



U.S. Department
of Transportation

**Federal Transit
Administration**

Administrator

400 Seventh St., S.W.
Washington, D.C. 20590

NOV 23 1998

C-98-37

Dear Colleague:

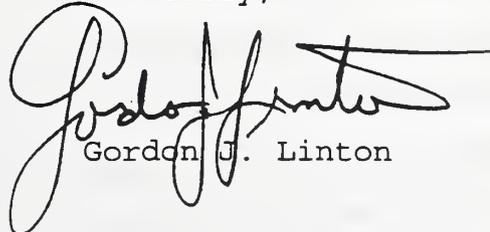
It is a pleasure to issue the revised circular for the Federal Transit Administration's Capital Program. FTA Circular 9300.1A provides program guidance and application procedures for transit capital assistance for:

- buses and bus-related facilities,
- modernization of fixed guideway systems and
- construction of new fixed guideway systems and extensions ("new starts").

In FY 1999, FTA will begin using its new Transportation Electronic Award and Management (TEAM) system for grant award and management. The system uses graphic user technology, providing point and click "smart" selections that will aid grant recipients in the process of submitting applications and reporting on the management of their grants.

The main purpose of this circular is to reflect provisions of the Transportation Equity Act for the 21st Century (TEA-21).

Sincerely,



Gordon J. Linton



U.S. Department
of Transportation

Federal Transit
Administration

CIRCULAR

FTA C 9300.1A

October 1, 1998

Subject: CAPITAL PROGRAM: GRANT APPLICATION INSTRUCTIONS

1. **PURPOSE.** This circular describes the Capital Program administered by the Federal Transit Administration (FTA) and provides guidance for applying for grants under the Capital Program. The program is authorized by 49 U.S.C. § 5309. The circular addresses the requirements that must be met in the application for Section 5309 capital program assistance and gives information about the basis of those requirements. The circular is a revision of FTA Circular 9300.1. This revision incorporates current statutory and programmatic requirements and includes changes based on the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, enacted June 9, 1998, as amended by the TEA-21 Restoration Act, Public Law 105-206, enacted July 22, 1998.
2. **CANCELLATION.** This circular cancels FTA Circular 9300.1 "Capital Program: Grant Application Instructions," dated 9-29-95.
3. **CODIFICATION OF FEDERAL TRANSIT LAWS.** Since July 1994, the bulk of Federal transit law has been codified in chapter 53 of Title 49, United States Code. Upon codification, substantially all of the Federal Transit Act, as amended, was repealed as redundant.
4. **REFERENCES.**
 - a. Federal transit laws, 49 U.S.C. chapter 53.
 - b. FTA website at www.fta.DOT.gov.
 - c. Federal highway and surface transportation laws, Title 23, United States Code.
 - d. Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. No. 102-240, 105 Stat. 1914, Dec. 18, 1991 (codified as amended by Pub. L. 103-272, 108 Stat. 745, July 5, 1994, in scattered sections of 49 and 23 United States Code).
 - e. Transportation Equity Act for the 21st Century (TEA-21), Pub. L. No. 105-178, June 9, 1998, as amended by the TEA-21 Restoration Act, Pub.L. No. 105-206, June 22, 1998.
 - f. Lobbying disclosure provisions of 31 U.S.C. § 1352.

**Distribution: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)**

**OPI: Office of Program
Management**

- aa. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.
- ab. FTA regulations, "Uniform System of Accounts and Records and Reporting System," 49 C.F.R. Part 630.
- ac. FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 C.F.R. Part 653.
- ad. FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," 49 C.F.R. Part 654.
- ae. FTA regulations, "Project Management Oversight," 49 C.F.R. Part 633.
- af. FTA regulations, "Capital Leases," 49 C.F.R. Part 639.
- ag. FTA regulations, "Rail Fixed Guideway Systems; State Safety Oversight," 49 C.F.R. Part 659.
- ah. FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661.
- ai. FTA regulations, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663; and FTA Disposition of Inquiries, "Pre-Award and Post-Delivery Audits of Rolling Stock Questions and Answers," 57 Fed. Reg. 10834 (1992).
- aj. FTA regulations, "Bus Testing," 49 C.F.R. Part 665.
- ak. Joint Federal Highway Administration (FHWA)/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 (specifically, Subpart B, "Statewide Transportation Planning," and Subpart C, "Metropolitan Transportation Planning and Programming").
- al. Joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Part 500 and 49 C.F.R. Part 613 and Part 614 dated 12-19-96.
- am. Joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93.
- an. Department of Labor Guidelines, "DOL Guidelines, Section 5333(b), Federal Transit law," 29 C.F.R. Part 215.
- ao. Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," dated 6-30-97.
- ap. FTA Circular 4220.1D, "Third Party Contracting Requirements," dated 4-15-96.
- aq. FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients," dated 5-26-88.
- ar. FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients," dated 7-26-88.

CAPITAL PROGRAM: GRANT APPLICATION INSTRUCTIONS

TABLE OF CONTENTS

	<u>PAGE</u>
CHAPTER I. INTRODUCTION AND BACKGROUND	I-1
CHAPTER II. HOW TO USE THIS CIRCULAR	II-1
CHAPTER III. BUSES AND RELATED ACQUISITIONS	III-1
CHAPTER IV. FIXED GUIDEWAY MODERNIZATION	IV-1
CHAPTER V. NEW STARTS	V-1
CHAPTER VI. REQUIREMENTS COMMON TO ALL CAPITAL PROGRAM GRANT APPLICATIONS	VI-1
CHAPTER VII. GRANT APPLICATION CONTENTS	VII-1
CHAPTER VIII. INSTRUCTIONS FOR PREPARING A PROJECT BUDGET	VIII-1
CHAPTER IX. EXAMPLES	IX-1
CHAPTER X. REGIONAL OFFICES	X-1
APPENDIX A. RELATIONSHIP BETWEEN CAPITAL PROGRAM GRANTS AND THE METROPOLITAN AND STATEWIDE PLANNING PROCESS	
APPENDIX B. JOINT DEVELOPMENT PROJECTS	
APPENDIX C. ANNUAL CERTIFICATIONS AND ASSURANCES	

INDEX

CHAPTER I

INTRODUCTION AND BACKGROUND

1. THE FEDERAL TRANSIT ADMINISTRATION. The Federal Transit Administration (FTA) is one of nine operating administrations within the U.S. Department of Transportation. FTA employs approximately 460 people to administer its programs. In recent years, FTA has received annual appropriations from the Congress exceeding \$4 billion to be applied to transit projects throughout the U.S.A. and its various possessions. Headquarters offices are located at 400 7th Street, S.W., Washington, D.C. 20590.

FTA has 10 Regional Offices, each headed by a Regional Administrator, with staff numbering from 10 to 22 employees. The Regional Offices form a local presence to provide assistance in the development of transit projects, review grant applications, and monitor grants awarded by FTA. Capital Program applications must be submitted to the appropriate Regional Office.

The Department of Transportation has created four metropolitan offices to provide service for the New York, Philadelphia, Chicago, and Los Angeles metropolitan areas. The metropolitan offices provide additional technical support through increased planning, program management involvement, and customer outreach initiatives, without adding another layer of bureaucracy to the process. The metropolitan offices combine staff from both FTA and the Federal Highway Administration (FHWA) and have approximately four to six employees. With the exception of the Los Angeles Metropolitan Offices, the offices are co-located with FTA's Regional Offices.

The locations and telephone numbers of the Regional Offices and the areas they serve and the metropolitan offices are listed in Chapter X of this circular.

2. FEDERAL TRANSIT LAWS. For 30 years the legislation establishing and governing the FTA and its programs resided in the Federal Transit Act of 1964, as amended. Since July 1994, the bulk of Federal transit law has been codified at 49 U.S.C. chapter 53. (Upon codification, substantially all of the Federal Transit Act, as amended, was repealed as redundant.) Section 5309 of chapter 53 (cited as 49 U.S.C. § 5309) establishes and imposes requirements for the Capital Program. Title 49 U.S.C. chapter 53 may be seen at www.fta.DOT.gov on FTA's website.
3. AUTHORIZING LEGISLATION. Authorizing legislation is substantive legislation enacted by Congress that sets up 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 Transportation

- (b) Modernization of Fixed Guideway Systems. Typically funded under fixed guideway modernization are 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.
 - (c) New Fixed Guideway Systems or Extensions ("New Starts"). Capital projects under this category include preliminary engineering, acquisition of real property (including relocation costs), final design and construction, and initial acquisition of rolling stock for the system.
- (2) Additional Eligible Project Activities.

- (a) Preventive Maintenance. Preventive maintenance, an expense that became eligible for FTA capital assistance for one year with the DOT 1998 Appropriations Act, was established as eligible for FTA capital assistance under TEA-21,⁴ so FY 1998 funds and subsequent fiscal year appropriations may be used for preventive maintenance.
Preventive maintenance costs are defined as all maintenance costs. For general guidance regarding eligible maintenance costs, the grantee should refer to the definition of maintenance in the most recent National Transit Database reporting manual. A grantee may continue to request assistance for capital expenses under the FTA policies governing associated capital maintenance items (spare parts), maintenance of vehicles leased under contract, vehicle overhauls (major re-work), mid-life rebuilds (rail), and end-of-life rebuilds; or a grantee may choose to capture all maintenance under preventive maintenance. If a grantee purchases service instead of operating service directly, and maintenance is included in the contract for that purchased service, then the grantee may apply for preventive maintenance capital assistance under the capital cost of contracting policy.
- (b) Education and Training. Capital Program funds may be used for education and training purposes as described in 49 U.S.C. § 5315(d).
- (c) Design and Art in Transit. Capital Program funds may be used to incorporate design and artistic considerations into transit projects.⁵
- (d) Innovative Financing. Capital Program funds may be used to pay for costs incurred to secure or initiate an innovative financing technique (see paragraph 4k below).
- (e) Capital Cost of Contracting. Some FTA grantees turn to an outside source to obtain transit service, or maintenance service, or vehicles that the grantee will use in transit service. When grantees contract for such service, FTA will provide assistance with the capital consumed in the course of the contract. In the case of a contractor's providing vehicles for transit service, the capital consumed is equivalent to the

4. Amending Chapter 53 to add Section 5302(a)(1)(E)

5. See FTA Circular 9400.1A, "Design and Art in Transit Projects," dated June 9, 1995.

A grant applicant applying for assistance with costs that contain any of the capital costs of contracting permutations listed in EXHIBIT I-1 may list costs for the contracted service all in the capital cost of contracting budget category, or the grantee may use both that category and another appropriate category such as preventive maintenance or leasing.

EXHIBIT I-1

PERCENT OF CONTRACT ALLOWED FOR CAPITAL ASSISTANCE WITHOUT FURTHER JUSTIFICATION*

(*based on assumption that contractor provides the assets)

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

- (f) Leasing. When a grantee leases tangible capital assets from another party, leasing costs are eligible for capital assistance, provided leasing is more cost effective than purchase or construction.⁶ Leasing costs eligible for capital assistance include finance charges, including interest, and ancillary costs such as delivery and installation charges.
- (g) Rail Trackage Agreements. Capital portions of rail trackage rights agreements are also eligible for Capital Program assistance.⁷

6. 49 CFR Part 639, "Capital Leases"

7. 49 U.S.C. § 5302(a)(1)(A), as amended by TEA-21

day care or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer or transportation mall.¹¹ Eligible costs do not include construction of a commercial revenue-producing facility or a part of a public facility not related to transit.¹²

11. 49 U.S.C.
§5302(a)(1)(G)(i)

(e) Projects that meet special needs of the elderly and persons with disabilities.

12. 49 U.S.C. 5302 (a)
(1)(G)(ii)

(f) Projects to support the development of corridors to support fixed guideway systems.¹³ Such 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" improvements that will increase transit use in the corridor. An example might be additional safety features that would encourage riders to use transit, walkways and pathways that make transit more readily available, and day care facilities that would improve the livability of a community and increase the benefits transit offers.

13. 49 U.S.C. 5309
(a)(1)(H)

d. Livable Communities. FTA from time to time 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. For example, FTA has established the "livable communities initiative" to emphasize the FTA goal of strengthening the link between transit and communities. This initiative promotes customer-friendly, community-oriented, and well-designed transit facilities and services. Transit projects that support the concept of livable communities are expected to enhance personal mobility, increase transit patronage, or improve the quality of community life. Community-sensitive transit projects are ones that support mixed-use development or incorporate on-site services to help foster livable communities. It is important that the transit investments reinforce land use policies that encourage transit-oriented development. Another example of transit projects that enhance community livability are those that contain pedestrian-oriented physical improvements or enhance the safety or security of transit customers.

Authority for livable communities projects, as for joint development projects, rests in 49 U.S.C. §§ 5302(a)((1)(G).

See Appendix B for further discussion on joint development projects.

e. Capital Program Grants in Relation to Total FTA Grant Program. Capital Program grants represent about 18 percent of the number of grants awarded by FTA in a fiscal year. In a typical year, 190 Capital Program grants may be awarded out of a total of 1,100 FTA grants awarded. Capital Program funds represent approximately 40 percent of the total FTA annual budget.

lifts or particulate traps) to be purchased to be in compliance with the ADA or the CAA Amendments and the Federal share will be 90 percent of the cost of the vehicle-related equipment. Alternatively, for bus or van purchases, a grant applicant may request an 83 percent share of the total vehicle cost. The 83 percent is a blended figure representing 80 percent of the cost of the vehicle and 90 percent of the cost of the vehicle-related equipment to be acquired to be in compliance with the ADA or CAA Amendments. FTA considers vehicle-related equipment to be equipment on the vehicle.

- j. Local Share for a Project. Net project cost and Federal share having been determined, the remainder of the net project cost must be provided, in cash, from sources other than Federal funds unless another Federal statute permits the use of specific Federal funds for local share. Any funds from public or private transit systems must be from undistributed cash surpluses, replacement or depreciation funds, or reserves available in cash, or new capital. The market value of real property integral to the project can be counted as a cash contribution toward local share, as can in-kind contributions. Detailed rules for eligibility, valuation, and accounting for the local matching share are described in section 18.24 of U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18. This document is referred to as the "Common Rule."

- (1) Revenue Bond Proceeds as Local Share¹⁹. For FY 1999 through 2003, TEA-21 authorized a grant applicant requesting assistance under the FTA Capital Program or the Urbanized Area Formula Program (49 U.S.C. Section 5307) to use the proceeds from the issuance of revenue bonds as the local share for a capital project, with prior FTA approval. Farebox receipts are one type of revenue that may be used to secure the bonds. Under this TEA-21 provision, using proceeds of the revenue bonds as local share will be approved only if the aggregate amount of financial support from the state and affected local governmental authorities in the urbanized area during the next three fiscal years 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 (as is made evident in the State Transportation Improvement Program).

*19. TEA-21,
Section 3011*

- (2) Credit for Toll Revenue Expenditures. TEA-21 made permanent earlier statutory provisions that permit a state to count as a credit toward a project's local share certain expenditures the state has made with toll revenues²⁰. 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. The state has four fiscal years to use the credit. A grant applicant wishing to apply the provisions of 23 U.S.C. Section 120(j) should discuss with its state

*20. TEA-21 at
Section 1111,
amended Section
120(j) of Title 23
U.S.C.*

with the grant applicant's first grant application in the Federal fiscal year, whichever comes first.

- (2) Action Required. The authorized representative of the grant applicant and the grantee's attorney must make the requisite certifications by:
 - (a) attesting to the certifications and assurances electronically with a personal identification number (PIN); and
 - (b) selecting electronically each assurance or certification category that will apply to the applicant's grants for the fiscal year; or
 - (c) selecting instead a "Select all" field that signifies the grant applicant will comply with all categories of certifications and assurances as they may apply to the various applications to be submitted during the year.

If a grant applicant is not able to submit the certifications electronically, the applicant should obtain a copy of the Federal Register Notice containing the current fiscal year's certifications and use the form contained in that Federal Register to submit the actual certifications. The Signature Page shown in the current Federal fiscal year's compilation in the Federal Register must be used.

- (3) Requirement for Current Affirmation. FTA requires a current attorney's affirmation of the grant applicant's legal authority to certify compliance with that fiscal year's FTA funding assistance. The attorney's affirmation from previous years is not acceptable.

The certifications and assurances the grant applicant attests to will remain valid for one year or until FTA publishes the next version.

- (4) Sample Certifications and Assurances in Appendix C. For convenience of the reader, a fair representation of the text of the Fiscal Year 1998 certifications and assurances is provided as a reference in Appendix C of the circular. The specific text of particular certifications may change and new certifications may be added as a result of TEA-21 or other Federal laws, but many of the FY 1999 certifications and assurances will remain substantially as set forth in Appendix C. When a Capital Program grant application requires information that can be derived from a certification or assurance, the reader will be directed to the appropriate paragraphs of Appendix C.

5. ELECTRONIC AWARD AND MANAGEMENT SYSTEM. FTA is implementing a series of automation improvements in the grant making and management process that are designed to improve customer service and efficiency of program delivery. Steps have been taken to provide a streamlined electronic interface between grantees and FTA that allows completely electronic application submission, review, approval, and management of all grants. Grantees may inquire about the status of grants, file their required quarterly financial status and narrative

CHAPTER II - HOW TO USE THIS CIRCULAR

TABLE OF CONTENTS

PAGE

1. PURPOSE	II-1
2. CONTENTS	II-1
3. APPENDICES	II-1
4. INDEX	II-2
5. ELECTRONIC GRANT APPLICATION	II-2
6. NOTES TO READER	II-2

CHAPTER II

HOW TO USE THIS CIRCULAR

1. PURPOSE. The purpose of this circular is to assist grant applicants in preparing a complete application for a Capital Program grant authorized by 49 U.S.C. § 5309 and administered by the Federal Transit Administration (FTA). The circular is addressed, in particular, to applicants that have never before applied for an FTA grant under the Capital Program. Separate chapters provide descriptions of each of the three categories of the Capital Program--bus and bus-related facilities, fixed guideway modernization, and new starts--and discuss the grant application requirements associated with each category. An experienced grant applicant already familiar with the statutory and regulatory requirements of the Capital Program category for which the applicant is applying may wish to turn directly to Chapter VII, "Grant Application Contents," and Chapter IX, "Examples," and use these chapters as its guides to a complete Capital Program grant application.

2. CONTENTS. Chapters III, IV, and V, respectively, describe the requirements that must be met in any bus, fixed guideway modernization, or new start project application. For example, in Chapter III statutory and regulatory requirements specific to bus and bus-related projects are described. Similarly, Chapter IV focuses on grant applications for fixed guideway modernization projects. Chapter V summarizes the steps in new start projects and identifies statutory and regulatory requirements peculiar to new starts.

Chapter VI describes in some detail the requirements common to every Capital Program application; these requirements must be met by all applicants for Capital Program funds. Requirements peculiar only to one category of the Capital Program, or peculiar by degree or threshold to only one category of the Capital Program, are addressed in the chapter on the individual category.

Chapter VII discusses the contents of a grant application and provides a checklist a grant applicant may use in determining the appropriate information to provide in connection with its application.

Chapter VIII contains instructions for preparing a proposed project budget.

Chapter IX contains examples a grant applicant may use as a guide in complying with the grant application requirements. The examples are presented in alphabetical order by title.

Chapter X lists addresses and telephone numbers of the 10 FTA Regional Offices and the four FTA metropolitan offices and identifies the states each Regional Office serves.

3. APPENDICES. Appendix A discusses the planning requirements of 49 U.S.C. §§ 5303 - 5306 and joint FHWA/FTA planning regulations¹ as they affect the

*1. 23 C.F.R. Part 450
and 49 C.F.R.
Part 613*

requirements with FTA Regional Office staff, to determine whether any additional requirements must be met or changes have been introduced since publication of the circular.

Moreover, the reader is cautioned that in the majority of instances the circular highlights only the salient points of laws and regulations that apply to Capital Program grant applications, seldom the details or the subtleties. Therefore, whenever a question about a requirement arises, or whenever a grant applicant needs clarification about a particular statute, regulation, or directive, in addition to discussing the requirement with the appropriate Regional Office, the grant applicant is urged to review the document itself.

CHAPTER III - BUSES AND RELATED ACQUISITIONS

TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION	III-1
2. COMPETITION FOR FUNDS	III-1
a. Flexible Funds	III-1
b. Clean Fuels Formula Program	III-1
c. Job Access and Reverse Commute Program	III-2
d. Over-the-Road Bus Accessibility Program	III-3
e. Transportation and Community System Preservation Pilot Program	III-3
3. COMBINING APPLICATIONS	III-4
4. LENGTH OF TIME FUNDS ARE AVAILABLE	III-4
5. ELIGIBLE PROJECTS	III-4
6. ENVIRONMENTAL CONSIDERATIONS	III-4
a. Categorical Exclusions	III-5
b. Projects That May Have an Environmental Impact	III-5
c. Clean Air Act Compliance	III-6
7. LEAD TIME NEEDED FOR PURCHASING NEW BUSES	III-7
8. REQUIREMENTS RELATED TO BUS PURCHASES	III-7
a. Requirements Related to Local Bus Fleets	III-7
(1) Service Life Policy	III-7
(2) Replacement Policies	III-8
(3) Rebuilding Policies	III-9
(4) Vehicle Overhauls	III-9
(5) Spare Ratio Policies	III-9
(6) Contingency Fleet	III-10
b. Requirements Related to Purchase of New Buses	III-10
(1) Fleet and Service Expansion	III-10
(2) Eligibility of Components for Funding	III-11
(3) Pre-Award and Post-Delivery Review of Buses	III-11
(4) Bus Testing	III-12
(5) Buy America	III-13
c. Requirements Related to Buses in Service	III-13
(1) Commercial Driver's License	III-13

CHAPTER III

BUSES AND RELATED ACQUISITIONS

1. INTRODUCTION. There are approximately 50,000 transit buses in service on U.S. streets today purchased through funds administered by the Federal Transit Administration (FTA). In an average year more than 4,000 buses are purchased by FTA grantees; while most buses are bought with funds under the FTA Urbanized Area Formula Program,¹ approximately 20 percent are acquired through the bus category of the Capital Program.² As used in this chapter, the term "bus category" refers to that part of the Capital Program that provides Federal assistance to buy, lease, replace, or rehabilitate buses and related equipment and to construct bus-related facilities.³ In a typical year, approximately half of bus category funds are spent for construction or rehabilitation of facilities and half for acquisition of vehicles.

1. 49 U.S.C.
§ 5307

2. 49 U.S.C.
§ 5309

3. authorized under
49 U.S.C.
§ 5309(m)(1)(C)

2. COMPETITION FOR FUNDS. Demand for assistance to undertake worthy transit projects always exceeds the amount of Federal funds available for those projects. Grant applicants are encouraged to investigate funding assistance in other FTA programs and in programs outside of FTA to support transit needs. Some possibilities for supplementing or complementing the FTA capital program are described in the paragraphs below.

a. Flexible Funds. Grant applicants are reminded to explore the availability of "flexible funds" delivered through the Federal-aid highway program. Flexible funding programs are reauthorized by the Transportation Equity Act for the 21st Century (TEA-21)⁴ and may be used for either transit or highway projects. These programs include the Surface Transportation Program (STP), the Donor State Bonus, Interstate Maintenance, Bridge Replacement and Rehabilitation, National Highway System, Substitute Highway, and the Congestion Mitigation and Air Quality Improvement (CMAQ) programs. Although these Federal Highway Administration (FHWA) programs have intermodal flexibility, it is important to note that there are both programmatic and distributive limitations to the use of at least some portions of some funds. Nevertheless, Capital Program applicants are encouraged to investigate possibilities in these other programs. Over the 6-year life of the ISTEA authorization⁵, nearly \$80 billion in FTA and FHWA program funding had the flexibility to be used either for transit or highway purposes, and approximately \$3.5 billion was transferred. More information about these programs can be found in the pamphlet, "Flexible Funding Opportunities for Transportation Investments," which can be obtained from FTA Regional Offices.

4. Public Law
105-178, June 9,
1998, Section
1103(i) amending
Title 23 U.S.C. at
§104(k)

5. Intermodal
Surface
Transportation
Efficiency Act,
Public Law
102-240, December
18, 1991

The program has a 50 percent Federal share. There will be a competitive grant selection process. The portion of the total project cost that is not funded by the Job Access and Reverse Commute Program may be derived from amounts appropriated or made available to another department or agency of the Federal Government (not the Department of Transportation), if the funds are eligible to be expended for transportation. The requirements of the Urbanized Area Formula Program as well as all planning requirements under Sections 5303 through 5306 apply to the grants awarded for the Job Access and Reverse Commute Program. Grants under this TEA-21 provision may not be used for planning or coordination activities. FTA will issue implementing guidance and application instructions.

- d. Over-the-Road Bus Accessibility Program. TEA-21 established the Rural Transportation Accessibility Incentive Program, hereinafter referred to as the Over-the-Road Bus Accessibility Program.¹² This program is designed to assist operators of over-the-road buses to finance the incremental capital and training costs of complying with the Department of Transportation's anticipated final rule regarding accessibility of over-the-road buses required by the Americans with Disabilities Act. The Federal share of these projects is 50 percent of the project cost.

*12. Section 3038
of TEA-21;
49 U.S.C. § 5310
Note.*

Beginning in FY 1999, funding will be available for operators of over-the-road buses in intercity fixed route service, starting with \$2 million in FY 1999 and increasing to \$5.25 million in FY 2003. In addition, beginning in FY 2000, an additional \$6.8 million will be available for FY 2000 through FY 2003 for operators of other over-the-road bus service, including local commuter service and charter or tour service. Total funding authorized through FY 2003 is \$17,500,000 for fixed route over-the-road bus operators and \$6,800,000 for operators of other over-the road bus services. A national solicitation for applications will be conducted, and grant recipients will be selected on a competitive basis. FTA will issue implementing guidance.

- e. Transportation and Community and System Preservation Pilot Program. TEA-21 established an initiative in the Highway program "to investigate and address the relationships between transportation and community and system preservation and identify private sector-based initiatives."¹³ Funds are available for obligation for any project eligible for funding under title 23 U.S.C., the highway program, or under chapter 53 of title 49 U.S.C., the transit program. Eligible recipients are state agencies, units of local government including public transit agencies, and metropolitan planning organizations.

*13. TEA-21,
Section 1221;
23 U.S.C. § 101
Note.*

The purposes of this new program are to improve the efficiency of the transportation system; reduce transportation's impacts on the environment; reduce the need for costly future investments in public infrastructure; provide

innovative financing for eligible projects are also reimbursable under the bus category. (See Chapter I, paragraph 4(c)(2)(d), concerning innovative financing.)

6. ENVIRONMENTAL CONSIDERATIONS. Chapter VI, paragraph 7, describes FTA's environmental protection procedures and the related Capital Program application requirements. The discussion here provides supplementary information specific to bus category acquisitions.

a. Categorical Exclusions. Many projects and activities assisted with bus category funds normally do not involve significant environmental impacts. The joint FHWA/FTA environmental regulations use the term "categorical exclusions" to describe those projects that are categorically excluded from the requirement to prepare an environmental document (environmental assessment or environmental impact statement). In accordance with the regulations,¹⁴ bus and bus-related projects that are predetermined to be categorical exclusions include:

14. 23 C.F.R.
§ 771.117(c)

- (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. A second group of bus category projects involve more construction and greater potential for off-site impacts. Examples are new construction or expansion of bus terminals and transfer facilities, bus storage and maintenance garages, office facilities, and transit centers with park-and-ride facilities. For these projects, the grant applicant must prepare environmental documentation with appropriate technical analysis to support a categorical exclusion, if appropriate, or a finding of no significant impact (FONSI), depending on the scope and magnitude of the probable environmental impacts.

Experience has shown that many construction projects can be built and operated without causing significant impacts if they are carefully sited in

a complete list of exempt projects. There may be cases in which a normally exempt transit project will require an air quality analysis and a conformity determination; hence, the grant applicant should review the proposed project with the FTA Regional Office to decide whether an exemption is appropriate. FTA's exemption determination is usually made in consultation with the agencies responsible for the area's air quality attainment plan.

7. LEAD TIME NEEDED FOR PURCHASING NEW BUSES. One cannot estimate with accuracy or confidence the lead time necessary between the moment new buses appear needed and the day they are placed on the street in transit service. Conditions vary. Manufacturing times may change with demand for buses and with the specification developed. Bus testing may be required. Mileposts to be taken into account that involve the FTA are as follows: The project must first be a product of the planning process and be included in the metropolitan transportation improvement program (TIP) and/or the statewide transportation improvement program (STIP). (A summary of the requirements that must be met in the metropolitan and statewide planning process is given in Appendix A.) The STIP must be approved both by the FTA and the FHWA before FTA can approve a grant application. A reasonable estimate for time required for FTA and FHWA to approve a STIP is 45 calendar days.

One state's experience with lead time in a bus procurement project follows: In October the state determined that it would apply to FTA for a grant for \$13 million for vehicles for 15 localities. The state planned to submit a statewide application with the 15 localities as subrecipients. Taking into account the upcoming holiday season, the time the localities would need to collect their portions of the information for the application, and the time the state would require to compile the information, the state decided to submit its statewide application for vehicles on April 1, which the state did. Between April and June, the subrecipients developed their vehicle specifications and requested bids. FTA announced approval of the application on June 30. Following FTA approval, approximately 4 to 6 weeks were needed for contracts to be executed with manufacturers. Manufacturers delivered vehicles 8 to 12 months later, depending on the vehicle. Total time elapsed before buses were in service was 18 to 22 months.

8. REQUIREMENTS RELATED TO BUS PURCHASES. Grant application requirements that apply only to bus and bus facilities projects of the Capital Program appear in this chapter. Requirements common to all Capital Program applications appear in Chapter VI.
 - a. Requirements Related to Local 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

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, for a bus with a 12-year minimum normal service life, the bus's value decreases each year by 1/12 of its original purchase price. Similarly, the Federal interest in the bus decreases each year by 1/12 of the amount of the Federal grant that was awarded for its purchase.

- (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 grantee so chooses. Moreover, a grantee 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 a bus for a bus with a similar service life and a rail vehicle for a rail vehicle. Under the like-kind exchange policy, proceeds from the vehicle sales are not returned to the FTA; instead, all proceeds must be invested in acquisition of the like-kind replacement vehicles. If sales proceeds are less than the amount of the Federal interest in the vehicle to be replaced, the grantee is responsible for providing the difference, along with the grantee's local share of the cost of the replacement vehicle.

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 Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," published in the Federal Register on August 28, 1992.¹⁸ Also, in Chapter IX, "Examples," there is a sample calculation for the like-kind replacement of a heavy-duty bus, illustrating the selling of a bus at the bus's mid-life. The sample appears as "Like-kind".

*18. 57 Fed. Reg.,
39328-39329 (1992)*

- (3) Rebuilding Policies. Buses to be rebuilt should be at the end of the minimum normal service life, as previously described, and in need of major structural and/or mechanical rebuilding. The age of the bus to be rebuilt is its years of service at the time the rebuilding begins.

Depending upon the extent of rebuilding planned, the project may be subject to Americans with Disabilities Act requirements. (See 49 C.F.R. Section 37.75 for remanufacture of non-rail vehicles.)

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.

Urbanized Area Formula Program. (See chapter VI, paragraph 4a for information about triennial reviews.) 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.

b. Requirements Related to Purchase of New Buses.

- (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.

Local criteria should be used in the identification of feasible opportunities for route extensions and new routes. These criteria are often based on demographic measures and are used to identify geographic locations that have transit potential. 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 be subjected to a more detailed analysis. Included in that analysis should be some established service design standards (for example, a minimum of 60-minute headways for all routes, or a 12-hour service day) which suggest the type and level of service that should be provided. Depending upon the degree of expansion, the grant applicant may wish to make available a map indicating the fleet and service expansion locations. 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 are considered routine purchases and should be acquired using funds under the Urbanized Area Formula Program. Where it is cost-effective to the grant applicant, and the grant applicant can so demonstrate, a reasonable but limited number of spares of major components may be purchased along with the vehicles under the Capital Program. This policy applies when vehicles are being procured for new transit systems, or for extensions and expansions of existing systems and operations so that the vehicle fleet size is greater than it previously was. It may also be

- (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 requirement¹⁹ applies to modified vans used in transit service as well as buses. The requirement applies also to new bus and van models using alternative fuels such as methanol, ethanol, and compressed natural gas.

19. 49 U.S.C.
§ 5323(c)

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. Category VI in Appendix C presents standard language for the certification.

FTA regulations, "Bus Testing,"²⁰ define a new model bus as one not used in mass 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.

20. 49 C.F.R.
Part 665

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.

retain in its records a certification of compliance with the charter service regulations from that operator.

The charter service regulations provide eight exceptions to the general prohibition on providing charter service. One exception permits FTA recipients in nonurbanized areas to petition FTA for an exception if the charter service that would be provided by willing and able private charter operators would result in a hardship to the customer because the available operators impose minimum trip durations pursuant to a state regulation and the desired trip length is shorter than the mandatory trip length, or because the private charter operator is located too far from the origin of charter service. The charter service regulations specify the process for requesting an exception; if granted, an exception is effective for no more than 12 months and sometimes may be restricted to the particular trip.

In certain circumstances transit service may appear to be charter service. For example, service provided under contract to a social service agency will generally be transit service, not charter service, if the FTA recipient controls the service, the service is open-door, and the FTA recipient is able to secure service on the vehicle for its passengers, in addition to passengers who are clients of the social service agency. Guidance on distinguishing prohibited charter service from permissible service may be found in the preamble to the original charter service regulation;²³ the FTA notice setting forth charter service questions and answers;²⁴ and the preamble to the amendment to the charter service regulations.²⁵ The latest guidance supersedes earlier conflicting guidance.

- (3) School Bus Operations. School bus service that may be provided by a federally funded transit operator is limited by 49 U.S.C. § 5323(f). These limitations, as well as four exemptions to these limitations, are specified in FTA regulations, "School Bus Operations."²⁶

Each grant applicant for FTA bus category assistance is required to enter into an agreement with FTA that the grant applicant will not engage in school bus operations exclusively for the transportation of students and school personnel, in competition with private school bus operators, in accordance with Federal regulations. That agreement is included in FTA's annual certifications and assurances. Category VIII in Appendix C provides language for the school bus agreement.

The school bus prohibition does not apply to a category of service FTA has designated "tripper service." Under FTA school bus regulations, tripper service means regularly scheduled transit service that is open to the public and that is designed or modified to accommodate the needs of school students and personnel, using various fare collection and subsidy systems. Buses used in tripper service must be clearly marked as open to

23. 52 *Fed. Reg.*
11916 (1987)

24. 52 *Fed. Reg.*
42248 (1987)

25. 53 *Fed. Reg.*
53348 (1988)

26. 49 *C.F.R.*
Part 605

increasing the mix of activities so that automobile use is less necessary and walk trips are feasible for more activities. Examples of such projects are day care facilities, retail businesses, and banking outlets.

- (2) If a grant applicant plans to build a facility in conjunction with an intercity bus company, a taxi operation, or with other organizations within the public sector, the grant applicant is expected to apportion the costs for the project among those transit-related portions of the project and those that are not transit-related.
 - (3) If a grant applicant should desire to build an exclusive busway on an urban street, the grant application must clearly separate project costs related to transit from project costs unrelated to transit.
 - (4) Eligible costs do not include construction of commercial revenue-producing facilities, whether the facilities would be publicly or privately owned; nor do eligible costs include portions of public or private facilities not related to transit.
 - (5) While FTA permits a grantee to lease portions of an FTA-funded facility to others, FTA expects the grantee to limit that leasing to insignificant amounts of space or to space shared with the lessee. Acceptable examples of leasing include leasing part of a bus facility's lobby for use as a small concession stand, or as an Amtrak ticketing area. In addition, if a grantee is unready to use a portion of its facility, the grantee may lease that portion to another concern for a temporary period until the grantee is ready to use the leased portion.
- 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 needs of the future. Thus, for a transit agency that at the present time operates 20 vehicles, a request for a bus maintenance garage that will accommodate 20 vehicles and have space for a 10 to 25 percent growth would be considered an acceptable grant request. For the same transit agency, a grant request for a garage for 40 vehicles would not be acceptable, unless the transit agency was absolutely committed to expanding its fleet to 40 vehicles. However, the purchase of enough land for the future expansion of the fleet and the garage 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 facility design and engineering and, where allowable under FTA's environmental requirements, for acquisition of real estate, and later to apply for a grant amendment for construction funds when the cost of construction can be accurately estimated.

concept building design, environmental documentation, and the development of a staging and financing plan.

10. EXPECTED TIMEFRAME FOR A BUS FACILITIES PROJECT. We offer the following timeline for an FTA-assisted bus facilities project, after discussions with several FTA Regional Offices. If one assumes, for the example, that the project is to construct a bus maintenance facility and that a preferred site has been selected by the grant applicant, then the following timeline that FTA has observed may be helpful:

CHAPTER IV - FIXED GUIDEWAY MODERNIZATION

TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION AND BACKGROUND	IV-1
a. Definition of Fixed Guideway	IV-1
b. Apportionments Schedule	IV-1
c. Length of Time Funds are Available	IV-1
2. ELIGIBLE PROJECTS	IV-1
3. ELIGIBLE RECIPIENTS	IV-2
a. First Tier	IV-2
b. Second Tier	IV-2
c. Third Tier	IV-2
d. Fourth Tier	IV-2
e. Fifth Tier	IV-2
f. Sixth Tier	IV-2
g. Seventh Tier	IV-3
4. SET-ASIDE FOR PROJECT MANAGEMENT OVERSIGHT	IV-3
5. RELATIONSHIP TO URBANIZED AREA FORMULA FUNDING	IV-3
6. REQUIREMENTS FOR FIXED GUIDEWAY MODERNIZATION PROJECTS	IV-3
a. Inclusion in the TIP and STIP	IV-3
b. Environmental Considerations	IV-3
(1) Categorical Exclusions	IV-3
(2) Other Possible Categorical Exclusions	IV-4
c. Clean Air Act Compliance	IV-5
d. Requirements Related to Fixed Guideway Rolling Stock	IV-6
(1) Service Life Policy	IV-6
(2) Replacement Policies	IV-6
(3) Rebuilding	IV-7
(4) Spare Ratio Policy	IV-8
(5) Pre-Award and Post-Delivery Reviews of Rolling Stock	IV-8
e. Procurement Activities Before a Grant Award	IV-8
f. Buy America	IV-9
g. Major Capital Investment Projects	IV-9

CHAPTER IV

FIXED GUIDEWAY MODERNIZATION

1. INTRODUCTION AND BACKGROUND. Chapter IV discusses those aspects of the Capital 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, in which are identified the requirements common to all Capital Program applications. Funding for fixed guideway modernization is allocated by Congress in 49 U.S.C. §5309(m)(1)(A) and apportioned in 49 U.S.C. § 5337.

a. Definition of Fixed Guideway. "Fixed guideway" refers to any transit service that uses exclusive or controlled rights-of-way or rails, entirely or in part. The term includes 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.

b. Apportionments Schedule. 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 Program funds.¹ FTA apports the urbanized area formula funds within 10 days of the enactment of the annual Department of Transportation Appropriations Act or on October 1, whichever is later.²

1. 49 U.S.C. § 5307

2. 49 U.S.C. § 5336(e)

c. Length of Time Funds are Available. Fixed guideway modernization funds are available to the grantee during the fiscal year in which they are apportioned plus three additional years. Any of the apportioned funds remaining unobligated to a grantee 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.³

3. consistent with the formula established by 49 U.S.C. § 5337

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, operational support equipment (including computer hardware and software), and system extensions. Preventive maintenance, described in chapter I, paragraph 4c(2), is also an eligible cost.

revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

- g. Tier 7. Any remaining amounts will be apportioned as follows: 50 percent to the 11 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 7 years. Allocations will be based on the latest available route miles and revenue vehicle miles for fixed guideway segments at least seven years old as reported to the National Transit Database.

4. SET-ASIDE FOR PROJECT MANAGEMENT OVERSIGHT.⁶ FTA is authorized to set aside 3/4 of 1 percent of the Capital Program funds to contract for the 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.

6. 49 U.S.C. § 5327(c)

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 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 FTA Regional Office.

6. REQUIREMENTS OF FIXED GUIDEWAY MODERNIZATION PROJECTS.

- a. Inclusion in the TIP and STIP. Just as capital projects in the Urbanized Area Formula Program and bus and new start projects in the Capital Program authorized by 49 U.S.C. § 5309 must be included in an urbanized area's transportation improvement program (TIP) and in the state transportation improvement program (STIP), so must fixed guideway modernization projects be in a TIP approved by the MPO and in a STIP approved by FTA and FHWA. A discussion of the metropolitan and statewide planning process required by 49 U.S.C. §§ 5303 - 5306 appears in Appendix A.
- b. Environmental Considerations. Chapter VI, paragraph 7 describes FTA's environmental protection procedures and the related Capital Program application requirements. The discussion here provides supplementary information specific to fixed guideway modernization .
- (1) Categorical Exclusions. Most projects and activities in support of fixed guideway modernization normally do not involve significant environmental impacts. The joint FHWA/FTA environmental regulations use the term "categorical exclusion" (CE) to describe a project that is categorically excluded from the requirement to prepare an environmental assessment (EA) or an environmental impact statement

they are carefully designed and located. FTA may approve the designation of these projects as CEs if the grant applicant provides documentation clearly demonstrating that no significant adverse environmental effects will result.⁸ In some cases, FTA will be able to approve a CE based only on the grant applicant's detailed project description showing that no significant environmental impacts will occur. In other cases, FTA may defer approval of a CE until the grant applicant conducts additional environmental studies (such as an analysis of the impact of bridge reconstruction on surrounding wetlands and the river itself). When the grant applicant proposes to rehabilitate historic property, FTA may again defer approval of a CE until the applicant has negotiated an agreement with the requisite historic preservation agencies.

8. 23 C.F.R.
771.117(d)

If the number or nature of environmental impacts preclude FTA from approving a CE 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. After public comment has been completed, FTA will then review the project and related documents to determine if a finding of no significant impact (FONSI) is appropriate or if an EIS is required.

FTA will not issue a FONSI on a modernization project which has been determined by FTA, in consultation with other agencies and the public, to have significant environmental impacts. For example, the environmental impacts of a fixed guideway modernization project involving substantial reconstruction of the guideway and relocation of stations may be similar to a new start project, particularly if the project establishes or restores high capacity transit service in one or more communities unaccustomed to such service. As with a new start project, FTA will require that the grant applicant prepare an EIS and follow the EIS process whenever significant environmental impacts are identified for a fixed guideway modernization project.

Federal regulations place limitations on project development while the NEPA process is being conducted. Grant applicants should refer to Chapter VI, paragraph 7 where the limitations are discussed.

- c. Clean Air Act Compliance. In nonattainment and maintenance areas, an applicant seeking funding must comply with the Clean Air Act's conformity requirements contained in 40 C.F.R. Part 93⁹. Fixed guideway modernization projects are generally exempt from these conformity requirements,¹⁰ 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

9. 40 C.F.R.
§ 93.126

10. 40 C.F.R.
§ 93.126

- (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.

To determine the Federal interest remaining in a federally financed rail vehicle, one must first calculate the total value remaining in the vehicle using the straight-line depreciation method. Based on straight-line depreciation, the value of a rail vehicle with a 25-year minimum normal service life decreases by 1/25 of the purchase price for each year the vehicle has been in transit service. Thus, a rail vehicle in service for 20 years has a total remaining value of 5/25 or 1/5 of the original purchase price. Having calculated the total remaining value, one then multiplies that figure by the percentage of Federal assistance that was provided to purchase the vehicle. The product of this multiplication represents the Federal interest remaining in the 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 grantee so chooses. Moreover, a grantee 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, a rail vehicle for a rail vehicle, etc. Under the like-kind exchange policy, proceeds from the vehicle sale are not returned to the 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 grantee is responsible for providing the difference, along with the grantee'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 Fed. Reg., 39328 (1992). A sample calculation for the like-kind replacement of a vehicle at mid-life appears as "Like-Kind" in Chapter IX.
- (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).

FTA approval of the grant application, in order to avoid reimbursement problems if the 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 f below concerning Buy America and to Chapter VI, paragraph 11, concerning "Pre-award and Post-delivery Reviews."

- f. Buy America. Discussed in Chapter VI because it is a requirement that applies to all Capital Program grantees, the Buy America requirement nevertheless is called to the attention of a grant applicant for a fixed guideway modernization grant. For information on Buy America requirements, the reader should refer to Chapter VI, paragraph 15.
- g. Major Capital Investment Projects. On occasion, a fixed guideway modernization project will be identified as a major capital investment project. FTA defines a major capital investment project as:
 - (1) any new start,
 - (2) rail modernization generally valued at over \$100 million, or
 - (3) any other project identified as a major capital investment project by the FTA Administrator.

In such cases 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). Regulations laying out the requirements of a project management plan can be found at 49 C.F.R. 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.

CHAPTER V - NEW STARTS

TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION AND BACKGROUND	V-1
2. CHAPTER CONTENTS	V-1
3. PLANNING AND PROJECT DEVELOPMENT PROCESS	V-2
a. Objectives	V-2
b. Phases	V-2
c. Description of Each Phase	V-3
(1) Planning	V-3
(2) Preliminary Engineering	V-4
(3) Final Design	V-5
(4) Construction	V-5
4. ENVIRONMENTAL PROTECTION	V-5
5. CLEAN AIR ACT COMPLIANCE	V-6
6. AVAILABLE FUNDING AND THE NEED FOR PRIORITIES ..	V-7
7. FTA RATING SYSTEM	V-8
8. LETTER OF INTENT	V-8
9. TIMING OF THE PROJECT DEVELOPMENT PROCESS	V-8
10. PROJECT MANAGEMENT PLAN	V-9
11. VALUE ENGINEERING REQUIREMENTS	V-10
12. FULL FUNDING GRANT AGREEMENT	V-11
13. BUY AMERICA	V-11
14. LENGTH OF TIME FUNDS ARE AVAILABLE	V-11
15. TECHNICAL ASSISTANCE	V-12

CHAPTER V

NEW STARTS

1. INTRODUCTION AND BACKGROUND. FTA uses the term "new start" to mean a project that involves building a new fixed guideway system or extending an existing fixed guideway. The new start 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. Also, new start projects can involve the development of transit corridors and markets to support the eventual construction of fixed guideway systems, including the construction of park-and-ride lots and the purchase of land to protect rights-of-way. New start projects 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 start were to be built. New start 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.

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

2. CHAPTER CONTENTS. Chapter V summarizes the steps in developing a new start project and discusses the air quality and environmental considerations particular to new starts. While funds from the Metropolitan Planning Program,¹ State Planning and Research Program,² Urbanized Area Formula Program,³ flexible Federal Highway Administration funds, and state and local resources are usually applied in the project's earlier stages, Capital Program funding is generally used in the later stages. Applications for grants for new start projects are very similar to other Capital Program applications. Hence, a grant applicant will need to refer to Chapter VI, "Requirements Common to All Capital Program Grant Applications." The similarity with other projects has several notable exceptions: First, new start projects usually require detailed environmental documentation, such as an environmental assessment or environmental impact statement. Second, FTA has a formal rating process for evaluating competing new start projects. In addition, new start projects require submission of a project management plan, the use of value engineering, and execution by FTA and the grantee of a full funding grant agreement. All of these subjects are discussed in the paragraphs to follow.

1. 49 U.S.C. § 5303

2. 49 U.S.C.
§ 5313(b)

3. 49 U.S.C. § 5307

As proposals advance through the phases, 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 locally preferred alternative) is selected for implementation.

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 preliminary engineering and beyond. There have been occasions when no FTA funds were used for the early stages of a project. In those cases FTA nevertheless worked closely with the local agency to develop the appropriate studies and resulting documents. By statute, FTA cannot approve funds for the later stages if the earlier stages have not met the requirements of 49 U.S.C. § 5309 for new start projects.

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

(1) 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.⁵

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. 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 FHWA statutory authorizations. Planning can be financed from a variety of sources including Urbanized Area Formula Program⁶ funds, Metropolitan Planning Program⁷ funds, and State Planning and Research Program⁸ funds administered by FTA. Planning is also supported with FHWA planning funds. Flexible funds (e.g., Surface Transportation Program, National Highway System, Congestion Mitigation and Air Quality) may

5. Regulations governing the metropolitan planning process can be found at 49 C.F.R. Part 613, Subpart C and at 23 C.F.R. Part 450, Subpart C, "Metropolitan Transportation Planning and Programming." These regulations will be revised to reflect the planning provisions contained in TEA-21.

6. 49 U.S.C. § 5307

7. 49 U.S.C. § 5303

8. 49 U.S.C. § 5313(b)

implemented as the non-Federal funding partners commit themselves during this phase.

Urbanized Area Formula Program funds are often used for preliminary engineering. Capital Program funds and flexible funds may also be used.

- (3) Final Design. Local agencies acquire right-of-way and produce the plans, specifications, and estimates necessary to construct the project. When final design of a project that FTA finds worthy is sufficiently advanced that the capital cost estimates and project impacts are well established, FTA may enter into a full funding grant agreement (FFGA) with the grantee. The FFGA 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.

Urbanized Area Formula Program funds and Capital Program funds are often used for final design.

- (4) Construction. Construction includes physical construction, procurement of vehicles, and pre-service testing of equipment (signal equipment or rolling stock, for example).

New start funding is used to finance these costs, and additional financial support may be available from the Urbanized Area Formula Program or flexible funds derived from FHWA.

4. 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 C.F.R. Part 771. The following discussion provides supplementary information about environmental requirements specific to new start projects.

Many new start projects involve significant environmental impacts. Before FTA may award capital assistance for a new start 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 environmental impact statement (EIS) or an environmental assessment (EA), as required by the regulations. New start 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.

EPA's transportation conformity regulation in nonattainment and maintenance areas.¹³ At the regional or corridor scale, the effects of a new start on mode share and travel patterns within the region should be assessed in the development of the metropolitan transportation plan and the 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 start 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 start 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.

*13. 40 C.F.R.
Part 93*

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 start 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 start 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 start 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 requirements.

*14. 49 U.S.C.
§ 5309(m)(1)(B)*

6. AVAILABLE FUNDING AND THE NEED FOR PRIORITIES. Congress has allocated 40 percent of the amount available for the Capital Program for construction of new fixed guideway systems and extensions.¹⁴ In any given year, however, new start funds available fall short of the funds requested by grant applicants. Therefore, a ranking of the authorized projects has been necessary.

FTA's role in establishing priorities for new start funding derives from 49 U.S.C. § 5309(o)(1), which requires the Secretary of Transportation to transmit each February a recommendation for the allocation of new start 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 Levels and Allocations of Funds for Transit Major Capital Investments," identifies the most worthy new start projects that merit

*15. 49 U.S.C.
§5309(o).*

least an operable segment. A letter of intent is not an obligation; nor is it an administrative commitment. FTA may not make an obligation or an administrative commitment in connection with a letter of intent except as funds are provided in appropriations acts.

9. 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.

10. PROJECT MANAGEMENT PLAN. As a condition of Federal assistance, a grant applicant for a major capital investment project must prepare a project management plan.¹⁷ A major capital investment project is defined as: any new start, 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 start project must submit the project management plan in time for FTA to review the applicant's plan in conjunction with its new start 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 project management plan, FTA must provide its reasons for disapproval to the applicant.

Although the grant applicant should refer to the statute and regulations to determine the amount of detail that must be provided, the project management plan 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;

*17. 49 U.S.C.
§ 5327(a) and
FTA project
management
oversight
regulations at
49 C.F.R.
Part 633*

preliminary engineering. FTA cannot approve a grant application for final design funding or a full funding grant agreement (see paragraph 12 below) until value engineering is complete. After every value engineering review, grantees 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.

19. 49 U.S.C.
§5309(e)(7)

12. FULL FUNDING GRANT AGREEMENT. FTA is required to use a full funding grant agreement (FFGA)¹⁸ in providing Federal financial assistance for new start projects. 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 for a new start project unless that project is authorized for final design and construction.¹⁹ The FFGA defines the project, including cost and schedule; commits to a maximum level of Federal financial assistance (subject to appropriation); 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 assures the grantee of predictable Federal financial support for the project (subject to appropriation) while placing a ceiling on the amount of that Federal support.

20. codified at
49 U.S.C.
Section 303

21. 23 C.F.R.
Part 771

The National Environmental Policy Act, the National Historic Preservation Act, Section 4(f) of the Department of Transportation Act of 1966²⁰ and the FTA's implementing regulation²¹ prohibit FTA from taking any major action before completing the required environmental review process. Hence, FTA will not enter into an FFGA until the environmental review process is complete. The culmination of the environmental review process for projects of major impact is the aforementioned record of decision, issued by FTA after publication and consideration of comments on the FEIS. Issuance of the ROD generally marks the end of preliminary engineering.

22. 49 C.F.R.
Part 661

FTA Circular 5200.1, "Full Funding Grant Agreements Guidance," dated July 2, 1993, provides guidance. Questions regarding full funding grant agreements should be addressed to FTA Regional Offices.

13. BUY AMERICA. Discussed in Chapter VI because it is a requirement common to all Capital Program applicants, the Buy America provision nevertheless is called to the attention of new start grant applicants. The FTA Final Rule on Buy America Requirements appeared in the Federal Register of January 9, 1991.²² No funds may be obligated by FTA for a recipient's project unless all steel, iron, and manufactured products used in the project are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in Appendix A to 49 C.F.R. 661.7. A specific waiver pertains to rolling stock. For further discussion, please see Chapter VI, paragraph 15, "Buy America."

CHAPTER VI - REQUIREMENTS COMMON TO ALL
CAPITAL PROGRAM GRANT APPLICATIONS

TABLE OF CONTENTS

	<u>PAGE</u>
1. INTRODUCTION	VI-1
2. PROJECT INCLUSION IN TIP AND STIP	VI-2
3. ORGANIZATION OF THE CHAPTER	VI-2
4. SECRETARY'S DETERMINATIONS	VI-2
a. Relationship Between Urbanized Area Formula Program and Capital Program Applications	VI-3
b. Legal Capacity	VI-4
c. Financial Capacity	VI-5
d. Technical Capacity	VI-6
e. Satisfactory Continuing Control	VI-7
f. Capability to Maintain	VI-9
5. PROCUREMENT RESTRICTIONS	VI-10
6. PUBLIC HEARING REQUIREMENTS	VI-10
7. ENVIRONMENTAL PROTECTION	VI-12
8. CLEAN AIR ACT	VI-13
9. PRIVATE ENTERPRISE CONCERNS	VI-14
a. Participation by Private Enterprise	VI-14
b. Acquisition of Private Mass Transportation Facilities	VI-15
c. Charter and School Bus Operations	VI-15
10. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE	VI-15
11. PRE-AWARD AND POST-DELIVERY REVIEWS	VI-17
12. LABOR STANDARDS	VI-17
a. Davis-Bacon Wage Rates	VI-17
b. Protection of Transit Employees	VI-17

CHAPTER VI

REQUIREMENTS COMMON TO ALL CAPITAL PROGRAM GRANT APPLICATIONS

1. INTRODUCTION. This chapter discusses requirements common to all applications for Capital Program assistance authorized by 49 U.S.C. § 5309. Earlier chapters discussed requirements that apply particularly to applications for bus-related grants, or fixed guideway modernization projects, or new starts. Grant applicants, therefore, should refer to the chapter or chapters that apply to the grant application at hand as well as follow the requirements in this chapter.

The Federal Transit Administration (FTA) relies on the representations made by a grant applicant in its application. Thus, FTA's commitment to a project is based upon reliance on descriptive documents and on assertions, assurances, and certifications provided by the grant applicant in its application. It is important to note that erroneous statements or failure to disclose significant information in an application can jeopardize Federal funding.

Requirements vary in the action a grant applicant must take. Some requirements identify explicit steps to be taken--for example, grant applicants must have provided an opportunity for public comment on the proposed project. Other requirements oblige grant applicants to document a claim, for example, that the bus spare ratio is within an acceptable percentage. Still others ask for assurance that the requirement will be met--for example, that the grant applicant will establish a drug-free workplace policy; and others, again, lay out a philosophical precept requiring no specific, immediate action-- for example, the statement of national policy that transit services are to be made available to the elderly and to persons with disabilities.¹

1. 49 U.S.C. § 5301(d)

When a grant applicant must supply supporting information or documentation, an example will be included in the circular, where practicable, presenting a sample submission. Titles of the examples are identified in the text and the examples are provided in Chapter IX. When a certification is required, the reader will be directed to the location of standard language. Also, in many cases when a certification is required, a brief discussion will be included identifying those aspects the grant applicant should take into consideration when so certifying.

Grant applicants are urged to make early contact with the appropriate Regional Office to discuss their proposed projects. Some requirements call for extensive planning and should be addressed long before the grant application is to be submitted, and Regional Office staff can guide a grant applicant toward efficient action. Preparing for the project may even include sending staff to courses on, for example, procurement practices, and to FTA-sponsored regional conferences to gain understanding and learn about best practices. It may also be useful to talk with staff of state transportation departments and of other grantees that have applied for assistance to undertake similar projects.

Specifically, no grant or loan may be made by FTA under the Capital Program unless FTA finds that⁶:

- (i) the project proposed is a product of the planning process, as earlier noted,
- (ii) the grant applicant has or will have the legal, financial, and technical capacity to carry out the project,
- (iii) the grant applicant has or will have satisfactory continuing control over the use of the equipment or facilities, and
- (iv) the grant applicant has or will have the capability to maintain the equipment or facilities, and will maintain the equipment or facilities.

6. 49 U.S.C. § 5309(d)

Requirements associated with an FTA finding of adequate planning, item (i), were discussed in paragraph 2 above. Before the requirements associated with a positive FTA finding for the remaining items are discussed, it may be useful first to review the way similar requirements are handled under the Urbanized Area Formula Program.

a. Relationship Between Urbanized Area Formula Program and Capital Program Applications.

A grant applicant for urbanized area formula funds is required to certify annually (among other certifications) that it has or will have the legal, financial, and technical capacity to carry out the formula-funded project, that it has or will have satisfactory continuing control over the use of equipment or facilities and will maintain the equipment or facilities, and that any project for which funds are requested has been part of the local planning process.⁷ On the basis of these certifications, in conjunction with other factors, FTA is permitted to award a grant under the Urbanized Area Formula Program. FTA, however, is required by statute to conduct at least every three years a review and evaluation of the performance of Urbanized Area Formula Program grantees in carrying out their programs.⁸ These performance reviews are called triennial reviews. It is during the triennial review that FTA determines whether an Urbanized Area Formula Program grantee is in compliance with Federal requirements, including the legal, financial, and technical capacity, satisfactory continuing control, and maintenance of facilities or equipment to which the grantee has certified.

7. 49 U.S.C. § 5307(d)

8. 49 U.S.C. § 5307(i)(2)

Returning to the discussion of Capital Program parallel requirements, in making the determinations that a grant applicant for Capital Program funds has the capacities and capabilities required regarding these same matters,⁹ FTA will rely on the findings in the grant applicant's most recent triennial review, if the Capital Program applicant is a recipient of Urbanized Area Formula Program funds.

9. listed in 49 U.S.C. § 5309(d)

First-time Capital Program grant applicants, for which FTA has no triennial review findings or other audit findings, will need to submit the necessary information to allow FTA to make a positive determination.

The paragraphs that follow discuss the subjects that FTA takes into account in making the findings for compliance with 49 U.S.C. § 5309(d). Specific

- c. **Financial Capacity.** Before FTA may award a Capital Program grant, 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 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 are available. 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 Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations" dated June 30, 1997.

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 Program grant. The directive refers to two aspects of financial capacity: One is the general financial condition of the transit operator. 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 of the grant applicant's funding sources to meet future operating deficits and capital costs. Financial capability refers to the stability and reliability of revenue sources 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 investments 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 by the MPO 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 MPO 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).

- (c) Ensure conformity to grant agreements, applicable statutes, codes, ordinances, and safety standards;
 - (d) Maintain the project schedule and ensure that other performance goals are being achieved;
 - (e) Ensure compliance with FTA requirements on the part of other persons or entities working under contract or interagency agreements;
 - (f) Account for project property, provide for its repair and replacement, and maintain property records; and
 - (g) Keep expenditures within approved project budget.
- (2) Review of Past Experience. If a grant applicant has previously received FTA financial assistance and carried out FTA-sponsored projects, some questions that may be considered include the following:
- (a) Who is responsible for grant administration, and what is the grant administration process?
 - (b) How did actual grant experience compare to proposed schedules, both activity timetable and drawdown schedules? Have delays been reasonable and explanations documented?
 - (c) What techniques were used to administer and manage project activities, including contractor work and force account activities? Have audits taken exception to force account activities or reimbursements from FTA?
 - (d) Was there timely closure of past grants? Do grants have unobligated balances or carryover amounts that appear excessive?
 - (e) Are progress reports and financial status reports submitted on time and do they contain the required information?
 - (f) Does the grantee have a cost allocation plan to support indirect administrative costs related to the grant program?
 - (g) How are changes to major capital and operating contracts approved? Are change orders reasonable in numbers and content?
 - (h) If past assistance involved a major capital project, did the grant applicant follow its Project Management Plan?
 - (i) If a grantee has received Federal assistance for the acquisition of rolling stock, is there indication the grantee ensures contractual vehicle specifications are met?
 - (j) What are the findings in independent audits and in triennial reviews?
- e. Satisfactory Continuing Control. Before FTA may award a Capital Program grant, FTA must make a finding that the grant applicant has or will have satisfactory continuing control over the use of property acquired with Federal assistance. Generally, FTA relies on its experience with the grant applicant in

If a grantee leases vehicles to another entity, FTA is interested in lease provisions regarding maintenance, storage, recordkeeping, return of the vehicle, and other items that guarantee the vehicle is used only for transit service. How the grantee ensures that its service contractors and lessees are complying with contracts or leases is an element FTA considers in determining satisfactory continuing control.

For grantees with 50 or more buses, FTA has established as a reasonable spare ratio 20 percent of the vehicles operated in maximum service. Some vehicles (after they have achieved their minimum normal service life) may be set aside to be used in specific contingencies, provided the grant applicant has developed, and FTA has approved, a contingency plan for the vehicles. Spare ratios and contingency planning are part of the FTA determination of satisfactory continuing control.

FTA considers satisfactory continuing control to be part of proper project management. Additional property management requirements are set out in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" at 49 C.F.R. Part 18 (referred to as the Common Rule). Please refer to the following: for real property, 49 C.F.R. § 18.31; equipment, 49 C.F.R. § 18.32; and supplies, 49 C.F.R. § 18.33. New applicants are encouraged to obtain a copy of FTA Circular 5010.1C and the Common Rule before undertaking an FTA capital project.

- f. Capability to Maintain. The grantee must keep equipment and facilities acquired with Federal assistance in good operating order. This includes maintenance of rolling stock (revenue and non-revenue), machinery and equipment, and facilities.

Regulations implementing the Americans with Disabilities Act of 1990 (ADA) require that all accessibility features of fixed-route transit such as lifts, elevators, and securement devices be properly maintained and kept operational.

FTA requires grantees to document maintenance plans, systems for recording warranty claims, and enforcement of warranty claims. At the same time, FTA does not prescribe maintenance standards or requirements. A first-time Capital Program grant applicant should include in its grant application enough information to permit FTA to make a positive finding that the applicant will exercise satisfactory continuing control over the use of facilities and equipment acquired with Capital Program funds and that the applicant has a maintenance plan and the capability to maintain facilities and equipment purchased with grant funds. If the first-time Capital Program grant applicant has been the subject of a recent performance review under the Urbanized Area Formula Program,¹⁰ pertinent findings from the review may be sufficient to allow FTA to make a positive finding without further documentation.

10. 49 U.S.C.
§ 5307

Questions that a grant applicant may wish to ask of itself regarding its capability to maintain include: Are adequate funds and staff available to

Usually, a project that "substantially" affects a community or its mass transportation service is one for which an environmental impact statement (EIS) must be prepared, in compliance with the National Environmental Policy Act (NEPA). (The joint FTA/FHWA rules for compliance with NEPA are codified at 23 C.F.R. Part 771). For this type of project, the EIS is the instrument by which the social, economic, and environmental effects of the project are considered, as well as its consistency with official land use plans for the urban area. Thus, as a practical matter, a hearing held in compliance with 49 U.S.C. § 5323(b), above, will be focused on the social, economic, and environmental effects presented for public review and comment in the draft EIS for that project.

The great majority of capital projects for which FTA provides assistance do not require preparation of an EIS; they require only preparation of an environmental assessment (EA), or they fall within a categorical exclusion from analysis under NEPA. Usually, projects that do not require EISs are not subject to the requirements of 49 U.S.C. § 5323(b), because they do not "substantially" affect the community or its mass transportation service. On occasion, however, there may be substantial public controversy, or other significant social or economic issues involving a project for which an EIS is not required. In such an instance, FTA may determine that the project does in fact "substantially" affect the community or its mass transportation service, and if so, FTA will apply the requirements of Section 5323(b) to that project.

In any instance in which a hearing is held to meet the requirements of Section 5323(b), a copy of the transcript of the hearing must be submitted to FTA. Additionally, FTA must review that transcript¹⁴ to establish that an adequate opportunity to present views was given to all parties with a significant social, economic, or environmental interest, and that the environmental document (EIS or EA) adequately states the environmental impacts of the project, the adverse environmental effects which cannot be avoided, alternatives to the proposed action, and the irreversible and irretrievable impacts on the environment. These public hearing and transcript requirements are codified in the joint FTA/FHWA environmental regulations.¹⁵

14. 49 U.S.C.
§ 5324(b)(2)

Further information about hearing notices and related subjects is available through FHWA and FTA planning and environmental guidance documents.

15. 23 C.F.R.
Part 771

Category IV in Appendix C provides the language for the certification.

It should be noted that 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.¹⁶ 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 transportation improvement programs--in the two agencies' joint planning regulations.¹⁷ The practical effect of these statewide and metropolitan planning requirements is to expose every FTA-funded capital

16. 49 U.S.C.
§§5303(f)(4) and
5304(a)

17. 23 C.F.R.

applicant may avoid duplication by complying with state or local environmental protection requirements in the course of complying with the joint FHWA/FTA regulations.

Early consultation with the FTA Regional Office concerning environmental requirements is critical, because a federally assisted project may not advance beyond the preliminary engineering phase until the environmental review has been completed. This limitation on further project development during the environmental review applies not only to FTA's ability to grant funding but also to activities that the grantee might undertake with local funds. The restriction is necessary to ensure objective consideration of all alternatives being studied in the NEPA review. The review is completed only when FTA has approved a record of decision or a finding of no significant impact or a categorical exclusion, depending on the project's classification. Hence, the NEPA process should be initiated well before a grantee submits a grant application for construction funds.

8. CLEAN AIR ACT. The Clean Air Act Amendments of 1990 represent a renewed effort to achieve healthful air quality across the country. In most areas currently in violation of national air quality standards ("nonattainment" areas), transportation is a major source of air pollution. Hence, the 1990 Amendments contain a wide array of provisions to limit pollution from mobile sources--for example, stricter urban bus emission standards, requirements for cleaner fuels, and greater emphasis on transportation control measures in regional air quality planning.

The 1990 Amendments also establish more stringent "conformity" requirements in nonattainment and maintenance areas to ensure that federally-assisted transportation projects support state (air quality) implementation plans (SIPs)--the strategies developed by state air agencies for attaining the air quality standards. FTA must find that capital projects needing FTA assistance conform to the applicable SIP before the projects may be advanced to construction. The projects must also be included in metropolitan transportation plans and programs (TIPs) that have also been found to conform to the SIP.

The procedures and criteria governing the conformity review process are specified in Environmental Protection Agency (EPA) conformity regulations at 40 C.F.R. Part 93. These regulatory requirements can be complex, depending primarily on the scale of the project and the severity of the area's air pollution problem. In general, major transit projects, e.g., new fixed guideways or extensions, must be analyzed at both the regional and local scales. The MPO has responsibility for performing a regional emissions analysis for all major highway and transit projects in the transportation plan and TIP. The grant applicant has responsibility for analyzing the localized effects of a federally-assisted transit project if that is required. Although it is generally accepted that major transit infrastructure improvements have a beneficial effect on air quality overall, certain projects in certain areas can create localized "hot-spot" violations that must be mitigated, for example, potential carbon monoxide violations at park-and-ride facilities and elevated levels of diesel soot and smoke (small particulate matter) at large bus or intermodal terminals. Hence, the conformity review process is

enterprise in its transit program, as explained in the FTA Federal Register Notice "Private Enterprise Participation," of April 26, 1994.³¹

31. 59 Fed. Reg.
21890 et seq.
(1994)

FTA relies on the local planning process, which must comply with rigorous planning and private enterprise requirements,³² and the joint FHWA/FTA planning regulations. To determine the adequacy of a grant applicant's efforts to incorporate private enterprise in its transit program, FTA monitors compliance with statutory and regulatory private enterprise requirements as part of the annual audits and the triennial reviews (discussed earlier) under the Urbanized Area Formula Program.³³

32. 49 U.S.C.
§§ 5303-5306

33. 49 U.S.C.
§ 5307

- b. Acquisition of Private Mass Transportation Facilities. Although acquisition of a private transit provider's property takes place less often than when Federal transit assistance was first established, Federal law recognizes the special concerns of private transportation providers whose property is acquired by public transit authorities. First, no Federal transit assistance authorized by 49 U.S.C. chapter 53 may be expended to acquire equipment or facilities currently being used in service in an urban area unless the transportation improvement program demonstrates that the acquired property will be so improved that the transportation needs of the area will be served better.³⁴ Second, FTA is prohibited from awarding Federal assistance to a governmental body to acquire property from a private transportation provider unless just and adequate compensation under state or local law will be paid to the private provider for acquisition of its franchises or property.³⁵

34. 49 U.S.C.
§ 5306(a)

35. 49 U.S.C.
§ 5323(a)(1)(C)

- c. Charter and School Bus Operations. By law, private providers of charter and school bus service are afforded certain protections from competition with public transit authorities. Grant applicants that operate bus or van services should refer to Chapter III, paragraph 8c, for a full explanation of the limits these protections place on federally assisted transit operators.

10. REAL PROPERTY ACQUISITION AND RELOCATION ASSISTANCE. If a grant applicant intends to use Federal financial assistance in a project which will require real property, the applicant must provide assurances--required by Sections 305 and 210 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act)³⁶--that it will comply with the Uniform Act and with U.S. DOT implementing regulations.³⁷ Category XI in Appendix C provides standard language for the assurances.

36. 42 U.S.C.
§§ 4601 et seq.

37. 49 C.F.R.
Part 24

The 49 C.F.R. Part 24 regulation is a government-wide regulation that applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons. 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. Grantees in the process of planning a federally-assisted project that will require the displacement of persons should be aware of the need for relocation planning during the early stages of project development.

In addition to the requirement for early relocation planning, following is a list (not exhaustive) of other actions required by 49 C.F.R. Part 24:

APPLICATION FOR FEDERAL ASSISTANCE

1 TYPE OF SUBMISSION: <i>Application</i> <input type="checkbox"/> Construction <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction <input type="checkbox"/> Non-Construction <i>Preapplication</i> <input type="checkbox"/> Construction <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction <input type="checkbox"/> Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name		Organizational Unit	
Address (give city, county, state, and zip code)		Name and telephone number of the person to be contacted on matters involving this application. (give area code)	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): <div style="border: 1px solid black; display: inline-block; width: 100px; height: 20px; margin-right: 10px;"></div> <div style="border: 1px solid black; display: inline-block; width: 100px; height: 20px;"></div>			

CHAPTER IX

FORMS AND REPRESENTATIVE DOCUMENTS

	<u>PAGE</u>
• Application (SF-424)	IX-1
• Authorizing Resolution	IX-3
• Fleet Status	IX-5
• Fleet Replacement	IX-7
• Like-Kind Exchange	IX-9
• Lobbying-Disclosure	IX-11
• Opinion of Counsel	IX-15
• Project Milestone Schedule	IX-17
• Proceeds from Sale of Assets	IX-19

Federal Transit Administration
Scope & Activity Line Item Codes

Effective 10/1/98

GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR RESEARCH AND OTHER EXPENDITURES

Research Projects
55.XX.XX

- .10.00 Personnel
- .13.00 Clerical
- .14.00 Managerial, Technical, & Professional
- .15.00 Construction Work
- .19.00 Other
- .20.00 Travel
- .30.00 Fringe Benefits
- .40.00 Equipment
- .41.00 ADP Purchase, Lease, or Rental
- .42.00 Material & Equip-Purchase / Lease / Rent
- .43.00 Equipment Design or Manufacture
- .49.00 Supplies
- .50.00 Contractual
- .51.00 Service Improvements
- .52.00 Consultant Services
- .53.00 ADP Services
- .54.00 Other
- .56.00 Construction
- .61.00 FAC; Renov; Purchase, Lease, Rental
- .62.00 Construction Work
- .70.00 Other
- .71.00 Administrative Costs
- .72.00 Service Operations
- .73.00 Contingencies
- .74.00 Other Project Costs
- .75.00 Diversion Payments
- .76.00 Profit or Fee
- .80.00 Indirect Costs
- .81.00 Overhead
- .82.00 General & Administrative
- .90.00 Income
- .91.00 Project Income
- .92.00 Investment Income
- .93.00 Proceeds, Sale of Non-Expen Pro
- .94.00 Farebox Revenue

University Research
70.XX.XX

- .10.00 Faculty Salaries & Wages
- .13.00 Secretarial & Clerical Costs
- .20.00 Employee Benefits
- .30.00 Travel
- .44.00 Automatic Data Processing Services
- .49.00 Services
- .50.00 Expendable Supplies & Material
- .51.00 Seminar Support
- .52.00 Student Stipend / Tuition
- .53.00 Publishing Costs
- .65.00 University Overhead
- .80.01 Student Salaries
- .80.02 Other Direct Costs
- .80.03 Other Indirect Costs
- .90.00 Cost Share or Grantee Local Share

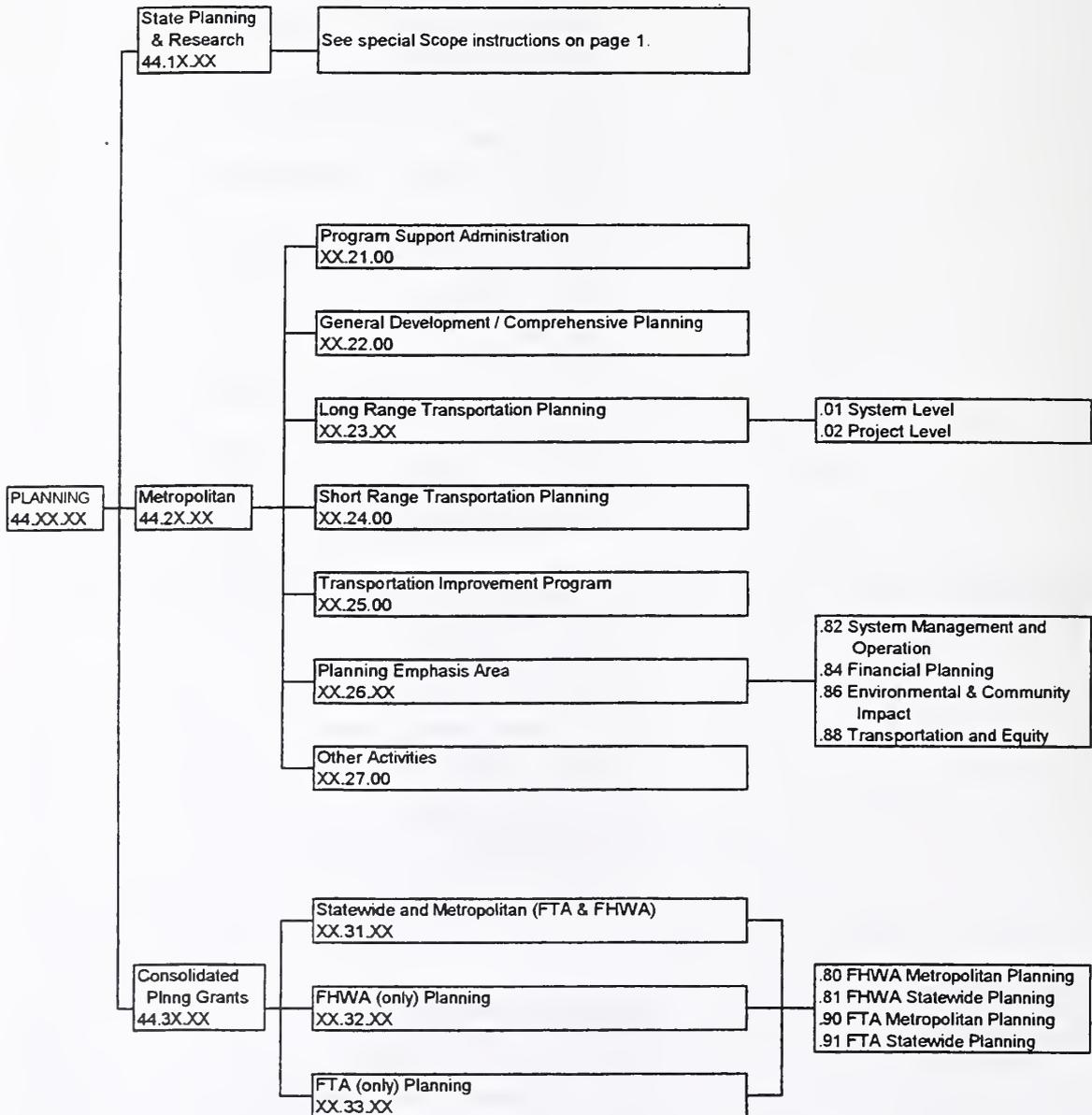
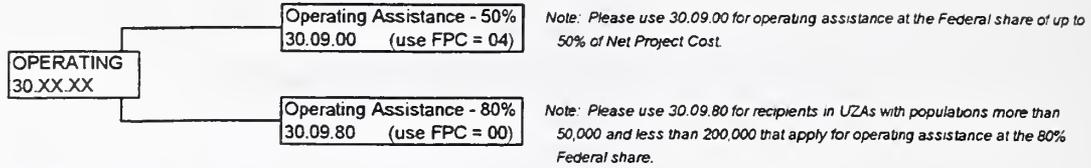
Non-Add Scope Codes
99X-nn

- 993-nn ITS - Fleet Management
- 994-nn ITS - Electronic Fare
- 995-nn ITS - Traveler Information
- 996-nn ADA / CAA Increased Federal Share
(i.e. Alternate Federal Share matches such as 90/10 and 83/17)
- 999-nn Contingency Projects

Federal Transit Administration
Scope & Activity Line Item Codes

Effective 10/1/98

GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR OPERATING AND PLANNING EXPENDITURES



Federal Transit Administration
Scope & Activity Line Item Codes

Effective 10/1/98

GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES

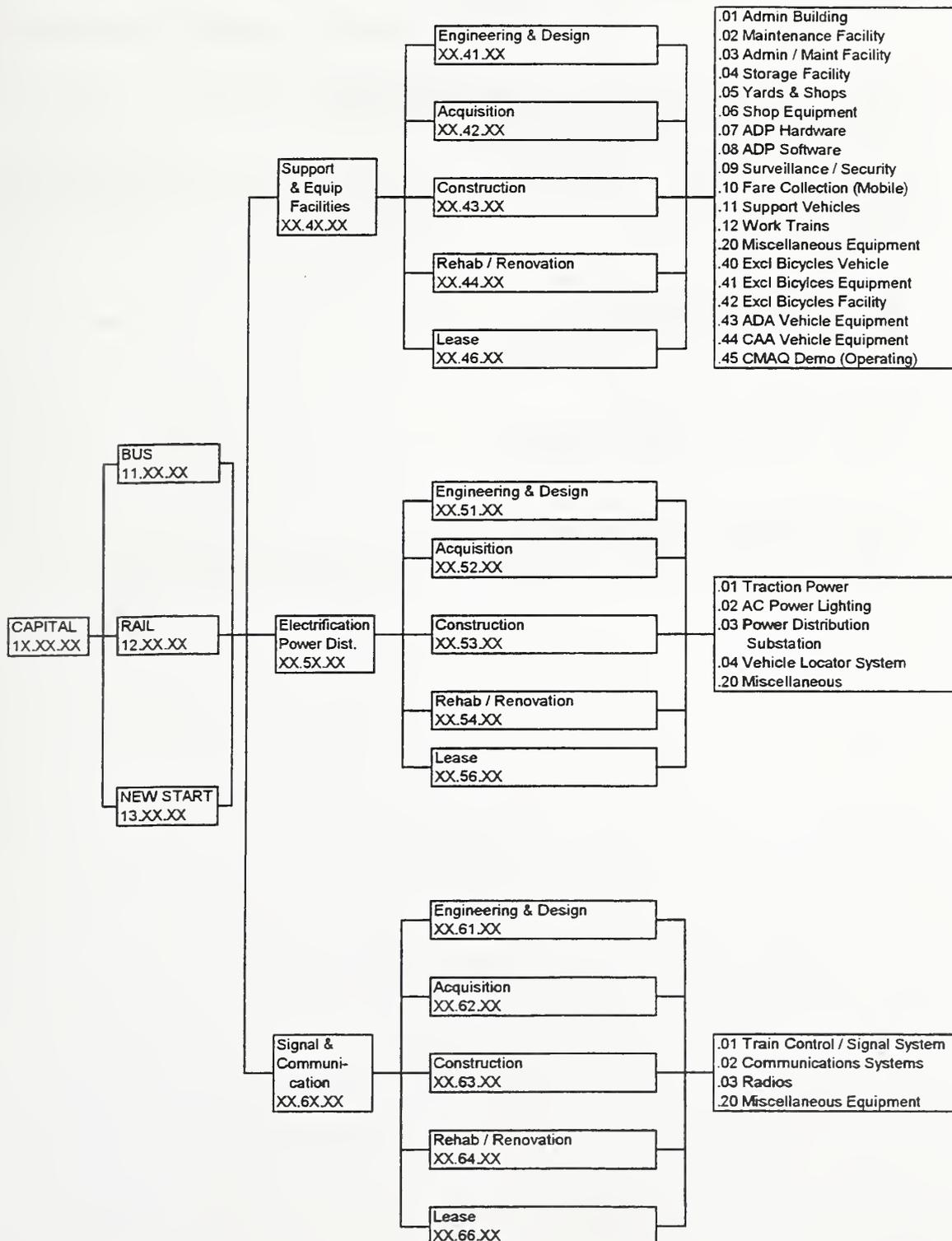


EXHIBIT VIII-7

**SCOPE LEVEL CODES AND
SPECIAL USE ACTIVITY CODES**
(con't)

- 135-00 New Start - Electrification/Power Distribution
- 136-00 New Start - Signals/Communication Equipment
- 137-00 New Start - Other Capital Items

- 300-00 Operating Assistance

- 441-00 State Planning and Research
- 442-00 Metropolitan Planning
- 443-00 Consolidated Planning Grants

- 993-00 ITS Fleet Management
- 994-00 ITS Electronic Fare Collection

- 995-00 ITS Traveler Information
- 996-00 ADA/CAA - Non-add Scope
- 999-00 Contingency Projects (Section 5307 Urban Formula Program only)

EXHIBIT VIII-6 (con't)

APPROVED PROJECT BUDGET (con't)

SOURCES OF FEDERAL FINANCIAL ASSISTANCE

FUNDING UZA: 240149 FUNDING UZA NAME: Transit-town, Md.

ACCOUNTING			PREVIOUSLY	AMENDMENT	
<u>CLASSIFICATION</u>	<u>FPC</u>	<u>DESCRIPTION</u>	<u>APPROVED</u>	<u>AMOUNT</u>	<u>TOTAL</u>
95.37.03.31.2	00	FY 1995, §5309 CAPITAL		\$ 469,500	\$ 469,500

EXHIBIT VIII-5 (continued)
Combining Costs of Similar Items

SCOPE

131-01 Purchase of Rolling Stock

Quantity: 50

Activities

13.12.20 Purchase 50 light rail vehicles

EXHIBIT VIII-4

Presenting Subrecipient Information - Format Option No. 2

Scope

111-01 Rolling Stock for Allegany County

Quantity: 3

Activity

11.12.03 Purchase small lift-equipped replacement buses for Allegany County

Quantity: 3

11.12.40 Spare components for buses

11.42.10 Purchase fareboxes for buses

Quantity: 3

Scope

111-02 Rolling Stock for Cumberland Transit System

Quantity: 4

Activity

11.12.15 Purchase lift-equipped vans for Cumberland Transit System

Quantity: 4

11.62.03 Purchase radios for vans

Quantity: 4

Under Format Option No. 1, FTA determinations regarding budget revisions and scope changes would be based on the quantity total of seven vehicles found at the scope level. Under Format Option No. 2, those determinations would be based on the specific scope level quantity for each of the subrecipients, i.e., quantities of three and four.

A grant applicant operating a larger system can also choose which of the two format options above best suit its internal management of projects. However, at a minimum, different scopes should be used to distinguish between rolling stock and facility activities and between rail and bus within each grouping. Furthermore, a grant applicant seeking Capital Program assistance to undertake a major capital project will be required to develop a budget based upon the baseline cost estimate and associated contract units reflected in the associated full funding grant agreement. It is necessary to clearly relate the scope and activities in the program-of-projects budget to the baseline cost estimate and

collection system or radio communications system, the more appropriate classification might appear as follows:

EXHIBIT VIII-2

Project Scope - Sample No. 2

Scope

113-01 Bus - Purchase fare collection system

(NOTE: In this example the activity code description appropriate to this Scope Code, Bus - Stations/Stops/Terminals, has been overwritten in order to provide a more accurate description.)

Activity

11.32.06 Purchase coin sorter

11.32.20 Purchase miscellaneous stationary fare collection equipment

11.42.09 Purchase fareboxes

Quantity: 45

Scope

116-01 Bus Signal/Communications System

Activity

11.61.01 Design bus communications system

11.62.02 Purchase base stations

11.62.03 Purchase bus radios

Quantity: 50

11.42.09 Purchase mobile radios

Quantity: 20

As one can see from these examples, it is also possible to combine activities that are associated, but which do not necessarily match the first three digits of the scope code under which they appear.

A grant applicant that operates a fixed guideway system or that is engaged in a new start project will use scope level numbers that correspond to the rail and new start segments of the Activity Code Chart, e.g., scope code 121-01, 02...for Rail Rolling Stock or 131-01, 02...for New Start Rolling Stock; or 123-01, 02...for Rail Stations and 133-01, 02...for New Start Stations.

CHAPTER VIII

INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

1. BACKGROUND. FTA has developed a single budget document that can be used for each of the FTA programs. A sample of an "Approved Project Budget," included as EXHIBIT VIII-6, shows the manner in which FTA transmits funding information to the grantee. Chapter VIII provides information about the items that appear on an Approved Project Budget and gives assistance for preparing a project budget.

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. The purpose of a group of activities is referred to as the scope of the group--that is, the scope of the project. Thus, a grant program may have several scopes.

FTA grant management decisions regarding whether a budget revision can be made versus whether a grant amendment is necessary depend in large measure on the effect of the proposed change on the scope of the project. The activity level is used as information to assist in the decision.

2. OVERVIEW OF PROJECT BUDGET DOCUMENT. Referring to the sample of an Approved Project Budget (EXHIBIT VIII-6), note the Approval Date in the upper left corner. This date will be added by FTA when the contents of the budget are formally approved. Also, the FTA-designated project number appears in the upper left, MD-03-0046-00. The first two letters, MD, indicate the state in which the grant is located; the next two digits, 03, indicate that the grant is funded under the Capital Program, and the next four digits, 0046, indicate the sequence number of Capital Program grants awarded within the state. The final two digits, 00, indicate this is the first increment of funding for the grant. Budget No.: 01 indicates this is the first approved budget for the grant.

Next, the scope of work (e.g., 111-01 Bus - Rolling Stock) is defined. Each scope is followed by the specific details (activities) of how the scope will be accomplished (e.g., 11.13.03, Purchase 30-foot buses for expansion of service).

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.

CHAPTER VIII - INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

TABLE OF CONTENTS

	<u>PAGE</u>
1. BACKGROUND	VIII-1
2. OVERVIEW OF PROJECT BUDGET DOCUMENT	VIII-1
3. PREPARING A PROJECT BUDGET	VIII-2
a. Scope and Activity Levels	VIII-2
b. Subrecipient Information	VIII-4

EXHIBIT VII-1

CHECKLIST FOR GRANT APPLICANT

A. Application Contents (to be submitted as part of grant application)

Grant applicants not applying electronically must submit an original application and 2 copies for DOL labor protection certification.

1. Transmittal letter
2. SF-424 Application for Federal Assistance
(see Example "Application" in Chapter IX)
Federal debt delinquency noted because frequently overlooked
3. Project Budget
4. Project Description
5. Project Justification¹/Supporting documentation as necessary
6. Milestone Schedule
(see Example "Project" in Chapter IX)
7. Project Financing/Local Share Commitment (source and amount of funding identified)
8. Labor Union Description(s) (including information about previous DOL certifications that may apply to this project)
9. Environmental Review
 - a. Date of FTA's signing of FONSI, or
 - b. Date of FTA's signing of ROD, or
 - c. Grant applicant's CE recommendation if neither a nor b above applies
10. STIP - Date of most recent approval by FTA (including any amendments) (please provide projects' page numbers)
11. Request for copy of Master Agreement, if grant applicant does not have latest.
12. Information confirming that urbanized area formula funds are programmed (i.e., are in an approved STIP)

B. Approval Prerequisites (on record with FTA, or to be submitted with application and updated as appropriate)

1. Opinion of Counsel (for first time grant applicants)
2. Authorizing Resolution (for first time grant applicants)

¹ Brief summary of planning and environmental justifications for project.

CHAPTER VII

GRANT APPLICATION CONTENTS

1. ELECTRONIC GRANT APPLICATIONS. FTA expects applicants for Capital Program funds to submit their applications electronically, absent unusual circumstances. Early in Fiscal Year 1999, FTA will introduce newly designed electronic award and management software. This will consist of a point-and-click system that contains "smart" selection options designed to streamline the application and management process. The electronic system is compatible with the year 2000 and beyond ("Y2K-compliant").

Also during FY 1999 FTA will use a dual grant numbering system--the present system in which the grant number appears in the form XX-90-X162, for example, and a new numbering system that reflects the current codification, in which the grant number will appear in the form XX-5309-0162, for example. Starting in FY 2000, only the new numbering system reflecting the codification will be used.

2. APPLICATION CHECKLIST. This chapter contains a checklist that may be used by the grant applicant when preparing a grant application for FTA Capital Program assistance. The checklist contains two parts.
 - a. Part I, Application Contents, is a list of information items that FTA expects to receive with each application. Grant applicants often use the extended text fields in the electronic system to include information concerning significant or unusual aspects of the grant request. A transmittal letter is not a required item but can be used to provide explanatory information.
 - b. Part II, Approval Prerequisites, contains information items FTA requires before FTA may award a grant. Current information is required, and may be submitted in the grant application if it is not already reflected in FTA records.

In addition to the items listed, FTA reserves the right to request additional information or documents specific to the grant application.

3. APPLICATION PACKAGE. To submit a grant application electronically, a grant applicant should follow the instructions within the FTA electronic system. FTA regional staff will provide assistance as needed. The Regional Office will forward the grant application to the Department of Labor (DOL) for certification of transit employee protective arrangements (See Chapter VI, paragraph 12 concerning Labor Standards.) Applicants not using the electronic system must submit an original and two copies of the grant application to the geographically appropriate FTA Regional Office. Regional Offices and the states and territories they serve are listed in Chapter X.

CHAPTER VII - GRANT APPLICATION CONTENTS

TABLE OF CONTENTS

	<u>PAGE</u>
1. ELECTRONIC GRANT APPLICATIONS	VII-1
2. APPLICATION CHECKLIST	VII-1
3. APPLICATION PACKAGE	VII-1
4. FTA ASSISTANCE	VII-1
5. STANDARD FORM 424	VII-1
6. PROJECT BUDGET	VII-2
7. PROJECT DESCRIPTION, PLANNING CONSISTENCY	VII-2
8. MASTER AGREEMENT	VII-2
9. INDEX OF THIS CIRCULAR	VII-2

requires a grantee to make certain that no Federal requirements are circumvented through its use.

The U.S. Department of Labor certification of the labor protective arrangements does not have to be in place before costs are incurred under the blanket authority, but does have to be in place before Federal funds can be awarded.

If a grant applicant has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, the grant applicant is encouraged to contact the appropriate FTA Regional Office.

- b. Letter of No Prejudice. For a project not covered by the blanket pre-award authority, including Capital Program new start projects not yet under a full funding grant agreement and bus projects that have not been published in 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 FTA to 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 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 two 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.
- c. Advance Capital Project Authority. A grant applicant that seeks to proceed with a transit project before Federal funds become available may request advance capital project authority, formerly referred to as advance construction authority. Advance capital project authority⁶¹ permits a grant applicant to incur project and financing (e.g., bond interest) costs before FTA awards a grant for the project and reserve the right to be reimbursed after FTA has approved the project. Advance capital project authority may be issued for Capital Program grants and Urbanized Area Formula Program grants and for grants under the interstate substitute transit program.⁶²

61. pursuant to
49 U.S.C.
§ 5309(n)

62. 23 U.S.C.
§103(e)(4)

Advance capital project authority may be approved provided that the project is carried out in accordance with all applicable Federal procedures and requirements. A grant application must have been received by FTA and all FTA grant application requirements must have been met, including receipt of a labor protection certification from the Department of Labor. This requirement for prior approval of an application and the eligibility of financing costs for reimbursement are two important differences from the blanket authority of paragraph 21a above and the LONP of paragraph 21b.

Advance capital project authority is limited to major projects such as large bus buys and facility construction projects that would require funding for

20. SEISMIC DESIGN AND CONSTRUCTION STANDARDS. A grant applicant must assure FTA that any new building or addition to an existing building built with Federal assistance is designed and constructed in accordance with seismic safety standards. The grant applicant is responsible to know before accepting delivery that the building complies with seismic design and construction requirements and, in accordance with U.S. DOT implementing regulations, "Seismic Safety,"⁵⁹ must assure FTA that it will obtain a certificate of compliance with the requirements. A grant applicant makes this assurance through the FTA annual certification process; see Category XI, Item C in Appendix C.

59. 49 C.F.R.
Part 41

21. REQUIREMENTS CONCERNING PROJECT ACTIVITIES IN ADVANCE OF FEDERAL FUNDS. There are three mechanisms FTA uses that allow a grant applicant to incur project costs without first receiving formal FTA project approval. By means of these mechanisms a grant applicant may spend local funds for project activities and be reimbursed by FTA if and when a project is approved. The three are discussed below.

It is important to note that a grant applicant with the requisite authority to proceed with project activities must take care to avoid prejudicing the legal and administrative findings FTA must make before approving financial assistance. That is, the grant applicant must comply with all applicable Federal statutory, procedural, and contractual requirements in carrying out its project, in order for FTA to later be able to provide financial assistance for the project.

a. Blanket Authority Under Formula Programs to Incur Pre-award Costs. FTA has provided blanket pre-award authority for grantees to incur costs for all FTA formula funds --including the Capital Program fixed guideway modernization formula funds--in advance of possible future Federal participation. This pre-award authority extends to future formula funds that will be apportioned during the authorization period of TEA-21, 1998-2003. The pre-award authority also applies to projects intended to be funded with STP or CMAQ funds transferred to FTA. The pre-award authority for STP and CMAQ funds is also extended for the 1998-2003 authorization period of TEA-21. Pre-award authority applies to FTA funds and flexible funds provided the conditions in paragraphs (1) and (2) below are met. Pre-award authority applies only to those Capital Program new start funds, or to Capital Program bus projects, that have been identified by FTA in annual Federal Register Notices as having pre-award authority.

(1) Conditions. FTA specified the following conditions under which the blanket pre-award authority may be used:

(a) This pre-award authority is not a legal or moral commitment that the project(s) will be approved for FTA assistance or that the FTA will obligate Federal funds. Further, it is not a legal or moral commitment that all items undertaken by the grant applicant will be eligible for inclusion in the project(s).

information to help grantees implement the rules are available through the FTA Office of Safety and Security, FTA Headquarters, 400 7th Street, S.W., Washington, D.C., 20590.

17. DRUG-FREE WORKPLACE. Each grantee is required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program. The grant applicant must agree that it will provide a drug-free workplace and comply with all requirements of the Drug-Free Workplace Act of 1988⁵⁵ and U.S. DOT's implementing regulations.⁵⁶

55. 41 U.S.C. §702 et seq.

The grantee 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.

56. 49 C.F.R. Part 29, Subpart F

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 grantee is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the grantee/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 grantee/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Category I, Item D in Appendix C provides standard language pertaining to the grant applicant's drug-free workplace requirements. A "Drug-Free Workplace Agreement" will be substituted for the "Drug-Free Workplace Certification."

18. LOBBYING. A certification and, when appropriate, a completed disclosure form must be submitted by the grant applicant in accordance with 31 U.S.C. § 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and U.S. DOT implementing regulations, "New Restrictions on Lobbying."⁵⁷ Section 1352 requires that all persons (meaning organizations as well as individuals) that request or receive Federal contracts, grants, or cooperative agreements exceeding \$100,000, or loans, loan guarantees, or insured loans exceeding \$150,000, submit a certification that Federal appropriated funds were not used to influence or attempt to influence the transactions. Standard language for the certification appears in Appendix C, Item II.

57. 49 C.F.R. Part 20

Grantees and contractors are required to disclose certain lobbying activities conducted with funds derived from other than Federal sources. If anyone is hired to lobby on behalf of the potential recipient requesting the Federal funds, Section 1352 requires that a disclosure statement, Standard Form LLL, be completed naming the lobbyists and the amounts paid to them. These

assembly requirements of 49 U.S.C. § 5323(j)(2)(C) has qualified for the specific rolling stock waiver authorized by 49 C.F.R. § 661.11(z), and there is no need to apply to FTA for this waiver.

- c. Waivers. The statute establishing FTA's Buy America requirements⁴⁴ permits FTA to issue waivers in the public interest, or when U.S. products are not available, and for price differentials of at least 25% between the U.S. and foreign product. The statute also authorizes rolling stock to qualify as a domestic product when its domestic component and subcomponent costs exceed 60 percent of the total component and subcomponent costs, and final assembly takes place in the United States.

44. 49 U.S.C.
§ 5323(j),

Absent a specific waiver for a specific product within FTA's Buy America regulations, a grant applicant must apply for and receive a waiver from FTA for each foreign acquisition of iron, steel, or manufactured good it intends to acquire. However, the grant applicant need not apply to FTA for a waiver to acquire rolling stock with domestic component and subcomponent costs exceeding 60 percent of the total component and subcomponent costs and final assembly taking place in the United States. Nor must an applicant apply to FTA for a waiver to acquire equipment listed in Appendix A to 49 C.F.R. § 661.7.

- d. Waiver for Small Purchases. FTA issued a general-interest waiver (60 Fed. Reg. 37930)⁴⁵ on July 24, 1995, to exempt from its Buy America requirements all purchases made with FTA financial assistance, including capital, planning, and operating assistance, where the cost of the purchase is \$100,000 or less. The exemption is based on the total cost of the purchase and not on individual items being purchased. Thus, if a grantee purchased, for example, 10 items costing \$15,000 each under a single purchase order, and the total purchase order cost \$150,000, the purchase would not be exempt from the Buy America requirements.

45. codified at
49 C.F.R. Part 661

- e. Regional Offices Available to Assist. It is often helpful to review the preambles as well as the text of the Buy America regulations. FTA recognizes that its Buy America regulations (including the preambles) do not address each issue that may arise in the course of a specific acquisition. It is not unusual for an acquisition to involve specific circumstances requiring individual interpretations of the regulations. For these reasons, Buy America questions or issues should be routinely submitted to the appropriate Regional Office.

16. DRUG AND ALCOHOL TESTING. In the interest of safety of transit operations, a recipient of Capital Program funding is required by 49 U.S.C. § 5331 to establish programs designed to help prevent accidents and injuries resulting from misuse of alcohol or the use of prohibited drugs by employees who perform safety-sensitive functions and to certify annually that it is in compliance with the two FTA regulations concerning drug and alcohol testing. Compliance with the regulations is a condition of FTA funding. Where applicable as discussed below, recipients of FTA funding are required to certify

49 U.S.C. Section 5332. Such steps should include: informing all communities of public hearings or meetings regarding such a project; providing an opportunity for interested persons to be considered for selection to decisionmaking transit boards and advisory committees; and ensuring that input on a facility's accessibility and location will be obtained and decisions will be made without regard to race, color, creed, national origin, age, or sex.

Each grant applicant must certify annually that it is in compliance with nondiscrimination requirements of Title VI. Standard language for that assurance appears in Category I, Item F of Appendix C.

- (2) Equal Employment Opportunity. A grantee with 50 or more employees that has received \$1 million or more in the previous Federal fiscal year must submit an EEO program to FTA. The specific components of this program may be found in FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients." In this program, grantees implement steps to ensure equal opportunity for employees and job applicants, without regard to race, color, creed, national origin, sex, age, or disability. A major focus of this program is the grantee's conducting an analysis of its work force to identify job categories and levels of employment in which minorities and women are underrepresented and, with the identification of those categories and levels, taking corrective action. After an original EEO program has been approved, an update must be submitted every three years. An organization contemplating submitting a grant application should ensure that its latest EEO program update remains current.
- (3) Disadvantaged Business Enterprise. DOT's Disadvantaged Business Enterprises program (DBEs) provides small and disadvantaged businesses the opportunity to compete for FTA-assisted contracts and participate in FTA-assisted projects. Section 1101(b) of TEA-21 requires that not less than 10 percent of the funds authorized by Congress for transit be expended with DBEs. Accordingly, if a grantee receives \$250,000 or more in FTA capital and/or operating assistance in a year (excluding funds for the purchase of transit vehicles), the grantee must submit an annual DBE goal to FTA for approval (49 C.F.R. Part 23, Subpart D, Appendix A, Section 23.64).

The grantee must also submit a DBE program indicating actions that will be taken to achieve this goal. Components that must be included in the DBE program are enumerated in FTA Circular 4716.1A, "FTA Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers." After it receives FTA approval, the DBE program remains in effect until there are major changes.

The grantee must submit its annual DBE goal to FTA 60 days before the beginning of each Federal fiscal year (60 days before October 1).

200 Constitution Avenue, N.W., Room N-5603, Washington, D.C. 20210;
telephone (202) 219-4473, fax (202) 219-5338.

13. TRANSPORTATION OF THE ELDERLY AND PERSONS WITH DISABILITIES. Congress has expressed the national policy that the elderly and persons with disabilities have the same right as others to use transit facilities and services.⁴³ Any project receiving Federal assistance must comply with this policy. Recipients of Capital Program assistance must take measures to ensure that the elderly and persons with disabilities will be able to use the project facilities and equipment. A discussion of how FTA carries out these requirements appears below in paragraph 14f, in which requirements pertaining to nondiscrimination are addressed.

43. 49 U.S.C.
§ 5301(d)

14. NONDISCRIMINATION--CIVIL RIGHTS REQUIREMENTS.

- a. Nondiscrimination Statutes. Discrimination in the use of Federal funds is prohibited by the following four statutes that concern civil rights:
- (1) Title VI of the Civil Rights Act of 1964, as amended (Title VI). Title VI is intended to ensure 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 from the FTA.
 - (2) 49 U.S.C. Section 5332(c) (Federal transit law). Under this statute, the Secretary of Transportation is required to take affirmative action to ensure that no person on the basis of race, color, creed, national origin, sex or age, shall be excluded from participation in, be denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part by FTA. This provision applies to employment and business opportunities and imposes additional requirements to those provisions of Title VI.
 - (3) Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. Sections 12101 *et seq.*). Title II of the ADA prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It applies to all state and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of state and local governments. It extends coverage to all public entities that provide public transportation, whether or not they receive Federal financial assistance. It establishes detailed standards for the operation of public transit systems.
 - (4) Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. Section 794). Section 504 prohibits discrimination on the basis of handicap in employment and services by recipients of Federal financial assistance.
- b. Programs. The applicable civil rights programs are: Title VI of the Civil Rights Act of 1964, as amended (Title VI); Equal Employment Opportunity (EEO); Disadvantaged Business Enterprise (DBE); and The Americans with

subject to the same reporting and disposition requirements required of all project property.

11. PRE-AWARD AND POST-DELIVERY REVIEWS. FTA requires³⁸ that grant recipients purchasing revenue passenger rolling stock undertake reviews of the rolling stock prior to the award of the bid, during manufacture, and following delivery of the vehicles. The reviews, specified by FTA regulations,³⁹ are intended to improve compliance with FTA Buy America requirements, the grantee's bid specifications, and Federal Motor Vehicle Safety Standards.

38. 49 U.S.C. § 5309(m)

39. 49 C.F.R. Part 663. Also, FTA published a "Disposition of Inquiries" related to those regulations on March 31, 1992 (57 Fed. Reg. 10834, 1992).

Reviews may be conducted by the grantee's staff or by a contractor for the grantee. The regulations require a resident inspector who is neither an agent nor an employee of the manufacturer to review specification compliance at the manufacturing site, unless the procurement is for 10 or fewer buses or for unmodified vans. Supporting documentation resulting from these reviews must be retained by the grantee in a manner readily available for FTA inspection. A grant applicant seeking to acquire rolling stock must certify that it will comply with FTA pre-award and post-delivery review requirements. Category V in Appendix C presents a standard certification. A discussion of Buy America requirements appears in this chapter under paragraph 15, "Buy America." Grant applicants requesting Federal funds to purchase buses or vans should review Chapter III, paragraph 8b(3) for a description of the review requirement as it pertains to buses or vans. Grant applicants requesting Federal funds to purchase rail cars should refer to Chapter IV, paragraph 6d(5) for a similar description pertaining to rail cars.

12. LABOR STANDARDS.

- a. Davis-Bacon Wage Rates. Prevailing wage requirements of the Davis-Bacon Act, as amended, apply⁴⁰ to transit construction projects authorized by 49 U.S.C. chapter 53.

40. 49 U.S.C. § 5333(a)

FTA must ensure that laborers and mechanics employed for construction projects covered by the Davis-Bacon Act will be paid at least the prevailing wages for their locality as determined by the Department of Labor (DOL). Thus, FTA may not award any FTA assistance authorized by 49 U.S.C. chapter 53 without obtaining adequate assurance that the prevailing wage requirements and required labor standards imposed by the Davis-Bacon Act will be maintained. This is accomplished when the grantee signs the grant agreement, which incorporates by reference a Master Agreement containing construction labor requirements.

- b. Protection of Transit Employees.⁴¹ 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. Those arrangements must be certified by the Secretary of Labor as meeting the requirements of the statute.

41. 49 U.S.C. § 5333(b)

(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. § 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. § 5307(a)(2), or whether the Applicant has received authority from the Designated Recipient to apply for Urbanized Area Formula Program assistance.

2. That (Title of Designated Official) is authorized to execute and file with its applications the annual certifications and assurances and other documents the Federal Transportation Administration requires before awarding a Federal assistance grant or cooperative agreement.

3. That (Title of Designated Official) is authorized to execute grant and cooperative agreements with the Federal Transit Administration on behalf of (Legal Name of Applicant).

CERTIFICATION

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

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

(Signature of Recording Officer)

(Title of Recording Officer)

(Date)

(Name of Grantee)

CLASSIFICATION OF FLEET

	<u>Before Grant</u> <u>Approval</u>	<u>Amount of</u> <u>Change</u>	<u>After Grant</u> <u>Approval</u>
I. Active Fleet			
A. Peak Requirement	_____	_____	_____
B. Spares	_____	_____	_____
C. Total (A+B)	_____	_____	_____
D. Spare Ratio (B/A)	_____	_____	_____
II. Inactive Fleet			
A. Contingency Reserve	_____	_____	_____
B. Pending Disposal	_____	_____	_____
C. Total (A+B)	_____	_____	_____
III. Total Fleet (I.C. + II.C)	_____	_____	_____

(Name of Grantee)

Listing of Vehicles to be Replaced

<u>Year of</u>	<u>Vehicle I.D.</u>	<u>Mo./Yr.</u>	<u>Estimated</u>	<u>Original</u>
<u>Make/Model</u>	<u>Number (VIN)</u>	<u>Placed in</u>	<u>Mo./Yr. to be taken</u>	<u>Grant</u>
<u>Manufacture</u>	<u>Rev. Miles</u>	<u>Rev. Service</u>	<u>Out of Rev. Service</u>	<u>Purchased Under</u>
				<u>Condition</u>

Example Transaction for Mid-life Sale of Transit Bus
When Federal Interest is Re-invested in Replacement Transit Bus

1. A grantee purchased a new bus in 1988 for \$180,000; 80 percent of the total price, or \$144,000, was Federal funding while 20 percent, or \$36,000, was local. Thus, there was an initial \$144,000 "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 grantee chose to sell the bus after 6 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 \$90,000. The remaining Federal interest was 80 percent of that figure, \$72,000.
4. Assume, for example, the grantee realized \$70,000 from the sale of the 6-year-old bus, or \$20,000 less than the straight-line depreciated value of the original vehicle.
5. The grantee then purchased a new bus in 1994 for \$200,000. The transaction looked like this:

Net project cost calculation:

Gross project cost of new bus	\$200,000
Less straight-line depreciated value of replaced bus.	- 90,000
Net project cost	\$110,000
Federal share 80%	88,000
Local share 20%	22,000

Sources of funds for new bus:

Net sales proceeds from replaced bus	\$ 70,000
New local cash	
Straight-line depreciated value shortfall	20,000
Local share of net project cost	22,000
Federal share	<u>88,000</u>
TOTAL	\$200,000

The Federal interest in the new bus is \$160,000 (\$72,000 transferred from the old vehicle and \$88,000 in the new).

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the Implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (03-48-0046), Washington, D.C. 20503.

(SAMPLE) OPINION OF COUNSEL

Name of Applicant
Address of Applicant

Dear (Responsible Official for Applicant):

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

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

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

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

(GRANTEE)

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. 1993
	Contract	March 1994
	First bus delivery, acceptance	May 1994
	Last bus delivery, acceptance	March 1995
	Contract complete (Final payment made)	May 1995
Purchase/install communications equipment	Bids advertised	April 1995
	Contract awarded	June 1995
	Contract complete	Sept. 1995
Engineering design for new facility	Request for proposals	Jan. 1995
	Contract awarded	March 1995
	Design completed	June 1995
	Contract closed (Final payment made)	July 1995

PROCEEDS FROM THE SALE OF ASSETS

TEA-21 amended Section 5334(g) of Federal transit law to add another option for disposing of capital assets that have been acquired with FTA assistance. The provision is effective after June 9, 1998 (date of enactment of TEA-21). Section 5334(g)(4) permits a grantee to apply the proceeds from the disposition of an asset no longer needed for transit purposes to a subsequent capital project. Following is the language of TEA-21:

""(A). In general.--When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for mass 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 grantee 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 grantee receives proceeds from the disposition of the asset, the grantee is expected to establish in the grantee's accounting system a record of liability (demonstrating that these funds are owed), which will be removed when the grantee uses the proceeds for a subsequent transit project.

When the grantee applies for a grant from FTA and applies the proceeds to the new transit project, the grantee should show the past transaction on the Grant Application screen of the FTA electronic system. The grantee 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 grantee may also describe in the Extended Text Screen the actions the grantee has taken or intends to take.

EXAMPLE. Here is a hypothetical example.

Grantee Disposes of Asset. Twenty years ago FTA provided a grantee 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 grantee sells the parcel and receives net sales proceeds of \$50,000.

Grantee Applies Proceeds to Subsequent FTA-Assisted Transit Project. Assume the grantee applies to FTA for assistance in purchasing a bus. The estimated cost of the bus is \$250,000. On the electronic application screen, the grantee is expected to report the use of the proceeds from the earlier sale of the asset in the following manner.

CHAPTER X

REGIONAL OFFICES

Region 1 - Boston

Transportation Systems Center Kendall Square 55 Broadway, Suite 920 Cambridge, MA. 02142-1093	Tel. No. 617 494-2055 TDD No. 617 494-3154* Fax No. 617- 494-2865
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Areas served: Maine, New
Hampshire, Vermont,
Massachusetts, Rhode Island, and
Connecticut

Region 2 - New York

1 Bowling Green New York, NY 10274 (beginning fall 1998); currently 26 Federal Plaza, Suite 2940 New York, NY 10278-0194	Tel. No. 212-264-8162 TDD No. 212 264-8162* Fax No. 212-264-8973
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Areas served: New York, New
Jersey, and U.S. Virgin Islands

**New York City
Metropolitan Office**

1 Bowling Green New York, NY 10274	212 466-1935
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Region 3 - Philadelphia

1760 Market Street Suite 500 Philadelphia, PA 19103-4124	Tel. No. 215-656-7100 TDD No. 215 656-7269* Fax No. 215-656-7260
---	--

Areas served: Pennsylvania,
Virginia, Delaware, West Virginia,
Maryland, and District of
Columbia

Region 6 - Ft. Worth

819 Taylor Street
Room 8A36
Ft. Worth, TX
76102

Tel. No. 817-978-0550
TDD No. 817-978-0550 and -9552*
Fax: 817-978-0575

Areas served: Texas, Oklahoma,
Arkansas, Louisiana, and New
Mexico

Region 7 - Kansas City

6301 Rockhill Road
Suite 303
Kansas City, MO
64131-1117

Tel. No. 816-523-0204
TDD No. 816-523-2150*
Fax No. 816-523-0927

Areas Served: Iowa, Kansas,
Nebraska, and Missouri

Region 8 - Denver

Columbine Place
216 16th St., Suite 650
Denver, CO
80202-5120

Tel. No. 303-844-3242
TDD No. 303-844-5526*
Fax No. 303-844-4217

Areas served: Colorado,
Montana, North Dakota, South
Dakota, Utah, and Wyoming

APPENDICES

1. APPENDIX A. RELATIONSHIP BETWEEN CAPITAL PROGRAM GRANTS AND THE METROPOLITAN AND STATEWIDE PLANNING PROCESS
2. APPENDIX B. JOINT DEVELOPMENT PROJECTS
3. APPENDIX C. ANNUAL CERTIFICATIONS AND ASSURANCES

APPENDIX A

RELATIONSHIP BETWEEN CAPITAL PROGRAM GRANTS
AND THE METROPOLITAN AND STATEWIDE PLANNING PROCESS

1. BACKGROUND. The codification of the laws authorizing the Federal transit program begins by expressing the congressional finding that "it is in the interest of the United States to encourage and promote the development of transportation systems that embrace various modes of transportation and efficiently maximize mobility of individuals and goods in and through urbanized areas and minimize transportation-related fuel consumption and air pollution."¹ To implement this policy, each metropolitan planning organization (MPO), in cooperation with the state and mass transportation operators, must develop transportation plans and programs for its urbanized area(s) within the state.² Further, the plans and programs must provide for development and integrated management and operation of transportation facilities that will function as an intermodal transportation system for the metropolitan area and as an intermodal transportation system for the state and the United States.³ Both the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) impose transportation planning requirements as a condition of Federal assistance for most mass transportation and highway projects.

1. 49 U.S.C. § 5301(a)

2. 49 U.S.C. § 5303(a)

3. Within 49 U.S.C. chapter 53, transportation planning requirements are set forth at 49 U.S.C. §§ 5303 - 5306

To achieve consistency in their planning requirements, FTA and FHWA have issued various joint regulations. The following text of this circular is a synopsis of part of the following two regulations:

- a. Joint FHWA/FTA regulations, "Planning Assistance and Standards," 23 C.F.R. Part 450 and 49 C.F.R. Part 613 (specifically Subpart B "Statewide Transportation Planning," and Subpart C "Metropolitan Transportation Planning and Programming").
 - b. Joint FHWA/FTA regulations, "Management and Monitoring Systems," 23 C.F.R. Part 500 and 49 C.F.R. Part 614.
2. GRANT APPLICANT'S ROLE. A grant applicant for Capital Program assistance in an urbanized area will need to be an active participant in the metropolitan 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 improvement program (TIP) and the statewide transportation improvement program (STIP). (As used in this appendix and the joint FHWA/FTA regulations, the TIP always refers to a metropolitan transportation improvement program.) A potential grant applicant for Capital Program assistance in a metropolitan area is therefore encouraged to participate in

Planning Program grants to states, which in turn pass through financial assistance to MPOs to support the costs of developing and implementing UPWPs.¹⁰ 10. 49 U.S.C.
§ 5303(g)

FHWA, through FHWA's counterpart planning program (the "PL" Program), also makes grants to states, which in turn transfer financial assistance to MPOs to support the costs of developing and implementing UPWPs.¹¹ Both FTA and FHWA grant assistance may be used for transportation-related planning and is not limited to mode-specific planning activities. A state may also use some of its State Planning and Research Program assistance to provide financial assistance to MPOs to supplement the costs of metropolitan planning.¹² 11. 23 U.S.C. § 134
12. 49 U.S.C.
§ 5313(b)

6. THE TRANSPORTATION IMPROVEMENT PROGRAM. The MPO, in cooperation with the state and affected transit operators, must develop a TIP for the metropolitan planning area and provide interested parties an opportunity to comment on the proposed TIP. The TIP must be updated at least once every two years and must be approved by the MPO and the chief executive officer of the state.

Projects proposed in the TIP for Federal funding must be consistent with the area's metropolitan long-range transportation plan. The TIP may include only projects or identified segments or phases of a project for which the entire amount of Federal and non-Federal funding can reasonably be anticipated to be available within the time period contemplated for completion of the project. Before the MPO and chief executive officer of the state approve the TIP, the MPO also must first provide adequate public notice and an opportunity for interested parties to review and comment on the proposed TIP.

Particularly important to FTA is the TIP's list of projects, including project segments and phases, intended to be carried out within the 3-year period, and the financial plan demonstrating how the TIP can be implemented, indicating resources from public and private sources expected to be made available for the project. Those projects, including segments and phases, must be listed in priority order, at a minimum, by year of funding.

Because each TIP must be financially constrained and a portion of the Capital Program funds are discretionary, Capital Program projects identified in Federal authorizing and annual appropriations legislation (funding committed to the area) may be included in the first year of the TIP, provided all other program requirements are met. The total Federal share of projects included in the second and third year of a TIP may not exceed the levels of funds committed, or reasonably expected to be available, to the metropolitan area.

Project selection for projects involving Federal participation must be made from an approved TIP by transit authorities in cooperation with the MPO in consultation with the state in areas with population of more than 200,000, as well

increase in carrying capacity for single occupant vehicles unless the project is part of an approved congestion management system (see discussion below).

The projects within the planning area boundaries of a TMA for which Federal assistance is sought must be selected by the MPO in consultation with the state and any affected public transit operator and in conformance with the TIP and that TIP's priorities for the applicable funding sources.

To the extent FTA considers appropriate, simplified planning procedures producing metropolitan long-range transportation plans and TIPs may be developed for an urbanized area not designated as a TMA.¹⁷ All projects or project groupings in an approved TIP must be included unmodified in the STIP. FTA and FHWA then approve the STIP before awarding Federal assistance.

*17. 23 C.F.R.
§ 450.316(c)*

9. CONGESTION MANAGEMENT SYSTEM. The transportation planning process for a TMA must include a congestion management system that provides for the use of travel demand reduction and operational management strategies to achieve effective management of new and existing transportation facilities.¹⁸

*18. 49 U.S.C.
§ 5305(c)*

10. PROJECTS NOT IN METROPOLITAN PLANNING AREA BOUNDARIES (RURAL). A state seeking Capital Program assistance for a project in a rural area must have developed that project as a result of its statewide planning process. The state must include the rural transit project in its current STIP before FTA may award Capital Program assistance for that project.

APPENDIX B

JOINT DEVELOPMENT PROJECTS

1. INTRODUCTION. This appendix contains guidelines for undertaking joint development projects. It also contains a set of questions most frequently asked about the concept of joint development and provides responses to those questions, with examples. This appendix implements the joint development policy announced in the Federal Register on March 14, 1997¹, which is available at www.fta.dot.gov on the FTA Home Page.

1. 62 *Fed. Reg.* 12266
(1997)

2. JOINT DEVELOPMENT PROJECTS. "Joint development" is any income-producing activity with a transit nexus related to a real estate asset in which FTA has an interest or obtains one as a result of granting funds (the "Assisted Real Estate Asset"). Joint development projects must meet three tests: statutory definition, financial return, and highest and best transit use. These tests are discussed in the paragraphs below.

Joint development projects are commercial, residential, industrial, or mixed-use developments that are induced by or enhance the effectiveness of transit projects. Joint development projects include private, for-profit, and non-profit development activities usually associated with fixed guideway transit systems that are new or being modernized or extended. Such projects can also be associated with new intermodal transfer facilities, transit malls, and Federal, state, or local investments in existing transit facilities. FTA capital funds may be used to facilitate private development that enhances transit; these funds may not be used for purely private development such as construction and permanent financing costs related to the design or construction of residential, retail, or other commercial, public, and private revenue-producing facilities not associated with transit-related development.²

3. REQUIREMENTS RELATED TO STATUTORY DEFINITION. A joint development transportation project must be compatible with the statutory definition of a capital project:

2. TEA-21 (Public
Law 105-178)
amendment to 49
U.S.C. § 5302

- a. It is a transportation project that enhances economic development or incorporates private investment including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, and the renovation and improvement of historic transportation facilities³, because the project -

3. TEA-21 at §3003
amending 49 U.S.C.
§ 5302(a)(1)(G).

- (1) Enhances the effectiveness of a mass transit project, and is related physically or functionally to that mass transit project; or

development program tests, the transit agency may retain as program income all the revenues that accrue.

- d. For open grants predating October 1, 1996, all the terms of the current Master Agreement apply, so subparagraph c above controls.
- e. Closed grants made in 1983 or thereafter may be reopened to allow for the use of Assisted Real Estate Assets in joint development projects. However, for those closed grants made between 1983 and October 1, 1996, the grant purpose and terms, as necessary, must be amended to allow for joint development. Aside from the requirement that the income be used for transit capital, planning, or operating expenses, FTA generally sets no further conditions on income from a closed grant.
- f. Program income includes current or future returns generated from, but not limited to, transfer or lease of property, mortgage proceeds, or returns stemming from participation in distribution of project revenues.
- g. Agreements which transfer title or rights in land or facilities acquired as part of the FTA project must contain provisions which--
 - (1) Extend the requirements, as appropriate, of the FTA Grant Agreement; (see paragraph 9) and,
 - (2) Ensure that the grantee retains continuing control of the assets as long as they are needed for mass transit. This continuing control may be demonstrated by an easement, by a reversionary interest, by a covenant running with the land, by a contractual clause in the joint development agreement, or more commonly, by some combination of these assuring the transit agency that the joint development project will maintain its physical or functional relationship to transit, will continue to enhance coordination between modes, or will in fact result in increased mass transportation usage.
 - (3) Ensure that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means.⁵

5. TEA-21 at § 3003
amending 49 U.S.C.
§ 5302 at
§ 5302(a)(1)(G)(i)

6. HIGHEST AND BEST TRANSIT USE REQUIREMENT.

- a. The calculation of equitable return required in paragraph 5 must be based on the appraised market value⁶ as represented either by highest and best use of the property or by highest and best transit use of the property, taking into account in either valuation the local transportation, land use, and economic development plans. Highest and best transit use is that combination of residential, commercial, retail, public, and/or parking space and amenities to be included in the joint development, which is calculated to produce the

6. 49 C.F.R. 18.25(g)

development projects which meet this general rule will be considered on a case-by-case basis.

- k. Professional Services Contracting Costs. Grantees may incur reasonable and necessary costs for consultants to prepare or perform items a through j above, or to assist the grantee in reviewing the same.

8. FUNDS THAT MAY BE USED IN JOINT DEVELOPMENT PROJECTS. No dedicated funding has been established for joint development projects. Joint development activities are eligible for funding under all Title 49 capital programs, including the Capital Program (Section 5309), the Urbanized Area Formula Program (Section 5307), the Non-urbanized Area Formula Program (Section 5311), and the Elderly and Persons with Disabilities Program (Section 5310). CMAQ and STP funds transferred from the Federal Highway Administration to be administered by FTA may also be used to support joint development projects. (See Chapter III, paragraph 2a for a discussion of flexible funds.)

9. APPLICATION OF OTHER FEDERAL REQUIREMENTS TO PRIVATE SECTOR PROJECTS. In a joint development project, FTA must determine whether, and to what degree, various Federal rules apply to the privately funded, non-transit portion of the project. The applicability of Federal requirements (such as those of the National Environmental Policy Act (NEPA), the Davis-Bacon Act, third party procurement requirements, and Buy America) will be resolved on a case-by-case basis for joint development projects involving the transfer of real property. FTA will work with the grant applicant to determine whether, and the extent to which, such Federal requirements apply, particularly to any private development, and the most appropriate procedures for satisfying the requirements. Proposals should be submitted as early as possible in the joint development process. This will allow FTA staff to help the grantee structure an approvable proposal in the least time possible and determine which cross-cutting requirements must be applied to the particular project. Nevertheless, the following cross-cutting requirements are expected to apply in the indicated circumstances:

- a. If the joint development involves a ground lease or transfer of federally assisted real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:
 - (1) language found at 49 C.F.R. 23.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
 - (2) language found at 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) binding the lessee or transferee not to discriminate based on disability and binding

plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6321 et seq.

- (6) Lobbying - 49 C.F.R. Part 20.
- (7) Labor Protection--Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon - 49 U.S.C. § 5333(a) and 40 U.S.C. 276a through 276a(7) and 29 C.F.R. Part 5; Copeland "Anti-Kickback " Act as amended, 18 U.S.C. 874 and 40 U.S.C. 276c and 29 C.F.R. Part 3; and Contract Work Hours and Safety Standards Act, 49 U.S.C. 327 through 332 and 29 C.F.R. Part 5 and 40 U.S.C. 333 and 29 C.F.R. Part 1926; as well as 49 U.S.C. 5333 (b) concerning protection of transit employees.
- (8) Civil Rights Requirements - 49 U.S.C. § 5332.
- (9) Program Fraud - Transferee(s) or joint developer agrees to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and 49 C.F.R. Part 31. Penalties may apply for noncompliance.
- (10) Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project.
- (11) Uniform Relocation - If the federally assisted site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 et seq. and the regulations at 49 C.F.R. Part 24.

c. In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA will issue a Categorical Exclusion. Joint development activities that portend significant environmental impacts, however, will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. See generally the FTA Environmental Impact and Related Procedures at 23 C.F.R. Part 771.

10. NOTES TO READER. Before undertaking a new joint development, a grant applicant is encouraged to turn to Chapter X, "Regional Offices," select the FTA Regional Office responsible for the grant applicant's locality, and telephone that office to discuss the kind of project planned. Such a dialogue, early in the project planning process, will ensure that the joint development proposal will be reviewed on a timely basis.

physically possible, appropriately supported, and financially feasible--that results in the highest anticipated selling price. The way highest and best transit use differs from highest and best use is through recognition that value to the transit system is not in the selling price alone.

Highest and best transit use is that combination of financial return and other transit benefits, such as increasing ridership, reducing trip durations or improving connections between trips, that maximizes the value of the asset to transit.

For example, a transit agency identified several properties adjoining existing or planned transit stations that it wished to use for joint development. One particular property was oddly shaped, but with substantial road frontage. A request for development proposals resulted in offers to build 8 or 10 townhouses with garages. This option would produce the highest immediate cash proceeds to the transit system. However, the transit agency sought and was granted revised zoning on the property, allowing up to 160 moderate-income apartments to be offered for rent. The moderate-income rental use will take a long time to produce cash flow and proceeds to the grantee, but in the interim, the moderate-income rental use is projected to increase transit ridership by (conservatively) 32,000 trips per year, which are estimated to be worth between \$18,000 and \$24,000 per year in additional farebox revenues. It is anticipated that these residents will also provide economic support for new retail space in the surrounding community. FTA regards this decision as satisfying the "highest and best transit use" criterion.

- e. How much land may be purchased by a grantee? A town is currently planning improvements to its bus transit system, including a downtown transfer center. The center is being planned as a multi-use facility, which will include a tourist information center, small retail businesses, and possibly a bank. To make this eventual development a reality may require that the transit agency acquire a larger amount of land than is necessary for the transit center alone. FTA will assist the transit operator's land acquisition activities with grant funds, as described in paragraphs 7a through 7e of this appendix. Generally, FTA will not support land purchases more than 1,500 feet from the center of the transit facility.
- f. What is an "envelope" or "building shell" for a joint development? The transit agency may wish to encourage local economic activity at its facilities. Under the Joint Development policy, the transit agency may build an "envelope," or rehabilitate an existing transit-owned facility. "Envelope" or "building shell" means (but is not limited to) load bearing walls, roof, foundation, substructure improvement, site design, and engineering. "Tenant finishes," however, are not eligible for FTA reimbursement. These include

expertise in meeting the applicable Federal requirements. For example, if the proposed land use is known from the outset, a grantee can reduce the risk to the private or nonprofit developer by using transit resources to perform the necessary environmental studies before choosing a partner. Alternatively, a project may be structured so that the grantee selects a development partner, the grantee and the partner jointly determine the highest and best transit use, and the grantee then performs the necessary environmental studies before its private or nonprofit partner becomes responsible for any costs. Such incentives can attract new participants to transit joint development.

- i. Are all incidental uses joint development? No, not all incidental uses are joint development. (FTA permits the incidental use of transit equipment and property for purposes other than provision of transit service, provided the use is compatible with the approved purposes of the project and does not interfere with intended uses of project assets.) Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off hours is an incidental use. So is temporary use of transit property as a staging area for nearby construction. These uses, however, are not joint development. In contrast, the acquisition of land or the redesign of space to allow for additional parking to be used by local theaters and restaurants could be considered as a joint development project - to the extent the acquisition or redesign is justified by a transit use - and should be discussed with the Regional Office.
- j. What is the difference between "joint development" and "transit-oriented development?" The term joint development is a subset of transit-oriented development. While all joint development is transit-oriented development, not all transit-oriented development meets the three tests of statutory definition (transit nexus), financial return, and highest and best transit use. Some transit-oriented development undertaken by private parties benefits from its proximity to transit without the use of an Assisted Real Estate Asset and/or without the use of FTA funds for new improvements. Such totally private projects are simply not governed by this circular.

APPENDIX C

ANNUAL CERTIFICATIONS AND ASSURANCES

1. INTRODUCTION. Before FTA may award a Federal grant, the grant applicant must provide to FTA all certifications and assurances required of the applicant--or in regard to the applicant's project--by Federal laws and regulations. The certifications and assurances are consolidated by FTA each Federal fiscal year into a single document that provides the text of the certifications and assurances to be used in connection with all Federal assistance programs administered by FTA during that fiscal year. The certifications and assurances are normally published on the same date that FTA announces the formula apportionments for the Capital Program formula and Urbanized Area Formula Program¹ apportionments in the Federal Register, an announcement that allocates funds in accordance with the latest U.S. Department of Transportation annual appropriations act. By statute, FTA must announce the formula apportionments on October 1 or within 10 days of enactment of the DOT Appropriations Act, whichever is later.²

FTA plans to continue to publish the certifications and assurances annually with any changes or additions specifically highlighted.

2. SAMPLE CERTIFICATIONS AND ASSURANCES IN APPENDIX C. For convenience of the reader, a fair representation of the text of the FY 1998 certifications and assurances is provided in this appendix as a reference. The specific text of a particular certification may change, and new certifications may be added as a result of TEA-21 or other Federal laws, but many of the FY 1998 certifications and assurances will remain substantially as set forth in Appendix C.
3. ELECTRONIC SUBMITTAL. Beginning with Fiscal Year 1999, FTA expects grant applications and certifications and assurances to be submitted electronically by means of the FTA electronic grant award and management system. If a grant applicant is not able to submit the certifications electronically, the applicant should obtain a copy of the Federal Register Notice containing the current fiscal year's certifications and use the form contained in that Federal Register to submit the actual certifications. The current Signature Page shown in the current Federal fiscal year's compilation in the Federal Register must be used.

The signature page, when properly attested to and submitted to FTA, assures FTA that the applicant intends to comply with the requirements for the specific program involved.

4. TIMING. The certifications and assurances must be attested to annually by a grant applicant or by any current grant recipient with an active project within 90 days from the date of their publication in the Federal Register or with the grant applicant's first grant application in the Federal fiscal year, whichever comes first.

¹ 49 U.S.C. § 5307

² The Fiscal Year 1998 certifications and assurances appeared in the Federal Register on October 14, 1997 (62 Fed.Reg. 53512).

EXAMPLE ONLY

FY 19xx CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE PROGRAMS

Each Applicant is requested to provide as many of the following certifications and assurances as possible to cover the various types of Federal assistance programs for which the Applicant intends to seek Federal assistance from FTA in Federal Fiscal Year 19xx. A state making certifications and assurances on behalf of its prospective subrecipients is expected to obtain sufficient documentation from those subrecipients as necessary for the state to make informed certifications and assurances. The 15 categories of certifications and assurances are listed by Roman numerals I through XV on the other side of the Signature Page document. Categories II through XV will apply to some, but not all applicants. The categories correspond to the following descriptions of circumstances mandating submission of specific certifications, assurances, or agreements:

I. CERTIFICATIONS AND ASSURANCES REQUIRED OF EACH APPLICANT

Each Applicant for Federal assistance awarded by FTA must make all certifications and assurances in this Category I. Accordingly, FTA may not award any Federal assistance until the Applicant provides assurance of compliance by selecting Category I on the Signature Page at the end of this document.

A. Authority of Applicant and Its Representative

The authorized representative of the Applicant and legal counsel who sign these certifications, assurances, and agreements attest that both the Applicant and its authorized representative have adequate authority under state and local law and the by-laws or internal rules of the Applicant organization to:

- (1) Execute and file the application for Federal assistance on behalf of the Applicant,
- (2) Execute and file the required certifications, assurances, and agreements on behalf of the Applicant binding the Applicant, and
- (3) Execute grant and cooperative agreements with FTA on behalf of the Applicant.

B. Standard Assurances

The Applicant assures that it will comply with all applicable Federal statutes, regulations, executive orders, FTA circulars, and other Federal administrative requirements in carrying out any grant or cooperative agreement awarded by FTA. The Applicant acknowledges that it is under a continuing obligation to comply with the terms and conditions of the grant or cooperative agreement issued for its approved project with FTA. The Applicant understands that Federal laws, regulations, policies, and administrative practices might be modified from time to time and affect the implementation of the project. The Applicant agrees that the most recent Federal requirements will apply to the project, unless FTA issues a written determination otherwise.

C. Debarment, Suspension, and Other Responsibility Matters -- Primary Covered Transactions

As required by U.S. DOT regulations on Governmentwide Debarment and Suspension (Nonprocurement) at 49 CFR 29.510:

- (1) The Applicant (Primary Participant) certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) transaction or contract under a public transaction; violation

EXAMPLE ONLY

E. Intergovernmental Review Assurance

The Applicant assures that each application for Federal assistance submitted to FTA has been or will be submitted, as required by each state, for intergovernmental review to the appropriate state and local agencies. Specifically, the Applicant assures that it has fulfilled or will fulfill the obligations imposed on FTA by U.S. DOT regulations, "Intergovernmental Review of Department of Transportation Programs and Activities," 49 CFR part 17.

F. Nondiscrimination Assurance

As required by 49 U.S.C. 5332, Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, and 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 at 21.7, the Applicant assures that it will comply with all requirements of 49 CFR part 21; FTA

Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients";

and other applicable directives, so that no person in the United States, on the basis of race, color, national origin, creed, sex, or age will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity (particularly in the level and quality of transportation services and transportation-related benefits) for which the Applicant receives Federal assistance awarded by the U.S. DOT or FTA as follows:

- (1) The Applicant assures that each project will be conducted, property acquisitions will be undertaken, and project facilities will be operated in accordance with all applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21, and understands that this assurance extends to its entire facility and to facilities operated in connection with the project.
- (2) The Applicant assures that it will take appropriate action to ensure that any transferee receiving property financed with Federal assistance derived from FTA will comply with the applicable requirements of 49 U.S.C. 5332 and 49 CFR part 21.
- (3) The Applicant assures that it will promptly take the necessary actions to effectuate this assurance, including notifying the public that complaints of discrimination in the provision of transportation-related services or benefits may be filed with U.S. DOT or FTA. Upon request by U.S. DOT or FTA, the Applicant assures that it will submit the required information pertaining to its compliance with these requirements.
- (4) The Applicant assures that it will make any changes in its 49 U.S.C. 5332 and Title VI implementing procedures as U.S. DOT or FTA may request.
- (5) As required by 49 CFR 21.7(a)(2), the Applicant will include appropriate clauses in each third party contract or subagreement to impose the requirements of 49 CFR part 21 and 49 U.S.C. 5332, and include appropriate provisions imposing those requirements in deeds and instruments recording the transfer of real property, structures, improvements.

G. Assurance of Nondiscrimination on the Basis of Disability

As required by U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," at 49 CFR part 27, implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities

Act of 1990, as amended, the Applicant assures that, as a condition to the approval or extension of any Federal assistance awarded by FTA to construct any facility, obtain any rolling stock or other equipment, undertake studies, conduct research, or to participate in or obtain any benefit from any program administered by FTA, no otherwise qualified person with a disability shall be, solely by reason of that disability, excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in any program or activity receiving or benefiting from Federal assistance administered by the FTA or any entity within U.S. DOT. The Applicant assures that project implementation and operations so assisted will comply with all applicable requirements of U.S. DOT regulations

EXAMPLE ONLY

facility in competition with or in addition to transportation service provided by an existing mass transportation company it has or will have:

- A. Provided for the participation of private mass transportation companies to the maximum extent feasible; and
- B. Paid or will pay just compensation under state or local law to a private mass transportation company for its franchises or property acquired.

**IV. PUBLIC HEARING CERTIFICATION FOR A CAPITAL PROJECT
(EXCEPT URBANIZED AREA FORMULA PROJECTS) THAT WILL
SUBSTANTIALLY AFFECT A COMMUNITY OR ITS TRANSIT SERVICE**

An Applicant seeking Federal assistance for a capital project authorized by 49 U.S.C. chapter 53 (except Urbanized Area Formula Program assistance), that will substantially affect a community or its transit service must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category IV on the Signature Page.

As required by 49 U.S.C. 5323(b), the Applicant certifies that it has, or before submitting its application, will have:

- A. Provided an adequate opportunity for a public hearing with adequate prior notice of the proposed project published in a newspaper of general circulation in the geographic area to be served;
- B. Held that hearing and provided FTA a transcript or detailed report summarizing the issues and responses, unless no one with a significant economic, social, or environmental interest requests a hearing;
- C. Considered the economic, social, and environmental effects of the project; and
- D. Determined the project to be consistent with official plans for developing the urban area.

**V. CERTIFICATION OF PRE-AWARD AND POST-DELIVERY ROLLING STOCK REVIEWS
REQUIRED FOR EACH APPLICANT SEEKING TO PURCHASE
ROLLING STOCK FINANCED WITH FEDERAL ASSISTANCE AWARDED BY FTA**

An Applicant seeking FTA assistance to purchase rolling stock must make the following certification. FTA may not provide assistance for any rolling stock acquisition until the Applicant provides this certification by selecting Category V on the Signature Page.

As required by 49 U.S.C. 5323(l), and implementing FTA regulations at 49 CFR 663.7, the Applicant certifies that it will comply with the requirements of 49 CFR part 663, in the course of purchasing revenue service rolling stock. Among other things, the Applicant will conduct or cause to be conducted the prescribed pre-award and post-delivery reviews, and will maintain on file the certifications required by 49 CFR part 663, subparts B, C, and D.

VI. BUS TESTING CERTIFICATION REQUIRED FOR NEW BUSES

An Applicant seeking FTA assistance to acquire new buses must make the following certification. FTA may not provide assistance for the acquisition of new buses until the Applicant provides this certification by selecting Category VI on the Signature Page.

As required by FTA regulations, "Bus Testing," at 49 CFR 665.7, the Applicant certifies that before expending any Federal assistance to acquire the first bus of any new bus model or any bus model with a new major change in configuration or components or authorizing final acceptance of that bus (as described in 49 CFR part 665):

EXAMPLE ONLY

As required by U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," at 49 CFR 37.77, the Applicant certifies that its demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service offered to persons without disabilities. When viewed in its entirety, its service for persons with disabilities is provided in the most integrated setting feasible and is equivalent with respect to: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

X. SUBSTANCE ABUSE CERTIFICATIONS

If the Applicant is required by Federal regulations to provide the following substance abuse certifications, FTA may not provide Federal assistance until the Applicant has selected Category X on the Signature Page.

A. Alcohol Testing Certification

As required by FTA regulations, "Prevention of Alcohol Misuse in Transit Operations," at 49 CFR 654.83, the Applicant certifies that it has established and implemented an alcohol misuse prevention program complying with the requirements of 49 CFR part 654; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an alcohol misuse prevention program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

B. Anti-Drug Program Certification

As required by FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," at 49 CFR 653.83, the Applicant certifies that it has established and implemented an anti-drug program and has conducted employee training complying with the requirements of 49 CFR part 653; and if the Applicant has employees regulated by the Federal Railroad Administration (FRA), the Applicant also certifies that it has for those employees an anti-drug program complying with the requirements of FRA's regulations, "Control of Alcohol and Drug Use," 49 CFR part 219.

XI. ASSURANCES REQUIRED FOR PROJECTS INVOLVING REAL PROPERTY

The Applicant must provide the following assurances in connection with each application for Federal assistance to acquire (purchase or lease) real property. FTA may not award Federal assistance for a project involving real property until the Applicant provides these assurances shown by selecting Category XI on the Signature Page.

A. Relocation and Real Property Acquisition Assurance

As required by U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," at 49 CFR 24.4, and sections 210 and 305 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Relocation Act), 42 U.S.C. 4630 and 4655, the Applicant assures that it has the requisite authority under applicable state and local law and will comply with the requirements of the Uniform Relocation Act, 42 U.S.C.

XII. CERTIFICATIONS FOR THE URBANIZED AREA FORMULA PROGRAM

Each Applicant to FTA for Urbanized Area Formula Program assistance authorized for 49 U.S.C. 5307 must provide the following certifications in connection with its application. FTA may not award Urbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XII on the Signature Page.

A. Certifications Required by Statute

As required by 49 U.S.C. 5307(d)(1)(A) through (J), the Applicant certifies that:

- (1) It has or will have the legal, financial, and technical capacity to carry out the proposed program of projects;
- (2) It has or will have satisfactory continuing control over the use of the equipment and facilities;
- (3) It will adequately maintain the equipment and facilities;
- (4) It will ensure that the elderly and handicapped persons, or any person presenting a Medicare card issued to himself or herself under title II or title XVIII of the Social Security Act (42 U.S.C. 401 *et seq.* or 42 U.S.C. 1395 *et seq.*), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed with Federal assistance authorized for 49 U.S.C. 5307 not more than 50 percent of the peak hour fare;
- (5) In carrying out a procurement financed with Federal assistance authorized for the Urbanized Area Formula Program at 49 U.S.C. 5307, it will use competitive procurement (as defined or approved by the Secretary), it will not use a procurement using exclusionary or discriminatory specifications, and it will comply with applicable Buy America laws in carrying out a procurement;
- (6) It has complied or will comply with the requirements of 49 U.S.C. 5307(c); specifically, it has or before submitting its application it will: (a) make available to the public information on amounts available for the Urbanized Area Formula Program at 49 U.S.C. 5307 and the program of projects it proposes to undertake with those funds; (b) develop, in consultation with interested parties, including private transportation providers, a proposed program of projects for activities to be financed; (c) publish a proposed program of projects in a way that affected citizens, private transportation providers, and local elected officials have the opportunity to examine the proposed program and submit comments on the proposed program and the performance of the Applicant; (d) provide an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects; and (e) ensure that the proposed program of projects provides for the coordination of transportation services assisted under 49 U.S.C. 5336 with transportation services assisted by another Federal Government source; (f) consider comments and views received, especially those of private transportation providers, in preparing the final program of projects; and (g) make the final program of projects available to the public;
- (7) It has or will have available and will provide the amount of funds required by 49 U.S.C. 5307(e) and applicable FTA policy (specifying Federal and local shares of project costs);
- (8) It will comply with: (a) 49 U.S.C. 5301(a) (requirements to develop transportation systems that maximize mobility and minimize fuel consumption and air pollution); (b) 49 U.S.C. 5301(d) (requirements for transportation of the elderly and persons with disabilities); (c) 49 U.S.C. 5303 through 5306 (planning requirements); and (d) 49 U.S.C. 5310(a) through (d) (programs for the elderly and persons with disabilities);
- (9) It has a locally developed process to solicit and consider public comment before raising fares or implementing a major reduction of transportation; and
- (10) As required by 49 U.S.C. 5307(d)(1)(J), it will expend at least one percent of the amount of Federal assistance it receives for this fiscal year apportioned by 49 U.S.C. 5336 for transit security projects, including increased lighting in or adjacent to a transit system (including bus stops, subway stations, parking lots, and garages), increased camera surveillance of an area in or adjacent to that system, emergency telephone line or lines to contact law enforcement or security personnel in an area in or adjacent to that system, and any other project intended to increase the security and safety of an existing or planned transit system; unless it has decided that it is not necessary to expend one percent of that Federal assistance this fiscal year for transit security projects.

EXAMPLE ONLY

F. The state assures that before issuing the state's formal approval of a project, its Elderly and Persons with Disabilities Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; all projects in urbanized areas recommended for approval are included in the annual element of the metropolitan Transportation Improvement Program in which the subrecipient is located; and it has obtained from any public body that is a prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.

G. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.

H. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (Category I.F., "Certifications and Assurances Required of Each Applicant.")

I. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

J. The state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. Each subrecipient has provided to the state an Assurance of Nondiscrimination on the Basis of Disability, as set forth in the Certifications and Assurances required of each applicant for FTA assistance at Category I.G of this document. If non-accessible vehicles are being purchased for use by a public entity in demand responsive service for the general public, the state will obtain from the subrecipient a "Certification of Equivalent Service," which states that when viewed in its entirety the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, meets the standard of equivalent service set forth in 40 C.F.R. section 37.77(c).

K. The subrecipient has certified to the state that it will comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VIII, "School Transportation Agreement.")

L. Unless otherwise noted, each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that financial assistance will not be provided for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that no financial assistance will be provided for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding \$100,000. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I-XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

**XIV. CERTIFICATIONS AND ASSURANCES FOR THE
NONURBANIZED AREA FORMULA PROGRAM**

10/01/98

Page 15 of 20

EXAMPLE ONLY

M. The subrecipient has submitted (or will submit) all applicable certifications and assurances currently required, including but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue, a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new bus models; a pre-award and post-delivery review certification; a lobbying certification for each application exceeding \$100,000; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances text of Categories I-XI of this document, but modified as necessary to accommodate the subrecipient's circumstances.

N. The state will enter into a written agreement with each subrecipient stating the terms and conditions of assistance by which the project will be undertaken and completed.

O. The state recognizes FTA's authority to conduct audits and reviews to verify compliance with the foregoing requirements and stipulations.

P. As required by 49 U.S.C. 5311(f), it will expend not less than fifteen percent of the Federal assistance authorized for 49 U.S.C. 5311(f) it receives during this fiscal year to carry out a program to develop and support intercity bus transportation, unless the chief executive officer of the state or his or her duly authorized designee certifies that the intercity bus service needs of the state are being adequately met.

**XV. CERTIFICATIONS AND ASSURANCES FOR
THE STATE INFRASTRUCTURE BANK PROGRAM**

A state Applicant for a grant of Federal assistance for deposit in the Transit Account of the State Infrastructure Bank (SIB) within that state must provide the following certifications and assurances. The Federal Transit Administration (FTA) may not award Federal assistance to capitalize a SIB until the state Applicant provides these certifications and assurances.

Based on its own knowledge and, as necessary, on requisite information submitted by the participating parties, the state Applicant for Federal assistance for the Transit Account of its state SIB program, authorized by section 350 of the National Highway System Designation Act of 1995 (NHS Act), as amended, 23 U.S.C. 101 note, certifies and assures that the following requirements and conditions will be fulfilled pertaining to any project financed with Federal assistance derived from the Transit Account of the SIB:

A. The state organization serving as the Applicant (state) agrees and assures the agreement of the SIB and each recipient of Federal assistance derived from the Transit Account of the SIB within the state (subrecipient) that each Project financed with Federal assistance derived from the Transit Account will be administered in accordance with: (1) the requirements of section 350 of the National Highway System Designation Act of 1995 (NHS Act), Pub. L. 104-59, Nov. 28, 1995, 23 U.S.C. 101 note, (2) the provisions of FTA's NHS Guidelines, and any amendments thereto, (3) the provisions of FHWA and FTA Cooperative Agreement with the state to establish the state's SIB program, and (4) the provisions of the FTA Grant Agreement with the state obligating Federal assistance for the Transit Account of the SIB, except that any provision of the Federal Transit Administration Master Agreement incorporated by reference into that Grant Agreement that conflicts with any provision of FTA's NHS Guidelines, the provisions of the Cooperative Agreement establishing the SIB program within the state, or the text within the Grant Agreement will not apply.

B. The state agrees to comply with and assures the compliance of the SIB and each subrecipient of all applicable requirements for the SIB program, as those requirements may be amended from time to time.

C. The state assures that the SIB will provide Federal assistance from its Transit Account only for transit capital projects eligible under section 350 of the NHS Act, and that those projects will fulfill all requirements imposed on comparable capital transit projects financed by FTA.

D. The state understands that the total amount of funds to be awarded for a Grant Agreement will not be immediately available for draw down. Consequently, the state assures that it will limit the amount of Federal

10/01/98

EXAMPLE ONLY

environmental approvals, as described in the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures," at 23 CFR 771.117(c). The state certifies that the SIB will not provide financial assistance from the Transit Account for any project that does not qualify for a categorical exclusion described in 23 CFR 771.117(c) until FTA has made the required environmental finding. The state further certifies that the SIB will provide no financial assistance from its Transit Account for a project requiring a conformity finding in accordance with the Environmental Protection Agency's Clean Air Conformity regulations at 40 CFR parts 51 and 93, until FTA makes the required conformity finding.

Q. The state assures that the subrecipient has submitted (or will submit), when applicable, all certifications and assurances currently required, including, but not limited to: a certification that its procurements and procurement system will comply with all applicable requirements imposed by Federal laws, executive orders, or regulations and the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements," and other implementing requirements FTA may issue; a certification that its project provides for the participation of private mass transportation companies to the maximum extent feasible; a certification it has paid or will pay just compensation under state or local law to each private mass transportation company for its franchise or property acquired under the project; a nonprocurement suspension and debarment certification; a bus testing certification for new models; a pre-award and post-delivery review certification; and a lobbying certification for each application exceeding \$100,000; assurances FTA requires for projects involving real property; and if required by FTA, an anti-drug program certification and an alcohol testing certification. Certifications and assurances applicable to and submitted by the subrecipient should be substantially similar to the text of parallel certifications and assurances of Categories I-XI of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs, but modified as necessary to accommodate the SIB and the subrecipient's circumstances.

R. The state agrees and assures that the SIB and each subrecipient will agree to permit FTA, U.S. DOT, and the Comptroller General to conduct audits to verify compliance with the foregoing requirements and stipulations.

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Selection and Signature Pages follow.

EXAMPLE ONLY

FEDERAL FISCAL YEAR 19xx FTA CERTIFICATIONS AND ASSURANCES

Required of all Applicants for FTA financial assistance, and
all FTA Grantees with an active project receiving capital program or formula program assistance.

Name of Applicant: _____

Name and Relationship of Authorized Representative: _____

BY SIGNING BELOW I, _____ (name), on behalf of the Applicant, declare that the Applicant has duly authorized me to make these certifications and assurances and bind the Applicant's compliance. Thus, the Applicant agrees to comply with all Federal statutes, regulations, executive orders, and administrative guidance required for each application it makes to the Federal Transit Administration (FTA) in Federal Fiscal Year 19xx.

FTA intends that the certifications and assurances the Applicant selects on the other side of this document, as representative of the certifications and assurances in Appendix A, should apply, as required, to each project for which the Applicant seeks now, or may later, seek FTA assistance during Federal Fiscal Year 1998.

The Applicant affirms the truthfulness and accuracy of the certifications and assurances it has made in the statements submitted herein with this document and any other submission made to FTA, and acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. 3801 *et seq.*, as implemented by U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31 apply to any certification, assurance or submission made to FTA. The criminal fraud provisions of 18 U.S.C. 1001 apply to any certification, assurance, or submission made in connection with the Urbanized Area Formula Program, 49 U.S.C. 5307, and may apply to any other certification, assurance, or submission made in connection with any other program administered by FTA.

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Date: _____

a. _____

Authorized Representative of Applicant

AFFIRMATION OF APPLICANT'S ATTORNEY

for _____ (Name of Applicant)

As the undersigned legal counsel for the above named Applicant, I hereby affirm that the Applicant has authority under state and local law to make and comply with the certifications and assurances as indicated on the foregoing pages. I further affirm that, in my opinion, the certifications and assurances have been legally made and constitute legal and binding obligations on the Applicant.

I further affirm that, to the best of my knowledge, there is no legislation or litigation pending or imminent that might adversely affect the validity of these certifications and assurances, or of the performance of the project. Furthermore, if I become aware of circumstances that change the accuracy of the foregoing statements, I will notify the Applicant and FTA promptly.

INDEX

<u>SUBJECT AND LOCATION IN CIRCULAR</u>	<u>PAGE</u>
Advanced Construction Authority (ACA)	VI-29
Alternatives Analysis	V-3
Alternative Financing	V-4
Americans with Disabilities Act	I-10
Application Checklist	VI-19
Application Contents	VII-1
Application Requirements Common to All Capital Program Grants	VI-1
Apportionments	IV-8; IV-1
Approved Project Budget	VIII-8
Art and Design	I-3
Authorizing Legislation	I-1
Authorizing Resolution	IX-3
Bicycle Facilities	I-8
Budget Codes	VII-10; VII-12
Budget Preparation	VII-1ff
Bus Facilities	III-15ff
Bus Program	III-1ff
Bus Testing	III-12
Bus Purchases	III-7; III-10
Buy America	III-13; IV-9; V-11; VI-22
Capital Cost of Contracting	I-3
Capital Program	I-1ff
Categorical Exclusions	III-5; IV-3
Certifications and Assurances	App. C
Certification Process	I-10
Charter Bus Operations	III-14
Checklist for Capital Program Grant Applications	VII-3; Exhibit VII-1
Civil Rights Submissions	VI-19; VII, Exhibit VII-1
Clean Air Act	III-6; IV-6; V-6; VI-13
Clean Fuels Program	III-1
Codification of Federal Transit Laws	I-1
Combining Applications	III-4; IV-3
Commercial Drivers License	III-13
Components, Eligibility	III-1
Congestion Management System	App. A-5
Contingency Fleet	III-10
Contingency Planning	III-10; VI-7

<u>SUBJECT AND LOCATION IN CIRCULAR</u>	<u>PAGE</u>
Introduction of New Technology	I-6
Job Access and Reverse Commute Program	III-2
Joint Development	I-6; App. B
Labor Unions	VI-17; VII-3
Labor Standards	VI-17
Lead-time - Bus Facilities	III-18
Lead-time - Purchasing Buses	III-7
Leasing	I-5; VI-30
Legal Capacity	VI-4
Length of Time Funds are Available	III-4; IV-1; V-11
Letter of Intent	V-8
Letter of No Prejudice (LONP)	VI-29
Like-kind Exchange	III-9; IV-7; IX-9
Livable Communities	I-7
Lobbying	VI-25; IX-11
Local Share	I-9
Maintenance of Equipment and Facilities	VI-9
Maintenance Facilities	III-18
Major Capital Investment Projects	IV-9; V-9
Master Agreement	VI-17; VII-2; App. B-2; App. B-3
Metropolitan Planning Organization (MPO)	App. A
New Starts	V
New Start - timing of development	V-8
Nondiscrimination	VI-19
Notes to Reader	II-2
Opinion of Counsel	VI-4; IX-15
Over-the-Road Accessibility Program	III-3
Park-and-ride Facilities	III-18
Passenger shelters	III-17
Planning, in nonattainment area	App. A-2
Planning Justification	III-17
Planning, New Starts	V-3
Planning, Relationship to Capital Program	V-2; App. A
Pre-award, Post-delivery Reviews	III-11; IV-8; VI-17
Pre-award Authority for Formula Grants	VI-27
Preliminary Engineering	V-4
Private Enterprise	VI-14
Proceeds from Sale of Assets	IX-19
Procurement Activities before Grant Award	IV-8
Procurement Self-Certification	VI-6
Project Description/Justification	VII-2

SUBJECT AND LOCATION IN CIRCULAR

PAGE

Transportation Management Areas	App. A, A-4
Transportation Improvement Program (see TIP);	
Triennial Reviews	VI-3
Unified Planning Work Program	App. A, A-2
Value Engineering	V-10

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