



May 2, 2014

U.S. Department of
Transportation Docket Operations
1200 New Jersey Avenue Southeast
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA-2014-0008

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration (FTA) request for comments on State of Good Repair Grants Program: Proposed Circular, published March 3, 2014 at 79 FR 11865.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

APTA speaks for its members. Its Board of Directors reiterated that fact on March 9, 2013, when it adopted the following statement: “While APTA encourages its members to provide specific examples or impacts in support of the association's positions, APTA crafts its comments to represent those of all APTA members. The association goes to great lengths to ensure its regulatory comments represent the consensus views of our members. Every APTA member has the opportunity to review drafts, participate in discussions, and assist in crafting those consensus comments. In short, we speak with a single voice and, when the rare instance occurs that we cannot reach consensus, we do not speak at all. APTA's comments are those of our more than 1,500 members. This consensus-based method of crafting regulatory comments is a factor underlying APTA's selection as one of Washington's most trusted brands in a broad survey conducted by the National Journal and we encourage all federal agencies to recognize the representative nature of the association's regulatory comments.”

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General Comments

We strongly object to FTA's intent to update this Circular in the future without further notice and comment. While FTA could certainly discuss changes to this circular in conjunction with proper notice and comment on related changes in other circulars or guidance, it should not revise this or any other circular unilaterally.

While we understand the need to move forward with interim guidance to facilitate the grants process, we caution that this circular, and this notice and comment period, should not be used as a substitute for complete and public review of the State of Good Repair and Transit Asset Management (TAM) definitions and parameters. Most important to this circular, we asserted and reiterate that "State of Good Repair" should simply be defined as **"an asset fit for its intended purpose."** For complete information, please see our comments filed in response to FTA's Advance Notice of Proposed Rulemaking on these subjects, in docket FTA-2013-0030.

We believe that funds under this program must be available to achieve or maintain equipment and facilities in a state of good repair. While the text of the proposed circular suggests FTA shares this view (e.g., allowing capital maintenance as a proper use of state of good repair funds), this is not always clear throughout the draft. We suggest FTA add a simple statement to the draft unequivocally stating as much – that funding under this program is available to maintain or improve an asset to ensure it is fit for its intended purpose – and note that the list of allowable uses is not exhaustive.

Chapter 1

The definition of Bus Rapid Transit System represents a substantial change from existing program guidance. We believe this reworking of the definition is neither necessary to nor appropriate for a circular dealing with project funding. For purposes of this rulemaking, FTA should cite, quote, and utilize the definitions found in 49 USC 5302 and 5309. To use this forum to update the definition in a vacuum would occasion inconsistency with the National Transit Database, existing BRT projects in the pipeline, and other guidance. Should FTA determine it advisable to amend the definitions related to BRT, it should do so in a comprehensive manner, amending all of its guidance simultaneously and accounting for actions already underway to avoid unintended consequences.

The definitions for Rebuild and Rehabilitation should be expanded to include assets other than rolling stock, such as those mentioned in Chapter 3, paragraph 4.a.

Chapter 2

FTA should clarify, in discussing the role of the designated recipient, that what may constitute a 'fair and equitable distribution' remains within the sole discretion of the recipient. Moreover, the sentence "The designated recipients have the principal authority and responsibility for administering funds" should be reworked to avoid an inference that direct recipients would be unable to apply directly to FTA for funding under this program.

Chapter 3

In discussing eligible projects, FTA should not rely solely on an asset's useful life. Eligibility, particularly in discussing computer hardware and software, should consider whether the asset can perform its intended purpose. The pace of development could easily leave a grantee in possession of hardware, software, or some other asset that is still technically within its useful life, yet obsolete.

In discussing projects that include aspects of state of good repair as well as expanding core capacity, the time is not yet ripe to address overlap of projects potentially eligible for both core capacity and SGR funding programs in the context of a circular. Until such time as we have clear definition of those relevant terms, the appropriate funds source for a particular project should be determined on a case-by-case basis through negotiation between a project sponsor and the FTA outside of and before the grant approval process is underway.

Chapter 4

We do not believe it appropriate for FTA to insist that all projects funded through this program are included in a TAM plan. We reiterate our position in the ANPRM process that 'roll-up' categories are more appropriate than specific projects within a TAM plan. To declare that all projects must be called out is to presume the result of a rulemaking that has yet to be initiated. As we stated in our ANPRM comments, "[r]equiring detail beyond [asset classes] would be expensive and time-consuming for agencies of all sizes, and the information rendered of limited value to FTA.

Similarly, Section 5(c) states that Transportation Improvement Plans (TIP) must include a description of the anticipated effect of the TIP or Statewide TIP (STIP) toward achieving the performance targets established in the metropolitan transportation plan or long-range statewide transportation plan, respectively, linking investment priorities to those performance targets. APTA requests that FTA add language to the circular to clarify that FTA will not require agencies to quantify performance impacts of each individual project in the TIP/STIP. The package of projects in the TIP/STIP will be reflected in the regional target-setting, thus establishing a linkage between capital investments and outcomes. However, it is impossible to isolate and quantify the impact of a specific capital investment on a regional target, given results are driven by a range of factors (e.g., baseline asset reliability, unexpected weather events, customer impact). In addition, agencies are conducting multiple projects concurrently, rendering it impossible to isolate the impact of one project on performance results.

In discussing Categorical Exclusions enumerated in 23 CFR 771.118, FTA should not deviate from its recent guidance on the subject, dated February 2014, by attempting to cite specific examples. Phrases related to specific examples should be excised completely and reference made to that regulatory section and guidance. Instead, FTA should reiterate the point made in Section 2(i) of Appendix A that states that most State of Good Repair Grant Program projects will meet the criteria for a CE. Moreover, FTA concurrence should not be required to establish pre-award authority for Categorical Exclusions included in 23 CFR 771.118(c) or (d).

Letters of No Prejudice should not be necessary for projects that are funded through multiple grants that span authorizations.

Chapter 6

FTA should not require use of the TrAMS until it has been thoroughly tested. We encourage FTA to establish the system in a manner that allow maximum integration with common agency software to ease the burden of replicating data.

We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy". The signature is fluid and cursive, with a prominent flourish at the end.

Michael P. Melaniphy
President & CEO

MPM/jpl/kb