Starts projects, the preliminary engineering (PE) and final design phases are merged into one phase referred to as project development. The other phases are the same as for New Starts projects.

As proposals advance through the alternatives analysis phase, the participating State and local planning and implementing agencies, working in collaboration, may drop alternatives from consideration as information on costs, benefits, and impacts is developed. This narrows the range of available alternatives until eventually one alternative or strategy (the LPA) is selected for implementation and advancement into PE (for New Starts projects) or project development (for Small Starts and Very Small Starts projects).

In each phase, local agencies undertake the technical studies to develop the proposals. FTA monitors the work, providing technical assistance and oversight. Local officials must obtain FTA approval to advance a project proposal into PE and final design (New Starts) or project development (Small Starts and Very Small Starts). Even if no FTA funds are used for the early stages of project development (systems planning and alternatives analysis), FTA encourages local agencies to work closely with FTA to ensure development of the appropriate studies and resulting documents. FTA cannot approve funds for the later stages of project development if the earlier stages have not met the requirements of 49 U.S.C. 5309 for New Starts and Small Starts and Very Small Starts projects.

c. Description of Each Phase. A brief description follows of each phase in the project's development.

- (1) Systems Planning. "Planning" refers to the continuing, cooperative, and comprehensive urban transportation planning process that exists in each urbanized area of the country. The process is carried out by the designated Metropolitan Planning Organization (MPO) in cooperation with the State government and operators of publicly owned transit services.

During planning, local officials conduct assessments of transportation conditions throughout the region. Regional goals and objectives are developed or updated, data on regional traffic patterns are collected, and future land use and travel are projected. A wide range of multimodal alternatives is examined leading to the adoption of policies, plans, and Transportation Improvement Programs (TIPs). Transportation plans and programs must be financially constrained and, in nonattainment areas, must conform to State implementation plans for air quality. "Financially constrained" means to FTA that in a local transportation plan, sources of funds are committed and available. The Federal share to be requested for these projects does not exceed the amounts the locality can reasonably expect on the basis of history and current FTA and the Federal Highway Administration (FHWA) statutory authorizations. Planning can be financed from a variety of sources including Urbanized Area Formula Program funds, MPP funds, and SPRP funds administered by FTA. Planning is also supported with FHWA planning funds. Flexible funds (e.g., Surface Transportation Program (STP), National Highway System, Congestion Mitigation and Air Quality (CMAQ) may be used for certain planning activities (See Chapter III, paragraph 2a regarding flexible funds).

- (2) Alternatives Analysis. Where the regional planning process identifies the likely need for a major capital investment to adequately address transportation problems in a given corridor, local stakeholders will typically initiate an alternatives analysis to determine which of several alternative improvements best meets these corridor needs. The purpose of the alternatives analysis is to identify and compare the costs, benefits, and impacts of an array of transportation alternatives as a means of providing local decision makers with the information necessary to determine and implement the most appropriate transportation solutions in priority corridors.

Broad consensus is reached on the type of improvement(s) that best meets the locally defined goals and objectives for the specific corridor. The alternatives considered are subject to various analyses of the pertinent issues in order to make an intelligent selection of a preferred transportation design concept and scope from the alternatives available.

Key elements of the alternatives analysis include: a description of the transportation problem in the corridor; specifying an evaluation framework for assessing the performance of potential alternatives that would address the problem; defining the alternatives to be considered; and then evaluating the alternatives in terms of how they best meet local goals and objectives, and have the most realistic opportunity for funding. The outcome of this process is the selection of an "LPA." The MPO reviews and modifies the regional long range transportation plan as appropriate to include the LPA. Requests to initiate PE for New Starts projects and projects development for Small Starts and Very Small Starts projects may only be submitted to FTA after the LPA has been adopted into the fiscally constrained long range transportation plan.

In addition, FTA can approve the initiation of PE for a New Starts project or the initiation of project development for a Small Starts project only when the project meets certain specified criteria as described in 49 U.S. C. Section 5309(d) and (e). FTA must determine that a New Starts project is justified based on a comprehensive review that considers mobility improvements, cost-effectiveness, operating efficiencies, environmental benefits, economic development, transit supportive land use, and other factors. FTA must determine that a Small Starts project is justified based on a review of cost-effectiveness, transit supportive land use, and economic development. FTA must also determine that the New Starts or Small Starts project is supported by an acceptable degree of local financial commitment.

- (3) Preliminary Engineering. During PE, the local agency refines the design of the LPA; develops more precise estimates of costs and impacts, completes the environmental process required under the NEPA, updates and further develops the project management plan to ensure construction quality and financial control, and works to obtain funding commitments of non-Federal funds. FTA defines the PE phase within the New Starts Program as the process of finalizing the project definition (scope, cost, and financial plan) such that all cost estimating is complete to the level of confidence necessary for the project sponsor to implement the financing strategy, including establishing the maximum dollar amount of the FTA New Starts financial contribution needed to implement the project.
- (4) Final Design. Local agencies acquire right-of-way and produce the plans, specifications, and estimates necessary to construct the project. When final design (New Starts) or project development (Small Starts) of a project that FTA finds worthy is sufficiently advanced that the capital cost estimate and project impacts

are well established, FTA may enter into a FFGA with the recipient for a New Starts project or a PCGA for a Small Starts project. The FFGA/PCGA binds the local agency to complete construction of the project within a fixed time schedule, sets a fixed ceiling on the total Federal contribution, and establishes a schedule for Federal contributions.

- (5) Construction. Construction includes physical construction, procurement of vehicles and equipment, testing of equipment (signal equipment or rolling stock, for example), integrated testing, system certification, pre-revenue service and start up.

Start up cost is defined as cost occurring as a result of the testing and start up phase of a project, which provides the linkage between Construction and Revenue Service. The purpose of this phase is to accept the newly constructed or modernized transit project after it is verified that the project meets the contractual specifications by performing system, performance, and integration testing. State Safety Oversight certification must be obtained before revenue service commences.

5. ENVIRONMENTAL PROTECTION. Chapter VI, paragraph 7, describes FTA's environmental protection procedures in general and the related Capital Program grant application requirements. Regulations governing the preparation and review of environmental documents can be found at 23 CFR Part 771. FTA takes an expansive view of environmental analysis and typically includes in its analysis and under the rubric of "NEPA" compliance related acts, including but not limited to the National Historic Preservation Act and Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(b) and 303(c). See 69 FR 2541, dated May 6, 2004. The following discussion provides supplementary information about environmental requirements specific to New Starts projects.

Many New Starts projects involve significant environmental impacts. Before FTA may award capital assistance for a New Starts project, the social, economic, and environmental impacts of the project, and of reasonable alternatives to the proposed project, must be analyzed and documented in an EIS or an EA, as required by the regulations. New Starts projects that normally require EISs are:

- a. new construction or extension of fixed-rail transit facilities such as rapid rail, light rail, commuter rail, and automated guideway transit facilities; and
- b. new construction or extension of a separate roadway for buses or high-occupancy vehicles (HOVs) not located within an existing highway facility.

An EIS is prepared in two phases, draft and final. The draft EIS can be prepared during alternatives analysis and serves as the basis for a decision on general mode (i.e., type of fixed guideway) and alignment. Otherwise, the draft EIS can be prepared during PE. The draft EIS must identify the impacts of the alternatives, reflect coordination with appropriate Federal, State, and local resource agencies on the impacts, and discuss avoidance,

minimization, and mitigation of any adverse impacts. The draft EIS must be provided to agencies with jurisdiction or an interest in the project and to the general public for review and comment. The final EIS, which identifies the preferred alternative, must be completed during PE. As appropriate, the final EIS must address the comments received in one of the following ways: changing the project location or design; committing to specific mitigation measures or environmental enhancements; or including a written justification in the final EIS of the applicant's reasons for not changing the project in response to a specific comment. Joint FHWA/FTA environmental regulations prohibit FTA from taking a final action, such as awarding a grant or issuing a Letter of No Prejudice (LONP) (see Chapter VI, paragraph 21b) for final design, land acquisition, or construction, or from making any other commitment to a particular alternative, until FTA completes and signs an environmental Record of Decision (ROD) pertaining to the environmental impact of the project. FTA may not issue an ROD until 30 days after the final EIS is filed with the Environmental Protection Agency (EPA) and it publishes a notice of availability in the *Federal Register*.

Some New Starts projects require little new right-of-way and therefore have less potential for off-site impacts. Examples include commuter rail on an existing freight rail line where train frequencies will be increased only marginally, or conversion of an existing highway median to HOV/bus lanes. For these kinds of projects, the grant applicant must prepare an EA which, like an EIS, analyzes the impacts of the proposed project, evaluates alternatives (location or design), and reflects coordination with other appropriate agencies. An EA is subject to public comment and FTA review to determine if a Finding of No Significant Impact (FONSI) is appropriate. If no significant environmental impacts are identified during the preparation of an EA, FTA will complete the environmental review process by issuing a FONSI. However, if significant environmental impacts are identified during the preparation of an EA, the more rigorous EIS process described above must be followed.

The grant applicant should note particularly that FTA will not award Federal assistance to support a project until FTA takes one of the following actions: determines that the project qualifies for a categorical exclusion or documented categorical exclusion; issues a FONSI; or approves the final EIS and issues a ROD.

6. **CLEAN AIR ACT COMPLIANCE**. New Starts projects, including extensions of existing fixed guideway systems, have consequences for air quality at both the regional and local levels and must be analyzed according to the requirements of EPA's transportation conformity regulation in nonattainment and maintenance areas. At the regional or corridor scale, the effects of a New Starts project on mode share and travel patterns within the region should be assessed in the development of the metropolitan transportation plan and the Transportation Improvement Program (TIP). The regional emissions analyses for the plan and TIP are conducted by the MPO, but the grant applicant or project sponsor is responsible for providing a sufficient description of the project design concept and scope to permit an assessment of the proposed project's effects on the area's transportation network. Both the MPO and FTA must make conformity determinations for the plan and TIP. Past analyses of New Starts projects in the context of the long-range transportation plan have

shown small but positive impacts on the regional emissions burden. The potential for greater emission reductions from a New Starts project depends to a great extent on the implementation of complementary measures to support transit use in the region or corridor, such as travel demand management actions and land-use controls to support transit.

Certain parts of a fixed guideway project, however, may cause localized adverse air quality impacts; for example, large parking lots or structures at stations or terminals may lead to elevated levels of carbon monoxide during periods of peak use. The localized effects of these projects are usually assessed by means of air quality dispersion modeling. Air quality dispersion modeling is typically done during the environmental analysis phase of the New Starts project when decisions concerning design and location are being made. Results of the air quality analysis and the project-level conformity determination are contained in the EA or final EIS for the project.

In general, a New Starts project is treated as a regionally significant project for purposes of the air quality conformity requirements in nonattainment and maintenance areas. As a result, a New Starts project will usually be required to comply with the most technical or extensive requirements of EPA's conformity regulation. A grant applicant should consult with the FTA Regional Office to become familiar with the Clean Air Act (CAA) requirements.

7. AVAILABLE FUNDING AND THE NEED FOR PRIORITIES. In any given year, New Starts funds available fall short of the funds requested by grant applicants. Therefore, a ranking of the projects is necessary.

FTA's role in establishing priorities for New Starts funding derives from 49 U.S.C. 5309(k)(1), which requires the Secretary of Transportation to transmit each February with the President's budget, a recommendation for the allocation of New Starts funding to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The required "Report on Funding Recommendations," identifies the most worthy New Starts and Small Starts projects that merit funding in the following fiscal year. FTA's criteria for making New Starts and Small Starts funding recommendations are described in the paragraphs below.

New Starts and Small Starts projects may also be eligible for funding—in whole or in part—under the FTA's Urban Area Formula Program (Section 5307) or Fixed Guideway Modernization Formula Program (5309) and, in the case of fixed guideway bus projects, under the Capital Investment Bus and Bus Facilities Program. (See the current FTA Circular 9030.1C for information on the Urban Area Formula Program, Chapter III of this circular for information on the Bus Program and Chapter IV for Fixed Guideway Modernization.)

8. FTA RATING SYSTEM. In the "Report on Funding Recommendations," FTA uses a number of evaluation criteria to rate the various projects and presents to Congress its findings and recommendations for allocating New Starts funds. Criteria currently used include:

- a. Project justification—Mobility improvements, environmental benefits, cost-effectiveness, operating efficiencies, transit supportive land use, economic development, and other factors.
- b. Local financial commitment—The proposed share of total project costs from sources other than the Section 5309 New Starts Program, the soundness of the capital finance plan, and the ability of the sponsoring agency to fund operation and maintenance of the entire system as planned once the guideway project is built.
- c. Other factors—FTA may consider other factors if they are well documented and convincingly demonstrate benefits which are not otherwise captured by the other project justification criteria and measures. Examples of other factors include: environmental justice considerations and equity issues; opportunities for increased access to employment for low-income people, and welfare to work initiatives; consideration of innovative financing, procurement, and construction techniques, including design-build turnkey applications; if a proposed project is a principal element of a congestion management strategy, in general, and an auto pricing strategy in particular; the extent to which the project addresses significant transportation problems or opportunities in a corridor; and any other factor which the New Starts project sponsor believes articulates the benefits of the proposed major transit capital investment but which is not captured within the other project justification criteria.

In addition “readiness” is taken into consideration—the ability of the recipient to expend funds soon after they are appropriated by Congress and obligated by FTA.

The first priority for available funds is for projects for which FTA has already awarded an FFGA or PCGA, or issued a “letter of intent” to obligate funds from future available appropriations (see paragraph 9 below).

The information used to address the New Starts/Small Starts rating criteria is developed as part of the local planning and project development process. From time to time FTA may issue policy statements that modify or clarify the rating criteria.

9. LETTER OF INTENT. In its discretion, FTA may issue a “Letter of Intent” to allocate a specific amount of New Starts funds for a project from future available budget authority, in accordance with 49 U.S.C. 5309(g)(1). As a practical matter, a Letter of Intent serves to set aside the specified amount of funding for a particular New Starts or Small Starts project well in advance of that project being ready for construction under an FFGA or PCGA. When a Letter of Intent is issued for a fixed guideway project, the amount stipulated under the letter must be sufficient to complete at least an operable segment. FTA must provide 60-days’ notice to the House Committee on Transportation & Infrastructure, the Senate Committee on Banking, Housing & Urban Affairs, and the House and Senate Committees on Appropriations before issuing a Letter of Intent. A Letter of Intent, in itself, is not an obligation of Federal funding nor is it an administrative commitment. All New Starts funds are subject to the availability of appropriations.

10. TIMING OF THE PROJECT DEVELOPMENT PROCESS. The length of time required for the process depends upon several factors, including:
- a. Nature of the corridor;
 - b. Complexity of the project alternatives;
 - c. Magnitude and nature of potential environmental impacts;
 - d. Status of local planning data bases, e.g., socioeconomic, transportation systems data;
 - e. Quality of local analysis tools, e.g., travel demand forecasting, cost estimation;
 - f. Competence and motivation of local agency staff; and
 - g. Absence or presence of local consensus on how to proceed.
11. PROJECT MANAGEMENT PLAN. As a condition of Federal assistance, a grant applicant for a major capital investment project must prepare a Project Management Plan (PMP). A major capital investment project is defined as: any New Starts project or any fixed guideway modernization project generally valued at more than \$100 million, or any other project the Federal Transit Administrator determines to be a major capital investment project. A grant applicant for a New Starts project must submit the PMP in time for FTA to review the applicant's plan in conjunction with its New Starts grant application. Within 60 days of receiving the project management plan, FTA must make a determination either to approve or disapprove the plan, or FTA must notify the grant applicant that it was unable to complete the review. If FTA disapproves a PMP, FTA must provide its reasons for disapproval to the applicant.

Although the grant applicant should refer to 49 U.S.C. 5327 (Project Management Oversight) and 49 CFR Part 633 (Project Management Oversight Rule) to determine the amount of detail that must be provided, the PMP must address the following matters:

- a. Adequate staff with clear reporting relationships and responsibilities;
- b. Budget that covers the project management organization, its consultants and other support costs;
- c. Construction schedule;
- d. Document control and recordkeeping system;
- e. Change order procedures;
- f. Appropriate organizational structures, management skills, and staffing levels throughout construction;

- g. Quality control and quality assurance functions;
- h. Materials testing policies and procedures;
- i. Internal plan implementation and reporting;
- j. Criteria and procedures for testing the operational system;
- k. Periodic updates of the plan;
- l. Commitment to make monthly budget and schedule submissions about the project; and
- m. Safety and Security Management, as required by the current FTA C 5800.1.

The grant applicant must agree to carry out the PMP approved by FTA. Nevertheless, the PMP is a dynamic document for managing engineering, design, construction, and start-up of a project. Periodic updating is expected as the recipient implements the project. At the grant application stage, FTA expects the PMP to provide sufficient detail to demonstrate the grant applicant's technical capacity and capability to carry out the project. The plan for managing later stages of the project may be laid out in general terms with a description of how and when the details will be developed, but the grant applicant must demonstrate that the plan will be developed and implemented as necessary to stay ahead of the implementation of the project.

12. VALUE ENGINEERING REQUIREMENTS. FTA encourages the application of value engineering to the planning, design, and construction of all federally-assisted construction projects and requires its use on major capital projects.

Value engineering is the systematic application of recognized techniques that identify the function of a product or service, establish a value for that function, and provide the necessary function reliably at the lowest overall cost. In all instances, the required function should be achieved at the lowest possible life-cycle cost consistent with requirements for performance, maintainability, safety, security, and aesthetics.

Typically, a neutral multidisciplinary team usually of five to seven people conducts the value engineering review. Teams may include, for example, electrical engineers, civil engineers, systems engineers, electronic traction experts, signal engineers, maintenance experts, and operations experts.

The training of recipient staff members in value engineering techniques is an eligible project cost. Recipients are encouraged to use independent consultants with expertise in value engineering to prepare value engineering studies.

Value engineering is undertaken early in the design process before major decisions have been fully incorporated into the design, near the completion of PE. FTA cannot approve a grant application for final design funding or a FFGA (see paragraph 12 below) until value

engineering is complete. After every value engineering review, recipients must provide information to the FTA Regional Office about the changes recommended by the value engineering team and the savings or other benefits to be expected.

13. FULL FUNDING GRANT AGREEMENT/PROJECT CONSTRUCTION GRANT AGREEMENT. FTA is required to use a FFGA or a PCGA in providing Federal financial assistance for construction of New Starts and Small Starts (including Very Small Starts) projects respectively. The Federal Transit Administrator also has the discretion to use an FFGA in awarding Federal assistance for other major capital projects. FTA cannot enter into an FFGA/PCGA for a New Starts/Small Starts project unless that project is authorized for final design and construction. The FFGA/PCGA defines the project, including cost and schedule; commits to a maximum level of Federal financial assistance (subject to Congressional appropriations); establishes the terms and conditions of Federal financial participation; covers the period of time for completion of the project; and helps to manage the project in accordance with Federal law. The FFGA/PCGA assures the recipient of predictable Federal financial support for the project (subject to Congressional appropriations) while placing a ceiling on the amount of that Federal support.

The NEPA, the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act of 1966 and FTA's implementing regulations prohibit FTA from taking any major action before completing the required environmental review processes. Hence, FTA will not enter into a FFGA/PCGA until the environmental review process is complete (Categorical Exclusion (CE), FONSI, or ROD).

Questions regarding FFGAs/PCGAs should be addressed to FTA regional offices.

14. BUY AMERICA. Title 49 U.S.C. 5323(j) provides that, with exceptions, Federal funds may not be obligated for public transportation projects unless steel, iron, and manufactured products used in such projects are produced in the United States. Buy America requirements apply to all purchases, including materials or supplies funded as operating costs, if the purchase exceeds the threshold for small purchases (currently \$100,000).

FTA cautions that its Buy America regulation that applies to third party procurements, published at 49 CFR Part 661, differs from Federal "Buy American Act" regulations that apply to direct Federal procurements, published in the Federal Acquisition Regulation at 48 CFR Chapter 1, Subparts 25.1 and 25.2. The recipient is strongly advised to review these regulations before undertaking any procurement to assure compliance with the requirements applicable at the time the procurement will be undertaken.

A manufacturer or supplier of steel, iron, or manufactured goods may be permitted to correct, after bid opening, an incomplete certification or a certification of noncompliance under certain circumstances if submission of the incorrect certification was the result of an inadvertent or clerical error. In addition, 49 U.S.C. 5323(j)(9) now allows a party adversely affected by an FTA action the right to seek review.

15. LENGTH OF TIME FUNDS ARE AVAILABLE. New Starts funds are available for the year of appropriation and two years thereafter. For example, funds appropriated in FY 2007 for New Starts that have not been obligated by FTA to a recipient by September 30, 2009, will no longer be available after that date, and will be made available for other Section 5309 projects. This three-year availability is specified each year in the Department of Transportation (DOT) Appropriations Act.

16. TECHNICAL ASSISTANCE. FTA offers a wide variety of training courses, guidance manuals, and other forms of technical assistance for New Starts/Small Starts planning and project development. Information on available technical assistance can be obtained from regional offices.

CHAPTER VI

OTHER PROVISIONS

1. INTRODUCTION. In addition to the program-specific requirements and guidance provided in this circular, Federal Transit Administration (FTA) recipients are held to a number of FTA-specific and other Federal requirements. This chapter summarizes 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. Readers should use this chapter in conjunction with FTA's "Master Agreement" and the current fiscal year "Certifications and Assurances" that recipients must sign annually (via the Transportation Electronic Award and Management (TEAM) 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 below, as a reminder to grant recipients of their obligations to FTA. More information about individual requirements can be found in the Master Agreement and the Certifications and Assurances on the FTA public website www.fta.dot.gov and TEAM website (<http://ftateamweb.fta.dot.gov>), and in the references provided below.

Recipients are encouraged to contact the appropriate FTA Regional Office for more detail about these requirements. Some requirements call for extensive planning and should be addressed long before the applicant submits a grant application, and Regional Office staff can guide a grant applicant toward efficient action.

2. PROJECT INCLUSION IN TIP AND STIP. 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 planning process specified in 49 CFR Part 613 and 23 CFR Part 450. That is, 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 Improvement Program (TIP) approved by the Metropolitan Planning Organization (MPO) and the chief executive officer of a State and in a Statewide Transportation Improvement Program (STIP) that has been approved by FTA and the Federal Highway Administration (FHWA). Projects not within metropolitan planning boundaries are required only to be in the STIP. The grant application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page 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 TEAM. Section 5309 funds may be shown at a program level or project level in the TIP/STIP depending on local practice. Projects listed in the TIP and STIP must be derived from and consistent with the State's long range plan.

3. **PROCUREMENT REQUIREMENTS.** An applicant seeking Federal assistance pursuant to Federal transit laws as codified at 49 U.S.C. 5301 et seq., to acquire property or services in support of a proposed project is subject to numerous provisions of law pertaining to third party procurement requirements. The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU) recodified FTA's procurement requirements in 49 U.S.C. 5325. In addition, regulations found at 49 CFR Part 18 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments) (the "common rule" or the "common grant rule") establish uniform administrative rules for Federal grants, cooperative agreements and subawards to State, local, and Indian tribal governments. Provisions of the common rule pertaining to procurement requirements for FTA recipients are set forth at 49 CFR 18.36. Those requirements, as well as other FTA specific provisions, are also set forth in FTA's Master Agreement (FTA MA(13) October 1, 2006, as amended) at Section 15, Procurement, updated annually with the issuance of each new Master Agreement. Finally, FTA has published additional guidance relative to recipients' compliance with third party procurement requirements in the current FTA Circular 4220.1 and its "Best Practices Procurement Manual, which can be found at http://www.fta.dot.gov/funding/thirdpartyprocurement/grants_finance_6037.html. ” The regulations and guidance are intended to ensure full and open competition and equitable treatment of all potential sources in the procurement process including planning, solicitation, award, administration, and documentation of all federally-funded contracts.

Each recipient of FTA seeking Federal assistance to acquire property or services in support of its proposed project shall certify to FTA, in accordance with 49 CFR 18.36, that its procurements and procurement system will comply with all applicable third party procurement provisions of Federal laws, regulations, and directives, except to the extent FTA has expressly approved otherwise in writing. Any applicant failing to provide this certification or 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.

4. **PUBLIC HEARING REQUIREMENTS.** The public hearing requirement in 49 U.S.C. 5323(b) for capital projects was changed by SAFETEA-LU. The law now associates more clearly the public involvement and hearing requirements for capital projects with the environmental review required by the National Environmental Policy Act (NEPA) and its implementing regulations. It also broadens the requirement to apply to all capital projects (as defined in 49 U.S.C. 5302(a)(1)). Now, the grant applicant must provide an adequate opportunity for public review and comment on a capital project, and, after providing notice, must hold a public hearing on the project if the project affects significant economic, social, or environmental interests. These requirements will be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a public hearing on every draft Environmental Impact Statement (EIS). FTA will also require a public hearing on Environmental Assessments (EAs) that have a high probability of being elevated to EISs, ensuring that the applicant has complied

with the public hearing requirement to be included in the environmental record for the project.

Pursuant to 49 U.S.C. 5323(b), any application for a project that will “substantially affect a community or the public transportation service of a community” shall include a certification to the effect that the applicant has:

- a. Provided an adequate opportunity for public review and comment on the project;
- b. After providing notice, held a public hearing on the project if the project affects significant economic, social, or environmental interests;
- c. Considered the economic, social, and environmental effects of the project; and
- d. Found that the project is consistent with official plans for developing the community.

Title 49 U.S.C. 5323(b)(2) further states, “Notice of hearings under this subsection shall include a concise description of the proposed project; and shall be published in a newspaper of general circulation in the geographic area the project will serve.”

Title 49 U.S.C. 5323(b) must be read in concert with 49 U.S.C. 5324(b) which states that FTA must review the public comments and hearing transcript to ascertain that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that FTA must make a written finding to this effect.

FTA notes the public hearing requirements of 49 U.S.C. 5323(b) are separate and apart from the requirements for public participation in statewide and metropolitan planning. All capital projects financially supported by FTA are subject to statewide transportation planning requirements and, in metropolitan areas, to metropolitan planning requirements. FTA and FHWA have codified procedures for compliance with the statewide and metropolitan planning statutory mandates—including the mandates for public participation in the development of long-range plans and TIPs—in the two agencies’ joint planning regulations. (See 23 CFR Part 450 and 49 CFR Part 613). The practical effect of these statewide and metropolitan planning requirements is to provide the opportunity for the public to be informed about and comment on transportation investment decisions, regardless of whether that project will “substantially” affect a particular community and its public transportation service. These provisions may not apply to projects that are considered a categorical exclusion (such as bus purchases) or a documented categorical exclusion.

5. ENVIRONMENTAL PROTECTIONS. FTA’s environmental impact regulation (49 CFR Part 622, referencing 23 CFR Part 771) requires different levels of analysis and documentation for the various types of projects funded through its programs. Many projects and activities funded through the Capital Investment Program do not normally involve significant environmental impacts. Such projects are termed “Categorical

Exclusion” (CE) in FTA’s procedures because they are types of projects that have been categorically excluded from the requirement to prepare an environmental document. In the annual Certifications and Assurances, the State assures FTA that all the projects in the application are CEs under 23 CFR 771.117(c) unless otherwise noted. The regulation classifies categorically excluded actions and projects into two groups.

The first group, described at 23 CFR 771.117(c), contains activities and projects that have very limited or no environmental effects at all, such as planning and technical studies, preliminary design work, program administration, operating assistance, and transit vehicle purchases. Because environmental impacts of these activities are either nonexistent or minimal, no environmental documentation is required.

The second group of projects, described at 23 CFR 771.117(d), which normally qualify for a CE, are projects involving more construction and greater potential for off-site impacts. Examples include new construction or expansion of transit terminals, storage and maintenance garages, office facilities, and parking facilities. Experience has shown that these projects can be built and operated without causing significant impacts if they are carefully sited in areas with compatible land use where the primary access routes are adequate to handle the additional transit vehicle traffic. These construction projects may be designated as CEs (also referred to as documented categorical exclusions or DCEs) after FTA approval, but no presumption exists concerning the significance of environmental effects. It is the applicant’s responsibility to provide documentation that clearly demonstrates that the stated conditions or criteria are met and that no significant adverse effects will result. Such documentation is usually narrowly focused on one or a limited number of environmental concerns or questionable areas. Depending on the circumstances, some technical analysis may be required, such as a noise impact assessment or a street capacity analysis; but in most cases, the documentation will focus on consistency with local land-use plans, zoning and any State or local plans or programs governing the protection and management of environmental resources, such as air quality, water quality and noise abatement. The documentation will provide a written record of coordination with those State and local agencies having jurisdiction or a special interest in some aspect of the project. There is no formal public review for these types of environmental studies. FTA reviews this information and determines if a DCE is appropriate.

For any project which is not found to be a CE or DCE, the designated recipient may be required to prepare an EA for public comment and FTA review to determine if a finding of no significant impact (FONSI) is appropriate. In the event significant environmental impacts are identified for a Capital Investment project, an EIS will be required.

A number of environmentally related statutes, orders, and compliance procedures may apply to a given project even if it is properly classified as a CE. The environmental requirements which may come into play for Capital Investment projects include the following: Clean Air Act (CAA) conformity provisions; protection of public parkland, wetland and waterfowl refuges, and historic sites (49 U.S.C. 303); Section 106 of the National Historic Preservation Act (protection of historic and archaeological resources);

and Section 404 of the Clean Water Act (CWA) (Corp of Engineers' permit requirements for dredge and fill activities in "waters of the United States"). FTA policy is to require compliance with these environmentally related requirements within the overall environmental process. The EA or environmental documentation to support a CE must address these related requirements. See 69 FR 2541, dated May 6, 2004, for a comprehensive list of related requirements.

For purposes of NEPA, FTA's procedures categorically exclude many routine Capital Investment projects. Recipients should screen potential projects when they are first identified to make an initial determination as to which projects clearly meet the FHWA/FTA criteria for CEs and which projects may require additional documentation. The latter should be coordinated with the FTA Regional Office early in project development so that any necessary environmental analysis and review will not delay implementation. Any project involving new construction of a facility or substantial rehabilitation of an existing facility must be discussed with FTA to determine the need for information supporting a CE and the applicability of any additional environmental requirements. Early coordination is also necessary to identify those projects for which the Applicant must prepare an EA. If an EA is required, further steps to develop the project will not be authorized (e.g., property acquisition, final design, and construction) until FTA makes a final environmental finding for the project.

6. CLEAN AIR ACT. The principal CAA requirement with which FTA-funded projects must comply is the transportation conformity process. The conformity requirements are contained in an Environmental Protection Agency (EPA) regulation (40 CFR Part 93) and they apply in areas that currently violate one or more of the National Ambient Air Quality Standards (NAAQS) (nonattainment areas) and also in areas that once violated the standards but have since been redesignated to attainment status by EPA (so-called maintenance areas). The transportation conformity process applies not only to federally-funded projects but also to long-range transportation plans and TIPs. Determining conformity for transportation plans and TIPs is the responsibility of the MPO. Determining conformity for individual projects is the project sponsor's responsibility. Major transit infrastructure projects, e.g., new fixed guideway projects and extensions, will be analyzed at both the regional and local scales.

The transportation conformity regulation reserves detailed air quality analysis for large projects which 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 do not require any analysis. 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 in nonattainment and maintenance areas to establish what the requirements are and how best to satisfy them. The FTA Regional Office can also provide information on selected provisions of other laws that support clean air objectives—for example, FHWA's Congestion Mitigation and Air Quality (CMAQ) Improvement Program. Over the years, local transit agencies have benefited greatly from this program as a supplementary source of funding for transit. The

CMAQ Program has its own eligibility requirements with which FTA's regional offices are familiar.

7. **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.

The most comprehensive FTA document regarding private sector participation requirements is a report titled "Private Enterprise Participation in Transportation Planning and Service Delivery." The report is available on FTA's website at:

http://www.fta.dot.gov/documents/Private_Enterprise_Brochure.doc or
http://www.fta.dot.gov/laws/leg_reg_180.html.

8. **REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE**. If a grant applicant intends to use Federal financial assistance in a project which 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, as amended (Uniform Act)—that it will comply with the Uniform Act and with Department of Transportation (DOT) implementing regulations (49 CFR Part 24).

The Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs regulations, at 49 CFR Part 24, implement a Department of Transportation-wide regulation that applies 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.

Requirement 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**. Also, the recipient 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 contribution-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.

9. PRE-AWARD AND POST-DELIVERY REVIEWS. Procurements for vehicles, other than sedans or unmodified vans, must be audited in accordance with 49 CFR Part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases.” Additional guidance is available in the manual, “Conducting Pre-Award and Post-Delivery Reviews for Rail Vehicle Procurements” on FTA’s website:

http://www.fta.dot.gov/laws/leg_reg_5424.html. The regulation requires any recipient or subrecipient that purchases rolling stock for use in revenue service with funds obligated after October 24, 1991, to conduct a pre-award and post delivery review to assure compliance with its bid specifications, Buy America requirements, and Federal motor vehicle safety requirements, and to complete specific certifications. Purchase of more than 20 vehicles for use in areas under 200,000 in population (more than 10, for large urbanized areas), other than unmodified vans or sedans, requires in-plant inspection. In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size.

10. 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 in accordance with the Davis-Bacon Act, as amended. The Secretary may not approve any such loan or grant without first obtaining “adequate 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) originally Section 13(c) of the UMT Act of 1964). 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 Office of the American Workplace, Statutory Programs, Department of Labor, 200 Constitution Avenue NW, Room N-5603, Washington, DC 20210; telephone 202-693-0126; fax 202-693-1342.

11. 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 Transit Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient

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—Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient 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 ground 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. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,” 49 CFR Part 21;
 - (3) The current FTA Circular 4702.1 “Title VI and Title VI—Dependent Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR Part 21), DOT’s Order to Address Environmental Justice in Minority Populations (62 FR 18377, Apr. 15, 1997), and DOT Policy Guidance Concerning Recipient’s Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005);
 - (4) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. This Order 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; and
 - (5) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons. This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to limited English proficient (LEP) persons, pursuant to Title VI of the Civil Rights Act of 1964 and implementing regulations.
- c. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient 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 49 U.S.C. 5332 and any implementing requirements FTA may issue.

- d. 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 implementing DOT regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR Part 25, and with any implementing directives that DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.
- e. 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 implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.
- f. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient 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 (Section 504), as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
 - (2) The Americans with Disabilities Act of 1990 (ADA, as amended, (42 U.S.C. Section 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 transportation.
 - (3) DOT regulations implementing Section 504 and the ADA include 49 CFR Parts 27, 37, and 38. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities, including a private non-profit entity “standing in the shoes” of the State as a subrecipient 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) 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.
- g. Disadvantaged Business Enterprise (DBE). 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 SAFETEA-LU Section 1101(b), 23 U.S.C. 101. Section 1101(b) of SAFETEA-LU requires FTA to make available at least 10 percent of its funding under that Act for contracts with small business concerns owned and controlled by socially and economically disadvantage people. Each FTA recipient assists FTA in meeting this national goal. Grantees must comply with applicable requirements of DOT regulations, “Participation by Disadvantaged Business enterprises in Department of Transportation Financial Assistance Programs,” 49 CFR Part 26, (DBE regulations), in order to receive FTA funding. Contracts funded in whole or in part with FTA funds and subject to FTA’s procurement rule are also subject to the grantee’s DBE Program and are included to the extent of FTA funding in determining (i) whether the grantee meets the DBE threshold for goal setting; and, (ii) the goal if the threshold is met.
- (2) The recipient agrees and assures that it will comply with DOT regulations, “Participation by DBEs 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 which meet a prescribed threshold, 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, national origin, or disability in the award and performance of any third party contract, or subagreement 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 subagreements supported with Federal assistance derived from DOT/FTA. As required by 49 CFR Part 26 and approved by DOT/FTA , 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/FTA to the recipient of a failure to implement its approved DBE program, DOT/FTA 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 will also provide current guidance on request.

12. DRUG AND ALCOHOL TESTING. In the interest of safety of transit operations, recipients of funding from the 5307 Urbanized Area Formula Program, 5309 Capital Investment Program, 5311 Nonurbanized Area Formula Program, and other programs as determined by the Secretary are required by 49 U.S.C. 5331 to establish drug and alcohol testing programs. The purpose of the 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. Grant recipients identified above must also certify annually that they are in compliance with DOT and FTA regulations concerning drug and alcohol testing (49 CFR Parts 40 and 655). Compliance with the regulations is a condition of FTA funding. Where applicable, recipients of FTA funding are required to comply with Federal Railroad Administration (FRA-49 CFR Part 219), Federal Motor Carrier Safety Administration (FMCSA-49 CFR Part 382) and United States Coast Guard (USCG-46 CFR Parts 16 and 4) regulations concerning drug and alcohol programs.

To assure compliance with the drug and alcohol testing requirements, FTA has promulgated a regulation titled, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR Part 655). The regulation applies to recipients of funds identified above. The regulation requires that FTA recipients follow the drug and alcohol testing procedures found in applicable FTA (49 CFR Part 655) and DOT (49 CFR Part 40) regulations.

FTA's regulation 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 subrecipients, 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. 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, start-up and actual revenue operations of FTA-funded transit systems.

FTA's regulation requires testing of employees who perform a safety-sensitive function, which is defined at 49 CFR Part 655.4. The regulation requires the following six types of testing for illicit 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 90 days or more); reasonable suspicion; random; post-accident; return-to-duty (after a violation); and follow-up (a minimum of six tests in 12 months after returning to duty).

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 alcohol concentration levels and prohibited 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 the website (<http://www.fta.dot.gov>—click on “Safety & Security” and then “Drug and Alcohol”) or through contacting the FTA Office of Safety and Security, FTA Headquarters.

13. **DEBARMENT AND SUSPENSION.** The purpose of the DOT-wide Debarment and Suspension (Nonprocurement) regulations (49 CFR Part 29) is to ensure that Federal assistance funds are not provided to anyone who has been debarred, suspended, ineligible, or voluntarily excluded from participation in federally-assisted transactions. The U.S. General Services Administration (GSA) maintains a website, at www.epls.gov, which is updated in real time as changes to the data occur. GSA’s Excluded Parties List System (EPLS) 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.
- a. DOT regulations, “Governmentwide Debarment and Suspension (Nonprocurement),” 49 CFR Part 29, 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 (such as 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.

The awarding party must verify that the person is not excluded or disqualified by:

- (a) Checking the Excluded Parties List System (EPLS) maintained by the General Services Administration (GSA) and available at <http://epls.gov> [strongly recommended by FTA] and
 - (b) Adding a clause or condition to the third party contract or subagreement with that awardee.
- c. In addition, the recipient and awardees participating in lower tier transactions are required to extend these requirements to their awardees.
- (1) 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 is presently excluded or disqualified under the these regulations.

14. 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 anti-drug 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 subrecipients.

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 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 10 days of having received the notice. Within 30 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 Drug and Alcohol Testing rules are available through FTA's Office of Safety and Security, FTA Headquarters.

15. 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, subrecipients, and third party contractors at any tier awarded FTA assistance exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of non-Federal 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 non-Federal funds for lobbying, so long as the required disclosures are made.

16. PRE-AWARD AUTHORITY.

- a. General. FTA provides blanket, or automatic, pre-award authority in certain program areas described below. This pre-award authority allows recipients to incur certain project costs before grant approval and retain their eligibility for subsequent reimbursement after grant approval. The recipient assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This automatic pre-award spending authority permits a recipient to incur costs on an eligible transit capital or planning project without prejudice to possible future Federal participation in the cost of the project or projects.

The authorization of formula funds or appropriation of funds for discretionary projects and publication of those projects in FTA's annual Federal Register Notice of Apportionments and Allocations triggers automatic pre-award authority for design and environmental work on the project. Following authorization of formula funds or appropriation and publication of discretionary projects, pre-award authority for other 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 FONSI, or a determination that the project is categorically excluded. The project must also be included in the State Transportation Improvement Plan (STIP) prior to the exercise of pre-award authority.

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.

- b. Conditions. In general, all Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. Specifically;
- (1) Pre-award authority is not a legal or implied commitment that the project(s) will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project(s).
 - (2) All FTA statutory, procedural, and contractual requirements must be met.
 - (3) The recipient must take no action that prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.
 - (4) Local funds expended by the recipient pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant for the project(s) or project amendment(s). Local funds expended by the recipient before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds on activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (i.e., the

completion of the NEPA process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

- (5) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/local match ratio at the time the funds are obligated.
 - (6) For funds to which the pre-award authority applies, the authority expires when the funds remain unobligated or lapse at the end of the fiscal year.
 - (7) When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority.
 - (8) More information and updates regarding pre-award authority can be found in FTA's annual apportionment notice published in the Federal Register.
- c. For a project not covered by the blanket pre-award authority, including Capital Investment Program New Starts projects not yet under a Full Funding Grant Agreement (FFGA) /Project Construction Grant Agreement and bus projects that have not been announced via a *Federal Register* Notice, 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. An LONP permits a grant applicant to incur costs on a project using non-Federal resources with the understanding that the costs incurred after the LONP is issued may be reimbursable as eligible expenses or eligible for credit toward local matching share if the project should be approved for funding by FTA at a later date. Each LONP has an expiration date. It is the date beyond which funding cannot be requested retroactively for the project. The period covered by an LONP generally does not exceed five years. The conditions under which LONP authority may be used are the same as those listed by FTA in announcing the blanket pre-award authority as described in the paragraph above.

17. **SAFETY AND SECURITY.** FTA's authority in the area of transit safety is set forth in 49 U.S.C. 5329. Under this section, FTA may conduct investigations into safety hazards and security risks associated with a condition in equipment, a facility, or an operation financed under Chapter 53 in order to establish the nature and extent of the condition and how to eliminate, mitigate, or correct it. FTA also may require local jurisdictions to submit a plan for eliminating, mitigating, or correcting the deficiency. Finally, FTA may withhold further financial assistance from any recipient that fails to correct any safety and security deficiency.

NOTE: FTA has entered into a Memorandum of Understanding 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 will also focus on addressing the needs of rural and small urban providers.

18. LEASE VERSUS BUY CONSIDERATIONS. 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 pre-award authority must conduct the cost comparison before entering into the lease. Recipients should refer to regulations for further details on conducting the cost effectiveness comparison (49 CFR Part 639).

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 three or four 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 a Congressional earmark 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>.

19. CHARTER BUS SERVICES. Title 49 U.S.C. 5323(d) places limits on the charter services that federally-funded public transportation operators may provide. The charter service regulation (49 CFR Part 604) prohibits FTA recipients from providing any charter service using FTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide. The charter service regulation applies to both buses and vans. Any Section 5309 recipient desiring to provide charter service must publish a notice annually and determine whether there are any private charter operators willing and able to provide the service. The State or designated recipient may conduct this process for itself and subrecipients or delegate this responsibility for the subrecipients to any or all of the subrecipients. The State and designated recipients must sign a charter agreement as part of the annual Certifications and Assurances, and obtain and retain signed charter agreements from their subrecipients. [NOTE: FTA issued a notice of proposed rulemaking for charter bus in the Federal Register (72 FR 7526, February 15, 2007). Interested parties are encouraged to visit <http://www.regulations.gov> and enter the docket number FTA-2007-2265722657 for more information. This paragraph may change if the final rule is issued before issuance of a final FTA Circular 9300].
20. SCHOOL BUS TRANSPORTATION. Title 49 U.S.C. 5323(f) 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 (so called “tripper service”). For the purpose of FTA’s school bus regulation, Headstart is a social service, not a school program. Rules for the Headstart Program limit the types of vehicles which may be used to transport children participating in a Headstart Program. FTA recipients may operate multi-functional vehicles which meet the safety requirements for school transportation, but may not provide exclusive school service.

21. COMMERCIAL DRIVER’S LICENSE (CDL). All drivers of vehicles designed to transport 16 or more 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 who drive the vehicles must also have a CDL.

APPENDIX A

INSTRUCTIONS FOR PREPARING A GRANT APPLICATION TO FTA

1. PRE-APPLICATION STAGE.

- a. System Access. Applications for the Federal Transit Administration (FTA) grant program funds must be submitted electronically through the Transportation Electronic Award and Management (TEAM) system. Applicants must have access to FTA's TEAM system in order to enter a grant. If an applicant does not have access to TEAM, 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 D.
- 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 Capital Investment 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 (ADA) Paratransit Plan. FTA's Regional Civil Rights Officer must verify that all required Civil Rights submissions are current at the time that the grant application is entered into TEAM. 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. (See Chapter VI, Other Provisions.)

2. APPLICATION STAGE (TEAM INFORMATION). Applicants should submit their grant applications electronically through the TEAM system. TEAM is a database accessible via the Internet. The TEAM User Guide provides detailed information on how to access and use FTA's TEAM 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 are also addressed. Information that should be entered into TEAM when preparing an application includes:

- a. Recipient Information. Applicants should enter or update all required information about their organization in the appropriate fields in TEAM, including recipient address, contact information, union information, urbanized area identification number (UZA), Congressional district(s), Date Universal Numbering System (DUNS) Number, etc. The information must be current and accurate for each grant and periodically updated as changes occur.
- b. Project Information. Applicants should identify whether the application is a new grant, a grant amendment, or a budget revision. The project start/end date, program date, Executive Order 12372 review date found at <http://www.whitehouse.gov/news/orders>, Metropolitan Planning Organization (MPO) concurrence date (if applicable), and grant project costs must be identified.
 - (1) 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. The project description should also identify any subrecipients funded through the grant application and the projects being implemented by each subrecipient. 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.
 - (2) Program Date and Page of State Transportation Improvement Program (STIP) or Unified Planning Work Program (UPWP). All projects for capital funds in the grant application must be included in the current STIP. The STIP is jointly approved by FTA and the Federal Highway Administration (FHWA). FTA funds cannot be obligated unless the STIP is approved by FTA. The application should note the page(s) in the most recently approved STIP on which the project(s) contained in the application are listed. The electronic 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.
 - (3) Earmarks. If the funding is being provided pursuant to a Congressional designation of funds (“earmark”) under the Capital Investment Program, the applicant must identify the earmark being used and in what amount.
- c. Budget. The appropriate scopes and ALIs should be used when developing the project budget. All sources of funds must be identified and confirmed. 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 specific funding programs. 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.

- d. Project Milestones. Estimated completion dates for all milestones should be provided; revenue vehicles have particular milestone requirements. If milestones are not pre-populated by the TEAM system for a particular ALI, use the add function to add milestones for that ALI to the grant application.
- e. 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 771.115 and 771.117.) Grant applicants should refer to Part 771.117(c) and (d) for a listing of the Class II (Categorical Exclusion) projects. Many Capital Program projects 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. Refer to Chapter IV, Fixed Guideway Modernization for more information on the environmental review process.
- f. Fleet Status. Applications requesting new or replacement revenue vehicles should include a summary of the make-up of the applicant's fleet. The applicant should include a listing of vehicles in the current fleet and also show how the size and make-up of the fleet will be affected by the vehicles included in the application.
- g. Application Submission. Once FTA deems the activities eligible, and determines that all pre-application requirements have been satisfied, FTA assigns a grant number. At this point, the grant is ready to be pinned (signed) and submitted in TEAM by the authorized official of the applicant.
- h. 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 Capital Program grants before FTA will approve them. Refer to Chapter VI for more information on DOL certification.
- i. Congressional Notification Process: FTA must notify Congress when awarding discretionary grants over \$1million and a courtesy notification to Congressional Representatives must be given for all grants, including earmarked funds. This is required by 49 U.S.C. 5334(k).
- j. Grant Approval. Once FTA staff determines through a final review of the application that FTA program requirements have been met, FTA awards and obligates funds requested in the grant.

- k. 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 include pre-award activity require the submission of a Financial Status Report before grant execution.

3. APPLICATION CHECKLIST.

Part I—Recipient Information

1. Are Annual Certifications & Assurances pinned?
2. Is the Recipient Contact, designated signator, Opinion of Counsel, Authorizing Resolution & Other information Complete?
3. Is UZA/Congressional District information entered and accurate?
4. Is union contact information entered and accurate?
5. Has Civil Rights Program Documentation been approved by FTA?
6. Has the applicants DUNS Number been entered in the appropriate field?

Part II—Project Details

- 1 Does the Project Description include adequate descriptive information of the project(s)? Is information on any subrecipients and their projects included?

Part III—Project Information

Have the following fields been completed if applicable?

- 1 New Application or Amendment?
- 2 Start/End Date?

Part IV—Budget

1. Are ALI codes entered under the appropriate scope codes?
2. Have funding percentages been verified to ensure that Federal funds are not over the allowable share?
3. Does the funding amount entered in the budget match financial information entered in the “Project Information” field?
 - a. Federal Funds
 - b. Local Match
4. Does the rolling stock (vehicle) line item contain accurate information such as:
 - a. Description
 - b. Fuel Type
5. Details (Extended Budget Description)
 - a Has descriptive information been added in the details section of each ALI that identifies the items being funded using the line item?
6. Where applicable, have non-add scopes been added to it that show the funds allocated to tribal governments or other areas of emphasis?

3. Program Date (STIP date)(UPWP if planning activities included)?
4. Have control totals been entered?
5. If pre-award authority is applicable, has “yes” been selected?
6. Has the EO 12372 Review been completed, if applicable?
7. Has the earmark information been entered, if applicable?

Part V—Project Milestones

1. Are milestones listed for each ALI? (If an ALI does not have milestones, they must be added.)
2. Have estimated completion dates been entered?

Part VI—Environmental Findings (NEPA)

1. Has an environmental finding been entered for each ALI?

Part VII—Fleet Status

1. Has information pertaining to current and future revenue vehicles been entered?

4. ECHO INFORMATION.

- a. Office of Management and Budget (OMB) Circulars A–102, A–110 and 31 CFR Part 205, governs payment to recipients for financing operations under Federal grant 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 System Users Manual for Recipients.”

ECHO Control Number (ECN)_____ (For initial ECHO setup agency will assign ECN Number, for non ECHO payments enter "N/A").

RECIPIENT INFORMATION	
NAME:	
ADDRESS:	
CITY/STATE/ZIP:	TELEPHONE NUMBER:
CONTACT PERSON NAME:	()

SIGNATURE OF AUTHORIZED OFFICIAL IN FTA		TELEFAX NUMBER: ()
	DATE: / /	
AGENCY INFORMATION		
NAME: <i>Federal Transit Administration</i>		
ADDRESS: <i>400 Seventh Street SW., Room 9422, TBP-24, Washington, DC 20590</i>		
CONTACT PERSON NAME:	<i>202-366-9748</i>	
FINANCIAL INSTITUTION INFORMATION (Note: Have Your Bank Complete This Section)		
NAME:		
ADDRESS:		
CITY/STATE/ZIP:		
CONTACT PERSON NAME:	TELEPHONE NUMBER: ()	
NINE DIGIT ROUTING TRANSIT NUMBER: _ _ _ _ _		
DEPOSITOR ACCOUNT TITLE:		
DEPOSITORS ACCOUNT NUMBER:		
TYPE OF ACCOUNT: CHECKING SAVING		
SIGNATURE AND TITLE OF REPRESENTATIVE:	DATE: //	FAX NUMBER: ()

Revised 7/98

b. Instructions for Completing Form:

- (1) Fill in your ECHO Control Number. If this is an **Initial ECHO Setup**, Agency will assign an ECHO Control Number.
- (2) Check appropriate box(es):
 - (a) Initial Setup.
 - (b) Change in Bank Information.

(c) Change in Recipient Information.

- (3) Fill out information in the appropriate section(s) listed below:
- (4) **Recipient Information Section**—Print or type the name of the recipient and address that will receive ECHO/ACH payments. Also include a contact person's name, date, telephone, and telefax numbers.
- (5) **Financial Institution Information Section**—Have your bank fill out this section. They should print or type the name and address of the financial institution that will receive the ECHO/ACH payment. Also included are the ACH coordinator's name, telephone number, nine-digit routing transit number (ABA #), depositor (recipient) account title, depositor (recipient) account number, and type of account (type can **ONLY** be designated as **Checking** or **Savings**), signature and title of representative, date, and telefax number.
- (6) Mail the form to the name and address shown in the **Agency Information Section**. This section also includes a contact person's name and telephone number.
- (7) If there are any questions, please call **202-366-1004** and ask for the agency's ACH contact.

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APPENDIX B

SECTION 5309 BUDGET INFORMATION

1. **BACKGROUND.** FTA has developed a single budget format of project scopes and activity line items that can be used for each of the Federal Transit Administration (FTA) programs. A sample Approved Project Budget for each category of capital program funds is provided in Exhibits VIII–1 through VIII–5. The most recent scope and activity line item (ALI) Chart is available on the TEAM-Web Home Page.
2. **OVERVIEW OF PROJECT BUDGET DOCUMENT.** Within a grant, there are often groups of activities related 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. **Scope and Activity Levels.** Grant applicants are referred to the FTA Scope & Activity Line Item (ALI) Codes Chart which is available on the TEAM home page. The numbering of both the scope and activity levels of information on the Approved Project Budget is derived from the activity codes in TEAM.
 - b. **Sources of Federal Financial Assistance.** The final section of the budget form, Sources of Federal Financial Assistance, outlines by urbanized area how funding for the grant has been obligated by FTA. If a grant is being funded for the first time, no dollar amounts will appear in the Previously Approved column. This column is used only when a grant is being amended, to reflect the original amount of a grant. Since FTA’s grants database is designed to store grant information in the context of “amendments,” beginning with amendment “00,” even the initial increment of funding for a grant is designated in the next column, the Amendment Amount column. The Amendment Amount column will be the same as the amount that appears in the Total column, if no additional funds are being added to the budget.
3. **PREPARING A PROJECT BUDGET.** The grant applicant should complete a project budget following the examples provided for each category of program funds. FTA will complete the information under the heading, “Sources of Federal Financial Assistance.”

FTA Circular 5010 describes FTA’s policies for approving budget revisions and grant amendments based on scopes and ALIs in an approved budget. When establishing a new project budget, recipients and FTA regional staff consider whether scopes should be broad or narrow based on the nature of the projects(s) and how much future flexibility the recipient may need to revise the budget.

Sample Budget for Bus Program Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-04-0001-00
Budget Number:	1—Budget Approved
Project Information:	purchase vans & rehab admin/maint facility

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
111-00 BUS—ROLLING STOCK	9	\$257,590.00	\$321,987.00
<u>ACTIVITY</u>			
11.12.15 BUY REPLACEMENT VAN	9	\$257,590.00	\$321,987.00
<u>SCOPE</u>			
114-00 BUS: SUPPORT EQUIP AND FACILITIES	0	\$21,631.00	\$27,039.00
<u>ACTIVITY</u>			
11.42.08 ACQUIRE—ADP SOFTWARE	0	\$9,596.00	\$11,995.00
11.42.20 ACQUIRE—MISC SUPPORT EQUIPMENT	0	\$1,552.00	\$1,940.00
11.44.03 REHAB/RENOVATE—ADMIN/MAINT FACILITY	0	\$10,483.00	\$13,104.00
<u>SCOPE</u>			
116-00 SIGNAL & COMM EQUIPMENT	0	\$12,041.00	\$15,052.00

(BUS)			
<u>ACTIVITY</u>			
11.62.03 PURCHASE RADIOS	0	\$4,192.00	\$5,241.00
11.62.20 PURCHASE MISC COMMUNICATIONS EQUIP	0	\$7,849.00	\$9,811.00
Estimated Total Eligible Cost:			\$364,078.00
Federal Share:			\$291,262.00
Local Share:			\$72,816.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Alternative Fuel Codes

11.12.15	BUY REPLACEMENT VAN	Gasoline
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Sample Budget for Fixed Guideway Modernization Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-05-0001-00
Budget Number:	1—Budget Prior Approved
Project Information:	5309 fixed guideway money

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
122-00 RAIL TRANSITWAY LINES	0	\$1,249,684.00	\$1,562,105.00
<u>ACTIVITY</u>			
12.23.03 CONSTRUCT LINE Pocket Track	0	\$1,249,684.00	\$1,562,105.00
<u>SCOPE</u>			
123-00 RAIL— STATION/STOPS/TERMINALS	10	\$986,000.00	\$1,232,500.00
<u>ACTIVITY</u>			
12.34.02 REHAB/RENOV—Mariposa LRT— Roof	0	\$123,000.00	\$153,750.00
12.54.01 REHAB/RENOV Lightning Protection.	0	\$123,000.00	\$153,750.00
12.14.20 LIGHT RAIL CARS—Vehicle Gearbox overhaul.	10	\$700,000.00	\$875,000.00
12.34.08 REHAB/RENOV—FURNITURE & GRAPHICS	0	\$40,000.00	\$50,000.00

<u>SCOPE</u>			
113-00 BUS— STATION/STOPS/TERMINALS	0	\$188,000.00	\$235,000.00
<u>ACTIVITY</u>			
11.34.02 REHAB/RENOVATE—BUS STATION	0	\$128,000.00	\$160,000.00
11.24.02 REHAB/RENO. MALL TREE REPLACE	0	\$60,000.00	\$75,000.00
<u>SCOPE</u>			
111-00 BUS—ROLLING STOCK	10	\$1,022,479.00	\$1,278,099.00
<u>ACTIVITY</u>			
11.14.03 REHAB/REBUILD Mall Shuttle	10	\$1,022,479.00	\$1,278,099.00
Estimated Total Eligible Cost:			\$4,307,704.00
Federal Share:			\$3,446,163.00
Local Share:			\$861,541.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Alternative Fuel Codes

11.14.03	REHAB/REBUILD Mall Shuttle	Hybrid Electric
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Sample Budget for New Starts Project

DOT



FTA

**U.S. Department of
Transportation**

**Federal Transit
Administration**

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-03-0001-00
Budget Number:	1—Budget Approved
Project Information:	Capital Projects

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
140-10 GUIDEWAY & TRACK ELEMENTS	0	\$2,770,399.00	\$5,806,640.00
<u>ACTIVITY</u>			
14.01.10 GUIDEWAY & TRACK ELEMENTS	0	\$2,770,399.00	\$5,806,640.00
<u>SCOPE</u>			
140-20 STATIONS, STOPS, TERMINALS, INTERMODAL	0	\$4,509,761.00	\$9,452,270.00
<u>ACTIVITY</u>			
14.02.20 STATIONS, STOPS, TERMINALS, INTERMODAL	0	\$4,509,761.00	\$9,452,270.00
<u>SCOPE</u>			
140-40 SITEWORK & SPECIAL CONDITIONS	0	\$9,301,897.00	\$19,496,390.00

<u>ACTIVITY</u>			
14.04.40 SITework & SPECIAL CONDITIONS	0	\$9,301,897.00	\$19,496,390.00
<u>SCOPE</u>			
140-50 SYSTEMS	0	\$2,929,977.00	\$6,141,110.00
<u>ACTIVITY</u>			
14.05.50 SYSTEMS	0	\$2,929,977.00	\$6,141,110.00
<u>SCOPE</u>			
140-80 PROFESSIONAL SERVICES	0	\$5,432,966.00	\$11,387,270.00
<u>ACTIVITY</u>			
14.08.80 PROFESSIONAL SERVICES	0	\$5,432,966.00	\$11,387,270.00
Estimated Total Eligible Cost:			\$52,283,680.00
Federal Share:			\$24,945,000.00
Local Share:			\$27,338,680.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Sample Budget for Alternatives Analysis Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-39-0001-00
Budget Number:	1—Budget Approved
Project Information:	5339 AA(Streetcar/Eastside)

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
442-00 METROPOLITAN PLANNING (06 5339, 80:20)	0	\$1,485,000.00	\$1,856,250.00
<u>ACTIVITY</u>			
44.23.02 Eastside AA & Design	0	\$750,000.00	\$937,500.00
44.23.02 Streetcar AA & Design	0	\$260,000.00	\$325,000.00
44.23.01 Technical Methods	0	\$275,000.00	\$343,750.00
44.23.01 System Plan	0	\$200,000.00	\$250,000.00
Estimated Total Eligible Cost:			\$1,856,250.00
Federal Share:			\$1,485,000.00
Local Share:			\$371,250.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Sample Budget for Clean Fuels Project

DOT



FTA

U.S. Department of Transportation

Federal Transit Administration

Application for Federal Assistance

Recipient ID:	0001
Recipient Name:	ANYWHERE TRANSIT DISTRICT
Project ID:	ST-58-0001-00
Budget Number:	1—Budget Approved
Project Information:	CLEAN FUEL BUS

Part 3: Budget

Project Budget

	<u>Quantity</u>	<u>FTA Amount</u>	<u>Tot. Elig. Cost</u>
<u>SCOPE</u>			
111-00 BUS—ROLLING STOCK	1	\$453,420.00	\$566,775.00
<u>ACTIVITY</u>			
11.12.01 BUY REPLACEMENT 40-FT BUS	1	\$453,420.00	\$566,775.00
Estimated Total Eligible Cost:			\$566,775.00
Federal Share:			\$453,420.00
Local Share:			\$113,355.00

OTHER (Scopes and Activities not included in Project Budget Totals)

None

Alternative Fuel Codes

11.12.01	BUY REPLACEMENT 40-FT BUS	Hybrid Electric
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APPENDIX C

SAMPLE DOCUMENTS

- **Authorizing Resolution (SAMPLE)**
- **Classification of Fleet**
- **Fleet Replacement**
- **Opinion of Counsel**
- **Project Milestone Schedule**
- **Proceeds from Sale of Assets**

(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, and other Federal statutes administered by the Federal Transit Administration.

WHEREAS, the Federal Transportation 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. Section 5307, either alone or in addition 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. Section 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 the 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)

(Name of Recipient)

CLASSIFICATION OF FLEET

Example reflects a fleet expansion of three vehicles.

	Before Grant <u>Approval</u>	Amount of <u>Change</u>	After Grant <u>Approval</u>
I. Active Fleet			

A. Peak Requirement	_____43_____	_____3_____	_____46_____
B. Spares	_____6_____	_____0_____	_____6_____
C. Total (A+B)	_____49_____	_____3_____	_____52_____
D. Spare Ratio (B/A)	_____13.95%_____	_____0.00%_____	_____13.04%_____

II. Inactive Fleet

A. Contingency Reserve	_____0_____	_____0_____	_____0_____
B. Pending Disposal	_____5_____	_____0_____	_____5_____
C. Total (A+B)	_____5_____	_____0_____	_____5_____

III. Total Fleet

(I.C.+II.C)	_____54_____	_____3_____	_____57_____
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FLEET REPLACEMENT

Listing of Vehicles to be Replaced

Make/Model

Year of Manufacture

Vehicle I.D. Number (VIN)

Month/Year Placed in Revenue Service

Accumulated Revenue Miles

Estimated Month/Year to be Taken Out of Revenue Service

Condition

Original Grant Purchased Under

Example Transaction for Mid-life Sale of Transit Bus

When Federal Interest is Re-invested in Replacement Transit Bus

1. A recipient purchased a new bus in 2005 for \$250,000; 80 percent of the total price, or \$200,000, was Federal funding while 20 percent, or \$50,000, was local. Thus, there was an initial \$200,000 “Federal interest” in the new vehicle.
2. Instead of keeping the bus in service for 12 years, the minimum normal service life under FTA guidelines, the recipient chose to sell the bus after six years and replace it with a new vehicle.
3. Since the bus had a minimum normal service life of 12 years and its depreciation was determined 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.
4. Assume, for example, the recipient realized \$100,000 from the sale of the 6-year-old bus, or \$25,000 less than the straight-line depreciated value of the original vehicle.
5. 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	\$116,000
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 FMV as evidenced by the sales proceeds.

(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. Section 5307, the opinion must state whether the Applicant is the Designated Recipient as defined at 49 U.S.C. Section 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 by _____

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, of 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

(RECIPIENT)

PROJECT MILESTONE SCHEDULE (SAMPLE)

PROJECT NO.: XX-90-0162

MOST RECENT AMENDMENT NO.: N/A

TOTAL FTA SHARE:

\$3,300,000

MILESTONE SCHEDULE:

<u>Line Item Description</u>	<u>Milestone Description</u>	<u>Date</u>
<i>Capital Assistance:</i>		
Purchase 10 30-ft. buses	Bids advertised	Dec. 2004
	Contract	March 2005
	First bus delivery, acceptance	May 2005
	Last bus delivery, acceptance	March 2005
	Contract complete (final payment made)	May 2005
Purchase/install communications equipment	Bids advertised	April 2005
	Contract awarded	June 2005
	Contract complete	Sept. 2005
Engineering design for new facility	Request for proposals	Jan. 2006
	Contract awarded	March 2006
	Design completed	June 2006
	Contract closed (Final payment made)	July 2006
<i>Planning Assistance:</i>		
Needs Assessment for Maintenance Facility	RFP advertised	Dec. 2005
	Contract awarded	March 2006
	Study completed	July 2006

Operating Assistance:

Op. Asst. for FY 2006

Final Disbursement

Sept. 2006

PROCEEDS FROM THE SALE OF ASSETS NO LONGER NEEDED FOR TRANSIT PURPOSES

Section 5334(h)(4) permits a recipient to apply the proceeds from the disposition of an asset no longer needed for transit purposes to a subsequent capital project. Title 49 U.S.C. 5334(h)(4) reads, in pertinent part:

“(A). In general.—When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

(B) Use.—The net income from asset sales, uses or leases (including lease renewals) under this subsection shall be used by the recipient to reduce the gross project costs of other capital projects carried out under this chapter.”

A recipient intending to dispose of an asset in accordance with this section of transit law should inform FTA of its intentions before disposing of the asset. When the recipient receives proceeds from the disposition of the asset, the recipient is expected to establish in the recipient’s accounting system a record of liability (demonstrating that these funds are owed), which will be removed when the recipient uses the proceeds for a subsequent transit project.

When the recipient applies for a grant from FTA and applies the proceeds to the new transit project, the recipient should show the past transaction on the Grant Application screen of the FTA electronic system. The recipient should fill in the line “adjustment amount” to show that the proceeds (or a portion of the proceeds) from the earlier disposition are being applied to the project and are being used to reduce the total project cost (gross project cost). If appropriate, the recipient may also describe in the Extended Text Screen the actions the recipient has taken or intends to take.

EXAMPLE.

Recipient Disposes of Asset. Twenty years ago FTA provided a recipient with assistance to purchase a parcel of land. Assume the parcel is no longer needed for transit purposes. Having received disposition concurrence from FTA, the recipient sells the parcel and receives net sales proceeds of \$50,000.

Recipient Applies Proceeds to Subsequent FTA-Assisted Transit Project. Assume 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, the recipient is expected to report the use of the proceeds from the earlier sale of the asset in the following manner.

EXAMPLE APPLICATION INFORMATION USING PROCEEDS FROM SALE OF ASSETS IN ACCORDANCE WITH Section 5334(g)(4)

Project Control Totals:

Total Cost \$250,000

Adjustment Amount **\$50,000** (*proceeds from sale of asset*)

Eligible Project Cost \$200,000 (*Net Project Cost*)

Total FTA Amount **\$160,000** (*80 percent of \$200,000*)

Total State Amount (*not applicable for the example*)

Total Local Amount: **\$40,000** (*20 percent of \$200,000*)

Other Fed. Funds: (*not applicable for the example*)

Special Condition Amount (*not applicable for the example*)

FTA C-9300
DATE

Appendix C

APPENDIX D

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, Georgia 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 Forth 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

<u>Office</u>	<u>Area Served</u>	<u>Contact Information</u>
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 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	1 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
Philadelphia Metropolitan Office	Philadelphia Metropolitan Area	1760 Market Street, Suite 510 Philadelphia, PA 19103-4124 Telephone: 215-656-7070 Fax: 215-656-7269
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, D.C. Metropolitan Office	Washington, D.C. Metropolitan Area	1990 K Street NW, Suite 510 Washington, DC 20006 Telephone: 202-219-3562/3565 Fax: 202-219-3545

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