



March 11, 2013

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Docket Operations, M-30
West Building Ground Floor
Room W12-140
Washington, DC 20590-0001

RE: Docket No. FTA-2010-0009

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) Proposed New Starts/Small Starts Policy Guidance, which was released for comment on January 9, 2013, at 78 FR 2038.

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

We support FTA's continuing commitment to increasing flexibility and options for local project sponsors while maintaining careful stewardship of federal funding and offer the following comments to assist in those efforts.

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As detailed below, we remain concerned that some of the proposed measures and rating thresholds in the draft guidance do not adequately account for the substantial differences in project length, scope and size of investment among projects of vastly different size and complexity. Some of the measures apply identical rating thresholds for New Starts and Small Starts projects, and APTA feels that the project evaluation and rating process should more accurately account for the different scale of projects. We urge FTA to make appropriate adjustments to the draft to fully accommodate these differences.

COMMENTS ON CRITERIA

Assessing Impacts of Proposed Breakpoints/Measures

- We note that FTA's research on performance of existing projects, used to develop the proposed rating thresholds and breakpoints, was not released with the draft. Because access to such research would be invaluable to FTA grantees and other in crafting salient, informed comments, we recommend future iterations of proposed New Starts/Small Starts guidance include underlying research. The quantitative nature of most of the evaluation and rating procedures proposed in the Policy Guidance makes it difficult to accurately gauge potential impacts without testing them against real project data. In the absence of this research, we have estimated impacts by applying the proposed breakpoints and measures to data about the projects reported in FTA's *Annual Reports on Funding Recommendations*, as well as a sampling of projects in pursuit of FTA approvals.
- APTA's analysis of existing projects in the New Starts and Small Starts pipeline and a sampling of projects pursuing FTA approvals indicates that some of the proposed measures and breakpoints, in particular the proposed mobility improvement and land use measures, are extremely challenging for projects in all but the most dense corridors in the largest metropolitan areas. These include nearly all Small Starts projects, including BRT, rapid bus, commuter rail, urban circulators and streetcars, many current New Starts projects, and a number of worthy projects funded through TIGER discretionary grants or local funding.
- We recommend that FTA establish separate mobility and land use breakpoints for New Starts and Small Starts, and distinguish breakpoints for projects with lower cost. A unilateral approach to these criteria fails to recognize the differences in size and scale of corridor between projects, and holds smaller projects to an inappropriately high standard. Thus, FTA should establish:
 - a single set of breakpoints for Small Starts; and
 - two sets of breakpoints for New Starts:
 - one for New Starts that are considered mega-projects (over \$1 billion); and
 - one for projects costing less than \$1 billion
- As noted above, this concept of scaled breakpoints would apply specifically to the proposed mobility improvement and land use measures that currently remain unscaled.

National Model

- FTA plans to provide a national model for optional use for estimating trips. This model will affect three of the six criteria: environmental benefits, mobility improvements, and cost effectiveness, all of which use trips as an input into calculation of measures. We believe it would be appropriate and prudent for FTA to vet this model with its grantees and other interested parties prior to implementation, since the assumptions contained in the model will

have a significant impact on the project rating process and influence regional transit outcomes into the future.

Horizon Year for Analysis

- The FTA final rule on Major Capital Investment Projects, released concurrently with the draft guidance on January 9, 2013 (the Final Rule), specifies that various criteria must be addressed for a current year, defined by FTA as “as close to today as the data will permit.” Sponsors may also address the criteria for a horizon year 10 or 20 years in the future, in which case FTA proposes an equally weighted average of 50 percent current and 50 percent horizon year. Consistent with our March 26, 2012 comments on the subject, we urge FTA to abandon this proposed, sweeping change to the current practice of relying on twenty year horizon data.
- For New Starts, a ten-year horizon is inconsistent with basic planning practices and requirements in metropolitan areas, and inconsistent with the *National Environmental Policy Act* (“NEPA”), where the horizon is twenty or more years in the future. Project sponsors must forecast riders into the future in order to properly size their projects, and to address NEPA requirements.
- The proposed approach would ignore much of the benefit from planned growth and development. Many project benefits are not realized on the day of opening as the project shapes future growth and development. Project sponsors in growing areas should be given the option to add greater weight by allowing the use of horizon year forecasts without averaging.
- Further, the use of current year data fails to account for the impacts of future-year demand on facilities and operations.
- FTA should amend this draft guidance and specify
 - An operating plan designed for the current-year level of demand or for a future horizon year may be used, at the option of the project sponsor; and
 - FTA will participate in the added costs necessary to meet future-year demand if the operating plan and physical facilities (capital) are scaled for shorter-term needs.

Warrants

- To promote simplification and streamlining, APTA strongly endorses FTA’s proposal to expand the use of warrants for project justification criteria. However, the proposed policy guidance does not include application of FTA’s current warrants for Very Small Starts (VSS), leaving sponsors who have been following the FTA’s Small Starts guidance since 2007 without a clear path to advance their projects.
- While FTA is reviewing and updating the VSS warrants in light of MAP-21, we urge FTA to allow projects to continue applying the prior warrants until those warrants are updated to respond to 49 USC 5309(g)(3). As FTA does update the warrant process for these small projects, it should ensure that modes other than rapid bus type projects can adequately compete.

Private Sector Contributions

- In recent years there has been considerable national interest in encouraging private sector contributions to public infrastructure projects. The Final Rule, in accordance with MAP-21, calls for the evaluation of local financial commitment of proposed New Starts and Small Starts projects to reflect consideration of private contributions.
- The proposed policy guidance discusses “whether there is private participation” as among the “measures to be used for the evaluation of the local financial commitment,” but does not specifically cite private contributions in the local financial commitment breakpoints. We request that FTA withhold guidance on this point in order to further study whether measuring and weighting private financial participation would positively impact or inappropriately skew the calculation of measures.

COMMENTS ON SPECIFIC CRITERIA

Mobility Improvements

Scaled Breakpoints for New Starts and Small Starts

- As proposed, breakpoints for the mobility improvements measure are not scalable to the size of a project. Further, breakpoints are the same for Small Starts and New Starts.
- Specified ranges for the breakpoints are extremely high. We estimate that, without adjusting for transit-dependent riders, 30,000-50,000 daily trips would be needed to achieve a Medium rating. This is challenging for many New Starts, and will be impossible for nearly all Small Starts.
- APTA completed an analysis of New Starts and Small Starts projects currently in the pipeline. Data are reported for fifteen New Starts projects. Two projects would achieve a High rating, three projects a Medium-High rating, five a Medium rating, and the remaining five projects a Medium-Low or Low rating under the proposed breakpoints.
- As per our analysis, of the eight Small Starts projects rated, only two of the projects would have exceeded the Medium mobility improvements threshold, both of which are in very high-density and high travel volume corridors. The remaining six projects are generally well under 10,000 riders daily, with one averaging 17,000 riders per day.
- This analysis demonstrates that the proposed rating thresholds are excessive for Small Starts scale and type of investment and would even limit the ability of a substantial number of clearly strong New Starts projects to achieve acceptable ratings.
- As discussed above, a unilateral approach on this criterion fails to recognize the differences in size and scale of corridor, and holds smaller projects to an almost impossible standard. Thus, FTA should establish, separately:
 - a single set of mobility improvements breakpoints for Small Starts; and
 - two sets of mobility improvements breakpoints for New Starts:
 - one for New Starts that are considered mega-projects (over \$1 billion); and
 - one for projects costing less than \$1 billion

Additional Weighting for Transit Dependent Riders

- The guidance proposes to use a factor of two in counting riders who are transit dependent, defined as those from zero-car or low-income households as determined in the local ridership forecasts. We appreciate and support the desire to give credit to projects that benefit transit dependent riders. However, we suggest that the number of trips by transit dependent riders be reported as a separate component, rather than being double-weighted and merged with the overall ridership figures, for the following reasons:
 - Mixing transit dependent riders into this category would result in the number of transit dependent riders being obscured, as there would be no distinct reporting of their numbers in the current proposal.
 - Giving additional weight to the number of trips by transit dependent riders provides no additional information on the total mobility created by a project. Rather, it enhances credit for those who are disadvantaged and being served by a project.
 - Finally, the breakpoints of lowest income vary between regions, leading to variations between projects that don't reflect actual benefit differences but simply variations in how "low-income" or "carless" households are defined by each region.

Counting Trips on Improved Existing Line

- In line extensions, sponsors may improve the capacity of an existing line. To maintain consistency of analysis, both resulting cost and ridership benefits should be counted, specifically trips on the existing line, as the cost of improvements to the existing line are already included in the cost effectiveness and environmental benefits calculations. For example, new rail cars could be purchased to serve a line extension, resulting in added passenger capacity at stations along the existing line.

Economic Development Effects

Affordable Housing

- For the economic development criterion, FTA proposes breakpoints for plans and policies to maintain or increase affordable housing in the project corridor. We request that FTA adopt a subjective, non-numerical definition of "affordable housing", allowing the sponsor to demonstrate that they have examined affordable housing based on local conditions.
- Currently, several organizations are working collaboratively on a working definition of affordable housing that could avoid skewing this measurement. FTA should refrain from using a single, objective measure of affordable housing until that process is complete and reviewed by both FTA and the broader affected community.

Transit Supportive Plans and Policies

- We support FTA's proposed breakpoints that account for the degree of local and private sector commitment to economic development, a commitment which may not be readily apparent in plans and policies. Possible indicators include developer agreements; local public funding incentives for development; value capture funding including self-imposed taxing or assessment districts, and private funding support for the transit project and supporting facilities.

Environmental Benefits

Calculating VMT Reductions

- FTA has developed a spreadsheet to calculate benefits based on changes in VMT. However, VMT reduction doesn't capture the environmental benefit of projects that help retain existing riders by making travel by public transit more reliable.
- Further, the use of VMT as the basis for calculating environmental benefits seems to contradict findings of the TCRP H-41 report, *Assessing and Comparing Environmental Performance of Major Transit Investments*, published in January 2012. The report cites GHG emissions per passenger-mile and project air pollutant emissions per passenger-mile as among the most promising measures of environmental performance.
- Rather than measuring VMT reductions, we again urge the FTA to consider using GHG emissions per passenger-mile or energy use per passenger-mile to calculate the environmental benefits of transit projects. These inputs are easily obtainable, and normalizing through the use of passenger miles would reflect the relative scale and utilization of projects.
- To monetize the value of emission reductions, FTA is proposing to give a 50 percent bonus to emission reductions in non-attainment areas. This bonus is based on FTA judgment, rather than scientific evidence. We encourage FTA to coordinate with the U.S. Environmental Protection Agency so that any bonus can truly reflect the value of emission reductions based on an area's nonattainment classification.
- Lastly, the safety factors that FTA proposes to use do not seem to reflect the large differences in safety between transit and the automobile. FTA should revise its safety factors for transit based on data reported by the National Safety Council.

Cost-Effectiveness

Excluding Operations and Maintenance Costs

- For Small Starts, the cost component of the cost effectiveness measure is limited to the annualized Federal share. FTA should exclude Federal funds used to support O&M from the cost effectiveness calculation.

Change in Discount Rate

- While we agree with the change in the discount rate from 7 percent to 2 percent, FTA should ensure that this change will be reflected in the methods and procedures used to calculate annualized capital costs and the cost effectiveness ratio. FTA should update its Standard Cost Categories worksheets to change the discount rate used to annualize costs.

Enrichments

- We support FTA's proposal to encourage project enrichments by removing their cost from the cost-effectiveness calculation.
- We suggest that the list of enrichments provided in the cost-effectiveness section not be an exclusive list, and that FTA consider other possible enrichments on a project-by-project basis.

Land Use

Scaled Breakpoints for New Starts and Small Starts

- For measures of existing land use, particularly the employment served by the system, the use of absolute numbers as proposed in the policy guidance do not take length of the corridor or size/scope of the proposed project into account. While we support measurement of these benefits, the proposed absolute thresholds aren't scalable to the size of the investment. APTA recommends that a scalable employment measure be adopted, similar to the population density measure already applied by FTA.
- FTA should clarify in guidance and in subsequent reporting instructions that the population and employment measures are based on a specified area around station areas in the project corridor. This has been the previous practice, and proposed policy guidance implies this, but confirmation is needed. It is confusing that the population and employment measures are described as "serving the system".
- The specified ranges are extremely high. For example, the proposed employment served by system is 125-175,000 to receive a Medium rating. Very few New Starts or Small Starts projects could achieve this Medium rating threshold.
- Of the Small Starts projects already approved into the pipeline under the old criteria, only three of eight would receive a Medium or higher rating for higher station area population density under the new criteria. These three projects are in dense urban corridors located in very large urban areas. Only one of eight Small Starts projects would exceed the Medium rating threshold for total station area employment. These proposed ratings criteria would, theoretically, eliminate seven projects that have already undergone a thorough analytic process and are expected to be a success.
- Given these draft breakpoints, a substantial number of New Starts projects currently in the pipeline fared poorly in the APTA analysis discussed above. Under the proposed criteria, only ten of the fifteen New Starts projects in the pipeline would receive at least a Medium rating in total number of employees, and nine of the fifteen projects would receive at least a Medium in population density.
- As discussed above, a unilateral approach on this criterion fails to recognize the differences in size and scale of corridors, and holds smaller projects to an inappropriately high standard. Thus, FTA should establish, separately:
 - a single set of land use breakpoints for Small Starts; and
 - two sets of land use breakpoints for New Starts:
 - one for New Starts that are considered mega-projects (over \$1 billion); and
 - one for projects costing less than \$1 billion

Radius of Benefits

- The proposed policy guidance is unclear as to what radii (or radius) are to be used to measure employment served by the station and population density in the station area. We suggest a ½-mile radius be used for both measures, to provide for general accessibility.

Affordability Restricted Housing in Corridor

- FTA's proposed measure compares the percentage of affordability restricted housing in the corridor with the percentage in the region. FTA has asked for comments on other approaches, such as "a simple total affordable housing quantity measure and/or a ratio such as affordable housing units per low income household."
- The proposed measure would require project sponsors to do considerable data collection, involving time and cost (particularly in major metro areas with many jurisdictions) to produce a measure of limited utility. We propose that FTA measure the number of affordability restricted housing units within ½ mile of proposed stations.

Assessing Benefits in Station Area or Entire Line

- FTA's May 2004 *Guidelines and Standards for Assessing Transit-Supportive Land Use* made clear that "employment served by system" counted all employment along a line, including a central business district (CBD) served by an existing line that is being extended. The proposed land use breakpoints are silent on this detail.
- We believe that FTA should affirmatively state that all employment along the line will be included in the rating, not solely employment around stations served by the proposed project.
- To support future iterations of this guidance, FTA should analyze the impact of a similar method of counting population – i.e., whether only populations near stations or those all along a line should be counted. Analysis is required to avoid unintended consequences that could slow or stop deserving projects. For instance, an airport connector line, while immensely useful, may be more fairly rated only on populations near stations and to do otherwise may inhibit these projects.

Congestion Relief

- We suggest that FTA, as it develops congestion relief measures, take into account not only relief of road and highway congestion made possible by the construction of transit capacity, but also system-wide benefits of congestion relief on existing transit lines. In an interrelated system, construction of new capacity can lead to congestion relief on a parallel line that is not part of the major capital project.

Breakpoints for Local Financial Commitment

- As projects progress through the project development process, they advance both in engineering and in completeness and certainty of local financial commitment. However, the proposed local financial commitment breakpoints do not differentiate between the commitment needed at the start of Engineering and the commitment needed for an FFGA. In particular, to receive a Medium rating for "commitment of capital and operating funds" under the proposed guidance, at least 25 percent of the non-New Starts capital funds must be committed or budgeted.
- Expecting 25 percent of the non-federal share to be committed at the start of Engineering is not realistic. Many agencies only budget a few years into the future and a long-term project entering Engineering may not start construction within the timeframe of the budget. Local funding measures are not necessarily appropriate until NEPA review is complete and cost estimates are more certain.
- Conversely, the 25 percent requirement appears too low for FFGA, when FTA and the project sponsor are making commitments to the delivery of a project.

- The former FTA criteria breakpoints for Local Financial Commitment required increasingly stringent standards to demonstrate the commitment of local funding as a project advanced through the pipeline.
- APTA suggests FTA return to incremental standards for different stages of the evaluation process. We recommend a standard that is more in keeping with project progression, as well as with successful application of progressive standards in past practice, as follows:
 - Entry into Engineering: A reasonable financial plan for securing capital and operating funding;
 - FFGA: 100 percent of non-5309 funds committed or budgeted.

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,



Michael P. Melaniphy
President & CEO