

**SUMMARY OF COMMENTS RECEIVED ON  
CAPITAL INVESTMENT GRANT PROGRAM  
PROPOSED INTERIM POLICY GUIDANCE**

August 2015

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## Introduction

This document summarizes the comments received on the Capital Investment Grant (CIG) Program Proposed Interim Policy Guidance published by the Federal Transit Administration (FTA) on April 8, 2015. FTA is appreciative of the thoughtful comments provided. Below we summarize the comments received by topic area and how FTA did or did not make changes in the final interim policy guidance based on those comments. This document provides succinct responses. Readers should familiarize themselves with the final interim policy guidance to get an understanding of the details.

FTA received written responses on the proposed interim policy guidance from 41 entities, including cities, transit operators, state agencies, metropolitan planning organizations, non-profit organizations, and interested citizens. These letters contained more than 539 separate comments. These responses can be found in their entirety under docket number FTA–2015–0007 at [www.regulations.gov](http://www.regulations.gov).

## Eligibility of Bus Rapid Transit Projects for CIG funding

FTA received a total of 17 comments on its proposed corridor based BRT definition. One was solidly in favor of the proposal. Nine noted that the definitions in law for corridor based BRT and fixed guideway BRT differ slightly, with the former saying “substantial investment in a defined corridor” and the latter saying “substantial investment in a single corridor.” These seven comments all suggested that FTA allow service operating on a trunk line with several branches to qualify as a project provided it can meet all other requirements. One comment suggested the proposed requirement for separate and consistent brand identity for stations and vehicles has limited utility and should not be given the same importance as other features that improve performance. Two suggested modifications to the corridor based BRT proposed definition to eliminate confusing terminology. One requested clarification on whether combined frequency of service along a given corridor would qualify. One requested that FTA change the definition to only require frequent bi-directional service during peak periods. Two comments were somewhat unclear in their intent, but seemed to be stating the corridor based BRT definition may not promote better projects and fixed guideway should be required.

FTA Response: FTA has kept the definition for corridor based BRT as listed in the proposed interim policy guidance because we believe the law intended corridor based BRT projects to have similar features to fixed guideway BRT projects, absent the fixed guideway component. However, FTA has added clarifying text on page 4 of the Small Starts Chapter of the final interim policy guidance. As a matter of practice, FTA has allowed in the past and will continue to allow trunk lines with multiple branches to be eligible as a single BRT project. The trunk line is considered the single corridor and is the basis on which FTA examines the combined frequency of service to determine if it meets the definition. While FTA agrees with the comment that a separate and unique branding for a BRT may not help improve performance of the BRT, such marketing helps to differentiate the service from local bus service and can assist in drawing ridership. Although some comments suggest the definition for corridor based BRT is confusing since it references separated guideways, FTA has not changed the definition because some corridor based BRTs contain separated guideway but not along enough of the project length to

qualify as a fixed guideway BRT. The law is clear that frequent bi-directional service should be provided for a substantial part of weekday and weekend days, thus FTA did not change the definition to require such service only during peak periods. Lastly, the law allows corridor based BRT projects without fixed guideway to be eligible for CIG funding, so we cannot require fixed guideway on all BRTs.

## **Getting into and through the Steps in the CIG Process**

### **Information Needed with Request to Enter Project Development**

Four comments were submitted on the information required to be provided to FTA to enter the Project Development (PD) phase. One comment was solidly in support of FTA's proposal, stating that the process was streamlined and straightforward, with minimal new work required on the project sponsor's part to collect and document information about the proposed project. One comment asked FTA to consider allowing the PD request letter to be longer than five pages, and another comment suggested that FTA tell project sponsors to organize their letters into sections matching the list of information. One comment was regarding FTA's proposal that project sponsors provide documentation demonstrating commitment of funds for Project Development work. That comment stated that FTA should accept letters of intent from jurisdictional staff responsible for budgeting funds in future budgets and capital improvement programs.

FTA Response: FTA believes the information required with the request to enter PD can easily be provided in 2-5 pages, and that each project sponsor should determine the format for their request based on the unique characteristics and status of their individual project. Letters of intent from jurisdictional staff to program future funding for PD means the funding is not currently available. FTA has added clarifying text in the final interim policy guidance that explains project sponsors must have money available to begin the PD work immediately upon entry into the program (pages 4-5 of New Starts Chapter, page 5 of Small Starts Chapter, and page 7 of Core Capacity Chapter). Funding available one or more years in future does not qualify as available and committed for entry into PD, even if it is programmed in a Transportation Improvement Plan, agency Capital Improvement Program, or future fiscal year budget document. MAP-21 intends projects to make quick progress and not linger in the program, which can only happen if funding is available to begin performing the PD work immediately upon entry into the CIG program.

### **Two-year Project Development Timeframe for New Starts and Core Capacity Projects**

FTA received four comments regarding extensions to the two-year timeframe to complete Project Development for New Starts and Core Capacity projects. Two of these comments asked FTA to clarify the criteria FTA would consider in deciding whether to grant an extension. Another comment recommended that FTA not exercise strict adherence to the two-year timeframe for Project Development because it could negatively impact environmental reviews in which multiple alternatives are being analyzed that require more time evaluate fully. One comment suggested that FTA establish a 30-day timeframe to respond to requests for PD extensions to enable the project to continue its momentum.

FTA Response: FTA has added some clarifying text in the final interim policy guidance related to requests for an extension to the two-year PD timeframe (page 6 of New Starts Chapter and

page 9 of Core Capacity Chapter), but notes that the proposed interim policy guidance already indicated the items FTA would consider when determining whether to grant an extension – the reasons an extension is needed, the reasonableness of the proposed revised schedule, and the timeframe to complete the PD activities. FTA does not wish to specify anything further in the final interim policy guidance because each situation is unique and we cannot account for the myriad of reasons a project may get delayed in selecting a locally preferred alternative, completing the environmental review required by the National Environmental Policy Act (NEPA), or getting the project adopted into the fiscally constrained long range metropolitan transportation plan (the items required by law to be completed within the two years). Instead, we have stated in the final interim policy guidance that each request for an extension will be considered on a case-by-case basis. For these same reasons, FTA has not stated a specific timeframe within which we will respond to requests for extensions, but intends for the process to neither be complicated nor lengthy. Lastly, FTA agrees with the comment that environmental reviews might take longer than the two year Project Development timeframe specified in law. However, that timeframe is in law so we must adhere to the requirement. Thus, FTA has stated in the proposed and final interim policy guidance that project sponsors may wish to conduct early planning work and initiate the environmental review process under NEPA including, where appropriate, early scoping prior to seeking entry into Project Development.

#### **Withdrawal From the CIG Program if Project Development Not Completed in Two Years**

FTA received one comment on its proposal to remove projects from the program if they do not complete Project Development within two years and are not granted an extension. The comment requested that FTA provide clarification on how much time a project would be allowed to complete Project Development upon its re-entry into that phase.

FTA Response: FTA has clarified the text in the final interim policy guidance to address the comment received (page 6 of New Starts Chapter and page 9 of Core Capacity Chapter). After being withdrawn from the program, project sponsors must complete the Project Development work activities on their own. When they re-apply to the CIG program, it would be for entry into the Engineering phase rather than re-entry into the Project Development phase. Any work performed after withdrawal from Project Development and prior to entry into Engineering would not be covered by pre-award authority and would be ineligible for reimbursement at a future date should FTA ultimately award a construction grant agreement.

#### **Start of Formal Oversight**

FTA received ten comments seeking clarification on its statement that “During PD, project sponsors should contact FTA no later than six months prior to their anticipated request to enter the Engineering phase so that FTA can proceed with our formal project oversight process and take the steps necessary to undertake our evaluation and rating of the project for entry into Engineering.” Specifically, eight of the comments wanted FTA to clarify that project sponsors would be given the full two years to complete Project Development, because the statement by FTA could be interpreted instead as giving them only 18 months to complete Project Development. The remaining two comments requested clarification on whether FTA anticipated an intervening time between completion of Project Development and entry into Engineering providing project sponsors additional time to develop the Project Management Plans and other documents in the list FTA proposed as needed to enter Engineering.

FTA Response: FTA has clarified the text in the final interim policy guidance to address the comments received (page 6 of New Starts Chapter and page 9 of Core Capacity Chapter). The text in the proposed interim policy guidance was not meant to imply project sponsors had only 18 months to complete the work required during Project Development. It was meant only to explain when formal oversight of the project will begin (no later than six months prior to entry into Engineering or six months prior to the end of the two year PD timeframe, whichever is earlier).

### **Expedited Oversight Reviews**

Six comments were received about expedited oversight reviews that FTA may undertake. Five comments strongly supported these expedited reviews because they will help accelerate projects from sponsors with a proven history of delivering projects on time and on budget. Another comment stated that expedited reviews should be provided to project sponsors who have delivered successful New and Small Starts projects and maintain a significant number of experienced personnel in the agency. Two comments requested that FTA commit to review timeframes in order to ensure that New Starts and Core Capacity projects can meet the requirement to complete the Project Development phase within two years.

FTA Response: FTA agrees that expedited reviews should be provided to project sponsors who have delivered successful CIG projects and maintain a significant number of experienced personnel in the agency and assigned to the project. These factors will be addressed as part of FTA's review of the project sponsor's management capacity and capability.

FTA works with project sponsors to develop roadmaps outlining the steps and timeframes required to reach the next major milestone for the project, whether that is entry into Engineering or receipt of a construction grant agreement. These roadmaps include general timeframes needed for FTA to complete its reviews.

### **Information Required for Entry into Engineering**

FTA received 20 comments on the list of design and engineering activities proposed by FTA to be completed during Project Development. Eight comments suggested the activities proposed by FTA go well beyond the required documentation to receive a rating, but one of these suggested development of the Project Management plan is appropriate during Project Development. Seven comments suggested the list of activities be required during the Engineering phase instead of during the Project Development phase. One comment stated the proposal seems to effectively require project sponsors to complete 30 percent design before requesting entry into the Engineering phase, which it said would be appropriate for projects being delivered through design-build or another accelerated delivery mechanism but challenging for traditional project delivery methods. One comment suggested the timing of completion of the list of activities creates potential Brooks Act implications, stating that under the Brooks Act consultants that have performed, or are performing planning work on the project would be excluded from consideration for such engineering tasks. One comment suggested the activities be strongly suggested, but not required. Several comments sought clarification on the activities listed such as Project Delivery Method selected, Value Engineering report timing, and level of documentation needed for third-party agreements and right-of-way.



FTA Response: The activities proposed by FTA as required to be completed during the Project Development phase and prior to entry into Engineering represent an approximate 30 percent level of design, which is typically what project sponsors complete to finish the environmental review process. FTA believes this is reasonable and appropriate within a two year Project Development timeframe. As part of the project evaluation and rating process required for entry into Engineering, FTA must determine if the project cost estimate is reasonable since it is used as a data point in many of the project evaluation criteria. A 30 percent design level allows the project sponsor and FTA to appropriately characterize the level of risk associated with the project. FTA has clarified the text in the final interim policy guidance (pages 5-6 of New Starts Chapter and pages 8-9 of Core Capacity Chapter) in response to the comments received to better explain the various documents needed, but has not changed the list of activities required to be completed during Project Development.

FTA does not believe the list of activities required to be completed for entry into the Engineering creates Brooks Act implications that do not otherwise already exist. Under the Brooks Act, an Architectural and Engineering firm is prohibited from proposing on work for which they are currently providing consulting services. The amount of engineering and design FTA requires at given phases in our CIG process has no bearing on this requirement. Project sponsors can define their procurements for consulting services to help avoid such issues.

### **Locking in the CIG Amount at Entry Into Engineering**

FTA received 37 comments total about its proposal to lock in the CIG amount at entry into the Engineering phase. All comments received were against the proposal. Twelve commenters suggested the two year Project Development timeframe specified in law for New Starts and Core Capacity projects does not allow sufficient time to complete extensive engineering and design, so locking in the CIG amount at entry into the Engineering phase would require project sponsors to apply higher than needed contingencies in their cost estimate. Many of the comments included alternative proposals. These included nine comments suggesting the CIG amount should be locked in at the point a construction grant agreement is being negotiated, five comments suggesting it be locked in somewhere between 60 and 85 percent design, three suggesting it be after the FTA conducted risk assessment, three suggesting that it be during the Engineering phase without specifying exactly when, and one suggesting that while the amount could be locked in at entry into Engineering it should be done only if an agreed upon inflation factor is considered such that the dollar amount may be increased or decreased by up to ten percent if the cost of the project increases or decreases during the Engineering phase.

FTA response: FTA has adopted as final its proposal to lock in the CIG amount (not share, the actual amount) at the level requested by the project sponsor with entry into Engineering. The parameters associated with the steps in the process proposed by FTA were built on the premise that the Federal process should not stand in the way of local agencies that wish to move quickly while strong local political support exists. In order to allow projects to move quickly if they desire, FTA's approach allows them to enter the Engineering phase with relatively little engineering and design completed (30 percent) as long as they include sufficient contingencies in their cost estimate to account for the unknowns at that stage. FTA believes that project sponsors, not the federal government, should bear the risk of the project cost escalating once it is in the Engineering phase, as it is the project sponsor's decision to enter into Engineering prior to completing extensive engineering and design work. To address the concerns noted in the



comments received, FTA made changes in the final interim policy guidance (page 6 of New Starts Chapter and page 9 of Core Capacity Chapter) explaining that project sponsors can write a request to FTA to postpone entry into Engineering if they wish to perform more engineering and design prior to locking in the CIG amount, provided they can demonstrate they have completed the steps required during PD within the 2-year timeframe specified in law. This includes demonstrating they have selected a locally preferred alternative, gotten it adopted into the fiscally constrained long range metropolitan transportation plan, completed NEPA, obtained funding commitments for at least 30 percent of the non-CIG funding, and completed approximately 30 percent design. If a project sponsor has not completed those activities, the sponsor would request an extension of PD rather than a postponement of entry into Engineering.

### **Making Sufficient Progress During Engineering**

FTA received eight comments on its proposal that project sponsors must make sufficient progress on gaining funding commitments and furthering the project design within three years of entry into Project Development (Small Start) or entry into Engineering (New Start or Core Capacity). Five of these comments agreed this was a reasonable approach and stated they support the goal of ensuring projects are making continual progress toward completion. One sought clarification to ensure FTA was not suggesting Engineering must be completed within three years and suggested complex projects and simple projects should be judged appropriately. Two suggested the proposal created an additional burden for project sponsors.

FTA response: FTA has kept in the final interim policy guidance the requirement that project sponsors must make sufficient progress on gaining funding commitments and furthering project design within three years of entry into Project Development (Small Start) or entry into Engineering (New Start or Core Capacity). FTA included a sentence clarifying it is not a requirement that the Engineering phase be completed in three years (page 8 of New Starts Chapter and page 10 of Core Capacity Chapter). We do not believe requiring that sufficient progress is made places an undue burden on project sponsors. Rather, we believe it meets the intent of the law that projects make progress and not linger in the program.

### **Early Systems Work Agreements and Letters of Intent**

FTA received six comments in total on Early Systems Work Agreements (ESWA) and Letters of Intent (LOI). One agreed with FTA's proposal to consider them on a case-by-case basis. One stated they allow project sponsors to take advantage of favorable market conditions, weather conditions, and long lead items. One sought clarification on difference between an ESWA and a Letter of No Prejudice. The last suggested FTA consider allowing the portion of the project covered by an ESWA to be either a subsection of the project's full length or work/tasks that would occur over the full length of the project.

Two comments were received on LOIs only. One stated a LOI from FTA would be useful when a project sponsor is pursuing local and non-traditional sources of matching funds because it would serve to validate the project standing in discussions with lenders, political leaders, and other entities that are asked to provide project funding. This comment suggested a LOI could be provided during the Engineering phase at the request of the project sponsor. The other suggested a LOI may not be as useful since it lacks an obligation of federal funds.

FTA response: FTA has stated in the final interim policy guidance that it will consider ESWAs and LOIs during the Engineering phase on a case-by-case basis. FTA added a sentence in the final interim policy guidance describing that a LOI could be useful when a project sponsor is pursuing local and non-traditional sources of matching funds (page 8 of New Starts Chapter and page 11 of Core Capacity Chapter).

### **Small Starts Projects Inclusion in the President's Budget**

FTA received nine comments about the need for Small Starts projects to be recommended for funding by FTA in the *Annual Report on Funding Recommendations*, which is a companion document to the President's budget, before FTA can begin working on a construction grant agreement. Eight comments stated that this practice would delay Small Starts project schedules. These comments seemed concerned that the evaluation and rating required to be considered as a funding candidate in the President's budget would require project sponsors to obtain commitments of all non-CIG funding at that point in time rather than at the point later in time when the project is ready for a construction grant agreement. They indicated this concern could be mitigated by FTA waiting to finalize the financial commitment rating until just before the award of the construction grant agreement.

Another comment requested clarification on when during Project Development FTA considers a project ready to be considered for a funding recommendation, and wanted to know if Small Starts projects could get a preliminary rating early in Project Development so that the project sponsor could then refine the project to improve the final rating.

FTA Response: FTA has kept in the final interim policy guidance the statements that projects must be recommended in the President's budget for funding before they will be considered for a construction grant agreement and that to be considered for a funding recommendation in the budget the project must be evaluated and rated by FTA. This is long-standing FTA practice, including for Small Starts projects. FTA does not know whether a project will be eligible for CIG funding until after an evaluation and rating is completed; therefore, we cannot recommend a project for funding in the budget until we have completed the evaluation. Additionally, FTA does not know whether a project is a wise investment of taxpayer dollars until we have completed the evaluation. The proposed and final interim policy guidance text does not state that all funding commitments must be in place to be considered for a funding recommendation in the President's budget. Furthermore, the evaluation and rating process does not require all funding commitments be in place. Thus, FTA has not implemented the suggestion to delay the local financial commitment rating until the time of the construction grant agreement.

Small Starts project sponsors can submit a request to be considered for a funding recommendation in an upcoming President's annual budget whenever they wish. The final interim policy guidance describes the considerations that FTA takes into account when deciding to include a project as a funding recommendation in the budget, based on, among other items, the evaluation and rating of the project and considerations related to project readiness.

Finally, Small Starts project sponsors may submit information to FTA at any time if they wish to have a preliminary evaluation and rating performed.

## Pre-Award Authority

Eight comments in total were received regarding pre-award authority. Four of the comments were against FTA's proposal that activities undertaken prior to a project entering Project Development are not covered by automatic pre-award authority. The comments stated that, due to the two-year timeframe for Project Development for New Starts and Core Capacity projects, project sponsors may need to undertake significant planning and environmental activities prior to Project Development. One of the four comments referred to FTA's policy for pre-award authority under its formula and other discretionary programs that is not applicable to the CIG program, which allows pre-award authority as of the date of authorization of formula funds or the date of the announcement of the discretionary allocation of funds.

Three comments were received regarding FTA's proposal that the work performed by project sponsors after they are withdrawn from the CIG program for not making sufficient progress and before they seek re-entry into the program would not be covered by pre-award authority. One of these was against FTA's proposal and suggested FTA allow pre-award authority during the period of withdrawal if the project sponsor identifies a timeframe for resolving technical or political obstacles. Another of these suggested that FTA determine on a case-by-case basis whether to provide pre-award authority for work completed after a project is withdrawn from the CIG program if it ultimately re-enters the program. Finally, one comment agreed with FTA's proposal, and wanted clarification that the costs expended during the time that the project was in the CIG program, before the period of withdrawal, would remain eligible for future reimbursement with CIG funds.

One comment wanted clarification regarding the application of pre-award authority in situations where there is a waiting period between the completion of the environmental review process and FTA's approval to enter Engineering. One comment requested that FTA provide automatic pre-award authority for project sponsors to proceed with all project work, including construction, as soon as the environmental review process is complete.

FTA Response: In the final interim policy guidance FTA retains its positions on pre-award authority but has added clarifying text to help address some of the comments received (page 4 of both the New Starts and Small Starts Chapters and page 6 of Core Capacity Chapter). FTA does not wish to grant pre-award authority for work conducted prior to entry into the CIG program because we would have no way to monitor or verify the work performed. Allowing work performed by the project sponsor after the project is withdrawn from the CIG program because of lack of progress to be covered by pre-award authority would eliminate any incentives for projects to move quickly through the CIG process as the law intended. The proposed and final interim policy guidance states that pre-award authority is granted for all Project Development work upon entry into Project Development. This includes any work performed prior to approval to enter Engineering. FTA does not wish to grant pre-award authority for construction activities and instead will continue with our policy that project sponsors must request a Letter of No Prejudice instead. FTA believes that it is appropriate for us to review and approve the start of construction even if it is being advanced entirely with non-CIG funds, because ultimately FTA would help share in those costs should a construction grant agreement be signed.

## Other Comments on Steps in the CIG Process

Nine general comments were received regarding the CIG program phases and milestones, and the work that FTA proposed be completed in each phase. Two comments supported the phases and steps proposed by FTA, including the increased flexibility with regard to the percentage of design that may be completed prior to entering the Engineering phase. One comment stated that the proposed steps in the process and milestones are geared to a design-bid-build process, and that FTA should address alternative delivery methodologies. One comment requested that FTA develop more flexible steps to allow project sponsors to accomplish some work concurrently, such as requesting entry into Engineering when Project Development is almost complete and requesting the start of project evaluation to be considered for a funding recommendation when Engineering is nearing completion. One comment requested that FTA allow project sponsors of New Starts and Core Capacity projects additional time (beyond the two-year limit for Project Development) to conduct design once information has been submitted for evaluation and rating. One comment was submitted regarding FTA's proposal to require completed third party agreements prior to awarding a construction grant agreement. That comment stated that it may be difficult for multimodal bus rapid transit projects to complete all third party agreements at that stage because some agreements at the state level require final bid documents to begin third party agreement negotiations.

FTA Response: FTA agrees that it is appropriate to provide flexibility regarding the level of design that should be completed prior to the Engineering phase, and the final interim policy guidance maintains FTA's position that project sponsors should perform as much engineering and design as they feel necessary to feel comfortable with the project cost and scope, but no less than a 30 percent level of design. Regarding the comments about the project delivery method and flexibility of steps, FTA believes that the steps as described in the proposed and final interim policy guidance already allow for these circumstances. For example, FTA routinely works with project sponsors to tailor FTA's oversight reviews to account for the unique structures of public-private partnerships and design-build project delivery methods. Regarding third party agreements, FTA already decides on a case-by-case basis which third party agreements are needed prior to the construction grant agreement. Therefore, in the specific situation that the commenter describes, FTA would take the unique circumstances into account and work with the project sponsor to determine what would need to be submitted prior to the construction grant agreement versus what could occur after the construction grant agreement is signed.

## Warrants

### Thresholds to Qualify for Warrants

FTA received 24 comments regarding the proposed cost and ridership ranges to be eligible for warrants. Of these, 13 comments expressed support for FTA's proposal. Eight comments asked that FTA expand eligibility to projects that exceed \$500 million in total project cost. One comment suggested that FTA establish stricter cost and ridership thresholds to enable projects to automatically qualify for Medium-High or High ratings. One comment requested that FTA establish a lower tier of cost and ridership ranges to allow smaller projects to qualify for project justification warrants. One comment suggested that FTA base the ranges for project cost on the

Federal share of the project instead of the total project cost to benefit projects providing a higher proportion of local funding.

FTA Response: In the final interim policy guidance FTA has kept the warrants thresholds as shown in the proposed interim policy guidance because we believe them to be appropriate. FTA developed the warrant thresholds based on an examination of data on past and current projects in the program. Those projects that met the existing ridership and cost thresholds generally fell within the cost per trip breakpoints currently used to assess cost-effectiveness, thus FTA believes them to be reasonable. FTA believes that projects with a capital cost of greater than \$500 million are of a size and scale that merits a more careful and detailed analysis before proceeding with investment of significant taxpayer dollars. Likewise, corridors with less than 3,000 existing transit riders in the corridor today may not have the densities to support successful implementation of a CIG project even if the capital cost of the proposed project is fairly low, so FTA does not wish to create lower warrants thresholds. Rather, these projects should be evaluated and rated to ensure demand is sufficient in the corridor to justify the expenditure of taxpayer dollars.

The purpose of warrants is to greatly simplify the evaluation process for projects that can meet certain cost and ridership thresholds. FTA believes creating multiple levels of thresholds to allow for various levels of automatic ratings would complicate the process and run counter to process simplification. Project sponsors wishing to get higher ratings can always submit more detailed information for evaluating and rating by FTA rather than selecting warrants.

### **Certifying Existing System is in a State of Good Repair to be Eligible for Warrants**

FTA received six comments regarding the MAP-21 requirement that a project sponsor requesting the use of warrants must certify its existing system is in a state of good repair. Four comments want FTA to automatically assume that all sponsoring agencies requesting the use of warrants are in a state of good repair until such time as FTA issues a regulatory definition of state of good repair. One comment proposed that until such time as FTA issues a regulatory definition of state of good repair, FTA should allow the use of warrants to sponsoring agencies that can demonstrate they have a process in place to assess the condition of their assets and have made progress toward improving asset condition across their system. One comment requested that FTA clarify how this MAP-21 requirement will impact project sponsors seeking to qualify for warrants who have capital backlogs in their transit systems.

FTA Response: FTA cannot automatically assume that all sponsoring agencies are in a state of good repair. Even in the absence of a regulatory definition, FTA must develop an approach that meets the requirement in law that project sponsors certify they are in a state of good repair to be eligible for warrants. In the final interim policy guidance, FTA has included text that matches one of the comments received (page 30 of New Starts Chapter). Specifically, it now states that when a sponsor submits its request to FTA seeking to take advantage of warrants, the letter submitted should include a signed statement by the Chief Executive Officer of the transit agency that the existing public transportation system is in a state of good repair as demonstrated by: 1) a description of the process in place to assess the condition of the transit system's assets; and 2) submittal of information demonstrating progress has been made toward improving asset conditions across the system. FTA intends to review the eligibility of a proposed project for



warrants on a case-by-case basis until such time as it completes the rulemaking process associated with the Transit Asset Management requirements of MAP-21.

### **Applicability of Warrants to Various Evaluation Criteria**

FTA received 10 comments in response to our proposal that project sponsors who request the use of warrants must be warranted for all of the project justification criteria for which travel forecasts are typically prepared -- mobility, cost effectiveness, congestion relief, and the simplified calculation for environmental benefits. Seven comments were against the proposal, requesting that FTA allow project sponsors to pick and choose the criteria for which they want to be warranted versus those that they wish to have evaluated and rated. One comment supported the proposal, stating that it would discourage project sponsors from shopping for results and reduce the burden of more in-depth analyses. One comment wanted FTA to clarify why project sponsors would be required to select all or none. One comment wanted to know if the requirement would apply to both project justification and finance warrants.

FTA Response: FTA has kept the requirement in the final interim policy guidance. The purpose of warrants is to greatly simplify the analysis required of projects sponsors and the verification of that analysis by FTA. Specifically, warrants help eliminate the need for costly and time-consuming ridership forecasting by project sponsors and FTA. Unless all the criteria are warranted, these time-savings would not be realized. Allowing a pick and choose approach might actually increase the workload required of project sponsors and FTA, eliminating any potential time-savings. Project sponsors will need to weigh the pros and cons of project justification warrants and make their own decision based on their specific situation.

Six comments were submitted related to FTA not allowing a project sponsor to revert back to warrants if the sponsor submits information for evaluation and rating and does not like the results. Five of these comments stated that FTA should allow project sponsors to re-evaluate the use of warrants if new information becomes available that would significantly alter the ratings. The remaining comment stated that FTA should allow project sponsors to re-evaluate the use of warrants after submitting information for evaluation and rating in order to create the best case for the project.

FTA Response: In the final interim policy guidance, FTA is retaining its requirement that project sponsors cannot revert back to warrants if they do not like the results of the more detailed evaluation and rating performed by FTA. The premise behind warrants is to streamline the level of analysis required by FTA and project sponsors. It would be contrary to this premise for project sponsors to submit information for evaluation and rating, have FTA evaluate the data submitted and rate the project, and then the sponsor changes back to warrants simply because they do not like the results of the evaluation and rating. Additionally, once FTA is aware a project may not fare well under the criteria specified in law for receipt of funds, we cannot go back to allowing warrants. FTA believes that project sponsors need to carefully weigh the decision to use warrants based on the specifics of their project. FTA has developed templates that allow project sponsors to easily determine on their own whether an improved project rating could be received if they opted for the full evaluation and rating.

## Expansion of Warrants

Eleven comments requested that FTA expand warrants to other measures or to FTA reviews and approvals. Of these, five comments requested that FTA allow Core Capacity projects to qualify for the proposed project justification warrants. Three comments requested that FTA propose warrants for the other project justification criteria (Land Use and Economic Development). One comment requested that FTA propose warrants for Project Management Oversight reviews and FTA milestone approvals for project sponsors with proven success implementing other projects. One comment requested that FTA expand warrants to the five project justification criteria common to New Start and Core Capacity projects. One comment suggested that Core Capacity projects be warranted for congestion relief because they improve transit and auto congestion.

FTA Response: At this time, FTA is not expanding warrants. After gaining some experience implementing the warrants included in the final interim policy guidance, FTA may consider making changes in the future. The proposed and final interim policy guidance state projects are still subject to the normal rating process for the Economic Development and Land Use criteria because those criteria are related to highly individualized aspects of each particular project such as the amount of affordable housing and the transit-supportive nature of local development plans and policies that cannot be determined to be acceptable solely because existing ridership in a corridor may meet the FTA threshold. FTA is not warranting Core Capacity projects for congestion relief at this time, but has altered the measure we will use, as explained elsewhere in this document, in response to comments received on the proposed interim policy guidance. Elsewhere in the proposed and final interim policy guidance, FTA has discussed the possibility of expedited oversight reviews. The allowance for warrants under Section 5309 is specific to the project evaluation and rating process and does not apply to FTA oversight responsibilities under Section 5327.

## Other Comments on Warrants

Nine comments were received on various other aspects of warrants. Two comments supported FTA's proposal to warrant Core Capacity projects for Environmental Benefits and Economic Development. One comment supported FTA's simplified approach for calculating the Environmental Benefits of warranted New and Small Starts projects. One comment suggested that FTA periodically review and update warrants to maintain a reasonable level of rigor. One comment was unclear but seemed to indicate that warrants aren't conducive to serving the transit user. Finally, four comments were received seeking clarification on demonstrating existing ridership in the corridor today to qualify for warrants. Of these, one wanted to know how FTA would define the corridor, and one wanted to know if private bus and ferry services would count.

FTA Response: FTA appreciates the comments in support of our proposals on these issues related to warrants. We do plan to periodically review the use of warrants and make improvements as appropriate. FTA has included in the final interim policy guidance a sentence explaining where project sponsors can find instructions on our website on how to document existing ridership (page 30 of New Starts Chapter and page 28 of Small Starts Chapter).



## Congestion Relief Criterion

### Congestion Relief Measure

FTA received a total of 44 comments on FTA's proposed Congestion Relief measure of new transit trips that was proposed to be used for New Starts, Small Starts, and Core Capacity projects. Of these, six comments were in favor of the proposed measure, with some noting it is simple to calculate, easy to explain to decision-makers, and consistent with reforms in the California Environmental Quality Act. One of these sought clarification on whether the measure would be calculated based on current year forecasts only or horizon year forecasts as well at the project sponsor's option. Another of these comments suggested that FTA implement the proposed measure for now, but work to develop a more direct measure of congestion relief in the future.

Fifteen comments generally disagreed with using new transit trips as the measure for congestion relief. Of these, several stated that the measure is inadequate because the notion of congestion relief encompasses more than the mode shift to transit. Two comments noted that because travel models are typically often not refined enough to capture bicycle and walk trips, the new transit trips measure does not accurately capture new transit trips previously made by bicycle, foot or carpool. One comment noted that the measure does not capture the effect on congestion of removing buses from mixed traffic. One comment expressed concern that the measure does not consider how a project would impact ridership among people that do not own vehicles, and further noted that features of a project, such as signal priority and far-side bus stops, can provide congestion relief. Finally, one comment expressed concern that the proposed measure would increase costs of project planning.

The remaining comments suggested other approaches that FTA might consider. A common refrain among most of these comments was that FTA should focus on throughput to the urban core as the measure of congestion relief, but these comments did not include a specific calculation or methodology for developing such information. One comment urged FTA to consider using new transit trips in conjunction with highway travel times to defined central business districts as the measure. Another suggested that FTA consider allowing long drive to transit trips that may be shortened due to implementation of a new transit project to count in the measure of congestion relief since they help remove traffic from portions of the roadway system.

Four comments asked that FTA consider supplemental information, with one of these specifying vehicle delay reductions, reductions in automobile vehicle miles traveled, and average transit travel time by trip purpose as possible information to consider.

With regard to Core Capacity projects specifically, three comments expressed concern that FTA's Simplified Trips on Project Software (STOPS) forecasting tool and local travel models will not be able to generate reasonable estimates of new transit trips for Core Capacity projects, with one of these asking that FTA not require ridership forecasting for the measure since it is not proposed to be required for any other aspect of Core Capacity project evaluation. A further three comments stated that because roadway congestion relief is not the primary goal of Core Capacity projects, new transit trips should not be used as the measure for Core Capacity projects. One

comment noted that the measure ignores the impacts of relieving bottlenecks where multiple transit lines converge.

For Core Capacity projects, six comments suggested that FTA consider additional space per transit passenger in lieu of new transit trips as the measure for Congestion Relief. Three comments proposed that FTA warrant the Congestion Relief criterion for Core Capacity projects, suggesting all projects receive an automatic Medium rating.

One comment apiece suggested that FTA measure transit congestion relief generally, increased carrying capacity of transit, increased carrying capacity of the overall multimodal transportation system, and a corridor or a maximum capacity per-hour line haul capacity past a maximum load point or constricted line segment.

Finally, one comment opined that development of transit has not led to congestion relief in the Los Angeles area.

FTA response: FTA has retained new transit trips on the project as the measure for the Congestion Relief criterion for New and Small Starts projects. FTA believes the measure is easy to calculate and continues to allow project sponsors the option of using the FTA Simplified Trips on Projects Software (STOPS). We acknowledge the measure represents only a proxy for congestion relief since it generally represents people who used to drive and now take transit instead. We also acknowledge it does not capture all of the possible congestion-related benefits of a transit project. However, the suggestions for augmenting or replacing the measure or modifying the definition of a new transit trip (including applying greater weight to certain trips) generally would require more complex modeling that in some cases is beyond the capability of STOPS and local models. This is particularly the case for the throughput to the urban core and highway travel time based measures that several commenters proposed. While some local travel models may be more refined to be able to calculate these types of measures, not all local models can. FTA believes maintaining a level playing field and a common point of comparison for all projects in the CIG program is important, so we must base our measure on data available from all types of project sponsors and areas. We also believe the streamlining and time savings afforded project sponsors by use of STOPS should not be taken away since we have heard many positive comments about it.

FTA has clarified in the final interim policy guidance that New and Small Starts project sponsors have the option of performing a horizon-year forecast for the Congestion Relief measure in addition to submitting the required current year forecast (page 17 of New Starts Chapter and page 15 of Core Capacity Chapter). The final interim policy guidance clarifies that project sponsors that opt to perform horizon-year analyses must do so for all four criteria involving ridership forecasts: Mobility Improvements, Cost Effectiveness, Environmental Benefits and Congestion Relief.

FTA intends to continue to refine the Congestion Relief measure over time with input from the industry and the experience gained through its initial implementation.

FTA agrees that the proposed new transit trips measure does not align well with the goals of Core Capacity projects, which is to relieve congestion on the existing fixed guideway transit line. FTA also recognizes that the other Core Capacity evaluation criteria do not require ridership forecasts and that most travel demand models, including STOPS, are not sensitive enough to recognize changes that may result from some Core Capacity projects. Therefore, FTA has changed the congestion relief criterion for Core Capacity projects in the final interim policy guidance to the percent increase in capacity in the corridor resulting from the proposed project. This is an incremental measure comparing the existing capacity in the corridor today, as measured by useable space per passenger for light rail and heavy rail or as percent seated load for commuter rail, to capacity that will exist once the project is completed (pages 16-17 of the Core Capacity Chapter). FTA believes that this measure is simple, imposes minimal burden on project sponsors to calculate, and provides a general indication of the transit congestion relief benefits and additional carrying capacity associated with Core Capacity projects while not requiring ridership forecasting. FTA does not agree with warranting this criterion given that Core Capacity projects will yield disparate capacity increases.

### **Congestion Relief Breakpoints**

Four comments were received that all disagreed with the proposed breakpoints. Three expressed concern that Small Starts projects would not fare well under the breakpoints, one of which specifically mentioned BRT projects and another that mentioned streetcar and urban circulator projects. The fourth comment proposed revised breakpoints that would require significantly fewer new transit trips.

FTA response: In the final interim policy guidance, the breakpoints have been changed. Because of the concerns noted in the comments received, FTA re-examined the data on past projects in the CIG program that were used to inform the breakpoints. When establishing breakpoints based on past data, we try to establish a bell curve rather than relying on pure quintiles. In other words, based on the existing data, we develop five rating thresholds where the majority of projects fall in the medium range, with lower numbers of projects falling in the other lower and higher ranges such that the curve resembles the shape of a bell. Upon closer examination, FTA determined the bell curve distribution used to inform the originally proposed breakpoints can be smoothed and improved with slightly lower breakpoints for the Low, Medium-Low, and Medium ranges.

## **Core Capacity**

### **Core Capacity Eligibility**

#### ***Light Rail and Heavy Rail Projects***

FTA received 42 comments on Core Capacity eligibility for light rail and heavy rail projects. Five comments supported the proposal to use peak hour average space per passenger on the line. Seven comments recommended determining capacity based on specific features of the line such as flat junctions, terminal layouts, constrained yards, signal system design, limited power distribution capability, lengthy run cycle times, etc. Two comments supported using a square footage per passenger factor based on the actual usable floor area of the passenger compartment of vehicles, excluding the operator's cab and other areas that offer no passenger-carrying

capacity. One comment recommended using manufacturers' specifications of usable interior floor area available to passengers.

Eight comments requested that FTA clarify whether the calculation is based on a peak load point during the peak hour in the peak direction.

Two comments recommended that project sponsors have the option to use a 5-year projection of ridership for purposes of determining Core Capacity eligibility rather than simply the existing ridership on the line. One comment recommended that current year ridership only should be used.

Six comments recommended that if additional capacity could be added simply by purchasing and operating additional rolling stock, the line should not be considered at capacity.

Three comments supported a requirement to show that the project sponsor will immediately provide more service upon completion of the project, rather than allowing calculating the amount of capacity improvement based on a distant point in the future that might include unfunded service improvements.

Three comments sought clarification on whether mode shift (such as from BRT to LRT) on an existing system would be eligible for Core Capacity program funding.

Four comments questioned whether increasing average space per passenger is an appropriate measure for determining whether implementation of the project meets the eligibility requirement of increasing capacity by at least 10 percent. These comments stated that due to latent passenger demand, the additional space would soon fill with new passengers. Some of these commenters stated that a better measure would be the number of additional riders who will use Core Capacity increases in the future, rather than increased space per passenger.

FTA Response: In the final interim policy guidance, FTA has altered the calculation that will be used to determine whether a light rail or heavy rail line is currently at capacity today or will be in five years (pages 3-4 of Core Capacity Chapter). Specifically, it has been changed from average space per passenger to the average useable space per passenger in response to comments received. The calculation now takes into account the average useable space per railcar rather than the total area of each railcar by using a simple, straightforward method found in the TCRP Transit Capacity Manual. While FTA recognizes each vehicle configuration may be different, for simplicity of the calculation and verification by FTA, we are using this standard calculation for all projects rather than system specific and vehicle specific calculations.

FTA has clarified in the final interim policy guidance that the calculations are peak hour average useable space per person along the entire project-defined corridor and are not based on a peak load point (page 4 of Core Capacity Chapter).

FTA is keeping the requirement that calculations verifying the fixed guideway corridor is at capacity today or will be in five years be based on existing ridership currently on the line. We are not implementing the suggestion that we allow ridership forecasts five years in the future to

be used, because other comments received on the proposed interim policy guidance rightly indicated the difficulty some travel models may have estimating future ridership for Core Capacity projects. For this same reason, FTA is not implementing the suggestion that we consider the additional riders that may use the service after it is implemented to make our eligibility determination that the project results in at least a 10 percent increase in capacity. Likewise, consideration of mode shift would require travel forecasting, so FTA has not implemented the suggestion given. This is because FTA believes maintaining a level playing field and a common point of comparison for all projects in the CIG program is important.

Lastly, the law does not allow the purchase of rolling stock alone to qualify as a Core Capacity project. FTA has clarified this in the final interim policy guidance (page 2 of the Core Capacity Chapter).

### ***Bus Rapid Transit (BRT)***

Six comments were received on Core Capacity eligibility for BRT projects. Three supported using a similar capacity standard for BRT as for commuter rail (e.g., 95 percent of passenger seats occupied.) Two comments recommended the same passenger capacity standard for BRT as proposed for light rail and heavy rail projects (i.e., average peak hour space per passenger.) One commenter suggested separate capacity eligibility standards for different types of BRT guideway facilities: e.g., express service without stations, local service with stations, bus-only freeway lanes without stops, etc. This commenter suggested a combination of volume of buses operated and actual speeds of buses as an alternative measure of BRT capacity.

FTA Response: At this time, FTA is not implementing a fixed guideway BRT capacity calculation. Instead, FTA will work with fixed guideway BRT projects on a case-by-case basis to determine whether the proposed project is eligible as a Core Capacity project. FTA will also continue to work with the industry to determine a simple national standard calculation for fixed guideway BRT projects that would be similar to the ones above used for rail projects.

### ***Commuter Rail (CR)***

Eleven comments were received on Core Capacity eligibility for CR projects. Three supported the proposed standard of percent of passenger seats occupied (e.g., 95% of seats occupied). Some of these commenters said that FTA should retain flexibility to allow different measures of available capacity for different operators depending on their type of operation (e.g., standees or no standees), although they said that the 95 percent standard “is workable”. Four additional comments suggest that FTA should explicitly recognize variations in loading standards between various CR operating agencies. Three commenters expressed concern with a different passenger capacity standard for CR than for light rail and heavy rail because some CR systems allow standees, similar to light rail and heavy rail systems, while others do not. One commenter recommended that commuter rail project sponsors be required to submit information similar to LRT/HRT Core Capacity project sponsors.

FTA Response: In the final interim policy guidance FTA is keeping the eligibility for CR projects as proposed. As stated in both the proposed and final interim policy guidance, while FTA recognizes there is a range of factors that play a role in the capacity of a line, those factors are very system specific and not easily verifiable by FTA without extensive analysis and review. For streamlining and time-savings, FTA believes simple calculations represent an acceptable

method for determining a project is at capacity today or will be in five years. Additionally, FTA knows that each transit system establishes its own load standards that guide its decisions on service planning. To make eligibility determinations for a national funding program, however, FTA believes it is more appropriate to use a general industry-wide standard rather than system specific measures based on local preferences.

### ***Stations***

Ten comments were received on Core Capacity eligibility for station projects. Eight comments recommended that FTA work with the industry to identify methodologies for measuring station capacity. One comment recommended use of the National Fire Protection Association's (NFPA) 130 Standard for Fixed Guideway Transit and Passenger Rail Systems for measures of station capacity. One comment recommended that making stations compliant with the Americans with Disabilities Act requirements should be considered as eligible for Core Capacity funding.

FTA Response: MAP-21 specifies that station facility improvements alone are not eligible as Core Capacity projects, and may only be considered as part of a larger Core Capacity project that includes other elements as well. The process for determining capacity put forth by FTA in the proposed interim policy guidance and being adopted by FTA in the final interim policy guidance does not include an evaluation of station capacity. However, FTA aspires for its process to account for station capacity needs in the future. We appreciate the suggestions received and will continue to work with the industry to determine a simple national standard calculation for station capacity that could be used in the future.

### ***Other Core Capacity Eligibility Matters***

Fourteen comments were received on other Core Capacity eligibility-related issues besides those identified above. Six comments requested clarification on the differentiation between Core Capacity and State of Good Repair (SGR) elements in a Core Capacity project. Four comments recommended that FTA retain flexibility, allowing projects to include multiple lines packaged together. One comment recommended FTA allow as an eligible project the development of an alternative route to relieve capacity constraints rather than simply allowing improvements to an existing route. One comment recommended that ferry projects be eligible for Core Capacity funding.

FTA Response: FTA does not wish to provide more detail at this time than is already included in the proposed and final interim policy guidance on differentiating between Core Capacity and state of good repair elements of a project. Rather, FTA wishes to retain flexibility and allow project sponsors to propose their own methods for differentiating the costs. This allows FTA the benefit of hearing from the industry how best it might be done. In future policy guidance additional clarification may be provided.

The law is clear that a Core Capacity project must be a "substantial corridor-based capital investment in an existing fixed guideway system." Therefore, FTA cannot allow system-wide improvements to be packaged together as a single Core Capacity project. However, FTA has clarified in the final interim policy guidance that improvements along a trunk line with several branches is an eligible Core Capacity corridor project (page 2 of Core Capacity Chapter).



MAP-21 includes ferry projects in the definition of fixed guideway projects, making them eligible for the CIG funding program including Core Capacity. FTA is not implementing a ferry project capacity calculation at this time, but will work with ferry project sponsors on a case-by-case basis to determine whether a proposed project is eligible.

## **Capacity Needs Criterion**

### ***Capacity Needs Measure***

Nine comments were received on the specific measure proposed for the Capacity Needs criterion. Four comments supported the simplified measure proposed by FTA for determining capacity needs, but recommended that it recognize the usable interior floor space rather than the total area of the vehicle to account for space taken up by driver cabs and other features. Two comments supported using space per passenger for the Capacity Needs criterion, similar to those measures defined in the Transit Capacity and Quality of Service Manual (TCRP Report 165). Two comments sought clarification that FTA intends the Capacity Needs criterion to focus on the peak load point. One comment sought clarification on whether the measure is applied to a whole rail line or, more narrowly, to a project-defined corridor if less than a whole line.

FTA Response: In the final interim policy guidance, FTA has altered the proposed capacity needs calculation from average space per passenger to the average useable space per passenger in response to comments received (pages 13-15 of Core Capacity Chapter). The calculation now takes into account the average useable space per railcar rather than the total area of each railcar by using a simple, straightforward method found in the TCRP Transit Capacity Manual. While FTA recognizes each vehicle configuration may be different, for simplicity of the calculation and verification by FTA, we are using this standard calculation for all projects rather than system specific and vehicle specific calculations. FTA has clarified in the final interim policy guidance that the calculations are peak hour person capacity along the entire project-defined corridor and are not based on a peak load point.

### ***Capacity Needs Criterion Breakpoints***

Thirteen comments were received on the breakpoints proposed for the Capacity Needs criterion. Five comments stated the breakpoints for light rail and heavy rail are too high because the simple use of vehicle length times width overestimates the interior floor space available for passengers. Six comments recommended separate breakpoints for commuter rail projects based on percent of seats occupied. Two comments recommended that FTA make modifications and updates to the breakpoints for the Capacity Needs criterion as more data is gathered over time from projects entering the program.

FTA Response: In the final interim policy guidance as described above, FTA has altered the calculation for the Capacity Needs criterion for light rail and heavy rail projects from average space per passenger to useable space per passenger with allowances for the average space taken up on railcars by driver cabs, wall thickness, etc. This addresses the concerns noted in the comments received so that the breakpoints do not need to be altered. The breakpoints have been established based on transit level of service data taken directly from TCRP Report 100, the former version of the Transit Capacity Manual. FTA believes this to be the best source of data for establishing the breakpoints at this time. Future policy guidance may suggest changes to the breakpoints after FTA has the benefit of reviewing data from project sponsors over time. Per the



comments received, in the final interim policy guidance FTA has added breakpoints for commuter rail projects since they were accidentally omitted previously (page 15 of Core Capacity Chapter).

### **Cost-Effectiveness Criterion**

FTA received three comments suggesting FTA treat the cost of enrichments for Core Capacity projects the same as they are treated for New Starts projects when calculating cost-effectiveness. Two comments requested clarification on FTA's statement that cost-effectiveness will be based on the Core Capacity CIG share of the project only. One comment suggested a measure other than cost per rider should be used, stating it is not a sufficient measure for quantifying the scale of a project's benefit and travel time savings should be measured.

FTA Response: In the final interim policy guidance, FTA has kept the cost-effectiveness calculation for Core Capacity projects as proposed. It is the annualized Section 5309 CIG Core Capacity share of the project cost per trip on the project. In other words, the measure is not based on the total project cost. Rather it is based only on the Section 5309 CIG share of the project cost. It does not include operating and maintenance costs. Thus, excluding the cost of enrichments is not reasonable. FTA allows enrichments for New Starts projects because it wants to encourage project sponsors to consider green building design, alternative fueled vehicles, joint development, and bicycle and pedestrian access when planning a project but these items can add to the project cost making the project fare worse on the evaluation criteria. Thus, FTA allows the cost of these enrichments to be excluded from the cost-effectiveness and environmental benefits calculations as a matter of policy to encourage sponsors to consider including these types of elements. Because the Core Capacity cost-effectiveness calculation does not look at the total project cost but only the Section 5309 CIG share, there is no need to remove costs from the calculation. The calculation is already based on something less than the total project cost. FTA is required by law to use a cost per rider measure for cost-effectiveness rather than other measures.

### **Local Financial Commitment Evaluation**

Five comments were received on the financial evaluation proposal for Core Capacity projects. One comment opposed the proposal to use "adequacy of meeting state of good repair needs" to evaluate local financial commitment. Two comments were related to the boost in the local financial commitment rating to High for projects qualifying for the streamlined financial evaluation if the project is seeking less than 50 percent in CIG funds. These comments suggested that FTA instead establish a sliding scale. Another comment suggested local financial commitment be evaluated during the Engineering phase instead of at entry into the Engineering phase so the time and effort associated with the level of project definition and cost estimation needed to obtain a satisfactory rating on the local financial commitment criterion would not consume part of the two year timeframe for completing Project Development.

FTA Response: In the final interim policy guidance, FTA has kept the local financial evaluation process the same as was proposed, which is similar to the manner in which we evaluate New and Small Starts projects. The law requires that FTA ensure "local resources are available to recapitalize, maintain, and operate the overall existing and proposed public transportation system . . . without requiring a reduction in existing public transportation services or level of service to

operate the project.” The law also requires that FTA evaluate and rate the project prior to its entry into the Engineering phase.

### **Other Core Capacity Related Matters**

One comment was received seeking clarification as to whether projects that contain both state of good repair and Core Capacity elements can be submitted in a single project grant application.

FTA Response: As stated in the proposed and final interim policy guidance, FTA understands there will often be cases where a project sponsor will propose to undertake a major construction project that involves both Core Capacity and SGR elements, and that the sponsor may seek both Section 5309 discretionary Core Capacity and Section 5339 formula SGR funds for the project. FTA allows such a combination of FTA funding for such projects. The final interim policy guidance does not get into the details of applying for the specific grants in our electronic grant making system. In Fiscal Year 2016, FTA will be deploying the Transit Award Management System (TrAMS) a successor to FTA’s current TEAM electronic grant system. TrAMS has been configured to allow applicants to develop a single grant application for multiple FTA funding program dollars that will fund a common project. Additional information about applying for funds in TrAMS can be found on the TrAMS web page at <http://www.fta.dot.gov/TrAMS>. Applicants should discuss specific scenarios for combining multiple funding programs within an application with their regional office prior to drafting applications.

## **Affordable Housing**

### **Affordable Housing Measure**

FTA received a total of 66 comments regarding the affordable housing measure under the land use criterion that has been part of the New and Small Starts evaluation process since 2013.

Nine comments offered support for the current ratio-based measure or recommended FTA augment the ratio-based measure with a second measure. Two suggested that FTA add consideration of municipal requirements for affordable housing to the measure. One comment suggested augmenting the ratio with an evaluation of the concentration of affordable housing in the counties through which the project passes or the percentage of low-income households experiencing severe housing cost burden. One comment supported the ratio but suggested that the sponsors of any projects that qualify for Project Justification warrants should be exempted from needing to submit information on affordable housing. Another suggested that transit-oriented developments that advance fair housing or consolidated plans should receive extra credit in the evaluation.

Ten comments expressed concerns with the ratio-based measure. Six of these observed that a project with a small number or proportion of affordable housing units in station areas could rate more favorably than a project with a more significant number or proportion if the latter project were in a county with considerable affordable housing. Two comments expressed concerns related to geographically large counties through which a project may travel, stating substantial portions of the county may have little to no connection to the transit project and that a large number of municipalities within the county can make the effort of collecting affordable housing

data prohibitive. One comment apiece mentioned that the measure is inconsistent with the suburbanization of poverty and may disadvantage expansion projects.

Fifteen comments concerned replacements for the ratio-based measure. Five of these suggested that FTA base the rating on qualitative information. Three suggested that FTA use the number of affordable housing units per incremental rider as the measure, while a further three proposed the total number of affordable housing units in project station areas. Two comments proposed the number of affordable housing units per transit station as the measure, while two comments cautioned against this measure because it would disadvantage smaller or less dense communities.

Seventeen comments were related to specific aspects of the existing ratio-based measure. Four comments suggested that FTA allow sources of affordable housing data beyond that available from public housing authorities, particularly noting state housing agencies as a data source. One comment noted that smaller municipalities may not keep records of the number of affordable housing units within their boundaries. Six comments concerned the boundary of the area on which to base the measure: one of these suggested expanding the station-area radius from one-half to one mile; three suggested replacing counties through which the project travels with the region, subregion, or a boundary of the project sponsor's choosing; and two suggested that the rating for extension projects should account for affordable housing accessible by a one-seat ride. Seven comments concerned the definition of legally binding affordability restricted housing that FTA uses, with two requesting that Section 8 units count and five requesting changes to the duration of the affordability restriction or income level that would allow a housing unit to count.

Nine comments related to the supplemental information on affordable housing that FTA allows project sponsors to submit. Eight comments encouraged FTA to continue accepting supplemental information. One comment requested clarification on whether FTA has a preferred format for receiving supplemental information.

FTA response: In the final interim policy guidance, FTA is retaining the ratio-based measure of existing affordable housing under the Land Use criterion because we continue to believe that the measure encourages project sponsors to consider locating their project in an area that serves a higher proportion of affordable housing than the greater surrounding area. This is a desirable goal since these are often the very populations most dependent on transit. The ratio FTA uses helps to normalize the results to the specific local area in which the project is located by comparing the legally binding affordability restricted housing in the project corridor to the legally binding affordability restricted housing in surrounding counties. The measure is not intended to compare projects to one another.

If FTA were to use a measure based on total existing affordable housing units in the project corridor instead of the ratio, it would bias the evaluation process in favor of larger cities with more total housing units and more total affordable housing units. In order to evaluate projects fairly and uniformly across the country, to the extent possible FTA avoids using measures that could bias the process in favor of one type or size of city over another. For example, both the cost-effectiveness criterion and the environmental benefits criterion are normalized since they compare the size of the benefits to the size of the cost. Larger cost projects with larger benefits can fair well under the evaluation process as can smaller cost projects with smaller benefits.

While the mobility improvements criterion looks at total trips estimated to be taken on a proposed project, it too is normalized to an extent. Not only does it take into consideration and give greater weight to trips made by transit dependent persons, but the size of a city does not necessarily determine how high the ridership on a proposed line might be. Sometimes geographic constraints, such as a mountain range on one side of a corridor and a lake on the other or a corridor with a river running through it that has limited bridge crossings, can create barriers to travel in a city regardless of its size, allowing a transit line to serve as a good solution for serving the transportation needs of the community in that corridor.

Having explained our rationale for keeping the ratio-based measure, FTA recognizes that it has some drawbacks, particularly for projects located in counties with very high levels of legally binding affordability restricted housing. Thus, FTA has stated in the final interim policy guidance that we will boost the rating for this subfactor one level if the denominator shows the counties through which the project travels have greater than a five percent share of legally binding affordability restricted housing (page 13 of New Starts Chapter and page 11 of the Small Starts Chapter). FTA established the five percent threshold based on an examination of the data received from projects that have submitted information for this measure since 2013. Five percent was the natural breakpoint that arose as the highest level of total legally binding affordability restricted housing in the surrounding counties. All of the information needed to determine whether a project qualifies for a rating increase is already part of the measure, so no additional work on project sponsors' part is required by this change. In recognition of each project corridor's unique circumstances with respect to affordable housing, FTA will continue to allow project sponsors to submit supplemental information on affordable housing.

The recommendations that FTA examine housing cost burdens or award extra credit for certain transit oriented developments did not include specific mechanisms for doing so, and therefore, FTA is not incorporating them into the measure at this time. FTA notes that municipal affordable housing policies are already considered as part of the Economic Development criterion. The Land Use criterion focuses on existing conditions. FTA is not extending project justification warrants to affordable housing at this time given that the correlation between affordable housing and corridor ridership is unclear.

FTA believes the measures that commenters proposed to replace the ratio would introduce their own biases. Replacing the ratio with the total number of affordable housing units could disadvantage projects in smaller or less densely populated communities as two commenters observed, as could using affordable housing units per transit station as the measure. A measure based on affordable housing units per incremental rider could disadvantage higher-ridership projects. FTA does not agree with basing the affordable housing measure under the land use criterion on qualitative information. The land use criterion is meant to capture conditions as they exist in the corridor today, which should be quantifiable.

FTA agrees that local public housing authorities are not the only sources for affordable housing data. The final interim policy guidance now simply says "area housing authorities." Project sponsors may gather data from state housing agencies and regional clearinghouses, the national preservation database, etc. The final interim policy guidance clarifies that signed certifications attesting to the accuracies of the data may be collected from the heads of the agencies from

where the data came (page 12 of the New Starts Chapter and page 11 of the Small Starts Chapter).

With respect to geographies, FTA will retain the half-mile station radius for consistency with other land use factors and retain counties through which the project travels as the reference geography. FTA notes that the rating increase described above for projects serving counties with a significant amount of affordable housing may address concerns about the reference geography. As for the definition of a legally binding affordability restricted housing unit, FTA will continue to use the same definition that it has applied since late 2013. FTA observes that many Section 8 housing units are tenant rather than project based, and thus do not have affordability restrictions once their tenants move elsewhere.

### **Affordable Housing Measure Breakpoints**

Seven comments were received on the existing affordable housing breakpoints. Three comments offered that the breakpoints appear reasonable based on the projects evaluated thus far, and recommended that FTA maintain the breakpoints for now. One comment suggested that FTA revise the breakpoints to smooth the distribution of ratings, one recommended awarding a Medium rating to any project that serves a concentration of affordable housing equivalent to the regional average, and two proposed standards for evaluating municipalities' affordable housing plans and policies (along with modifying the measure accordingly).

FTA response: In the final interim policy guidance, FTA has kept the breakpoints as they were in the proposed interim policy guidance. We believe that the breakpoints have resulted in a reasonable distribution of ratings across projects so far and help to strengthen the nexus between transit planning and concentrations of affordable housing. Lowering the breakpoints so that a project that serves a concentration of affordable housing equivalent to the regional average be assigned a Medium rating is inconsistent with FTA's goal. Consideration of local affordable housing plans and policies are already examined as part of the Economic Development criterion, so that has not been added to the affordable housing measure under the Land Use criterion.

### **Impact of the Measure on Station Locations and Affordable Housing Supply**

FTA received more than 20 comments in response to this question posed in the proposed interim policy guidance. Nine comments stated that the measure is too new to have had an impact yet, as alignment decisions for many projects currently seeking CIG funding were largely made before FTA implemented the measure. However, six comments expressed that the measure is spurring local conversations about station locations. Additionally, one project sponsor reported that the project alignment was changed in part to improve access to affordable housing. Another comment indicated that a project serving low-income areas became a higher priority for implementation in its region. One comment mentioned that the measure incentivizes the location of stations near affordable housing, and vice versa. Two further comments mentioned that partnerships catalyzed by the introduction of the measure will support compliance with the Fair Housing Rule. One comment alluded to a loss of affordable housing units in a major city and the difficulty of finding the remaining affordable units.

FTA response: FTA acknowledges the measure has been in place only a short time, but appreciates the feedback on its effects to date on the location of affordable housing developments and alignments of transit projects. With respect to the comment about the loss of affordable

housing, FTA notes that the CIG process specifically takes into consideration whether there are local plans and policies in place to preserve and expand affordable housing under the Economic Development criterion.

### **Burden of Calculating and Reporting Affordable Housing Data**

FTA received 11 comments on the burden in providing the required affordable housing information to FTA. Five comments stated that computation is not an undue burden to project sponsors since the data is readily available. A housing consultant reported that the firm's clients unanimously felt that the measure was not burdensome to compute. One local government reported that it was already proactively collecting the data needed for the measure. A New Starts project sponsor estimated the burden at \$6,000 and 60 hours of labor for its project. Another project sponsor indicated that a nonprofit organization was already maintaining a database of affordable housing for that region, and that a portion of the organization's \$800,000 annual budget could be attributable to collecting the data needed for the measure. A New Starts project sponsor reported that both the optional supplemental analyses and obtaining the needed certification by public housing authorities were the most burdensome aspects of computing the measure.

FTA response: FTA is pleased that the measure is not an undue burden to project sponsors. In response to comments received on the proposed interim policy guidance, FTA has made changes in the final interim policy guidance on the CEO certifications required that we hope reduces the burden in obtaining them (page 12 of the New Starts Chapter and page 11 of the Small Starts Chapter).

### **Signed CEO Certifications of Affordable Housing Data**

Ten comments were received on the requirement that project sponsors submit signed CEO certifications from housing authorities attesting to the data on affordable housing units. Six of these observed that project sponsors may have difficulty obtaining certifications from local public housing authorities in cases where some of the units are not the housing authorities' responsibility. These comments suggested that FTA instead allow project sponsors to self-certify the accuracy of the counts they are submitting and that FTA occasionally conduct spot checks using publicly available data. Three comments suggested as an alternative that FTA clarify that project sponsors may submit multiple letters and that the letters do not need to be from public housing authorities. One comment stated that the need to recertify housing counts that it already provides to a regional database created extra effort.

FTA response: FTA has clarified in the final interim policy guidance that it will accept signed certification letters from the head of any entity from where the data came (page 12 of the New Starts Chapter and page 11 of the Small Starts Chapter). FTA believes that certification letters are appropriate given that project sponsors do not control the affordable housing data they are supplying to FTA.

### **Other Matters Related to the Affordable Housing Measure**

FTA received 14 comments on the merits of including affordable housing in the evaluation process. Twelve of these comments were supportive. Two comments recommended that FTA deemphasize affordable housing given that it is generally out of a transit project sponsor's control.



FTA received six comments on other topics related to affordable housing. One comment encouraged FTA to continue collaborating with the U.S. Department of Housing and Urban Development (HUD) and to encourage HUD to consider transit access in its own discretionary funding decisions. Another comment suggested that FTA provide support and technical assistance to ensure that environmental justice groups benefit from FTA investments. One comment apiece noted that the State of California does not require a relationship to transit in affordable housing plans, a property covenant may not be recognized if it is not kept in a publicly available database, parking has become more valuable and gentrification defeats the purpose of transit.

FTA response: FTA is pleased at the support for including affordable housing in the CIG project evaluation process. We believe providing transit access to affordable housing and jobs is important when determining where to locate a transit project. Environmental justice concerns are taken into consideration as part of the environmental review process required for the project.

## Other CIG Project Evaluation Matters

### Environmental Benefits Criterion

Fifteen comments were received on using the change in vehicle miles traveled (VMT) as the basis for the environmental benefits criterion for New and Small Starts projects. Eleven of these suggested FTA consider evaluating environmental benefits based instead on the change in greenhouse gas emissions per passenger-mile, change in energy use per passenger-mile, and change in air quality criteria pollutants per passenger mile. Another comment proposed comparing local per capita VMT to regional per capita VMT. Several comments referenced TCRP report 176 entitled *Quantifying Transit's Impact on GHG Emissions and Energy Use – the Land Use Component*, suggesting greenhouse gas emissions per passenger-mile is a promising metric for evaluating environmental performance in transit projects. A few comments noted that using VMT penalizes older transit systems in denser communities with higher transit market share that tend to have shorter trip lengths and, therefore, less VMT.

FTA Response: As stated in the proposed interim policy guidance, FTA did not reopen the Environmental Benefits measure for public comment. Thus, we have kept the environmental benefits measure as is in the final interim policy guidance. In the future, FTA may consider altering the measure based on the comments and research suggested.

### Ridership Forecasts

Five comments were received on ridership forecasts. Two were on forecasts for Core Capacity projects, one of which requested clarification on whether travel forecasts or existing ridership data is to be used and one of which stated that travel models have difficulty calculating trips on Core Capacity projects. Three comments were about FTA's requirement that New and Small Starts projects submit current year forecasts, with horizon year forecasts allowed at the sponsor's option. One of these suggested a large part of the value of a CIG investment is to help support growth. Another said this requirement goes against the long term transportation planning tradition of basing highway and transit plans on a forecast 20 or more years in the future. The



third said using current year ridership rather than horizon year ridership does not support rail investment but rather favors BRT projects.

FTA Response: FTA has clarified in the final interim policy guidance that Core Capacity projects are evaluated on existing ridership on the line in the project corridor rather than forecasts of ridership because we agree with the comment that travel models are not sensitive enough to be able to predict the ridership changes that may result from Core Capacity projects (page 13 of Core Capacity Chapter). For example, some Core Capacity projects may add vehicles to trains to add capacity rather than adding trains. Travel models and STOPS are not sensitive enough to recognize a change in the number of vehicles per train, but rather only a change in the frequency of trains. The other comments received on ridership forecasts were on items not open for public comment. New and Small Starts projects will continue to be evaluated based on ridership forecasts using current year inputs of population and employment, with an option for project sponsors to also prepare horizon year forecasts using inputs either 10 or 20 years in the future. As stated under the guiding principles section of the proposed and final interim policy guidance, FTA believes project evaluation based on existing conditions provides the most easily understood, most reliable, and most readily available information for decision-making. Use of current year data increases the reliability of the projected future performance of the proposed project by avoiding reliance on future population, employment, and transit service levels that are themselves forecasts. Because FTA allows sponsors at their option to also calculate a 20 year horizon for consideration in the rating, we are being consistent with metropolitan planning processes.

#### **Breakpoints for Other Criteria and Measures Not Open for Public Comment**

FTA received four comments on breakpoints for several criteria not open for public comment. One of the four was supportive of the breakpoints established for the Small Starts Economic Development measures. Another noted the parking supply measure under the Land Use criterion looks at parking supply and cost in the Central Business District, which may not be informative for projects that serve suburban markets where parking is generally free. The third comment stated the breakpoints for the mobility improvements and congestion relief criteria should be different for New Starts and Small Starts projects. The final comment suggested breakpoints for the cost-effectiveness criterion be updated annually.

FTA Response: FTA is keeping the measures and breakpoints as is since they previously went through an extensive public comment process before being finalized and were not re-opened for public comment in the proposed interim policy guidance. FTA will consider the suggestions made when contemplating future revisions of the policy guidance.

#### **General Comments on the CIG Project Evaluation Process**

FTA received one comment encouraging FTA to adopt an evaluation and rating process that meaningfully differentiates projects. Another comment suggested the number of measures for Small Starts, New Starts, and Core Capacity projects could reasonably be of different magnitude based on the overall project cost. A third comment understood the reason FTA must develop national standards, but stated such standards cannot capture the experience of operating in a complex environment. This comment suggested FTA allow project sponsors to submit alternate analytical approaches that could be reviewed by FTA and deemed acceptable or unacceptable.

FTA Response: The law outlines a multiple measure approach that FTA must use to evaluate and rate projects seeking CIG funding. As stated in the proposed and final interim policy guidance, FTA has tried to develop meaningful measures that generally rely on readily available and easily verifiable data and follow the direction given in law. Allowing unique and different calculations by individual project sponsors for a national funding program would not provide FTA with a standard basis on which to make its funding recommendations to Congress.

### Other Matters

Seventeen comments were received on various other matters. Four comments were statements of appreciation to FTA for efforts to simplify the overall CIG process. Two observations were made that the proposed interim policy guidance significantly advances the creation of comprehensive guidance for the three types of CIG projects. FTA received two commendations for outreach to the industry and to stakeholders for seeking their help in determining the best way to implement the new requirements contained in MAP -21.

Three comments were received stating support for the Program of Inter-related Projects CIG provisions of MAP-21, which were not included in the proposed interim policy guidance. Four comments were received on resiliency, stating it is essential for transit systems to be resilient to climate change. Two of those comments recommended FTA allow resiliency measures to be included in project costs when those resiliency elements would maintain transit service during natural disasters. One comment requested FTA include language to clarify how expansion projects should be shown in the constrained regional transportation plan.

FTA Response: FTA appreciates the comments noting our efforts to simplify and streamline the process and provide comprehensive policy guidance. FTA intends to continue to work closely with the industry to refine the measures and breakpoints over time as needed when new information becomes available.

FTA has worked hard to implement the many new changes to the CIG program resulting from enactment of MAP-21. Given the significance of the changes made, FTA felt extensive industry outreach was critical prior to suggesting processes and procedures and evaluation measures on the newly created aspects of the program. This final interim policy guidance, which outlines the process to be followed by Core Capacity projects until the more formal rulemaking process can be completed, is a necessary first step toward implementing the Programs of Inter-related Projects provisions in MAP-21 since those provisions indicate the programs can include Core Capacity projects.

FTA agrees ensuring transit systems are resilient is important. That is why we specifically encourage in the proposed and final interim policy guidance that project sponsors seeking CIG funding incorporate resilience elements in their project design. These elements are eligible as part of the CIG project cost.

The law requires that projects seeking CIG funding be adopted into the fiscally constrained metropolitan transportation plan, which we believe is clear. If a project sponsor needs clarification on what project definition to include in that plan, FTA can provide assistance on a case-by-case basis.

## **Comments on Topics Not Part of the CIG program**

FTA received two comments related to the FTA rulemaking process on safety and asset management and the definition of state of good repair. Both comments stated that FTA should adopt a definition of state of good repair as being a condition when assets are fit for their intended purposes.

FTA Response: FTA appreciates these comments related to safety and asset management. FTA is in the process of developing a Notice of Proposed Rulemaking (NPRM) on that topic that will include a public comment period. We encourage the public to review the NPRM and provide comments during the public comment period.