



December 2, 2011

Docket Management Facility:
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA-2011-0054

Dear Docket Clerk:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration's (FTA) notice of availability of proposed circular and request for comments on Title VI; published September 29, 2011 at 76 FR 60593.

About APTA

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including public transit systems; high-speed intercity passenger rail agencies; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

General Comments

APTA fully supports FTA's efforts to clarify its practices under Title VI and to ensure transit services are provided free of discriminatory effects and disparate impacts. Additionally we commend FTA for its extensive outreach effort to educate the transit industry and to hear their concerns. We believe this effort is helpful to providing greater clarity, accountability and transparency in this process.

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Due to continued economic and fiscal constraints, public transportation systems continue to deal with service and fare restructuring to meet operating costs and retain important services to their customers. APTA is concerned that several proposed changes would negatively affect public transportation agencies, in particular smaller transit agencies, by requiring costly new reporting. This effort is flawed. FTA has proposed a \$10M operating expense threshold for substantial recording requirements. Inflation over time would grow the universe of affected agencies. Fluctuating costs could push an agency over this threshold without warning. We believe a more stable, predictable measure – perhaps 100 buses during peak service – would better serve FTA’s intent.

Finally, the draft suggests that every fare change would require substantial analysis. We believe that, like service changes, fare changes should be analyzed only if significant. For example, agreements for free or reduced fare service provided to individuals in exchange for a community or sponsor subsidy, often of limited duration, should be considered *de minimis* and not subject to analysis. Similarly, many services provided to extremely small populations such as support for homeless youth in transition or summer youth job training programs (many of which are funded through JARC) should not be saddled by excessive analysis costs that would likely prompt agencies to never provide the services at all.

Chapter 1 (Definitions):

The definition of “service area” in the draft appears to inadvertently enlarge that definition. By redefining the term by reference to “local laws,” this definition would create uncertainty and suggest public transportation agencies should service areas beyond their existing charters. In some states, agencies are *authorized* – often by state law – to operate in large areas while their services areas, as defined in their charters, are substantially smaller. Moreover, rural services are often provided in communities under the authority of state laws authorizing service throughout the state. We recommend FTA revert to its existing definition and specifically note its intent not to enlarge this definition.

While FTA has provided an option for agencies to define “minority transit routes” through use of local demographics or ridership characteristics, establishing the baseline definition by reference to route mileage will very likely establish that baseline definition as a minimum standard. Because of this likelihood, we believe FTA should be more precise in this definition, particularly by reference to revenue mileage rather than route mileage. Simply referencing “route mileage” may lead to unintended consequences by changing the mix of routes within the definition of “minority transit routes” based, in part, on the location of a garage rather than the neighborhoods served.

We remain concerned that the definition of “disproportionately high and adverse effect on minority and low income populations” remains extremely subjective. While establishing a bright line, objective test would be difficult and very likely counter-productive, FTA should provide assurance to transit agencies that their locally-defined measures of what might be predominantly borne by a particular population or is appreciably more severe will not be subjected to second guessing. We believe FTA should include language in this definition that the measures are ‘in relation to reasonably constructed local standards established by the public transportation agency to reflect local characteristics’ and note that practices such as the “4/5 rule” used at some agencies will

be presumptively accepted. This creates a reasonable safe harbor minimum while allowing agencies the necessary flexibility to respond to local conditions.

Chapter 3 (General Requirements and Guidelines)

The requirement for approval by a grantee's board of directors prior to submission to FTA in Chapter 3, paragraph 4 and repeated elsewhere in the draft is problematical. While FTA's intent to ensure Title VI programs receive appropriate attention from agency policy officials, the great variance in agency structure and practice across the country makes such a sweeping requirement almost impossible to interpret, comply with, and enforce. As drafted, the requirement begs a number of questions. Does this require approval by the full board or, in agencies with very large boards particularly, will a board committee suffice? Must the boards approve every document considered by their staffs or are staff reports sufficient? Must the boards also review the detailed equity analysis documentation their staffs and general managers work from? Would a system that allows a general manager and board chair to jointly approve a plan meet this proposed requirement? We believe a simple statement that the program must be approved by appropriate officials responsible for policy determinations in the agency, consistent with the agency's usual policy making functions, would meet FTA's needs while allowing flexibility. While this will, in many if not most cases, mean an agency's board of directors takes an action, it also allows for the wide variation in organizations and practices.

We believe the requirement for primary recipients to include copies of sub-recipient Title VI programs in their own submissions would be unduly burdensome on state departments of transportation that manage the Section 5310 program and oversee hundreds of sub-recipient agencies. We suggest simply retaining sub-recipient programs for inspection during FTA's State Management review would be effective and less administratively burdensome.

Chapter 4: (Requirements and Guidelines for Transit Providers)

While we understand and support FTA's intent that Title VI policies and practices should be pervasive in public transportation, we believe FTA must differentiate between sub-recipients and contractors. As drafted, the policy would suggest contract operators would be responsible for submitting Title VI documentation that would be duplicative, at best, of those of the agencies they provide services to. Contract operators serving under contracts of limited scope and duration (e.g., a paratransit contractor providing services under a contract that renews from year to year based on options) often do not have the autonomy or ability to act independently of the agencies they support. We believe any requirement for contractors must be differentiated from those applicable to sub-grantees to avoid confusion and establish meaningful programs.

Although not explicit, the proposed text suggests a requirement for passenger surveys, conducted at three year intervals or more frequently. We believe FTA should more fully explain their concept of required surveys and, if FTA believes surveys are required, it should consider less frequent surveys. Conducting a valid reliable rider survey is an expensive activity in the best of economic conditions. A five year survey cycle, if any at all, would be consistent with New Starts practices and less onerous on agencies. We ask also that FTA explicitly note the limitations on information collected from our paratransit riders and factor those limitations into its requirements.

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We appreciate the opportunity to assist FTA in this important endeavor. For additional information, please contact James LaRusch, APTA's chief counsel and vice president corporate affairs, at (202) 496-4808 or jlarsch@apta.com.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Michael P. Melaniphy". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael P. Melaniphy
President and CEO

MPM/jpl/jr