

included in the discussion of meaningful connections.

Eligibility of New Intercity Bus Facilities. In Chapter IX, FTA specified that constructing new intercity terminal facilities for rural passengers is an eligible activity under Section 5311(f), in addition to improvements for existing facilities.

Eligible Subrecipients of Section 5311 funds. FTA amended language in Chapter IX regarding when an intercity bus operator elects to be a contractor or a subrecipient. A “contract” is a legal instrument by which a recipient or subrecipient purchases property or services needed to carry out its project or program under a Federal award. In contrast, a “subaward” is an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out part of a Federal award received by the pass-through entity. The requirements for each are similar but the terms and conditions, including oversight and enforcement, may be different.

ADA Regulations for Intercity Bus Service Operated by Private Entities Using Over-the-Road Buses (OTRBs). In Chapter IX, FTA added language clarifying that vehicles used by intercity bus services provided by a public entity or under contract or other arrangement or relationship to a public entity must be compliant with both 49 CFR 38.23 and subpart G of 49 CFR part 38, as well as 49 CFR part 37.

Update to the Capitalization Threshold for Equipment. FTA received several comments inquiring about the \$5,000 capitalization threshold for equipment, with some commenters requesting the threshold be raised. In its recent final rule, codified at 2 CFR 200.1, OMB increased the threshold for the definition of equipment to \$10,000, and FTA has made this change in the final circular.

State Planning Requirement for Intercity Bus. FTA received three comments from one commenter requesting language reflecting new State planning requirements as updated in FAST Act. FTA added a section to Chapter IX, Intercity Bus, emphasizing that transportation plans and transportation improvement programs must provide for intermodal facilities that support intercity transportation, including intercity buses and intercity bus facilities. Chapter V, Planning & Program Development, subsection 2 (“Metropolitan, Statewide, and Non-Metropolitan Planning”) already specifies that States requesting Section 5311 or Section 5339(a) assistance must comply with the planning requirements of 49 U.S.C. 5303, 5304 and 5306.

Tribal Transit Matching Funds. Consistent with a recent Tribal consultation (89 FR 48593, June 10, 2024), no local match is required for the Tribal Transit Competitive Program. FTA has updated Chapter XI to reflect this change.

C. 2 CFR Part 200 Updates

As stated above, OMB’s 2024 update to 2 CFR part 200 increased the threshold, from \$5,000 to \$10,000, for the value of equipment, which impacts how a recipient may retain, sell, or dispose of the equipment at closeout. Items under \$10,000 are considered supplies. In addition, the threshold for expenditures at which recipients of Federal awards are required to have independent audits conducted annually increased from \$750,000 to \$1,000,000. FTA has updated the final circular to reflect these changes.

Veronica Vanterpool,
Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2023–0009]

Urbanized Areas Formula Grant Programs Guidance, Final Circular

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of availability of final circular and response to comments.

SUMMARY: The Federal Transit Administration (FTA) has finalized a new circular entitled, “Urbanized Areas Formula Grant Programs Guidance,” which consolidates and replaces the circulars for the Urbanized Area Formula Grants Program (FTA Circular C 9030.1), the State of Good Repair Grants Program (FTA Circular C 5300.1), and the Urbanized Area formula component of the Grants for Buses and Bus Facilities Program (FTA Circular C 5100.1). The update and consolidation of the circulars incorporate provisions from the Fixing America’s Surface Transportation (FAST) Act; the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act; the Uniform Administrative Requirements for Federal awards to non-Federal entities; and current FTA policies and procedures. This notice responds to the comments FTA received on the proposed circular, which was published in the **Federal Register** on July 12, 2023.

DATES: The applicable date of this circular is November 1, 2024.

ADDRESSES: One may view the comments at docket number FTA–2023–0009. For access to the docket, please visit <https://www.regulations.gov> or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For State of Good Repair Grant program questions, Ciara Williams, Office of Transit Programs, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E44–412, Washington, DC 20590, phone: (202) 366–8954, or email, ciara.williams@dot.gov. For Urbanized Area Formula Grant program questions, Nichole Neal, Office of Transit Programs, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E44–451, Washington, DC 20590, phone: (202) 366–7865, or email, nichole.neal@dot.gov. For Buses and Bus Facilities program questions, Kirsten Wiard-Bauer, Office of Transit Programs, Federal Transit Administration, 1200 New Jersey Ave. SE, Washington, DC 20590, phone: (202) 366–7052, or email, kirsten.wiard-bauer@dot.gov. For legal questions, Jerry Stenquist, Office of Chief Counsel, same address, Room E56–314, phone: (202) 493–8020, or email, Jerry.Stenquist@dot.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

This notice announces the availability of FTA Circular C 9050.1A, “Urbanized Areas Formula Grant Programs Guidance,” which is a consolidation of guidance for the administration of grants for the Urbanized Area Formula Grants Program under 49 U.S.C. 5307 (FTA Circular C 9030.1), State of Good Repair Grants Program under 49 U.S.C. 5337 (FTA Circular C 5300.1), and the urbanized area formula component of the Grants for Buses and Bus Facilities Program under 49 U.S.C. 5339(a) (FTA Circular C 5100.1). The C 9050.1A circular replaces these three circulars. Additionally, this circular incorporates provisions of the FAST Act (Pub. L. 114–94) and the Infrastructure Investment and Jobs Act (Pub. L. 117–58) and includes program-specific

guidance for these formula programs. Additional requirements for all grant programs are identified in FTA's Award Management Requirements Circular C 5010.1. The applicable date of C 9050.1A is November 1, 2024.

The C 9050.1A circular consolidates and summarizes programmatic information, streamlines pre-existing guidance from the three previous program circulars, and reduces duplication of information provided between the Urbanized Area Formula Programs circular and FTA's other topic-specific circulars, including by moving certain text applicable to most or all of FTA's grant programs to FTA's Award Management Requirements Circular C 5010.1.

Additionally, C 9050.1A clarifies a number of policy issues as interpreted and applied by FTA. These clarifications address topics in the previous program circulars (C 9030.1, C 5300.1, and C 5100.1), including: how funds are apportioned; reallocations or transfers of apportionments; consolidation of grants to insular areas; intermodal use of formula funds; eligible projects and activities for each formula program; operating assistance limitations and exceptions; capital cost of contracting; the role of transportation network companies in providing public transportation services; period of availability to obligate funds flexed to the FTA formula programs from the Federal Highway Administration (FHWA); planning requirements; pre-award authority; revisions to required planning documents as a result of post-award modifications; and requirements pertaining to fares charged to seniors and persons with disabilities.

II. Response to Public Comments

FTA published a notice in the **Federal Register** on July 12, 2023 (88 FR 44440), seeking public comment on a proposed version of Circular C 9050.1. FTA received 115 comments from 30 unique commenters. FTA reviewed the comments and discusses below the changes that FTA made in the final circular based on the public comments. FTA also addresses below the categories of comments for which no changes were made in the final circular. FTA appreciates the commenters who expressed support for updates in the circular, as well as those who provided feedback on administrative non-substantive changes, such as recommending corrections for typographical errors and alternative pagination methods. FTA has reviewed and made those changes to the final circular, as needed.

A. Comments for Which No Changes Were Made

Comments Outside the Scope of FTA C 9050.1A

FTA received comments for which no changes were made because FTA has determined that the topics were outside of the scope of this circular. Topics that were outside the scope of the circular included: a request that FTA increase the size or scope of grants; inquiring whether FTA will require a subrecipient to ensure its contractors pay a livable wage; a request for information about financing programs administered by the U.S. DOT Build America Bureau; and updating guidance outside of FTA C 9050.1A. FTA also determines the following topics were outside the scope of the circular, although it discusses them in further detail because they were raised by more than one commenter:

Comment: Three commenters asked which version of the C 5010.1 "Award Management Requirements" circular should be referenced in C 9050.1A.

FTA Response: In the proposed C 9050.1A, FTA referenced that FTA planned to propose updates to C 5010.1E, which FTA published for public notice and comment in the **Federal Register** on February 14, 2024 (89 FR 11334). The final C 9050.1A references C 5010.1F, which also is being published on this date.

Comment: Two commenters requested extension of the public comment period for C 9050.1A to accommodate the public comment period for proposed C 5010.1F. One commenter asked that FTA publish responses to comments on proposed C 5010.1F before taking comments on proposed C 9050.1A. The other commenter asked that FTA extend the comment period for proposed C 9050.1A to close simultaneously with comment period for C 5010.1F.

FTA Response: The public comment period for proposed C 9050.1A closed on September 11, 2023, and proposed C 5010.1F was not published until February 14, 2024. Thus, it was not possible for FTA to extend the public comment period for proposed C 9050.1A to coincide with the comment period for proposed C 5010.1F. FTA, however, made proposed C 9050.1A available for reference during the subsequent C 5010.1F public comment review period in response to these requests. FTA has revised the circulars concurrently and withheld publishing the final C 9050.1A until after its review of the comments received in response to the C 5010.1F **Federal Register** notice requesting public comment. To the extent that a topic is related to both circulars, commenters were able to

comment during either comment period, and FTA considered any comment that applied to both circulars while both circulars were under revision.

Comment: Three commenters requested more information about Transit Asset Management (TAM) requirements, including adding overall policies, principles, strategies, organizational structure, and objectives that inform the creation and implementation of TAM plans. Furthermore, commenters sought more specificity regarding TAM review schedules, monitoring asset performance, overlap with the metropolitan planning organization (MPO) planning process, and providing guidance on useful life and asset life cycles.

FTA Response: All recipients and subrecipients of Federal financial assistance under 49 U.S.C. chapter 53 that own, operate, or manage capital assets used for providing public transportation must develop a TAM plan. Clarity and guidance concerning TAM requirements are important; however, the requested policy, guidance, and clarification regarding these TAM requirements is outside the scope of the urbanized area formula grant programs discussed in C 9050.1A. Because TAM requirements apply to most FTA recipients across many FTA grant programs, FTA ensures consistency and reduces duplicative information by providing TAM information and resources independently of the circulars on a publicly available website, <https://www.transit.dot.gov/TAM>. FTA will consider these comments during future updates to its TAM guidance.

Comment: One commenter provided comments focused on safety technology, which requested that FTA update the model bus safety program to account for advances in technology since the program was last amended, including an update to include a mandate for advanced driver assistance systems (ADAS) on transit vehicles.

FTA Response: FTA acknowledges the importance of safety technology. The substance of these comments, however, is outside the scope of the urbanized area formula grant programs discussed in C 9050.1A. FTA provides and maintains safety information and resources independently of the circulars on a publicly available website, <https://www.transit.dot.gov/regulations-and-guidance/safety/transit-system-safety>.

Comment: One commenter requested additional guidance or training focused on responsibilities of MPOs during the metropolitan transportation planning process.

FTA Response: MPOs play an integral role in the planning and approval of transportation projects, including those financed with formula funding offered through 49 U.S.C. 5307, 5337, and 5339(a). However, the commenter's proposals are outside of the scope of the formula funding programs discussed in the circular. FTA acknowledges that additional technical assistance may be beneficial and will consider the substance of the comments in any future training and guidance provided to recipients regarding MPO programs. Please also see FTA's resources about MPOs at <https://www.transit.dot.gov/regulations-and-guidance/transportation-planning/metropolitan-planning-organization-mpo>.

Comment: One commenter requested FTA to include intercity bus considerations as a part of planning justifications in Chapter IV of the circular. The commenter also noted that FTA's circular, FTA C 8100.1D "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants," refers to the need for States and MPOs to provide intercity bus operators and other stakeholders a reasonable opportunity to comment on transportation plans. The commenter requested the C 9050.1A section on planning justifications require improved timely intercity bus consultation processes by States and MPOs. The commenter also provided recommendations on the preferred method for the States and MPOs to engage with intercity bus carriers and the timing for when they can provide input on plans. Similarly, the commenter requested FTA highlight the intercity bus consultation component of planning under Chapter V where additional planning requirements are discussed. The commenter also noted that the language in Chapter V stating that the local coordinated planning process "may also include consideration of the intercity bus transportation needs of the targeted population of seniors and individuals with disabilities" is too permissive.

Response: FTA declines to make a change in response to the comments. FTA declines to incorporate the recommendations under the planning justifications section in Chapter IV or in Chapter V in this circular because the more appropriate venue for planning-specific guidance is FTA C 8100.1D, which addresses the planning requirements carried out by States and MPOs. The scope of C 9050.1A, on the other hand, is to address the administration of urbanized area formula grant program funding under Sections 5307, 5337, and 5339(a), in

which there are no provisions regarding intercity bus.

Comment: One commenter requested continued engagement with MPOs and other stakeholders and requested FTA provide a cross-reference guide to assist MPOs in understanding the updates in terminology in C 9050.1A.

Response: FTA will continue to engage with recipients, applicants, and the public to communicate changes resulting from the consolidation of the previous circulars into C 9050.1A. FTA's engagement will include outreach that provides explanations of updates to terminology and other content in the circular.

Comment: One commenter requested more emphasis throughout the circular on the role private providers of transportation play in the provision of public transportation services. The commenter requested that the circular reference coordination with the private sector in the definition of "Mobility Management." The commenter also requested that FTA change the reference to "private nonprofit organizations" in Chapter II discussing subrecipient arrangements to "private providers." Further, the commenter requested that FTA add a reference to "operational service planning including consideration of contracted operations" as one example of a technical study that could be funded as a planning activity with Section 5307 funds. Additionally, the commenter requested that FTA add "local ride providers" to the entities involved in public transportation/human services planning or an alternative planning process from which Job Access and Reverse Commute (JARC) projects may be derived.

Response: FTA declines to make changes in response to these comments. FTA acknowledges the significant role of private transportation providers in the provision of public transportation services and the benefit of their consideration in transportation coordination and public transportation planning processes. However, for the purposes of this circular, FTA limits the circular's discussion of private providers' roles in transit to their relevance to Sections 5307, 5337, and 5339(a). FTA further addresses the resources and benefits of private providers within its guidance on transportation coordination and planning.

Comments Within the Scope of the Circular That Resulted in No Changes

The following comments regarding the circular resulted in no changes because either the requests sought changes to statutory requirements, the

topics they raised already are addressed adequately in the circular, or because the comment is better addressed through direct guidance from FTA to the commenter.

Comments Requesting Changes to Statutory Requirements

Comment: Two commenters requested that FTA change the maximum Federal share for Section 5307 operating assistance from 50 percent to 80 percent.

FTA Response: The 50 percent maximum Federal share for operating assistance is set in statute, 49 U.S.C. 5307(d), and FTA has no authority to change it.

Comment: Similarly, two commenters requested a change to allow proceeds from transit fares to be used as local match to FTA financial assistance.

FTA Response: Generally, financial assistance from FTA may only fund the permissible Federal share of the "net project cost" of eligible projects for the formula programs covered by C 9050.1A (49 U.S.C. 5307(d), 49 U.S.C. 5337(e), and 49 U.S.C. 5339(a)(7)). The term "net project cost" means the part of a project that reasonably cannot be financed from revenues (49 U.S.C. 5302(13)). Furthermore, 49 U.S.C. 5307(d)(3) and 49 U.S.C. 5339(a)(7)(B) specify the sources of funds that may be used as match and explicitly exclude "revenues from providing public transportation services."

Comment: Two commenters requested a change to the period of availability to obligate Section 5307, 5337, and 5339(a) funds to awards, so that all three sources of formula funds have the same period of availability. Another commenter requested FTA remove language addressing Governors' discretion to use Section 5307 program funds remaining from the State's apportionment for small urbanized areas (UZAs) 90 days before the expiration of their period of availability, or alternatively, change the time period from 90 days to one year.

FTA Response: FTA lacks discretion to modify the periods of availability to obligate formula funds for Section 5307 and 5339(a) programs because the periods of availability are set forth in 49 U.S.C. 5336(g) and 49 U.S.C. 5339(a)(8), respectively. FTA has already administratively matched the period of availability for Section 5337 funds with the statutory period governing Section 5339(a) funds. Similarly, FTA lacks discretion to remove or modify the 90-day time frame during which Governors may reallocate lapsing Section 5307 program funds because the time frame is established in 49 U.S.C. 5336(f)(3).

Comment: One commenter requested that the circular require the Governor or the Governor's designee to consult with the MPO when redesignating a UZA's designated recipient. The commenter further requested that FTA require that an MPO's letter of concurrence accompany the Governor's written notice of redesignation to FTA. The commenter opined that past redesignation procedures requiring transit providers' unanimous consensus caused notable challenges in achieving a timely agreement.

Response: FTA declines to make a change in response to the comment. FTA has not changed the recipient redesignation process requiring concurrence by the applicable MPO(s). Further, FTA does not have the discretion to exclude publicly owned operators of public transportation from a designation decision because 49 U.S.C. 5302 defines a "designated recipient" as "an entity designated, in accordance with the planning process under Sections 5303 and 5304, by the Governor of a State, responsible local officials, and publicly owned operators of public transportation to receive and apportion amounts made available under Section 5336 to UZAs of 200,000 or more in population."

Comment: One commenter requested FTA allow recipients who receive funds for contiguous but separately defined UZAs to use funds apportioned to one UZA for capital improvements in another UZA, as long as the recipient can demonstrate that the funds are being expended equitably across all areas.

Response: FTA declines to make a change in response to this comment. FTA does not have the discretion to allow funds apportioned to one UZA to be used in another UZA when those funds provide no direct benefit to the apportioned UZA. Such use of funds would circumvent the apportionment transfer provisions codified in 49 U.S.C. 5336. However, as detailed at the end of Chapter IV, FTA notes limited flexibility for the use of UZA-specific funds for capital projects outside of the UZA. A recipient may use funds apportioned to a UZA outside the UZA for capital activities that involve mobile capital assets (e.g., rolling stock acquisition or maintenance) if the capital assets support a geographically continuous public transportation service that has at least one passenger access point within the apportioned UZA. Further, the updated circular clarifies that recipients may use funds apportioned to a UZA for immobile capital assets (e.g., rail stations, bus stops and terminals, etc.) located outside the UZA in proportion to the extent the asset supports transit

service provided in the apportioned UZA based on a reasonable cost allocation methodology.

Topics Already Adequately Addressed or Better Addressed Directly With Recipients

Comment: One commenter encouraged FTA to exercise discretion to determine that not all vehicles providing demand-response service be included in a vehicle count for purposes of complying with 49 U.S.C. 5307(a)(2), colloquially referred to as the '100-bus rule'.

FTA Response: 49 U.S.C. 5307(a)(2) limits a recipient's use of Section 5307 funds for operating assistance based on the number of buses operated in peak service. In compliance with the statute, FTA counts buses operated in peak demand-response service, excluding ADA complimentary paratransit service. Because common practice of transit providers operating both fixed-route and demand-response services is to employ their demand-response fleets for ADA complementary paratransit service, FTA excludes these operators' demand-response fleets for purposes of 49 U.S.C. 5307(a)(2). However, for operators that only provide demand-response service, FTA cannot distinguish that portion of the fleet used for ADA complementary paratransit service. Therefore, the bus count for demand-response-only fleets, for purposes of the thresholds in 49 U.S.C. 5307(a)(2), is determined by counting the number of demand-response vehicles used in peak service.

Comment: Four commenters requested that FTA provide additional clarification of eligible expenses under FTA grants. One commenter requested clarification regarding eligibility of certain activities as a capital expense; one commenter requested clarification on the eligibility of fixed guideway under Section 5337; one commenter requested clarification about the eligibility of art and landscaping used for flood protection and resiliency; and one commenter asked that FTA list preventive maintenance in Table IV-1 "Summary of Eligible Activities by Formula Grant Program" as an eligible activity.

Response: FTA declines to make a change in response to these comments. FTA issues circulars to provide general guidance and clarification while summarizing applicable Federal law. It would be impractical to provide this level of specificity for eligible expenses. Recipients should contact their FTA regional office with specific eligibility questions.

Comment: One commenter requested the circular include an example

illustrating how to split contract expenses to avoid counting the same expenses as both operating and capital costs under FTA's capital cost of contracting policy.

Response: FTA declines to make a change in response to the comment. The requested examples would either be unduly specific or not expansive enough. FTA issues circulars to provide general guidance and clarification while summarizing applicable Federal law. The recipient should contact its FTA regional office with these eligibility questions.

Comment: One commenter requested FTA add language stating whether a subrecipient of Section 5310 funds would also be considered an eligible subrecipient for the grant programs covered in this circular.

Response: FTA declines to make a change in response to the comment. FTA considers its guidance sufficient regarding subrecipient eligibility in the circular, including the potential participation of non-profit organizations in certain grant programs. FTA issues circulars to provide general guidance and clarification while summarizing applicable Federal law. For this purpose, it is generally impractical to specify the eligibility of entities' grant participation in other FTA grant programs.

Comment: One commenter requested that FTA include language stating when a recipient may charge administrative fees to an award for administration and management of Section 5307, 5337, and 5339(a) grant awards. Similarly, another commenter noted that FTA should address *de minimis* administrative costs, alleging that they are or should be separate from direct and indirect costs.

Response: FTA declines to make a change in response to the comment. Under the government-wide Uniform Cost Principles for Federal Awards, every eligible cost must be either a direct cost or an indirect cost. (See 2 CFR 200.412 through 200.415 for information about determining whether a cost is direct or indirect.) This includes costs the commenter considers administrative in nature. The circular describes which administrative expenses are eligible. These expenses may potentially be indirect costs or directly allocable to the award. If the recipient is referring to administrative expenses associated specifically with designated recipient responsibilities, Table IV-2, Urban Formula Programs Capital Eligibility Table, states that those are not an eligible expense of formula funds.

Comment: In reference to FTA's definition of "Rehabilitate" in Chapter I,

one commenter opined that the phrase “including a rebuild and overhaul as defined in this circular” may be confusing because these terms are a reference to the process to cause a capital asset to meet or extend its planned useful life.

Response: FTA declines to make a change in response to the comment. FTA disagrees that the use of these terms is confusing. “Rehabilitate” is the term used in Section 5339(a) to describe projects eligible under that section. FTA’s definition clarifies that both rebuilds and overhauls are examples of activities that qualify as rehabilitation and only pertain to rolling stock. The definition uses rebuilds and overhauls to further distinguish from standard preventive maintenance, which is not a form of rehabilitation.

Comment: One commenter requested that the list of Associated Transit Improvements in Chapter IV include additional examples of projects that address resiliency issues.

Response: FTA declines to make a change in response to the comment. The circular only lists projects eligible as Associated Transit Improvements (ATI) that are in statute. FTA declines to add examples to the list. It is impractical to include additional specificity because of the various considerations in determining whether a project meets the statutory criteria as an ATI. Recipients should contact their FTA regional office with these eligibility questions.

Comment: One commenter requested that FTA add language in Chapter IV discussing JARC projects to clarify that private for-profit companies are eligible for third-party contracts to provide JARC services.

Response: FTA declines to add additional language regarding program-specific eligibility of third-party private for-profit companies because Chapter II of the circular articulates generally the eligibility of contracted service arrangements with such operators. These arrangements may include, but are not limited to, contracts to provide JARC services.

Comment: One commenter noted that “Job Access and Reverse Commute (JARC) Project” as a defined term should be deleted because the JARC formula grant program under 49 U.S.C. 5316 was repealed.

Response: While 49 U.S.C. 5316 was repealed by MAP–21, FTA declines to remove the definition of JARC in the circular because JARC projects are still eligible under 49 U.S.C. 5307(a)(1)(C).

Comment: A commenter requested FTA consider removing all specific dollar amounts under the apportionment section of the circular in

Chapter III. The commenter noted future legislative changes could modify certain fixed apportionment amounts, creating confusion and causing the circular to become outdated. The commenter opined, for example, that if Congress were to amend the \$4 million State apportionment of 5339(a) National Distribution funding, such legislation would cause this circular to have incorrect information and cause confusion.

Response: FTA did not remove the dollar amounts for certain fixed apportionments because the circular cites to the transportation reauthorization legislation from which the amounts are derived. FTA asserts that, in some cases when the risk of imminent change in the apportionment is low, the public and recipients are better served by references to the specific apportionment amounts in this circular. The commenter’s example is a good example of an appropriate use of citation to a specific dollar amount because the State set-aside requirement in 49 U.S.C. 5339(a)(5)(A) is a statutory set-aside set forth in a program-specific section of 49 U.S.C. chapter 53. The statutory provision is less likely to be amended before reauthorization, so citation to a specific dollar amount is appropriate.

Comment: One commenter requested that the definition of “Facilities” in the circular be revised to reference the intercity bus portion of intermodal facilities. The commenter noted that FTA’s circular on joint development projects, FTA C 7050.1C, includes references to intercity bus when referring to joint development.

Response: FTA declines to make a change in response to the comment. FTA declines to revise the definition of “Facilities” in C 9050.1A because the definition is sufficiently broad to include different types of facilities. FTA C 7050.1C is specific to joint development projects and provides more targeted information on intermodal facilities. The definition of “Facilities” in C 9050.1A does not preclude intermodal facilities, which may include intercity bus, from being included in a joint development. FTA’s joint development circular provides sufficient applicable guidance regarding this definition from which the formula grant programs do not deviate.

Comment: One commenter requested that the definition of “Public Transportation” be revised in the circular to clarify that Section 5307 and 5339 funding can be used to improve intercity bus services.

Response: FTA declines to revise the definition of “Public Transportation” as

requested. The circular’s definition of “Public Transportation” is consistent with the definition at 49 U.S.C. 5302(15). Intercity bus is not public transportation according to this statutory definition applicable to the entirety of Chapter 53. The circular references intercity bus services where applicable to Section 5307, 5337, and 5339(a) programs, which specify the narrow instances for which Section 5307 and 5339 funding can be used for intercity bus purposes.

Comment: One commenter requested FTA to elaborate on information in Table IV–3 under “Crime Prevention and Security Projects” to clarify that capital projects that enhance safety and security at intercity bus facilities and intermodal transportation centers are eligible activities.

Response: FTA declines to make a change in response to the comment. FTA declines to revise the list of examples in response to this comment because the list of examples is to reference specific technology or items that may enhance safety and security, not the type of facility.

Comment: One commenter requested FTA add “intermodal facilities including the intercity bus portions of such facilities” as an example of eligible capital projects in Chapter IV where capital projects are generally discussed.

Response: FTA declines to add this reference as specified; however, FTA added language regarding reasonable access for private intercity or charter transportation operators to federally funded public transportation facilities under 49 U.S.C. 5323(r) in the same section where capital projects are generally discussed based on other comments. FTA has also included a reference to joint development improvements, which include improvements of intercity bus facilities, in Table IV–2, based on other comments. To the extent that the comment seeks to state the inclusion of intercity bus in eligible transit programs, these additional references sufficiently address this comment.

Comment: One commenter requested FTA include additional language under the “Joint Development Projects” section in Chapter IV to specify that eligible activities also include the improvement of transportation-related furniture, fixtures, and equipment in intercity bus terminals, as it is specified in the “Transit-Oriented Development” section.

Response: FTA declines to make a change in response to the comment. FTA declines to add language to the “Joint Development Projects” section in the circular because the section already

references FTA C 7050.1C, FTA's Joint Development circular, which provides guidance regarding joint development projects. FTA also notes that the joint development projects and transit-oriented development projects are categorically distinct, and any addition of relevant information would be duplicative of other sections in the circular.

Comment: One commenter requested FTA revise the definition of "Incidental Use" in the circular by adding a sentence clarifying that privately or publicly operated intercity bus service in an FTA-funded facility is not an incidental use of that facility. The commenter expressed concern that, without that clarifying sentence, the circular may create confusion on whether intercity bus services are an incidental use.

Response: FTA declines to make a change in response to the comment. FTA declines to revise the definition of "Incidental Use" by adding the suggested sentence. The nature of property incidental use is discussed in full in FTA's Award Management Requirements circular (C 5010.1), which explains that incidental use is "the limited non-transit use of project property that does not conflict with the original authorized purpose of the project property or the recipient's ability to maintain satisfactory continuing control." By statute, 49 U.S.C. 5302(15), intercity bus service is not public transportation. Circular 9050.1A addresses intercity bus opportunities where appropriate while FTA's guidance regarding incidental use and intercity bus is discussed in other FTA circulars.

Comment: One commenter requested FTA add language referencing the Surface Transportation Block Grant Program (STBG) under "Availability of FHWA 'Flexible Funds' for Transit Projects" and "Congestion Mitigation and Air Quality (CMAQ) Improvement Program" that specifies flex funds can be used for intercity bus projects.

Response: FTA declines to make a change in response to the comment. FTA declines to add this language because the flexible funding section in the circular sufficiently conveys that expenses must be eligible under both the originating Federal Highway Administration (FHWA) program and the FTA receiving program.

B. Changes Based on Public Comments Comments Requesting Clarifications or Specificity

FTA revised language in the circular to address the following comments, as explained below.

Comment: One commenter requested FTA to add a statement that acknowledges that circulars may become outdated, and in that event, the law would apply.

Response: In response to this comment, FTA added the sentence, "to the extent this circular is inconsistent with changes in any statute or regulation, statute or regulation will supersede this circular," in the introductory paragraph of the circular.

Comment: One commenter requested FTA to include language stating that third-party contracted service agreements may include businesses other than taxi companies and transportation network companies (TNCs) that are referred to in Chapter II, under "Private Operators of Public Transportation as Contractors."

Response: FTA agrees that taxi companies and TNCs are not exclusively the businesses that may participate in these contracted service agreements. In response to this comment, FTA added "or other similar service deployment models" to the section to account for the various business models and contracting arrangements recipients may engage.

Comment: One commenter requested clarification as to how State recipients must administer transferred funds. More specifically, the commenter asked whether apportionments transferred from a large UZA to a rural area would be administered as Section 5311 funds and therefore would follow the corresponding guidance for those funds.

Response: Funds apportioned under one formula program to another separate formula program, or to a different tier of the same formula program, as determined by Census designations, are managed as if they are part of the receiving funding program (e.g., Section 5307 transferred to Section 5311). While the circular already addresses how transferred apportionments would retain certain requirements/limitations associated with the original apportioned program in Chapter III, additional language was included to specify that transfers of apportionments retain the same period of availability to obligate funds to grants as the program of the original apportionment.

Comment: In reference to FTA's definitions of "Equipment" and "Supplies," three commenters requested an increase of the \$5,000 per-unit value

threshold to \$10,000 in order to match the threshold for micro-purchases for federalized procurement purchases.

Response: Since FTA published the proposed circular, the Office of Management and Budget (OMB) has updated the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" under 2 CFR part 200, which will be effective October 1, 2024 (89 FR 30046). Among those updates, OMB increased the threshold in the definitions of "Equipment" and "Supplies" from \$5,000 to \$10,000. FTA has incorporated these new thresholds in the circular. Note that FTA made this change based on definitional changes in part 200, not based on the micro-purchase threshold as suggested by the commenters. Also note that the threshold change is not effective until OMB's update to part 200 is effective on October 1, 2024.

Comment: One commenter requested that FTA expand the criteria that a recipient should consider when undertaking fleet expansion in Chapter IV under "Requirements Related to Vehicles and Equipment Eligibility." The commenter noted that the language should additionally account for recipients' evaluation of locally available resources to identify feasible opportunities for new and expanded routes and services, as such an evaluation is needed to require consideration of private mobility providers and to consider provision of demand-response services in lieu of fixed-route transit.

Response: In response to the comment, FTA added "and evaluate available resources" to refer to other available resources, including those contemplated by the commenter, because recipients can consider a wide variety of resources.

Comment: One commenter requested further clarification on recipients' eligibility to use funds apportioned to UZAs in rural areas, as well as their eligibility to use funds apportioned to rural areas in UZAs. More specifically, the commenter communicated support for the circumstances under which either rural or UZA funds may be used for services that intersect both a UZA and rural area but noted a contradiction in the circular's language regarding the inflexibility to use rural funds for the portion of such a service that is internal to a UZA when both UZA and rural funds are combined to support the respective service.

Response: FTA updated the applicable circular language to reflect and clarify that, when both UZA and rural funds are combined to subsidize

such a service (or mobile capital assets used for the service), rural funds may support the portion of a service that is internal to a UZA. However, the language re-emphasizes that if a recipient only uses rural funds for such a service, the service must be designed primarily to bring rural passengers to and from the UZA with a limited number of route stops within the UZA. Additionally, FTA modified language to reflect and clarify that funds apportioned to a UZA that will be used for immobile capital assets located outside the UZA may support such an asset in proportion to the extent the asset supports transit service provided in the respective UZA based on a reasonable cost allocation methodology.

Comment: One commenter requested clarification on whether transit agencies' bike share programs are eligible for Section 5307 funding, which would include activities such as purchasing bicycles and operating and managing bike share services.

Response: In response to the comment, in Chapter IV, FTA clarified that eligible projects funded with Section 5307 funds may include infrastructure expenses to accommodate the presence of bicycle or other mobility device sharing programs in the vicinity of transit stops or stations, but the acquisition of bicycles, scooters, segways, or other similar mobility devices are ineligible expenses. Further, in the section addressing JARC projects in Chapter IV, FTA removed language that suggested operating expenses for bicycle sharing programs in the vicinity of transit stations are eligible. Such expenses are ineligible because operations associated with those individualized modes of travel do not qualify as public transportation.

Comment: One commenter requested FTA to consider a different terminology other than "Bicycle and Pedestrian Paths" in Chapter IV. The commenter recommended FTA use the term "bicycle and pedestrian facilities" in order to highlight the physical nature of the space rather than give the impression that it refers to an off-road type of recreation amenity.

Response: FTA updated the section in Chapter IV to which the comment referred by revising the terminology to "Bicycle and Pedestrian Access Improvements." Changing the term to "access improvements" rather than "paths" or "facilities" provides better alignment to Associated Transit Improvements (ATI), which is defined in 49 U.S.C. 5302(2) and is the focus of the section in the circular. FTA presumptively interprets bicycle and pedestrian access improvements as

being "physically or functionally related to transit facilities" if they meet the distance requirements specified in the circular.

Comment: Two commenters requested C 9050.1A clarify that minimum useful life, which is addressed in FTA's circular "Award Management Requirements" (C 5010.1), is different from useful life benchmark (ULB), which is governed by the Transit Asset Management (TAM) requirements. One of the commenters requested that C 9050.1A note that C 5010.1 is the governing circular on minimum useful life.

Response: In response to these comments, FTA references C 5010.1F in the definition for the term "minimum useful life" for more information on that specific topic. FTA also deleted "useful life benchmark" from the list of defined terms in C 9050.1A to further reduce confusion since the term is no longer used in the circular.

Comment: One commenter requested that the circular define or clarify the types of communications that fulfill the "in writing" requirement for purposes of requesting and issuing pre-award authority.

Response: These types of communications are already addressed in Chapter V of the circular, but FTA additionally updated the definition of "Pre-award Authority" to state that it is announced in the annual Apportionment Notice, Notice of Funding Opportunity, a Letter of No Prejudice, or other written notification.

Comment: One commenter requested that FTA emphasize the statutory provision 49 U.S.C. 5323(r), which states that a recipient may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities. The commenter said that the cost of maintaining bus terminals in dense urban areas is becoming too expensive for intercity bus companies, and the intercity bus companies are facing difficulty finding suitable and affordable facilities for passenger terminals in dense urban areas. The commenter further said that allowing the intercity bus companies access to public transportation facilities would be a convenience to passengers connecting to public transportation.

Response: In response, FTA included the reference to the statute in the "Activities Applicable to Section 5307, 5337, and 5339(a)" section under Chapter IV. There, FTA states that a recipient's capacity requirements and the impact on existing public transportation services must be considered by a recipient in its

determination of whether a proposed access is reasonable. FTA included examples of considerations in this determination.

Comment: One commenter requested that "intercity bus service" be a defined term in C 9050.1A to ensure clarity on the meaning of intercity bus service. The commenter further requested that information about the Intercity Bus program under Section 5311(f) be added to C 9050.1A under "Relationship to Other Programs" in Chapter II.

Response: In response to these comments, FTA added information on the Intercity Bus Program under Section 5311(f) in Chapter II and a definition of "intercity bus service" that is based on the definition in FTA's Rural Areas Formula Grant Programs Guidance circular, C 9040.1H, for consistency.

Comment: One commenter requested clarification regarding how the capital cost of contracting table in Chapter IV applies to Section 5339(a) funds.

Response: In response, FTA amended the circular to now include additional information within the capital cost of contracting table summarizing the extent to which Section 5337 and 5339(a) funds may support capital cost of contracting activities.

Comment: One commenter requested FTA to clarify that, in Chapter III, the "Lapsing Funds" section under "Reallocation or Transfer of Apportionments" is referring to Section 5307 funds.

Response: FTA made this revision so that the section is titled "Lapsing Section 5307 Funds."

Comment: One commenter requested FTA emphasize that intercity bus projects are eligible as a capital project if they are part of a joint development improvement project under 49 U.S.C. 5302(4)(G).

Response: FTA added a new row in Table IV-2 to specify joint development improvement projects as eligible capital activities in response to this public comment.

Comment: One commenter requested FTA implement the requirement for recipients in UZAs with a population of 200,000 or more to expend a minimum of 0.75 percent of their Section 5307 apportionment on safety-related projects, referred to as the safety set-aside, only at the individual recipient level and not for each recipient's grant application to allow recipients greater grant-making flexibility.

Response: FTA removed the applicability of the requirement to each grant application to allow recipient flexibility for determining how to best structure grants to satisfy the minimum 0.75 percent expenditure on safety-

related projects. The implementation of the requirement at the individual recipient level was retained to ensure compliance with the statute.

Comment: One commenter requested that FTA clarify in Chapter II, under the section that briefly explains Federal Highway Administration (FHWA) Flexible Programs, that flex funds can be used for intercity bus projects. The commenter noted that the language in the circular refers to flex funds being eligible for “public transportation projects,” which does not include intercity bus.

Response: In response to this comment, FTA removed the reference to “public transportation projects” and added language from the statute governing the transfer of highway funds for transit projects, 23 U.S.C. 104(f)(1), to specify that recipients can transfer funds that were available for transit projects or transportation planning. The inclusion of the statutory language provides better alignment with the scope of eligible projects covered by the statute.

Comment: One commenter requested that FTA revise the language in Chapter V stating that subarea allocations of formula funds are determined by “a process based on local needs.” The commenter asked that “local needs” be replaced with “regional priorities” to better align subarea allocation of formula funds with the performance and outcome-based planning processes carried out by MPOs.

Response: FTA agrees. 49 U.S.C. 5303 generally establishes regional priorities as the appropriate geographic scale and standard governing metropolitan transportation planning decisions while incorporating local considerations through MPO local official participation. FTA revised the language to more closely match the statutory language emphasizing regional priorities as the controlling standard. In the same sentence, FTA removed language emphasizing the agreement by designated recipients to subarea allocations, as designated recipients’ participation in the subarea allocation process is already represented through the metropolitan planning process.

Comment: One commenter requested clarification on whether the flexibility to include substitute or contingency projects in a grant application is now being extended to all recipients rather than to just States and MPOs with multiple subrecipients. The commenter also requested clarification on this flexibility because the circular references “below the line” in a section of a grant application which may have

referred to a scope code that no longer exists.

Response: In the proposed circular, FTA changed the reference from “State” to “recipient.” In response to the comment, FTA clarified that recipients with more than one subrecipient may substitute contingency subrecipient projects within a grant application. FTA declines to extend the flexibility to recipients without more than one subrecipient because they do not manage a program of projects within a single grant application for more than one other entity. FTA agrees that the reference to “below the line” section of a grant budget is unnecessary and has removed the reference to the term.

III. Other Changes

In addition to the changes noted above, FTA has made revisions in this final circular for consistency with changes in statute, regulation, and other FTA circulars, as well as minor, non-substantive revisions for clarity. For consistency with statute, FTA has added language in Chapter II, under “Designated Recipient and State Roles in Program Administration,” to match the language for the criteria for eligible recipients in 49 U.S.C. 5339(a)(4). FTA also deleted information about the “Over the Road Bus Accessibility Program” in Chapter IV, which was mentioned under the section discussing the capital cost of contracting in the proposed circular. FTA removed that reference from the circular because the funding program expired after Federal fiscal year 2012.

FTA also updated Public Transportation Safety Program (PTASP) information in Chapter V for consistency with revisions to the PTASP regulation (49 CFR part 673) that occurred after publication of the proposed circular.

In Chapter IV, under “Workforce Development Activities,” the reference to cost principles for Federal awards under 2 CFR 200.403(d) was updated with a clarifying change from “may not” to “must not” for consistency with OMB updates to 2 CFR part 200 that become effective October 1, 2024.

FTA made revisions in this final circular for consistency with language that was included in proposed FTA C 5010.1F “Award Management Requirements” and C 9040.1H “Rural Areas Formula Grant Programs Guidance” that were published for notice and comment. The name of this circular, C 9050.1A, has been updated to “Urbanized Areas Formula Grant Programs Guidance” for consistency with the naming structure of C 9040.1H. FTA also removed the statement that the

circular contains guidance for the preparation of grant applications because that information is in C 5010.1F. FTA updated or added the following definitions for consistency with proposed C 5010.1F: the definition of “Capital Asset,” which was modified for consistency with 2 CFR 200.1; the definition of “Federal Interest,” which was updated to better align with FTA and Federal regulations, including in cases for which fair market value determinations are not readily discernable; the definition of “Incidental Use” to align with C 5010.1F; the definition of “National Environmental Policy Act (NEPA),” which was updated to clarify the role in FTA-funded projects; the definition of “Preventive Maintenance,” which was updated to provide more specificity; added the definition of “Project Property” for consistency with C 5010.1F; removed the definition of “Spare Parts” as it is not a term used in the circular; and the definition of “State of Good Repair” was clarified with non-substantive changes. For consistency with C 9040.1H, the definition of “State” was updated to include the 49 U.S.C. 5339 reference to the distinction between “State” and “territory,” and a similar revision was made to note territories under the section explaining the Grants for Buses and Bus Facilities Formula Program under 49 U.S.C. 5339(a) in Chapter III.

Along with other non-substantive administrative changes that were recommended by several commenters, FTA made additional corrections in the circular for typographical errors, grammatical errors, and formatting.

Finally, FTA removed outdated language establishing a threshold level of more than one mile of fixed guideway in order for UZAs to receive State of Good Repair funds in Chapter III under the “State of Good Repair Grants program (Section 5337).” The outdated requirement was not based in statute and has not been FTA policy for a significant amount of time. Removing this threshold requirement from the circular does not impact any prospective applicants of State of Good Repair funds and is not a change in existing policy.

Veronica Vanterpool,
Deputy Administrator.

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