



March 31, 2005

Docket Management Facility
U. S. Department of Transportation
Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590-0001

RE: DOT DMS Docket Number FTA-2005-20585

Dear Docket Clerk:

The Federal Transit Administration (FTA) issued a “Dear Colleague” letter dated March 9, 2005, in which it invited interested parties to comment on a number of issues relating to the FTA’s New Starts Program by April 1, 2005. In that regard, the American Public Transportation Association (APTA) is pleased to submit the following comments on behalf of the public transportation industry.

About APTA

APTA is a nonprofit international association of over 1,500 public and private member organizations including transit systems and commuter rail operators; planning, design, construction, and finance firms; product and service providers; academic institutions; transit associations and state departments of transportation. APTA members serve the public interest by providing safe, efficient, and economical transit services and products. Over ninety percent of persons using public transportation in the United States and Canada are served by APTA member systems.

Introduction

In its March 9 letter, the FTA announced the implementation of a new funding recommendation policy and requested comment on five possible changes to the New Starts process for the upcoming project rating cycle. Subsequently, on March 21, 2005, the FTA Administrator and key staff discussed the substance of the letter and its proposals in a webinar with approximately 400 participants at sites around the country. We appreciate the outreach effort demonstrated in the webinar and would encourage the use of such technology for outreach purposes in the future.

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Summary of APTA Position

APTA's position in this matter may be summarized as follows -

- We are disappointed that a proper review and comment process was not used to deal with the matters in the March 9 "Dear Colleague" letter.
- We are opposed to changing the cost-effectiveness rating level for project funding recommendations.
- We are supportive of the five potential changes proposed, but request more time for FTA to work with the transit industry on their development and implementation.

General Comments

In addition to the comments below on FTA's five possible changes to New Starts process for the upcoming project rating cycle, we offer the following overarching comments on the change implemented by FTA concerning its new funding recommendation policy.

The Regulatory Process

We understand that FTA desires to move quickly in this matter so that its proposals may be implemented in the upcoming New Starts project evaluation cycle, but we are concerned that what are major changes in the New Starts evaluation process are being implemented not through the notice and comment rulemaking process but rather through the mechanism of an administrative letter. The New Starts Program regulation was effective December 7, 2000, which means there has been no opportunity for formal notice and comment on the New Starts rule since that time.

Federal transit law at 49 USC 5334 (b)(2) provides that "[e]xcept for emergency regulations, the Secretary shall give interested parties at least 60 days to participate in a regulatory proceeding under this chapter by submitting written information, views, or arguments, with or without an oral presentation..." The term "regulation" is defined at 49 USC 5302 (a) (11) as "...any part of a statement of general or particular applicability of the Secretary designed to carry out, interpret, or prescribe law or policy in carrying out this chapter." In our view, the changes proposed in the March 9 "Dear Colleague" letter are significant and come within the scope of these provisions.

We are concerned about the FTA's short-term and non-regulatory process employed to make changes to the New Starts evaluation process, and the precedent thereby created. Compliance with the New Starts project evaluation process by grantees is lengthy, time consuming and costly. The process is rigorous and comprehensive; it has been favorably commented on by the U.S. Department of Transportation Inspector

General and the Government Accountability Office. Moreover, the existing New Starts evaluation process was extensively and favorably assessed by the White House Office of Management and Budget in its Program Assessment Rating Tool submitted as part of the Administration's FY 2006 Budget.

If, as is proposed in the March 9 Dear Colleague letter, that process can abruptly be changed each year with little notice and without proper opportunity for comment, what has become perhaps the most comprehensive and thorough federal government review process instead becomes a moving target. Moreover, transit reauthorization legislation now pending in Congress that may soon be enacted into law will also require revisions to the New Starts Program. Consistent with longstanding APTA policy in support of ample opportunity for comment when FTA proposes significant policy changes, APTA thus asks that FTA not proceed with the change and proposals announced in its March 9 letter. Rather, we recommend that a proper rulemaking and policy guidance effort be undertaken covering both the announced funding policy change covering cost-effectiveness and the other five potential changes proposed in the letter.

The New Starts Process: Consideration of Multiple Factors

Clearly, cost-effectiveness is an important project justification issue in the New Starts project rating process. As important as cost-effectiveness is, however, APTA members are concerned that the calculation of arbitrary cost-effectiveness numbers not become the single or key focus of the FTA New Starts rating process in contravention of explicit statutory authority enacted by the Congress. The clear intent of Congress, emphasized in each of the last three reauthorization statutes - as well as in the bills currently pending before Congress, is that FTA ratings of New Starts projects are to be based upon "multiple factors" including the importance of land use and economic development considerations as part of project justification.

In addition, the multi-measure approach is clearly emphasized in FTA's own New Starts rule at 49 CFR Part 611; see, for example, section 611.9 ("Project justification criteria for grants and loans for fixed guideway systems") at section 611.9 (a) and (a)(1): "To make the statutory evaluation and assign ratings for project justification, FTA will evaluate information...The method used to make this determination will be a multiple measure approach in which the merits of candidate projects will be evaluated in terms of each of the criteria specified in this section."

It is noteworthy that since 2000 FTA has recommended many projects with low-medium or low cost-effectiveness ratings that were offset by high ratings in land use and other measures. Several of these projects, which would not have been funded under the policy announced on March 9, are now in operation with excellent results benefiting millions of Americans each year.

Lowering the Threshold

The new FTA funding recommendation policy announced in the March 9 letter would result in a *de facto* application of a threshold value of cost-effectiveness from no more than \$25 to no more than \$20, without any discussion of the rationale behind such a change or the impact it would have on pending and future projects. Those projects that do not currently have a rating of “medium” in cost-effectiveness would automatically be precluded from funding recommendation by the FTA, notwithstanding the merits of other criteria applicable to those projects. In that regard, a number of currently pending projects would be affected, including some that are poised to receive FFGAs from FTA in the months immediately ahead.

This can only be seen as unfair to those transit agencies that have been working closely with FTA – often through several years of expensive planning and design work – to fine-tune their projects’ cost-effectiveness and obtain recommendations for funding, only to have such recommendations taken away. The ongoing work on improving ridership forecasting methodologies and results, on trimming project scope and components, on performing value engineering of designs, and on other factors affecting cost-effectiveness has been done based on the belief that previously stated FTA rating thresholds would be honored.

It also should be noted that the current cost-effectiveness thresholds were set several years ago without industry input and have not been adjusted for inflation since. However, project capital costs are required by FTA to be provided in inflated dollars. A sound approach for routinely adjusting thresholds on an annual basis for inflation should be developed in consultation with the transit industry, and incorporated by FTA in its rulemaking. Currently, there appears to be no basis for the demarcation points assigned to low, medium-low, medium, medium-high and high cost-effectiveness ratings -- \$25, \$20, \$13, and \$10, respectively. FTA should undertake a process in collaboration with the transit industry for establishing appropriate thresholds, and annually adjusting them for inflation, as well as for determining how the resulting cost-effectiveness ratings should be used in funding recommendations. That would provide more of a sense of merit to the ratings, and less sense of arbitrariness.

Application of the requirement for a medium cost-effectiveness rating before any consideration can be given to a funding recommendation, without regard to other important project merits, including land use, economic growth and environmental benefits, also runs counter to the goals FTA established in response to Congressional directive, to use multiple factors in evaluating projects. Indeed, the effect of this change would be to place the Transportation System User Benefit (TSUB) as the factor of paramount importance. TSUB is an improvement over the previous cost effectiveness

index which measured cost per new rider as a ratings factor. However, the TSUB generally rewards projects with long trip-lengths, and penalizes projects in regions that have worked hard to reduce the impacts of congestion by supporting compact growth with its shorter trips.

Potential Changes Under Consideration

We are pleased with the five potential changes proposed in the March 9 letter, some of which have been requested by the transit industry for many years, and FTA is to be commended for bringing them forward. While we have a positive reaction to each of the five, and are providing supportive comments by the April 1 deadline, as noted above we ask that such changes be addressed in an FTA rulemaking for a more measured and inclusive effort by FTA and the transit industry to work out the details of implementation for each, as discussed below.

- 1. Adjusting the cost-effectiveness rating thresholds to reflect the impact of inflation, potentially on a regional basis*

APTA strongly endorses the general concept of indexing the ratings thresholds to reflect the impact of inflation, but believes the industry needs time to study the possible indices. There are a wide variety of inflation indices, and while none is transit-specific, nor has perfect correlation to the transit industry, we believe the *Engineering News Record* (ENR) Construction Cost Index, as a long-standing and well established national index, may be most suitable to the public transportation industry. However, we recognize that this index does not include land acquisition and vehicle costs, and would like to work with FTA to address these issues. The RS Means Heavy Construction Index may be another candidate. It tracks a broad range of goods and services related to heavy construction, and is supported by extensive historical data.

Regional adjustments to inflation would still need careful analysis to ensure that those adjustments reflected the characteristics and realities of the region where a project is located. The example regional indices provided in the attachment to the March 9 letter do not reflect the fact that many transit projects have major components of their capital and labor costs that are subject to national and international market forces, not just local ones. For example, steel rail prices and concrete are subject to world-wide trends, not local conditions.

On a related note, as discussed under the "Lowering the Threshold" section above, project costs should be consistent with the dollar values of cost-effectiveness. Because the current values assigned as thresholds are 2002 or earlier dollars, then project costs should be deflated to that year, or the cost-effectiveness values should be inflated to a year consistent with costs.

2. *Permitting the use of a 2030 planning horizon*

APTA is supportive of making this change, as regional metropolitan planning organizations (MPOs) adjust their long-range plan horizons, and the associated forecasting of population, employment and travel. To ensure a level-playing field among competing projects, it may be that all projects should eventually use the same planning horizon year. If an MPO is not yet ready with the 2030 data, FTA should work with transit agencies to plan continued use of the 2025 planning horizon data or to develop consistent guidance for making extrapolations of the planning data as necessary.

3. *Adjusting annualized capital costs to reflect standard cost categories and useful life assumptions*

APTA is aware that much work on implementing the change to reflect standard cost categories is already underway, and supports that work. However, the industry would like the opportunity to review and comment on the useful life assumptions. In addition, because the useful life of a given asset will vary widely depending on geography, ridership and construction materials, it would make sense to allow agencies to assign useful life based on local conditions and agency policies.

4. *Permitting the use of modal constants in travel forecasting models to reflect demonstrated consumer preferences*

This has long been sought by the transit industry, based upon actual experience around the country. We believe that the FTA staff is aware of and conversant with the issues inherent in developing and applying modal constants reasonably and consistently. Therefore, while we support this proposed change to allow communities with first time projects to capture the consumer preference already documented in other communities' existing fixed guideway projects, we request a better understanding and involvement on how FTA will implement this change.

5. *Excluding soft costs from the calculation of cost-effectiveness*

Once again, this is an eminently sensible proposal, and one that APTA supports. We understand that soft costs now account for an average 23 percent of project costs. There is industry interest in discussing the definition of items to be included in "soft costs," and presumably that definition is or will become consistent with the January 2005 FTA Standard Cost Categories under Category 80, "Professional Services" and Category 100 "Financial Charges", which

includes the costs to provide debt financing during project construction based on January 2005 revisions. We believe all professional services listed under category 80 and financial charges should be excluded from the cost of the project when calculating cost-effectiveness, in order to provide consistency.

In addition, we seek clarification from FTA that removal of these costs from the cost-effectiveness calculation will have no impact on the eligibility of those costs for Section 5309 funding.

Conclusion

The March 9 "Dear Colleague" letter notes that FTA is examining ways to more accurately capture the congestion relief benefits of New Starts projects, as well as the effects of projects on land use and economic growth. The letter notes that while FTA is not yet ready to move forward with these, FTA may contact some transit agencies in the months immediately ahead to request assistance in testing these possible new measures.

APTA and its individual transit agency members look forward to the results of these efforts by FTA, and will enthusiastically support the testing of new measures. At the same time, we urge FTA to consider implementing the policies and changes addressed in its March 9 letter through the formal rulemaking and policy guidance process so that all parties have ample opportunity to make their views known, and the FTA has ample opportunity to consider and respond to those comments.

If we may supply further information in this matter, please contact Rich Weaver of APTA's Government Affairs Department at (202) 496-4809 or email rweaver@apta.com.

Sincerely yours,



William W. Millar
President