

**DEPARTMENT OF TRANSPORTATION****Federal Transit Administration**

[Docket No. FTA-2006-24037]

**Elderly Individuals and Individuals With Disabilities, Job Access and Reverse Commute, New Freedom Programs and Coordinated Public Transit-Human Services Transportation Plans: Notice of Public Meeting, Interim Guidance for FY06 Implementation, and Proposed Strategies for FY07****AGENCY:** Federal Transit Administration (FTA), DOT.**ACTION:** Guidance for FY06 Implementation; notice and request for comment for FY07 implementation; and announcement of public meeting.

**SUMMARY:** The Federal Transit Administration (FTA) is developing guidance in the form of circulars to assist grantees in implementing the Elderly Individuals and Individuals with Disabilities Program, the Job Access and Reverse Commute Program, and the New Freedom Program beginning in FY07.

FTA solicited public comment in 2005 through a **Federal Register** Notice (Transit Program Changes, Authorized Funding Levels and Implementation of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, 70 FR 71950, November 30, 2005) and public listening sessions held in five locations around the country.

Drawing on the public comment received, FTA developed proposed strategies, described in this Notice, for implementation of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs, including the cross-cutting requirement to develop a coordinated public transit-human services transportation plan for FY07. By this Notice, FTA seeks additional public comment to assist us in developing circulars for these programs. This notice also includes guidance for FY06 implementation for those requirements that go into effect immediately.

**DATES:** Comments should be submitted by April 21, 2006. Late-filed comments will be considered to the extent practicable.

**Public Meeting Date**

FTA will host a public meeting on March 23, 2006 from 9 a.m.–5 p.m. at the Hilton Hotel (1767 King Street, Alexandria, VA, 22314). This meeting is intended to further define program strategies discussed in today's Notice.

Anyone interested in attending the March meeting should RSVP to Easter Seals Project ACTION at 1-800-659-6428 or via e-mail at (stibbs@easterseals.com). A summary of the meeting will be posted in the docket. Attendees, in order to have their comments fully considered by FTA, should post their comments to the public docket either before or immediately after the meeting.

**ADDRESSES:** You may submit comments identified by the docket number [FTA-2006-24037] by any of the following methods:

1. Web site: <http://dms.dot.gov>. Follow the instructions for submitting comments on the DOT electronic docket site.

2. Fax: 202-493-2251.

3. Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-401, Washington, DC 20590-0001.

4. Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Instructions:** You must include the agency name (Federal Transit Administration and Docket number (FTA-2006-24037) for this Notice at the beginning of your comments. You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed stamped postcard. Note that all comments received will be posted, without change, to <http://dms.dot.gov> including any personal information provided and will be available to Internet users. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit <http://dms.dot.gov>.

**Docket:** For access to the docket to read background documents and comments received, go to <http://dms.dot.gov> at any time or to Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Henrika Buchanan-Smith or Bryna Helfer, Office of Program Management, Federal Transit Administration, 400 Seventh Street SW., Room 9114, Washington, DC 20590, phone: (202) 366-4020, fax: (202) 366-7951, or e-mail, [Henrika.Buchanan-Smith@fta.dot.gov](mailto:Henrika.Buchanan-Smith@fta.dot.gov); [Bryna.Helfer@fta.dot.gov](mailto:Bryna.Helfer@fta.dot.gov); or Bonnie

Graves, Office of Chief Counsel, Federal Transit Administration, 400 Seventh Street SW., Room 9316, Washington, DC 20590, phone: (202) 366-4011, fax: (202) 366-3809, or e-mail, [Bonnie.Graves@fta.dot.gov](mailto:Bonnie.Graves@fta.dot.gov).

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#### I. Overview

FTA requested comments in several specific areas in the November 30, 2005 Notice (70 FR 71950) related to the Elderly Individuals and Individuals with Disabilities (§ 5310), Job Access and Reverse Commute (§ 5316), and New Freedom (§ 5317) FTA funded programs. Commenters raised several other key questions and concerns throughout the comment process, both in the docket and during listening sessions. These included: (1) Aspects of the coordinated planning processes; (2) the relationship between public transit-human service plans and other planning processes; (3) the competitive selection process; (4) technical assistance and

training that would be helpful to grantees; (5) strategies and performance measures that could be employed to evaluate the successes of these programs; (6) management of the administrative aspects of these programs; (7) types of projects that should be considered for eligibility under New Freedom as they relate to new public transportation services and alternatives to public transportation beyond the Americans with Disabilities Act (ADA); and (8) types of projects that are eligible under the Job Access and Reverse Commute (JARC) Program. The public comment period and listening sessions assisted FTA with developing the strategies proposed in this Notice for addressing the above areas. Commenters included public and private transportation providers, trade associations, State departments of transportation, metropolitan planning organizations, advocacy groups, human service providers, and individuals with disabilities.

This document includes several items. First, this document provides details on the public meeting, designed to inform final guidance to implement programs beginning in FY07. Second, it establishes interim program guidance for FY06 funds for the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs. These requirements are based on provisions in the statute as well as issues raised and commented on during public comment and listening sessions held in December 2005. Finally, FTA solicits further comments on cross cutting and program specific elements of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs.

#### II. Public Meeting

FTA will host a public meeting on March 23, 2006 from 9 a.m.–5 p.m. at the Hilton Hotel (1767 King Street, Alexandria, VA 22314). This meeting is intended to further define program strategies discussed in today's Notice. Anyone interested in attending the March meeting should RSVP to Easter Seals Project ACTION at 1–800–659–6428 or via e-mail at ([stibbs@easterseals.com](mailto:stibbs@easterseals.com)). A summary of the meeting will be posted in the docket. Attendees, in order to have their comments fully considered by FTA, should post their comments to the public docket either before or immediately after the meeting.

#### III. Interim Guidance for the Elderly Individuals and Individuals With Disabilities, JARC, and New Freedom Grants for FY 2006

FTA received questions asking how the coordinated planning provisions under the three programs should be addressed in FY 2006 and about grant awards in advance of the issuance of final program guidance for the JARC and New Freedom programs. Based on statutory provisions and in response to comments received to date, FTA is adopting the following guidelines for JARC and New Freedom grants for FY 2006.

##### *Coordinated Plan*

For the New Freedom and Elderly Individuals and Individuals with Disabilities programs, SAFETEA–LU requires that projects selected be derived from a coordinated plan beginning in FY 2007. This requirement allows time for the development of a coordinated plan and permits projects to be funded in FY 2006 even if a coordinated plan is not yet in place. FTA encourages designated recipients to conduct coordinated planning activities and consultation with planning partners before the selection of FY 2006 projects, but it is not required in FY 2006 that the projects selected be derived from a completed coordinated public transit-human services transportation plan.

For JARC programs, however, there is no delay in the requirement that projects be derived from a coordinated plan, since a similar requirement was in place for JARC under TEA–21. For areas that previously received JARC discretionary funding, the previously required JARC plan may satisfy the coordinated planning requirement for FY 2006. In areas with no current JARC plan, for FY 2006, the planning partners should at a minimum be consulted about projects and where possible expressions of support should be obtained and documented. Each grant application must describe activities undertaken to reach out to stakeholders, including providers and users of service, to identify community-wide needs and to begin to catalog available resources.

Beginning in FY 2007, the requirement for a coordinated plan will apply fully to all three programs.

##### *Designated Recipient*

As discussed later in this document in Section VI(A), the Governor must designate recipients for JARC and New Freedom funds. In the **Federal Register** Notice of November 30, 2005, FTA indicated that the Governor must

designate the recipient for JARC and New Freedom funds allocated to the State before the first grant application is submitted. For funds allocated to large urbanized areas, FTA will accept FY 2006 grant applications for JARC and New Freedom from the designated recipient for urbanized areas (§ 5307), pending formal designation by the Governor. However, if the designated recipient for JARC and New Freedom will not be the same agency as the designated recipient for § 5307, the new recipient must be officially designated before applying for FY 2006 funds.

#### *Competitive Selection*

The requirement that the designated recipient competitively select the projects for funding under JARC and New Freedom is effective in FY 2006. An applicant for funds before the issuance of final guidance for the programs must at a minimum include in the application a description explaining the steps taken to assure that the projects were selected consistent with a competitive process established at the statewide level (for funds apportioned to the State) or for the large urbanized area.

#### *Final Guidelines*

If FTA subsequently establishes more specific criteria for the coordinated planning or competitive selection process, or for project eligibility, that were not met by early applicants for FY 2006 funds, the requirements will not be applied retroactively to grants awarded prior to the issuance of the guidance.

#### *Administrative Costs*

Designated recipients may apply for the administrative funds allowed under the program in advance of selecting projects in order to support the planning and selection process.

#### *Project and Subrecipient Eligibility*

Projects selected prior to the issuance of guidance should conform to the basic statutory eligibility requirements; specifically, in the case of JARC, access to jobs and reverse commute projects, and in the case of New Freedom, new public transportation services and public transportation alternatives beyond those required by the ADA that assist individuals with disabilities with transportation. Subrecipient eligibility is defined in statute. Guidance exists for the Elderly Individuals and Individuals with Disabilities (§ 5310) program in FTA Circular 9070.1E.

#### *Certifications and Assurances*

FTA's FY 2006 Certifications and Assurances include basic program

requirements for the Elderly Individuals and Individuals with Disabilities (category 17); JARC (category 19); and New Freedom (category 20) programs. These certifications and assurances must be signed prior to submission of an application.

#### **IV. Aspects of the Coordinated Public Transit-Human Services Transportation Plan**

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), (Pub.L. No. 109-59, August 10, 2005) requires that projects selected for funding under the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs be "derived from a locally developed, coordinated public transit-human services transportation plan" and that the plan be "developed through a process that includes representatives of public, private, and nonprofit transportation and human services providers and participation by the public."

Commenters requested clarification of the coordinated public transit-human services transportation planning process with regard to: (1) Elements of a coordinated public transit-human services transportation plan ("coordinated plan"); (2) participation in the coordinated planning process; and (3) the relationship of the coordinated planning process to the metropolitan and statewide transportation planning processes. In addition to requesting clarification, comments submitted included specific questions on and proposed strategies for the coordinated public transit-human services transportation planning process. Commenters' questions, strategies, and requests for clarification are addressed below.

##### *A. What are the elements of a coordinated public transit-human services transportation plan?*

SAFETEA-LU requires that formula programs for the Elderly Individuals and Individuals with Disabilities, Job Access and Reverse Commute (JARC), and New Freedom, be derived from a coordinated plan. However, SAFETEA-LU does not define coordinated plan. From comments received and FTA's experience, we propose to define the coordinated plan as a unified, comprehensive strategy for public transportation service delivery that identifies the transportation needs of individuals with disabilities, older adults, and individuals with limited incomes, lays out strategies for meeting these needs, and prioritizes services. FTA suggests that a coordinated plan

should maximize the programs' collective coverage by minimizing duplication of services. Further, a coordinated plan should be developed through a process that includes representatives of public, private and nonprofit transportation and human services providers, and participation by the public. In addition, FTA proposes that a coordinated plan should incorporate activities offered under other programs sponsored by Federal, State, and local agencies to greatly strengthen its impact.

SAFETEA-LU also does not specify the required elements for a coordinated plan. Again, drawing on feedback from stakeholder meetings as well as FTA experience through the United We Ride initiative and the JARC program, FTA proposes that the key elements of a coordinated plan include the following:

- An assessment of transportation needs for individuals with disabilities, older adults, and persons with limited incomes;
- An inventory of available services that identifies areas of redundant service and gaps in service;
- Strategies to address the identified gaps in service;
- Identification of coordination actions to eliminate or reduce duplication in services and strategies for more efficient utilization of resources; and,
- Prioritization of implementation strategies.

FTA suggests that States and communities utilize the United We Ride Framework for Action when developing a coordinated plan. The Framework for Action (available at <http://www.unitedweride.gov>) is a self assessment tool for communities and States. It addresses each of the core elements of a fully coordinated transportation system.

FTA further suggests that States and communities utilize the Facilitator's Guide that accompanies the Framework for Action. The Facilitator's Guide enables leaders at the Federal, State and community levels to guide a coordinating council, interagency working group, local group of human service agencies, public and private transit providers and stakeholders through a transportation coordination assessment and a plan for action by offering detailed advice on how to choose an existing group or construct an ad hoc group. In addition, it describes how to develop key elements of a plan, such as identifying the needs of targeted populations, assessing gaps and duplications in services, and developing strategies to meet needs and coordinate services. While the Framework for

Action and the Facilitator's Guide will not produce the coordinated plan, they will serve as useful tools in the development of a coordinated plan. The components and related overview of the sections included in the Framework for Action are outlined below:

*Making Things Happen by Working Together:* This section addresses the process for establishing leadership and partnerships. It recommends that coordinators view individuals and organizations as catalysts for envisioning, organizing, and sustaining a coordinated system that provides mobility and access to transportation for all.

*Taking Stock of Community Needs and Moving Forward:* This section assesses the capacity of human service agencies to coordinate transportation services. The assessment, used for planning and action, is a completed and regularly updated community transportation evaluation process that identifies assets, expenditures, services provided, duplication of services, specific mobility needs of the various target populations, and opportunities for improvement.

*Putting Customers First:* This section provides elements to consider for implementation that addresses consumer needs. For example, one element to consider is that customers, including people with disabilities, older adults, and low-income riders, have a convenient and accessible means of accessing information about transportation services. Another element to consider is that customers are regularly engaged in the evaluation of services and identification of needs.

*Adapting Funding for Greater Mobility:* This section provides that coordinators should and often do employ innovative accounting procedures to support transportation services by combining various Federal, State, and local funds. This strategy creates customer friendly payment systems while maintaining consistent reporting and accounting procedures across programs.

*Technology:* This section recognizes that technology is a tool that is being used to design and manage coordinated transportation systems in real time with greater efficiency and effectiveness. Technology is also an integrated component of many of the other sections included in the Framework for Action.

*Moving People Efficiently:* This section discusses creating multimodal and multi-provider transportation networks that are seamless for the customer and operationally and organizationally sound for the

providers. This involves setting up a "family of services" that includes but is not limited to fixed route, flex route, demand response, and volunteer services.

In addition to clarification of the elements of a coordinated plan, some commenters asked which agency should be the lead agency in developing the coordinated plan. FTA proposes that choosing a lead agency is a local decision. Further, some commenters questioned how FTA would define "local" in "locally developed, coordinated public transit-human services plan." FTA proposes that this decision be made at the State, regional, and local levels.

FTA received comments from stakeholders that already have a local planning process in place for human services transportation coordination. FTA recognizes the importance of local flexibility in developing plans for human service transportation and strongly supports current planning processes in human service transportation conducted with stakeholders and partners. FTA notes, however, that all new Federal requirements must be met. Therefore, FTA proposes that communities modify their plans or processes as necessary to meet these requirements. FTA also encourages communities to consider inclusion of new partners, new outreach strategies, and new activities related to the targeted programs and populations.

*B. How do we ensure participation in the coordinated public transit-human services transportation planning process?*

Many commenters expressed concern about participation in the planning process. These concerns were particularly focused on issues regarding: (1) Ensuring adequate outreach; (2) recognition of outreach efforts; and (3) participation from non-DOT funded partner agencies and organizations. Drawing on suggestions from the public docket and listening sessions, FTA proposes the following possible strategies:

1. Adequate Outreach to Allow for Participation

SAFETEA-LU requires recipients to certify that the coordinated plan was developed through a process that included representatives of public, private, and nonprofit transportation and human services providers, and participation by the public. Many commenters asked FTA to ensure that they and others would be given sufficient notice and an opportunity to participate in the development of

coordinated plans. Some requested that FTA establish specific outreach requirements, while others asked FTA to refrain from establishing such requirements.

FTA recognizes that outreach strategies and potential participants will vary from area to area. Potential outreach strategies could include notices or flyers in centers of community activity, newspaper or radio announcements, e-mail lists, Web postings, and invitation letters to other government agencies, transportation providers, and advocacy groups. Conveners should note that not all potential participants have access to the Internet and they should not rely exclusively on electronic communications. FTA recommends allowing many ways to participate, including in-person testimony, mail, e-mail, and teleconference. Additionally, accessible formats such as interpreters and large print should be provided upon request and as required by law.

Some commenters suggested that specific types of groups and organizations be included in the coordinated planning process. FTA proposes to provide illustrative examples in the guidance of who should be involved in the planning process. FTA recommends that the lead agency developing the coordinated plan would invite the participants, and proposes that the lead agency include the following groups and organizations in the coordinated planning process:

- Area transportation planning agencies;
- Transit riders and potential riders, including both general and targeted populations—those individuals with lower incomes, a representational cross-section of individuals with disabilities, and older Americans;
- Public transportation providers;
- Private transportation providers, including private transportation brokers, ADA paratransit providers, taxi services, intercity bus operators, etc.;
- Non-profit transportation providers;
- Human service agencies funding and/or supporting access for transportation services;
- Other government agencies that administer health, employment, or other support programs for targeted populations. Examples of such programs include Temporary Assistance for Needy Families (TANF), Workforce Investment Act (WIA), Vocational Rehabilitation, Medicaid, Community Action (CAP), Independent Living Centers, and Agency on Aging (AoA) programs;

- Non-profit organizations that serve the targeted populations intended for transportation services;
- Advocacy organizations working on behalf of targeted populations;
- Security and emergency management agencies;
- Any other appropriate local or State officials;
- Tribes and tribal representatives;
- Representatives of the business community (e.g., employers);
- Community-based organizations;
- Economic development agencies;
- Job training and placement agencies; and
- Elected officials.

FTA recognizes that this proposed list would not limit participation by other groups, or require participation by every group listed. FTA expects that planning participants will have an active role in the development and implementation of the plan.

#### 2. Recognition of Outreach Efforts for Inclusion

Several comments received through both the listening sessions and the public docket noted the lack of participation from some targeted groups. Specifically, commenters indicated that recipients did not want to be penalized in an FTA oversight review for lack of participation from targeted stakeholders when they made an effort to include these groups at the table.

FTA recognizes that participation may remain low even though a good faith effort is made by the lead agency to involve the public, representatives of public, private, and nonprofit transportation and human services providers, and others. FTA proposes that the lead agency convening the coordinated planning meeting(s) document the efforts they utilized, such as those suggested above, to solicit involvement.

#### 3. Participation From Partner Agencies and Organizations

Commenters from all regions of the country expressed concern about the lack of participation from targeted partner agencies and organizations. These comments specifically expressed concern about the lack of participation by government funded partners. For example, some commenters noted they have had difficulty engaging other agencies that support and/or provide human services transportation, especially when these agencies have no requirements or incentive to participate. Some commented that it is incumbent upon FTA, as the leader of the United We Ride initiative, to coordinate with other Federal agencies to ensure that government and non-profit agencies that receive Federal assistance from sources

other than the U.S. Department of Transportation to participate in the coordinated planning process.

FTA will continue to work with its Federal partners through the United We Ride initiative to encourage agencies that receive Federal funding to participate in the coordinated planning process. In addition, FTA proposes that State DOT offices work closely with their partner agencies to educate policy makers about the importance of partnering with human services transportation programs and the opportunities that are available when building a coordinated system. FTA also proposes that States work with their partner agencies to provide information to their local constituents regarding the importance of a coordinated public transit and human services transportation system.

In addition, Federal, State, regional, and local policy makers, providers, and advocates need to consistently engage in outreach efforts that enhance the coordinated process, because it is important that all stakeholders identify the opportunities that are available in building a coordinated system. Therefore, FTA encourages States, regional and local communities to utilize the Framework for Action and other tools to build relationships and dialogue with partner agencies. FTA further proposes that recipients demonstrate a good faith effort to reach out to specific targeted partners by maintaining copies of notices, newspaper ads, letters, etc., to document their outreach efforts. FTA recipients should also continue to work with those partners who are interested in coordinating efforts in the interim.

#### V. The Relationship of the Coordinated Plan to the Metropolitan and Statewide Transportation Planning Processes

FTA received a number of questions and proposed strategies from commenters concerning the relationship of the coordinated human services transportation planning process to the broader transportation planning process. These comments addressed: (1) The relationship of the coordinated plan to the metropolitan and statewide planning process regulations specified in 23 CFR part 450 and 49 CFR part 613; (2) the incorporation of the public transit-human services coordinated plan into the metropolitan and statewide plan; (3) the ability to build on current planning processes in human services transportation at the local and State level; (4) the process for including projects from the coordinated plan in the Transportation Improvement Program/State Transportation

Improvement Program; (5) the relationship between the requirements for consultation and public participation included in the development of the public transit-human services coordinated plan and the public participation requirements in metropolitan and statewide transportation planning; (6) the cycle and life of a public transit-human services coordinated transportation plan; (7) the ability to incorporate activities and projects that are supported by funding sources other than the Elderly Individuals and Individuals with Disabilities (§ 5310), Job Access and Reverse Commute (JARC) (§ 5316), and New Freedom (§ 5317) into the public transit-human services transportation plan, and (8) the role of the metropolitan planning organization (MPO) or State in certifying that projects are derived from a locally developed coordinated plan. FTA proposes and seeks comments on the following strategies to address the issues outlined above.

##### A. What is the relationship of the coordinated plan to the metropolitan and statewide planning process regulations specified in 23 CFR Part 450?

FTA's Office of Program Management and Office of Planning and Environment are working closely together to develop guidance on the coordinated plan that would ensure that it is consistent with the new metropolitan and statewide planning regulations now under development.

##### B. What is the relationship between the coordinated planning process and the metropolitan and statewide transportation planning processes?

FTA proposes flexibility in this area. The coordinated plan can either be developed separately from the metropolitan and statewide transportation planning processes and then incorporated into the broader plans, or be developed as a part of the metropolitan and statewide transportation planning processes.

In either case, FTA proposes that the MPO or State be responsible for determining that the projects selected within a coordinated plan are incorporated in the metropolitan and statewide transportation plans, Transportation Improvement Programs (TIPs), and Statewide Transportation Improvement Programs (STIPs). All projects developed for funding by the coordinated planning process must be incorporated in the TIP and STIP by the MPO in urbanized areas with populations of 50,000 or more, or

incorporated into the STIP by the State for areas under 50,000 in population. Like all federally funded transportation programs, projects must be incorporated into the STIP before receiving a grant. FTA strongly urges the partners developing the coordinated plan to communicate with the relevant MPOs or State planning agencies at an early stage in plan development.

Depending upon the structure established by local decision-makers, the coordinated planning process may or may not become an integral part of the metropolitan or statewide transportation planning processes. FTA understands the fundamental differences in scope, time horizon, and level of detail between the coordinated planning process and the metropolitan and statewide transportation planning processes. FTA also recognizes that there are areas of overlap between the coordinated planning process and the metropolitan and statewide transportation planning processes. Areas of overlap may include: (1) Needs assessments based on the distribution of targeted populations and locations of employment centers, employment-related activities, community services and activities, medical centers, housing and other destinations; (2) inventories of transportation providers/resources, levels of utilization, duplication of service and unused capacity; (3) gap analysis; (4) any eligibility restrictions; and (5) opportunities for increased coordination of transportation services. As such, FTA encourages local communities to choose the method for developing plans that best fits their needs and circumstances.

*C. What is the relationship between the requirement for public participation in the coordinated plan and the requirement for public participation in metropolitan and statewide transportation planning?*

SAFETEA-LU strengthened the public participation requirements for metropolitan and statewide transportation planning. Title 49 U.S.C. 5303(i)(5) and 5304(f)(3), as amended by SAFETEA-LU requires MPOs and States provide "interested parties" with a reasonable opportunity to comment on the transportation improvement plan. "Interested parties" include, among others, affected public agencies, private providers of transportation, representatives of users of public transportation, and representatives of individuals with disabilities.

FTA proposes that MPOs and States coordinate schedules, agendas, and strategies of the coordinated planning process with metropolitan and

statewide planning in order to minimize additional costs and avoid duplication of efforts. MPOs and States must still provide opportunities for participation when planning for transportation related activities beyond human service specific activities.

*D. What is the cycle and duration of the coordinated plan?*

FTA proposes that the coordinated plan follow the update cycles for metropolitan transportation plans (i.e., four years in air quality nonattainment and maintenance areas and five years in air quality attainment areas). However, FTA recommends that there be opportunities to update the coordinated plan to harmonize with the competitive selection process.

*E. What is the role of the MPO or State in certifying that projects are derived from a locally developed coordinated plan?*

It is the designated recipient's responsibility to competitively select projects and certify that they are derived from a coordinated plan. The designated recipient may be the MPO in an urbanized area with a population over 200,000, and will be the State in rural areas and urban areas under 200,000 in population.

*F. What is the role of transportation providers that receive FTA funding under the Urbanized and Other Than Urbanized Formula programs in the coordinated planning process?*

FTA received questions about the role of transportation providers that receive FTA funding under the Urbanized Formula (§ 5307) and the Other Than Urbanized Formula (§ 5311) programs in the coordinated planning process. Recipients of § 5307 and § 5311 assistance are the "public transit" in the public transit-human service transportation plan and their participation is assumed and expected. Further, § 5307(c)(5) requires that, "Each recipient of a grant shall ensure that the proposed program of projects provides for the coordination of public transportation services \* \* \* with transportation services assisted from other United States Government sources." In addition, the § 5311(b)(2)(C)(ii) requires the Secretary of the U.S. Department of Transportation to determine that a State's § 5311 projects "provide the maximum feasible coordination of public transportation service \* \* \* with transportation service assisted by other Federal sources." Further, since States are required to expend 15 percent of the amount available under the Other Than

Urbanized area program (§ 5311) to support intercity bus service, FTA expects the coordinated planning process to take into account human service needs that require intercity transportation.

## VI. Competitive Selection Process

JARC and New Freedom require a recipient of funds to conduct a competitive selection process that is separate from the planning process. Sections 5316 and 5317 of 49 U.S.C., as amended by SAFETEA-LU, provide the following:

"(d) Competitive Process for Grants to Subrecipients.—

(1) Areawide solicitations.—A recipient of funds apportioned under subsection (c)(1)(A) [urbanized areas with a population over 200,000] shall conduct, in cooperation with the appropriate metropolitan planning organization, an area wide solicitation for applications for grants to the recipient and sub recipients under this section.

(2) Statewide solicitation.—A recipient of funds apportioned under subsection (c)(1)(B) [urbanized areas with a population of less than 200,000] or (c)(1)(C) [Other Than Urbanized areas] shall conduct a statewide solicitation for applications for grants to the recipient and sub recipients under this section.

(3) Application.—Recipients and sub recipients seeking to receive a grant from funds apportioned under subsection (c) shall submit to the recipient an application in the form and in accordance with such requirements as the recipient shall establish.

(4) Grant awards.—The recipient shall award grants under paragraphs (1) and (2) on a competitive basis."

FTA received a significant number of comments regarding the competitive selection process required for New Freedom and JARC. Specifically, commenters had questions regarding: (1) The role of the designated recipient and the metropolitan planning organization (MPO) in the competitive selection process, particularly when the designated recipient also has an interest in applying for funds under a specific program; (2) the importance of establishing clear guidance on the competitive selection process; and (3) the importance of establishing a fair and equitable distribution as outlined in SAFETEA-LU.

*A. What is the role of the designated recipient and the metropolitan planning organization in the competitive selection process?*

In urbanized areas with populations less than 200,000 and in Other Than Urbanized areas, the State is the designated recipient. For these areas, the governor designates a State agency that will be responsible for administering the JARC and New

Freedom programs, and officially notifies the appropriate FTA regional office in writing of that designation. The governor may designate the State agency that receives Other Than Urbanized area (§ 5311) and/or the Elderly Individuals and Individuals with Disabilities (§ 5310) funds to be the JARC or New Freedom recipient, or the governor may designate a different agency.

In urbanized areas over 200,000 in population, the recipient is designated as prescribed in § 5307(a)(2). FTA interprets the provision regarding the designated recipient for JARC and New Freedom to mean that a recipient charged with administering the JARC and New Freedom programs must be officially designated through a process consistent with the provision in § 5307(a)(2)(A) which provides:

an entity designated in accordance with the planning process under sections 5303, 5304, and 5306, by the chief executive officer of a State, responsible local officials, and publicly owned operators of public transportation, to receive and apportion amounts under section 5336 that are attributable to transportation management areas identified under section 5303.

Many commenters expressed concern that a "conflict of interest" could exist in large urbanized areas when the designated recipient both conducts the competitive selection process and is itself eligible for funds through that same process. Some commenters suggested that the MPO should hold the competitive selection process instead. However, JARC and New Freedom require that in urbanized areas, "a recipient of funds. \* \* \* shall conduct, in cooperation with the appropriate metropolitan planning organization, an area wide solicitation \* \* \*" 49 U.S.C. 5316(f)(1), 49 U.S.C. 5317(d)(1).

To address this concern, FTA proposes that the designated recipient for JARC and New Freedom does not have to be the same as the designated recipient for Urbanized Area Formula (§ 5307) funds. The potential "conflict of interest" is resolved when a designation of recipient is made for the JARC and New Freedom programs separate from the designation made for the Urbanized Area program (§ 5307). FTA recommends the designated recipient for these funds not be a provider of transportation services. When the MPO is the designated recipient of these funds, FTA proposes that the MPO would be responsible for conducting the competitive selection. FTA seeks comment on this proposed strategy. When the recipient of Urbanized Area Formula (§ 5307) funds is the same as the designated recipient for JARC and New Freedom funds, FTA

proposes a competitive selection process that is transparent, as described below. Further, FTA believes that the requirement for recipients to certify that the selection of projects is "fair and equitable" as required by 49 U.S.C. 5316(f)(2) and 49 U.S.C. 5317(e)(2) also provides an opportunity to ensure that the process is conducted fairly (see below).

*B. What is FTA's guidance on the competitive selection process in urbanized areas?*

SAFETEA-LU requires that selected projects be derived from the locally developed coordinated plan and meet the intent of the program. In addition to this requirement, FTA encourages recipients for large urbanized areas in which the designated recipient for JARC and New Freedom is the same as the Urbanized Area Formula program (§ 5307) recipient or another transit provider, to follow a simple and straightforward selection process. Below is a list of potential strategies, drawn from public comment, that FTA believes are useful for recipients to consider when implementing a competitive selection process. FTA proposes that a recipient can:

- Assure greater inclusion at the onset of the coordinated planning process to allow private sector participation or participation by others who have not been involved in the MPO planning process to alleviate concerns about a level playing field;
- Provide for transparency and documentation in both the coordinated planning process and the competitive selection process to minimize conflict of interest concerns;
- Publish an announcement that lays out program requirements and the process for receiving funds, which may help communities initiate planning activities as well as lay out the recipient's timeline for the competitive selection process;
- Conduct the competitive selection process in cooperation with the MPO to capitalize on the MPO's experience in project evaluation and selection processes for Transportation Improvement Programs (TIPs);
- Rank projects using any of the following approaches: peer review; third party review; best practices advice; or a panel of planning partners; and then publish a list of selected projects for each State/locale; and
- Evaluate who should provide services and ensure fair and equitable competition, by allowing communities to build on transit agencies' experience with third party contracting for specialized services.

FTA may also suggest additional criteria for recipients to use when establishing priorities for selecting projects. Such additional criteria may include selecting projects that: (1) Address gaps in current service provisions for targeted communities; (2) make use of available resources and leverage resources to the extent possible; (3) are considered for geographic distribution to encourage some level of diverse geographic disbursement; (4) coordinate with other Federal programs (e.g., coordinated services, financial partnership); (5) can be achieved with the given technical capacity of project sponsor; and (6) show evidence of broad solicitation for input (coordinated planning process).

*C. What is fair and equitable distribution of funds?*

Several comments also addressed the importance of oversight and accountability to ensure a fair and equitable competitive selection process. Sections 5316(f)(2) and 5317(e)(2) provide that "a recipient of a grant under this section shall certify to the Secretary that allocations of the grant to subrecipients are distributed on a fair and equitable basis." A transparent and inclusive competitive selection and planning process should serve as the basis for the certifications.

Regardless of the process utilized, FTA embraces the importance of demonstrating evidence of a fair and equitable process, especially in the context of potential conflict of interest. FTA proposes that fair and equitable distribution would be addressed in the State Management Review for State administered programs and in the Planning Certification Review and Triennial Review Processes in urbanized areas over 200,000 in population. FTA further proposes that States document the competitive selection process as part of a State Management Plan and that designated recipients in urban areas document the competitive selection process in the annual solicitation notice or some other format available to the public. FTA believes that building on existing reviews would not slow down project implementation and would allow implementation and lessons learned to be examined. FTA seeks public comment on this proposal.

**VII. Technical Assistance and Training**

FTA solicited comments on the technical assistance needs and activities that should be undertaken to assist States and transit agencies with implementation of the requirements for the Elderly Individuals and Individuals



with Disabilities (§ 5310), JARC (§ 5316), and New Freedom (§ 5317). Commenters identified the need for technical assistance and training in: (1) The development of coordinated plans; (2) technical assistance for transportation providers in rural and urban settings; (3) training for non-profit and private transportation providers; (4) technical assistance for human service agencies regarding their role in transportation planning; and (5) training for consumers on skills required for using various transportation resources.

In addition to the two national technical assistance centers related to senior transportation and coordinated human service transportation established by SAFETEA-LU, FTA will continue to engage an existing network of technical assistance resources charged with addressing needs related to human service transportation. These resources include: Easter Seals Project ACTION (a national technical assistance center specializing in accessible transportation); JobLINKS (a national technical assistance program specializing in employment transportation); and Intelligent Transportation Systems (ITS) and Planning Peer to Peer projects (both of which offer on-site, phone, and e-mail consultation on targeted issues). Additionally, FTA will engage the Federal Interagency Coordinating Council, which launched the United We Ride Ambassador program, to provide technical assistance directly to State agencies on implementing the coordinated planning process. FTA will also use the United We Ride Web site (<http://www.unitedweride.gov>) to communicate useful practices from around the country. The National Rural Transportation Assistance Program (RTAP) is also available to assist States in implementing their RTAPs, in building capacity in coordinated human service transportation, and implementing the Elderly Individuals and Individuals with Disabilities (§ 5310), JARC (§ 5316) and New Freedom (§ 5317) programs in rural areas.

In addition, recipients may use up to 10% of their Elderly Individuals and Individuals with Disabilities (§ 5310), JARC (§ 5316) and New Freedom (§ 5317) funds to provide technical assistance, as well as administrative and planning functions, to localities and consumer groups on human service coordination. Designated recipients and States may use the funds directly for these purposes or to provide funding to subrecipients for technical assistance purposes. Regardless of structure, FTA encourages recipients to develop a

strategy for offering technical assistance to local communities.

### VIII. Strategies for Evaluation and Oversight

FTA received comments on issues concerning evaluation and oversight. These comments addressed the following issues: (1) The relationship of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom to the State Management Plan, (2) performance measures, (3) reporting requirements, and (4) oversight of these programs.

#### A. What is the relationship of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom to the State Management Plan (SMP)?

FTA recognizes that portions of the JARC and New Freedom programs will be managed by States. Therefore, FTA proposes that States be required to create an SMP for JARC and New Freedom. Like the current requirement for other FTA programs (e.g., Elderly Individuals and Individuals with Disabilities, Other Than Urbanized Formula, etc), the SMP may be a stand-alone plan for each program, or it may be a consolidated plan that addresses all State-managed programs (Elderly Individuals and Individuals with Disabilities, JARC, New Freedom).

#### B. What program evaluation and performance measures will FTA use to implement and manage the programs?

Commenters were interested in evaluation measures that focus on specified performance outcomes and impacts, having the same data collection and reporting requirements for the Elderly Individuals and Individuals with Disabilities, JARC, New Freedom programs and that data collection that is simple and straightforward.

FTA recognizes the importance of evaluation in the implementation and management of programs. FTA is working with the Federal Interagency Coordinating Council on Access and Mobility to develop performance measures for coordination of human services transportation. Once finalized, FTA proposes to adopt these measures for application to the Elderly Individuals and Individuals with Disabilities, JARC, New Freedom programs. FTA seeks comments on the following proposed measures:

**Performance Measure One: Efficiency of Operations.** Increase the number of rides for persons who are older, persons with disabilities and persons with limited incomes for the same or lower cost.

**Definition (Performance Measure One):** To increase by x% from baseline the number of communities and States reporting the use of shared resources (e.g., staff, equipment, funding, etc) between different agencies and organizations so they can provide more rides for more people with disabilities, older adults, and individuals with lower incomes at a lower cost.

**Performance Measure Two: Program Effectiveness.** Increase the number of communities with easier access to transportation services for persons who are older, persons with disabilities and persons with limited incomes.

**Definition (Performance Measure Two):** To increase by x% from baseline the number of communities (e.g., urban, rural, other) which have a simple point of entry-coordinated human service transportation system for people with disabilities, older adults, and individuals with lower incomes so they have easier access to transportation services.

**Performance Measure Three: Customer Satisfaction.** Increase the quality of transportation services for persons who are older, persons with disabilities and persons with limited incomes.

**Definition (Performance Measure Three):** To increase by x% from baseline the level of customer satisfaction reported in areas related to the availability, the affordability, the acceptability and the accessibility of transportation services for people with disabilities, older adults, and individuals with lower incomes.

The percentage of increase is stated in terms of an annual target, which will be established after a baseline has been determined and validated during the first year. In addition to the cross-cutting performance measures proposed above, FTA will be proposing new evaluation measures for each of the human services related programs (e.g., Elderly Individuals and Individuals with Disabilities, JARC and New Freedom). At the time of this **Federal Register** Notice, specific performance measures for the New Freedom and Elderly Individuals and Individuals with Disabilities programs are not developed. FTA seeks comments on outcome measures for consideration in these areas.

The JARC program has been collecting data for a number of years, and this year JARC will test a new measurement to evaluate outcome and impact. The following measure will be tested and baseline measurements will be obtained during FY06: cumulative number of jobs reached through the provision of JARC-related services for low-income



individuals and welfare recipients. FTA plans to set an annual goal of two million jobs reached and/or job-related services accessed. As a result of this new measure, only data necessary for understanding this impact of JARC will be included in future data collection efforts.

FTA recognizes that past data collection efforts associated with the JARC program have been difficult and cumbersome at times and the information collected has not been useful to the measure program effectiveness. Therefore, FTA is researching options to streamline data collection efforts using existing data collection mechanisms including the National Transit Database (NTD). NTD is a reporting mechanism required for the Urbanized Area Formula (§ 5307) designated recipients and will be implemented as a new requirement under SAFETEA-LU for Other Than Urbanized Formula program (§ 5311) recipients at the State level.

#### *C. What will FTA's reporting requirements be?*

Comments received addressed the need to ensure that reporting elements are identified and defined early in the implementation of programs. Commenters suggested using existing processes and products in the reporting process. Commenters also expressed concern about difficult and burdensome requirements, such as the past reporting requirements in the previous JARC program.

FTA proposes that reporting requirements focus on the minimum data needed to meet the requirements of the Government Performance and Results Act, the Office of Management and Budget's (OMB) Program Assessment Rating Tool, and other performance initiatives set forth by Congress and OMB. FTA proposes to build on existing infrastructure and data collection mechanisms including the use of the National Transit Database beginning in FY 2007. FTA seeks further comments on this approach.

#### *D. How will FTA monitor the implementation of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom programs?*

FTA will monitor implementation of these programs through our preaward review of grant applications and post-award grant management. FTA will also conduct oversight of these programs through its State Management Review for State managed areas and the Planning Certification Review and

Triennial Review Process in urbanized areas over 200,000 in population.

#### **IX. Mobility Management**

Some commenters requested clarification regarding the use of capital funds for "mobility management." Mobility management activities are eligible capital expenses, defined as "consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation services providers carried out by a recipient or sub-recipient through an agreement entered into with a person, including a government entity, under this chapter (other than sections 5309 and 5320); but excluding operating public transportation services." 49 U.S.C. 5302(a)(1)(L). Mobility management activities can be funded under all FTA programs that provide capital assistance, excluding § 5309 (Bus and Capital Investment) and § 5320 (Public Land) activities. This includes the § 5307 Urbanized Area and the § 5311 Other Than Urbanized Area programs. It also includes the § 5310 Elderly and Persons with Disabilities, the § 5316 Job Access and Reverse Commute and the § 5317 New Freedom programs. While mobility management funds may not be used for the direct provision and operation of coordinated transportation services, including the scheduling, dispatching and monitoring of vehicles, FTA proposes the following as eligible mobility management activities:

- The development of coordinated plans;
- The support of State and local coordination policy bodies and councils;
- The maintenance and operation of transportation brokerages to coordinate providers, funding agencies and customers;
- The development and maintenance of other transportation coordination bodies and their activities, including employer-oriented Transportation Management Organizations, human service organization customer-oriented travel navigator systems and neighborhood travel coordination activities;
- The development and support of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- The acquisition and operation of intelligent transportation technologies to help plan and operate coordinated systems inclusive of Global Information

Systems (GIS) mapping, coordinated vehicle scheduling, dispatching and monitoring technologies as well as technologies to track costs and billing in a coordinated system and single smart customer payment systems.

#### **X. Management of the Administrative Aspects of the Elderly Individuals and Individuals With Disabilities, Job Access Reverse Commute, and New Freedom Programs**

Comments received on various management and administrative cases addressed transfers of funds and the use of 10% of funds for administration, planning, and technical assistance.

##### *A. Can designated recipients transfer New Freedom funds to projects serving areas other than the area specified in the New Freedom program?*

FTA received several comments related to transfer of funds. Specifically, commenters suggested that in order to maximize flexibility, particularly where area allocations are very small, the New Freedom Program should follow JARC language which provides that, "[a] State may use funds \* \* \* for projects serving areas other than the area specified \* \* \* if the Governor of the State certifies that all of the objectives of this section are being met in the specified area; or for projects anywhere in the State if the State has established a statewide program for meeting the objectives of this section." 49 U.S.C. 5316(c)(3).

In response, FTA notes that the exception identified above in the JARC program was not included in New Freedom. Therefore, FTA cannot extend this exception to the New Freedom program.

##### *B. Use of the Elderly Individuals and Individuals With Disabilities, JARC, and New Freedom Funds for Administration, Planning and Technical Assistance*

FTA received comments concerning the use of the ten percent of funds available for administration, planning, and technical assistance. Funds for these purposes (up to ten percent) do not require a local match.

Commenters suggested that funds for administration should be available up front to facilitate development of the coordinated plan in order to provide an incentive for an agency to step forward as lead. This will mitigate the risk that funds will lapse because no one was willing to take on the task of leading the coordinated planning process.

FTA will allow recipients to apply for the ten percent of the Elderly Individuals and Individuals with Disabilities, JARC, and New Freedom

program funding that can be used for planning, technical assistance, or project administration to cover costs associated with the development and implementation of the coordinated plan and the competitive selection process prior to applying for the project implementation. Preaward authority may be used for these activities. Preaward authority, however, cannot be used for project implementation prior to meeting the Federal requirements associated with the program.

Other commenters wanted to know if the salary cost for an employee administering the New Freedom and other programs would be eligible expenses. The ten percent of funding available does include costs, such as staff time, associated with administering the program.

#### **XI. New Freedom Program**

FTA requested comments on the following topics: (1) The projects and activities stated in SAFETEA-LU that might be funded under the New Freedom program and how they relate to what is "beyond the ADA;" (2) activities related to ADA complementary paratransit services beyond the minimum requirements outlined in 49 CFR part 37; and (3) the types of projects and services that should be considered for eligibility under the New Freedom program. FTA also requested comments regarding technical assistance strategies and measures for evaluating the success of the program. Those comments were addressed in Sections VII and VIII above, respectively.

##### *A. Do projects have to be both "new" and "beyond the ADA?"*

The New Freedom Program specifies that "the Secretary may make grants under this section to a recipient for new public transportation services and public transportation alternatives beyond those required by the Americans with Disabilities Act of 1990 that assist individuals with disabilities with transportation \* \* \*" 49 U.S.C. 5317(b)(1). Many commenters requested clarification regarding what would be considered "new" transportation service and what constitutes "beyond the ADA." Commenters suggested FTA take an expansive view of the types of projects that could be funded through the New Freedom program.

FTA proposes that "new public transportation services" and "public transportation alternatives beyond those required by the ADA" be considered separate categories of service. That is, to be eligible, a project must either be a "new public transportation service" OR

"a public transportation alternative beyond those required by the ADA." In either case, the project must "assist individuals with disabilities with transportation." Therefore, new service is not required to go beyond the ADA. Rather, it must simply be new service that (1) is targeted toward people with disabilities; and (2) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services. One example would be extension of a fixed bus route to serve a particular location identified as in need of service by the disability community.

FTA believes this interpretation allows the New Freedom program to fund projects identified by the conference report (H.R. Rpt. 109-203 at § 3019, July 28, 2005) accompanying SAFETEA-LU and disability advocates that would not have been eligible if services had to be both new and beyond the ADA. Examples include new routes targeted to serve people with disabilities, station accessibility improvements, and existing paratransit services beyond the required ¾ mile on either side of a fixed route—all of which may not have been eligible if funded services or improvements had to be both new and beyond the ADA. FTA proposes that local communities may prioritize for funding those projects that are both new and beyond the ADA. FTA seeks public comment on these proposals.

FTA reminds transit providers and other interested parties that all eligible activities must be derived from the locally developed public transit-human services coordinated plan, and determined based on a competitive selection process.

##### *B. What types of enhancements to ADA complementary paratransit service will FTA consider eligible for New Freedom funding?*

The "ADA" means the Americans with Disabilities Act of 1990 (ADA), Pub.L. No. 101-336, as codified at 42 U.S.C. 12101 *et seq.*, and the Department of Transportation's implementing regulations, at 49 CFR parts 37 and 38. Commenters requested clarification on the types of projects and activities that would be considered beyond the ADA, particularly in the area of enhancements to paratransit service operated under 49 CFR part 37, subpart F.

One area of particular interest to a number of commenters involved the nature of complementary paratransit service under the ADA, and whether or

not door-to-door service should be considered beyond the ADA. Under 49 CFR 37.129, ADA complementary paratransit service is defined as "origin-to-destination" service, which may be defined by local communities as either curb-to-curb or door-to-door. A number of commenters requested that door-to-door service, in a community in which curb-to-curb service is provided, be considered beyond the ADA and therefore eligible for New Freedom funds.

When the regulation was first promulgated, the preamble language stated, "it is reasonable to think that service for some individuals or locations might be better if it is door-to-door, while curb-to-curb might be better in other instances. This is exactly the sort of detailed operational decision best left to the development of paratransit plans at the local level." (56 FR 45604; September 6, 1991). In guidance issued on September 1, 2005, the Department of Transportation provided further clarification of the nature of origin-to-destination service, stating, "where the local planning process establishes curb-to-curb service as the basic paratransit service mode, however, provision should still be made to ensure that the service available to each passenger actually gets the passenger from his or her point of origin to his or her destination point. To meet this origin-to-destination requirement, service may need to be provided to some individuals, or at some locations, in a way that goes beyond curb-to-curb service." It would appear, then, that door-to-door service, whether provided across a community or only in circumstances in which a particular passenger needs additional assistance, is not beyond the ADA. FTA proposes that door-through-door service, however, may be eligible for New Freedom funding.

ADA complementary paratransit service may include feeder service to permit individuals who use wheelchairs or who have a specific impairment-related condition which prevents the person from traveling to a boarding location or from a disembarking location to access the fixed route. 49 CFR 37.129. Requirements for ADA complementary paratransit service do not apply to commuter bus, commuter rail, or intercity rail systems. 49 CFR 37.121(c). FTA proposes that feeder service to outlying transit stations for which complementary paratransit is not required, such as commuter rail stations, express or commuter bus service, or an intercity bus stop or rail station, may be eligible for New Freedom funding.

ADA complementary paratransit service is provided to origins and destinations within corridors with a width of  $\frac{3}{4}$  mile on each side of each fixed route, including, within the core service area, those small areas not inside any corridors but surrounded by corridors. 49 CFR 37.131. Outside of the core service area, a transit provider may designate corridors from  $\frac{3}{4}$  mile up to one and one half miles on each side of a fixed route. While ADA complementary paratransit services provided in such locations might be argued to be within the scope of the ADA, the conference report accompanying SAFETEA-LU clearly indicates an intent by Congress to consider paratransit service beyond  $\frac{3}{4}$  mile of the fixed route to be eligible for New Freedom funding by listing it as an example of the type of activity Congress would like the program to fund. H.R. Rpt. 109-203, at § 3019 (July 28, 2005).

The paratransit service area for rail is a circle with a radius of  $\frac{3}{4}$  mile around each station. Again, while the ADA permits local entities to consider paratransit service within a radius of up to one and one half miles around each station as part of their ADA complementary paratransit system, following the same logic as above, FTA proposes to regard any service beyond the minimum  $\frac{3}{4}$  mile as eligible for New Freedom funding.

Commenters stated that some paratransit operators already provide service outside of the  $\frac{3}{4}$  mile corridor, and they expressed a desire to use New Freedom funds to continue that service. FTA proposes to permit New Freedom funds be used for this purpose as long as it is part of the coordinated plan, and the project is competitively selected pursuant to statute.

Next day service is required pursuant to 49 CFR 37.131(b). While the Department's ADA regulations permit same-day service, they do not require it. For this reason, FTA proposes to regard same-day service as eligible for funding under the New Freedom program.

ADA complementary paratransit service shall be available during the same hours and days of service as fixed route service. 49 CFR 37.131(e). Paratransit service provided in addition to these hours is beyond the ADA. For example, if the fixed-route system does not operate between the hours of midnight and 5 a.m., but complementary paratransit service is available 24 hours a day, FTA proposes that New Freedom funding may be sought to support paratransit service between the hours of midnight and 5 a.m.

The regulation contemplates that an entity may provide ADA complementary paratransit service exceeding that provided for in 49 CFR § 37.131. Any service that exceeds the regulatory requirement is beyond the ADA and therefore may be eligible for New Freedom funding.

#### *C. How does FTA propose to define "new" service?*

Commenters requested clarification of what would be considered "new" service and requested that FTA take an expansive view of the types of projects eligible for New Freedom funds. As suggested previously, FTA proposes that enhancing fixed-route service by adding routes or providing additional hours of service in order to target groups of individuals with disabilities would be considered new service that assists individuals with disabilities with transportation, and therefore, eligible for New Freedom funds. Similarly, in rural areas where no service exists, if new service—whether demand response or fixed route—is added that meets the needs of persons with disabilities, that service would be new public transportation service and thus eligible for New Freedom funds. New service may in fact serve a greater population than just individuals with disabilities. FTA proposes that new service that meets the needs of older adults, individuals with low incomes, and/or the general public, if it primarily meets the needs of individuals with disabilities, may be eligible for New Freedom funds or may be supported with New Freedom funds in combination with other funding sources such as the Other Than Urbanized Formula Programs (§ 5311).

The Americans with Disabilities Act Accessibility Guidelines (ADAAG), as well as the Department of Transportation's ADA regulations, require new transportation facilities, including stations, bus stops, bus stop pads, terminals, buildings or other transportation facilities to be accessible. Further, when a transportation facility is altered, then each altered element, space, feature or area must be accessible, unless compliance is technically infeasible, in which case the alteration shall provide accessibility to the maximum extent feasible. Finally, when an area of primary function is altered, the ADA regulations require alterations to the path of travel and other elements serving the area of primary function, unless the cost of doing so would be disproportionate. Specific requirements for transportation facility alterations, including definitions of "maximum extent feasible," "primary

function," "path of travel" and "disproportionate," can be found in subpart C to 49 CFR part 37.

FTA proposes that New Freedom funds may be used to improve accessibility at existing transportation facilities, so long as the projects are clearly intended to remove barriers to existing stations that would otherwise have remained, and are not projects that are part of an already planned station renovation or alteration. In other words, FTA is drawing a distinction between funding a new accessibility enhancement to a station that is not otherwise being altered and the required accessibility portion of a planned alteration. Only the first would be eligible for New Freedom funds. The second would not be similarly eligible.

FTA believes that permitting New Freedom funds to be used for new accessibility enhancements meets the intent of the program as it removes barriers to people with disabilities so they may access greater portions of public transportation systems, such as fixed-route bus service, commuter rail, light rail and rapid rail. This may include building an accessible path to a bus stop that is currently inaccessible, including curbscuts, sidewalks, pedestrian signals or other accessible features. It may include adding an elevator or ramps, detectable warnings, improving signage, or other accessibility improvements to a non-key station. It may also include the implementation of technology improvements that enhance accessibility for persons with disabilities. FTA seeks comment on the types of technology improvements that may be funded, as well as additional types of accessibility improvements or barrier removals that may be funded with New Freedom funds.

Commenters suggested that a "new" project for purposes of eligibility in the New Freedom program would be any otherwise eligible project that did not already exist on the day SAFETEA-LU was signed into law, that is, August 10, 2005. FTA proposes that projects not included in a TIP and/or STIP as of August 10, 2005, would be eligible for New Freedom funds.

#### *D. What other activities may be eligible for New Freedom funds?*

In keeping with the language of the SAFETEA-LU conference report, (H.R. Rpt. 109-203 at § 3019, July 28, 2005), as well as comments received, FTA proposes that the following projects also be eligible for New Freedom funding:

- Purchasing vehicles and supporting accessible taxi, ride sharing, and vanpooling programs; including staff

training, administration, and maintenance. FTA proposes to define an accessible taxi as a vehicle having the capacity to accommodate a passenger who uses a "common wheelchair" as defined under 49 CFR 37.3, at a minimum, while remaining in his/her personal mobility device inside the vehicle, and meeting the same requirements for lifts, ramps and securement systems specified in 49 CFR part 38, subpart B;

- Administering voucher and transit pass programs for transportation services offered by transit and human services providers. This activity supports the management of these activities, and does not support the direct expense for the cost of vouchers or passes;
- Administering volunteer driver and aide programs to support the management of driver recruitment, safety, background checks, scheduling, coordination with consumers, and other related support functions;
- Supporting mobility management among public transportation providers and other human service agencies providing coordinated transportation services;
- Training for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities. This includes travel instruction and travel training services; and,
- Corridor services providing transportation access for populations beyond those served by one agency or organization within a community. For example, a non-profit agency receiving funding through New Freedom could not limit the services it provides to its own clientele; it would coordinate usage of vehicles with other non-profits. These services are intended to build coordination with other existing providers and service options.

#### E. Other Comments

The source of local match was a concern for several commenters. FTA received comments which suggested that "in-kind" services, or the increased cost of expanded paratransit service be considered a source of local match. The New Freedom statute provides that grants for capital projects may not exceed 80 percent of the net capital costs of the project, and grants for operating assistance may not exceed 50 percent of the net operating costs of the project. In-kind match may be allowed pursuant to 49 CFR 18.24 or 49 CFR 19.23 as appropriate. Other commenters suggested charging a premium fare for expanded paratransit service, and questioned whether the premium fare

could be used for local match. Fare box revenue generally must be subtracted from gross project costs to derive net project costs and is not eligible to be used as local match. Revenue from service contracts can be used as local match along with local funds and other non-DOT Federal funds.

Commenters expressed concern that the "stringent Federal requirements" for the New Freedom program might discourage agencies from applying for these funds, and suggested a threshold amount, such as \$10,000, could be established before the Federal requirements take effect. The statute does not contemplate such a threshold. Any recipient applying for New Freedom funds must meet the requirements as outlined in the statute.

One commenter quoted a statement from the November 30, 2005, Notice, which provided that "funding is available for transportation services provided by public, non-profit, or private-for-profit operators" and noted that this seems to preclude awards to individuals. This is correct. A recipient is defined as, "a designated recipient (as defined in Section 5307(a)(2)) and a State that receives a grant under this section directly." 49 U.S.C. 5317(a)(1). A subrecipient is defined as, "a State or local governmental authority, nonprofit organization, or operator of public transportation services that receives a grant under this section indirectly through a recipient." 49 U.S.C. 5317(a)(2).

Commenters asked whether New Freedom monies could be used for operating expenses in urbanized areas with populations over 200,000. Operating expenses are eligible under the New Freedom program subject to a 50% local matching share.

#### XII. Job Access and Reverse Commute Program

Comments relating to the JARC program focused on issues such as: continuation of prior year funding; eligible projects and expenses; the designated recipient's ability to transfer funds to Urbanized Area Formula program (§ 5307); and funding limitations.

##### A. Will previously funded JARC projects be continued?

As discussed previously, FTA proposes that previously funded JARC projects may continue to receive funding under the JARC program. Projects must be derived from the coordinated planning process, which means that local areas will decide if previously funded JARC projects should be continued. In addition, starting in FY

2006, the projects must be competitively selected by the State (for urbanized areas under 200,000 and rural areas) or the designated recipient (for large urbanized areas). FTA seeks comments addressing this proposal.

##### B. What other projects may be eligible for JARC funding?

In general, projects and expenses eligible for JARC funding must relate to "the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment." 49 U.S.C. 5316(a)(1).

During implementation of the TEA-21 JARC provisions, FTA's policy limited JARC funds to "new and expanded" services. The "maintenance of transportation services" language in SAFETEA-LU (above) suggests that not only continuing JARC projects could be funded, but also existing projects that meet the intent of the program but were previously funded by other programs such as the Urbanized Area Formula program (§ 5307). FTA is interested in comments that address the eligibility of existing services that meet the objectives of the JARC program, but may have been funded previously under a different program.

In the conference report (109-203) accompanying SAFETEA-LU, the conferees stated an expectation that FTA would "continue its practice of providing maximum flexibility to job access projects that are designed to meet the needs of individuals who are not effectively served by public transportation, consistent with the use of funds described in the **Federal Register**, Volume 67 (April 8, 2002)." H.R.Rpt. 109-203, at § 3018 (July 28, 2005). That **Federal Register** Notice, (67 FR 16790) provides that eligible projects may include, but are not limited to:

- Late-night and weekend service;
- Guaranteed ride home service;
- Shuttle service;
- Expanding fixed-route mass transit routes;
- Demand-responsive van service;
- Ridesharing and carpooling activities;
- Bicycling;
- Local car loan programs that assist individuals in purchasing and maintaining vehicles for shared rides; and
- Promotion, through marketing efforts, of the:
  - Use of transit by workers with non-traditional work schedules;
  - use of transit voucher programs by appropriate agencies for welfare

recipients and other low-income individuals;

- development of employer-provided transportation such as shuttles, ridesharing, carpooling; or
- use of transit pass programs and benefits under Section 132 of the Internal Revenue Code of 1986.

• Further, the **Federal Register** Notice encouraged communities to:

- Establish regional mobility managers or transportation brokerage activities;
- Apply Geographic Information System (GIS) tools;
- Implement Intelligent Transportation Systems (ITS), including customer trip information technology;
- Integrate automated regional public transit and human service transportation information, scheduling and dispatch functions; and
- Deploy vehicle position-monitoring systems.

FTA seeks comments addressing this list of projects and requests input regarding additional projects that might be funded under JARC. In addition, FTA has required that JARC projects comply with the definition of public transportation by ensuring shared use of vehicles and availability to the public. Projects supporting bicycling and individual car use or ownership have at times had difficulty meeting this criterion. FTA is interested in comments on how nontraditional public transportation options (e.g., car loan or ownership programs, shared-use station cars, etc.) should be treated under the JARC program.

Previously, promotion of the use of transit vouchers was an eligible expense, but purchase of the vouchers themselves was not an eligible expense under JARC on existing services. For new services, such as guaranteed-ride home taxi programs, where contracts were based on individual rides, purchase of vouchers was an eligible expense. This policy was adopted by FTA because JARC focused on expanding transportation connections to jobs and support services, especially to suburban jobs, late night and weekend jobs and to support services like child care, and not on purchasing transit passes for existing services. FTA seeks comment on whether we should now allow JARC funds to support user-side subsidies for eligible individuals on all services of an existing system (e.g., transit passes to low-income workers

entering the workforce for a specified startup period). If so, how should the program goal of removing transportation service gaps be addressed?

*C. Can designated recipients transfer JARC funds to the urbanized area formula program?*

Some commenters recommended that the designated recipient in a large urbanized area be allowed to transfer JARC funds to the Urbanized Area Formula (§ 5307) program. The law specifically allows States to transfer JARC funds to the Other Than Urbanized (§ 5311) or the Urbanized (§ 5307) formula programs. (49 U.S.C. 5316(e)). However, there is no comparable provision regarding transfer by designated recipients. FTA does not have the discretion to allow such transfers. The designated recipient, however, can communicate in writing to FTA the allocation of JARC funds to other eligible Urbanized Area Formula (§ 5307) recipients in the urbanized area and FTA will make JARC grants directly to those recipients.

*D. Are there funding limitations for reverse commute projects?*

The law no longer limits the amounts that can be used for Reverse Commute projects. The decision to use funds for either Job Access or Reverse Commute projects is made at the local level through the coordinated planning process.

**XIII. Section 5310 (Elderly Individuals and Individuals With Disabilities Programs)**

The following specific questions were raised about implementation of the § 5310 program: (1) Whether, if funds from these three programs are mixed in a local application, the § 5333(b) [aka § 13(c) labor] requirements convey to the New Freedom and Elderly Individuals and Individuals with Disabilities programs, and, (2) with regard to “sliding scale” matching requirements for the Elderly Individuals and Individuals with Disabilities programs, whether it is possible to obtain matches greater than 80 percent.

*A. Will FTA impose § 5333(b) labor protection requirements?*

FTA is working with the U.S. Department of Labor (DOL) as DOL develops revised procedures for labor certifications for all FTA programs

where labor certifications are required. Labor protective arrangements are not required for New Freedom projects or, except for a few case-by-case exceptions, for the Elderly Individuals and Individuals with Disabilities (§ 5310) projects, even when funds are transferred to Urbanized Area Formula (§ 5307) or Other Than Urbanized Formula (§ 5311) programs. Previously, States were able to transfer § 5310 funds to § 5307 or § 5311 to supplement those program objectives. However, as stated in the November 30, 2005 Notice, SAFETEA-LU provides that the Elderly Individuals and Individuals with Disabilities, funds that are transferred must be used for eligible projects under the Elderly Individuals and Individuals with Disabilities program. This is consistent with transfer provisions included in § 5316 and § 5317. The § 5333(b) requirements of the original program remain attached to the funds even when they are transferred.

*B. What are the sliding scale match requirements?*

SAFETEA-LU allows a higher Federal share for the Elderly Individuals and Individuals with Disabilities program for States described in § 120(b) of title 23 in accordance with the formula under that section for States with a large amount of Federal lands. Section 120(b)(1) provides a limited list of 14 states with specific “enhanced” match ratios for projects that would otherwise have an 80% Federal share under FTA funded projects. In addition, § 120(b)(2) provides a higher Federal share to all States. For those States on the (b)(1) list, the (b)(2) shares are higher than the (b)(1) shares, but in order to obtain the (b)(2) rates the State has to have a specific agreement with the Federal Highway Administration (FHWA) agreeing to spend the difference in local share on highway projects. FTA will honor the match ratio for § 120(b)(1) based on the list included in FHWA Notice N 4540.12, but in order to obtain the higher match for § 120(b)(2) the State will have to provide evidence that it has a current agreement with FHWA.

Issued in Washington, DC, this 8th day of March, 2006.

**Sandra K. Bushue,**

*Deputy Administrator.*

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