AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

April 14, 2022

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

Subject: Request for Comment on the Capital Investment Grants Program Initial Guidance Proposals (FTA-2021-0010)

Dear Docket Clerk:

On behalf of the 1,500 public- and private-sector member organizations of the American Public Transportation Association (APTA), I write to provide comments on the Federal Transit Administration's (FTA) Capital Investment Grants (CIG) Program Initial Guidance Proposals published in the *Federal Register* on March 15, 2022, at 87 FR 14612. The Infrastructure and Investments Jobs Act (IIJA) (P.L. 117-58) made a series of changes to the CIG program framework. FTA's proposed Initial Guidance clarifies how several specific changes in the statute will be incorporated into the overall CIG program.

We appreciate that FTA is seeking feedback from the public transit industry on its CIG Initial Guidance Proposals and are grateful for the opportunity to provide this input. APTA strongly supports the CIG program and has surveyed members to develop these comments regarding the Initial Guidance.

As Congress developed the IIJA, APTA strongly urged Congress and the Administration to conduct a zero-based review of each requirement in the CIG program. We believe that Congress, in adopting many of APTA's CIG recommendations, specifically intended to strengthen the CIG program, expedite approval, and ensure that beneficial projects across the nation are delivered in a timely manner. As FTA implements changes to the CIG program and processes, we urge the agency to ensure that each change further streamlines the delivery of this critically important program to our communities.

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The FTA Initial Guidance proposes changes in three key areas: CIG project eligibility; demonstrating progress toward meeting Transit Asset Management (TAM) targets; and bundles of CIG projects.

APTA offers the following comments on FTA's proposed changes to its CIG Policy Guidance.

1. **CIG Project Eligibility**

   a. **New Starts and Small Starts**: Consistent with the IIJA, FTA's Initial Guidance proposes to change the eligibility of New Starts to projects with a total estimated cost of $400 million or more or that are seeking $150 million or more of section 5309 CIG funds. FTA proposes to change the eligibility of Small Starts to projects that are less than these two thresholds. FTA further indicates that these changes are self-effectuating. **APTA strongly supports FTA's determinations and believes that these new thresholds should be effective as of the date of enactment of the IIJA.** We believe that these changes will have an important impact on expediting approval of Small Starts that qualify under the revised thresholds.[1]

   b. Core Capacity: In addition, the IIJA includes changes to the eligibility parameters for Core Capacity projects. Specifically, under the IIJA, for a project to be eligible for Core Capacity, the project must be at or over capacity within 10 years. As we stated in our October 13, 2021 letter[2] to FTA responding to its Request for Information (RFI) on the CIG program, **APTA strongly supports this change because Core Capacity projects are major investments and require a longer time horizon.**

   Concurrent with the statutory change to the 10-year time horizon for Core Capacity projects, FTA proposes to alter its methodology for making a Core Capacity eligibility determination. The Initial Guidance also incorporates the IIJA requirement that the assessment of capacity shall be "without regard to any temporary measures employed by the applicant expected to increase short-term capacity within the next 10 years."

   APTA also urges FTA to allow transit agencies to demonstrate that a corridor is likely to be over capacity in 10 years based upon a forecast of future service and ridership, perhaps using FTA's Simplified Trips-on-Project Software (STOPS) or the agencies own regional travel demand model. There are situations where existing ridership is a poor indicator of future ridership (*e.g.*, in cases where a new line is being built that

[1] *See* APTA Capital Investment Grant Project Pipeline Dashboard (03.28.2022) at https://www.apta.com/wp-content/uploads/APTA-CIG-Project-Pipeline-Dashboard-03.28.2022.pdf.
[2] APTA Letter to the Honorable Nuria I. Fernandez regarding FTA Request for Information Concerning the Capital Investment Grants Program (FTA-2021-0010), October 13, 2021.

connects to an existing line.). Additionally, current COVID era ridership may not be an adequate indicator of where ridership will be in near term windows of time.

Although APTA appreciates FTA's proposal of less stringent current usage requirements, we believe that the changes proposed by FTA do not address and adequately measure the significant capacity constraints faced by transit agencies in certain corridors. As we indicated in our October 13 letter,[3] a transit corridor's capacity is determined by three factors:

1) the corridor's maximum throughput capacity;
2) ridership levels and passenger loads, particularly at maximum load points; and
3) the safe and comfortable passenger carrying capacity per vehicle.

Agencies establish thresholds for passenger crowding in their formal service standards, the most common of which is vehicle passenger loads at maximum load points. Those service standards are officially adopted by the agency's policymaking body and communicated to FTA in the agency's Title VI program. If the agency's service standards are being violated and the corridor is already performing at maximum vehicle throughput capacity (i.e., the maximum number of trains or buses per hour as determined by existing systems, equipment, and facilities), the corridor may warrant the type of major capital investment anticipated by the Core Capacity category of the CIG program.

APTA strongly encourages FTA to allow a project to qualify as capacity constrained based on the public transit agency's own established service standards, as included in the Title VI program submitted to FTA. This approach would align FTA's calculations and requirements with the standards and methods most agencies already use to track and evaluate corridor crowding and capacity. It also allows FTA to easily verify each project sponsor's metrics and thresholds against the service standards listed in the Title VI program.

In addition, APTA believes the capacity utilization measure should be calculated and applied at the corridor's peak load point or segment, rather than calculated as an average of the entire project corridor.

If FTA believes that it is necessary to retain the current capacity measure based on average space per passenger, FTA should allow project sponsors to input the actual usable space of the vehicles serving that corridor, rather than an automatic calculation based on the vehicle's length and width. This approach would allow for a fairer accounting of the actual usable space in an agency's vehicles, as seating configurations

[3] *Id.*

and other internal elements can vary widely. FTA should understand that rail vehicles, and particularly light rail vehicles, vary greatly from agency to agency.

Moreover, in the Explanatory Statement of the Congressional Appropriations Act, 2022 (P.L. 117-103), Congress directed FTA to reevaluate the calculation to determine interior size of railcar capacity for making core capacity determinations. In re-evaluating this calculation, Congress specifically directed FTA to "ensure that the method recognizes variation in vehicle configurations and provides flexibility for agencies in determining usable space per passenger in the corridor for determining eligibility for Core Capacity funding."[4]

We strongly believe that allowing project sponsors the option of proposing an alternative way to calculate capacity based upon unique characteristics of their vehicle fleet is both the best policy approach and most reflective of Congressional intent.

Finally, FTA should also ensure that any capacity threshold defined by a square feet per passenger standard must not only consider vehicle dimensions but also allow agencies to align their capacity definitions to changes in public health considerations. FTA must allow agencies to reduce their passenger load factors and maximum crowding thresholds because of the COVID-19 pandemic and concerns about future public health emergencies.

2. **Demonstrating Progress Toward Transit Asset Management Targets**

The IIJA requires FTA to determine that an applicant has made progress toward meeting TAM targets prior to issuing a CIG Grant. APTA supports FTA's efforts to promote the integration of asset management principles into overall agency plans, including system expansion, and strongly agrees that progress toward TAM targets should be based on performance against a public transit agency's chosen target. At the same time, we do not believe that the Initial Guidance is likely to promote transit asset stewardship as intended with the TAM final rule. In its Initial Guidance, FTA focuses on TAM targets and performance for rolling asset classes. Specifically, FTA recommends that, if agencies demonstrate that at least one of the asset classes within the rolling stock vehicle category has met or done better than its target in at least one of the applicable years, the agency can determine that progress has been made toward meeting TAM targets and the CIG can be awarded.

APTA has several concerns with this approach.

First, under the TAM final rule, FTA established state-of-good-repair performance measures for four areas: rolling stock, infrastructure, facilities, and equipment. The Initial Guidance limits review to progress in rolling stock only. This approach is problematic and may be counterproductive. The transit network is a "system of systems", and there is a synergy among

[4] 168 Cong. Rec. 3038 (March 9, 2022).

the asset management categories and progress in one area may overcompensate for lack of perceived progress in another area. For instance, on a transit rail system, a train moves from a facility on track laid on a guideway that may cross a bridge or a culvert; and is powered by power systems and controlled by signal and communications systems to transport customers to stations. None of these service enabler assets (e.g., maintenance equipment, signals, systems, amenities, power, track, facilities, and land) are considered in the proposed approach, but without them, the service would not be able run. Moreover, these assets often account for the largest share of an agency's capital asset base, and possibly the largest share of its capital program. In the exercise of planning, programming, and implementing capital plans, the entire system must be considered. Moreover, the Initial Guidance, with its exclusive focus on rolling stock, would adversely impact transit agencies that have focused investments on core infrastructure, which is also essential to providing safe, reliable, and efficient public transit service. **APTA recommends that the Guidance enable transit agencies to show progress toward meeting TAM targets in <u>any</u> of the four SGR areas: rolling stock, infrastructure, facilities, and equipment.**

Second, the Initial Guidance does not take into account that, under some circumstances, it may make fiscal sense to operate vehicles beyond their useful life.[5] When assets are well maintained and new methodologies and maintenance practices are adopted through a controlled data-driven process, assets can outlast their expected useful life thresholds and still function effectively. In addition, if an asset is designed to be more resilient with materials that have long use lives and are more wear and contaminant resistant, it is feasible for assets to surpass their benchmark useful lives. For example, the New York Metropolitan Transportation Authority implemented new assets and "hardened" existing assets in its public transit system to be more resilient after Super Storm Sandy, thereby increasing its useful life for vulnerable assets throughout the system.[6] **APTA agrees that progress on one of the rolling stock vehicle classes should constitute progress toward meeting the TAM targets. However, APTA also recommends that the Guidance take into account that, under some circumstances, it may make fiscal sense to operate vehicles beyond their useful life.**

Third, the Initial Guidance does not adequately account for achieving long-term TAM targets. The Initial Guidance could disadvantage agencies, particularly legacy rail transit systems, that are making significant rolling stock procurements because of the long-term delivery schedule of some major rolling stock procurements (e.g., rail cars). APTA's recommended practice on establishing TAM targets advocates for mid- to long-term targets and makes the case that short-term targets are more about how well your procurement and supplier functions work. **APTA recommends that the Guidance take into account achieving long-term TAM targets.**

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[5] *Useful Life of Transit Buses and Vans,* Report No. FTA VA-25-7229-07.1.

[6] FTA Funding Allocations for Hurricane Sandy Recovery and Resiliency at https://www.transit.dot.gov/funding/grant-programs/emergency-relief-program/fta-funding-allocations-hurricane-sandy-recovery-and.

Fourth, we appreciate that FTA has taken a two-step approach where projects that are expected to receive a CIG Grant on or before December 31, 2023, meet one standard while projects that expect a CIG Grant after that date meet a higher standard. We understand that FTA implemented this two-step approach because many agencies typically only have three full years of data currently available. We appreciate that FTA devised this two-step approach to assist agencies.

APTA recommends that this approach be restructured in the following manner. The two-step threshold process should remain in place, but the transition point should be extended from December 31, 2023, to December 31, 2027. APTA believes that more time is needed for public transit agencies to prepare for this significant change in the decision-making process.

Until January 2028, require agencies to produce their TAM plans and narrative reports, and how they plan to make progress toward achieving a state of good repair over the TAM plan horizon. Any shorter window is not practical with how agencies procure vehicles or perform projects. Using a five-year or 10-year target setting process would align with APTA's recommended practice.[7] This approach will allow agencies to utilize existing plans and reports to document the alignment of their TAM and financial plans.

For those projects anticipating a CIG Grant after January 2028, FTA must develop a new set of standards for utilizing a measuring system that demonstrates improvements in asset management that meets the statutory requirement. If FTA must be able to award grants based on progress toward TAM targets, then a rubric for qualitatively assessing alignment to that purpose should be implemented. We appreciate that Congress and FTA want to determine if an agency is making progress toward TAM targets before FTA issues a grant for a new major capital investment. There is, however, no single measurement that would tell us that. With time, a rubric could be created that utilizes information on asset management performance that better encapsulates an agency's progress than using an oversimplified reliance on a single asset category. Significant work went into standardizing National Transit Database (NTD) data and there are now a set of standards that have been documented. We recognize that developing such a rubric will take a significant effort, but we believe it will be a much better tool to demonstrate progress.

We encourage FTA to develop this approach in new Guidance that is issued for public comment by December 31, 2022, and that the agency issue final CIG Guidance with these revised TAM requirements no later than October 1, 2023. Under this timeline, agencies can understand the CIG TAM requirements nearly five years prior to implementation and develop TAM updates that align with these expectations.

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[7] Using Performance Targets to Drive a Transit Asset Management Program at https://www.apta.com/research-technical-resources/standards/sustainability/apta-suds-tam-wp-009-20/, October 16, 2020.

APTA, and specifically APTA's Planning, Policy & Program Development Committee, is eager to work with FTA staff to discuss this issue further.

3. **Bundles of CIG Projects**

APTA strongly supports the CIG bundling authority provided by the IIJA. We believe that there are many public transit systems currently performing large-scale, transformational planning for entirely new or expanded transit investments that can benefit from this approach. As FTA develops the bundling authority, it is important to remember that the purpose of this initiative is to expedite approval of these transformational public transit investments. The proposed changes to implement bundling in the Initial Guidance appear limited to the information necessary for an agency to request to enter a bundle of projects into Project Development (PD). We are encouraged that FTA envisions this information can be included in a "short letter" and these additional requirements appear to be reasonable and straightforward.

As this program is further defined, particularly the requirements of PD and Engineering, we believe that FTA must take a broad view of how a bundle is structured. To make this program as open and effective for the array of agencies who may try to utilize it, FTA must provide as much flexibility as possible. Some public transit agencies may be envisioning a series of what would otherwise be individual Small Starts, while other larger systems might be envisioning a bundle of New Starts and Small Starts. Some transit agencies with existing transit networks might want to consider a series of New Starts, Small Starts and Core Capacity projects in one bundle. FTA should provide transit agencies with maximum flexibility to define their bundles in a manner that best meets the needs of their specific communities. A limited definition of eligible elements in a bundle will limit the success of bundling.

In addition, for the purpose of project management, and consistent with the objectives of the bundling authority, APTA urges FTA to consider a bundle as one project and allow for single, comprehensive documentation of the project (e.g., Project Management Plans, Financial Capacity Documentation, Technical Capacity Documentation). While these documents may be updated over the life of a bundle, agencies must not be overly burdened by creating new versions of each submittal for each element of a bundle. FTA must also give consideration for work previously completed on early elements of a bundle.

We also suggest that for immediate bundles, when developing project criteria, FTA allow proponents to combine (e.g., a single Land Use criteria submittal vs one for each separate project) and that ridership demand modeling be conducted once with all immediate bundle projects, rather than independently for each separate project. This would reflect the systemic benefits of having the multiple projects in operation together and recognize the benefits of combining projects.

We appreciate the opportunity to provide input to FTA on its CIG Initial Guidance. We realize that this Initial Guidance is an interim document and anticipate that FTA will issue comprehensive CIG Guidance later this year. In October 2021, APTA provided significant comments in its response to the FTA CIG RFI, and we look forward to working with you as FTA prepares its comprehensive Guidance, or as it considers other updates to the CIG program.

If you have questions or would like to discuss our comments further, please contact Linda Ford, APTA's General Counsel, at (202) 496-4808 or lford@apta.com.

Sincerely yours,

Paul P. Skoutelas

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President and CEO