

Michael W. Hancock, P.E., President

Secretary, Kentucky Transportation Cabinet

Bud Wright, Executive Director

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November 25, 2013

Administrator Peter Rogoff  
Federal Transit Administration, East Building  
1200 New Jersey Avenue S.E. 5<sup>th</sup> Floor, Suite E-57  
Washington, DC 20590

Re: Docket No. FTA-2013-0023

Dear Administrator Rogoff:

The American Association of State Highway and Transportation Officials (AASHTO) appreciates the opportunity to submit comments on FTA's "Formula Grants for Rural Areas: Guidance and Application Instructions," which was released on September 23, 2013.

In the spirit of providing guidance and technical expertise on behalf of the states, AASHTO proposes the following recommendations for your consideration.

**Formula Grants for Rural Areas (Section 5311)**

- Clear and concise definitions throughout each of the Federal Transit Administration's circulars assist states in interpreting the intent and application of each of the issue areas and the same should be applied for this circular as well. For example, the following terms such as Clean Fuel, Designated Recipient, Direct Recipient, Intelligent Transportation System, Net Project Cost, New Bus Model, Non-profit Organization, Operating Expense, Overhaul and Useful Life are present in the Section 5311 Rural Area Formula Program Proposed Circular but are not defined as they are in other circulars. Including a definition would assist in the uniform application of this circular among all FTA Regions. In addition, there seems to be some discrepancies in the definitions. For example, Force Account definition does not agree with the Federal Highway Administration's definition. What definition should the State DOTs follow? Another example of inconsistency is in relation to mobility management. The circular states that Section 5309 funds are excluded for use of mobility management. Is it the FTA's intent that 5339 funds are eligible since they are not mentioned for this exclusion?
- Under Chapter III, 3. Eligible Activities, c., Operating Expenses (page III-11) as compared to Chapter III, 4. Federal/Local Matching Requirements, c., Operating Expenses (page III-18): Clarification is needed. Each section should consistently and specifically state the intended eligibility of human service contract income in reducing operating expenses.
  - Page III-11 states:  
*Farebox revenues do not include payments made directly to the transportation provider by human service agencies to purchase service. However, purchase of transit passes or other fare media for clients would be considered farebox revenue. A voluntary or mandatory fee that a college university or similar institution imposes on all its students*

*for free or discounted transit service is not farebox revenue. Payments made directly to the transportation provider by human service agencies and college university fees passed on to the transit provider would be considered “program income” and may be used to reduce the net operating cost of the service or may be used as local match.*

- Page III-18 states:  
*Under Subsection 5311(g)(3)(A), funds received pursuant to a service agreement with a State or local social service agency or a private social service organization may be used as local match.*

*Income from contracts to provide human service transportation may be used either to reduce the net project cost (treated as revenue) or to provide local match for Section 5311 operating assistance (treated as program income). In either case, the cost of providing the contract service is included in the total project cost.*

*The manner in which a subrecipient applies income from human service agencies to a project affects the calculation of net operating expenses and, therefore, the amount of Section 5311 operating assistance the project is eligible to receive. A State’s method of sub-allocating its apportionment among its subrecipients is a discretionary action, subject only to the statutory requirements described in this circular. While a State may not prohibit a subrecipient from using income from human service agency contracts as a source of local match according to Section 5311(g)(5), the State may elect to regard the degree to which a subrecipient demonstrates local financial commitment to the project from other sources of local funds as a rating factor in its discretionary allocation decisions.*

The section on page III-18 is duplicative of the previous section and much more detailed. Due to the inconsistency in the descriptive narrative language one could infer the intent of local match vs. program income should they only refer to one section and not to both of the sections. We recommend that both section read identically where referring to net operating expenses/program income/local match.

- Under Chapter III, 3. Eligible Activities, f. Job Access and Reverse Commute projects, it states, "Although private non-profit organizations are not eligible sub-recipients for other Section 5311 funds, private non-profit organizations may receive funding for job access and reverse commute projects as a sub-recipient of an FTA designated recipient or direct recipient."
  - This statement about private non-profits not being eligible sub-recipients for Section 5311 funds seems to contradict Chapter III, 2. Where the definition of Eligible Recipients and Sub-recipients, includes a list of eligible sub-recipients including non-profit organizations.
- Under Chapter III, 3. Eligible Activities, f. Job Access and Reverse Commute projects (1) New and Existing Services it states, “Recipients may not re-classify existing public transportation services that have not received funding under the former Section 5316 program as job access and reverse commute services in order to qualify for operating assistance.” Also under (b) Maintenance Projects it states, “Maintenance of transportation services means projects that continue and maintain job access and reverse commute projects and services that received funding under the former Section 5316 program.” States want the flexibility to move a project that was previously funded under Section 5311 operating and meets the job access eligibility to be funded under the Section 5311 program as a job access and reverse commute project. This could be accomplished by adding the Section 5311 program to the end of the sentence in (b).

Under Chapter V, 3. Equipment Management, b., Transfer of Property (page V-2): Consistent standards in the tracking and accountability of 5311 assets should be maintained throughout all of FTA programs. It is unclear why rural assets of facilities and equipment are being held to a different standard by the inclusion of the following language for federally funded assets, not found in the 5307 circular.

- *FTA may authorize such a transfer only if FTA determines: the asset will remain in public use for at least 5 years after the date the asset is transferred; there is no public transportation purpose for which the asset should be used; the overall benefit of allowing the transfer is greater than the interest of the Federal government in liquidation and return of the financial interest of the Federal government in the asset, after considering fair market value and other factors; and there is no interest in acquiring the asset for Federal use if the asset is a facility or land.*
- Chapter VI, State Management Plan, needs to be repaginated to reflect the correct chapter reference (VI vs. VII).
- It is our understanding that MAP-21 made the 5311 (f) program for intercity bus in-kind match program permanent and lifted the previous limitation allowing only 50% of the cost of connecting unsubsidized intercity bus miles as in-kind match. However, there seems to be some discrepancy whether or not the proposed circular would continue the 50% limitation or allow for the unsubsidized intercity bus miles to count toward the full match. As you know, this pilot program for the 5311 (f) program has allowed for an expansion of the program for state DOT, private nonprofit and public transportation participants. This flexibility for states has allowed for state and local resources to be used on additional public transportation projects and support the Congressional intent.
- Program of Projects (POP) –

AASHTO supports FTA's proposal to provide greater flexibility to States to make minor revisions to the POP without having to necessarily obtain FTA's prior approval. We think the circular could go much further in this regard, providing relief to 5311 recipients, their subrecipients and the FTA. It might be helpful to remember that while FTA uses the term "program of projects" in the 5311 circular, MAP-21 does not specifically require a "program of projects" to be submitted to the Secretary for the 5311 program. A "state program" is required under the law. As such, FTA should avoid circular language that would likely result in FTA regions requiring 5311 grant applications to include unnecessary detail in their POPs.

Specific AASHTO recommendations related to the POP:

- The circular should relax the level of detail required in the program of projects (POP). While the circular does not require the POP to have the same level of detail as FFATA reporting, by linking the two in the circular language, the result is likely to be a POP that is the same level of detail as the FFATA report. Once this level of detail is in the POP, then changes to the details becomes subject to formal (and informal) FTA review and/or approval over the life of the grant. (Keep in mind there is a lot of informal review done by FTA in the regional offices. This review is not necessarily required by the circular but it naturally evolves from the state submitting information to FTA via TEAM on which FTA staff feel compelled to comment. This informal review can be as much of an administrative burden as the reviews mandated by the circular).

For the 5311 program, the circular might encourage the "program of projects/state program" to be as simple and as high level as possible, such as: a list of 5311 subrecipients in the state that are eligible to receive a sub-award under the grant; the anticipated dollar amount to be used for each of the following funding categories:

operating assistance, vehicles, facilities, equipment and administration; and specific information for the facilities to meet NEPA requirements.

An anticipated distribution of funding to be awarded to each subrecipient could also be provided so that FTA can make the determination of “fair distribution” required in MAP-21. However, the POP does not need to assign a specific dollar amount and exact number of vehicles to each subrecipient. States should be able to allocate Section 5311 funds for eligible vehicle replacement over the life of the grant, rather than having to pre-define this allocation at the time they apply for federal funds via the POP. Allowing the states to award 5311 funds to any eligible subrecipients to replace eligible vehicles on an “as-needed” basis will allow states to draw down their oldest 5311 grant funds without having to amend a POP. It will also allow for timely reassignment of vehicles in the event that a subrecipient terminates operations.

- The current and proposed circular allows for certain changes to the POP without prior FTA notification and/or approval. However, FTA’s grant approval processes -- specifically details that must be entered into TEAM, approved by FTA via TEAM and then re-approved by FTA (via TEAM) if a grantee makes a revision to TEAM -- continues to force a level of FTA review regardless of what is in the circular.
- AASHTO does not see the need for FTA approval to increase or decrease the number of revenue vehicles to be purchased by more than two units. The number of revenue vehicles in the original POP is within the grantee’s discretion based on FTA useful life definitions and state priorities. The number of vehicles should not have to be pre-defined in the POP such that changing that number would not require a change to the POP subject to FTA approval.
- AASHTO recommends FTA consider adding language to the circular that allows FTA to approve whole categories of projects immediately upon filing of the state program/POP by a grantee. AASHTO believes that FTA has the legal authority under MAP-21 to provide Section 5311 grantees with immediate approval to incur costs and seek federal reimbursement of routine replacement of revenue vehicles upon filing of a state program/POP and the required certifications and assurances. The current provisions for pre-award authority are insufficient. AASHTO is asking FTA to establish a method within this circular by which the recipient can proceed under the umbrella of full FTA approval for certain categories of projects.

AASHTO believes FTA has considerable flexibility within MAP-21 to re-engineer the grant approval process along these lines. However, if FTA disagrees, AASHTO supports authorizing language that directs FTA to establish a pilot program to demonstrate simplification and streamlining of the current federal grant approval process for routine, on-going projects, such as vehicle replacement. Under such a pilot program, full FTA pre-approval of eligible categories of projects nearly immediately after appropriation of funds should be allowed. Confirmation that the funds were expended consistent with federal regulations would be made in accordance with the existing state review processes and if needed, annual status reviews.

We appreciate the opportunity to provide these comments and look forward to working with FTA in developing final guidance. If you would like to discuss the issues raised in this letter, please contact Shayne Gill, AASHTO's Program Manager for Public Transportation at (202) 624-3630.

Sincerely,

A handwritten signature in black ink, appearing to read "Bud Wright". The signature is fluid and cursive, with the first name "Bud" written in a larger, more prominent style than the last name "Wright".

Bud Wright  
Executive Director, American Association of State Highway and Transportation Officials

A handwritten signature in blue ink, appearing to read "Shailen Bhatt". The signature is highly stylized and cursive, with the first name "Shailen" written in a larger, more prominent style than the last name "Bhatt".

Shailen Bhatt  
Secretary, Delaware Department of Transportation  
Chair, AASHTO Standing Committee on Public Transportation