

9070.1G. Included in the new chapter are the following topics: program administrative requirements and other provisions, equipment management, vehicle use, leasing and title to vehicles, satisfactory continuing control requirements, reporting requirements, management plan, and drug and alcohol testing requirements. FTA has updated the section on equipment management to reflect a change in 49 U.S.C. 5334(h). As stated above, FTA has moved information related to capital reserve accounts to Chapter IV. Information related to Federal Funding Accountability and Transparency Act (FFATA) (Pub. L. 109–282) requirements is located in the program of projects information in Chapter V. Other sections in Chapter VI of C 9070.1G have been removed and can be found in the updated C 5010.1F. Those sections include procurement, debarment and suspension, financial management, FTA’s electronic grant management system, system for award management (SAM) requirements, Electronic Clearing House Operation (ECHO) requirements, allowable costs, closeout, audit, real property, and construction management and oversight.

G. Chapter VII—State and Program Management Plans

Chapter VII of the updated circular is substantially similar to Chapter VII of C 9070.1G, with minor clarifying edits. As stated above, FTA has removed Chapter VIII, Other Provisions from the updated circular and pertinent information can now be found in the updated C 5010.1F. Drug and alcohol requirements, formerly in Chapter VIII, have been moved to Chapter VI of this circular.

H. Appendices

FTA has removed many of the appendices found in C 9070.1G, as the information is available in other circulars and resources and can be easily referenced. However, FTA has retained Appendix B, Sample Section 5310 Program of Projects, which is renamed as Appendix A. FTA has also retained Appendix D, Relationship Between Coordinated Planning and Metropolitan and Statewide Planning (Table), but is renamed as Appendix B.

Veronica Vanterpool,
Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–FTA–2024–0003]

Award Management Requirements, Final Circular

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

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

SUMMARY: The Federal Transit Administration (FTA) has made available on its website the final updated Award Management Requirements Circular (C 5010.1). The updated circular combines requirements applicable to all FTA financial assistance awards (referred to as “cross-cutting” requirements) and supersedes the previous Award Management Requirements Circular C 5010.1E. This notice responds to the comments FTA received on the proposed circular, which was published in the **Federal Register** on February 14, 2024.

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

ADDRESSES: One may view the comments at docket number FTA–2024–0003. For access to the docket, please visit <https://www.regulations.gov> or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For award management questions, Latrina Trotman, Office of Program Management, Federal Transit Administration, 1200 New Jersey Ave. SE, Room E46–301, Washington, DC 20590, phone: (202) 366–2328, or email, Latrina.Trotman@dot.gov. For legal questions, Jerry Stenquist, Office of Chief Counsel, same address, Room E56–314, phone: (202) 493–8020, or email, Jerry.Stenquist@dot.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview
- II. Responses to Public Comments
 - A. Comments for Which No Changes Were Made
 - B. Changes Based on Public Comments
 - C. Comment Requesting Technical Assistance
- III. Other Updates

I. Overview

This notice announces the availability of FTA Circular C 5010.1F, Award Management Requirements. C 5010.1F

replaces C 5010.1E, with an applicable date of November 1, 2024. This circular incorporates provisions of Federal law enacted since the publication of C 5010.1E, including the Infrastructure Investment and Jobs Act (Pub. L. 117–58); the Office of Management and Budget’s (OMB) and United States Department of Transportation’s (USDOT) updated Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR part 200 (89 FR 30046, effective October 1, 2024) and 2 CFR part 1201, respectively; USDOT’s regulation implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) (49 CFR part 24); and USDOT’s Disadvantaged Business Enterprise (DBE) regulation (49 CFR part 26).

The purpose of Circular 5010.1 is to summarize generally applicable FTA administrative requirements for financial assistance awards (colloquially referred to as “cross-cutting requirements”) while consolidating other pre-existing cross-cutting guidance historically included in other FTA program circulars, including the pre-existing “Formula Grants for Rural Areas” (C 9040.1G), “Enhanced Mobility of Seniors and Individuals with Disabilities” (C 9070.1G), “Bus and Bus Facilities Formula Program” (C 5100.1), “State of Good Repair Grants Program” (C 5300.1), and “Urbanized Area Formula Program” (C 9030.1E) circulars, reducing duplicative, redundant, and conflicting information in separate circulars. The last three of these circulars have been consolidated and superseded by a new circular, “Urbanized Areas Formula Grant Programs Guidance” (C 9050.1A), which is being published contemporaneously with this updated C 5010.1F. The first two are also being updated and superseded with circulars published contemporaneously.

Additionally, the revisions update or clarify descriptions of policy to explain current FTA practices. The circular updates include FTA policies regarding real property status reporting, the incidental use of FTA-funded project property, and transfer of real property to third parties for affordable housing. The circular updates also increase the use of graphics, tables, and weblinks to improve clarity. A copy of the circular is in the docket and is posted on FTA’s Circulars page (<https://www.transit.dot.gov/regulations-and-guidance/fta-circulars/circulars>).

II. Responses to Public Comments

FTA published notice for the proposed C 5010.1F in the **Federal Register** on February 14, 2024 (89 FR 11334), seeking public comment. FTA received seventy-four comments from twelve unique commenters. FTA reviewed the comments and discusses below the changes that FTA made in the final circular based on public comments. FTA also addresses comments for which no changes were made in the final circular. FTA appreciates the commenters who expressed support for updates in the circular, as well as those who provided feedback on administrative non-substantive changes, such as recommending corrections for typographical errors and document formatting. FTA has reviewed and made these changes to the final circular, as necessary. In cases where a commenter found FTA's guidance confusing or requested clarification and FTA declined to amend the circular, the commenter should contact the FTA regional office responsible for administering its awards for assistance.

A. Comments for Which No Changes Were Made

Comments Outside the Scope of FTA C 5010.1F

FTA declined to make changes in response to some comments because the comments' subject matter was outside the scope of this circular. Topics that were outside the scope of the circular include: State DOT policies for subrecipients' completion of National Environmental Policy Act (NEPA) requirements for non-federally funded projects and notes on circular changes apparently intended for the commenter's internal communication.

Cloud-Based Computing Technology

Comment: One commenter requested FTA clarify whether cloud-based computing technology is a capital or operating expense.

FTA Response: FTA declines to make a change based on this comment. C 5010.1F sufficiently establishes that cloud-based computing technology is included under the definition of "Information Technology Systems," which, by extension, is included under the definition of "Equipment." If cloud-based computing technology qualifies as "Equipment," it may be considered a capital expense as opposed to an operating expense.

Major Capital Project Construction Oversight

Comment: One commenter suggested FTA institute a time limit for FTA's review of technical plans and specifications for a major capital project so as not to delay a project from construction. The commenter also expressed concerns that the proposed C 5010.1F does not specify the milestones during the design of a project at which FTA may request to review the technical plans and specifications.

FTA Response: FTA declines to make a change in response to the comment. FTA declines to establish generally applicable design milestones and corresponding time limits because the stages of design at which technical plans and specifications should be reviewed, and the duration of time it takes to review them, are better determined on a case-by-case basis. FTA reviews the design of major capital projects at various stages during a project's lifecycle, which is established in consultation with project sponsors. This project-specific approach retains flexibility and efficiency in FTA's review, benefiting both FTA and recipients.

FTA Technical and Construction Oversight Review

Comment: One commenter asked how quickly FTA's reviews of technical plans and specifications of a project will occur if FTA deems such a review necessary. The commenter expressed concern that designs that may need to be reviewed could be time sensitive. The commenter also mentioned that there is no guidance on what "projects" the oversight review requirement may concern and asked whether there are there specific cost thresholds for projects that would trigger a review.

FTA Response: FTA declines to make a change in response to this comment. If deemed necessary, FTA may review technical plans and specifications of a project to ensure proper execution, consistency with the scope of work and need, and incorporation of FTA requirements. The duration of such a review necessarily depends on multiple factors that are distinct to the project in question and cannot be prescribed. For the referenced provision, there is no set cost threshold for projects that could trigger such a review. However, all projects that meet the definition of a "Major Capital Project" are subject to design reviews at different stages during a project's lifecycle.

Incidental and Shared Use

Comment: One commenter thanked FTA for the updated definition of

"Equipment." The comment also requested FTA reference the definition of "Equipment" in other parts of the circular related to the concept of incidental use.

FTA Response: FTA declines to make a change in response to the comment. The definitions section controls the use of the term "Equipment" throughout the circular. No additional identification of the term is required.

Comment: One commenter asked that FTA clarify that incidental use and shared use can apply to property other than just real property.

FTA Response: FTA declines to make a change in response to this comment. The circular is sufficiently clear that the incidental use provisions apply to equipment. The definition of "Incidental Use" is "the limited non-transit use of project property that does not conflict with the original authorized purpose of the project property or the recipient's ability to maintain satisfactory continuing control." The circular defines "Project Property" to include both real property and personal property.

Comment: FTA's definitions of "Incidental Use" and "Shared Use" authorize certain non-transit uses of transit property. One commenter asked FTA to modify these definitions so that uses that support or relate to public transportation in some way would not be categorized as non-transit uses.

FTA Response: FTA declines to make a change in response to this comment. FTA's definitions of "Incidental Use" and "Shared Use" sufficiently identify FTA's intended treatment of property uses that support public transportation, which provides recipients with flexibility to use project property for both transit and non-transit purposes. The commenter's proposed recategorization of property uses would not create additional flexibilities and conflict with the definition of "Public Transportation" at 49 U.S.C. 5302.

Comment: A commenter asked FTA to provide further guidance for establishing the allocation of applicable costs of a shared use of project property.

FTA Response: FTA declines to make a change in response to this comment. The circular says the costs of shared uses are tied to the pro rata share of the construction, acquisition, maintenance, and operating costs that the shared use represents. The method of determining pro rata costs will vary depending on the particular shared use. FTA declines to be more prescriptive as to determining pro rata share because the circular's purpose is to provide general guidance and allow for flexibility.

Comment: One commenter expressed concern that FTA's incidental use policy in Chapter IV restricts leases of FTA-assisted real property to a one-year term.

FTA Response: FTA declines to make a change based on this comment. The policy in the circular does not limit leases for the incidental use of FTA-assisted real property to one year. Rather, the revision modifies FTA policy by changing FTA's review of incidental uses from a concurrence process to a notice process. Except in cases of utility, ingress, and egress use, FTA now requires 30-day prior notice for incidental uses that will: (1) encumber title to the project property, (2) exceed a term of one year, or (3) allow for the installation of real property fixtures onto project property by third parties.

If none of these apply to an incidental use, a 30-day notice is not required. Nevertheless, recipients must keep a record of all incidental uses, which may be reviewed during a compliance review or audit.

Real Property

Comment: One commenter requested that FTA add property use restrictions to the list of items included in an appraisal report that may affect the appraised value.

FTA Response: FTA declines to make a change in response to this comment. 49 CFR 24.103 establishes the requirements for appraisals, which are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) and already require the appraiser to consider factors like land use restrictions and encumbrances when determining market value.

Comment: Three commenters expressed support for the circular's exemption from FTA's concurrence on real property appraisals for major capital projects when FTA has determined that a recipient's Real Property Acquisition and Management Plan (RAMP) establishes that the recipient is adequately prepared to comply with Federal requirements when acquiring project property. One of the three commenters requested that FTA provide additional information to guide recipients' drafting of a RAMP and the changes to the existing circular.

FTA Response: FTA declines to make a change based on these comments. A RAMP is required of all FTA-designated major capital projects. FTA provides technical assistance and feedback to project sponsors through its project management oversight contractor (PMOC) program on the development of

a project-specific RAMP document. Appendix D of the circular includes a model outline for the development of a RAMP document. FTA is also exploring other ways to provide training and technical assistance to major capital project sponsors on the RAMP development process.

Comment: One commenter opined that, by deleting the definitions of "Global Settlement" and "Legal Settlement," FTA may have caused a conflict with the circular's provisions for property acquisition and relocation assistance.

Response: FTA declines to make a change based on this comment. While the definitions for "Global Settlement" and "Legal Settlement" were removed from the Definitions section of the proposed circular, the circular's use of the terms are unambiguous. The circular refers to legal settlements arrived at after filing for property condemnation as "administrative settlements" for purposes of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), because that is the term used in USDOT's implementing regulation. 49 CFR 24.102(i). The circular states that a "global settlement" means the consolidation of all payments, including acquisition and relocation assistance, into one payment. Global settlements conflict with the purpose of the Uniform Act because relocation assistance benefits are a reimbursement of eligible actual, reasonable, and necessary expenses, while the payment to acquire real property relates to the payment of just compensation and is subject to negotiation. Uniform Act relocation assistance benefits must not be used as consideration for a settlement of a dispute regarding property value. Therefore, the circular's uses of "Legal Settlement," "Administrative Settlement," and "Global Settlement" do not conflict with each other or the purposes of the Uniform Act. The words are used according to their ordinary meanings, and it is not necessary to give them special definitions in the circular.

Comment: One comment opined that FTA's allowance of acquisition incentives payments (AIPs) to exceed a recipient's just compensation determination may conflict with language prohibiting global settlements. The commenter expressed concern with the risk of the global settlement prohibition conflicting with state law and that a comparison of local government acquisition requirements should take place prior to full implementation.

FTA Response: FTA declines to make a change based on this comment. AIPs

are payments for interests in real property above a recipient's established just compensation determination applied equally project-wide, based on pre-established criteria, if initial offers are timely accepted. FTA has determined that the proper use of AIPs does not conflict with the Uniform Act or the circular's restriction on global settlements because their use is limited to compensating owners for the value of property, and they serve to "encourage and expedite acquisition by agreements." 49 CFR 24.1(a). To avoid any conflict, FTA will concur on AIP programs prior to their implementation, including a review of the proposing agency's documentation that the AIP program is permissible under state law. AIPs may not be used for relocation assistance benefits because a pre-determined incentive for displaced persons to relocate may potentially incentivize premature displacement of a person or otherwise incentivize actions inconsistent with the purpose of the Uniform Act. Recipients still may not use global settlements, regardless of whether an AIP payment is offered or paid.

Comment: One commenter recommended that FTA restore a paragraph that had appeared in C 5010.1E allowing for alternative real property valuation methods in exceptional circumstances.

FTA Response: FTA declines to make a change based on this comment. C 5010.1F retains the same provision in Chapter IV under a subsection titled "Valuation of Property Pending Disposal."

Comment: One commenter asked that FTA remove leases exceeding a one-year term and third-party fixture installation from the requirement for recipients to provide 30-day advance notice of an incidental use. The commenter asserted that these conditions should only be for incidental uses that do not require FTA concurrence and should be removed because all incidental use agreements must be terminable and most, if not all, require FTA concurrence.

FTA Response: FTA declines to make a change based on this comment because the updated language regarding incidental uses of real property no longer requires concurrence as the commenter describes. Rather, the revision modifies FTA policy by changing FTA's review of incidental uses from a concurrence process to a notice process. Except in cases of utility, ingress, and egress use, FTA now requires 30-day prior notice for incidental uses that will: (1) encumber title to the project property, (2) exceed a term of one year, or (3) allow for the

installation of real property fixtures onto project property by third parties. If none of these apply to an incidental use, a 30-day notice is not required. FTA's concurrence is not required for any incidental use unless another provision of law or the circular applies.

Nevertheless, recipients must keep a record of all incidental uses, which FTA may review during a compliance review or audit. Lastly, FTA advises that recipients should include termination provisions in their incidental use agreements, but FTA does not prescribe any particular terms or notice periods. Recipients should use commercially reasonable terms that ensure satisfactory continuing control over the transit use of the property.

Project Signage

Comments: FTA received two comments on project signage. One commenter supported FTA's encouragement of recipients to prominently display project signage to identify projects approved and funded by USDOT but recommended that FTA clarify that the suggestion applies to signs pertaining to permanent projects, as opposed to signage for wayfinding or planned service disruptions. Another commenter recommended that FTA only apply the recommendation to projects with a cost of greater than \$200,000.

FTA Response: FTA declines to make a change based on this comment. FTA encourages, but does not require, project signage that identifies projects approved and funded by USDOT. FTA encourages recipients to use their discretion in determining which projects are most appropriate for such signage, as well as the sizes and formats of signs. C 5010.1F permits this flexibility through the provided guidelines. The inclusion of a specific cost or project type threshold would limit this flexibility.

Activity Line Item (ALI) Tree

Comment: One commenter requested that FTA update and streamline its Activity Line Item (ALI) tree, which is an inventory of scope codes and associated ALIs for which funds may be obligated in FTA's award management system (TrAMS), as part of the updated C 5010.1F.

FTA Response: FTA declines to make a change based on this comment. FTA seeks to use C 5010.1F for cross-cutting guidance on award management, not to provide administrative direction on the use of TrAMS. However, FTA currently is working on an update to the ALI tree.

Disadvantaged Business Enterprise (DBE) Program

Comment: In response to language in Chapter II stating that FTA-funded contracts subject to FTA's procurement rules are also subject to USDOT's DBE regulation, one commenter requested that FTA clarify that micro-purchases (those transactions not in excess of \$10,000) are not "contracts" for DBE purposes. The comment further argues that 40 CFR part 26 provides that applicable DBE regulations apply to competitive bids and proposals as opposed to micro-purchases (which are excepted from competition because of their small size), and otherwise applying DBE requirements to micro-purchase procurements is burdensome.

FTA Response: FTA declines to make a change based on this comment. The term "contract," for purposes of the USDOT DBE program, is defined in regulation at 49 CFR 26.5. There is no contract dollar value threshold in 49 CFR part 26. An FTA Tier 1 recipient that is required to set a DBE goal must set its goal as a percentage "of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that [the recipient] will expend". 49 CFR 26.45(e). The DBE rule does not exclude micro-purchases. FTA has issued guidance on reporting multiple purchases from the same vendor (see FAQ CR10 at <https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#COVID-19Civil>).

FTA Minimum Useful Life Policy for Rolling Stock and Ferries

Comment: A commenter urged FTA to add examples of common vehicle makes and models used in public transit/human services transportation to the table detailing the minimum useful life for FTA-funded rolling stock and ferries in Chapter IV of the circular.

FTA Response: FTA declines to make a change based on this comment. FTA does not include specific vehicle makes and models in guidance because vehicle manufacturers, makes, and models often change. Furthermore, this inclusion could suggest FTA's endorsement of particular vehicle manufacturers, which is inappropriate and goes beyond the scope of FTA's role, mission and purview.

Comment: A commenter stated that there should be a nexus between FTA minimum useful life requirements and Altoona testing.

FTA Response: FTA declines to make a change based on this comment. FTA's bus testing rule, 49 CFR 665.11(e),

already requires that "[b]uses shall be tested according to the service life requirements identified in the prevailing published version of FTA Circular 5010." While it is unclear what further nexus the commenter is suggesting, FTA declines to amend the circular beyond the requirements of 49 CFR part 665.

Comment: A commenter requested that FTA add minimum useful life thresholds for bus shelters and other common transit features.

FTA Response: FTA declines to make a change based on this comment. Useful life serves as a benchmark representing a reasonable expectation of the duration of time for which FTA-funded assets should be used by recipients for transit purposes. Any benefit of FTA prescribing useful life for the many different types of bus shelters or other common transit features would likely be outweighed by the loss of flexibility to account for unforeseen factors and allow for innovation, as well as the burden on FTA and recipients to follow useful life standards for inexpensive assets. In Chapter IV, FTA seeks to maximize flexibility by allowing recipients to identify reasonable and common methods for determining minimum useful life for assets other than vehicles and certain facilities and lists examples of acceptable methods.

Rolling Stock Rebuilds and Overhauls

Comment: One commenter asked FTA for additional clarification on distinguishing between overhauls and rebuilds. The commenter asked whether it is the recipient who determines whether vehicle work is a rebuild or an overhaul.

FTA Response: FTA declines to make a change based on this comment. Whether vehicle work is an overhaul or a rebuild is determined by the remaining useful life of the vehicle at the time of the work, and the amount of remaining useful life the vehicle will have after the work is completed. The circular establishes that an overhaul is a capital activity enabling a vehicle to perform until the end of the vehicle's original, expected useful life. On the other hand, the circular explains that rebuilds are intended to extend the vehicle's useful life beyond its original useful life. The commenter should contact the FTA regional office responsible for administering its grants for further assistance.

Like-Kind Exchange of Equipment

Comment: A commenter opined that FTA should include examples of calculations for like-kind exchanges of equipment involving insurance

proceeds, as were provided in the pre-existing C 5010.1E.

FTA Response: FTA declines to make a change based on this comment. FTA consolidated the pre-existing like-kind exchange examples into the Equipment Disposition Scenarios in Appendix G to C 5010.1F.

Use of Insurance Proceeds Toward Damaged or Destroyed FTA-Assisted Equipment

Comment: A commenter requested FTA change its policy that subrecipients may keep all insurance proceeds obtained from claims for loss of damaged or destroyed equipment in excess of a remaining Federal interest. According to the commenter, FTA's interest in a vehicle extinguishes when the vehicle has reached its minimum useful life, although the vehicle may still be in good condition, and "this creates an incentive for a [recipient] to deliberately total a federally funded" vehicle when it has reached the end of its useful life to obtain insurance proceeds.

FTA Response: FTA declines to make a change in response to the comment. FTA's interest in a vehicle does not extinguish when a vehicle reaches its minimum useful life as the commenter describes. FTA's interest in the vehicle persists until the recipient disposes of the vehicle. For any vehicle with a value in excess of \$10,000, the recipient must follow authorized disposition procedures and remit to FTA its proportional share of the vehicle's fair market value at the time of disposition when the fair market value is greater than the straight-line depreciated value of the vehicle. FTA's interest is based on the greater of a vehicle's fair market value or sale proceeds, if it is sold, or alternatively the straight-line depreciated value. Section 3 of Chapter IV of C 5010.1F describes the process of equipment disposition and valuation.

The commenter is correct that, in the case of insurance proceeds received for a vehicle taken out of service by casualty, FTA claims an interest in the insurance proceeds equal to the value of FTA's interest in the vehicle immediately before the vehicle was taken out of service. If insurance proceeds exceed the value of FTA's interest, the recipient may retain the excess. This policy protects the Federal financial interest and incentivizes recipients to adequately insure project property in their possession. FTA is not aware of examples of its policy driving the behavior the commenter is concerned about.

For more information, FTA encourages any interested recipient to

speak with its insurer about the consequences of deliberately damaging vehicles to collect insurance proceeds.

Drug and Alcohol Program Compliance Audits

Comment: In relation to drug and alcohol compliance audits, a commenter requested FTA clarify whether recipients' annual drug and alcohol certification is in reference to Drug and Alcohol Management Information System (DAMIS) reporting or a separate requirement.

FTA Response: FTA declines to make a change in response to the comment. The circular and FTA's annual Certifications and Assurances are clear that the annual certification of drug and alcohol testing is separate from the drug and alcohol management information system reporting that requires submission of the previous year's testing.

Cognizant Federal Agency for Indirect Cost Rate Proposals

Comment: A commenter requested the circular provide that indirect cost rate proposals (ICRPs) need to be approved by the cognizant Federal agency and to provide clarification for determining the cognizant agency for subrecipients' indirect costs as distinct from the cognizant agency for audits.

FTA Response: FTA declines to make a change in response to the comment. In Chapter VI, the circular states, "ICRPs must be approved by FTA or another legally designated cognizant Federal agency". The circular, in Section 7 of Chapter VI, also states the method of determining agency cognizance: "DOT is the cognizant agency of indirect costs for State and local airport and port authorities and transit districts' cognizant audit agencies. Based on delegations within DOT, FTA is cognizant for transit districts. For other organizations, cognizance is generally assigned to the Federal agency that provides the predominant amount of Federal funding to a recipient within a given departmental organization within the State or locality." Appendix I explains that ICRPs are prepared by an individual recipient or subrecipient to substantiate an indirect cost rate.

De Minimis Rate for Indirect Costs

Comment: A commenter requested FTA to leave the de minimis rate for indirect costs unspecified in the circular, in case the de minimis rate is changed by subsequent legislation or rulemaking.

FTA Response: FTA declines to make a change in response to the comment. FTA has updated the de minimis rate in

the circular to 15 percent, in accordance with the revision to 2 CFR 200.414(f). The de minimis rate has changed only once since the original part 200 was published in 2014. The convenience to readers of stating the de minimis rate in the circular outweighs the potential inconvenience if the de minimis rate changes again in the future and the circular must be updated.

Relationship of Circular to FTA Master Agreement

Comment: One commenter suggested that instead of describing ethical standards, certifications, and procurement standards in Chapter II of the circular, FTA simply refer the reader to FTA's Master Agreement, because the requirements derive from the Master Agreement, and the Master Agreement is subject to change.

FTA Response: FTA declines to make a change in response to the comment. The commenter did not cite a specific requirement, but generally speaking, the procurement requirements derive both from Federal regulations, like 2 CFR part 200, and FTA's Master Agreement. Where a requirement has more than one source, the circular generally cites only to the regulation so as not to overcrowd the document with citations. The convenience to the reader of stating requirements in the circular outweighs the potential inconvenience if a requirement should change in the future and the circular must be updated. For more information about the standards that apply to procurements carried out under FTA awards, refer to the latest version of FTA's C 4220.

Requests To Change Statutory or Other Government-Wide Regulatory Requirements

FTA received some comments requesting changes to requirements that are based in statutes or regulations that FTA does not have the authority to change.

Comment: One commenter asked FTA to reinsert language in the definition for "Associated Transit Improvement" to include landscaping for stormwater absorption and erosion prevention, consistent with version C 5010.1E of the circular.

FTA Response: FTA declines to make a change in response to the comment. The definition of "Associated Transit Improvement" is given in statute at 49 U.S.C. 5302(2). Note that certain kinds of landscaping may remain eligible as "functional landscaping" under the definition of "Associated Transit Improvement."

Comment: A commenter requested that FTA include fares as a permissible source of local match.

FTA Response: FTA declines to make a change in response to the comment. Federal law excludes fares as an eligible source of local match for FTA financial assistance. *E.g.*, 49 U.S.C. 5307(d)(3) (“the remainder of the net project costs shall be provided . . . in cash from non-Government sources other than revenues from providing public transportation services”). Generally, financial assistance from FTA may only fund up to the permissible Federal share of the “net project cost” of eligible projects. The term “net project cost” means the part of a project that reasonably cannot be financed from revenues (49 U.S.C. 5302(13)).

Comment: One commenter requested the circular only reference national flood insurance coverage thresholds as the required coverage for FTA-funded facilities in special flood hazard areas, which the commenter alleges would “avoid confusion due to the unavailability of substantial flood insurance policies or policies that fully ensure agency’s assets and facilities.”

FTA Response: FTA declines to make a change in response to the comment. The circular does not require that recipients obtain full flood insurance coverage over project property. The circular cites 42 U.S.C. 4013(b)(4), which sets the minimum flood insurance coverage requirements.

Comment: One commenter recommended FTA remove language from Chapter III stating that milestone progress reports (MPRs) and Federal financial reports (FFRs) must be submitted to FTA within 30 days after the end of each quarter, as the commenter opines that 30 days is not sufficient to research, document, and provide explanations for variances that arise between MPRs and FFRs due to differences in the timing of project progress and project invoice submissions. The commenter further recommended FTA provide reporting frequencies and submission deadlines as best practices rather than requirements.

FTA Response: FTA declines to make a change based on this comment. Per 2 CFR 200.329, the recipient must submit regular performance reports. Reports that are due more frequently than annually, like the quarterly submitted MPRs, “must be due no later than 30 calendar days after the reporting period.” FTA does not have the discretion to deviate from this government-wide regulation.

B. Changes Based on Public Comments

Comments below reflect areas where FTA made language changes in the circular in response to public comments.

Effective Date for Updated Circular

Comment: One commenter noted the circular’s lack of a stated effective date or a statement of how existing awards and third-party agreements will be affected by C 5010.1F. The commenter asked if FTA will adjust its compliance reviews to account for differing applicable requirements based on the applicable date of circular C 5010.1F.

FTA Response: In response to this comment, FTA included the circular’s applicable date, November 1, 2024, in the first paragraph of the circular. FTA also added a statement to clarify the legal effect of the circular on FTA recipients. As a guidance document, the circular does not have the force and effect of law and is not meant to bind the public in any way. The circular is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Some of the revisions made in C 5010.1F describe changes in law or policy that took effect before the applicable date of C 5010.1F. Those changes apply according to their respective terms. Other circular provisions reflect long-standing FTA operating procedures to which notice was already provided or not required. Future compliance reviews conducted by FTA will account for the applicable effective dates.

Changes Made to Definitions in the Circular

Comment: One commenter said the proposed circular’s definition of “Shared Use” appeared to only apply to real property. The comment requested that FTA modify the definition to explicitly include shared use of equipment, including rolling stock.

FTA Response: FTA updated this definition to explicitly note shared use can apply to equipment, including rolling stock.

Comment: A commenter asked FTA to define Qualified Human Service Organization (QHSO) and provide additional guidance regarding the exception of QHSOs from the restrictions of FTA recipients to provide charter bus services contained in 49 U.S.C. 5323(d).

FTA Response: FTA added a definition of QHSO to C. 5010.1 using the same definition provided at 49 CFR 604.3(q) for consistency. Additional language addressing QHSO exceptions

was not added to the circular because 49 CFR part 604 addresses charter service. 49 CFR 604.7 provides the necessary guidance for QHSOs providing charter bus services. No further guidance from the circular is required at this time.

Information on Specific Discretionary Programs

Comment: One commenter asked FTA to include a reference to FTA’s passenger-only ferry program in the list of current FTA programs in Chapter II.

FTA Response: FTA added the Passenger Ferry Discretionary Program (49 U.S.C. 5307(h)) to the list of current FTA programs.

Request for Reference to Additional Resource

Comment: One commenter asked FTA to include a reference to the Coordinating Council on Access and Mobility (CCAM) Federal Fund Braiding Guide in Chapter VI as a resource for recipients to understand which sources of Federal funds may be used as local match for FTA-funded activities.

FTA Response: FTA added a reference to the CCAM Federal Fund Braiding Guide and a link to the online resource.

Incidental and Shared Uses

Comment: One commenter requested that FTA include examples of shared use and incidental use of equipment similar to the circular’s examples of shared use and incidental use of real property, further suggesting FTA include a table clarifying the difference between the two, as well as the applicable Federal rules for each.

FTA Response: In response to this comment, FTA included examples for the shared use and incidental use of equipment in Chapter IV of the circular. FTA did not include a table clarifying the difference between the two concepts, as the difference between the two concepts is sufficiently described in both Chapter IV and the circular’s definitions.

Comment: A commenter asked FTA to explain if FTA must always provide prior approval for shared use of real property. The commenter also asked if it was appropriate for FTA to refer to the allocable costs of construction for equipment that may qualify as a shared use for determining such a shared use’s pro rata share.

FTA Response: The circular already states that a shared use of property requires prior FTA approval except when it involves coordinated public transit-human services transportation. However, the word “construction” was replaced with “acquisition” to refer to the usual process for acquiring

equipment that may qualify as a shared use.

Comment: A commenter requested that the circular address incidental and shared uses of equipment and supplies by a non-controlling subrecipient for a public transportation use.

FTA Response: In response to this comment, FTA updated language addressing the concept of shared use for both real property and equipment in Chapter IV to clarify that shared uses can be arranged with any third-party user of project property, regardless of the type of entity, and is not limited only to non-transit entities or uses. Accordingly, a subrecipient's use of a recipient's real property or equipment can qualify as a shared use. However, FTA declines to change the language addressing incidental uses because the circular accurately reflects FTA's intent to define "Incidental Use" as the limited non-transit use of project property. A subrecipient's use of a recipient's project property for public transportation is not an incidental use because a subrecipient's activities are inherently public transportation.

Comment: One commenter requested that FTA remove the language addressing the incidental use of real property under the Property Management subsection in Chapter IV because the circular provides the same language under the Non-transit Uses of FTA-Assisted Real Property subsection in the same chapter.

FTA Response: In response to this comment, FTA removed the language regarding incidental use in Chapter IV's section on general use of project property, while retaining the same language in the section on incidental use.

Intercity Bus

Comment: One commenter asked that the circular recognize intercity bus as a non-incidental use, in other words, that intercity bus should be recognized in FTA guidance as a primary transportation use at FTA-funded facilities. The commenter stated that this request was because of challenges and delays intercity bus companies experience trying to obtain reasonable access for intercity bus at federally funded public transportation facilities.

FTA Response: FTA has added text to Chapter IV of C 5010.1F emphasizing the requirements of 49 U.S.C. 5323(r). According to 49 U.S.C. 5323(r), a recipient of FTA assistance may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including

intermodal facilities, park-and-ride lots, and bus-only highway lanes.

FTA declines to exclude intercity bus uses as a potential type of incidental use. By statute, 49 U.S.C. 5302(15) and 49 U.S.C. 5311, intercity bus service is not public transportation. The circular's definition of incidental use does not diminish the requirement in 49 U.S.C. 5323(r) that transit agencies must provide reasonable access because it is reasonable to ensure that intercity bus use does not conflict with the transit purpose of the project property or the recipient's ability to maintain satisfactory continuing control over the use of the property. Therefore, reasonable access provided to intercity bus service at an FTA-funded facility may be an incidental use of such a facility.

Comment: One commenter requested that FTA revise the circular to state that recipients should give intercity bus companies access to transit property at low or no cost. In C 5010.1F, FTA added a description of "no- or low-income" uses of transit property (those that bring little revenue to the recipient but serve a public purpose) as a kind of incidental use recipients may consider. The commenter suggested that FTA recategorize no- or low-income uses as distinct from incidental uses, under a new category such as "Non-Incidental," "Primary," or "Intercity Transportation" use. The commenter then requested that FTA state that intercity bus companies should be treated as a no- or low-cost use because they are a form of transportation with public benefits.

FTA Response: In response to this comment, FTA added a subsection to the circular to highlight the requirements of 49 U.S.C. 5323(r), which says recipients may not deny intercity bus companies and charter companies reasonable access to transit facilities. However, FTA declines to recategorize no- or low-income use separately from incidental use. FTA's incidental use policy is intended to cover all non-transit uses occurring on transit property, regardless of the revenue they create for FTA's recipient.

The purpose of the circular's description of no- or low-income uses is to recognize a recipient's flexibility to allow less-than-market rates for uses that provide benefits that complement public transportation services notwithstanding their low potential for revenue to the transit system. The categorization of any use as an incidental use is not a statement as to the importance of the use.

Additionally, FTA declines to describe intercity bus as a no- or low-income use. The access provision of 49

U.S.C. 5323(r) requires that recipients not deny intercity bus companies reasonable access to transit assets, but reasonable access does not require no cost or low cost access, although a recipient may determine that intercity bus service is an appropriate no- or low-income use depending on the location and its unique situation. FTA intends that its recipients have the full flexibility to bargain for what is reasonable in each situation, taking into consideration the public benefit of the proposed use, the costs the recipient incurs by allowing the use, the impact of the use on the recipient's operations, market rates, the value of the access to the non-transit entity, possible alternative uses, and other factors as determined by the recipient.

Real Property Status Reporting

Comment: One commenter recommended that FTA remove the additional elements now included in the updated circular's list of required information a recipient must include in its real property status reports, saying that records containing the additional information may not exist, require significant funds to generate, or otherwise would be burdensome to produce. The commenter further stated that 2 CFR 200.330 only requires recipients to generate real property status reports on a regular basis and does not require FTA acquire such information.

FTA Response: FTA declines to make any changes in response to this comment. Recipients must maintain adequate records for FTA's monitoring of recipients' compliance with Federal requirements. A real property status report would be inadequate to assess compliance with FTA real property requirements without the specified information. However, FTA modified the "Current Use(s) of the Property" element to prompt reporters to identify whether a significant change has occurred to a parcel of real property or is anticipated to occur in the next reporting period, and, if so, to describe the change. Further, FTA clarified language that some of the reporting elements apply to real property dispositions.

Comment: One commenter requested that FTA not require recipients to report the date of property disposition or the sale price and net proceeds in their real property status reports following property disposition.

FTA Response: FTA declines to remove the property disposition date, sales price, and related proceeds from the list of property status report elements because the information is

necessary to sufficiently assess a recipient's compliance with requirements regarding real property disposition and accounting for FTA's interest in the property. However, in response to this comment, FTA added language explaining that recipients should include the requisite disposition information for real property disposed within a three-year reporting cycle in the following real property status report, but recipients may remove the disposition information from the real property status reports thereafter.

Equipment Disposition Scenarios—Appendix G

Comment: One commenter asserted that the equipment disposition scenarios in Appendix G contain two errors. The commenter said the second paragraph of the appendix should indicate that the insurance proceeds received by the recipient are more than the Federal share for the example unit of equipment rather than less than the Federal share. The commenter also said that language in the third paragraph of the appendix should indicate that the insurance proceeds received by the recipient are less than the Federal share for the example unit of equipment rather than more than the Federal share.

FTA Response: In response to this comment, FTA adjusted the language referenced by the commenter to accurately show the relationship between the amount of insurance proceeds and the respective Federal share for the example units of equipment in the scenarios presented.

Comments Requesting Clarifications or Specificity

FTA received several requests for clarification or more specificity on various requirements. In response, FTA revised language in the circular to address comments, as explained below.

Inventory of Vehicle Components

Comment: Three commenters expressed concerns regarding the requirement for recipients to identify and inventory vehicle components removed from a vehicle at the end of the vehicle's useful life that retain a Federal interest. The commenters opined that such treatment would exact an administrative burden for transit agencies and auditors because of the large volume of low-value components that fall into this category.

FTA Response: In response to this comment, FTA clarified in the circular that a recipient only must inventory a removed vehicle component when the component meets the definition of "equipment." 2 CFR 200.1 and the

circular define equipment as tangible property having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient for financial statement purposes, or \$10,000.

Transfer of Real Property for Affordable Housing

Comments: A commenter submitted multiple comments related to provisions for the transfer of real property for affordable housing purposes as part of a transit-oriented development (TOD). One comment expressed safety concerns with the combination of housing with transit facilities and asserted that any such developments that combine the two should include separation requirements between those uses. Another comment suggested that restrictions on the use of transferred real property for low-cost housing could limit complementary ancillary services for transit patrons associated with transit facilities located in mixed-use environments. An additional comment expressed concerns and confusion with the transfer criteria potentially excluding governmental entities and non-profit organizations.

FTA Response: In response to this comment, FTA changed the title of the subsection in Chapter IV from "Transfer for Transit Oriented Development" to "Transfer for Affordable Housing for Transit Oriented Development" to clarify that this transfer authority is specific to affordable housing in a TOD environment, not all TOD initiatives. However, no additional changes were made based on these comments. The affordable housing requirements do not prevent the inclusion of additional ancillary services beyond those that could support affordable housing. The provisions of 49 U.S.C. 5334(h)(1)(B) do not prohibit recipients' abilities to engage in TOD initiatives or additional transit-related services, but rather provide one permissible disposition option for affordable housing projects meeting the statutory requirements. Further, this asset disposition provision prioritizes transfer to governmental entities and non-profit organizations. An asset may only be transferred to a third-party entity if a local government authority or nonprofit organization is unable to develop the property. For additional information about the asset disposition provision, please see FTA's Interim Asset Disposition Guidance at <https://www.transit.dot.gov/funding/funding-finance-resources/interim-asset-disposition-guidance>.

Asset Disposition

Comment: Two commenters requested that FTA increase the disposition threshold from \$5,000. One commenter also requested that FTA permit recipients to retain all proceeds obtained through the resale of FTA-assisted vehicles to supplement open grants.

FTA Response: FTA edited language addressing disposition of equipment and supplies in Chapter IV to conform with changes IJA made to 49 U.S.C. 5334(h)(4)(B), as well as changes to 2 CFR part 200 that took effect on October 1, 2024. Per 2 CFR 200.313 and 200.314, equipment with a per unit value of \$10,000 or less and unused supplies with an aggregate value of \$10,000 or less may be retained, sold, or otherwise disposed of with no further responsibility to FTA. If the proceeds are greater than \$10,000, then per 49 U.S.C. 5334(h)(4)(B), the recipient may retain \$5,000 and the percentage of the local share in the original award of the remaining proceeds, with the remaining Federal share returned to FTA. Because 49 U.S.C. 5334(h)(4)(B) requires recipients to return to FTA the FTA share of proceeds from the sale of rolling stock, FTA does not have discretion to allow recipients to retain these proceeds to supplement open grants.

Comment: A commenter asked FTA to provide further guidance regarding the disposition of supplies and attendant insurance proceeds, mentioning that pre-existing C 5010.1E provided detailed information on the topic.

FTA Response: In response to this comment and to reflect updates to 2 CFR 200.314, FTA included additional language identifying the treatment of the disposition of supplies. In several places where C 5010.1F discusses the application of disposition rules to equipment, FTA has added a statement that disposition rules also apply to unused supplies the aggregate value of which exceeds \$10,000. FTA does not have any unique considerations regarding the disposition of supplies beyond what is directed in 2 CFR 200.314. Furthermore, FTA's treatment of insurance proceeds applies similarly to all project property. Equipment disposition scenarios that involve insurance proceeds are provided in Appendix G of the C 5010.1F. The same examples illustrate FTA's treatment of disposition of unused supplies. Therefore, no further guidance is necessary to further illustrate FTA's treatment of the disposition of supplies or attendant insurance proceeds from claims arising for the loss of supplies.

Buy America

Comment: One commenter recommended that FTA remove the summaries of “Buy America Domestic Preference” in Chapter II and, instead, only use the circular to refer FTA grant recipients to current Buy America regulations at 49 CFR part 661, 2 CFR part 184, and the Office of Management and Budget’s (OMB’s) implemented guidance for Build America, Buy America (BABA). The commenter was concerned that the summary of these requirements in C 5010.1F may inhibit compliance by overly simplifying complex requirements.

FTA Response: FTA understands the commenter’s concern and agrees that recipients always should refer to the actual laws and regulations cited in the circular. However, FTA declines to adopt the commenter’s suggestion. C 5010.1F strikes a balance between informing readers of the broad requirements of Buy America while recognizing that actual rules are complicated. Moreover, directing recipients to regulations without additional context may also be confusing. The application of the Build America, Buy America Act domestic preference, located at 2 CFR part 184, is only partially applicable to FTA financial assistance awards because FTA’s existing Buy America requirements at 49 U.S.C. 5323(j) continue to apply where they meet or exceed the Build America, Buy America Act requirements.

However, FTA updated a reference from a superseded OMB memorandum to its current version and corrected a misstatement in the circular’s text. The proposed version of C 5010.1F had said that 49 CFR 663.37 exempts some vehicle purchases from the auditing requirement, when 49 CFR 663.37 actually exempts those purchases from the resident inspector requirement.

Transit Vehicle Manufacturer (TVM) Compliance Under FTA’s Disadvantaged Business Enterprise (DBE) Program

Comment: A commenter requested FTA include a clarification in Chapter II that recipients are not restricted to solicit bids from DBE-eligible transit vehicle manufacturers (TVMs). The commenter states that bid respondents could be other third parties, such as authorized dealers, which can also be bound by the TVM requirements.

FTA Response: In response to this comment, FTA expanded relevant language explaining that recipients may seek bids from entities other than vehicle manufacturers, such as

dealerships, who certify that the procured vehicles are, or will be, manufactured by DBE-eligible TVMs.

Rolling Stock Spare Ratio Policies

Comment: A commenter requested that FTA exempt the requirement to report spare ratios for subrecipients whose spare ratios are not limited to 20 percent. The commenter also asked FTA to clarify whether a direct recipient or the subrecipient’s maximum spare ratio would apply when the direct recipient is seeking funding to procure vehicles on behalf of a subrecipient.

FTA Response: In response to this comment, FTA added a statement in its spare ratio policy clarifying that FTA calculates each transit operator’s maximum spare ratios separately, based on each separate operator’s fleet size, without regard to their status as a direct recipient or subrecipient. FTA’s spare ratio policy is that recipients with 50 or more fixed-route vehicles limit their spare ratio to 20 percent of the number of vehicles operated in maximum fixed-route service. This requirement extends to subrecipients’ separate fleets individually, and their fleets are not imputed to the recipient. For individual operators with fewer than 50 fixed-route vehicles, whether they are recipients or subrecipients, FTA does not set a specific maximum spare ratio but expects the number of spare vehicles to be reasonable, considering the number of vehicles and variety of vehicle types and sizes.

Recipient-to-Recipient Transfer of Rolling Stock

Comment: A commenter requested that FTA clarify that recipient-to-recipient transfers of rolling stock are used for instances in which the useful life of the rolling stock has not yet been met.

FTA Response: In response to this comment, in Chapter IV, FTA has amended the language specific to recipient-to-recipient transfers of rolling stock to clarify that recipients should provide FTA with certain documentation when seeking FTA’s approval of recipient-to-recipient transfer of rolling stock with a remaining useful life. The language in Chapter III addressing recipient-to-recipient transfers of rolling stock does not exclusively apply to rolling stock at the end of its useful life. Rather, the language specifically addresses the differing requirements and considerations when transferring rolling stock that does or does not have a remaining useful life.

C. Request for Technical Assistance

Comment: FTA received a comment requesting more targeted technical assistance on new information included in Appendices A, B, and C. The commenter also asked FTA to provide guidance regarding recipient legal capacity requirements outlined in Appendix A. Lastly, the commenter asserted that pre-award requirements in Appendix B include substantial changes that may require proper lead time for agencies to prepare for the requirements.

FTA Response: FTA declines to make any changes in the circular in response to this comment. However, FTA will provide training and technical assistance opportunities regarding updates made to this and the other simultaneously issued program circulars (C 9040.1H, C 9070.1H, C 9050.1A).

III. Other Updates

In addition to the changes noted above, FTA made revisions in this final circular for consistency with changes in statute, regulation, and other FTA circulars, as well as minor, non-substantive revisions for clarity. For consistency with statute, FTA added language in Chapter IV identifying alternative fueling facilities as a potential type of incidental use of both real property and equipment in accordance with 49 U.S.C. 5323(p). Additionally, FTA added a statement at the beginning of the circular that in cases for which the circular is inconsistent with changes to any law, the law will supersede this circular. Along with other non-substantive administrative changes that were recommended by several commenters, FTA made additional corrections in the circular for typographical errors, grammatical errors, and formatting.

Updates Based on Regulatory Changes

Since C 5010.1F was released for public comment on February 14, 2024, several government-wide regulations have changed. FTA has accordingly updated the 5010.1 circular to reflect changes in the law since that time, including the following:

2 CFR Part 200 Changes

The Office of Management and Budget (OMB) updated the government-wide policies for the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards under 2 CFR part 200 as well as parts 25, 175, and 180, effective October 1, 2024, including but not limited to the following:

- *Equipment and Aggregate Supplies Definitions/Thresholds:* Sections

200.313 (Equipment) and 200.314 (Supplies) of 2 CFR part 200 each increase the thresholds, from \$5,000 to \$10,000, for the value of equipment and aggregate supplies a recipient may retain, sell, or dispose of at closeout. Consistent with 2 CFR 200.314, FTA also clarified throughout the circular that disposition requirements apply only to unused supplies.

- *De Minimis Rate*: 2 CFR part 200 increases the de minimis indirect cost rate from 10% to 15% of Modified Total Direct Costs (MTDC). FTA recipients and subrecipients may elect a lower de minimis rate at their discretion and modify the indirect cost rate of MTDC to permit inclusion of the first \$50,000 of any one subaward in the base.

- *Single Audit*: 2 CFR part 200 increases the direct Federal expenditure threshold requiring a recipient to conduct a single audit from \$750,000 to \$1 million. OMB also revised the definitions of “known questioned costs” and “likely questioned costs” while providing additional direction to recipients to identify such costs in an audit report.

Uniform Act Changes

Acting as Lead Agency, FHWA published a final rule on May 3, 2024, to amend and update 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act) for land acquisition and displacement activities by all Federal agencies and their financial assistance recipients (89 FR 36908). These regulations clarify existing requirements for implementing the Uniform Act, meet modern needs, and improve the agencies’ service to individuals and businesses affected by Federal or federally assisted projects. All references to these regulations were updated in C 5010.1F.

Disadvantaged Business Enterprise (DBE) Final Rule Changes

On April 9, 2024, the U.S. Department of Transportation published its final rule regarding Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs located at 49 CFR part 26 (89 FR 24898). Changes to the rule include a streamlined DBE certification process, adjustments to grant recipient reporting requirements, and other technical corrections. For FTA specifically, the rule creates two tiers of recipients: Tier I recipients who award more than \$670,000 in FTA funds annually in 3rd party contracts and are subject to all DBE program provisions and Tier II recipient who award \$670,000 or less in

FTA funds annually and are subject to a subset of provisions.

Veronica Vanterpool,
Deputy Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2024–0004]

Rural Areas Formula Grant Programs Guidance, Final Circular

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

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

SUMMARY: The Federal Transit Administration (FTA) has finalized an updated circular, to assist recipients in their implementation of the Rural Areas Formula Program and the rural component of the Grants for Buses and Bus Facilities Program. The update and consolidation of the circulars incorporates provisions from the Fixing America’s Surface Transportation (FAST) Act; the Infrastructure Investment and Jobs Act (IIJA), also known as the Bipartisan Infrastructure Law (BIL); the Uniform Administrative Requirements for Federal awards to non-Federal entities; and current FTA policies and procedures. This notice responds to the comments FTA received on the proposed circular, which was published in the **Federal Register** on April 4, 2024.

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

ADDRESSES: One may view the comments at docket number FTA–2024–0004. For access to the docket, please visit <https://www.regulations.gov> or the Docket Operations office located in the West Building of the United States Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For Rural Formula program questions, Matt Lange, Office of Transit Programs, Federal Transit Administration, US DOT Volpe Center, 220 Binney Street, Room-940, Cambridge, MA 02142, phone: (617) 494–6308, or email, matthew.lange@dot.gov. For Bus and Bus Facilities program questions, Kirsten Wiard-Bauer, Office of Transit Programs, Federal Transit Administration, 1200 New Jersey Ave. SE, Washington, DC 20590, phone: (202)

366–7052, or email, KirstenWiard-Bauer@dot.gov. For Tribal Transit Program questions, Elan Flippin, Office of Transit Programs, phone: (202) 366–3800, or email, elan.flippin@dot.gov. For legal questions, Bonnie Graves, Office of Chief Counsel, phone: (202) 366–0944, or email, Bonnie.Graves@dot.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Overview
- II. Responses to Public Comments
 - A. Disposition of Comments for Which No Changes Were Made
 - B. Changes Made as a Result of Public Comments
 - C. 2 CFR Part 200 Updates

I. Overview

The Federal Transit Administration’s (FTA) final circular, “Rural Areas Formula Grant Programs Guidance,” C 9040.1H, is a consolidation of guidance for Rural Areas Formula Grants Program under 49 U.S.C. 5311 (Circular 9040.1) and the rural area component of the Grants for Buses and Bus Facilities Program under 49 U.S.C. 5339(a) (Circular 5100.1). Additionally, this updated circular incorporates provisions of the FAST Act (Pub. L. 114–94), the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), and other changes in law, and includes program-specific guidance for these formula programs. Additional requirements for all grant programs are identified in FTA’s Award Management Requirements (Circular 5010.1).

The update to Circular 9040.1 consolidates and summarizes programmatic information, streamlines pre-existing guidance from the two program circulars, and reduces duplication of information provided between the Rural Areas Formula Program circular and FTA’s other topic-specific circulars, including by moving certain text applicable to most or all FTA grant programs to Circular 5010.1. Furthermore, the circular incorporates statutory changes and clarifies policies as applied by FTA. Statutory changes for Section 5311 include additional sources of local share; in-kind match for intercity bus service; and fund allocations for tribes. Statutory changes for Section 5339(a) include the application of Section 5311 requirements to Section 5339 grants in rural areas; additional source for local share; additional eligible entities; and use of procurement tools authorized under Section 3019 of the FAST Act. Policy clarifications address topics in the existing program circulars, including consolidation of grants to