

[Federal Register Volume 76, Number 26 (Tuesday, February 8, 2011)]  
[Notices]  
[Pages 6958-7079]  
From the Federal Register Online via the Government Printing Office ([www.gpo.gov](http://www.gpo.gov))  
[FR Doc No: 2011-2592]

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Vol. 76

Tuesday,

No. 26

February 8, 2011

Part IV

Department of Transportation

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Federal Transit Administration

FTA Fiscal Year 2011 Apportionments, Allocations, and Program Information; Notice

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2011 Apportionments, Allocations, and Program Information

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

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SUMMARY: The Federal Transit Administration (FTA) annually publishes one or more notices apportioning funds appropriated by law. In some cases, if less than a full year of funding is available, FTA publishes multiple partial apportionment notices. This notice is the first notice announcing partial apportionment of Fiscal Year (FY) 2011 formula funds. It also provides program guidance and requirements; and provides information on several program issues important in the current fiscal year. The notice also includes tables that show certain unobligated (carryover) funding discretionary programs from previous years that will be available for obligation during FY 2011.

FOR FURTHER INFORMATION CONTACT: For general information about this notice contact Kimberly Sledge, Team Leader, Transit Program Management Team, at (202) 366-2053. Please contact the appropriate FTA regional office for any specific requests for information or technical assistance. The Appendix at the end of this notice includes contact information for FTA regional offices. An FTA headquarters contact for each major program area is included in the discussion of that program in the text of the notice.

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I. Overview

FTA's current authorization, the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA-LU), expired September 30, 2009. Since that time, Congress has enacted short-term extensions allowing FTA to continue its current programs. Most recently, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, as amended, (Pub. L. 111-322, Div. C), continues the authorization of the Federal transit programs of the U.S. Department of Transportation (DOT) through March 4, 2011. It extends contract authority for programs in the Formula and Bus Grants account provided in the previous authorization extension Hiring Incentives to Restore Employment Act (Pub. L. 111-147) until March 4, 2011, i.e., approximately 5/12th of the contract authority available in FY 2010.

This document apportionments approximately \$3 billion in FY 2011 funds made available under the Continuing Appropriations and Surface Transportation Extensions of Act 2011, as amended, hereinafter, ("CR, 2011") among potential program recipients according to statutory formulas in 49 U.S.C. Chapter 53. This is in addition to over \$4.2 billion existing in unobligated formula funds available from prior years. The notice includes FY 2011 formula funds that are currently available, which is approximately 5/12 or 42.47% of the amounts that were available under the Consolidated Appropriations Act, 2010 (Pub. L. 111-117). The notice does not include any extension or reprogramming of any discretionary funds that lapsed to the designated project as of September 30, 2010. FTA will issue a supplemental notice at a later date for any additional increments of formula and discretionary funds that become available.

For each FTA program included in this notice, we have provided relevant information on the FY 2011 funding currently available,

program requirements, period of availability, and other related program information and highlights, as appropriate. A separate section of the document provides information on program requirements and guidance that are applicable to all FTA programs.

## II. FY 2011 Available Funding for FTA Programs

### A. Funding Based on the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Pub. L. 111-322)

The CR 2011 makes available approximately 5/12ths of the contract authority levels authorized in FY 2010 for the Formula programs. Table 1 of this document shows the funding that is currently available for the FTA programs. This Federal Register notice includes tables of apportionments and

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allocations for FTA formula programs based on CR, 2011 and carryover discretionary funds.

### B. Program Funds Set-aside for Project Management Oversight

As background, Section 5327 of title 49 U.S.C. authorizes the takedown of funds from FTA programs for project management oversight. Section 5327 provides oversight takedowns at the following levels: 0.5 percent of Planning funds, 0.75 percent of Urbanized Area Formula funds, 1 percent of Capital Investment funds, 0.5 percent of Special Needs of Elderly Individuals and Individuals with Disabilities formula funds, 0.5 percent of Non-urbanized Area Formula funds, and 0.5 percent of the Paul S. Sarbanes Transit in the Parks Program funds (formerly the Alternative Transportation in the Parks and Public Lands Program).

The funds are used to provide necessary oversight activities, including oversight of the construction of any major capital project under these statutory programs; to conduct State Safety Oversight, drug and alcohol, civil rights, procurement systems, management, planning certification and, financial reviews and audits, as well as evaluations and analyses of grantee specific problems and issues; and to provide technical assistance to correct deficiencies identified in compliance reviews and audits.

## III. 2011 FTA Programs

This section of the notice provides the available FY 2011 funding through March 4, 2011, and/or other important program-related information for eleven FTA formula programs that are contained in this notice. Funding and/or other important information for each of the formula programs is presented immediately below. This includes program apportionments, certain program requirements, length of time FY 2011 funding is available for obligation and other significant program information pertaining to FY 2011.

### A. Metropolitan Planning Program (49 U.S.C. 5305(d))

Section 5305(d) authorizes Federal funding to support a cooperative, continuous, and comprehensive planning program for transportation investment decision-making at the metropolitan area level. The specific requirements of metropolitan transportation planning are set forth in 49 U.S.C. 5303 and further explained in 23 CFR Part 450, as incorporated by reference in 49 CFR Part 613, Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule. State Departments of Transportation are direct recipients of funds allocated by FTA, which are then suballocated to Metropolitan Planning Organizations (MPOs) by formula, for planning activities that support the economic vitality of the metropolitan area, especially by enabling global competitiveness, productivity, and efficiency; increasing the safety and security of the transportation system for motorized and non-motorized users; increasing the accessibility and mobility options available to people and for freight; protecting and enhancing the environment, promoting energy conservation, and improving quality of life; enhancing the integration and connectivity of the transportation system, across and between modes, for people and freight; promoting efficient transportation system management and operation; and emphasizing the preservation of the existing transportation system. This funding must support work elements and activities resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods in the metropolitan area. Comprehensive transportation planning is not limited to transit planning or surface transportation planning, but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. Eligible work elements or activities include, but are not limited to studies relating to management, mobility management, planning, operations, capital requirements, and economic feasibility; evaluation of previously funded projects; peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analysis among MPOs and other transportation planners; work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment; development of coordinated public transit human services transportation plans. An

exhaustive list of eligible work activities is provided in FTA Circular 8100.1C, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants, dated September 1, 2008. For more about the Metropolitan Planning Program and the FTA Circular 8100.1C, contact Victor Austin, Office of Planning and Environment at (202) 366-2996.

1. FY 2011 Funding Availability

CR 2011 provides \$39,790,936 to the Metropolitan Planning Program (49 U.S.C. 5305(d) to support metropolitan transportation planning activities set forth in 49 U.S.C. 5303. The total amount apportioned for the Metropolitan Planning Program to States for MPOs' use in urbanized areas (UZAs) is \$39,591,981, as shown in the table below, after the deduction for oversight.

Metropolitan Planning Program

Total Appropriation.....	\$39,790,936
Oversight Deduction.....	-198,955
Total Apportioned.....	39,591,981

States' apportionments for this program are displayed in Table 2.

2. Basis for Formula Apportionments

As specified in law, 82.72 percent of the amounts authorized for Section 5305 are allocated to the Metropolitan Planning program. FTA allocates Metropolitan Planning funds to the States according to a statutory formula. Eighty percent of the funds are distributed to the States as a basic allocation based on each State's UZA population, based on the most recent decennial Census. The remaining 20 percent is provided to the States as a supplemental allocation based on an FTA administrative formula to address planning needs in the larger, more complex UZAs. The amount published for each State is a combined total of both the basic and supplemental allocation.

3. Program Requirements

The State allocates Metropolitan Planning funds to MPOs in UZAs or portions thereof to provide funds for projects included in an annual work program (the Unified Planning Work Program, or UPWP) that includes both highway and transit planning projects. Each State has either reaffirmed or developed, in consultation with their MPOs, an allocation formula, based on the 2000 Census. The State allocation formula may be changed annually, but any change requires approval by the FTA regional office before grant approval. Program guidance for the Metropolitan Planning Program is found in FTA Circular 8100.1C, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants, dated September 1, 2008. For more about the Metropolitan Planning Program and the FTA Circular 8100.1C, contact Victor Austin, Office of

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Planning and Environment at (202) 366-2996.

4. Period of Availability

The funds apportioned under the Metropolitan Planning program to each State remain available for obligation by FTA to recipients for four fiscal years--which includes the year of apportionment plus three additional years. Any apportioned funds that remain unobligated at the close of business on September 30, 2014, will revert to FTA for reapportionment under the Metropolitan Planning Program.

5. Consolidated Planning Grants

FTA and FHWA planning funds under both the Metropolitan Planning and State Planning and Research Programs can be consolidated into a single consolidated planning grant (CPG), awarded by either FTA or FHWA. The CPG eliminates the need to monitor individual fund sources, if several have been used, and ensures that the oldest funds will always be used first. Unlike "flex funds" for capital programs, planning funds from FHWA may be combined with FTA planning funds in a single grant. Alternatively, FTA planning funds may be transferred to FHWA to be administered as combined grants.

Under the CPG, States can report metropolitan planning program expenditures (to comply with the Single Audit Act) for both FTA and FHWA under the Catalogue of Federal Domestic Assistance number for FTA's Metropolitan Planning Program (20.505). Additionally, for States with an FHWA Metropolitan Planning (PL) fund-matching ratio greater than 80 percent, the State can waive the 20 percent local share requirement, with FTA's concurrence, to allow FTA funds used for metropolitan planning in a CPG to be granted at the higher FHWA rate. For some States, this Federal match rate can exceed 90 percent.

States interested in transferring planning funds between FTA and FHWA should contact the FTA Regional Office or FHWA Division Office for more detailed procedures. Current guidelines are included in Federal Highway Administration Memorandum dated July 12, 2007, "Information: Final Transfers to Other Agencies that Administer Title 23 Programs."

For further information on CPGs, contact Nancy Grubb, Office of Budget and Policy, FTA, at (202)366-1635.

B. Statewide Planning and Research Program (49 U.S.C. 5305(e))

This program provides financial assistance to States for Statewide transportation planning and other technical assistance activities, including supplementing the technical assistance program provided

through the Metropolitan Planning program. The specific requirements of Statewide transportation planning are set forth in 49 U.S.C. 5304 and further explained in 23 CFR Part 450 as referenced in 49 CFR Part 613, Statewide Transportation Planning; Metropolitan Transportation Planning; Final Rule. This funding must support work elements and activities resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods. Comprehensive transportation planning is not limited to transit planning or surface transportation planning, but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. For more information, contact Victor Austin, Office of Planning and Environment at (202) 366-2996.

1. FY 2011 Funding Availability

CR 2011 provides \$8,312,227 to the State Planning and Research Program (49 U.S.C. 5305). The total amount apportioned for the State Planning and Research Program (SPRP) is \$8,270,666 as shown in the table below, after the deduction for oversight (authorized by 49 U.S.C. 5327).

State Planning and Research Program

Total Appropriation.....	\$8,312,227
Oversight Deduction.....	-41,561
Total Apportioned.....	8,270,666

State apportionments for this program are displayed in Table 2.

2. Basis for Apportionment Formula

As specified in law, 17.28 percent of the amounts authorized for Section 5305 are allocated to the State Planning and Research program. FTA apportionments funds to States by a statutory formula that is based on the most recent decennial Census, and the State's UZA population as compared to the UZA population of all States.

3. Requirements

Funds are provided to States for Statewide transportation planning programs. These funds may be used for a variety of purposes such as planning, technical studies and assistance, demonstrations, and management training. In addition, a State may authorize a portion of these funds to be used to supplement Metropolitan Planning funds allocated by the State to its UZAs, as the State deems appropriate. Program guidance for the State Planning and Research program is found in FTA Circular 8100.1C. This funding must support work elements and activities resulting in balanced and comprehensive intermodal transportation planning for the movement of people and goods. Comprehensive transportation planning is not limited to transit planning or surface transportation planning, but also encompasses the relationships among land use and all transportation modes, without regard to the programmatic source of Federal assistance. Eligible work elements or activities include, but are not limited to studies relating to management, planning, operations, capital requirements, and economic feasibility; evaluation of previously funded projects; peer reviews and exchanges of technical data, information, assistance, and related activities in support of planning and environmental analysis; work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operation of facilities and equipment. An exhaustive list of eligible work activities is provided in FTA Circular 8100.1C, Program Guidance for Metropolitan Planning and State Planning and Research Program Grants, dated September 1, 2008. For more information, contact Victor Austin, Office of Planning and Environment at (202) 366-2996.

4. Period of Availability

The funds apportioned under the State Planning and Research program to each State remain available for obligation for four fiscal years, which include the year of apportionment plus three additional fiscal years. Any apportioned funds that remain unobligated at the close of business on September 30, 2014, will revert to FTA for reapportionment under the State Planning and Research Program.

C. Urbanized Area Formula Program (49 U.S.C. 5307)

Section 5307 authorizes Federal capital assistance, and in some cases, operating assistance for public transportation in UZAs. A UZA is an area with a population of 50,000 or more that has been defined and designated as such in the 2000 Census by the U.S. Census Bureau. The

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Urbanized Area Formula Program funds may also be used to support planning activities, and may supplement planning projects funded under the Metropolitan Planning program. Urbanized Areas Formula Program funds used for planning must be shown in the Unified Planning Work Program (UPWP) for MPO(s) with responsibility for that area. Funding is apportioned directly to each UZA with a population of 200,000 or more, and to the State Governors for UZAs with populations between 50,000 and 200,000. Eligible applicants are limited to entities designated as recipients in accordance with 49 U.S.C. 5307(a)(2) and other public entities with the consent of the Designated Recipient. Generally,

operating assistance is not an eligible expense for UZAs with populations of 200,000 or more. However, there are several exceptions to this restriction. The exceptions are described in section 3(d)(5) below.

For more information about the Urbanized Area Formula Program contact Kimberly Sledge, Office of Transit Programs, at (202) 366-2053.

1. FY 2011 Funding Availability

CR 2011 provides \$1,763,230,999 to the Urbanized Area Formula Program (49 U.S.C. 5307). The total amount apportioned for the Urbanized Area Formula Program is \$1,916,008,252 as shown in the table below, after the 0.75 percent deduction for oversight (authorized by 49 U.S.C. 5327) and including funds apportioned to UZAs from the appropriation for Section 5340 for Growing States and High Density States.

Urbanized Area Formula Program

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Total Appropriation.....	\a\ \$1,763,230,999
Oversight Deduction.....	-13,224,232
Section 5340 Funds Added.....	166,001,486
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Total Apportioned.....	1,916,008,252
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\a\ One percent set-aside for Small Transit Intensive Cities Formula.	

Table 3 displays the amounts apportioned under the Urbanized Area Formula Program.

2. Basis for Formula Apportionment

FTA apportions Urbanized Area Formula Program funds based on legislative formulas. Different formulas apply to UZAs with populations of 200,000 or more and to UZAs with populations less than 200,000. For UZAs with 50,000 to 199,999 in population, the formula is based solely on population and population density. For UZAs with populations of 200,000 and more, the formula is based on a combination of bus revenue vehicle miles, bus passenger miles, fixed guideway revenue vehicle miles, and fixed guideway route miles, as well as population and population density. Table 4 includes detailed information about the formulas.

To calculate a UZA's FY 2011 apportionment, FTA used population and population density statistics from the 2000 Census and (when applicable) validated mileage and transit service data from transit providers' 2009 National Transit Database (NTD) Report Year. Consistent with 49 U.S.C. 5336(b), FTA used 60 percent of the directional route miles attributable to the Alaska Railroad passenger operations system to calculate the apportionment for the Anchorage, Alaska UZA.

FTA has calculated dollar unit values for the formula factors used in the Urbanized Area Formula Program apportionment calculations. These values represent the amount of money each unit of a factor is worth in this year's apportionment. The unit values change each year, based on all of the data used to calculate the apportionments. The dollar unit values for FY 2011 are displayed in Table 5. To replicate the basic formula component of a UZA's apportionment, multiply the dollar unit value by the appropriate formula factor (i.e., the population, population x population density), and when applicable, data from the NTD (i.e., route miles, vehicle revenue miles, passenger miles, and operating cost).

In FY 2011, one percent of funds appropriated for Section 5307, or \$17,632,310 based on CR 2011 is set aside for Small Transit Intensive Cities (STIC). FTA apportions these funds to UZAs under 200,000 in population that operate at a level of service equal to or above the industry average level of service for all UZAs with a population of at least 200,000, but not more than 999,999, in one or more of six performance categories: passenger miles traveled per vehicle revenue mile, passenger miles traveled per vehicle revenue hour, vehicle revenue miles per capita, vehicle revenue hours per capita, passenger miles traveled per capita, and passengers per capita.

The data for these categories for the purpose of FY 2011 apportionments comes from the NTD reports for the 2009 reporting year. This data is used to determine a UZA's eligibility under the STIC formula, and is also used in the STIC apportionment calculations. Because these performance data change with each year's NTD reports, the UZAs eligible for STIC funds and the amount each receives may vary each year. In FY 2011, FTA apportioned \$55,976 for each performance factor/category for which the urbanized area exceeded the national average for UZAs with a population of at least 200,000 but not more than 999,999.

In addition to the funds apportioned to UZAs, according to the Section 5307 formula factors contained in 49 U.S.C. 5336, FTA also apportions funds to urbanized areas under Section 5340 Growing States and High Density States formula factors. In FY 2011, FTA apportions \$67,464,168 to UZAs in growing States and \$98,537,318 to UZAs in High Density States. Half of the funds appropriated for Section 5340 are available to Growing States and half to High Density States. FTA apportions Growing States funds by a formula based on State population forecasts for 15 years beyond the most recent Census. FTA distributes the amounts apportioned for each State between UZAs and nonurbanized areas based on the ratio of urbanized/nonurbanized population within each State in the 2000 census, and to UZAs proportionately based on UZA population in the 2000 census (because population estimates are not

available at the UZA level). FTA apportions the High Density States funds to States with population densities in excess of 370 persons per square mile. These funds are apportioned only to UZAs within those States. FTA pro-rates each UZA's share of the High Density funds based on the population of the UZAs in the State in the 2000 census.

FTA cannot provide unit values for the Growing States or High Density formulas because the allocations to individual States and urbanized areas are based on their relative population data, rather than on a national per capita basis.

Based on language in the conference report accompanying SAFETEA-LU, FTA is to show a single apportionment amount for Section 5307, STIC and Section 5340. FTA shows a single Section 5307 apportionment amount for each UZA in Table 3, the Urbanized Area Formula apportionments. The amount includes funds apportioned based on the Section 5307 formula factors, any STIC funds, and any Growing States and High Density States funding allocated to the area. FTA uses separate formulas to calculate and generate the respective apportionment amounts for the Section 5307, STIC and Section 5340. For technical assistance purposes, the UZAs that received STIC funds are listed in Table 6. FTA will make available breakdowns of the funding allocated to each UZA under these

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formulas, upon request to the regional office.

### 3. Program Requirements

Program guidance for the Urbanized Area Formula Program is currently found in FTA Circular 9030.1D, Urbanized Area Formula Program: Grant Application Instructions, dated May 1, 2010, and supplemented by additional information or changes provided in this document.

#### a. Urbanized Area Formula Apportionments to Governors

For small UZAs, those with a population of less than 200,000, FTA apportions funds to the Governor of each State for distribution. A single total Governor's apportionment amount for the Urbanized Area Formula, STIC, and Growing States and High Density States is shown in the Urbanized Area Formula Apportionment Table 3. The table also shows the apportionment amount attributable by formula to each small UZA within the State for information purposes only unless the small UZA is located within the planning boundaries of a Transportation Management Area (TMA). The Governor is not bound by the small UZA amounts published in this notice and shall determine the sub-allocation of funds among the small UZAs. The Governor's sub-allocation should be sent to the appropriate FTA Regional Office before grants are awarded. In the case of a small UZA that is located within the planning boundaries of TMA, the Governor must allocate to that small UZA, as discussed in subsection f below.

#### b. Transit Enhancements

Section 5307(d)(1)(K) requires that one percent of Section 5307 funds apportioned to UZAs with populations of 200,000 or more be spent on eligible transit enhancement activities or projects. This requirement is now treated as a certification, rather than as a set-aside as was the case under the Transportation Equity Act for the 21st Century (TEA-21). Designated recipients in UZAs with populations of 200,000 or more certify they are spending no less than one percent of Section 5307 funds for transit enhancements. In addition, Designated Recipients must submit an annual report on how they spent the money with the Federal fiscal year's final quarterly progress report in TEAM-Web. The report should include the following elements: (1) Grantee name; (2) UZA name and number; (3) FTA project number; (4) transit enhancement category; (5) brief description of enhancement and progress towards project implementation; (6) activity line item code from the approved budget; and (7) amount awarded by FTA for the enhancement. The list of transit enhancement categories and Activity Line Item (ALI) codes may be found in the table of Scope and ALI codes on TEAM-Web, which can be accessed at <http://FTATEAMWeb.fta.dot.gov>.

The term "transit enhancement" includes projects or project elements that are designed to enhance public transportation service or use and are physically or functionally related to transit facilities. Eligible enhancements include the following: (1) Historic preservation, rehabilitation, and operation of historic mass transportation buildings, structures, and facilities (including historic bus and railroad facilities); (2) bus shelters; (3) landscaping and other scenic beautification, including tables, benches, trash receptacles, and street lights; (4) public art; (5) pedestrian access and walkways; (6) bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on mass transportation vehicles; (7) transit connections to parks within the recipient's transit service area; (8) signage; and (9) enhanced access for persons with disabilities to mass transportation.

It is the responsibility of the MPO to determine how the one-percent for transit enhancements will be allotted to transit projects. The one percent minimum requirement does not preclude more than one percent from being expended in a UZA for transit enhancements. However, activities that are only eligible as enhancements--in particular, operating costs for historic facilities--may be assisted only within the one-percent funding level.

#### c. Transit Security Projects

Consistent with section 5307(d)(1)(J), each recipient of Urbanized Area Formula funds must certify that of the amount received each fiscal year, it will expend at least one percent on "public transportation security projects" or must certify that it has decided the expenditure

is not necessary. For applicants not eligible to receive Section 5307 funds for operating assistance, only capital security projects may be funded with the one percent. SAFETEA-LU, however, expanded the definition of eligible "capital" projects to include specific crime prevention and security activities, including: (1) Projects to refine and develop security and emergency response plans; (2) projects aimed at detecting chemical and biological agents in public transportation; (3) the conduct of emergency response drills with public transportation agencies and local first response agencies; and (4) security training for public transportation employees, but excluding all expenses related to operations, other than such expenses incurred in conducting emergency drills and training. Activity Line Item (ALI) codes have been established for these four new capital activities and will be used to track the use of this provision. The one percent may also include security expenditures included within other capital activities, and, where the recipient is eligible, operating assistance.

FTA is often called upon to report to Congress and others on how grantees are expending Federal funds for security enhancements. To facilitate tracking of grantees' security expenditures, which are not always evident when included within larger capital or operating ALI items in the grant budget, we have established a non-additive ("non-add") scope code for security expenditures--Scope 991. The non-add scope is to be used to aggregate activities included in other scopes, and it does not increase the budget total. Section 5307 grantees should include this non-add scope in the project budget for each new Section 5307 grant application or amendment. Under this non-add scope, the applicant should repeat the full amount of any of the line items in the budget that are exclusively for security and include the portion of any other line item in the project budget that is attributable to security, using under the non-add scope the same line item used in the project budget. The grantee can modify the ALI description or use the extended text feature, if necessary, to describe the security expenditures.

The grantee must provide information regarding its use of the one percent for security as part of each Section 5307 grant application, using a special screen in TEAM-Web. If the grantee has certified that it is not necessary to expend one percent for security, the Section 5307 grant application must include information to support that certification. FTA will not process an application for a Section 5307 grant until the security information is complete.

d. FY 2011 Operating Assistance

UZAs under 200,000 in population may use Section 5307 funds for operating assistance. In addition, Section 5307, as amended, allows some UZAs with a population of 200,000 or more to use Urbanized Area Formula funds for operating assistance under certain conditions. CR, 2011 extends

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that eligibility until March 4, 2011. The specific provisions allowing the limited use of operating assistance in large UZAs follow:

(1) Section 5307(b)(1)(E) provides for grants for the operating costs of equipment and facilities for use in public transportation in the Evansville, IN-KY urbanized area, for a portion or portions of the UZA if "the portion" of the UZA includes only one State, the population of "the portion" is less than 30,000, and the grants will not be used to provide public transportation outside of "the portion" of the UZA.

(2) Section 5307(b)(1)(F) provides operating costs of equipment and facilities for use in public transportation for local governmental authorities in areas which adopted transit operating and financing plans that became a part of the Houston, Texas, UZA as a result of the 2000 decennial census of population, but lie outside the service area of the principal public transportation agency that serves the Houston UZA.

(3) Section 5336(a)(2) prescribes the formula to be used to apportion Section 5307 funds to UZAs with population of 200,000 or more. SAFETEA-LU amended 5336(a)(2) to add language that stated, " \* \* \* except that the amount apportioned to the Anchorage urbanized area under subsection (b) shall be available to the Alaska Railroad for any costs related to its passenger operations." This language has the effect of directing that funds apportioned to the Anchorage urbanized area, under the fixed guideway tiers of the Section 5307 apportionment formula, be made available to the Alaska Railroad, and that these funds may be used for any capital or operating costs related to its passenger operations.

(4) Section 3027(c)(3) of TEA-21, as amended (49 U.S.C. 5307 note), provides an exception to the restriction on the use of operating assistance in a UZA with a population of 200,000 or more, by allowing transit providers/grantees that provide service exclusively to elderly persons and persons with disabilities and that operate 20 or fewer vehicles to use Section 5307 funds apportioned to the UZA for operating assistance. The total amount of funding made available for this purpose under Section 3027(c)(3) is \$1.4 million. Transit providers/grantees eligible under this provision have already been identified and notified.

(5) Consistent with the SAFETEA-LU Technical Corrections Act, 2008, in FY 2009, section 5307(b)(2) allowed: (1) UZAs that grew in population from under 200,000 to over 200,000 or that were under 200,000 but merged into another urbanized area and the population is over 200,000, as a result of the 2000 Census to use Section 5307 funds for operating assistance in an amount up to 50 percent of the



grandfathered amount for FY 2002 funds; (2) Areas that were nonurbanized under the 1990 Census and became urbanized, as a result of the 2000 Census, to use no more than 50 percent of the amount apportioned to the area for FY 2003 for operating assistance; and (3) nonurbanized areas under the 1990 Census that merged into urbanized areas over 200,000, as a result of the 2000 Census, to use 50 percent of the amount the area received in FY 2002 Section 5311 funding for operating assistance. CR 2011 continued these special rules for the period October 1, 2009 through March 4, 2011.

e. Sources of Local Match

Consistent with Section 5307(e), the Federal share of an urbanized area formula grant is 80 percent of net project cost for a capital project and 50 percent of net project cost for operating assistance unless the recipient indicates a greater local share. The remainder of the net project cost (i.e., 20 percent and 50 percent, respectively) shall be provided from the following sources:

- (1) From non-Government sources other than revenues from providing public transportation services;
- (2) From revenues derived from the sale of advertising and concessions;
- (3) From an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital;
- (4) From amounts received under a service agreement with a State or local social service agency or private social service organization; and
- (5) Proceeds from the issuance of revenue bonds.
- (6) Funds from Section 403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. 603(a)(5)(C)(vii)) can be used to match Urbanized Area Formula funds.

f. Designated Transportation Management Areas (TMA)

Guidance for setting the boundaries of TMAs is in the joint transportation planning regulations codified at 23 CFR Part 450 as referenced in 49 CFR Part 613. In some cases, the TMA planning boundaries established by the MPO for the designated TMA includes one or more small UZAs. In addition, one small UZA (Santa Barbara, CA) has been designated as a TMA. In either of these situations, the Governor cannot allocate "Governor's Apportionment" funds attributed to the small UZAs to other areas; that is, the Governor only has discretion to allocate Governor's Apportionment funds attributable to areas that are outside of designated TMA planning boundaries.

The list of small UZAs included within the planning boundaries of designated TMAs is provided in the table below:

Designated TMA	Small urbanized area included in TMA planning boundary
Albany, NY.....	Saratoga Springs, NY.
Houston, TX.....	Galveston, TX; Lake Jackson-Angleton, TX; Texas City, TX; The Woodlands, TX.
Jacksonville, FL.....	St. Augustine, FL.
Orlando, FL.....	Kissimmee, FL.
Palm Bay-Melbourne, FL.....	Titusville, FL.
Philadelphia, PA-NJ-DE-MD.....	Pottstown, PA.
Pittsburg, PA.....	Monessen, PA; Weirton, WV-Steubenville, OH-PA (PA portion); Uniontown-Connellsville, PA.
Seattle, WA.....	Bremerton, WA.
Washington, DC-VA-MD.....	Frederick, MD.

The MPO must notify the Associate Administrator for Program Management, Federal Transit Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, in writing, no later than July 1 of each year of the identity of any small UZA within the planning boundaries of a TMA.

g. Urbanized Area Formula Funds Used for Highway Purposes

Funds apportioned to a TMA are eligible for transfer to FHWA for highway projects, if the Designated Recipient has allocated a portion of the

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area's Section 5307 funding for such use. However, before funds can be transferred, the following conditions must be met: (1) Approval by the MPO in writing, after appropriate notice and opportunity for comment and appeal are provided to affected transit providers; (2) a determination of the Secretary that funds are not needed for investments required by the Americans with Disabilities Act of 1990 (ADA); and (3) the MPO determines that local transit needs are being addressed.

The MPO should notify the appropriate FTA Regional Administrator of its intent to use FTA funds for highway purposes. Urbanized Area Formula funds that are designated by the MPO for highway projects and meet the conditions cited in the previous paragraph will be transferred to and administered by FHWA.

4. Period of Availability

The Urbanized Area Formula Program funds apportioned in this notice are available for obligation during the year of appropriation plus three additional years. Accordingly, these funds must be obligated in grants by September 30, 2014. Any apportioned funds that remain

unobligated at the close of business on September 30, 2014, will revert to FTA for reapportionment under the Urbanized Area Formula Program.

5. Other Program or Apportionment Related Information and Highlights

In each UZA with a population of 200,000 or more, the Governor, in consultation with responsible local officials and publicly owned operators of public transportation, has designated one or more entities to be the Designated Recipient for Section 5307 funds apportioned to the UZA. The same entity(s) may or may not be the Designated Recipient for the Job Access and Reverse Commute (JARC) and New Freedom program funds apportioned to the UZA. In UZAs under 200,000 in population, the State is the Designated Recipient for Section 5307 as well as JARC and New Freedom programs. The Designated Recipient for Section 5307 may authorize other entities to apply directly to FTA for Section 5307 grants pursuant to a supplemental agreement. While the requirement that projects selected for funding be included in a locally developed coordinated public transit/human service transportation plan is not included in Section 5307 as it is in Sections 5310, 5316 (JARC) and 5317 (New Freedom), FTA expects that in their role as public transit providers, recipients of Section 5307 funds will be participants in the local planning process for these programs.

D. Capital Investment Program (49 U.S.C. 5309)--Fixed Guideway Modernization

This program provides capital assistance for the maintenance, recapitalization, and modernization of existing fixed guideway systems. Funds are apportioned by a statutory formula to UZAs with fixed guideway systems that have been in operation for at least seven years. A "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, monorail, 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. Eligible applicants are the public transit authorities in those urbanized areas to which the funds are apportioned. For more information about Fixed Guideway Modernization contact Kimberly Sledge, Office of Transit Programs, at (202) 366-2053.

1. FY 2011 Funding Availability

CR 2011 provides \$706,290,063 to the Fixed Guideway Modernization Program. The total amount apportioned for the Fixed Guideway Modernization Program is \$699,227,162, after the deduction for oversight, as shown in the table below.

Fixed Guideway Modernization Program

Total Appropriation.....	\$706,290,063
Oversight Deduction.....	-7,062,901
Total Apportioned.....	699,227,162

The FY 2011 Fixed Guideway Modernization Program apportionments to eligible areas are displayed in Table 8.

2. Basis for Formula Apportionment

The formula for allocating the Fixed Guideway Modernization funds includes seven tiers. The apportionment of funding under the first four tiers is based on amounts specified in law and NTD data used to apportion funds in FY 1997. Funding under the last three tiers is apportioned based on the latest available data on route miles and revenue vehicle miles on segments at least seven years old, as reported to the NTD. Section 5337(f) of title 49, U.S.C. provides for the inclusion of Morgantown, West Virginia (population 55,997) as an eligible UZA for purposes of apportioning Fixed Guideway Modernization funds. Also, consistent to 49 U.S.C. 5336(b), FTA uses 60 percent of the directional route miles attributable to the Alaska Railroad passenger operations system to calculate the apportionment for the Anchorage, Alaska UZA under the Section 5309 Fixed Guideway Modernization formula.

FY 2011 Formula apportionments are based on data grantees provided to the NTD for the 2009 report year. Table 9 provides additional information and details on the formula. Dollar unit values for the formula factors used in the Fixed Guideway Modernization Program are displayed in Table 5. To replicate an area's apportionment, multiply the dollar unit value by the appropriate formula factor, i.e., route miles and revenue vehicle miles.

3. Program Requirements

Fixed Guideway Modernization funds must be used for capital projects to maintain, modernize, or improve fixed guideway systems. Eligible UZAs (those with a population of 200,000 or more) with fixed guideway systems that are at least seven years old are entitled to receive Fixed Guideway Modernization funds. A threshold level of more than one mile of fixed guideway is required in order to receive Fixed Guideway Modernization funds. Therefore, UZAs reporting one mile or less of fixed guideway mileage to the NTD are not included. However, funds apportioned to an urbanized area may be used on any fixed guideway segment in the UZA. Program guidance for Fixed Guideway Modernization is presently found in FTA Circular C9300.1B, Capital Facilities and Formula Grant Programs, dated November 1, 2008.

4. Period of Availability

The funds apportioned in this notice under the Fixed Guideway Modernization Program remain available to recipients to be obligated in a grant during the year of appropriation plus three additional years. FY 2011 Fixed Guideway Modernization funds that remain unobligated at the close of business on September 30, 2014, will revert to FTA for reapportionment under the Fixed Guideway Modernization Program.

E. Special Needs of Elderly Individuals and Individuals With Disabilities Program (49 U.S.C. 5310)

This program provides formula funding to States for capital projects to assist private nonprofit groups in meeting the transportation needs of the

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elderly and individuals with disabilities when the public transportation service provided in the area is unavailable, insufficient, or inappropriate to meet these needs. A State agency designated by the Governor administers the Section 5310 program. The State's responsibilities include: notifying eligible local entities of funding availability; developing project selection criteria; determining applicant eligibility; selecting projects for funding; and ensuring that all subrecipients comply with Federal requirements. Eligible nonprofit organizations or public bodies must apply directly to the designated State agency for assistance under this program. For more information about the Elderly and Individuals with Disabilities Program contact Gil Williams, Office of Transit Programs, at (202) 366-2053.

1. FY 2011 Funding Availability

CR 2011 provides \$56,579,492 to the Elderly and Individuals with Disabilities Program (49 U.S.C. 5310). After deduction of 0.5 percent for oversight, and the addition of reapportioned prior year funds, \$56,296,595 remains available for allocation to the States.

Elderly and Individuals With Disabilities Program

Total Appropriation.....	\$56,579,492
Oversight Deduction.....	-282,897
<b>Total Apportioned.....</b>	<b>56,296,595</b>

The FY 2011 Elderly and Individuals with Disabilities Program apportionments to the States are displayed in Table 12.

2. Basis for Apportionment

FTA allocates funds to States by an administrative formula consisting of a \$125,000 floor for each State (\$50,000 for smaller territories) with the balance allocated based on 2000 Census population data for persons aged 65 and over and for persons with disabilities.

3. Requirements

Funds are available to support the capital costs of transportation services for older adults and people with disabilities. Uniquely under this program, eligible capital costs include the acquisition of service. Seven specified States (Alaska, Louisiana, Minnesota, North Carolina, Oregon, South Carolina, and Wisconsin) may use up to 33 percent of their apportionment for operating assistance under the terms of the SAFETEA-LU Section 3012(b) pilot program.

Capital assistance is provided on an 80 percent Federal, 20 percent local matching basis except that Section 5310(c) allows States eligible for a higher match under the sliding scale for FHWA programs to use that match ratio for Section 5310 capital projects. Operating assistance is 50 percent Federal, 50 percent local. Funds provided under other Federal programs (other than those of the U.S. DOT, with the exception of the Federal Lands Highway Program established by 23 U.S.C. 204) may be used as match. Revenue from service contracts may also be used as local match.

While the assistance is intended primarily for private non-profit organizations, public bodies approved by the State to coordinate services for the elderly and individuals with disabilities, or any public body that certifies to the State that there are no non-profit organizations in the area that are readily available to carry out the service, may receive these funds.

States may use up to ten percent of their annual apportionment to administer, plan, and provide technical assistance for a funded project. No local share is required for these program administrative funds. Funds used under this program for planning must be shown in the United Planning Work Program (UPWP) for MPO(s) with responsibility for that area.

The State recipient must certify that: the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and, the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public. The locally developed, coordinated public transit-human services transportation planning process must be coordinated and consistent with the metropolitan and statewide planning processes and funding for the program must be included in the metropolitan and

statewide Transportation Improvement Program (TIP and STIP) at a level of specificity or aggregation consistent with State and local policies and procedures. Finally, the State must certify that allocations to subrecipients are made on a fair and equitable basis.

The coordinated planning requirement is a requirement in two additional programs. Projects selected for funding under the Job Access Reverse Commute program and the New Freedom program also are required to be derived from a locally developed coordinated public transit/human service transportation plan. FTA anticipates that most areas will develop one consolidated plan for all the programs, which may include separate elements and other human service transportation programs.

The Section 5310 program is subject to the requirements of Section 5307 formula program to the extent the Secretary determines appropriate. Program guidance is found in FTA Circular 9070.1F, dated May 1, 2007. The circular is posted on the FTA Web site at <http://www.fta.dot.gov>.

4. Period of Availability

FTA has administratively established a three-year period of availability for Section 5310 funds. Funds allocated to States under the Elderly and Individuals with Disabilities Program in this notice must be obligated by September 30, 2013. Any funding that remains unobligated as of that date will revert to FTA for reapportionment among the States under the Elderly and Individuals with Disabilities Program.

5. Other Program or Apportionment Related Information and Highlights

States may transfer Section 5310 funds to Section 5307 or Section 5311, but only for projects selected under the Section 5310 program, not as a general supplement for those programs. FTA anticipates that the States would use this flexibility primarily for projects to be implemented by a Section 5307 recipient in a small urbanized area, or for Federally recognized Indian Tribes that elect to receive funds as a direct recipient from FTA under Section 5311. A State that transfers Section 5310 funds to Section 5307 must certify that each project for which the funds are transferred has been coordinated with private nonprofit providers of services. FTA has established a scope code (641) in the TEAM grant system to track Section 5310 projects included within a Section 5307 or 5311 grant. Transfer to Section 5307 or 5311 is permitted, but not required. FTA expects primarily to award stand-alone Section 5310 grants to the State for any and all subrecipients.

6. Performance Measure

To support the evaluation of the program, FTA has established performance measures for the Section 5310 program, which should be submitted with the State's annual program of projects status report on October 31, 2011. States should submit performance measures on behalf of their subrecipients. Information on the Section 5310 performance measures can be found at [http://www.fta.dot.gov/laws/circulars/leg\\_req\\_6622.html](http://www.fta.dot.gov/laws/circulars/leg_req_6622.html).

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F. Nonurbanized Area Formula Program (49 U.S.C. 5311)

This program provides formula funding to States and Indian Tribes for the purpose of supporting public transportation in areas with a population of less than 50,000. Funding may be used for capital, operating, State administration, and project administration expenses. Eligible subrecipients include State and local governmental authority, Indian Tribes, private non-profit organizations, and private operators of public transportation services, including intercity bus companies. Indian Tribes are also eligible direct recipients under Section 5311, both for funds apportioned to the States and for projects selected to be funded with funds set aside for a separate Tribal Transit Program.

For more information about the Nonurbanized Area Formula Program contact Lorna Wilson, Office of Transit Programs, at (202) 366-2053.

1. FY 2011 Funding Availability  
 CR 2011 provides \$197,074,635 to the Nonurbanized Area Formula Program (49 U.S.C. 5311). The total amount apportioned for the Nonurbanized Area Formula Program is \$216,863,673 after take-downs of two percent for the Rural Transportation Assistance Program (RTAP), 0.5 percent for oversight, and \$6,357,246 for the Tribal Transit Program, and the addition of Section 5340 funding for Growing States, as shown in the table below:

Nonurbanized Area Formula Program

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Total appropriation.....	\$197,074,635
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Oversight deduction.....	-985,373
Tribal takedown.....	-6,357,246
RTAP takedown.....	-3,941,493
Section 5340 funds added.....	31,073,150
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Total apportioned.....	216,863,673
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The FY 2011 Nonurbanized Area Formula apportionments to the States are displayed in Table 13.

2. Basis for Apportionments

FTA apportions the funds after take-down for oversight, the Tribal Transit Program, and RTAP according to a statutory formula. FTA apportions the first twenty percent to the States based on land area in

nonurbanized areas with no state receiving more than 5 percent of the amount apportioned. FTA apportions the remaining eighty percent based on nonurbanized population of each State relative to the national nonurbanized population. FTA does not apportion Section 5311 funds to the Virgin Islands, which by a statutory exception are treated as an urbanized area for purposes of the Section 5307 formula program.

FTA is allocating \$31,073,150 to the States and territories for nonurbanized areas from the Growing States portion of Section 5340. FTA apportions Growing States funds by a formula based on State population forecasts for 15 years beyond the most recent census. FTA distributes the amounts apportioned for each State between UZAs and nonurbanized areas based on the ratio of urbanized/nonurbanized population within each State in the 2000 census.

### 3. Program Requirements

The Nonurbanized Area Formula Program provides capital, operating and administrative assistance for public transit service in nonurbanized areas under 50,000 in population.

The Federal share for capital assistance is 80 percent and for operating assistance is 50 percent, except that States eligible for the sliding scale match under FHWA programs may use that match ratio for Section 5311 capital projects and 62.5 percent of the sliding scale capital match ratio for operating projects.

Each State must spend no less than 15 percent of its FY 2011 Nonurbanized Area Formula apportionment for the development and support of intercity bus transportation, unless the State certifies, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being adequately met. FTA also encourages consultation with other stakeholders, such as communities affected by loss of intercity service.

Each State prepares an annual program of projects, which must provide for fair and equitable distribution of funds within the States, including Indian reservations, and must provide for maximum feasible coordination with transportation services assisted by other Federal sources.

To retain eligibility for funding, recipients of Section 5311 funding must report data annually to the NTD. Additional information on NTD reporting is contained in paragraph 5 of this section, below.

Program guidance for the Nonurbanized Area Formula Program is found in FTA Circular 9040.1F, "Nonurbanized Area Formula Program Guidance and Grant Application Instructions," dated April 1, 2007. The circular is posted at <http://www.fta.dot.gov>.

### 4. Period of Availability

It was administratively determined that funds apportioned to nonurbanized areas under the Nonurbanized Area Formula Program during FY 2011 will remain available for obligation for two additional fiscal years after the year of apportionment. Any funds that remain unobligated at the close of business on September 30, 2013, will revert to FTA for reapportionment among the States under the Nonurbanized Area Formula Program.

### 5. Other Program or Apportionment Related Information and Highlights

a. NTD Reporting. By law, FTA requires that each recipient under the Section 5311 program submit an annual report to the NTD containing information on capital investments, operations, and service provided with funds received under the Section 5311 program. Section 5311(b)(4), as amended by SAFETEA-LU, specifies that the report shall include information on total annual revenue, sources of revenue, total annual operating costs, total annual capital costs, fleet size and type, and related facilities, revenue vehicle miles, and ridership. State or Territorial DOT 5311 grant recipients must complete a one-page form of basic data for each 5311 subrecipient, unless the subrecipient is already providing a full report to the NTD as a Tribal Transit direct recipient or as an urbanized area reporter (without receiving a Nine or Fewer Vehicles Waiver). For the 2010 Report Year, State or Territorial DOTs must report on behalf of any subrecipient receiving Section 5311 grants in 2010, or that continued to benefit in 2010 from capital assets purchased using Section 5311 grants. Tribal Transit direct recipients must report if they received an obligation or an outlay for a Section 5311 grant in 2010, or if they continued to benefit in 2010 from capital assets using Section 5311 Grants, unless the Tribe is already filing a full NTD Report as an urbanized area reporter or unless the Tribe only received \$50,000 or less in planning grants. The NTD Rural Reporting Manual contains detailed reporting instructions and is posted on the NTD Web site, <http://www.ntdprogram.gov>.

b. Extension of Intercity Bus Pilot of In-Kind Match. Beginning in FY 2007, FTA implemented a two year pilot program of in-kind match for intercity bus service. The initial program was set to expire after FY 2008; however, FTA decided to extend the program through FY 2010. Through this notice FTA extends the In-Kind Match program through FY 2011. FTA published

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guidance on the in-kind match pilot in the Federal Register on February 28, 2007, as Appendix 1 of the Notice announcing the final revised circular 9040.1F, which is available at <http://www.fta.dot.gov>.

### G. Rural Transportation Assistance Program (49 U.S.C. 5311(b)(3))

This program provides funding to assist in the design and implementation of training and technical assistance projects, research, and other support services tailored to meet the needs of transit

operators in nonurbanized areas. For more information about Rural Transportation Assistance Program (RTAP) contact Lorna Wilson, Office of Transit Programs, at (202) 366-2053.

1. FY 2011 Funding Availability

CR 2011 provides \$3,941,493 to RTAP (49 U.S.C. 5311(b)(2)), as a two percent takedown from the funds appropriated for Section 5311. FTA has reserved 15 percent for the National RTAP program. A total of \$3,350,269 is available for allocation to the States, as shown in the table below.

Rural Transit Assistance Program

Total Appropriation.....	\$3,941,493
National RTAP Takedown.....	-591,224
Total Apportioned.....	3,350,269

Table 13 shows the FY 2011 RTAP allocations to the States.

2. Basis for Allocation

FTA allocates funds to the States by an administrative formula. First FTA allocates \$65,000 to each State (\$10,000 to territories), and then allocates the balance based on nonurbanized population in the 2000 census.

3. Program Requirements

States may use the funds to undertake research, training, technical assistance, and other support services to meet the needs of transit operators in nonurbanized areas. These funds are to be used in conjunction with a State's administration of the Nonurbanized Area Formula Program, but also may support the rural components of the Section 5310, JARC, and New Freedom programs.

4. Period of Availability

FTA administratively established that funds apportioned to States under RTAP remain available for obligation two fiscal years following FY 2011. Any funds that remain unobligated at the close of business on September 30, 2013, will revert to FTA for allocation among the States under the RTAP.

5. Other Program or Apportionment Related Information and Highlights

The National RTAP project is administered by cooperative agreement and re-competed at five-year intervals. In FY 2008, FTA awarded the cooperative agreement to the Neponset Valley Transportation Management Association (NVTMA) located in Waltham, Massachusetts through a competitive process. The National RTAP projects are guided by a project review board that consists of managers of rural transit systems and State DOT RTAP programs. National RTAP resources also support the biennial TRB National Conference on Rural Public and Intercity Bus Transportation and other research and technical assistance projects of a national scope.

H. Job Access and Reverse Commute Program (49 U.S.C. 5316)

The Job Access and Reverse Commute (JARC) program provides formula funding to States and Designated Recipients to support the development and maintenance of job access projects designed to transport welfare recipients and low-income individuals to and from jobs and activities related to their employment, and for reverse commute projects designed to transport residents of UZAs and other than urbanized areas to suburban employment opportunities. For more information about the JARC program contact Gil Williams, Office of Transit Programs, at (202) 366-2053.

1. Funding Availability in FY 2011

CR 2011 provides \$69,717,801 for the JARC Program. The total amount apportioned by formula is shown in the table below.

Job Access and Reverse Commute Program

Total apportioned.....	\$69,717,801
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Table 15 shows the FY 2011 JARC apportionments.

2. Basis for Formula Apportionment

By law, FTA allocates 60 percent of funds available to UZAs with populations of 200,000 or more persons (large UZAs); 20 percent to the States for urbanized areas with populations ranging from 50,000 to 199,999 persons (small UZAs), and 20 percent to the States for rural and small urban areas with populations of less than 50,000 persons. FTA apportionments funds based upon the number of low income individuals residing in a State or large urbanized area, using data from the 2000 Census for individuals with incomes below 150 percent of the poverty level. FTA publishes apportionments to each State for small UZAs and for rural and small urban areas and a single apportionment for each large UZA.

The Designated Recipient, either for the State or for a large UZA, is responsible for further allocating the funds to specific projects and subrecipients through a competitive selection process. If the Governor has designated more than one recipient of JARC funds in a large UZA, the Designated Recipients may agree to conduct a single

competitive selection process or sub-allocate funds to each Designated Recipient, based upon a percentage split agreed upon locally, and conduct separate competitions.

States may transfer funds between the small UZA and the nonurbanized apportionments, if all of the objectives of JARC are met in the size area the funds are taken from. States may also use funds apportioned to the small UZA and nonurbanized area apportionments for projects anywhere in the State (including large UZAs) if the State has established a statewide program for meeting the objectives of JARC. A State that is planning to transfer funds under either of these provisions should submit a request to the FTA regional office. FTA will assign new accounting codes to the funds before obligating them in a grant.

### 3. Requirements

States and Designated Recipients must solicit grant applications and select projects competitively, based on application procedures and requirements established by the Designated Recipient, consistent with the Federal JARC program objectives. In the case of large UZAs, the area-wide solicitation shall be conducted in cooperation with the appropriate MPO(s).

Funds are available to support the planning, capital, and operating costs of transportation services that are eligible for funding under the program. Assistance may be provided for a variety of transportation services and strategies directed at assisting welfare recipients and eligible low-income individuals to address unmet transportation needs, and to provide reverse commute services. The transportation services may be provided by public, non-profit, or private-for-profit operators. The Federal share is 80 percent of capital and planning expenses and 50 percent of operating expenses. Funds provided under other Federal programs (other

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than those of the DOT, with the exception of the Federal Lands Highway Program established by 23 U.S.C. 204) may be used for local/State match for funds provided under Section 5316, and revenue from service contracts may be used as local match.

States and Designated Recipients may use up to ten percent of their annual apportionment for administration, planning, and to provide technical assistance. No local share is required for these program administrative funds. Funds used under this program for planning in urbanized areas must be shown in the UPWP for MPO(s) with responsibility for that area.

The Designated Recipient must certify that: the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and, the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public, including those representing the needs of welfare recipients and eligible low-income individuals. The locally developed, coordinated public transit-human services transportation planning process must be coordinated and consistent with the metropolitan and statewide planning processes and funding for the program must be included in the metropolitan and statewide Transportation Improvement Program (TIP and STIP) at a level of specificity or aggregation consistent with State and local policies and procedures. Finally, the State must certify that allocations of the grant to subrecipients are made on a fair and equitable basis.

The coordinated planning requirement is also a requirement in two additional programs. Projects selected for funding under the Elderly and Individuals with Disabilities Program (Section 5310) and the New Freedom program (Section 5317) also are required to be derived from a locally developed coordinated public transit-human service transportation plan. FTA anticipates that most areas will develop one consolidated plan for all the programs, which may include separate elements and other human service transportation programs. The goal of the coordinated planning process is not to be an exhaustive document, but to serve as a tool for planning and implementing beneficial projects. The level of effort required to develop the plan will vary among communities based on factors such as the availability of resources. FTA does not approve coordinated plans.

The JARC program is subject to the relevant requirements of Section 5307, including the requirement for certification of labor protections. JARC program requirements are published in FTA Circular 9050.1, dated April 1, 2007. The circular and other guidance including frequently asked questions are posted on the FTA Web site at <http://www.fta.dot.gov>.

### 4. Period of Availability

FTA has established a consistent three-year period of availability for JARC, New Freedom, and the Section 5310 program, which includes the year of apportionment plus two additional years. FY 2011 funding is available for obligation through FY 2013. Any funding that remains unobligated on September 30, 2013 will revert to FTA for reapportionment among the States and large UZAs under the JARC program.

### 5. Other Program or Apportionment Related Information and Highlights

a. Carryover Earmarks. In the FTA 2010 Apportionments, Allocations and Program Information notice, which was published on February 16, 2010, FTA notified recipients of 2002-2005 earmarks that any remaining JARC discretionary funds should be obligated in a grant before September 30, 2010. At this time, JARC discretionary funds are no longer available for obligation.

b. Designated Recipient. FTA must have received formal notification

from the Governor or Governor's designee of the Designated Recipient for JARC funds apportioned to a State or large UZA before awarding a grant to that area for JARC projects.

c. Transfers to Section 5307 or Section 5311. States may transfer JARC funds to Section 5307 or Section 5311, but only for projects competitively selected under the JARC program, not as a general supplement for those programs. FTA anticipates that the States would use this flexibility primarily for projects to be implemented by a Section 5307 recipient in a small urbanized area or for Federally recognized Indian Tribes that elect to receive funds as a direct recipient from FTA under Section 5311. FTA has established a scope code (646) to track JARC projects included within a Section 5307 or 5311 grant. All activities within a Section 5307 or Section 5311 grant application that are funded with JARC resources should be listed under the 646-00 scope code. Transfer to Section 5307 or 5311 is permitted but not required. FTA also will award stand-alone JARC grants to the State for any and all subrecipients. To track disbursements accurately against the appropriate program, FTA will not combine JARC funds with Section 5307 funds in a single Section 5307 grant, nor will FTA combine JARC with New Freedom funds in a single Section 5307 grant.

I. New Freedom Program (49 U.S.C. 5317)

SAFETEA-LU established the New Freedom Program under 49 U.S.C. 5317. The program purpose is to provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. For more information about the New Freedom program contact Gil Williams, Office of Transit Programs, at (202) 366-2053.

1. Funding Availability in FY 2011

CR 2011 provides \$39,203,019 for the New Freedom Program. The entire amount is apportioned by formula, as shown in the table below:

New Freedom Program

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Total Apportioned.....	\$39,203,019
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Table 16 shows the FY 2011 New Freedom apportionments.

2. Basis for Formula Apportionment

By law, FTA allocates 60 percent of funds available to UZAs with populations of 200,000 or more persons (large UZAs); 20 percent to the States for urbanized areas with populations ranging from 50,000 to 199,999 persons (small UZAs), and 20 percent to the States for rural and small urban areas with populations of less than 50,000 persons. FTA apportions funds based upon the number of persons with disabilities over the age of five residing in a State or large urbanized area, using data from the 2000 Census. FTA publishes apportionments to each State for small UZAs and for rural and small urban areas and a single apportionment for each large UZA.

The Designated Recipient, either for the State or for a large UZA, is responsible for further allocating the funds to specific projects and subrecipients through a competitive selection process. If the Governor has designated more than one recipient of New Freedom funds in a large UZA, the Designated Recipients may agree to conduct a single competitive selection process or sub-allocate funds to each Designated Recipient, based upon a

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percentage split agreed on locally and conduct separate competitions.

3. Requirements

States and Designated Recipients must solicit grant applications and select projects competitively, based on application procedures and requirements established by the Designated Recipient, consistent with the Federal New Freedom program objectives. In the case of large UZAs, the area-wide solicitation shall be conducted in cooperation with the appropriate MPO(s).

Funds are available to support the capital and operating costs of new public transportation services and public transportation alternatives that are beyond those required by the Americans with Disabilities Act (ADA). Funds provided under other Federal programs (other than those of the DOT, with the exception of the Federal Lands Highway Program established by 23 U.S.C. 204) may be used as match for capital funds provided under Section 5317, and revenue from contract services may be used as local match.

Funding is available for transportation services provided by public, non-profit, or private-for-profit operators. Assistance may be provided for a variety of transportation services and strategies directed at assisting persons with disabilities to address unmet transportation needs. Eligible public transportation services and public transportation alternatives funded under the New Freedom program must be both new and beyond the ADA. In a notice of policy change published on April 29, 2009, (Federal Register Volume 74 Number 81, April 29, 2009) FTA expanded the type of projects it considers to be "beyond the ADA" and thus increase the types of projects eligible for



funding under the New Freedom program. Under interpretation published in the Federal Register, new and expanded fixed route and demand responsive transit service planned for and designed to meet the needs of individuals with disabilities are eligible projects.

The Federal share is 80 percent of capital expenses and 50 percent of operating expenses. Funds provided under other Federal programs (other than those of the DOT) may be used for local/state match for funds provided under Section 5317, and revenue from service contracts may be used as local match.

States and Designated Recipients may use up to ten percent of their annual apportionment to administer, plan, and provide technical assistance for a funded project. No local share is required for these program administrative funds. Funds used under this program for planning must be shown in the UPWP for MPO(s) with responsibility for that area.

The Designated Recipient must certify that: the projects selected were derived from a locally developed, coordinated public transit-human services transportation plan; and, the plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers and participation by the public, including those representing the needs of welfare recipients and eligible low-income individuals. The locally developed, coordinated public transit-human services transportation planning process must be coordinated and consistent with the metropolitan and statewide planning processes and funding for the program must be included in the metropolitan and statewide Transportation Improvement Program (TIP and STIP) at a level of specificity or aggregation consistent with State and local policies and procedures. Finally, the State must certify that allocations of the grant to subrecipients are made on a fair and equitable basis.

The coordinated planning requirement is also a requirement in two additional programs. Projects selected for funding under the Section 5310 program and the JARC program are also required to be derived from a locally developed coordinated public transit-human service transportation plan. FTA anticipates that most areas will develop one consolidated plan for all the programs, which may include separate elements and other human service transportation programs.

The New Freedom program is subject to the relevant requirements of Section 5307, but certification of labor protections is not required. New Freedom Program requirements are published in FTA Circular 9045.1, which was effective May 1, 2007. The circular and other guidance including frequently asked questions are posted on the FTA Web site at <http://www.fta.dot.gov>.

#### 4. Period of Availability

FTA has established a consistent three-year period of availability for New Freedom, JARC, and the Section 5310 program funds, which includes the year of apportionment plus two additional years. FY 2011 funding is available for obligation through FY 2013. Any funding that remains unobligated on September 30, 2013 will revert to FTA for reapportionment among the States and large UZAs to be used for New Freedom program purposes.

#### 5. Other Program or Apportionment Related Information and Highlights

a. Designated Recipient. FTA must have received formal notification from the Governor or Governor's designee of the Designated Recipient for New Freedom funds apportioned to a State or large UZA before awarding a grant to that area for New Freedom projects.

b. Transfers to Section 5307 or 5311. States may transfer New Freedom funds to Section 5307 or Section 5311, but only for projects competitively selected under the New Freedom program, not as a general supplement for those programs. FTA anticipates that the States would use this flexibility for projects to be implemented by a Section 5307 recipient in a small urbanized area or for Federally recognized Indian Tribes that elect to receive funds as a direct recipient from FTA under Section 5311. FTA has established a scope code (647) to track New Freedom projects included within a Section 5307 or 5311 grant. All activities within a Section 5307 or Section 5311 grant application that are funded with New Freedom resources should be listed under the 647-00 scope code. Transfer to Section 5307 or 5311 is permitted but not required. FTA also will award stand-alone New Freedom Program grants to the State for any and all subrecipients. In order to track disbursements accurately against the appropriate program, FTA will not combine New Freedom funds with Section 5307 funds in a single Section 5307 grant, nor will FTA combine New Freedom with JARC funds in a single Section 5307 grant.

#### J. Growing States and High Density States Formula Factors (49 U.S.C. 5340)

CR 2011 makes \$197,074,635 available for apportionment in accordance with the formula factors prescribed for Growing States and High Density States set forth in 49 U.S.C. 5340. Fifty percent of this amount is apportioned to eligible States and urbanized areas using the Growing State formula factors. The other 50 percent is apportioned to eligible States and urbanized areas using the High Density States formula factors.

The term "State" is defined only to mean the 50 States. For the Growing State portion of the program, funds are allocated based on the population forecasts for fifteen years after the date of that census. Forecasts are based on the trend between the most recent decennial census and Census Bureau population estimates for the most current year. Census population

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estimates as of July 1, 2009 were used in the FY 2011 apportionments. Funds allocated to the States are then sub-allocated to urbanized and non-urbanized areas based on forecast population, where available. If forecasted population data at the urbanized level is not available, as is currently the case, funds are allocated to current urbanized and non-urbanized areas on the basis of current population in the 2000 Census. Funds allocated to urbanized areas are included in their Section 5307 apportionment. Funds allocated for non-urbanized areas are included in the states' Section 5311 apportionments.

#### IV. FTA Policy and Procedures for FY 2011 Grants

##### A. Automatic Pre-Award Authority To Incur Project Costs

###### 1. Caution to New Grantees and Grantees Using Innovative Financing

While we provide pre-award authority to incur expenses before grant award for many projects, we recommend that first-time grant recipients NOT utilize this automatic pre-award authority and wait until the grant is actually awarded by FTA before incurring costs. As a new grantee, it is easy to misunderstand pre-award authority conditions and be unaware of all of the applicable FTA requirements that must be met in order to be reimbursed for project expenditures incurred in advance of grant award. FTA programs have specific statutory requirements that are often different from those for other Federal grant programs with which new grantees may be familiar. If funds are expended for an ineligible project or activity, FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

Grantees proposing to use innovative financing techniques or capital leasing are required to consult with the applicable FTA Regional Office (see Appendix A) before entering into the financial agreement--especially where the grantee expects to use Federal funds for debt service or capital lease payments. Consulting with FTA before entering into the agreement allows FTA to advise the project sponsor of any applicable Federal regulations, such as the Capital Leasing Regulation, and will minimize the risk of the costs being ineligible for reimbursement at a later date.

###### 2. Policy

FTA provides pre-award authority to incur expenses before grant award for certain program areas described below. This pre-award authority allows grantees to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval. The grantee assumes all risk and is responsible for ensuring that all conditions are met to retain eligibility. This pre-award spending authority permits a grantee to incur costs on an eligible transit capital, operating, planning, or administrative project without prejudice to possible future Federal participation in the cost of the project. In the Federal Register Notice of November 30, 2006, FTA extended pre-award authority for capital assistance under all formula programs through FY 2009, the duration of SAFETEA-LU. In this notice, FTA extends pre-award authority through FY 2012 for capital assistance under all formula programs. FTA provides pre-award authority for planning and operating assistance under the formula programs without regard to the period of the authorization. In addition, we extend pre-award authority for certain discretionary programs based on the annual Appropriations Act each year. All pre-award authority is subject to conditions and triggers stated below:

a. FTA does not impose additional conditions on pre-award authority for operating, planning, or administrative assistance under the formula grant programs. Grantees may be reimbursed for expenses incurred before grant award so long as funds have been expended in accordance with all Federal requirements. In addition to cross-cutting Federal grant requirements, program specific requirements must be met. For example, a planning project must have been included in a Unified Planning Work Program (UPWP); a New Freedom operating assistance project or a JARC planning or operating project must have been derived from a coordinated public transit-human services transportation plan (coordinated plan) and competitively selected by the Designated Recipient before incurring expenses; expenditure on State Administration expenses under State Administered programs must be consistent with the State Management Plan. Designated Recipients for JARC and New Freedom have pre-award authority for the ten percent of the apportionment they may use for program administration, if the use is consistent with their Program Management Plan.

b. Pre-Award authority for Alternatives Analysis planning projects under 49 U.S.C. 5339 is triggered by the publication of the allocation in FTA's Federal Register Notice of Apportionments and Allocations following the annual Appropriations Act, or announcement of additional discretionary allocations. The projects must be included in the UPWP of the MPO for that metropolitan area.

c. Pre-award authority for design and environmental work on a capital project is triggered by the authorization of formula funds, or the appropriation or allocation of funds for a discretionary project.

d. Following authorization of formula funds or appropriation and publication of discretionary projects, pre-award authority for capital project implementation activities, such as property acquisition, demolition, construction, and acquisition of vehicles, equipment, or

construction materials, may be exercised only after FTA concurs that all applicable environmental requirements have been satisfied, including those for actions classified as normally requiring preparation of environmental impact statements, environmental assessments, and categorical exclusions found in 23 CFR 771.117(d). Other conditions and requirements set forth in paragraph 3, below, must also be satisfied. Before exercising pre-award authority, grantees must comply with the conditions and Federal requirements outlined in paragraph 3 below. Failure to do so will render an otherwise eligible project ineligible for FTA financial assistance. Capital projects under the Section 5310, JARC, and New Freedom programs must comply with specific program requirements, including coordinated planning and competitive selection. In addition, before incurring costs, grantees are strongly encouraged to consult with the appropriate FTA regional office regarding the eligibility of the project for future FTA funds and the applicability of the conditions and Federal requirements.

e. As a general rule, pre-award authority applies to the Section 5309 Capital Investment Bus and Bus-Related Facilities, the Clean Fuels Bus program, high priority project designations, and any other transit discretionary projects only AFTER funds have been appropriated or allocated to the project. For Section 5309 Capital Investment Bus and Bus-Related Facilities, Clean Fuels Program, or other transit capital discretionary projects such as those designated in an annual Appropriations Act, the date that costs may be incurred is: (1) For design and environmental review, the appropriations bill which funds the project was enacted or the announcement of the discretionary allocation of funds for the project; and (2) for property acquisition, demolition,

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construction, and acquisition of vehicles, equipment, or construction materials, the date that FTA approves the document (ROD, FONSI, or CE determination) that completes the environmental review process required by the National Environmental Policy Act (NEPA) and its implementing regulations. FTA introduced this new trigger for pre-award authority in FY 2006 in recognition of the growing prevalence of new grantees unfamiliar with Federal and FTA requirements to ensure FTA's continued ability to comply with NEPA and related environmental laws. Because FTA does not sign a final NEPA document until MPO and statewide planning requirements (including air quality conformity requirements, if applicable) have been satisfied, this new trigger for pre-award will ensure compliance with both planning and environmental requirements before irreversible action by the grantee.

f. In previous notices, FTA extended pre-award authority to Section 330 projects referenced in the DOT Appropriation Act, 2002, and the Consolidated Appropriations Resolution, 2003 and to those surface transportation projects commonly referred to as Section 115 projects administered by FTA, for which amounts were provided in the Consolidated Appropriations Act, 2004, Section 117 projects in the 2005 Appropriations Act, and Section 112 of the 2006 Appropriations Act that are to be administered by FTA. FTA, in the FY 2008 Apportionment Notice, extended pre-award authority to high priority projects in SAFETEA-LU, as of the date they were transferred or allotted to FTA for administration. The same conditions described for bus projects apply to these projects. We strongly encourage any prospective applicant that does not have a previous relationship with FTA to review Federal grant requirements with the FTA regional office before incurring costs.

g. Blanket pre-award authority does not apply to Section 5309 Capital Investment New and Small Starts funds. Specific instances of pre-award authority for Capital Investment New and Small Starts projects are described in paragraph 4 below. Pre-award authority does not apply to Capital Investment Bus and Bus-Related Facilities or Clean Fuels projects authorized for funding beyond this fiscal year. Before an applicant may incur costs for Capital Investment New and Small Starts projects, Bus and Bus-Related Facilities projects, or any other projects not yet published in a notice of apportionments and allocations, it must first obtain a written Letter of No Prejudice (LONP) from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office, as described below.

h. Blanket pre-award authority does not apply to Section 5314 National Research Programs. Before an applicant may incur costs for National Research Programs, it must first obtain a written Letter of No Prejudice (LONP) from FTA. To obtain an LONP, a grantee must submit a written request accompanied by adequate information and justification to the appropriate FTA headquarters office. Information about LONP procedures may be obtained from the appropriate headquarters office.

### 3. Conditions

The conditions under which pre-award authority may be utilized are specified below:

a. Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds to support the project. Furthermore, it is not a legal or implied commitment that all items undertaken by the applicant will be eligible for inclusion in the project.

b. All FTA statutory, procedural, and contractual requirements must be met.

c. No action will be taken by the grantee that 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 grantee pursuant to and after the date of the pre-award authority will be eligible for credit toward local match or reimbursement if FTA later makes a grant or grant amendment for the project. Local funds expended by the grantee before the date of the pre-award authority will not be eligible for credit toward local match or reimbursement. Furthermore, the expenditure of local funds or undertaking of project implementation activities such as land acquisition, demolition, or construction before the date of pre-award authority for those activities (i.e., the completion of the NEPA process) would compromise FTA's ability to comply with Federal environmental laws and may render the project ineligible for FTA funding.

e. The Federal amount of any future FTA assistance awarded 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.

f. For funds to which the pre-award authority applies, the authority expires with the lapsing of the fiscal year funds.

g. When a grant for the project is subsequently awarded, the Financial Status Report, in TEAM-Web, must indicate the use of pre-award authority.

h. Environmental, Planning, and Other Federal Requirements. All Federal grant requirements must be met at the appropriate time for the project to remain eligible for Federal funding. The growth of the Federal transit program has resulted in a growing number of inexperienced grantees who make compliance with Federal planning and environmental laws increasingly challenging. FTA has therefore modified its approach to pre-award authority to use the completion of the NEPA process, which has as a prerequisite the completion of planning and air quality requirements, as the trigger for pre-award authority for all activities except design and environmental review.

i. The requirement that a project be included in a locally adopted metropolitan transportation plan, the metropolitan transportation improvement program and Federally-approved statewide transportation improvement program (23 CFR Part 450) must be satisfied before the grantee may advance the project beyond planning and preliminary design with non-Federal funds under pre-award authority. If the project is located within an EPA-designated non-attainment area for air quality, the conformity requirements of the Clean Air Act, 40 CFR Part 93, must also be met before the project may be advanced into implementation-related activities under pre-award authority. Compliance with NEPA and other environmental laws and executive orders (e.g., protection of parklands, wetlands, historic properties, and assurance of tribal consultation) must be completed before State or local funds are spent on implementation activities, such as site preparation, construction, and acquisition, for a project that is expected to be subsequently funded with FTA funds. The grantee may not advance the project beyond planning and preliminary design/engineering before FTA has determined the project to be a categorical exclusion, or has issued a Finding of No Significant Impact (FONSI) or an environmental Record of Decision (ROD), in accordance with FTA environmental regulations, 23 CFR Part 771. For planning projects, the project must be included in a locally-approved Unified Planning Work Program (UPWP) that has been coordinated with the State.

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j. In addition, Federal procurement procedures, as well as the whole range of applicable Federal requirements (e.g., Buy America, Davis-Bacon Act, Disadvantaged Business Enterprise) 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, this increased administrative flexibility requires a grantee to make certain that no Federal requirements are circumvented through the use of pre-award authority. If a grantee has questions or concerns regarding the environmental requirements, or any other Federal requirements that must be met before incurring costs, it should contact the appropriate regional office.

#### 4. Pre-Award Authority for New and Small Starts Projects

a. Preliminary Engineering (PE), Final Design (FD), and Project Development (PD). Projects proposed for Section 5309 capital investment funds (New and Small Starts) are required to follow a federally defined project development process. For New Starts projects, this process includes, among other things, FTA approval of the entry of the project into PE and FD. For Small Starts projects, this process includes, among other things, approval of the entry of the project into PD. In accordance with Sections 5309(d) and (e), FTA considers the merits of the project, the strength of its financial plan, and its readiness to enter the next phase in deciding whether or not to approve entry into PE, FD, or PD. For New Starts projects, upon FTA approval to enter PE, FTA extends pre-award authority to incur costs for PE activities. Upon completion of NEPA, FTA extends pre-award authority to incur costs for utility relocation, as well as real property acquisition and vehicle purchases, which are further addressed below. Upon FTA approval to enter FD, FTA extends pre-award authority to incur costs for FD activities, demolition, and non-construction activities such as procurement of long-lead time items or items for which market conditions play a significant role in the acquisition price. This includes, but is not limited to procurement of rails, ties, and other specialized equipment, and commodities. Please contact the FTA Regional

Office for a determination of activities not listed here, but which meet the intent described above. For Small Starts projects, upon FTA approval to enter PD, FTA extends pre-award authority to incur costs for the design and engineering activities necessary to complete the NEPA process. Upon completion of NEPA, FTA extends pre-award authority to incur costs for utility relocation, as well as real property acquisition and vehicle purchases, which are further addressed below. Because Small Starts projects are not subject to approval into FD, they are not granted pre-award authority for procurement of rails, ties, and other specialized equipment; the procurement of commodities; and demolition. The pre-award authority for each phase is automatic upon FTA's signing of a letter to the project sponsor approving entry into that phase.

b. Real Property Acquisition Activities and Vehicle Purchases. FTA extends automatic pre-award authority for the acquisition of real property, real property rights and acquisition of vehicles for a New or Small Starts project upon completion of the NEPA process for that project. The NEPA process is completed when FTA signs an environmental Record of Decision (ROD) or Finding of No Significant Impact (FONSI), or makes a Categorical Exclusion (CE) determination. With the limitations and caveats described below, real estate acquisition and vehicle purchases for a New or Small Starts project may commence, at the project sponsor's risk, upon completion of the NEPA process.

For FTA-assisted projects, any acquisition of real property or real property rights must be conducted in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) and its implementing regulations, 49 CFR Part 24. This pre-award authority is strictly limited to costs incurred: (i) To acquire real property and real property rights in accordance with the URA regulation, and (ii) to provide relocation assistance in accordance with the URA regulation. This pre-award authority is limited to the acquisition of real property and real property rights that are explicitly identified in the final environmental impact statement (FEIS), environmental assessment (EA), or CE document, as needed for the selected alternative that is the subject of the FTA-signed ROD or FONSI, or CE determination. This pre-award authority regarding property acquisition that is granted at the completion of NEPA does not cover site preparation, demolition, or any other activity that is not strictly necessary to comply with the URA, with one exception. That exception is when a building that has been acquired, has been emptied of its occupants, and awaits demolition poses a potential fire-safety hazard or other hazard to the community in which it is located, or is susceptible to reoccupation by vagrants. Demolition of the building is also covered by this pre-award authority upon FTA's written agreement that the adverse condition exists.

Pre-award authority for property acquisition is also provided when FTA makes a CE determination for a protective buy or hardship acquisition in accordance with 23 CFR 771.117(d)(12), and when FTA makes a CE determination for the acquisition of a pre-existing railroad right-of-way in accordance with 49 U.S.C. 5324(c). When a tiered environmental review in accordance with 23 CFR 771.111(g) is being used, pre-award authority is NOT provided upon completion of the first-tier environmental document except when the Tier-1 ROD or FONSI signed by FTA explicitly provides such pre-award authority for a particular identified acquisition.

Project sponsors should use pre-award authority for real property acquisition relocation assistance, and vehicle purchases very carefully, with a clear understanding that it does not constitute a funding commitment by FTA. FTA provides pre-award authority upon completion of the NEPA process for real property acquisition and relocation assistance to maximize the time available to project sponsors to move people out of their homes and places of business, in accordance with the requirements of the Uniform Relocation Act, but also with maximum sensitivity to the plight of the people so affected. FTA provides pre-award authority upon the completion of the NEPA process for vehicles purchases in recognition of the long-lead time and complexity of this activity as well as its relationship to the "critical path" project schedule. FTA cautions grantees that do not currently operate the type of vehicle proposed in the New or Small Starts project about exercising this pre-award authority and encourages these sponsors to wait until later in the project development process when project plans are more fully developed and Federal support for the project is more certain. FTA reminds project sponsors that the procurement of vehicles must comply with all Federal requirements including, but not limited to, competitive procurement practices, the Americans with Disabilities Act, and Buy America. FTA encourages project sponsors to discuss the procurement of vehicles with FTA in regards to Federal requirements before exercising pre-award authority.

Although FTA provides pre-award authority for property acquisition and vehicle purchases upon completion of the NEPA process, FTA will not make a grant to reimburse the sponsor for real estate activities conducted under pre-

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award authority until the New Starts project has been approved into FD or the Small Starts project has received its construction grant. FTA will only reimburse the sponsor for vehicle purchases through an executed Full Funding Grant Agreement (New Starts) or a Project Construction Grant Agreement or single year capital grant (Small Starts). This is to ensure that Federal funds are not risked on a

project whose advancement into construction is still not yet assured.

c. National Environmental Policy Act (NEPA) Activities. NEPA requires that major projects proposed for FTA funding assistance be subjected to a public and interagency review of the need for the project, its environmental and community impacts, and alternatives to avoid and reduce adverse impacts. Projects of more limited scope also need a level of environmental review, either to support an FTA finding of no significant impact (FONSI) or to demonstrate that the action is categorically excluded from the more rigorous level of NEPA review.

FTA's regulation titled "Environmental Impact and Related Procedures," at 23 CFR Part 771 states that the costs incurred by a grant applicant for the preparation of environmental documents requested by FTA are eligible for FTA financial assistance (23 CFR 771.105(e)). Accordingly, FTA extends pre-award authority for costs incurred to comply with NEPA regulations and to conduct NEPA-related activities for a proposed New Starts or Small Starts project, effective as of the date of the Federal approval of the relevant STIP or STIP amendment that includes the project or any phase of the project. NEPA-related activities include, but are not limited to, public involvement activities, historic preservation reviews, section 4(f) evaluations, wetlands evaluations, endangered species consultations, and biological assessments. This pre-award authority is strictly limited to costs incurred to conduct the NEPA process, and to prepare environmental, historic preservation and related documents. It does not cover PE activities beyond those necessary for NEPA compliance.

For many FTA programs, costs incurred by a grant applicant exercising pre-award authority in the preparation of environmental documents required by FTA are eligible for FTA reimbursement (See also 23 CFR 771.105(e)). When any transit project (including New Starts and Small Starts) is adopted into the STIP or STIP amendment and pre-award authority is granted, reimbursement for NEPA activities may be sought at any time through Section 5339 (Alternatives Analysis program), Section 5307 (Urbanized Area Formula Program), and some flexible highway funds. FTA assistance for environmental documents for New Starts and Small Starts projects is subject to certain restrictions. Under SAFETEA-LU, Section 5309 capital investment funds (New and Small Starts) funds cannot be used to reimburse any activity, including a NEPA-related activity that occurs before the approval of a New Starts project into PE or a Small Starts project into PD. Only when a project has PE approval (for New Starts) or PD approval (for Small Starts) may it seek reimbursement for NEPA work conducted after the approval through Section 5309 New Starts funds. Prior to PE approval, any NEPA related work for New Starts or Small Starts can only be reimbursed through the use of Section 5339 (Alternatives Analysis Program), Section 5307 (Urbanized Area Formula Program) and some flexible highway funds. NEPA-related activities include, but are not limited to, public involvement activities, historic preservation reviews, section 4(f) evaluations, wetlands evaluations, endangered species consultations, tribal consultation, and biological assessments. As with any pre-award authority, FTA reimbursement for costs incurred is not guaranteed.

d. Other New and Small Starts Activities Requiring Letter of No Prejudice (LONP). Except as discussed in paragraphs a through c above, a grant applicant must obtain a written LONP from FTA before incurring costs for any activity expected to be funded by New or Small Starts funds not yet awarded. To obtain an LONP, an applicant must submit a written request accompanied by adequate information and justification to the appropriate FTA regional office, as described in B below.

## B. Letter of No Prejudice (LONP) Policy

### 1. Policy

LONP authority allows an applicant to incur costs on a project utilizing non-Federal resources, with the understanding that the costs incurred subsequent to the issuance of the LONP may be reimbursable as eligible expenses or eligible for credit toward the local match should FTA approve the project at a later date. LONPs are applicable to projects and project activities not covered by automatic pre-award authority. The majority of LONPs will be for Section 5309 New Starts or Small Starts projects undertaking activities not covered under automatic pre-award authority, an FFGA or a PCGA, or for Section 5309 Bus and Bus-Related projects authorized but not yet appropriated by Congress. LONPs may be issued for formula and discretionary funds beyond the life of the current authorization or FTA's extension of automatic pre-award authority; however, the LONP is limited to a five-year period, unless otherwise authorized.

### 2. Conditions and Federal Requirements

The conditions for pre-award authority specified in section IV.A.2 above apply to all LONPs. The Environmental, Planning and Other Federal Requirements described in section IV.A.3 also apply to all LONPs. Because project implementation activities may not be initiated before NEPA completion, FTA will not issue an LONP for such activities until the NEPA process has been completed with a ROD, FONSI, or CE.

### 3. Request for LONP

Before incurring costs for a project not covered by automatic pre-award authority, the project sponsor must first submit a written request for an LONP, accompanied by adequate information and justification, to the appropriate regional office and obtain written approval from FTA. FTA approval of an LONP for a New Starts or Small Starts project is determined on a case-by-case basis. Federal funding for a New or Small Starts project is not implied or guaranteed by an LONP. Specifically, when requesting an LONP, the applicant shall

provide sufficient information to allow FTA to consider the following items:

- a. Description of the activities to be covered by the LONP.
- b. Justification for advancing the identified activities. The justification should include an accurate assessment of the consequences to the project scope, schedule, and budget should the LONP not be approved.
- c. Allocated level of risk and contingency for the activity requested.
- d. Status of procurement progress, including, if appropriate, submittal of bids for the activities covered by the LONP.
- e. Strength of the capital and operating financial plan for the New or Small Starts project and the future transit system.
- f. Adequacy of the Project Management Plan.
- g. Resolution of any readiness issues that would affect the project, such as land acquisition and technical capacity to carry out the project.

FTA will, following the completion of the requirements under NEPA, expedite the issuance of LONPs for New and

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Small Starts projects, when appropriate, by no longer performing a detailed review of the cost and scope of the request in every instance. Rather, a limited review will be performed in those cases that are of a more routine nature, especially those involving an experienced sponsor.

#### C. FTA FY 2011 Annual List of Certifications and Assurances

The full text of the FY 2011 Certifications and Assurances was published in the Federal Register on November 2, 2010, and is available on the FTA Web site and in TEAM-Web. The FY 2011 Certifications and Assurances must be used for all grants made in FY 2011, including obligation of carryover funds. All grantees with active grants are required to have signed the FY 2011 Certifications and Assurances within 90 days after publication. Any questions regarding this document may be addressed to the appropriate Regional Office or to Nydia Picayo, in the FTA Office of Program Management, at (202) 366-1662.

#### D. FHWA Funds Used for Transit Purposes

SAFETEA-LU continues provisions in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and TEA-21 that expanded modal choice in transportation funding by including substantial flexibility to transfer funds between FTA and FHWA formula program funding categories. The provisions also allow for transfer of certain discretionary program funds for administration of highway projects by FHWA and transit projects by FTA. FTA and FHWA execute Flex Funding Transfers between the Formula and Bus Grants programs and the Federal Aid Highway programs. This also includes the transfer of Metropolitan and Statewide planning set-aside funds between FHWA and FTA to be combined with metropolitan and statewide planning resources as Consolidated Planning Grants (CPG). These transfers are based on a State's requests to transfer funding from the Highway and/or Transit programs to fund States and local project priorities, and joint planning needs. This practice can result in transfers to the Federal Transit Program from the Federal Aid Highway Program or vice versa.

SAFETEA-LU was signed into law on August 10, 2005. With the enactment of SAFETEA-LU, beginning in FY 2006, with few exceptions, Federal transit programs were funded solely from general funds or trust funds. The transit Formula and Bus Grant programs are now funded entirely from Mass Transit Account of the Highway Trust Fund. The Formula and Bus Grant Programs can also receive flex funding transfers from the Federal Aid Highway Program.

As a result of the changes to program funding mechanisms, there is no longer a requirement to transfer budget authority and liquidating cash resources simultaneously upon the execution of a flex funding transfer request by a State. Since the transfers are between trust fund accounts, the only requirement is to transfer contract authority (obligation limitation) between the Federal Aid Program trust fund account and the Formula and Bus Grant Program account. At the point that the obligation resulting from the transfer of budgetary authority is expended, a transfer of liquidating cash will be required.

Beginning in FY 2007, the accounting process was changed for transfers of flex funds and other specific programs to allow contract authority to be transferred and the liquidating cash to be transferred separately. FTA requires that flexed fund transfers to FTA be in separate and identifiable grants in order to ensure that the draw-down of flexed funds liquidating cash can be tracked, thus securing the internal controls for monitoring these resources from the Federal Highway Administration to avoid deficiencies in FTA's Formula and Bus Grants account.

FTA monitors the expenditures of flexed funded grants and requests the transfer of liquidating cash from FHWA to ensure sufficient funds are available to meet expenditures. To facilitate tracking of grantees' flex funding expenditures, FTA developed codes to provide distinct identification of "flex funds."

The process for transferring flexible funds between FTA and FHWA programs is described below. Note that the new transfer process for "flex funds" that began in FY 2007 does not apply to the transfer of State planning set-aside funds from FHWA to FTA to be combined with

metropolitan and statewide planning resources as Consolidated Planning Grants (CPG). These transfers are based on States requests to transfer funding from the Highway and/or Transit programs to fund States and local project priorities, and joint planning needs. Planning funds transferred will be allowed to be merged in a single grant with FTA planning resources using the same process implemented in FY 2006. For information on the process for the transfer of funds between FTA and FHWA planning programs refer to section III.A and B. Note also that certain prior year appropriations earmarks (Sections 330, 115, 117, and 112) are allotted annually for administration rather than being transferred. For information regarding these procedures, please contact Erin McCartney, FTA Budget Office, at (202) 366-5189 or Nancy Grubb, FTA Budget Office, at (202) 366-1635; or FHWA Budget Division, at (202) 366-2845.

#### 1. Transfer From FHWA to FTA

FHWA funds transferred to FTA are used primarily for transit capital projects and eligible operating activities that have been designated as part of the metropolitan and statewide planning and programming process. The project must be included in an approved STIP before the funds can be transferred. By letter, the State DOT requests the FHWA Division Office to transfer highway funds for a transit project. The letter should specify the project, amount to be transferred, apportionment year, State, urbanized area, Federal aid apportionment category (i.e., Surface Transportation Program (STP), Congestion Mitigation and Air Quality (CMAQ) or identification of the earmark and indication of the intended FTA formula program (i.e., Section 5307, 5311 or 5310) and should include a description of the project as contained in the STIP. Note that FTA may also administer certain transfers of statutory earmarks under the Section 5309 bus program, for tracking purposes.

The FHWA Division Office confirms that the apportionment amount is available for transfer and concurs in the transfer, by letter to the State DOT and FTA. The FHWA Office of Budget and Finance then transfers obligation authority. All FHWA CMAQ and STP funds transferred to FTA will be transferred to one of the three FTA formula programs (i.e. Urbanized Area Formula (Section 5307), Nonurbanized Area Formula (Section 5311) or Elderly and Persons with Disabilities (Section 5310). High Priority projects in Section 1702 of SAFETEA-LU or Transportation Improvement projects in Section 1934 of SAFETEA-LU and other Congressional earmarks that are transferred to FTA will be aligned with and administered through FTA's discretionary Bus and Bus Related Facilities Program (Section 5309). The most recent guidance on transfers of FHWA funds as allowed under SAFETEA-LU is FHWA Memorandum, dated July 19, 2007, "Information Fund Transfers to Other Agencies and Among Title 23 Programs."

The FTA grantee's application for the project must specify which program the funds will be used for, and the application must be prepared in accordance with the requirements and

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procedures governing that program. Upon review and approval of the grantee's application, FTA obligates funds for the project.

Transferred funds are treated as FTA formula or discretionary funds, except for local match purposes as described in c below, but are assigned a distinct identifying code for tracking purposes. The funds may be transferred for any capital purpose eligible under the FTA formula program to which they are transferred and, in the case of CMAQ, for certain operating costs. FHWA issued revised interim guidance on project eligibility under the CMAQ program in a Notice at 71 FR 76038 et seq. (December 19, 2006) incorporating changes made by SAFETEA-LU. In accordance with 23 U.S.C. 104(k), all FTA requirements except local share, which remains the same as required under the FHWA program, are applicable to transferred funds except in certain cases when CMAQ funds are authorized for operating expenses. Earmarks that are transferred to the Section 5309 Bus Program for administration, however, can be used for the congressionally designated transit purposes, and in some cases where the law provides, are not limited to eligibility under the Bus Program.

Earmarked funds, however, can only be used for the congressionally designated purposes.

#### 2. Transfers From FTA to FHWA

The MPO submits a written request to the FTA regional office for a transfer of FTA Section 5307 formula funds (apportioned to a UZA 200,000 and over in population) to FHWA based on approved use of the funds for highway purposes, as determined by the designated recipient under Section 5307 and contained in the Governor's approved State Transportation Improvement Program. The MPO must certify that: (1) Notice and opportunity for comment and appeal has been provided to affected transit providers; (2) the funds are not needed for capital investments required by the Americans with Disabilities Act, and (3) local transit needs are being addressed. The FTA Regional Administrator reviews and, if he or she concurs in the request, then forwards the approval in written format to FTA Headquarters, where a reduction equal to the dollar amount being transferred to FHWA is made to the grantee's Urbanized Area Formula Program apportionment.

Transfers of discretionary earmarks for administration by FHWA are handled on a case by case basis, by the FTA regional office, in consultation with the FTA Office of Program Management, Office of Chief Counsel, and Office of Budget and Policy.

#### 3. Matching Share for FHWA Transfers



Section 104(k) of title 23 U.S.C., regarding the non-Federal share, applies to Title 23 funds used for transit projects. Thus, FHWA funds transferred to FTA retain the same matching share that the funds would have if used for highway purposes and administered by FHWA.

There are four instances in which a Federal share higher than 80 percent would be permitted. First, in States with large areas of Indian and certain public domain lands and national forests, parks and monuments, the local share for highway projects is determined by a sliding scale rate, calculated based on the percentage of public lands within that State. This sliding scale, which permits a greater Federal share, but not to exceed 95 percent, is applicable to transfers used to fund transit projects in these public land States. FHWA develops the sliding scale matching ratios for the increased Federal share.

Second, commuter carpooling and vanpooling projects and transit safety projects using FHWA transfers administered by FTA may retain the same 100 percent Federal share that would be allowed for ride-sharing or safety projects administered by FHWA.

The third instance is the 100 percent Federally-funded safety projects; however, these are subject to a nationwide 10 percent program limitation.

The fourth instance occurs with CMAQ funds. Section 1131 of, The Energy Independence and Security Act, 2007 (Pub. L. 11-140) amended 23 U.S.C. 120 increased the Federal share of CMAQ projects to 100% at the State's discretion. FTA will honor this increased match for CMAQ funds transferred to FTA for implementation if the state chooses to fund the project at a higher Federal share than 80 percent. The Federal share for CMAQ projects cannot be lower than 80 percent.

#### E. Technical Assistance

FTA headquarters and regional staff will be pleased to answer your questions and provide any technical assistance you may need to apply for FTA program funds and manage the grants you receive. This notice and the program guidance circulars previously identified in this document may be accessed via the FTA Web site at <http://www.fta.dot.gov>.

In addition, copies of the following circulars and other useful information are available on the FTA Web site and may be obtained from FTA regional offices; Circular 4220.1F, "Third Party Contracting Guidance," and Circular 5010.1D, "Grant Management Guidelines." Both circulars were recently revised and can be found at [http://www.fta.dot.gov/laws/leg\\_req\\_circulars\\_guidance.html](http://www.fta.dot.gov/laws/leg_req_circulars_guidance.html). The FY 2011 Annual List of Certifications and Assurances and Master Agreement are also posted on the FTA Web site.

The DOT final rule on "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," which was effective July 16, 2003, can be found at [http://www.access.gpo.gov/nara/cfr/waisidx\\_04/49cfr26\\_04.html/](http://www.access.gpo.gov/nara/cfr/waisidx_04/49cfr26_04.html/).

Issued in Washington, DC, this 1st day of February, 2011.

Peter Rogoff,  
Administrator.

#### Appendix A

##### FTA Regional Offices

Mary Beth Mello, Regional  
Administrator, Region 1--Boston,  
Kendall Square, 55 Broadway, Suite  
920, Cambridge, MA 02142-1093,  
Tel. 617-494-2055

Robert C. Patrick, Regional  
Administrator, Region 6--Ft.  
Worth, 819 Taylor Street, Room  
8A36, Ft. Worth, TX 76102, Tel.  
817-978-0550

States served: Connecticut, Maine,  
Massachusetts, New Hampshire,  
Rhode Island, and Vermont

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

Brigid Hynes-Cherin, Regional  
Administrator, Region 2--New York,  
One Bowling Green, Room 429, New  
York, NY 10004-1415, Tel. 212-668-  
2170

Mokhtee Ahmad, Regional  
Administrator, Region 7--Kansas  
City, MO, 901 Locust Street, Room  
404, Kansas City, MO 64106, Tel.  
816-329-3920

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States served: New Jersey, New York

States served: Iowa, Kansas,  
Missouri, and Nebraska

New York Metropolitan Office,  
Region 2--New York, One Bowling  
Green, Room 428, New York, NY  
10004-1415, Tel. 212-668-2202

Letitia Thompson, Regional  
Administrator, Region 3--  
Philadelphia, 1760 Market Street,  
Suite 500, Philadelphia, PA 19103-  
4124, Tel. 215-656-7100

Terry Rosapep, Regional  
Administrator, Region 8--Denver,  
12300 West Dakota Ave., Suite 310,  
Lakewood, CO 80228-2583, Tel. 720-  
963-3300

States served: Delaware, Maryland,  
Pennsylvania, Virginia, West

States served: Colorado, Montana,  
North Dakota, South Dakota, Utah,

Virginia, and District of Columbia and Wyoming.

Philadelphia Metropolitan Office, Region 3--Philadelphia, 1760 Market Street, Suite 500, Philadelphia, PA 19103-4124, Tel. 215-656-7070

Washington, DC Metropolitan Office, 1990 K Street, NW., Room 510, Washington, DC 20006, Tel. 202-219-3562

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Yvette Taylor, Regional Administrator, Region 4--Atlanta, 230 Peachtree Street, NW., Suite 800, Atlanta, GA 30303, Tel. 404-865-5600

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States served: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and Virgin Islands

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Marisol Simon, Regional Administrator, Region 5--Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312-353-2789,

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

Chicago Metropolitan Office, Region 5--Chicago, 200 West Adams Street, Suite 320, Chicago, IL 60606, Tel. 312-353-2789

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Leslie T. Rogers, Regional Administrator, Region 9--San Francisco, 201 Mission Street, Room 1650, San Francisco, CA 94105-1926, Tel. 415-744-3133

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

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Los Angeles Metropolitan Office, Region 9--Los Angeles, 888 S. Figueroa Street, Suite 1850, Los Angeles, CA 90017-1850, Tel. 213-202-3952

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Rick Krochalis, Regional Administrator, Region 10--Seattle, Jackson Federal Building, 915 Second Avenue, Suite 3142, Seattle, WA 98174-1002, Tel. 206-220-7954

States served: Alaska, Idaho, Oregon, and Washington

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