



**AMERICAN  
PUBLIC  
TRANSPORTATION  
ASSOCIATION**

November 9, 2009

U.S. Department of Transportation  
Docket Operations  
West Building Ground Floor  
Room W12-140  
1200 New Jersey Avenue, SE  
Washington, DC 20590

**RE: Federal Transit Administration Docket Number FTA-2009-0030**

Dear Docket Clerk:

On behalf of the 1,500 member organizations of the American Public Transportation Association (APTA), I write to provide comment on the Federal Transit Administration's (FTA) Advance Notice of Proposed Rulemaking (ANPRM) concerning Capital Project Management, published September 10, 2009 at 74 FR 46515.

***About APTA***

APTA is a non-profit international trade association of 1,500 public and private member organizations, including transit systems; high speed 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 Comment**

We applaud FTA's continuing efforts to seek consensus in advance of formal rulemaking processes and intent to streamline the project management oversight system. While we believe some of the proposals in this ANPRM would run contrary to the streamlining effort, APTA and its members stand willing to assist FTA in finding appropriate means to protect the federal investment in transit projects without making oversight significantly unnecessarily expensive and cumbersome both for FTA and its grantees.

*Chair*  
Mattie P. Carter

*First Vice Chair*  
Michael J. Scanlon

*Secretary-Treasurer*  
Nathaniel P. Ford, Sr.

*Immediate Past Chair*  
Beverly A. Scott

*Vice Chairs*  
J. Barry Barker  
    *Government Affairs*  
Doran J. Barnes  
    *Human Resources*  
Linda J. Bohlinger  
    *Research and Technology*  
Christopher P. Boylan  
    *Management and Finance*  
Flora M. Castillo  
    *Transit Board Members*  
Joyce Eleanor  
    *Bus and Paratransit Operations*  
Joseph Giulletti  
    *Commuter and Intercity Rail*  
Sharon Greene  
    *Business Members*  
Delon Hampton  
    *Business Member-at-Large*  
Angela Iannuzziello  
    *Canadian Members*  
Michael A. Sanders  
    *State Affairs*  
Gary C. Thomas  
    *Rail Transit*  
Peter J. Varga  
    *Small Operations*  
Alice Wiggins-Tolbert  
    *Marketing and Communications*

*President*  
William Millar

## **Applicability of the Rule**

Here, as throughout our comments, we believe some of the very specific questions posed in the ANPRM may be premature and instead offer broader, programmatic comments.

The proposed expansion of the applicability of the rule is problematic. As proposed, FTA would shift from first determining if a given project was a “major capital project,” then reviewing a grantee’s technical capacity to assign appropriate oversight resources where a project was deemed major to a practice of reviewing technical capacity as the means of determining whether a project was a major capital project. This proposal would greatly expand the number of projects subject to Project Management Oversight (PMO) review, including fixed guideway projects that appear to be outside FTA’s statutory authority under 49 USC 5327. Even assuming a greatly expanded interpretation of section 5327 authority exists, expansion of the oversight universe would be counterproductive. Costs to grantees would be increased, FTA’s already thinly-stretched contractor and in-house resources would be given even more tasks, and the quality of oversight would likely decline, threatening the success of major capital projects that would otherwise benefit greatly from the advice and assistance of dedicated PMO resources.

## **Principles and Requirements for Capital Projects**

While clearly well intentioned, several of the proposed principles and requirements would frustrate FTA’s purposes. The ANPRM describes a shift in policy from assuming the competence of FTA grantees to assuming their incompetence. We believe this philosophical shift will prove detrimental to the program, adding expense and time as project sponsors unnecessarily prove baseline competencies and FTA reviews these submissions. Moreover, this proposed shift would be contrary to the provisions of 49 USC 5309(c)(2), which specifically accepts grantee certifications as sufficient bases for technical capacity and other required determinations.

Similarly, the proposal to require an asset management plan for all fixed guideway capital projects expands the PMO program, adds costs and time for submissions and FTA review, and would add little to the quality of projects. The statutory requirement in Intermodal Surface Transportation Efficiency Act (ISTEA) for Transit Management Plans was subsequently eliminated and we do not believe it valuable or appropriate to essentially recreate that requirement through FTA review and approval of asset management plans. Additionally, the proposed expansion of checklists to fixed guideway modernization and other projects would similarly impact project costs and schedules.

The eight proposed volumes of a Project Management Plan and the proposed requirement that each serve as a prerequisite of entering Preliminary Engineering (PE) would add unnecessary costs to projects. Many aspects of these plans are logical products of the PE process rather than prerequisites and attempts to define them prior to PE would be of little or no value. Additionally, requiring FTA

approval of sub-elements of the PMP not required by 49 USC 5327(a) would likely add time and costs to projects.

We do not believe fixed guideway modernization or state of good repair projects can appropriately be grouped with New Starts or Small Starts projects. The former are accomplished by experienced agencies and involve greatly reduced risk for the federal investment.

### **FTA Oversight**

As an overarching theory in prescribing oversight requirements, FTA should always remain mindful of the relative risk borne by and relative investment by FTA and the local sponsor. FTA oversight should not dominate what are largely local efforts and FTA should not substitute its judgment in areas where all or the vast majority of risk is borne by the sponsor. We believe that once the federal investment is capped and cost risk effectively shifted to the local sponsor, FTA actions should not be allowed to increase those costs through delay or otherwise. FTA oversight, while vital to the federal interest, should add value to projects rather than add costs.

We believe FTA's risk assessment processes provide an area where streamlining could greatly increase the value of the PMO program. The current sequential nature of risk management reviews serves to delay project implementation. By moving to a real time review model, risk assessment could be an aspect of technical assistance, maintaining the benefit of the reviews without the burden of delay.

We believe much of FTA's financial capacity and technical capacity assessment can be done more cost effectively at a programmatic level. This would minimize redundancy, uncertainty and delay, while saving money for both sponsors and FTA. Moreover, improvements in management processes and capabilities from a programmatic review would apply to multiple projects, increasing the value of the oversight program.

### **Recommendations**

We believe continuation of the collaborative process can overcome the issues we have identified, strengthen the protection of the federal investment in transit projects, and add value to projects through the oversight process.

We believe regional listening sessions are vital to ensuring the ultimate rule is valuable and comprehensive and to avoid unintended consequences that detract from the PMO program and FTA assisted projects. Regional listening sessions would carry the added benefit of promoting consistency across regions. As with many aspects of nationwide programs, regional differences in interpretations and practices detract from the PMO program and cause uncertainty for grantees and PMO contractors as well.

Additionally, we believe listening sessions in conjunction with APTA events such as the 2010 legislative and rail conferences would be of great benefit, since those sessions would bring together commentators from across the country, once again supporting consistency in the application of the ultimate rule. We would be pleased to assist FTA in scheduling these sessions.

As always, we appreciate this opportunity to work with FTA on this important aspect of transit policy. For additional information, please contact James LaRusch APTA's chief counsel and vice president corporate affairs at (202) 496-4808 or [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,

William Millar  
President

WM/rk

DRAFT