



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:

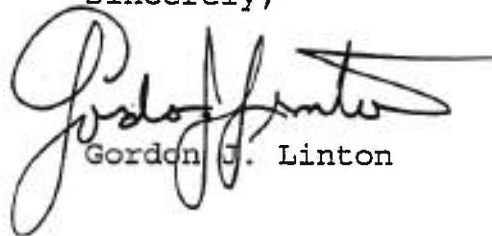
It is a pleasure to issue the revised circular for the Federal Transit Administration's Capital Program. FTA Circular 9300.1A provides program guidance and application procedures for transit capital assistance for:

- 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

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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**

MTA LIBRARY

- g. Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. and scattered sections of 29 United States Code.
- h. Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et seq.
- i. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794.
- j. National Environmental Policy Act of 1969, as amended, 42 U.S.C. §§ 4321 et seq.
- k. Section 106 of the National Historic Preservation Act, 16 U.S.C. § 470f.
- l. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 et seq.
- m. Drug-Free Workplace Act of 1988, 49 U.S.C. § 702
- n. U.S. Department of Housing and Urban Development regulations, "Community Development Block Grants," 24 C.F.R. Part 570.
- o. U.S. Department of Transportation (DOT) regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18.
- p. U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20.
- q. U.S. DOT regulations, "Participation by Minority Business Enterprise in Department of Transportation Programs," 49 C.F.R. Part 23.
- r. U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24.
- s. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27.
- t. U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-free Workplace (Grants)," 49 C.F.R. Part 29.
- u. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37.
- v. U.S. DOT regulations, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38.
- w. U.S. DOT regulations, "Procedures for Transportation Workplace Drug Testing Programs," 49 C.F.R. Part 40.
- x. U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41.
- y. FTA regulations, "Charter Service," 49 C.F.R. Part 604.
- z. FTA regulations, "School Bus Operations," 49 C.F.R. Part 605.

- 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.

- as. FTA Circular 4716.1A, "Disadvantaged Business Enterprise Requirements for Recipients and Transit Vehicle Manufacturers," dated 7-26-88.
- at. FTA Circular 5010.1C, "Grant Management Guidelines," dated 10-1-98.
- au. FTA Circular 5200.1, "Full Funding Grant Agreements Guidance," dated 7-2-93.
- av. FTA Circular 7008.1 "Urban Mass Transportation Financial Capacity Policy," dated 3-30-87.
- aw. FTA Circular 9030.1C, "Urbanized Area Formula Program: Grant Application Instructions," dated 10-1-98.
- ax. FTA Circular 9040.1E, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," dated 10-1-98.
- ay. FTA Circular 9400.1A, "Design and Art in Transit Projects," dated 6-9-95.
- az. FTA Circular 9500.1, "Intergovernmental Review of FTA Planning, Capital and Operating Programs and Activities," dated 3-30-84.
- ba. FTA Notice "Policy Statements on Local Share Issues," 57 Fed. Reg., 30880 (1992).
- bb. FTA Notice, "Change in Policy on Sale and Replacement of Transit Vehicles," 57 Fed. Reg., 39328 (1992).



Gordon L. Linton
Administrator

CAPITAL PROGRAM: GRANT APPLICATION INSTRUCTIONS

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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

1. *Public Law*
105-178. June 9, 1998

2. *Public Law*
105-206,
July 22, 1998

3. *49 U.S.C.*
§ 5309(m)(1)

Equity Act for the 21st Century (TEA-21)¹. TEA-21 was subsequently amended by the TEA-21 Restoration Act². TEA-21 authorizes FTA programs from Federal Fiscal Year 1998 through Fiscal Year 2003.

4. THE CAPITAL PROGRAM.

a. Categories of Funding. Under Section 5309 of title 49, United States Code, the Secretary of Transportation is authorized to make grants to assist in financing capital projects that will benefit the country's transit systems. The Secretary has delegated that authority to the FTA Administrator. Funding from Congress is addressed to the following three categories of projects:³

- (1) Bus and bus-related facilities;
- (2) Modernization of fixed guideway systems; and
- (3) Construction of new fixed guideway systems and extensions ("new starts")

These three funding categories together form the FTA Capital Program.

b. Eligible Applicants. Public bodies and agencies (transit authorities and other state and local public bodies and agencies thereof) may apply for Capital Program assistance authorized by 49 U.S.C. § 5309. Eligible public bodies include: states; municipalities, and other political subdivisions of states; public agencies and instrumentalities of one or more states; and certain public corporations, boards, and commissions established under state law.

States are encouraged to combine the transit capital needs of non-urbanized areas into one Capital Program grant application.

c. Eligible Projects. Federal transit law at 49 U.S.C § 5302(a)(1) provides a list of projects and activities eligible for FTA capital assistance. This section of the circular will group eligible projects and activities into three areas: Assets for which FTA Provides Assistance, Additional Eligible Project Activities, and Purposes for which FTA Provides Assistance.

(1) Assets for Which FTA Provides Assistance. Although not an exhaustive list, the following are typical eligible projects under the bus, fixed guideway modernization, and new starts categories of the Capital Program.

(a) Bus and Bus-related Facilities. The major purchases under this category are buses and other rolling stock, ancillary equipment, and the construction of bus facilities (i.e., maintenance facilities, garages, storage areas, waiting facilities and terminals, transit malls and centers, transfer facilities, and intermodal facilities). This category also includes bus rehabilitation and leasing, park-and-ride facilities, parking lots associated with transit facilities, and bus passenger shelters.

- (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.

depreciation of the vehicles in use in the transit service during the period of the contract. In the case of a maintenance contract, the capital consumed may be, for example, depreciation of the maintenance garage, or depreciation of the machine that lifts the vehicle. Capital consumed may also include a proportionate share of the interest the contractor might pay out as the contractor purchases and makes available to the grantee these capital assets. The concept of assisting with capital consumed is referred to as the "capital cost of contracting." FTA will provide assistance at the 80/20 FTA/local share ratio for the capital cost of contracting.

Only the costs attributable to privately owned assets are eligible under this policy. Items purchased with Federal, state, or local government assistance are not eligible. Capital consumed for service or maintenance in the provision of service outside the transit portion of the contract, such as for charter or school bus service, is not an eligible cost.

In addition, FTA provides assistance for preventive maintenance, which has been defined as all maintenance and which is discussed in paragraph a above. In some instances, grantees contract with outside sources both for maintenance and for transit service, with the contractor providing both maintenance and vehicles. In such cases, both preventive maintenance and the capital cost of contracting concept will apply.

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

The table of EXHIBIT I-1 is based on the assumption that the contractor provides the assets. Thus, for example, if a contractor provides maintenance, it is assumed in the calculations that the contractor does so in a facility provided by the contractor.

A grant applicant may request FTA participation in a higher percentage of the contract than is shown in the table, but must provide actual costs. Rail-related contracts will be evaluated on a case-by-case basis.

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.

6. 49 CFR Part 639, "Capital Leases"

(g) Rail Trackage Agreements. Capital portions of rail trackage rights agreements are also eligible for Capital Program assistance.⁷

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

- (h) Intelligent Transportation Systems. TEA-21 expanded the definition of a capital project to include transit-related intelligent transportation systems (ITS). ITS refers to the use of electronics, communications, or information processing used singly or in combination to improve efficiency or safety of a transit or highway system. Examples of transit-related ITS projects include automatic vehicle location, automated passenger counters, vehicle component monitoring (diagnostics), advanced fare payment methods, computer-aided dispatching and real-time ridesharing, and automated information for travelers using more than one mode of transportation.
- (3) Purposes for Which FTA Provides Assistance. Federal transit law at 49 U.S.C. § 5302(a)(1) provides a list of activities eligible for FTA capital assistance for the following purposes:
- (a) Capital projects needed for efficient and coordinated transportation systems. Examples include replacement of transit buses or facilities, or construction of a bus transfer facility that links to a subway system.
 - (b) Capital costs of coordinating transit with other transportation. An example might be transit linkages to an airport or to intercity bus or passenger rail services.
 - (c) Introduction of new technology. An example may be a project to install real-time bus arrival information available through electronic displays at bus stops.
 - (d) Transportation projects that enhance urban economic development or incorporate private investment.⁸ This category can include "joint development projects," i.e., projects that involve a public/private partnership and result in a higher return on investment for both the public and private sector dollar. These types of projects must enhance the effectiveness of a transit project and must be related "physically or functionally" to the transit project, or they must establish new or enhanced coordination between transit and other forms of transportation.⁹ Such projects must provide a fair share of revenue that will be used for transit. (See Appendix B for discussion of joint development projects and explanation of "physically" or "functionally" related.)

8. 49 U.S.C.
§5302(a)(1)(A), as
amended by TEA-21

9. 49 U.S.C.
§5302(a)(1)(G)

10. 49 U.S.C.
§5302(a)(1)(G)

Grants awarded for the purpose of enhancing economic development and incorporating the private sector must require that the "person" (entity, organization) occupying space in the resulting facility pay a reasonable share of costs of the facility.¹⁰ Eligible costs for projects with this purpose include property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as

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.

f. Division of Capital Program Funds. TEA-21 requires Capital Program funds to be made available in the proportions shown below. Annual appropriations acts may alter slightly these percentages.

- (1) Bus and bus-related facilities - 20 percent
- (2) Modernization of fixed guideway systems - 40 percent
- (3) Construction of new fixed guideway systems and extensions - 40 percent

Of the amount available for the bus category, at least 5.5 percent must be made available for areas other than urbanized areas.

14. 49 U.S.C.
§5327(c)(1)

Up to 3/4 of 1 percent of the funds appropriated under these categories is set aside for FTA project oversight activities.¹⁴

15. 49 U.S.C. § 5336(e)

g. Announcement of Apportionments. By statute,¹⁵ FTA must apportion funds appropriated for the Urbanized Area Formula Program for any fiscal year no later than the 10th day following the date on which the funds are appropriated or on October 1 of the fiscal year, whichever is later. Apportionments for fixed guideway modernization projects are included by the FTA in the Federal Register notice announcing the urbanized area formula apportionments.

h. Federal Share for a Project. The Federal share for any project to be assisted under the Capital Program is an amount equal to 80 percent of the net project cost, unless the grant applicant requests a lower Federal grant percentage. The net project cost is that portion of the cost of a project that FTA estimates cannot be reasonably financed from revenues. Local share is discussed in paragraph j below.

There are four types of exceptions to the 80 percent Federal share for Capital Program projects. These exceptions are as follows:

- (1) As noted in the paragraph above, for reasons particular to the needs of a local area or to a state, a grant applicant may request a Federal share below 80 percent of the net project cost.
- (2) The Federal share is 90 percent¹⁶ of the net project cost of vehicle-related equipment acquired in order to be in compliance with the Americans with Disabilities Act of 1990 (ADA). (See paragraph j below.)
- (3) The Federal share is 90 percent¹⁷ for vehicle-related equipment acquired to be in compliance with the Clean Air Act Amendments of 1990 (CAA Amendments). (See paragraph i below.)
- (4) The Federal share is 90 percent for capital projects used to provide access for bicycles to transit facilities, or to install racks or other equipment for transporting bicycles on transit vehicles.¹⁸

16. 49 U.S.C. § 5323(i)

17. 49 U.S.C. § 5323(i)

18. 49 U.S.C. § 5319

i. Federal Share for Vehicle-related Equipment. Grant applicants proposing to purchase rolling stock may itemize discrete, vehicle-related equipment (such as

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.*

Department of Transportation the availability of toll credits for use as local share in matching FTA grants. The Federal Highway Administration (FHWA) oversees the determination of toll revenue credit within each state.

- (3) Deferral of Payment of Local Share. A grant applicant may request that the local share for a project be deferred until 100 percent of the Federal funds have been drawn down. A request for the deferral should accompany the grant application. Approval is contingent upon the deferral's resulting in benefits to transit and upon the grant applicant's demonstrating that the applicant has the financial capacity to complete the project. The deferred local share policy is not applicable to projects with Full Funding Grant Agreements. A grant applicant wishing to apply the Deferred Local Share initiative to a project should refer to 57 Fed. Reg., 30880, "Policy Statements on Local Share Issues," July 10, 1992.

- k. Alternative Financing. Grant applicants--especially applicants wishing to undertake major projects--are encouraged to explore alternative and innovative methods of financing transit projects. Alternative financing can involve combining multiple, nontraditional sources of funding--Federal, state, local, and private--in support of transit capital and operating needs. Some approaches grant applicants might investigate include leasing arrangements, joint development, state economic development or revolving loan funds, exchanges of real property, and in-kind contributions.²¹ For projects exceeding \$100 million in cost, grantees may wish to consider a loan or loan guarantee, as provided under the Transportation Infrastructure Financing and Innovation Act (TIFIA), Section 1501 of TEA-21.²² Such loans or loan guarantees would be repaid with local dedicated funds or user fees.

21. See FTA Notice, "Innovative Financing Initiative," 60 Fed. Reg. 24682 *et seq.*, of May 9, 1995.

22. 23 U.S.C. § 181 *et seq.*

23. 49 U.S.C. § 5307

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

- l. Annual Certification Process. 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 Urbanized Area Formula Program²³ and Capital Program formula apportionments in the Federal Register. 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.²⁴

- (1) 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.

- (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

progress reports, and, as noted in the paragraphs above, make annual certifications and assurances through the system. The Department of Labor (DOL), also participating in the program, receives requests electronically for Transit Employee Protective Certification of projects.

CHAPTER II - HOW TO USE THIS CIRCULAR

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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*

award of Capital Program grants. Appendix B describes the characteristics and requirements of joint development projects, projects that are physically or functionally related to the transit project and that enhance the effectiveness of the transit project. Appendix C describes the annual certification and assurance process introduced by FTA in Fiscal Year 1995 and contains a fair representation of the text of certifications and assurances for all FTA grant programs for Fiscal Year 1998.

4. INDEX. An index to topics in the circular and their location forms the final pages.
5. ELECTRONIC GRANT APPLICATION. Beginning with Fiscal Year 1999, FTA will receive all grant applications for the Capital Program by electronic submission, except under rare circumstances that might prevent electronic submission. The newly designed FTA electronic award and management system is a point-and-click system that contains "smart" selection options designed to streamline the grant application and management process. The system is compatible with the year 2000 and beyond ("Y2K-compliant").

In order to submit a grant application electronically, a grant applicant must request a grant number from FTA and provide the information requested by the electronic program. The Regional Office will forward the grant application electronically to the Department of Labor for certification of transit employee protective arrangements. (See Chapter VI, paragraph 12, concerning Labor Standards.) If a grant applicant is not able to submit the grant application electronically, then the applicant must submit an original and two copies to the geographically appropriate FTA Regional Office.

6. NOTES TO READER. Before reading the circular, first-time grant applicants are encouraged to turn to Chapter X, "Regional Offices," select the FTA Regional Office responsible for the applicant's locality, and telephone that office to discuss the kind of project planned. Nothing can substitute for discussion with FTA field staff as a way to learn quickly the critical path in the grant application process. That done, the grant applicant can return to the circular for, it is hoped, a more meaningful read.

The statements included in the circular reflect typical project situations. Space does not permit FTA's addressing each circumstance meriting an exception to FTA standard practices. Hence, instructions given and policy statements appearing in the circular are not intended to be read as inflexible FTA mandates. They are, instead, set forth as guidelines FTA generally applies to typical projects.

To the extent permitted by law, the Federal Transit Administrator reserves the right to waive any provision of this circular.

While the major purpose of the circular is to describe the current grant application requirements for Capital Program assistance, because laws and regulations may change these requirements, the grant applicant is encouraged to discuss the

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

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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

6. *amending*
49 U.S.C. §5308

7. 42 U.S.C.
§§ 7401 *et seq.*
and sections of 29
United States
Code

8. *A subsequent
Congressional
appropriation may
result in an
amount available
to a program that
is less than the
amount*

9. 49 U.S.C. § 5309
Note

10. *A subsequent
Congressional
appropriation may
result in an amount
available to a
program that is less
than the amount
authorized.*

11. *A municipality
or other built-up
place appropriate
for a local transit
system to serve
individuals in the
locality, as defined
in 49 U.S.C.
§ 5302(a)(16).*

- b. Clean Fuels Formula Program. The Clean Fuels Formula Program was authorized by TEA-21⁶ to support the purchase or lease of clean fuel buses and facilities and the improvement of existing facilities to accommodate clean fuel buses. Eligible grant recipients are transit operators that are public bodies providing transit service in either urbanized or non-urbanized non-attainment or maintenance areas as defined by the Clean Air Act.⁷

Clean fuel buses include those powered by compressed natural gas, liquefied natural gas, biodiesel fuels, batteries, alcohol-based fuels, hybrid electric, fuel cell and certain clean diesel, and other low or zero emissions technology, and which the Environmental Protection Agency (EPA) has certified sufficiently reduce harmful emissions.

This is a formula program. However, the formula is applied on the basis of the grant applications submitted. Grant applications must be submitted by January 1 of each fiscal year. By February 1 of each year, FTA must apportion funds to the grant applicants. Two thirds of the funds available are to be apportioned in urbanized areas with populations of a million and over, and one third is to be apportioned to grantees in areas with populations less than a million. Formula weighting factors, distinguished between the one-million-and-over and under-a-million populations, include the proportion of the grant applicant's bus fleet to the total number of vehicles of all grant applicants in the population division, severity of non-attainment for the area in which the project is located, and proportion of bus passenger miles of the total bus passenger miles of all grant applicants in the population division. There are limitations within the program on amounts that may be awarded for single grants and for some types of projects.

This program begins with FY 1999 and is authorized at \$200 million⁸ per year for the remaining five years of TEA-21. Funds are available to a project for the year of appropriation, plus one. FTA will develop regulations for the program's administration.

- c. Job Access and Reverse Commute Program. This program is to develop additional transportation services needed to connect welfare recipients and other people with low income to jobs and related support services. The program is authorized in Section 3037 of TEA-21.⁹ TEA-21 authorizes \$150 million annually, beginning with FY 1999¹⁰. A Job Access project is a project designed to transport welfare recipients and other eligible individuals with low income to and from jobs and activities related to their employment. A Reverse Commute project is a project related to the development of transportation services designed to transport residents from urban areas,¹¹ urbanized areas, and nonurbanized areas to opportunities for employment in suburbs. Reverse commute projects are not tied to the income of the commuter. Up to \$10 million a year is authorized for Reverse Commute projects.

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

efficient access to jobs, services, and centers of trade; and examine development patterns and identify strategies to encourage private sector development patterns that achieve the first four purposes. The initiative includes a research program to investigate these relationships; funds for states, MPO's, and local governments to create strategies to integrate transportation and community and system preservation plans and practices; and funds to address transportation efficiency and community and system preservation. Types of projects listed as eligible for funding include "corridor preservation activities...necessary to implement transit-oriented development plans."

TEA-21 authorizes an apportionment from the Highway Trust Fund of \$20 million for FY 1999 and \$25 million for each of fiscal years 2000 through 2003. The Federal Highway Administration issued implementing guidelines in the Federal Register on September 16, 1998 (63 Fed Reg. 49632 et seq.) (1998).

3. COMBINING APPLICATIONS. Grant applicants are encouraged to look into advantages that may be gained by joining with other grant applicants and applying together for a single Capital Program grant. In a bus acquisition grant, for example, there may be economies of scale resulting from the preparation of one grant application, development of one specification, preparation of supporting materials for public hearings, and the hiring of fewer vehicle inspectors. Moreover, it may be possible to obtain a lower price.
4. LENGTH OF TIME FUNDS ARE AVAILABLE. Since Fiscal Year 1993, FTA has had a long-standing general provision in the DOT Appropriations Act that allows funds appropriated for the Capital Program for bus and bus related purchases to be available for three years. Thus, for example, funds appropriated in FY 1998 for bus and bus-related purchases that have not been obligated by FTA to a grantee by September 30, 2000, will no longer be available after that date and will be made available for other discretionary projects. Similarly, funds appropriated in FY 1999 for bus and bus-related purchases that have not been obligated by FTA to a grantee by September 30, 2001, will also be made available for other discretionary projects after that date. This three-year availability is specified each year in the DOT Appropriations Act.
5. ELIGIBLE PROJECTS. Examples of projects eligible for bus category funding are the acquisition of buses for fleet and service expansion; bus maintenance and administrative facilities; transfer facilities, bus malls, transportation centers, intermodal terminals, and park-and-ride stations; acquisition of replacement vehicles; bus rebuild; bus preventive maintenance; passenger amenities such as passenger shelters and bus stop signs; and accessory and miscellaneous equipment such as mobile radio units, supervisory vehicles, fareboxes, computers, and shop and garage equipment. Costs incurred in arranging

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

areas with compatible, non-residential land use where the primary access roads are adequate to handle the additional bus traffic. FTA may approve the designation of these construction projects as categorical exclusions if the grant applicant provides documentation which clearly demonstrates that the conditions stated above are met and that no significant adverse effects will result. Grant applicants should refer to the list of categorical exclusions requiring FTA approval contained in the joint FHWA/FTA environmental regulations.¹⁵

15. 23 C.F.R.
771.117(d)

For any project not meeting the conditions for a categorical exclusion, the grant applicant must prepare an environmental assessment (EA) which documents the impacts of the proposed project and considers alternatives to the proposed site or design. An EA is subject to public comment.

If significant environmental impacts are identified for a bus category project, an environmental impact statement (EIS) will be required. For example, the new construction or extension of a separate roadway for buses or high-occupancy vehicles which is not located within an existing highway right-of-way normally requires an EIS.

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

- c. Clean Air Act Compliance. In nonattainment and maintenance areas, federally assisted transportation projects must comply with the conformity requirements of the Clean Air Act Amendments of 1990. In order to receive Federal funding, transportation plans, programs, and projects must be found to conform to applicable state implementation plans (SIPs) for air quality. The proposed bus improvement must be included in a current long-range plan and transportation improvement program (TIP), which have been determined to conform to the SIP.

In general, any project expected to have a quantifiable effect on regionwide, transportation-related emissions in an air quality nonattainment area must be included in the regional emissions analysis required for the area's transportation plan and TIP. In addition, some large bus projects (e.g., new intermodal terminals) must be analyzed for their potential localized impact on air quality. This is normally accomplished as part of the environmental analysis undertaken to comply with the National Environmental Policy Act (NEPA).¹⁶ The FTA Regional Office can provide guidance on how to analyze the localized air quality impacts of various bus projects.

16. 42 U.S.C.
§§4321 *et seq.*

17. 40 C.F.R.
Section 93.126

Many bus category projects are exempted from the conformity requirements because they are presumed to have a negligible effect on regional and localized air quality. The grant applicant should refer to the Environmental Protection Agency (EPA) regulations governing the conformity process,¹⁷ for

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

scheduled transit revenue service (i.e., to meet peak service requirements with a reasonable allowance for spares).

- (1) Service Life Policy. Service life of rolling stock begins on the date the vehicle is placed in revenue service and continues until it is removed from service. Minimum normal service lives for buses and vans are given in the paragraphs below.
 - (a) Large, heavy-duty transit buses (approximately 35'-40', and articulated buses): at least 12 years of service or an accumulation of at least 500,000 miles.
 - (b) Medium-size, heavy-duty transit buses (approximately 30'): 10 years or 350,000 miles.
 - (c) Medium-size, medium-duty transit buses (approximately 30'): 7 years or 200,000 miles.
 - (d) Medium-size, light-duty transit buses (approximately 25- 35'): 5 years or 150,000 miles.
 - (e) Other light-duty vehicles such as small buses and regular and specialized vans: 4 years or 100,000 miles.

It is recommended that grant applicants specify the expected service life category in requests for bids when acquiring new vehicles.

FTA calculates the value of vehicles prior to the end of their minimum normal service life on the basis of a formula using straight-line depreciation as described in paragraph (2)(b) below. Removal of an FTA- funded vehicle from revenue service before the end of its minimum normal service life, for any reason, leaves the grantee liable to FTA for the Federal share of the vehicle's remaining value. Consistent with this policy, the suggested vehicle service life standards stated above in years refer to time in normal service, not time spent stockpiled or otherwise unavailable for regular transit duty.

- (2) Replacement Policies.
 - (a) Replacement at End of Minimum Normal Service Life. Vehicles proposed to be replaced must have achieved at least the minimum normal service life. For purposes of bus replacement grant applications, the age of the bus to be replaced is its years of service or mileage at the time the proposed new bus is introduced into service.
 - (b) Early Disposition Policy. If a vehicle is replaced before it has achieved its minimum normal service life, the grantee has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or applying the "like-kind exchange" policy (discussed

below) and placing an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

To determine the Federal interest in a federally funded vehicle during its minimum normal service life, a straight-line depreciation formula is used: for example, 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.

- (4) Vehicle Overhauls. Rolling stock overhauls are an eligible capital expense. Because the category of "vehicle overhaul--20%" is an eligible capital cost under the category of preventive maintenance discussed in Chapter I, paragraph 4c(2)(a), FTA will eliminate the category "vehicle overhaul--20%" beginning with FY 2000 funds.
- (5) Spare Ratio Policies. Spare ratios will be taken into account in the review of projects proposed to replace, rebuild, or add vehicles. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for grantees operating 50 or more revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum service.

For purposes of the spare ratio calculation, "vehicles operated in maximum service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak season of the year, on the week and day that maximum service is provided. It excludes atypical days and one-time special events. Scheduled standby vehicles are permitted to be included as "vehicles operated in maximum service."

Spare ratio is defined as the number of spare vehicles divided by the vehicles required for annual maximum service. Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required and 20 spare vehicles is a 20 percent spare ratio.

For each grant application to acquire buses, a grant applicant must address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, and the applicant's conformance with the FTA spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the grant application is based is significantly altered prior to the grant award. "Fleet" and "Fleet Replacement" examples in Chapter IX provide assistance in addressing spare ratio for a grant applicant requesting funds to purchase buses.

- (6) Contingency Fleet. Buses may be placed in an inactive contingency fleet --stockpiled -- in preparation for emergencies. No bus may be stockpiled before that vehicle has reached the end of its minimum normal service life. Buses held in a contingency fleet must be properly stored, maintained, and documented in a contingency plan, updated as necessary, to support the continuation of a contingency fleet. A contingency plan is not an application requirement, although FTA may request information about the contingency fleet during application review. Contingency plans are subject to review during triennial reviews required for the

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

applied to the purchase of replacement vehicles if cost-effectiveness is shown.

- (3) Pre-Award and Post-Delivery Review of Buses. FTA requires that grantees purchasing revenue passenger rolling stock undertake reviews of the rolling stock before award of the bid, during manufacture, and following vehicle delivery. Grant applicants seeking to acquire rolling stock must certify that they will comply with pre-award and post-delivery review requirements. The certification language appears as Category V in Appendix C.

The requirement to undertake the pre-award and post-delivery reviews arises from 49 U.S.C. Section 5323(m) and is specified in FTA regulations at 49 C.F.R. Part 663. The reviews are intended to improve compliance with Buy America requirements, the grantee's bid specifications, and federal motor vehicle safety standards. FTA has tried to carry out the intent of the law in a way that builds on current practices by many grantees and that improves the monitoring of compliance in the least burdensome manner. Reviews may be conducted by the grantee's staff or by a contractor for the grantee. The regulations require a resident inspector who is not an agent or an employee of the manufacturer to review specification compliance for the grantee at the manufacturing site, unless the procurement is for 10 or fewer buses or for an unlimited number of unmodified vans. The grantee must keep on file, and make available to FTA upon request, written reports resulting from the reviews.

When a state undertakes a consolidated state procurement on behalf of several subrecipients of FTA funds, the requirement for a resident inspector at the manufacturing site depends upon the number of buses in a subrecipient's order. That is, for example, although a state may order 30 vehicles, if no subrecipient expects to receive more than 10 of the vehicles, the state is not required to place an inspector on site. If more than 10 vehicles are ordered for a subrecipient, an on-site inspector is required, and may be provided by either the state or the subrecipient. In addition, if the on-site inspector is used on one subrecipient's order, then this meets the on-site inspection requirement for the state procurement even though there are other subrecipient orders of more than 10 vehicles.

In carrying out the reviews, it may be useful to obtain a copy of the manual, "Pre-Award and Post-Delivery Reviews for Bus Vehicles," from the FTA Regional Offices (listed in Chapter X). Also, for buses that have been tested at the Altoona Bus Testing Center, it may be useful to obtain a copy of the test report. That address is provided in the discussion on bus testing below.

- (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.

Reports on new model buses or buses with significant changes can be obtained from the Altoona Bus Testing Center, 6th Avenue and 45th Street, Altoona, Pennsylvania, 16602. The telephone number is (814) 949-7944.

- (5) Buy America. Discussed in Chapter VI because it is a requirement common to all FTA grantees, the Buy America provision nevertheless is called to the attention of grant applicants applying for a grant for buses or related acquisitions. See Chapter VI, paragraph 15, "Buy America."

c. Requirements Related to Buses in Service.

- (1) Commercial Driver's License. All drivers of vehicles designed to transport more than 15 people (including the driver) must have a commercial driver's license. Mechanics who drive the vehicles also must have a commercial driver's license. The requirement derives from FHWA regulations, "Commercial Driver's License Standards; Requirements and Penalties" putting into effect various commercial motor vehicle safety acts.²¹
- (2) Charter Operations. Charter service provided by federally assisted transit operators is limited by 49 U.S.C. § 5323(d). These limitations are specified in FTA regulations, "Charter Service," 49 C.F.R. Part 604. 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 charter service unless permitted by FTA charter service regulations. That agreement is included in FTA's annual certifications and assurances. Category VII in Appendix C provides the language of the charter bus agreement.

21. See 49 C.F.R. Part 383, §§ 383.3, 383.5, and 383.23.

22. A third party contract refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA.

FTA's charter service regulations prohibit FTA recipients from providing any charter service using FTA-funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the FTA recipient proposes to provide. The charter service regulations apply to bus or van service provided by direct recipients, subrecipients, or third party contractors²² that provide bus or van service financed with FTA funds. Before a transit operator may provide charter service using bus or van equipment or facilities financed by FTA, the operator must publish a notice at least annually and determine whether there are any private operators that do not receive FTA assistance willing and able to provide the service. A state either may conduct this process for itself and its subrecipients or may delegate these public notice responsibilities to its subrecipients, as long as adequate public notice is given. In addition, a state or a direct recipient of FTA funds that intends to make FTA funds available to another transit operator must obtain and

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.

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

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

- (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

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

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

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

the public and may stop only at regular service stops. All routes of the tripper buses must be within the operator's regular route service as shown in the operator's published route schedules.

- d. Requirements Related to Accessory and Miscellaneous Equipment. This category includes such items as mobile radio units, bus stop signs, supervisory vehicles, fareboxes, computers, and shop and garage equipment. The rationale or need for requesting them should be made apparent in the grant application.

9. REQUIREMENTS RELATED TO BUS FACILITIES.

- a. General Philosophy. FTA assists in building two categories of bus facilities:
- (1) facilities that support transit operations, such as maintenance garages and administrative buildings, and
 - (2) facilities that provide passenger amenities and extend into the urban environment, such as bus terminals, stations, shelters, and park-and-ride lots.

FTA supports projects that are transit-related; an applicant will need to justify costs that are only indirectly related to transit. FTA participates in those portions of a project most physically and functionally connected to transit. Generally speaking, FTA does not participate in costs outside the "transit footprint" of a development project. (See Appendix B for amplification concerning joint development projects.)

With regard to intermodal facilities, FTA will participate on a pro rata basis, based on the public transit use or portion of the project. FTA assistance for parking is generally limited to parking for transit passengers or ride-sharing. FTA funds may not be used to support parking for shoppers or sports events unrelated to transit usage. To ensure that Federal funds appropriated for transit purposes are used as Congress intended, FTA may require a grantee to reserve FTA-assisted parking areas for transit users. Incidental use of parking areas, however, may be acceptable; an example of acceptable incidental use would be weekend use by shoppers of a parking area normally restricted for transit users during the week.

- b. Examples. FTA's approach to the review of bus-related transit facility projects is reflected in the following examples:
- (1) If a project is designed to improve the mixed land use and pedestrian access in the immediate vicinity of a transit bus station, the project may be eligible for Capital Program funding. The grant applicant should explain how the project helps to maintain or increase transit use. Transit use may result from maintaining the viability of the area immediately around the station for businesses and residences, or may result from

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.

- e. Planning Justifications. There must be a planning basis for every project or for every group of projects. Planning studies at varying levels of detail should be undertaken in support of projects to acquire, install, or construct major transit facilities. In the grant application, a grant applicant may choose to cite in reference and summarize pertinent parts of documents in which results of project studies were reported (for example, transportation plans, unified planning work programs, and management systems). FTA may request copies of studies or summaries of study results upon reviewing a grant application. The paragraphs that follow provide guidance.
- (1) Passenger Amenities.
- (a) Passenger Shelters--Passenger shelters proposed at load and transfer points, park-and-ride stations, employment concentrations, and housing concentrations for the elderly and persons with disabilities are eligible for FTA assistance. A program for bus shelters should be developed for the existing and proposed network based on the operator's shelter criteria, and, in the case of significant increases, should be described in the grant application. A map indicating the transit network and shelter location should be developed and be available.
- (b) Transfer Facility or Transportation Center--The basis for a new transfer facility or transportation center should be documented in a planning study. Elements would include a determination of transit demand and other use, an evaluation of existing transfer facilities or sites to satisfy existing and future transit needs, evaluation and selection of sites if a new facility is warranted, preliminary concept design and cost estimate of the transit transfer facility, development of a staging and financing plan, and environmental documentation for the new facility.
- (c) Park-and-ride Facilities--The basis for a new park-and-ride lot should be documented in a planning study. Generally, activities would include an evaluation of demand and service needs, evaluation of sites to satisfy existing and future transit needs, preliminary concept design of the park-and-ride lots, development of a staging and financing plan, and environmental documentation for the new facility.
- (2) Maintenance and Administrative Facilities. The basis for new maintenance and administrative facilities or major expansions or renovations of existing facilities should be documented in a planning study. Activities would include an evaluation of the condition and adequacy of the existing facility, development of site evaluation criteria, identification and evaluation of alternative sites based upon site evaluation and design requirements, final site selection and preliminary

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

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:

EXHIBIT III-1
Timeframe for Bus Maintenance Facility

<u>Milestone</u>	<u>Time Required</u>
Planning Study, Environmental Impact Study, Conceptual design completed	6 to 12 months, for projects costing up to \$10 million
	12 to 24 months, for projects costing up to \$40 million
Design/Engineering	3 to 6 months, for projects up to \$10 million
	12 to 24 months, for projects costing up to \$40 million
Construction	12 to 18 months, for projects up to \$10 million
	24 to 36 months, for projects up to \$40 million

Some factors that might expedite or delay the project include availability of local share, environmental requirements, site selection (sometimes a major delay), design review process, various construction permits, construction problems, labor relations, and local politics.

Grant applicants applying to FTA for financial assistance for any one of these phases should also include in their calculations the FTA grant application review period.

CHAPTER IV - FIXED GUIDEWAY MODERNIZATION

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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 apportiones 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.

4. *Public Law*
105-178, June 9, 1998

5. 49 U.S.C. § 5335(a)

3. **ELIGIBLE RECIPIENTS.** The Transportation Equity Act for the 21st Century (TEA-21)⁴ modified the formula for allocating the fixed guideway modernization funds. The new formula contains seven tiers rather than four. The allocation of funding under the first four tiers has been modified slightly and, through fiscal year 2003, will be based on data used to apportion the funding in fiscal year 1997. Apportionments in the three new tiers will be apportioned based on the latest available route miles and revenue vehicle miles on segments at least seven years old as reported to the National Transit Database⁵, rather than on route miles and revenue vehicle miles on entire systems which are seven years old. Each year, the new fixed guideway modernization formula will allocate funds by seven tiers as follows:
- a. **Tier 1.** The first \$497,700,000 will be apportioned to the following urbanized areas: Baltimore \$8,372,000; Boston \$38,948,000; Chicago/Northwestern Indiana \$78,169,000; Cleveland \$9,509,500; New Orleans \$1,730,588; New York \$176,034,461; Northeastern New Jersey \$50,604,653; Philadelphia/Southern New Jersey \$58,924,764; Pittsburgh \$13,662,463; San Francisco \$33,989,571; Southwestern Connecticut \$27,755,000.
 - b. **Tier 2.** The next \$70,000,000 will be apportioned as follows: Tier 2A: 50 percent to areas identified in Tier 1; and Tier 2B: 50 percent to other urbanized areas with fixed guideway in operation at least seven years. The apportionments for both Tiers 2A and 2B will be based on the Urbanized Area Formula Program fixed guideway tier formula factors that were used to apportion funds for fixed guideway modernization in fiscal year 1997.
 - c. **Tier 3.** The next \$5,700,000 will be apportioned to the following urbanized areas as follows: Pittsburgh, 61.76 percent; Cleveland, 10.73 percent; New Orleans, 5.79 percent; the remaining 21.72 percent will be apportioned to areas in Tier 2B on the basis of the fixed guideway tier formula factors used in fiscal year 1997.
 - d. **Tier 4.** The next \$186,600,000 will be apportioned to all eligible areas on the basis of the fixed guideway tier formula factors used in fiscal year 1997.
 - e. **Tier 5.** The next \$70,000,000 will be apportioned as follows: 65 percent to the 11 areas specified in Tier I, and 35 percent to all other urbanized areas using the most current Urbanized Area Formula Program fixed guideway tier formula factors. Any segment that is less than seven years old has been deleted from this data base.
 - f. **Tier 6.** The next \$50,000,000 will be apportioned as follows: 60 percent to the 11 areas specified in Tier I, and 30 percent to the other urbanized areas with fixed guideway system segments in revenue service for at least seven years. 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.

- 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

(EIS). The following fixed guideway modernization projects are normally determined to be CEs:⁷

7. 23 C.F.R.
§ 771.117(c)

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

Experience has shown that many of these construction projects can be built and operated without having significant environmental impacts if

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

construction or renovation of rail storage and maintenance facilities and ancillary structures; rail car rehabilitation; and purchase of new vehicles as replacements or for a minor expansion of the fleet.

While it is unlikely that a fixed guideway modernization project would involve air quality effects that must be quantified, there can be exceptions. For example, the conversion of an existing commuter rail system from diesel to electric power offers an MPO the opportunity to demonstrate reductions in emissions that should be recorded in the area's transportation planning documents and air quality attainment strategy. Hence, it is advisable for the grant applicant to consult early with the MPO and FTA Regional Office to discuss the scope of the project and whether it will be exempt from the analytical requirements of the air quality conformity process.

d. Requirements Related to Fixed Guideway Rolling Stock.

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

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

(2) Replacement Policies

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

- (b) Early Disposition Policy. If a vehicle is replaced before the end of its minimum normal service life, the grant applicant has the option of returning to FTA an amount equal to the remaining Federal interest in the vehicle or using FTA's "like kind exchange" policy (discussed below) and putting an amount equal to the remaining Federal interest in the vehicle into a newly purchased vehicle.

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).

- (4) Spare Ratio Policy. Spare ratio for bus fleets can be determined using the calculations involving buses discussed in Chapter III at paragraph 8(a)(5). Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as the acceptable spare ratio for rail fleets. Nevertheless, rail operators should be aware that the grant applicant's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined as part of the grant application review whenever FTA assistance is requested to purchase rail vehicles. As in the calculation of the spare ratio for bus fleets, scheduled standby fixed guideway vehicles are permitted to be included as "vehicles operated in maximum service."
- (5) Pre-award and Post-delivery Reviews of Rolling Stock. FTA requires that grantees purchasing revenue passenger rolling stock undertake reviews¹¹ of the rolling stock before award of the bid, during manufacture, and after delivery of the vehicle as specified in FTA's implementing requirements in nonattainment and maintenance areas.¹² The reviews are intended to improve compliance with Buy America requirements, the grantee's bid specifications, and government motor vehicle safety guidelines. (Federal Motor Vehicle Safety Standards do not apply to rail rolling stock.)

11. 49 U.S.C.
§ 5323(l)

12. 49 C.F.R.
Part 663

Reviews may be conducted by the grantee's staff or a contractor. The grantee must engage a resident inspector who is neither an agent nor an employee of the manufacturer to review specification compliance at the manufacturing (or final assembly) site for the grantee. Grantees may wish to obtain from FTA Regional Offices a copy of "Pre-award and Post-delivery Review for Rail Vehicles," a manual prepared by FTA to assist grantees in complying with this requirement.

Certifications and supporting documentation from the reviews must be retained by the grantee in a manner readily available for FTA inspection. A grant applicant must certify that it will comply with FTA's pre-award and post-delivery review requirements when purchasing revenue service rolling stock. Category -V in Appendix C presents a standard certification.

- e. Procurement Activities Before a Grant is Awarded. Grant applicants for fixed-guideway-modernization funds that want to proceed with a transit project before Federal funds are obligated may use pre-grant-award authority to incur costs using the grant applicant's non-Federal funds with the understanding that the costs incurred may be reimbursable if an FTA grant is awarded for the project. Such actions prior to FTA approval of a grant may include a grant applicant's contracting with a third party for equipment or services. Grant applicants are advised to follow FTA Circular 4220.1D, "Third Party Contracting Requirements," when contracting in advance of

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

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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

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

3. PLANNING AND PROJECT DEVELOPMENT PROCESS. In order to ensure that new start projects meet the requirements of 49 U.S.C. § 5309, FTA requires project applicants to undertake a defined planning and project development process as described in the joint FTA and Federal Highway Administration planning and environmental regulations. (The current joint planning regulations (23 C.F.R. 450) will be updated to address the new planning and environmental provisions contained in TEA-21⁴.)

4. *The Transportation Equity Act for the 21st Century (TEA-21), Pub. L., 105-178, as amended by the TEA-21 Restoration Act, Pub. L., 105-206.*

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

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)

be used for certain planning activities (see Chapter III, paragraph 2a regarding flexible funds).

Where the regional planning process identifies the likely need for a major capital investment to adequately address transportation problems in a given corridor (which may be funded, in part, with Federal resources), local stakeholders will typically initiate an analysis and evaluation of several alternative improvements to determine which improvement best meets these corridor needs. For these major investments, decisions on design concept and scope (e.g., technology, termini, width, degree of grade separation) are traditionally based on corridor analysis, which may be initiated in the long-range planning process and subsequently documented as part of an environmental assessment or draft environmental impact statement. Alternative investments or strategies, including multimodal options, are evaluated for their effectiveness in addressing corridor problems, overall project cost-effectiveness, and other locally established measures. The analysis develops information on the costs of the alternatives and on such factors as mobility improvements (including the impact on low-income transit-dependent riders), socioeconomic and environmental effects, safety, operating efficiency, land use and economic development, financing, and energy consumption. These multimodal systems planning studies serve as the "alternatives analysis" that is required for certain new start projects.⁹

9. 49 U.S.C.
§ 5309(e)(1)(A)
and (e)(2)

During systems planning, the MPO reviews and modifies the regional transportation plan as appropriate to identify the selected design concept and scope. Requests to initiate preliminary engineering may be submitted for projects that are included in the adopted plan.

10. 49 U.S.C.
§ 5309(e)(6)

FTA can approve the initiation of preliminary engineering for a new start when the project meets certain specified criteria.¹⁰ FTA must determine that the new start is justified based on a comprehensive review that considers mobility improvements, cost-effectiveness, operating deficiencies, environmental benefits, and other factors. FTA must also determine that the new start is supported by an acceptable degree of local financial commitment. Certain kinds of projects are exempt from the new start criteria.¹¹ For example, an exemption applies to a project for which the Section 5309 New Starts share is less than \$25 million.

11. 49 U.S.C.
§ 5309(e)(8)

- (2) Preliminary Engineering. The local agency refines the design of the locally preferred alternative, and possibly other alternatives that have been found to be cost effective. More precise estimates of costs and impacts are developed. The environmental process required under the National Environmental Policy Act is completed. A detailed, comprehensive project management plan is developed to ensure construction quality and financial control. The project financing plan is

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.

An EIS is prepared in two phases, draft and final. The draft EIS can be prepared during the corridor/subarea study and serve as the basis for a decision on general mode (i.e., type of fixed guideway) and alignment. Otherwise, the draft EIS is prepared during preliminary engineering. The draft EIS must identify the impacts of the alternatives, reflect coordination with appropriate Federal, state, and local resource agencies on the impacts, and discuss avoidance, minimization, and mitigation of any adverse impacts. The draft EIS must be provided to agencies with jurisdiction or an interest in the project and to the general public for review and comment. The final EIS, which identifies the preferred alternative, must be completed during preliminary engineering. As appropriate, the final EIS must address the comments received in one of the following ways: changing the project location or design; committing to specific mitigation measures or environmental enhancements; or including a written justification in the final EIS of the applicant's reasons for not changing the project in response to a specific comment. Joint FHWA/FTA environmental regulations¹² prohibit FTA from taking a final action, such as awarding a grant or issuing a Letter of No Prejudice (see Chapter VI, paragraph 21b) for final design, land acquisition or construction, or from making any other commitment to a particular alternative, until FTA completes and signs an environmental record of decision (ROD) pertaining to the environmental impact of the project. FTA may not issue an ROD until 30 days after the final EIS is filed with the U.S. Environmental Protection Agency (EPA) and EPA publishes a notice in the Federal Register.

12. 23 C.F.R.
§ 771.127

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

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

5. CLEAN AIR ACT COMPLIANCE. New start projects, including extensions of existing fixed guideway systems, have consequences for air quality at both the regional and local levels and must be analyzed according to the requirements of

EPA's transportation conformity regulation in nonattainment and maintenance areas.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).

funding in the following fiscal year. FTA also must submit a supplemental report each August 31 as an update on projects that have moved from planning into preliminary engineering and from preliminary engineering into final design since the last report.¹⁵ FTA's criteria for making new start funding recommendations are described in the paragraphs below.

7. FTA RATING SYSTEM. In the "Report on Funding Levels and Allocations of Funds," FTA uses a number of evaluation criteria to rate the various projects and present to Congress its findings and recommendations for allocating new start funds. Criteria currently used are:
 - a. Analytical base--result of an alternatives analysis and preliminary engineering.
 - b. Project justification--mobility improvements, environmental benefits, cost-effectiveness (including cost per new rider and cost per hour of travel time saved), and operating efficiencies.
 - c. Local financial commitment--percentage of the project paid for with local/state funds, the soundness of the capital finance plan, and the stability and reliability of local operating revenues.
 - d. Other factors--for example, local commitments to support land use and transportation policies, and inclusion of the project in a state's air quality implementation plan.

In addition "readiness" is taken into consideration--the ability to expend funds soon after they are appropriated by Congress and obligated by FTA.

The first priority for available funds is for projects for which FTA has already awarded a full funding grant agreement, or issued a "letter of intent" to obligate funds from future available appropriations (see paragraph 8 below).

16. 49 U.S.C.
§ 5309(g)

The information used to address the rating criteria is developed as part of the local planning and project development process (see paragraph 3 above). From time to time FTA may issue policy statements that modify or clarify the rating criteria.

The rating process does not apply to a part of a project financed completely with amounts from the Highway Trust Fund.

8. LETTER OF INTENT.¹⁶ On occasion, FTA will issue to a grant applicant a "letter of intent" to obligate funds from future available appropriations. When issued, letters of intent usually are to finance major capital projects. At least 30 days before issuing a letter of intent, FTA must notify the House Committee on Transportation and Infrastructure and the Senate Committee on Banking, Housing, and Urban Affairs of the proposal to issue. These congressional committees authorize the FTA program. When a letter of intent is issued for a fixed guideway project, the amount stipulated must be sufficient to complete at

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.

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

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;

- f. Appropriate organizational structures, management skills, and staffing levels throughout construction;
- g. Quality control and quality assurance functions;
- h. Materials testing policies and procedures;
- i. Internal plan implementation and reporting;
- j. Criteria and procedures for testing the operational system;
- k. Periodic updates of the plan; and
- l. Commitment to make monthly budget and schedule submissions about the project.

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

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

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

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

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

Value engineering is undertaken early in the design process before major decisions have been fully incorporated into the design, near the completion of

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.

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.

22. 49 C.F.R.
Part 661

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."

14. LENGTH OF TIME FUNDS ARE AVAILABLE. New Start funds are available for the year of appropriation and two years thereafter. For example, funds appropriated in FY 1997 for new starts that have not been obligated by FTA to a grantee by September 30, 1999, will no longer be available after that date, and will be made available for other discretionary projects. Similarly, funds appropriated in FY 1998 for new starts that have not been obligated by FTA to a grantee by September 30, 2000, will also be made available for other discretionary projects after that date. This three-year availability is specified each year in the DOT Appropriations Act.
15. TECHNICAL ASSISTANCE. FTA offers a wide variety of training courses, guidance manuals, and other forms of technical assistance for planning and project development. Information on available technical assistance can be obtained from Regional Offices (see Chapter X).

CHAPTER VI - REQUIREMENTS COMMON TO ALL
CAPITAL PROGRAM GRANT APPLICATIONS

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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.

2. 49 U.S.C. § 5309

For grant applicants that have received FTA grants previously under the Capital Program² or under the Urbanized Area Formula Program,³ or have been found in compliance as a result of a recent triennial review audit, there will be far less new information to submit. If unresolved compliance issues remain outstanding, however, the grant applicant should work with the Regional Office on these matters. (See paragraph 4a below for information about triennial reviews.)

3. 49 U.S.C. § 5307

4. 49 U.S.C. §§ 5303 -
5306

2. PROJECT INCLUSION IN TIP AND STIP. Before FTA may make a Capital Program grant, adequate planning must take place.⁴ The project proposed must be a product of the metropolitan planning process and/or the statewide planning process: That is, all transit projects for which Federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan Transportation Improvement Program (TIP) approved by the metropolitan planning organization (MPO) and the Governor and in a statewide transportation improvement program (STIP) that has been approved by FTA and FHWA. Projects not within metropolitan planning boundaries are required only to be in the STIP. The application should identify the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers, and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s). Because the planning provisions of 49 U.S.C. chapter 53 have introduced several new steps into the planning process, particularly pertaining to statewide planning and programming, and greatly increased the responsibilities of MPOs in selecting projects, the description and requirements of the planning process that precedes submission of a Capital Program grant application have been addressed in some detail and placed in a separate appendix of this circular (Appendix A).
3. ORGANIZATION OF THE CHAPTER. This chapter describing the requirements necessary to every Capital Program grant application begins with requirements Congress imposed in 49 U.S.C. § 5309 on the Capital Program itself. These are followed by an explanation of requirements arising from other sections of 49 U.S.C. chapter 53 and, finally, by an explanation of requirements arising outside of chapter 53, this latter category including other Federal statutes, regulations, Executive Orders, and Federal policies that apply to a Capital Program application.
4. SECRETARY'S DETERMINATIONS. The Secretary of Transportation is required by 49 U.S.C. § 5309(d) to make several specific findings concerning the grant applicant's planning for a project and the applicant's capability to carry out the project. The Secretary of Transportation has delegated authority to make these determinations to the Federal Transit Administrator. The requirement that FTA make specific findings distinguishes its review of Capital Program grant applications from its review of applications under other FTA grant programs, such as the Urbanized Area Formula Program,⁵ where certifications may be relied upon. Therefore, it is the responsibility of the grant applicant (and particularly in the applicant's first application) to provide clear information or documentation to support a positive FTA determination.

5. 49 U.S.C. § 5307

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

information the grant applicant is required to submit is identified. Any other information or documentation suggested is just that, a suggestion, in order to list for the grant applicant the kinds of information the applicant may wish to provide or make reference to, to assist FTA in making the determination. To summarize, it is in the interest of the grant applicant to document its capabilities and capacities in its grant application.

- b. Legal Capacity. Before FTA may award a grant for a Capital Program project, FTA must make a finding that the grant applicant has or will have the legal capacity to carry out the project. In making this finding FTA generally relies on the grant applicant's certification that it has or will have the legal capacity to carry out the project. Specifically, the grant applicant must be eligible and authorized under state or local law to request, receive, and spend FTA funds to administer FTA-assisted projects. Officials acting on behalf of the grant applicant must have appropriate authority designated by state or local law or by the governing body of the grant applicant. Although FTA does not routinely require grant applicants to submit an Opinion of Counsel, FTA expects applicants for their first Capital Program grant to submit an Opinion of Counsel as described below. FTA also retains the discretion to require any grant applicant to submit a legal opinion and other supporting documentation.

Example, "Opinion," is provided as a guide in Chapter IX. An Opinion of Counsel identifies the legal authority of the grant applicant, citing, for example, state and local statutes, and states whether any significant legislation or litigation is pending that may affect the legal status of the applicant. It is not uncommon for legislation or litigation to be pending; its significance in terms of legal capacity and in terms of ability to complete the project determines whether or not it should be noted in the Opinion of Counsel. While the first Opinion of Counsel sets forth the basis that gives the grant applicant the authority to apply for FTA funding, the authority to apply for subsequent grants will be certified to in the annual certification process described in Chapter I, paragraph 4l. That affirmation appears in the certifications in Appendix C as Category I, Item A, and on the signature page.

The grant applicant is expected to notify FTA of any change in local law, litigation, conditions, or any other event that may significantly affect the grantee's ability to carry out the project. Any change in status will require a new Opinion of Counsel.

The authority of those officials acting on behalf of a public body grant applicant generally must be demonstrated by a resolution from the governing body of the grant applicant, a statute, or an ordinance showing the grant applicant has authority to file an official grant application, showing who has the authority to act on behalf of the applicant, and supporting the application. A certified copy of the authorizing resolution is required for the grant applicant's first application. A sample format is provided in Chapter IX as Example "Authorizing." For subsequent grant applications, FTA will rely on the annual certification as shown in Appendix C.

- 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).

FTA assesses financial capacity of a Capital Program grant applicant when FTA approves the STIP and again when FTA selects projects for Capital Program funds. The level of detail of the financial capacity assessment will be consistent with the size of the transit system being considered and the scale of the capital investments being proposed. Depending upon the scale of the proposal, the grant applicant may wish to provide FTA with such supporting information as that contained in the TIP, short-range transit plans, 3-to-5-year projection of capital and operating revenues and expenses, capital budgets, reports on financial operations such as periodic financial statements and audit reports, or identification of state and local tax revenues.

- d. Technical Capacity. Before FTA may award a Capital Program grant, FTA must make a finding that the grant applicant has or will have the technical capacity to carry out the project. Technical capacity involves the capability of the grant applicant to properly carry out and manage Federal grants. In making this finding, FTA generally relies on its experience with the grant applicant. A first-time grant applicant for a Capital Program grant must demonstrate that the applicant can carry out the project described in the grant application in accordance with the requirements of the grant agreement, and with all applicable laws, and regulations, using sound management practices. Thus, a certification that the grant applicant will comply with all requirements applicable to its grant application and to the grant agreement, when awarded, is required. Category I, Item B, "Standard Assurances," in Appendix C provides the certification language. Guidelines for management practices can be found in FTA Circular 5010.1C, "Grant Management Guidelines."

Every grant application, first-time or subsequent, must include a proposed project milestone schedule. A sample schedule appears as Example "Project" in Chapter IX.

A grant applicant must certify that its procurement system complies with all applicable requirements imposed by Federal laws, regulations, and executive orders, and the requirements identified in FTA Circular 4220.1D. The certification language appears as Category I, item H in Appendix C. Also, the grant applicant should review paragraph 5 below, "Procurement Restrictions: Special Requirements Concerning Specifications," for a discussion of the procurement system certification and its relationship to FTA's determination of technical capacity.

- (1) FTA Expectations. FTA's view of grantee responsibilities in carrying out a project can be seen in the following edited excerpt from its grant management guidelines (FTA Circular 5010.1C). The grantee's responsibilities include actions to:
- (a) Provide continuous direction over project operations;
 - (b) Provide adequate technical inspection and supervision of work in progress;

- (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

making this finding. A grantee must ensure that the property is used in transit service, must dispose of any unneeded property in accordance with Federal requirements, and must provide safeguards against loss, theft, or damage. If the grantee leases federally assisted property either to another party or from another party, the lease must provide the grantee satisfactory continuing control over the use of that property, and the grantee must have had prior concurrence in the lease from FTA.

Requirements for satisfactory continuing control vary somewhat for the following three types of property: real property (land) and facilities affixed to land; revenue rolling stock, such as buses or railcars, and nonrevenue rolling stock, such as towtrucks and supervisor vehicles; and other personal property (equipment).

The grant applicant may wish to include brief descriptions or reference to documents supporting its capability to retain satisfactory control of project property. Evidence of satisfactory continuing control may be made apparent by such records as property inventory records, an excess real property utilization plan, procurement or purchasing manuals, annual audits and financial reports, fleet inventories, or contingency fleet plans.

The following paragraphs identify factors FTA considers in making its determination of satisfactory continuing control.

If a grant applicant is requesting assistance for equipment or facilities, FTA must be provided a current description of the transit system and service, including supplemental services, operated directly by the applicant or by contract to another party. If the grant applicant leases vehicles to or contracts for their operation by another party, the grant application should include a description of how control is maintained or a copy of the lease agreement.

Applicants that have received grants from FTA in prior years are subject to requirements regarding inventory systems, an aspect of satisfactory continuing control. All grantees must conduct biennial inventories of real property, reviewing all grantee-owned real property acquired with FTA assistance to ensure that it continues to be needed for the purposes specified in approved grants. Grantees that are not states must also conduct biennial inventories of personal property (equipment), reviewing the need for the property as well as reconciling the inventoried property with its financial records. The biennial inventory of real property may indicate that FTA-assisted property is no longer needed; then grantees must prepare or update an excess real property utilization plan. Thus, evidence of continuing control could include discussion of the plan.

With respect to removing real or personal property from service, FTA Circular 5010.1C, "Grant Management Guidelines," contains requirements to assist grantees in achieving the highest possible return. Conformance with the FTA procedures for removing property from service is an element FTA will consider as part of the determination of satisfactory continuing control.

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

employ and train mechanics and other personnel? Are adequate tools, parts, manuals, and equipment available? What is the usual length of time vehicles remain out of service? What is the program of warranty-related preventive maintenance? Answers to these questions, along with a review of annual financial statements and capital and operating budgets devoted to maintenance, may assist the grant applicant in assuring itself and FTA that it has the capability to maintain project property.

5. PROCUREMENT RESTRICTIONS (SPECIAL REQUIREMENT CONCERNING SPECIFICATIONS). A grant applicant should be aware that each procurement financed with FTA assistance must conform to the requirements of FTA Circular 4220.1D, "Third Party Contracting Requirements." A third party contract refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA. The circular's guidelines contain general procurement requirements of the DOT Common Rule, which includes specific statutory procurement provisions required by FTA's enabling legislation and other special concerns to FTA. These provisions include, but are not limited to, a prohibition against the use of FTA grant or loan funds to support exclusionary or discriminatory specifications¹¹ and special provisions for procuring rolling stock, and management, architectural, and engineering services.¹²

11. 49 U.S.C.
§ 5323(h)(2)

12. 49 U.S.C.
§ 5325(b)

The procurement certification noted in paragraph 4d above is one of the items of information FTA relies on to make a positive finding of technical capacity when reviewing a grant application.

It should be noted that both the Common Rule¹³ and FTA Circular 4220.1D prohibit state or local preferences in procurements, except in certain restricted circumstances.

13. 49 C.F.R. Part 18

6. PUBLIC HEARING REQUIREMENTS: REQUIREMENTS FOR PUBLIC PARTICIPATION IN STATEWIDE AND METROPOLITAN PLANNING.

A grant application for a capital project that will "substantially" affect a community or its mass transportation service must include a certification that the grant applicant has:

- a. provided an adequate opportunity for a public hearing with adequate prior notice;
- b. held the hearing unless no one with a significant social, economic, or environmental interest requested one;
- c. considered the social, economic, and environmental effects of the project; and
- d. found that the project is consistent with official plans for the comprehensive development of the urban area.

This requirement can be found in 49 U.S.C. § 5323(b) ("General provisions on assistance").

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.

project to a certain level of public scrutiny, regardless of whether that project will "substantially" affect a particular community and its mass transportation service.

7. ENVIRONMENTAL PROTECTION. FTA's environmental review process has two primary objectives: to fully disclose the probable environmental impacts resulting from a proposed project and to develop measures that will avoid or mitigate adverse environmental effects. Before FTA may approve a Capital Program grant, FTA must make a finding that either "no adverse environmental effect is likely to result from the project, or no feasible and prudent alternative to the effect exists and all reasonable steps have been taken to minimize the effect."¹⁸

18. 49 U.S.C.
§5324(b)(3)(A)(iii)

19. at 49 U.S.C.
§ 5324(b)(2)

20. 42 U.S.C.
§§ 4321 *et seq.*

21. 49 U.S.C. § 303

22. 16 U.S.C. § 470f

23. 33 U.S.C.
§ 1344

24. 42 U.S.C.
§ 7506

25. 23 C.F.R.
Part 771

In addition to specific statutory requirements for the Capital Program,¹⁹ several other Federal environmental statutes and regulations may apply to the project. The following statutes often impose requirements on the project: the National Environmental Policy Act of 1969, as amended (NEPA),²⁰ section 4(f) of the DOT Act protecting historic sites and public parks and refuges;²¹ section 106 of the Historic Preservation Act;²² section 404 of the Clean Water Act, as amended;²³ and section 176 of the Clean Air Act, as amended.²⁴ Federal environmental regulations applicable to the Capital Program include the joint FHWA/FTA regulations, "Environmental Impact and Related Procedures."²⁵ These joint regulations have been drafted to accommodate most of the requirements of the statutes listed above and their implementing regulations. Other environmental requirements have been established by Federal executive orders or state laws, e.g., protection of wetlands, flood plains, prime agricultural lands, and coastal zones.

Capital Program projects have a wide range of environmental effects and thus require varying levels of documentation and review. The joint FHWA/FTA regulations classify projects based on their potential to significantly affect the environment--including the built environment as well as natural resources--and they detail the environmental analysis and review process required, depending on the classification. New start projects usually involve significant social, economic, and environmental impacts and will, therefore, require preparation of formal environmental documents, in most cases an environmental impact statement. In contrast, most fixed guideway modernization projects qualify for an expedited environmental review if the grant applicant demonstrates that the conditions for a "categorical exclusion" are met. A project with uncertain environmental impacts requires an environmental assessment. Substantial controversy surrounding a proposed project will influence the level of documentation and review required for the project. The classification of a project in the context of FTA's environmental impact procedures is determined by the FTA Regional Office in consultation with the grant applicant.

The preparation and review of environmental documents for major transit projects can be a lengthy process, involving technical analysis of a wide range of project impacts and subsequent coordination with Federal, state, and local agencies having regulatory programs for protecting various types of environmental resources. To the extent permitted by Federal law and regulations, a grant

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

applied at the plan, program, and project levels, and there must be a documented conformity finding by FTA at each step in order to advance a major project.

The EPA regulation also establishes a list of highway and transit projects that are exempt from the process outlined above. These are projects presumed to have insignificant emissions effects even at the local scale, and normally they can be advanced without regard to the conformity requirements. A number of smaller transit projects are covered under the list of exemptions at 40 C.F.R. § 93.126. Regardless of the type of project being considered, early consultation with FTA is essential to lay out the applicable Clean Air Act requirements in nonattainment and maintenance areas. The FTA Regional Office can also provide information on selected provisions of other laws that support clean air objectives--for example, the Congestion Mitigation and Air Quality Improvement Program (see Chapter III, paragraph 2).

9. PRIVATE ENTERPRISE CONCERNS. The concerns of Federal transit law regarding private enterprise focus mainly on including the private sector in participating in local transit programs, ensuring that adequate compensation is provided a private provider when its transit facilities and equipment are acquired by a state or local governmental authority, and protecting private providers of transit from competition with federally assisted transit providers.

- a. Participation by Private Enterprise. Both Federal transit law and joint FHWA/FTA planning regulations²⁶ (discussed in Appendix A of the circular) impose strong requirements for private as well as public sector participation as transportation programs are developed. Plans and programs required for Federal transit assistance must encourage the participation of private enterprise to the maximum extent feasible.²⁷

26. 23 C.F.R.
Part 450 and
49 C.F.R. Part 613

27. 49 U.S.C.
§ 5306(a)

Federal law recognizes the special concerns of private transportation providers that compete with public mass transit authorities. By law, existing private transportation providers are afforded certain safeguards from competition. Specifically, FTA is prohibited from providing Federal assistance to a governmental body that provides service in competition with, or supplementary to, service currently provided by a private transportation company, unless FTA finds that the local transportation program developed in the planning process provides for participation by private transportation companies to the maximum extent feasible.²⁸

28. 49 U.S.C.
§ 5323(a)(1)(B)

29. 49 U.S.C.
§ 5303(f)(4)

Accordingly, Federal transit law²⁹ and the joint FHWA/FTA planning regulations direct special attention to the concerns of private transit providers in planning and project development. Joint FHWA/FTA planning regulations specifically require that private transit providers, as well as other interested parties, be afforded an adequate opportunity to be involved in the early stages of the plan development and update process.³⁰ While FTA supports the participation of private transit providers in local mass transportation programs, FTA no longer imposes prescriptive requirements for determining whether a grant applicant has made adequate efforts to integrate private

30. 23 C.F.R.
§ 450.322(c)

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

- 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

33. 49 U.S.C.
§ 5307

34. 49 U.S.C.
§ 5306(a)

- 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.

35. 49 U.S.C.
§ 5323(a)(1)(C)

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:

No person (individual, family, partnership, corporation or association) will be required to move without at least 90 days' advance notice. In the case of persons displaced from residences, the 90-day notice must also include the availability of at least one comparable replacement dwelling. All displacees--both business and residential--are reimbursed for moving expenses. There must be as many residential dwellings available as there are families who will be displaced. The dwellings must be comparable to the ones from which the families are displaced. In addition, the comparable replacement dwellings must be decent, safe and sanitary; located in the same area or in areas generally not less desirable in regard to public utilities and public and commercial facilities; reasonably accessible to the displacees' places of employment and within the financial means of the displaced families. Replacement housing must be open to all persons regardless of race, color, religion, sex, or national origin. Before making an offer to the property owner, the grantee must first establish market value of the parcel to be purchased. Market value is to be established through a current appraisal and appraisal-review. No owner shall be required to surrender possession of real property without either payment of the agreed purchase price or deposit of the established just compensation in condemnation court, with the deposit available to the owner. The grantee must expeditiously reimburse property owners for actual, reasonable, and necessary expenses incidental to transfer of title. If the acquisition leaves the owner with an uneconomical remnant, the grantee must offer to acquire that remnant. An uneconomical remnant is defined as a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and which the acquiring agency has determined has little or no value or utility to the owner. Any decrease or increase in market value caused by the project or caused by the likelihood that a particular property is to be acquired for the project will be disregarded in determining just compensation for the property.

One may contact an FTA Regional Office for a copy of the Uniform Act, itself, in its amended form. One may also download a copy of 49 C.F.R. Part 24 from the GPO website at: "www.access.gpo.gov/su_docs/aces/aces140.html."

In addition, the grantee should inform itself of state laws regarding compensation for real property and requirements for relocation of persons and personal property.

Prior FTA concurrence must be obtained for property transactions in excess of \$250,000; for administrative settlement acquisitions exceeding current market value by \$50,000; and for initiating condemnation action. The effects of contamination should be investigated prior to taking title. FTA Circular 5010.1C, "Grant Management Guidelines," lists program management requirements.

Real property may be contributed as part of the local matching share. Credit can be allowed only for that portion of the property needed to carry out the scope of the project. Federal funds must not have been used to purchase the property proposed as local matching share. The contribution-in-kind property will be valued at its current market value and when incorporated into the project will be

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

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)

When a labor organization (union) represents a group of affected employees in the service area of an FTA project, the employee protective arrangement is usually the product of negotiations or discussions with the union.

These protections must be afforded to all transit employees in the service area of the project, including the employees of the grant applicant, employees of other FTA grantees, and employees of any other public or private transit provider, including providers of transit service by contract. Consequently, the grant application submitted to FTA must identify each transit provider in the service area of the project and be accompanied by a list of any union(s) and the transit provider's employees they represent. The grant application must also identify transit providers in the service area whose employees are not represented by a union.

When any of the grant applicant's employees change the labor organization representing them, the grant applicant must identify the changes made in its next grant application submitted to FTA.

The grant applicant can also facilitate DOL certification by identifying in the application any previously certified protective arrangements that have been applied to similar projects undertaken by the grant applicant.

Upon receipt of a grant application requiring employee protective arrangements, the FTA Regional Office will transmit electronically the application to DOL and request certification of the employee protective arrangements.

42. 29 C.F.R.
Part 215

In accordance with DOL guidelines,⁴² DOL notifies the relevant unions in the area of the project that a grant for transit assistance is pending and affords the grant applicant and union the opportunity to agree to an arrangement establishing the terms and conditions of the employee protections.

If an appropriate protective arrangement already exists from a previous grant, DOL proposes certification on that arrangement, and new negotiations begin only if a party to the arrangement objects to the proposed certification. If necessary, DOL furnishes technical and mediation assistance to the parties during their negotiations. The Secretary of Labor may determine the protections to be certified if the parties do not reach an agreement after good-faith bargaining and mediation efforts have been exhausted. DOL will also set the protective conditions when affected transit employees are not represented by a union.

When DOL determines that an agreed-to employee protective arrangement complies with 49 C.F.R. § 5333(b), or when the Secretary of Labor determines the protections to be applied, DOL will provide a certification to FTA. The grant agreement between FTA and the grant applicant incorporates by reference the employee protective arrangements certified by DOL.

Questions concerning employee protective arrangements and related matters pertaining to transit employees should be addressed to the Office of the American Workplace, Statutory Programs, Department of Labor,

200 Constitution Avenue, 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

Disabilities Act of 1990--(ADA), Section 504 of the Rehabilitation Act of 1973 (Section 504), and the respective Department of Transportation implementing regulations. The programs are discussed in paragraphs below.

All required civil rights program submissions must be approved by FTA and periodically updated, in accordance with program guidelines. To avoid any delay in the grant application approval process, early submission of these program elements to the appropriate Regional Office is recommended. It is the responsibility of FTA to ensure that grantees are in compliance with all civil rights program requirements that apply to transit-related projects.

- (1) Title VI. Each grant applicant or grantee must submit a Title VI program that addresses requirements enumerated in FTA Circular 4702.1, "Title VI Program Guidelines for Federal Transit Administration Recipients." First-time grant applicants, if located in areas with a population under 200,000, are only required to submit information relating to "General Reporting Requirements" of FTA Circular 4702.1. This information relates to active lawsuits or complaints, pending grant applications with other Federal agencies, the submittal of the DOT Title VI and FTA civil rights assurances, and the impact of transit projects on minority communities. First-time grant applicants in areas 200,000 and over in population must submit not only "General Reporting Requirements" but program-specific information such as maps/overlays showing bus routes and distribution of minority persons by census tracts, policy relating to service standards, that is, bus assignments, headways, etc.

After an initial Title VI program has been approved, an update is required every three years. For recipients in urbanized areas with over 200,00 in population, only a limited amount of information need be forwarded to the Regional Office for review. However, the entire submission must continue to be updated and available for review upon request. During a Title VI compliance review, all aspects of Circular 4702 requirements will be assessed. The full program data must also be available for other reviews, such as triennial reviews, complaint investigations, or on-site visits. A grant applicant contemplating submitting a grant application should ensure that its latest submission remains current.

Nondiscrimination requirements cover such areas as land acquisition and relocation of residences and businesses, impacts of construction, fixed guideways, placement of routes, vehicle assignments, availability of transit amenities such as bus shelters, headways, passenger loads, environmental considerations, public involvement, and multilingual communication.

If a grant applicant is planning the construction of a large FTA-assisted project such as a multimodal transportation facility or a fixed guideway light rail system, prior to submitting a grant application for assistance, the applicant should be taking steps to ensure compliance with Title VI and

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).

- (4) Transportation of Persons with Disabilities. Compliance with the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. Sections 12101 et seq.) and Section 504 of the Rehabilitation Act of 1973, as amended, (29 U.S.C. Section 794) and ADA implementing regulations at 49 C.F.R. Parts 27, 37, and 38, prohibit discrimination against individuals with disabilities in the provision of transportation service.

The ADA affects transportation providers in four significant ways. First, the ADA accessible vehicle requirements pertain to vehicle acquisitions by both public and private entities for fixed route or demand responsive service. Second, the ADA contains accessibility requirements for the design and construction of new transportation facilities, alterations to existing facilities, and key stations on rail transit systems. Third, the ADA requires public entities providing fixed route service to provide complementary paratransit service to people with disabilities who cannot use fixed route service. Fourth, the ADA includes service requirements intended to ensure that people with disabilities are afforded equal opportunity to use transportation vehicles and facilities.

Category I, Item G in Appendix C provides standard language for the grant applicant to assure FTA of compliance with U.S. DOT regulations carrying out Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990.

15. BUY AMERICA.

- a. Basic Requirement. In accordance with 49 U.S.C. § 5323(j), and FTA Buy America regulations, 49 C.F.R. Part 661, specific Buy America requirements apply to each acquisition of iron, steel, or manufactured goods, including rolling stock. Thus unless an acquisition qualifies for a waiver as discussed further in this section, Federal transit assistance authorized by 49 U.S.C. chapter 53 and 23 U.S.C. (Highways) may not be used to finance the acquisition of iron, steel, or manufactured goods that are not produced in the United States.
- b. General Buy America Requirements Contrasted with Special Requirements for Rolling Stock. The grant applicant should be aware that FTA's Buy America requirements for steel, iron, and manufactured goods other than rolling stock differ substantially from FTA's Buy America requirements for rolling stock. In particular, FTA assistance may not be used to finance the procurement of steel, iron, or manufactured goods other than rolling stock, unless the steel, iron, or those manufactured goods either qualify as a domestic product in accordance with 49 C.F.R. § 661.5, or FTA has granted a waiver in accordance with the Buy America regulations.

In contrast, rolling stock qualifies as a domestic product when: (1) the cost of its domestic (United States) components exceeds 60 percent of the cost of all its components, and (2) final assembly takes place in the United States. Rolling stock meeting the 60 percent domestic component cost and final

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.
- 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.

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

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

to Federal Railroad Administration (FRA) regulations and to Federal Highway Administration (FHWA) regulations concerning drug and alcohol programs.

To assure compliance with the drug and alcohol testing requirements, FTA has promulgated two regulations, "Prevention of Prohibited Drug Use in Transit Operations"⁴⁶ and "Prevention of Alcohol Misuse in Transit Operations."⁴⁷ The regulations apply to recipients of funds under the Capital Program, as well as to recipients under the Urbanized Area Formula Program,⁴⁸ the Nonurbanized Area Formula Program,⁴⁹ and the interstate program.⁵⁰ Both regulations require that FTA recipients follow the drug and alcohol testing procedures found in DOT regulations.⁵¹

46. 49 C.F.R.
Part 653

47. 49 C.F.R.
Part 654

48. 49 U.S.C.
§ 5307

49. 49 U.S.C.
§ 5311

50. Section
103(e)(4) of
Title 23

51. 49 C.F.R.
Part 40

The regulations apply to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes subrecipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with the FTA regulations.

Large operators (generally those operating primarily in urbanized areas with populations of 200,000 or more) were required to initially certify and begin the alcohol and drug testing programs by January 1, 1995. States and small operators (generally those operating primarily in areas with populations less than 200,000) must initially certify and begin the testing programs by January 1, 1996. States must annually certify on behalf of their subrecipients. Standard language for certification of compliance with the regulations appears in Category X and Category XIV, item M in Appendix C.

52. 49 C.F.R.
Part 219

53. 49 C.F.R.
Part 382

54. 33 C.F.R.
Part 95 and
46 C.F.R.
Parts 4, 5, and 16

The FTA regulations do not apply to a recipient that operates a commuter railroad; a commuter railroad operator must comply with FRA regulations⁵² with regard to its hours of service employees. An FTA recipient that operates a commuter railroad must comply with regulations of the FHWA for its employees who hold commercial drivers licenses.⁵³ A recipient that operates a ferry service must comply with FTA's rules and those of the Coast Guard.⁵⁴

The rules require testing of employees who perform a safety-sensitive function, which is defined in the rules. The rules require the following six types of testing: pre-employment for drugs (including transfer from a non-safety-sensitive position to a safety-sensitive position); reasonable suspicion; random; post-accident; return-to-duty; and follow-up.

Both rules require each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. Both rules require the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, the alcohol rule establishes alcohol concentration levels and prohibited behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration. Technical assistance materials and training

information to help 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

requirements also apply to subgrantees and subcontractors. A copy of Standard Form LLL appears in Chapter IX as "Lobbying-Disclosure."

Lobbying is not prohibited by Section 1352. Using federally appropriated funds to pay for lobbying is prohibited. Disclosure is not required for the lobbying activities of long-term regularly employed officers or employees of grantees (that is, persons employed at least 130 working days within 1 year immediately preceding the date the grant application is submitted). Only the activities of hired lobbyists and newly hired officers and employees must be disclosed.

Activities such as submitting grant applications, status inquiries, and professional and technical services are not lobbying and do not need to be disclosed. Efforts to influence Federal officials about specific grants and contracts or to ask Congressional representatives for support of a particular application or bid must be disclosed.

A state applying for a grant on behalf of several subgrantees must keep on file the certifications of the subgrantees.

Disclosure forms, if appropriate, must be submitted when the grant applicant makes its first grant application. Additionally, disclosure forms are required each calendar quarter following the first disclosure if there has been a material change in the status of the previous disclosure. A material change is defined in the following way:

- a. a cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
- b. a change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
- c. a change in the officer(s) or employee(s) or Member(s) contacted to influence or attempt to influence a covered Federal action.

58. 49 C.F.R.
29.115(a)

19. INTEGRITY - DEBARMENT AND SUSPENSION. "In order to protect the public interest, it is the policy of the Federal Government to conduct business only with responsible persons."⁵⁸ Debarment and suspension are methods used to implement the policy. U.S. DOT has issued implementing regulations at 49 C.F.R. Part 29.

An applicant for FTA assistance is required to certify that it, through its "principals," is not excluded from federally assisted transactions and to ensure that none of its subrecipients, third-party contractors, or subcontractors are debarred, suspended, ineligible, or voluntarily excluded from participation in federally-assisted transactions. Please see Appendix C, Category I, Item C for standard certification language.

Disclosure to FTA is required if at any time the grantee or other "covered" entity learns the certification was erroneous when submitted or if circumstances have changed (e.g., new personnel, indictment, conviction).

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).

- (b) All FTA statutory, procedural, and contractual requirements must be met.
 - (c) No action will be taken by the grant applicant which prejudices the legal and administrative findings that the Federal Transit Administrator must make in order to approve a project.
 - (d) Local funds expended by the grant applicant pursuant to and after the date of this authority will be eligible for credit toward local match or reimbursement if the FTA later makes a grant for the project(s) or project amendment(s).
 - (e) The Federal amount of any future FTA assistance to the grantee for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal-local match ratio at the time the funds are obligated.
- (2) Period of Availability. The blanket authority to undertake projects in advance of award runs concurrent with the period of availability of the funds to which the authority applies. Thus, for example, for fiscal year 1999 fixed guideway modernization funds, pre-award authority is available in the year the 1999 funds are appropriated, plus three years.
- (3) Environmental, Planning, and Other Requirements. FTA emphasizes that all Federal grant requirements must be met for the project to remain eligible for Federal funding. Some of these requirements must be met before pre-award costs are incurred, notably requirements of the National Environmental Policy Act (NEPA) and the planning requirements. Compliance with NEPA and other environmental laws or executive orders (e.g., protection of park lands, wetlands, historic properties) must be completed before state or local funds are advanced for a project expected to be subsequently funded with FTA funds. Depending on which class the project is included under in FTA's environmental regulations (23 C.F.R. part 771), the grantee may not advance the project beyond planning and preliminary engineering before FTA has approved either a categorical exclusion (refer to 23 C.F.R. part 771.117(d)), a finding of no significant impact, or a record of decision.

The conformity requirements of the Clean Air Act⁶⁰ also must be fully met before the project may be advanced with non-Federal funds.

Similarly, the requirement that a project be included in a locally adopted metropolitan TIP and a federally approved STIP must be met before the project may be advanced with non-Federal funds. In addition, Federal procurement procedures, as well as the whole range of Federal requirements, must be followed for projects in which Federal funding will be sought in the future. Failure to follow any such requirements could make the project ineligible for Federal funding. In short, the increased administrative flexibility allowed by the pre-award authority

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

more than a single year. Advance capital project authority does not constitute a commitment of Federal funds until the project is converted to a regularly financed FTA project. The grant applicant should make contact with the appropriate Regional Office for specific instructions in applying for advance capital project authority.

22. LEASE VS. BUY CONSIDERATIONS. A grant applicant may use Capital Program funds to lease capital assets from another party, where justified. To qualify a lease for Capital Program assistance, a grant applicant must: make a written comparison of the cost of leasing the asset with the cost of purchasing or constructing it, and include the cost-effectiveness justification in its grant application. It is important to note that a recipient of Capital Program funds may not enter into a lease before grant approval without express authority from FTA. The general requirements and principles of FTA regulations, "Capital Leases,"⁶³ apply to the Capital Program. Obtaining an asset by lease is more cost-effective than purchase or construction when the lease cost is less than the purchase cost, as calculated in the manner described in the regulations.⁶⁴

63. 49 C.F.R.
Part 639

64. 49 C.F.R.
§§ 639.23 and
639.25

CHAPTER VII - GRANT APPLICATION CONTENTS

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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.

4. FTA ASSISTANCE. One of FTA's major responsibilities is to provide assistance to grant applicants in preparing their grant applications. Regional Office staff can advise how specific laws, regulations, Federal Register notices, and Executive Orders may be obtained.
5. STANDARD FORM 424. All information required by Office of Management and Budget Standard Form 424 entitled "Application for Federal Assistance" (revised April 1988) must appear or be entered in the appropriate windows of the electronic system. This information must be completed in its entirety, including information pertaining to any delinquent indebtedness to the U. S. Government, and be attested to by the authorized official in the Authorizing Resolution, which accompanies the annual certifications and assurances (see Appendix C). A copy of SF 424 appears as an example in Chapter IX.
6. PROJECT BUDGET. FTA uses the same budget format for all grant programs it administers. Chapter VIII contains information for preparing a budget. The budget submitted must enumerate a list of projects and the estimated amounts of Federal and total funds for each. Grant applicants are asked to provide details of proposed capital purchases according to the activity line item codes contained in EXHIBIT VIII-8, Budget Activity Codes.
7. PROJECT DESCRIPTION, PLANNING CONSISTENCY. The grant applicant should describe all projects and activities in the application in sufficient detail for FTA to determine that the grant request is eligible for funding. The grant applicant should briefly provide a summary about each project, drawing, in particular, from the transportation plan, TIP, STIP, or environmental record. Each project and activity in the grant application should be addressed.
8. MASTER AGREEMENT. FTA uses an abbreviated grant agreement that incorporates by reference in a Master Agreement most terms and conditions applicable to the FTA project for which a grant has been awarded. Each grantee is expected to retain the applicable Master Agreement on file. A grant applicant that does not have the latest Master Agreement in its records should request a copy from the appropriate Regional Office.
9. INDEX OF THIS CIRCULAR. Items listed in EXHIBIT VII-1, Checklist for Grant Applicant, have been discussed in various paragraphs of this circular. An index to topics in the circular and their location forms the circular's final pages.

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.

EXHIBIT VII-1

CHECKLIST FOR GRANT APPLICANT (continued)

B. Approval Prerequisites (continued)

3. Information supporting financial capacity, technical capacity, satisfactory continuing control, maintenance capability) (for first time applicants)
4. Any outstanding oversight findings resolved or resolution plan and schedule set
5. Current annual Certification and Assurances. Grant activities in the application are covered by the Certifications and Assurances (that is, for example, if project includes acquiring real estate, then certification on real property has been made).
6. Civil rights submissions up-to-date
 - a. Title VI
 - b. DBE Program
 - c. EEO Program
 - d. ADA
7. Dates public hearings were held, and notice to FTA that transcripts are available (see 49 U.S.C. §5323(b) regarding projects that will substantially affect a community)

CHAPTER VIII - INSTRUCTIONS FOR PREPARING A PROJECT BUDGET

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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.

3. PREPARING A PROJECT BUDGET. The grant applicant should complete a project budget following the format provided, through the line, "Local Share." FTA will complete the information under the heading, "Sources of Federal Financial Assistance."
- a. Scope and Activity Levels. The numbering of both the scope and activity levels of information on the Approved Project Budget is derived from the activity codes in the FTA electronic award and management system. A separate listing of scope level codes forms EXHIBIT VIII-7. A seven-paged chart showing the activity codes forms EXHIBIT VIII-8.¹ In most cases, the first three digits of the scope code will match the first three digits of its corresponding activities. For example, if a grant applicant wishes to purchase revenue rolling stock, the scope might be defined in the following way:

EXHIBIT VIII-1

Project Scope - Sample No. 1Scope

111-01 Bus - Rolling Stock

Quantity:² 6Activity

11.12.02 Purchase 35-foot replacement buses with lifts

Quantity: 4

11.13.03 Purchase 30-foot buses with lifts for service expansion

Quantity: 2

11.12.40 Spare parts

In the example above, a mix of rolling stock will be purchased, and the scope includes the purchase of associated items. If a grant applicant wishes to include radios and fareboxes as part of this purchase, radios and fareboxes could also be listed as part of the rolling stock scope. In such case, the quantities for the radios and fareboxes would not be included in the rolling stock total quantity under 111-01, but would be indicated in the activity level description. If a grant applicant proposes to purchase an entirely new fare

¹ The activity code chart applies to all FTA grant programs.

² Although quantities have been included in the examples, FTA requires that quantities only for rolling stock be included in the budget, and then only at the activity level. Rolling stock quantities are shown in the scope level in the examples because the FTA electronic award and management system automatically sums the rolling stock identified at the activity levels and prints the quantity at the scope level.

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.

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

EXHIBIT VIII- 3

Presenting Subrecipient Information - Format Option No. 1Scope

111-01 Purchase Rolling Stock and Related Equipment

Quantity: 7

Activity

11.12.03 Purchase small lift-equipped replacement buses for Allegany County

Quantity: 3

11.12.15 Purchase lift-equipped vans for Cumberland Transit System

Quantity: 4

11.12.40 Spare components for buses

11.42.10 Purchase of fareboxes for buses

Quantity: 3

11.62.03 Purchase of radios for vans

Quantity: 4

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

related procurement actions. This can be accomplished by "rolling up" the costs of similar items (i.e., station construction) into one activity. The format for this budget is illustrated below:

EXHIBIT VIII - 5

Combining Costs of Similar Items

SCOPE

132-01 Construct a 20-mile light rail line, including
20 stations and support facilities

Activities

- 13.23.03 Construction of line and structures
- 13.33.02 Construction of stations
- 13.43.02 Construction of operations/maintenance
- 13.53.01 Electrification and power distribution
- 13.63.01 Signals
- 13.33.06 Fare collection equipment acquisition
and installation
- 13.75.91 Real estate acquisition
- 13.75.92 Relocation

SCOPE

137-01 Support services, in house and contracted,
for engineering design, project and construction
management, insurance, legal aid, etc.

Activities

- 13.71.02 Contracted final design services
- 13.71.04 Contracted construction management services
- 13.72.03 Grantee support services/project management
- 13.72.11 Other contracted support services

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-6

APPROVED PROJECT BUDGET

APPROVAL DATE : 6/09/95

GRANTEE: REGIONAL TRANSIT ADMINISTRATION
TRANSIT-TOWN, MARYLAND

PROJECT NO.: MD-03-0046-00 BUDGET NO.: 01

<u>SCOPE</u>	<u>FEDERAL AMOUNT</u>	<u>TOTAL AMOUNT</u>
111-01 BUS - ROLLING STOCK..... QUANTITY: 4	\$ 450,750	\$ 601,000
<u>ACTIVITY</u>		
11.13.03 BUY 30-FT BUS FOR SERVICE EXPANSION QUANTITY: 4	\$ 435,000	\$ 580,000
11.32.06 ACQ FARE COLLECTION EQUIPMENT QUANTITY: 5	\$ 3,750	\$ 5,000
11.62.03 PURCHASE BUS RADIOS 30-FT BUSES QUANTITY: 3	\$ 12,000	\$ 16,000
<u>SCOPE</u>		
113-01 BUS-STATION/STOPS/TERMINAL	\$ 18,750	\$ 25,000
<u>ACTIVITY</u>		
11.33.10 PURCHASE PASSENGER AMENITIES QUANTITY: 5	\$ 18,750	\$ 25,000
TOTAL CAPITAL.....	\$ 469,500	\$ 626,000
TOTALS.....	\$ 469,500	\$ 626,000
ESTIMATED NET PROJECT COST		\$ 626,000
FEDERAL SHARE		\$ 469,500
LOCAL SHARE		\$ 156,500

(continued)

EXHIBIT VIII-6 (cont)

APPROVED PROJECT BUDGET (cont)

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-7

**SCOPE LEVEL CODES AND
SPECIAL USE ACTIVITY CODES**

These codes should be used in conjunction with the various activity level codes included in EXHIBIT VIII-8. All scope level codes must have associated activity level codes attached to them. While the samples below designate 00 as the last two digits, if the grant applicant has more than one scope within a scope code, the applicant should begin with 01 and number sequentially (illustrated in EXHIBIT VIII-4).

The Scope Level Codes and Special Use Activity Codes are accessible within the electronic award and management system. The grant applicant, as an option, can select by means of a budget table ("drop down menu") the particular scope and activity codes that apply to the project budget. This optional table can be accessed in the project budget window.

The first three digits of these codes correspond to the major categorical headings located on the left side of the Activity Code Chart.

111-00 Bus - Rolling Stock
112-00 Bus - Transitways/Lines
113-00 Bus - Stations/Stops/Terminals
114-00 Bus - Support Equipment/Facilities
115-00 Bus - Electrification/Power Distribution
116-00 Bus - Signals/Communications Equipment
117-00 Bus - Other Capital Items
118-00 State Administration
119-00 Bus - Transit Enhancements

121-00 Rail - Rolling Stock
122-00 Rail - Transitway/Lines
123-00 Rail - Stations/Stops/Terminals
124-00 Rail - Support Equipment/Facilities
125-00 Rail - Electrification/Power Distribution
126-00 Rail - Signals/Communications Equipment
127-00 Rail - Other Capital Items
128-00 State Administration
129-00 Rail - Transit Enhancements

131-00 New Start - Rolling Stock
132-00 New Start - Transitway/Lines
133-00 New Start - Stations/Stops/Terminals
134-00 New Start - Support Equipment/Facilities

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

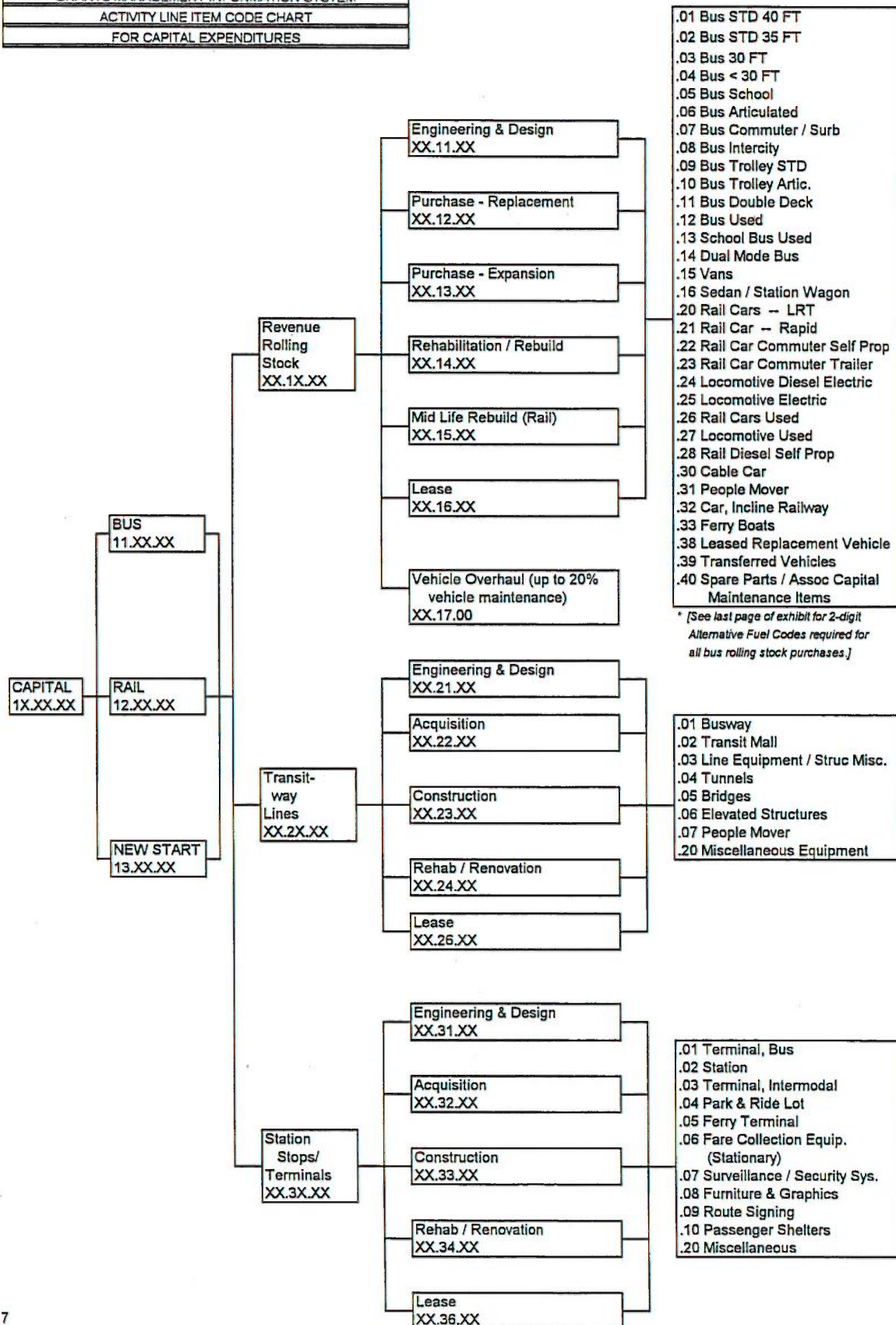
- 993-00 ITS Fleet Management
- 994-00 ITS Electronic Fare Collection

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

Federal Transit Administration
Scope & Activity Line Item Codes

Effective 10/1/98

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

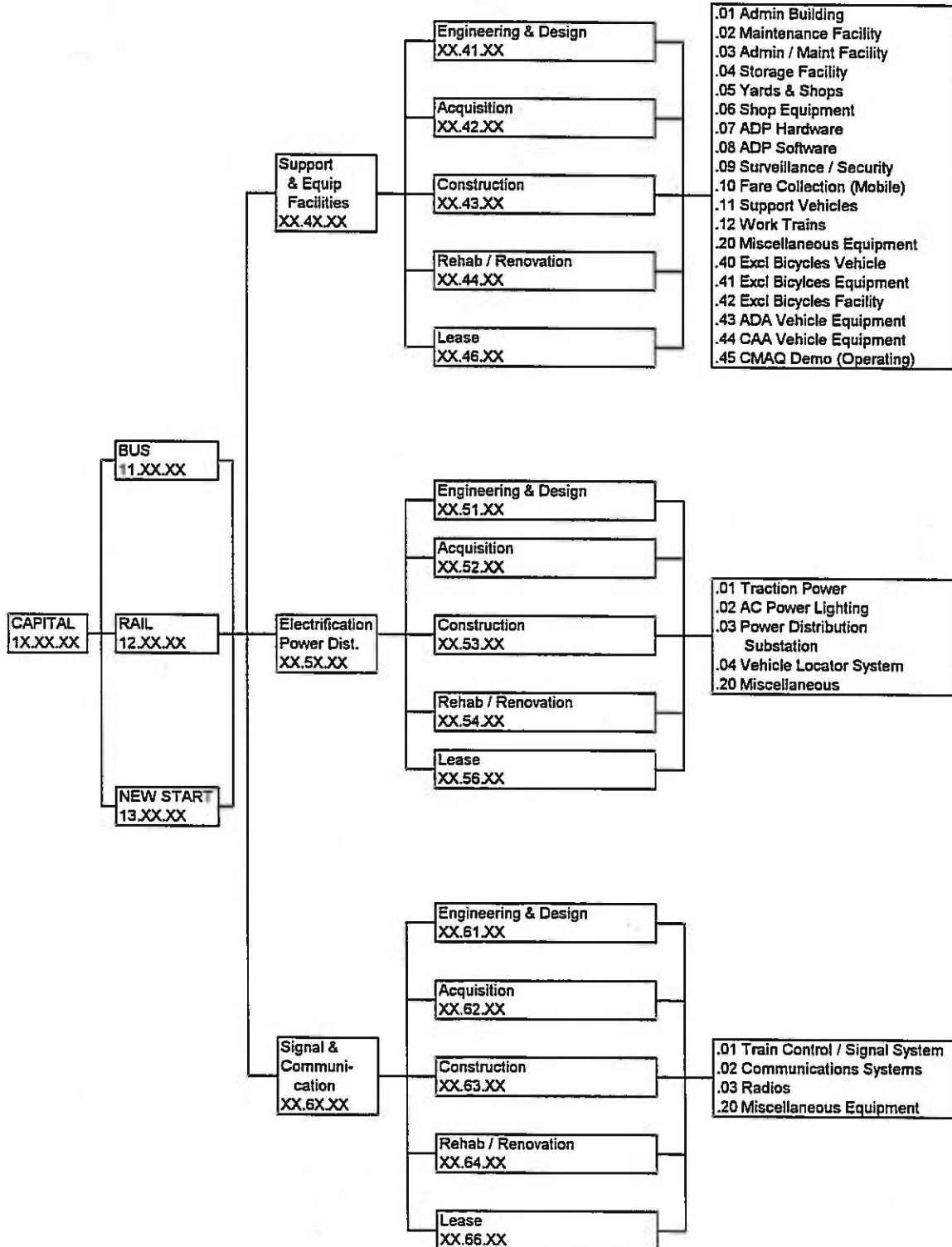


* [See last page of exhibit for 2-digit Alternative Fuel Codes required for all bus rolling stock purchases.]

**Federal Transit Administration
Scope & Activity Line Item Codes**

Effective 10/1/98

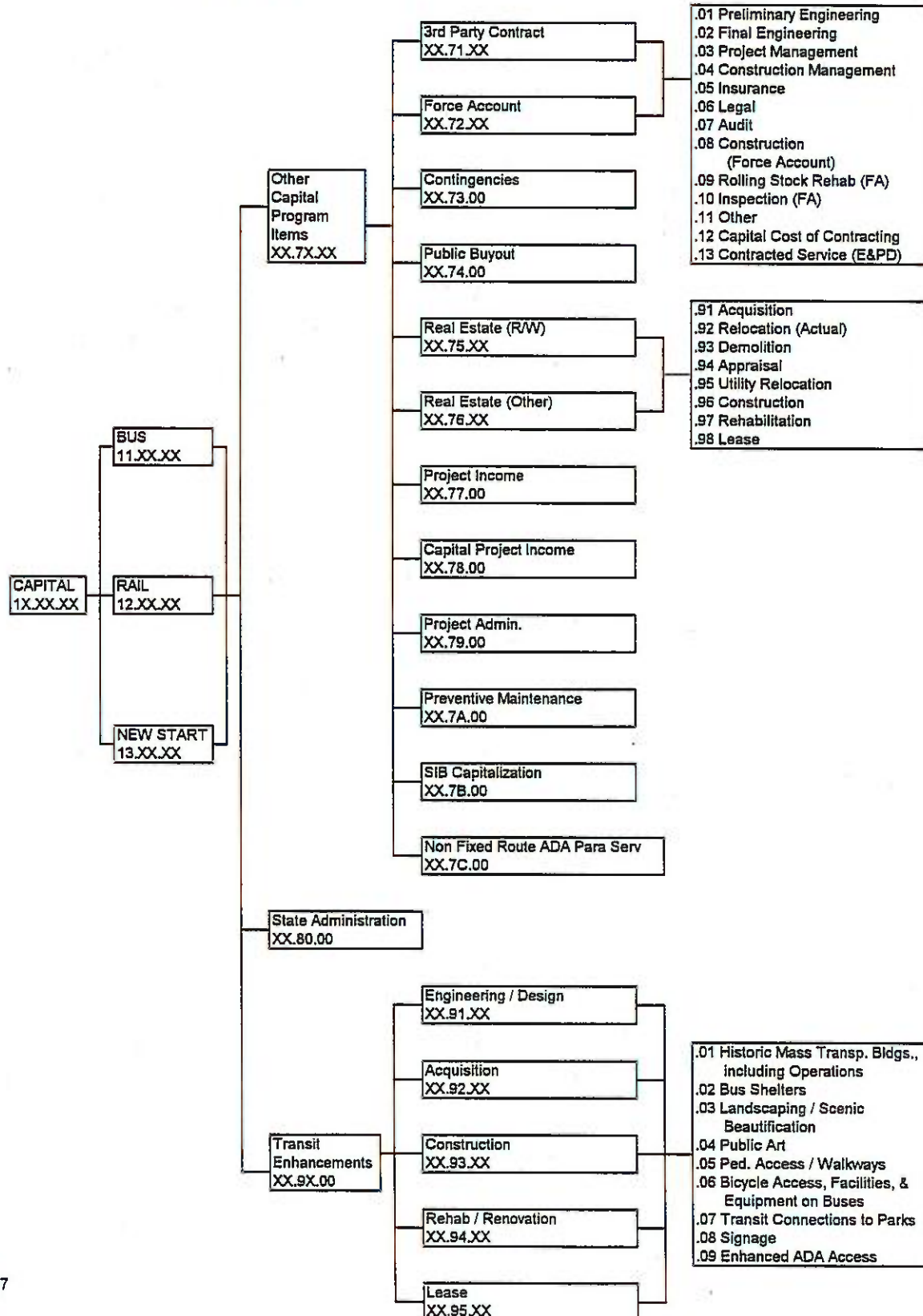
GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES



**Federal Transit Administration
Scope & Activity Line Item Codes**

Effective 10/1/98

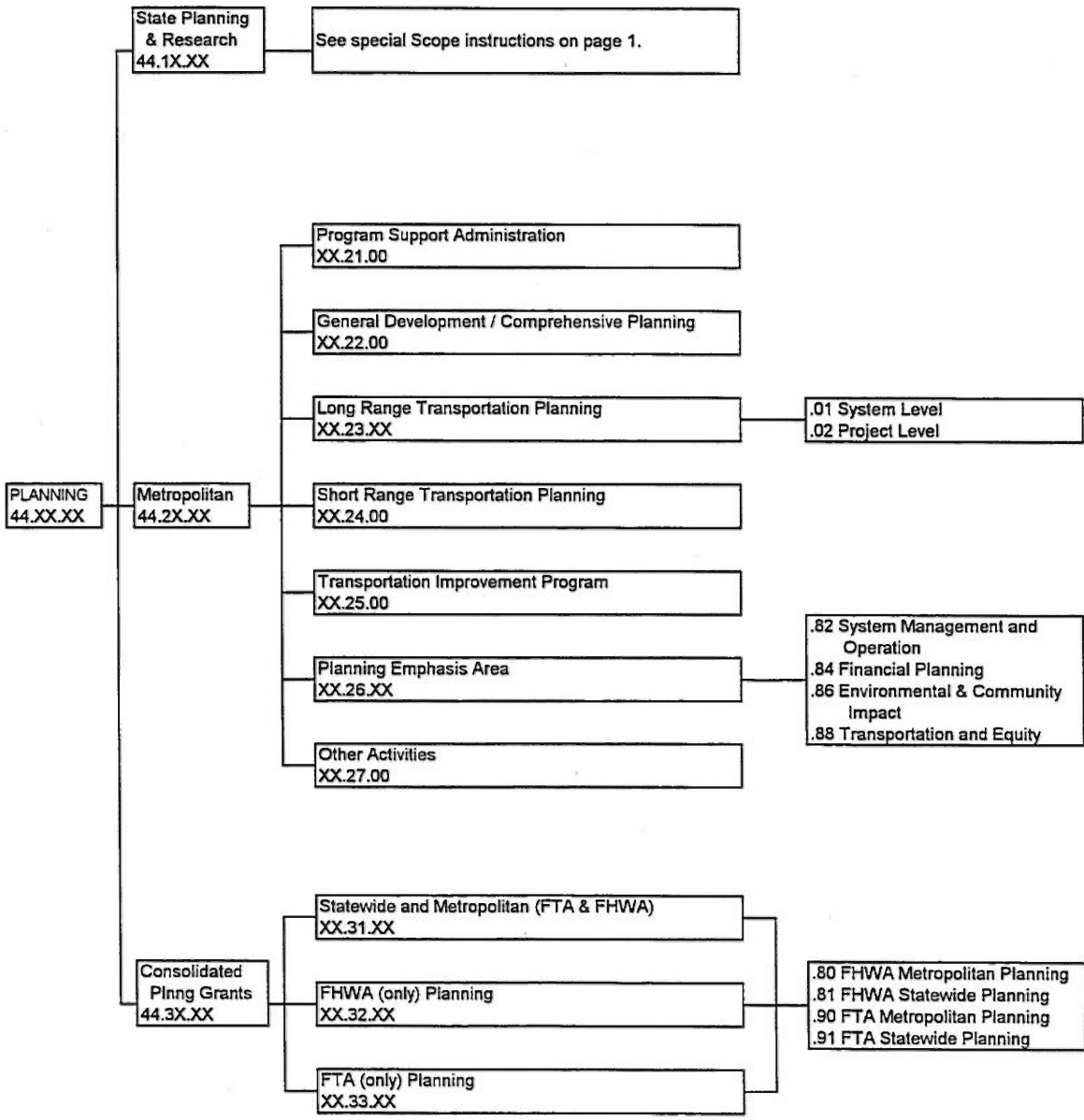
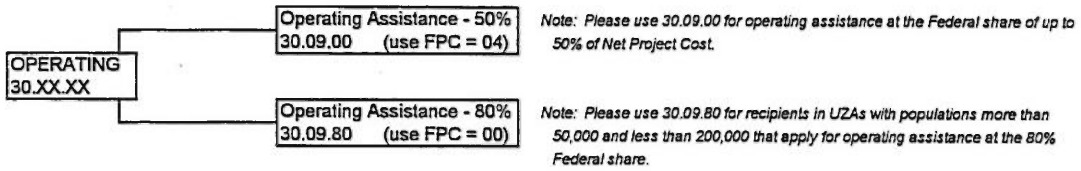
GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR CAPITAL EXPENDITURES



**Federal Transit Administration
Scope & Activity Line Item Codes**

Effective 10/1/98

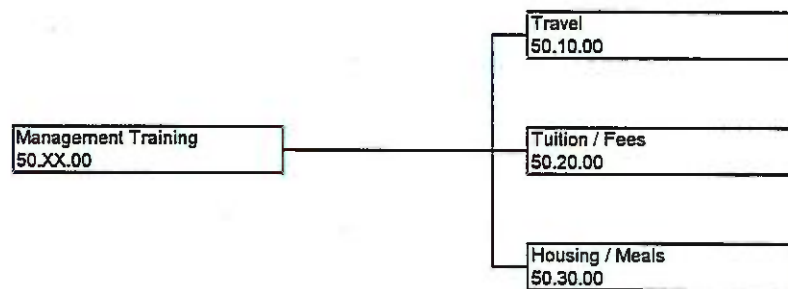
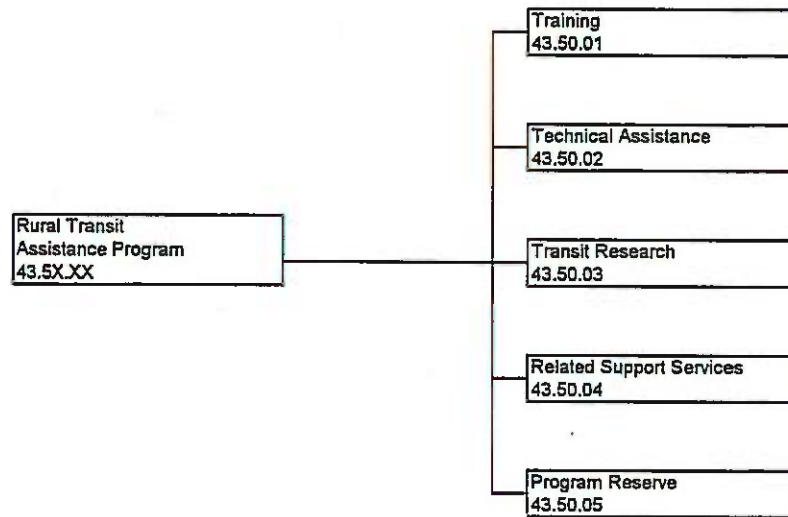
GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR OPERATING AND PLANNING EXPENDITURES



**Federal Transit Administration
Scope & Activity Line Item Codes**

Effective 10/1/98

GRANTS MANAGEMENT INFORMATION SYSTEM
ACTIVITY LINE ITEM CODE CHART
FOR RTAP AND MANAGEMENT TRAINING



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
ALTERNATIVE FUEL TYPE CODES
FOR BUS PURCHASES

- | |
|--------------------------------|
| DF - DIESEL FUEL |
| DP - DIESEL (PARTICULATE TRAP) |
| CN - COMPRESSED NATURAL GAS |
| LN - LIQUEFIED NATURAL GAS |
| LP - LIQUEFIED PETROLEUM GAS |
| MT - METHANOL |
| ET - ETHANOL |
| EP - ELECTRIC PROPULSION |
| GA - GASOLINE |
| BF - BUNKER FUEL |
| OR - OTHER |

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
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• Project Milestone Schedule	IX-17
• Proceeds from Sale of Assets	IX-19



OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction Preapplication <input type="checkbox"/> 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): [][] - [][][][][][][][][][][]		7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>	
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision enter appropriate letter(s) in boxes: <input type="checkbox"/> <input type="checkbox"/> A Increase Award B Decrease Award C Increase Duration D Decrease Duration Other (specify) _____		A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____	
		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: [][] a [][][]		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
TITLE:			
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)			
13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a Applicant	b Project
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a Federal	\$.00	a YES. THIS PREAPPLICATION APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b Applicant	\$.00	b NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372	
c State	\$.00	<input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d Local	\$.00		
e Other	\$.00		
f Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
g TOTAL	\$.00	<input type="checkbox"/> Yes If "Yes," attach an explanation <input type="checkbox"/> No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED			
a Typed Name of Authorized Representative		b Title	c Telephone number
d Signature of Authorized Representative			e Date Signed

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

(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)

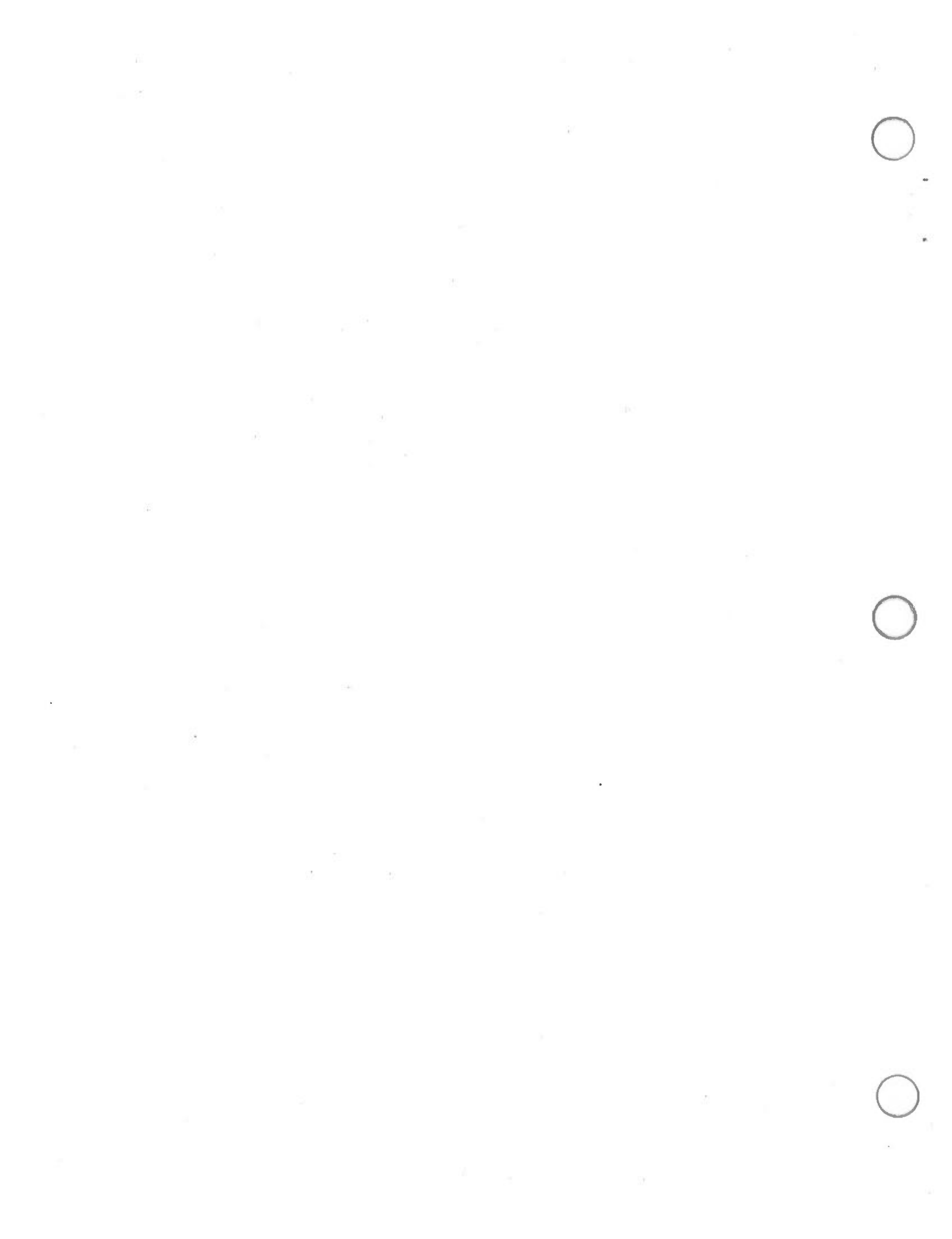
(Date)



(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>Manufacture</u>	<u>Number (VIN)</u>	<u>Placed in</u>	<u>Mo./Yr. to be taken</u>	<u>Grant</u>
<u>Make/Model</u>	<u>Number (VIN)</u>	<u>Rev. Service</u>	<u>Out of Rev. Service</u>	<u>Purchased Under</u>
		<u>Rev. Miles</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).



DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 Page IX-11
(See reverse for public burden disclosure.)

<p>1. Type of Federal Action:</p> <p><input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance</p>	<p>2. Status of Federal Action:</p> <p><input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award</p>	<p>3. Report Type:</p> <p><input type="checkbox"/> a. Initial filing <input type="checkbox"/> b. material change</p> <p>For Material Change Only: year _____ quarter _____ date of last report _____</p>
<p>4. Name and Address of Reporting Entity:</p> <p><input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:</p> <p>Congressional District, if known: _____</p>	<p>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</p> <p>Congressional District, if known: _____</p>	
<p>6. Federal Department/Agency:</p>	<p>7. Federal Program Name/Description:</p> <p>CFDA Number, if applicable: _____</p>	
<p>8. Federal Action Number, if known:</p>	<p>9. Award Amount, if known:</p> <p>\$ _____</p>	
<p>10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):</p> <p>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</p> <p style="text-align: center;"><small>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</small></p>		
<p>11. Amount of Payment (check all that apply):</p> <p>\$ _____ <input type="checkbox"/> actual <input type="checkbox"/> planned</p>	<p>13. Type of Payment (check all that apply):</p> <p><input type="checkbox"/> a. retainer <input type="checkbox"/> b. one-time fee <input type="checkbox"/> c. commission <input type="checkbox"/> d. contingent fee <input type="checkbox"/> e. deferred <input type="checkbox"/> f. other; specify: _____</p>	
<p>12. Form of Payment (check all that apply):</p> <p><input type="checkbox"/> a. cash <input type="checkbox"/> b. in-kind; specify: nature _____ value _____</p>		
<p>14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:</p> <p style="text-align: center;"><small>(attach Continuation Sheet(s) SF-LLL-A, if necessary)</small></p>		
<p>15. Continuation Sheet(s) SF-LLL-A attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		
<p>16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the clerks above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.</p>		
<p>Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____</p>		

**DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET**

Approved by OMB
0348-0046

Reporting Entity: _____

Page _____ of _____

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 (0348-0046), 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

PROJECT MILESTONE SCHEDULE (SAMPLE) (con't)

MILESTONE SCHEDULE:

<u>Line Item Description</u>	<u>Milestone Description</u>	<u>Date</u>
<i>Planning Assistance:</i>		
Needs Assessment for Maintenance Facility	RFP advertised	Dec. 1994
	Contract awarded	March 1995
	Study completed	July 1995
<i>Operating Assistance:</i>		
Op. Asst. for FY 1996	Final Disbursement	Sept. 1996

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.

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

Project Control Totals:

Total Cost	\$250,000	
Adjustment Amount	-\$50,000	<i>(proceeds from sale of asset)</i>
Eligible Project Cost	\$200,000	<i>(Net Project Cost)</i>
Total FTA Amount	\$160,000	<i>(80% of \$200,000)</i>
Total State Amount		<i>(not applicable for the example)</i>
Total Local Amount:	\$40,000	<i>(20% of \$200,000)</i>
Other Fed. Funds:		<i>(not applicable for the example)</i>
Special Condition Amount		<i>(not applicable for the example)</i>

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

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

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

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

**Philadelphia
Metropolitan Office**

1760 Market Street
Suite 510
Philadelphia, PA
19103-4124

Tel. No. 215 - 656-7070

Region 4 - Atlanta

61 Forsyth Street, S.W.
Suite 17T50
Atlanta, GA.
30303-8917

Tel. No. 404-562-3500
TDD No. 404-562-3481*
Fax No. 404-562-3505

Areas served: North Carolina,
Kentucky, Tennessee, South
Carolina, Alabama, Georgia,
Florida, Mississippi, and Puerto
Rico

Region 5 - Chicago

200 W. Adams Street
Suite 2410
Chicago, IL
60606-5232

Tel. No. 312-353-2789
TDD No. 312-353-1653*
Fax No. 312-886-0351

Areas served: Illinois, Ohio,
Minnesota, Wisconsin,
Indiana, and Michigan

**Chicago Metropolitan
Office**

200 W. Adams Street
Suite 2410, 24th Floor
Chicago, IL
60606-5232

Tel. No. 312-886-1616

* Telecommunication
device for the deaf

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

*Telecommunication
device for the deaf

Region 9 - San Francisco

201 Mission Street
Room 2210
San Francisco, CA
94105-1800

Tel. No. 415-744-3133
TDD No. 415-744-3113*
Fax No. 415-744-2726

Areas served: California, Arizona,
Nevada, Hawaii, Guam, American
Samoa, and the Northern Mariana
Islands

**Los Angeles
Metropolitan Office**

201 North Figueroa
Suite 1460
Los Angeles, CA
90012

Tel. No. 213-202-3950
Fax No. 213-202-3969

Region 10 - Seattle

Jackson Federal Building
915 Second Avenue, Suite 3142
Seattle, WA
98174-1002

Tel. No. 206-220-7954
TDD No. 206-220-7961*
Fax. No. 206-220-7959

Areas served: Washington,
Oregon, Idaho, and Alaska

* Telecommunication
device for the deaf

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

4. defined by 23 C.F.R.
§ 450.104

the local MPO's planning activities, specifically in both the development of the metropolitan transportation plan⁴ (hereinafter referred to as the "metropolitan long-range transportation plan") and the development of the TIP to ensure that proposed projects are adequately considered for inclusion in the TIP and STIP. A potential Capital Program grant applicant from a nonurbanized area is encouraged to follow a similar process.

5. 49 U.S.C. § 5303(f)

3. LONG-RANGE TRANSPORTATION PLANNING.

a. Metropolitan.⁵ Each MPO is required to develop and update periodically a metropolitan long-range transportation plan covering a forecast period of at least 20 years. New start projects and other major facilities projects earmarked in Federal authorizing legislation (i.e., the Transportation Equity Act for the 21st Century), should be addressed in the metropolitan long-range transportation plan.

6. 23 C.F.R. § 450.214

b. State.⁶ Each state is required to develop and update periodically a statewide transportation plan, hereinafter referred to as the "statewide long-range transportation plan" because this plan also must cover a forecast period of at least 20 years. The state must integrate each metropolitan long-range transportation plan submitted by the state's MPOs into a consistent statewide long-range transportation plan.

7. 23 C.F.R.
§ 450.322(d)

4. METROPOLITAN LONG-RANGE TRANSPORTATION PLANNING IN AN

AIR QUALITY "NONATTAINMENT AREA." Each MPO serving an area designated by EPA as a nonattainment or maintenance area for purposes of the Clean Air Act, as amended, due to transportation-related pollutants (such as ozone or carbon monoxide), must coordinate development of its metropolitan long-range transportation plan with development of the state (air quality) implementation plan (SIP)⁷. Before the MPO approves the metropolitan long-range transportation plan, the MPO must first provide a reasonable opportunity for interested parties to comment on that plan, including an opportunity for at least one formal public meeting annually to review planning assumptions and plan development for each nonattainment transportation management area (TMA).⁸ FTA and FHWA then must review and evaluate the MPO's "conformity finding" for the metropolitan long-range transportation plan -- i.e., a finding that the metropolitan long-range transportation plan conforms with the SIP. Other air quality requirements applicable to a TMA in a nonattainment or maintenance area are discussed in paragraph 8 of this appendix.

8. 23 C.F.R.
§ 450.322(c)

9. 23 C.F.R. § 450.314

5. UNIFIED PLANNING WORK PROGRAM. Unless FHWA and FTA permit an MPO to submit a simplified statement of work describing the planning activities for which it seeks Federal assistance, the MPO must develop a Unified Planning Work Program (UPWP), which addresses transportation planning activities to be undertaken in the next one or two-year period.⁹ FTA makes Metropolitan

Planning Program grants to states, which in turn pass through financial assistance to MPOs to support the costs of developing and implementing UPWPs.¹⁰ 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

10. 49 U.S.C.
§ 5303(g)

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

as in other metropolitan areas designated as TMA's. For an area with a population of less than 200,000 and not designated a TMA, project selection is carried out by the state and/or the transit operator in consultation with the MPO. Documentation for project selection must be forwarded to FTA.

FTA provides Capital Program assistance only for those projects included in the TIP and/or STIP (see paragraph below) applicable to the fiscal year for which the grant applicant requests assistance. If, for any reason, FTA does not grant available Capital Program assistance for a specific project as requested, FTA does not consider the project as remaining eligible, absent rare circumstances. Thus, if a request for that Capital Program assistance is re-submitted in a later fiscal year, the TIP and/or STIP must include that project on the list for the later year, reflecting the fact that available Capital Program assistance not granted in the past as requested continues to be desired.

13. 23 C.F.R.
§ 450.216

14. 49 U.S.C.
chapter 53 consists of
codified Federal
transit law and related
laws.

15. Title 23 U.S.C.
consists of the codified
Federal highway and
surface transportation
laws.

16. 49 U.S.C.
§ 5305(a)

7. STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM. A statewide transportation improvement program (STIP) must be prepared and approved by FHWA and FTA¹³ before Federal assistance authorized by 49 U.S.C. chapter 53¹⁴ or Title 23 U.S.C.¹⁵ may be awarded. Among other things, the STIP consists of unmodified TIPs, approved by both the MPO and chief executive officer of the state. TIPs for nonattainment and maintenance areas, however, may not be included in the STIP until the requisite air quality conformity findings are made by FTA and FHWA. A multi-year STIP should be developed with proposed projects and funding sources identified for each year. Transit projects must be selected in accordance with requirements of the specific funding programs. Each project in the grant application must be included in Year 1 of the approved STIP before FTA may award a grant for that project, or be moved from Years 2 and 3 into Year 1 using project selection procedures. If the STIP is used for two years, then each project must be included, as appropriate, in years 1 or 2.
8. TRANSPORTATION MANAGEMENT AREAS. The Secretary of Transportation is required to designate each area with more than 200,000 in population as a TMA. Upon request by the chief executive officer of the state and the MPO, the Secretary of Transportation may also designate an area with 200,000 or less population as a TMA¹⁶. Within a TMA, the metropolitan long-range transportation plans and TIPs must be based on a continuing and comprehensive transportation planning process carried out by the MPO in cooperation with the state and transit operators.

For a TMA classified by EPA as a nonattainment or maintenance area for purposes of the Clean Air Act, as amended, Federal assistance funds may not be included in the TIP or STIP for any project that will result in a significant

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

- (2) It establishes new or enhanced coordination between mass transportation and other transportation; and,
- (3) It provides a fair share of revenue for mass transportation use.

4. OTHER DEFINITIONS RELATED TO THE CAPITAL PROJECT DEFINITION.

- a. *Physically Related.* A project is physically related to a capital project if it provides a direct physical connection with transit services or facilities. This includes projects using air rights over transit stations or projects built within or adjacent to transit facilities.
- b. *Functionally Related.* A project is functionally related to a capital project if it is related by activity and use, and it is functionally linked (with or without a direct physical connection) to transit services or facilities. Also, a project is functionally related to a capital project if it provides a beneficial service to the public (or community service) and enhances use of or access to transit. Functional relationships do not extend beyond the distance most people reasonably can be expected to walk to use a transit service. The eligible project area for a functionally related project is estimated to be within a radius of approximately 1,500 feet from the center of a transit facility. The eligible project area for a functionally related project will be identified by the grantee in consultation with FTA's Regional Office on a case-by-case basis.

5. FINANCIAL RETURN REQUIREMENTS.

- a. Each grantee must negotiate a fair and equitable return in the form of cash and other benefits to be generated as a result of the FTA investment.
- b. All projects must generate a one-time payment or ongoing revenue stream for transit use, the present value of which equals or exceeds the fair market value of the property. See paragraph 6 for discussion of fair market value.
- c. After October 1, 1996, all FTA Master Agreements allow the use of real property for appropriate project purposes "including joint development purposes that generate program income to support transit purposes;" this is the Federal agency authorization required by 49 C.F.R. 18.25(g)(2) by which the revenues are brought within the definition of program income and can be used for transit capital, planning, and operating purposes. While a grant is still open, the transit agency must apply all revenues from any *sale* of real property (which does not qualify as a joint development *transfer*) to the grant purposes, or must return the revenues to FTA, or must obtain FTA approval to use the revenue to reduce gross project costs in another capital project⁴. If the transit agency transfers an Assisted Real Estate Asset from an open grant and maintains continuing control and otherwise meets the three joint

4. See chapter II of FTA Circular 5010.1C, "Grant Management Guidelines," regarding use of sales proceeds.

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)

greatest level of social, economic, and financial benefit to the transit system and the community that it serves.

- b. If the grantee structures a joint development project to include the transfer of an Assisted Real Estate Asset, then the final transfer value must be based on competition to the extent practicable, and FTA concurrence in the final transfer value is required.

7. Urbanized Area Formula Program funds (49 U.S.C. §5307) and, with limitations, funds from the Nonurbanized Area Formula Program (49 U.S.C. §5311), the Metropolitan Planning Program (49 U.S.C. § 5303), and the State Planning and Research Program (49 U.S.C. § 5313(b)).

- 7. ELIGIBLE COSTS FOR JOINT DEVELOPMENT PROJECTS. Eligible project costs for joint development projects include, but are not limited to, the following:
 - a. Design, engineering, and environmental analyses, as appropriate. (Formula program funds are more appropriate for planning and feasibility analysis.)⁷
 - b. Real estate packaging for a specific joint development project including preliminary design and engineering; estimates of operating income and expenses and capital costs; and negotiations to secure financing, developers, and prime tenants.
 - c. Land acquisition, relocation, demolition of existing improvements, and site preparation, as appropriate.
 - d. Foundations and substructure improvements for buildings over transit facilities.
 - e. Open space, and pedestrian connections and access links between transit services and related development.
 - f. Other facilities and infrastructure investments needed to induce significant private investment and to improve access between new or existing development and transit facilities.
 - g. Utility work. The eligibility of costs of utility work associated with private investment will be considered on a case-by-case basis. FTA grant funds will pay for costs of utility work that are attributable to non-FTA project purposes only when--
 - (1) The utility services a joint private and transit use; or
 - (2) The utility lines will be located under a co-located street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.
 - h. Safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications).
 - i. Facilities that incorporate community services such as daycare or health care.
 - j. Parking elements. All FTA participation in financing parking improvements must have a public transit justification and use. Parking elements of joint

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

the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed;

- (3) language contained in the FTA MA(4), dated October 1, 1997, and found in Section 3 Subparagraphs (a)(1), (a)(2), and (b) thereof relating to conflicts of interest and debarment.
- b. If the construction of improvements is also federally assisted, then in addition to paragraph 9a above, at least the following requirements also will apply and must be incorporated into the lease or the conveyance instrument:
- (1) Buy America - language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661. The reader is referred to Chapter VI, paragraph 15 of this circular for further information about Buy America requirements.
 - (2) Planning and Environmental Analysis - language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of: the FHWA/FTA metropolitan and statewide planning regulations at 23 C.F.R. Part 450; the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq. ("NEPA"); Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994; FTA statutory requirements on environmental matters at 49 U.S.C.5324(b); Council on Environmental Quality regulations on compliance with the NEPA, 40 C.F.R. 1500 et seq.; FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771; Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106, "Protection of Historic and Cultural Properties," 36 C.F.R. 800; and restrictions on the use of certain publicly owned lands unless the FTA makes the specific findings required by 49 U.S.C. 303.
 - (3) Cargo Preference - language making it clear that items imported from abroad and used in the joint development were shipped predominantly on U.S.-flag ships and that the project complies with 46 C.F.R. Part 381, to the extent these regulations apply to the joint development.
 - (4) Seismic Safety - language certifying that a structure conforms to seismic safety standards, as contained in 49 C.F.R. Part 41.
 - (5) Energy Conservation and Recycled Products - Transferee(s) or joint developer agrees to comply with the mandatory energy efficiency standards and policies within the applicable state energy conservation

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.

The statements included in this appendix reflect typical project situations. Instructions given and policy statements appearing in the circular are not intended to be read as inflexible FTA mandates. They are instead set forth as guidelines which FTA generally applies to typical projects. Early dialogue with the FTA Regional Office will clarify the degree to which a new joint development project conforms to, or differs from, previous FTA experience.

11. FREQUENTLY ASKED QUESTIONS AND SOME PRACTICAL EXAMPLES.

- a. What is joint development? It is an income-producing activity involving a third party, taking place on or with an Assisted Real Estate Asset (described in paragraph 2 above). The third party is the source of the income to the grantee; the third party is the party to whom the property is transferred or the lessee who leases the space.
- b. What is the limitation on new improvements for joint development? The purpose of the Joint Development Policy is to facilitate the use of an Assisted Real Estate Asset for transit oriented joint development. Thus, FTA will support, or allow the use of grant funds for, the construction of a structure that includes a transit facility. However, FTA is unlikely to allow FTA grant funds to support a free-standing facility (such as an apartment building or an office tower) that is not part of a transit facility. (See question 11f for the definition of a shell for joint development.)
- c. Does joint development require a private or nonprofit developer? Not really. The third party's role need not be that of developer; it may be that of a lessee. For example, the transit agency can lease out its excess space to a senior care or day care provider, in which case the transit agency is the "developer" under FTA's policy. If, however, the project is to build an office/retail complex in the air space above a transit station, only a very large transit agency will have the means to borrow the sums necessary to build and finance the structure. It will be much easier (though not absolutely necessary) to have a private partner who builds and manages the development.

One transit authority has created a private subsidiary (limited partnership) to assist it in developing property around an historic central station. This project will create six floors of multi-family rental housing. The project will be financed with a combination of historic preservation tax credits, low-income housing tax credits, and mortgage revenue bonds issued by the city. The transit operator is also a partner in the joint development. The transit operator will receive a share of the project revenues for the life of the limited partnership.

- d. What is highest and best transit use? A property's highest and best use is the use--from among reasonably probable and legal alternative uses that are

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

partition walls, furniture, equipment, shelving, lighting, drapes, floor coverings, and other items specific to the business intended to be operated.

A Neighborhood Travel and Jobs Center involved just such a development. There, the local transit authority was allowed to convert an existing office building into a \$3 million Neighborhood Travel Center. The center will serve as a terminal for bus lines to industrial jobs and will provide the focus for a downtown redevelopment "campus" including jobs training, child care facilities, and a privately-financed development bank. The tenant finishes for each of these ancillary activities will be paid for with non-grant funds, though grant funds were used to rehabilitate the building itself. The tenants will pay market rate rent to the transit authority.

- g. What is the difference between a sale and a joint development transfer? A sale does not involve continuing control of the real property by the grantee and fails to establish a nexus between the Assisted Real Estate Asset and an ongoing transit purpose as outlined in paragraph 3 of this appendix. Proceeds from a sale are not program income and must be returned to FTA pursuant to 49 CFR 18.31(c)(2).

In contrast, a joint development transfer meets the statutory definition test outlined in paragraph 3 of this appendix, the grantee exercises continuing control over the transferred real estate, and the financial and highest and best use tests of the Joint Development Policy are met. The proceeds from a joint development transfer are considered program income, which may be retained by the grantee. (See paragraph 5c.)

Here is an example of a joint development transfer: a rapid rail station includes 6.3 acres for a "park and ride" area. A developer has been approved to build 160 residential units and 17,000 square feet of service retail space on a portion of this area. The transit operator transfers 3.4 acres to the developer for use in the joint development. The development will generate more transit trips and more non-fare revenue than the displaced parking spaces provided. The transit agency will retain the income generated from this land transfer as program income and will be assured of satisfactory continuing control through covenants running with the land. Should the developer re-sell the land in the future, the covenants bind the next owner to a transit-oriented use of the land.

- h. Will NEPA and other Federal cross-cutting requirements discourage private participation? It is the will of the Congress that the Federal cross-cutting requirements govern grantees' use of FTA's financial assistance. To the extent that a grantee joins with a private or nonprofit developer to undertake joint development using FTA grant funds in whole or in part for the improvements to the site, it is that grantee's role to obtain the grant funds necessary to make the joint development financially feasible and to supply its

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 Program ¹ 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).

5. 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.
6. 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.
7. SUPPLEMENTARY INFORMATION. FTA's assistance programs, to which the certifications and assurances apply, include Capital Program Grants; Research, Development and Demonstration Grants; Metropolitan Planning Grants; Formula Assistance Grants for Urbanized Areas; Grants for Training Programs; Formula Assistance Grants for the Elderly and Persons With Disabilities; Formula Assistance Grants for Nonurbanized Areas; Human Resource Grants; and Planning and Research Grants. FTA also uses these certifications and assurances for Federal assistance programs authorized by Title 23, United States Code administered by FTA.

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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

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of Federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, state, or local) with commission of any of the offenses listed in paragraph (2) of this certification; and

(d) Have not within a three-year period preceding this certification had one or more public transactions (Federal, state, or local) terminated for cause or default.

(2) The Applicant also certifies that if, later, it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to FTA.

(3) If the Applicant (Primary Participant) is unable to certify to the statements within paragraphs (1) and (2) above, it shall indicate so on its Signature Page and provide a written explanation to FTA.

D. Drug-Free Workplace Certification

As required by U.S. DOT regulations on Drug-Free Workplace Requirements (Grants) at 49 CFR 29.630, the Applicant certifies that it will provide a drug-free workplace by:

(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Applicant's workplace and specifying the actions that will be taken against its employees for violation of that prohibition;

(2) Establishing an ongoing drug-free awareness program to inform its employees about: (a) the dangers of drug abuse in the workplace; (b) the Applicant's policy of maintaining a drug-free workplace; (c) any available drug counseling, rehabilitation, and employee assistance programs; and (d) the penalties that may be imposed upon its employees for drug abuse violations occurring in the workplace;

(3) Making it a requirement that each of its employees to be engaged in the performance of the grant or cooperative agreement be given a copy of the statement required by paragraph (1);

(4) Notifying each of its employees in the statement required by paragraph (1) that, as a condition of employment financed with Federal assistance provided by the grant or cooperative agreement, the employee will: (a) abide by the terms of the statement, and (b) notify the employer (Applicant) in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than 5 calendar days after that conviction;

(5) Notifying FTA in writing, within 10 calendar days after receiving notice required by paragraph (4)(b) above from an employee or otherwise receiving actual notice of that conviction.

The Applicant, which is the employer of any convicted employee must provide notice, including position title, to every project officer or other designee on whose project activity the Applicant's convicted employee was working. Notice shall include the identification number(s) of each affected grant or cooperative agreement.

(6) Taking one of the following actions within 30 calendar days of receiving notice under paragraph (4)(b) above with respect to any employee who is so convicted: (a) by taking appropriate personnel action against that employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended, or (b) by requiring that employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency;

(7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6) above.

The Applicant has or will provide to FTA a list identifying its headquarters location and each workplace it maintains in which project activities supported by FTA are conducted.

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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

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implementing the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, at 49 CFR parts 27, 37, and 38, and any applicable regulations and directives issued by other Federal departments or agencies.

H. Procurement Compliance

The Applicant certifies 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. The Applicant certifies that it will include in its contracts financed in whole or in part with FTA assistance all clauses required by Federal laws, executive orders, or regulations, and will ensure that each subrecipient and contractor will also include in its subagreements and contracts financed in whole or in part with FTA assistance all applicable clauses required by Federal laws, executive orders, or regulations.

II. LOBBYING CERTIFICATION FOR AN APPLICATION EXCEEDING \$100,000

An Applicant that submits, or intends to submit this fiscal year, an application for Federal assistance exceeding \$100,000 must provide the following certification. FTA may not provide Federal assistance for an application exceeding \$100,000 until the Applicant provides this certification by selecting Category II on the Signature Page.

A. As required by U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application for a Federal assistance exceeding \$100,000: (1) No Federal appropriated funds have been or will be paid, by or on behalf of the Applicant, to any person 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 pertaining to the award of any Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and (2) If any funds other than Federal appropriated funds have been or will be paid to any person 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 any application to FTA for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including the information required by the form's instructions, which may be amended to omit such information as permitted by 31 U.S.C. 1352.

B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

III. EFFECTS ON PRIVATE MASS TRANSPORTATION COMPANIES

An Applicant that is a state or local government seeking Federal assistance under 49 U.S.C. chapter 53 to acquire property or an interest in property of a private mass transportation company or operate mass transportation equipment or a facility in competition with or in addition to transportation service provided by an existing mass transportation company must provide the following certification. FTA may not award that Federal assistance until the Applicant provides this certification by selecting Category III on the Signature Page.

As required by 49 U.S.C. 5323(a)(1)(B) or 5323(a)(1)(C), the Applicant certifies that before it acquires property or an interest in property of a private mass transportation company or operates mass transportation equipment or a

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):

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- A. The model of the bus will have been tested at a bus testing facility approved by FTA; and
- B. It will have received a copy of the test report prepared on the bus model.

VII. CHARTER SERVICE AGREEMENT

An Applicant seeking FTA assistance to acquire or operate transportation equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 (except 49 U.S.C. 5310) or Title 23, U.S.C. must enter into the following charter service agreement. FTA may not provide assistance for those projects until the Applicant enters into this agreement by selecting Category VII on the Signature Page.

- A. As required by 49 U.S.C. 5323(d) and FTA regulations, "Charter Service," at 49 CFR 604.7, the Applicant agrees that it and its recipients will: (1) provide charter service that uses equipment or facilities acquired with Federal assistance authorized for 49 U.S.C. 5307, 5309, or 5311 or Title 23 U.S.C., only to the extent that there are no private charter service operators willing and able to provide the charter service that it or its recipients desire to provide, unless one or more of the exceptions in 49 CFR 604.9 applies, and (2) comply with the provisions of 49 CFR part 604 before they provide any charter service using equipment or facilities acquired with Federal assistance authorized for the above statutes.
- B. The Applicant understands that the requirements of 49 CFR part 604 will apply to any charter service provided, the definitions in 49 CFR part 604 apply to this agreement, and violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

VIII. SCHOOL TRANSPORTATION AGREEMENT

An Applicant seeking FTA assistance to acquire or operate transportation facilities and equipment acquired with Federal assistance authorized by 49 U.S.C. chapter 53 must agree as follows. FTA may not provide assistance for transportation facilities until the Applicant enters into this Agreement by selecting Category VIII on the Signature Page.

- A. As required by 49 U.S.C. 5323(f) and FTA regulations, "School Bus Operations," at 49 CFR 605.14, the Applicant agrees that it and all its recipients will: (1) engage in school transportation operations in competition with private school transportation operators only to the extent permitted by an exception provided by 49 U.S.C. 5323(f), and implementing regulations, and
(2) comply with the requirements of 49 CFR part 605 before providing any school transportation using equipment or facilities acquired with Federal assistance authorized by 49 U.S.C. chapter 53 or Title 23 U.S.C. awarded by FTA for transportation projects.
- B. The Applicant understands that the requirements of 49 CFR part 605 will apply to any school transportation it provides, the definitions of 49 CFR part 605 apply to this school transportation agreement, and a violation of this agreement may require corrective measures and the imposition of penalties, including debarment from the receipt of further Federal assistance for transportation.

IX. CERTIFICATION REQUIRED FOR THE DIRECT AWARD OF FTA ASSISTANCE TO AN APPLICANT FOR ITS DEMAND RESPONSIVE SERVICE

An Applicant seeking direct Federal assistance to support its demand responsive service must provide the following certification. FTA may not award Federal assistance directly to an Applicant to support its demand responsive service until the Applicant provides this certification by selecting Category IX on the Signature Page.

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.

EXAMPLE ONLY

4601 et seq., and U.S. DOT regulations, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs," 49 CFR part 24 including, but not limited to the following:

- (1) The Applicant will adequately inform each affected person of the benefits, policies, and procedures provided for in 49 CFR part 24;
- (2) The Applicant will provide fair and reasonable relocation payments and assistance required by 42 U.S.C. 4622, 4623, and 4624; 49 CFR part 24; and any applicable FTA procedures, to or for families, individuals, partnerships, corporations or associations displaced as a result of any project financed with FTA assistance;
- (3) The Applicant will provide relocation assistance programs offering the services described in 42 U.S.C. 4625 to such displaced families, individuals, partnerships, corporations or associations in the manner provided in 49 CFR part 24 and FTA procedures;
- (4) Within a reasonable time before displacement, the Applicant will make available comparable replacement dwellings to displaced families and individuals as required by 42 U.S.C. 4625(c)(3);
- (5) The Applicant will carry out the relocation process in such a manner as to provide displaced persons with uniform and consistent services, and will make available replacement housing in the same range of choices with respect to such housing to all displaced persons regardless of race, color, religion, or national origin; and
- (6) In acquiring real property, the Applicant will be guided to the greatest extent practicable under state law, by the real property acquisition policies of 42 U.S.C. 4651 and 4652;
- (7) The Applicant will pay or reimburse property owners for necessary expenses as specified in 42 U.S.C. 4653 and 4654, understanding that FTA will participate in the Applicant's costs of providing those payments and that assistance for the project as required by 42 U.S.C. 4631;
- (8) The Applicant will execute such amendments to third party contracts and subagreements financed with FTA assistance and execute, furnish, and be bound by such additional documents as FTA may determine necessary to effectuate or implement the assurances provided herein; and
- (9) The Applicant agrees to make these assurances part of or incorporate them by reference into any third party contract or subagreement, or any amendments thereto, relating to any project financed by FTA involving relocation or land acquisition and provide in any affected document that these relocation and land acquisition provisions shall supersede any conflicting provisions.

B. Flood Insurance Coverage

As required by section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a(a), the Applicant assures that in the course of implementing each project financed with Federal assistance, the Applicant will obtain appropriate insurance for any real estate acquired or construction undertaken thereon within any special flood hazard area as identified by the Federal Insurance Administrator. The Applicant understands that such insurance is available in the participating area through the U.S. Federal Emergency Management Agency's National Flood Insurance Program.

C. Seismic Assurance

As required by U.S. DOT regulations, "Seismic Safety," 49 CFR 41.117(d), the Applicant assures that before it accepts delivery of any building financed with Federal assistance provided by FTA, the Applicant will obtain a certificate of compliance with the seismic design and construction requirements of 49 CFR part 41.

EXAMPLE ONLYXII. 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.

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B. Certification Required for Capital Leasing

As required by FTA regulations, "Capital Leases," 49 CFR at 639.15(b)(1) and 639.21, to the extent that the Applicant uses Federal assistance authorized for 49 U.S.C. 5307 to acquire any capital asset by lease, the Applicant certifies that:

- (1) It will not use Federal assistance authorized for 49 U.S.C. 5307 to finance the cost of leasing any capital asset until it undertakes calculations demonstrating that it is more cost-effective to lease the capital asset than to purchase or construct similar assets;
- (2) It will complete these calculations before entering into the lease or before receiving a capital grant for the asset, whichever is later; and
- (3) It will not enter into a capital lease for which FTA can only provide incremental funding unless it has the financial capacity to meet its future obligations under the lease in the event Federal assistance is not available for capital projects in subsequent years.

C. Certification Required for Sole Source Purchase of Associated Capital Maintenance Item

As required by 49 U.S.C. 5325(c), to the extent that the Applicant procures an associated capital maintenance item under the authority of 49 U.S.C. 5307(b)(1), the Applicant certifies that it will use competition to procure an associated capital maintenance item unless the manufacturer or supplier of that item is the only source for the item and the price of the item is no more than the price similar customers pay for the item, and maintain sufficient records pertaining to each such procurement on file easily retrievable for FTA inspection.

**XIII. CERTIFICATIONS AND ASSURANCES FOR
THE ELDERLY AND PERSONS WITH DISABILITIES PROGRAM**

An Applicant that intends to administer, on behalf of the state, the Elderly and Persons with Disabilities Program must provide the following certifications and assurances. FTA may not award assistance for the Elderly and Persons with Disabilities Program until the Applicant provides these certifications and assurances by selecting Category XIII on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Elderly and Persons with Disabilities Program authorized by 49 U.S.C. 5310 certifies and assures that the following requirements and conditions will be fulfilled:

- A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized for 49 U.S.C. 5310; and to implement and manage the project.
- B. The state assures that each subrecipient either is recognized under state law as a private nonprofit organization with the legal capability to contract with the state to carry out the proposed project, or is a public body that has met the statutory requirements to receive Federal assistance authorized for 49 U.S.C. 5310.
- C. The subrecipient's application for 49 U.S.C. 5310 assistance contains information from which the state concludes that the transit service provided or offered to be provided by existing public or private transit operators is unavailable, insufficient, or inappropriate to meet the special needs of the elderly and persons with disabilities.
- D. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.
- E. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance awarded for this project.

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- 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**

EXAMPLE ONLY

An Applicant that intends to administer, on behalf of the state, the Nonurbanized Area Formula Program must provide the following certifications and assurances. FTA may not award Nonurbanized Area Formula Program assistance to the Applicant until the Applicant provides these certifications and assurances shown by selecting Category XIV on the Signature Page.

Based on its own knowledge and, as necessary, on information submitted by the subrecipient, the Applicant administering on behalf of the state the Nonurbanized Area Formula Program authorized by 49 U.S.C. 5311 certifies and assures that the following requirements and conditions will be fulfilled:

- A. The state organization serving as the Applicant and each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive and disburse Federal assistance authorized for 49 U.S.C. 5311; and to implement and manage the project.
- B. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.
- C. The subrecipient has, or will have by the time of delivery, sufficient funds to operate and maintain the vehicles and equipment purchased with Federal assistance authorized for this project.
- D. The state assures that before issuing the state's formal approval of the project, its Nonurbanized Area Formula Program is included in the Statewide Transportation Improvement Program as required by 23 U.S.C. 135; to the extent applicable, projects are included in a metropolitan Transportation Improvement Program, and it has obtained from the prospective subrecipient of capital assistance a certification that an opportunity for a public hearing has been provided.
- E. The state has provided for a fair and equitable distribution of Federal assistance authorized for 49 U.S.C. 5311 within the state, including Indian reservations within the state.
- F. The subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, including social service agencies authorized to purchase transit service.
- G. The subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, "Certifications and Assurances Required of Each Applicant.")
- H. The subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprise in U.S. DOT programs.
- I. 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).
- J. The subrecipient has complied with the transit employee protective provisions of 49 U.S.C. 5333(b), by one of the following actions: (1) signing the Special Warranty for the Nonurbanized Area Formula Program, (2) agreeing to alternative comparable arrangements approved by the Department of Labor (DOL), or (3) obtaining a waiver from DOL; and the state has certified the subrecipient's compliance to DOL.
- K. The subrecipient has certified to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, "Charter Service Agreement," and 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.

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

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assistance it draws down for deposit in the Transit Account of its SIB to amounts that do not exceed the limitations specified in the underlying Grant Agreement or the Approved Project Budget for that Grant Agreement.

E. The state assures that each subrecipient has or will have the necessary legal, financial, and managerial capability to apply for, receive, and disburse Federal assistance authorized by Federal statute for use in the Transit Account of the SIB, and to implement, manage, operate, and maintain the project and project property for which such assistance will support.

F. The state assures that the SIB will provide Federal assistance derived from the Transit Account only to a subrecipient that is either a public or private entity recognized under state law as having the legal capability to contract with the state to carry out its proposed project.

G. The state assures that sufficient non-Federal funds have been or will be committed to provide the required local share.

H. The state assures that the SIB 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, including specific provisions that any security or debt financing instrument the SIB may issue will contain an express statement that the security or instrument does not constitute a commitment, guarantee, or obligation of the United States.

I. The state assures that before the SIB enters into an agreement with a subrecipient under which Federal assistance within the Transit Account of the SIB will be disbursed to the subrecipient, the subrecipient's project is included in the Statewide Transportation Improvement Program; 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 each subrecipient of capital assistance that is also a public body a certification that an opportunity for a public hearing has been provided.

J. The state assures that the subrecipient has, to the maximum extent feasible, coordinated with other transportation providers and users, and other interested parties within the area.

K. The state assures that the subrecipient is in compliance with all applicable civil rights requirements, and has signed the Nondiscrimination Assurance. (See Category I.F, "Certifications and Assurances Required of Each Applicant," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.)

L. The state assures that the subrecipient will comply with applicable requirements of U.S. DOT regulations on participation of disadvantaged business enterprises in U.S. DOT programs.

M. To the extent applicable, the state will comply with all existing Federal requirements regarding transportation of elderly persons and persons with disabilities. The state assures that the SIB will provide to the state an Assurance of Nondiscrimination on the Basis of Disability from each subrecipient, as set forth in the Certifications and Assurances required of each Applicant for FTA assistance. (See Category I.G, "Certifications and Assurances Required of Each Applicant," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.) 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 the public entity's demand responsive service offered to persons with disabilities, including persons who use wheelchairs, is equivalent to the level and quality of service the public entity offers to persons without disabilities. (See Category IX, "Certifications Required for the Direct Award of FTA Assistance to an Applicant for its Demand Responsive Service," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.) This "Certification of Equivalent Service" must also state that the public entity's demand responsive service, when viewed in its entirety, is provided in the most integrated setting feasible and has equivalent: (1) response time, (2) fares, (3) geographic service area, (4) hours and days of service, (5) restrictions or restraints on trip purpose, (6) availability of information and reservation capability, and (7) constraints on capacity or service availability.

N. The state assures that before the SIB provides Federal assistance from the Transit Account, each subrecipient will have complied with the applicable transit employee protective provisions of 49 U.S.C. 5333(b) as required for that subrecipient and its project.

O. The state assures that each subrecipient has certified or will certify to the state that it will comply with 49 CFR part 604 in the provision of any charter service provided with equipment or facilities acquired with FTA assistance, and will also comply with applicable provisions of 49 CFR part 605 pertaining to school transportation operations. (See Category VII, "Charter Service Agreement," and Category VIII, "School Transportation Agreement," of the Federal Fiscal Year 1998 Certifications and Assurances for the Federal Transit Administration Programs.)

P. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further environmental approvals, as described in Q. Unless otherwise noted, the state assures that each of the subrecipient's projects qualifies for a categorical exclusion and does not require further

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.

##

Selection and Signature Pages follow.

EXAMPLE ONLY

**Appendix A to Certifications and Assurances
FEDERAL FY 19xx CERTIFICATIONS AND ASSURANCES FOR FTA ASSISTANCE**

Name of Applicant: _____

The Applicant agrees to comply with applicable requirements of Categories I - XV. ____
(The Applicant may make this selection in lieu of individual selections below.)

OR

The Applicant agrees to comply with the applicable requirements of the following categories it has selected:

- I. Certifications and Assurances Required of Each Applicant. _____
- II. Lobbying Certification. _____
- III. Effects on Private Mass Transportation Companies. _____
- IV. Public Hearing Certification for Major Projects with Substantial Impacts. _____
- V. Certification for the Purchase of Rolling Stock. _____
- VI. Bus Testing Certification. _____
- VII. Charter Service Agreement. _____
- VIII. School Transportation Agreement. _____
- IX. Certification for Demand Responsive Service. _____
- X. Substance Abuse Certifications. _____
- XI. Assurances Projects Involving Real Property. _____
- XII. Certifications for the Urbanized Area Formula Program. _____
- XIII. Certifications for the Elderly and Persons with Disabilities Program. _____
- XIV. Certifications for the Nonurbanized Area Formula Program. _____
- XV. Certifications for the State Infrastructure Bank (SIB) Program _____

(Both sides of this Signature Page must be appropriately completed and signed where indicated.)

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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.

EXAMPLE ONLY

Date: _____

b. _____

Applicant's Attorney

An attorney for the Applicant must provide an affirmation of the Applicant's legal capacity, unless the Applicant seeks only an FTA university and research training grant authorized by 49 U.S.C. 5312(b).

In addition, an attorney for a Capital Program Grantee or Formula Program Grantee with an active project must provide an affirmation of the Grantee's legal capacity.

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