General CIG Policy Guidance Comments

FTA received one comment expressing general support for the proposed changes to the Capital Investment Grants (CIG) Policy Guidance. Another commenter suggested that each change should streamline project delivery. Some comments received were outside the scope of this initial proposal. FTA will not respond to comments that were outside the scope but may take them under consideration for future updates.

FTA Response: FTA appreciates the comment noting support for the proposed changes to the CIG process. FTA strives to implement streamlined and simplified CIG evaluation measures and processes. This includes use of "warrants"— ways that projects can get automatic ratings without having to develop and submit extensive information to FTA. It also includes development of the Simplified Trips-on-Project Software (STOPS) tool to make estimating ridership simpler and quicker, use of standard factors for calculating environmental benefits, and standardized cost reporting forms. Following the publication of this initial policy guidance update and as noted in the July 2021, Request for Information (RFI) in the Federal Register (see https://www.federalregister.gov/documents/2021/07/15/2021-15079/request-for-informationconcerning-the-capital-investment-grants-program), FTA intends in the future to propose a more comprehensive update of the CIG Policy Guidance for notice and comment, incorporating feedback FTA received in responses to the RFI.

Bundles Comments

FTA received comments from a total of 10 respondents on the topic of Bundles of CIG Projects.

Bundles – Project Development Request Submission Requirements

FTA received four comments on the proposed Project Development (PD) request submission requirements for a Bundle of CIG projects. All four comments expressed support for the requirement that only a short letter containing information on eligibility be provided to FTA, noting the requirement seemed reasonable and straightforward.

FTA Response: FTA appreciates the support for this proposal. In the final initial guidance updates, FTA has kept the requirement that only a short letter containing information on eligibility be provided to FTA.

Bundles – PD Request Requirement to Include Project Cost and CIG Share

FTA received one comment on the proposed requirement that a PD request for an immediate or future bundle include the estimated capital cost and the requested CIG share for each project in the bundle. The comment noted that the CIG share should be set at entry into Engineering and estimated cost after the risk assessment.

FTA Response: Section 5309(i) requires project sponsors to include the cost and CIG share for each project in a PD request for an immediate or future bundle of CIG projects. FTA must follow the statute. FTA acknowledges that the cost and CIG share are the project sponsor's best estimate early in development and will likely change as the projects are further planned and designed. FTA is not requiring that either the cost or CIG share be locked in at the amounts specified with entry into PD. This is clarified in the final initial updated CIG Policy Guidance.

Bundles – Commitment of PD Funds

FTA received two comments on the proposed requirement that non-CIG funding covering PD costs be identified and committed for projects in an immediate bundle or the initial project in a future bundle. Both expressed support for this proposal.

FTA Response: FTA appreciates the support for this proposal. In the final initial guidance updates, FTA has kept the requirement.

Bundling Projects already in the CIG Program

FTA received two comments on the proposal that projects already in the CIG Program could be eligible for a Bundle by providing a similar letter as for a new Bundle explaining, among other things, the bundle of CIG projects and their timeframes. One comment was in support. One comment was opposed because the statute authorizing Bundling was not in place when these projects entered Project Development and the commenter felt that allowing them to Bundle would provide an advantage by providing them access to Letters of Intent.

FTA Response: Section 5309(k)(1)(A) allows any New Starts or Core Capacity project in the CIG program to seek a Letter of Intent, whether or not the project is part of a bundle of CIG projects. If a project sponsor pursuing multiple CIG projects wishes to have them considered as a bundle, FTA does not believe this provides any undue advantage over pursuing the projects individually.

Bundles – Clarifying What Comprises a Bundle

FTA received five comments asking that it clarify whether an immediate or future bundle can include any combination of New Starts, Small Starts, and Core Capacity projects.

FTA Response: The final initial updated CIG Policy Guidance explains that an immediate or future bundle of CIG projects may include any combination of New Starts, Small Starts, and Core Capacity projects. The guidance also further explains that each of the projects in a future or immediate bundle must be individually eligible as a New Starts, Small Starts, or Core Capacity project.

Bundles – Streamlining

FTA received comments from nine respondents stating it should streamline documentation (including project management plans) and reviews (including ridership, finance, and others), oversight, and other aspects for a bundle of CIG projects. This included two comments that FTA treat all bundles as one application.

FTA Response: At this time FTA is only finalizing how an immediate or future bundle of CIG projects advances into the PD phase of the CIG program. FTA intends to propose measures for how a bundle of CIG projects advances through the remaining stages of the CIG process in a future, more comprehensive, proposed CIG guidance update. The law directs that each CIG project in a bundle be evaluated and rated according to the criteria set forth for that type of eligible project — New Starts, Small Starts, or Core Capacity — as applicable. Section 5309(i)(3) directs FTA to consider, "changes to the evaluation criteria for project justification and local financial commitment . . . for the purposes of streamlining the evaluation process for projects included in a future bundling request or an immediate bundling request, including changes to enable simultaneous evaluation of multiple projects under one or more evaluation criteria." In the future comprehensive CIG Policy Guidance update, FTA intends to propose some ideas to address this requirement. Additionally, FTA is considering other ways the process for bundles of CIG projects can be streamlined.

Bundles – Multiple Phases of a Line Qualifying

FTA received one comment proposing that for a corridor project with phased implementation, FTA consider each phase as part of a Bundle, and one related comment that an operable segment of a larger project be eligible for immediate or future bundling as applicable.

FTA Response: Multiple construction phases of a single line can qualify as a bundle of CIG projects as long as each phase qualifies for CIG based on its scope, is a minimum operable segment, and has independent utility. This is clarified in the final initial updated CIG guidance.

Bundles – Maximum CIG Funding

FTA received one comment encouraging it to disclose any maximum amount of CIG funding for a bundle of CIG projects.

FTA Response: Section 5309(l)(1)(B) outlines the maximum CIG share allowed for each type of project—New Starts at 60 percent, Small Starts at 80 percent, and Core Capacity at 80 percent. The law also specifies the maximum total Federal funds that may be put toward an individual CIG project at 80 percent. The law does not contain any maximum CIG share or Federal share for bundles of CIG projects that differ from these requirements. The maximum CIG share established in law applies based on the type of projects included in the bundle. For example, if a bundle consists of one New Starts project and three Small Starts projects, then the Small Starts projects are individually subject to the maximum 80 percent CIG share whereas the New Starts project is subject to the maximum 60 percent CIG share.

CIG Project Eligibility

FTA received comments from a total of twenty respondents on the topic of eligibility requirements for Core Capacity projects.

Core Capacity Eligibility – General

FTA received seven comments on FTA's proposal to use less stringent requirements for demonstrating that a system is at or over capacity or will be in ten years. Of those comments, five expressed general support for the proposal.

One commenter stated that FTA's proposal of examining the peak hour in the peak direction for determining capacity did not go far enough in providing flexibility for demonstrating that a line is at or over capacity today or will be in ten years given the changes in travel behavior resulting from the pandemic, such as riders traveling outside of the peak hours more than in previous years. That commenter also suggested FTA use a subjective approach to eligibility that accounts for multiple measures, such as use of transit lines by essential workers, who the commenter suggested are more likely to travel outside of the peak period compared to other riders.

Another commenter opposed the less stringent requirements FTA proposed for demonstrating a line is at capacity or will be in ten years, suggesting that continuing with the existing requirements would better distribute funds to where the need is greatest. That commenter also suggested that if the FTA requirements for light and heavy rail projects are relaxed, they should be relaxed at the same proportion as commuter rail.

FTA Response: Changes in BIL made eligibility requirements for Core Capacity projects less stringent, stating that a corridor had to be at capacity today or will be in ten years rather than in five years as the law was written previously. Because of this change in law, FTA believes it is necessary to change FTA's approach to ensure that CIG program implementation is consistent with the law.

FTA understands the concerns raised by the commenter that more riders travel outside of peak hours than in comparison to previous years. However, the law bases eligibility on a line being at capacity today or will be in ten years. FTA believes capacity constraints are best judged at the point in the day when a line is most heavily utilized. Thus, FTA allows sponsors to pick the peak hour in the peak direction of travel as the basis for demonstrating eligibility. FTA does not define the peak, but rather lets the project sponsor provide the data for the most capacity constrained time of day. Presumably any service provided at other times of the day by the project sponsor is less utilized than during the self-identified peak period. Also, the pandemic and its full effects on travel behaviors are not yet fully known at the time of publication of this final initial CIG Policy Guidance. Although FTA is adopting the proposed method for calculating the peak hour, peak direction person capacity at this time, it will continue to consider alternative approaches in future updates as the full effects on travel behaviors from the pandemic are better understood.

Core Capacity Eligibility – Space-Per-Passenger

FTA received eight comments on its proposal for calculating capacity for light rail and heavy rail projects by using space-per-passenger in the peak hour in the peak direction.

One commenter opposed universal application of the space-per-passenger thresholds as "flawed and inflexible," stating that the approach fails to "reflect or respond to a local system's fleet, technology, throughput limitations, or actual customer experience" and suggesting that it does not "correspond to actual vehicle capacities or the patterns and dimensions of crowding, which can vary greatly across systems." That same commenter suggested instead that capacity thresholds be based on a transit agency's service standards and on "actual vehicle carrying capacity at the corridor's maximum load point or segment, rather than calculated as a corridor average." The commenter stated the current and proposed approaches do not reflect hybrid service such as heavy-rail service levels using vehicles that have commuter rail characteristics and seating configurations. Four commenters supported this same general concept by suggesting that FTA allow project sponsors to propose an alternative way to calculate capacity accounting for unique fleet characteristics. One of these commenters suggested that transit agencies be able to use the service standards that are included in the Title VI program submittal to FTA. One commenter specifically suggested that the methodology be revised to calculate useable passenger space, allowing applicants to reduce space dedicated for bicycles, luggage, wheelchairs, other mobility devices, and space to comply with the Americans with Disabilities Act.

Three commenters supported the idea of measuring capacity at the corridor's peak load point or segment rather than as along the project corridor. Another commenter suggested that FTA not focus solely on vehicle capacity and that FTA also consider capacity issues related to signal systems, station configuration, railyard capacity, and others.

FTA received five comments specifically related to the proposed capacity threshold for light rail and heavy rail projects that use square foot per passenger as that relates to current public health concerns. One of these commenters suggested that transit agencies be allowed to align capacity definitions with changes in public health requirements and vehicle dimensions and four of the commenters stated that these metrics should be based on social distancing requirements or norms. One comment suggested that FTA re-evaluate passenger load factors and maximum crowding thresholds based on passengers' lower tolerance for crowded conditions due to the COVID pandemic, suggesting that FTA specifically re-evaluate the levels when FTA begins to require post-2019 ridership data for capacity calculations.

One commenter suggested that capacity constraints due to a major planned event be considered for purposes of establishing a project's eligibility for the Core Capacity program, rather than demonstrating a sustained increase in ridership over time that would exceed the threshold in the guidance.

Another commenter suggested that service frequency, not just capacity, should be considered, especially due to concerns about crowded vehicles due to the COVID pandemic. That commenter and one other commenter also stated that impacts stemming from an agency's desire to increase the resiliency of the system and adapt to situations should be captured in other criteria, such as "Congestion Relief."

FTA Response: FTA recognizes there is a range of factors that play a role in determining the capacity of a transit line such as station configurations, control and signal systems, junctions, yards, dwell times, fare collection methods, vehicle configurations, etc. However, those factors are very system specific and not easily verifiable by FTA without extensive analysis and review. For streamlining and time-savings purposes, FTA believes the simple space per passenger calculations proposed for light rail and heavy rail projects represent an acceptable method for determining a line is at capacity today or will be in ten years. Furthermore, the law requires that Core Capacity determinations be based on a single corridor rather than system-wide capacity constraints.

FTA has considered using each transit agency's adopted load factor as the method for determining whether a line is at capacity today or will be in ten years, such as the load factors included in Title VI plans. However, FTA believes the wide variability among transit systems in adopted load standards would lead to unfair advantages for some projects over others in the evaluation process for a national funding program. For example, some transit agencies' load standards are not accepting of standees on vehicles while others assume a significant number of standees before additional service is added. FTA believes that whenever possible using consistent measures and approaches for a national funding program is appropriate, rather than case-by-case, project-by-project, or agency-by-agency specific determinations.

FTA understands the concerns noted by commenters related to passenger spacing during the COVID-19 pandemic. However, the law specifies that eligible projects be in corridors that are very well utilized today such that they are already at capacity or will be in ten years. The capacity thresholds chosen by FTA come from Transit Cooperative Research Program research, and that research indicates transit service used less than these thresholds is often considered unproductive service. At this time, FTA believes these thresholds are reasonable for meeting the intent specified in law. The pandemic and its full effects on travel behaviors are not yet fully known. While FTA is adopting the proposed capacity measures at this time, it will continue to consider alternative approaches in future updates.

Lastly, FTA believes the law intends for corridors to be eligible for CIG funding that are consistently at capacity or that will be in ten years such that the proposed project helps improve the crowding conditions and expand capacity. FTA does not believe the intent was that projects qualify because of capacity constraints due to a single or atypical event as was suggested in one of the comments.

Core Capacity Eligibility – Calculating Capacity

FTA received three comments on calculating capacity for Core Capacity eligibility. One commenter suggested that FTA allow project sponsors to demonstrate that a corridor will likely be over capacity in ten years based on forecasting ridership rather than current existing ridership. Another commenter suggested that project sponsors be allowed to use ridership data from the year immediately preceding a major disruption in service due to construction, rehabilitation, or other activities or events outside of the control of the agency (such as the COVID pandemic or natural disasters). The same commenter requested that FTA confirm that ridership showing that the system is at or over capacity can be based on sampling and not require data from automatic counting systems.

Another commenter stated that FTA's guidance mistakenly equates the capacity of a system's peak-hour train schedule with corridor capacity, when in fact that existing schedule might not have the maximum possible number of trains, the maximum number of possible cars on each train, or the maximum number of seats in each car. The commenter suggested that project sponsors submit a schedule that maximizes these items and use that schedule as existing corridor capacity rather than the existing train schedule. The commenter also proposed a "day before project opening" schedule to be used as existing corridor capacity.

FTA Response: FTA must balance meeting the statutory intent with the desire for a streamlined process that does not overburden project sponsors. Using existing ridership to determine Core Capacity eligibility rather than requiring project sponsors to develop forecasts simplifies the process significantly and does not overburden project sponsors. Project sponsors are not required to use automatic passenger counter information when reporting existing ridership to FTA and can use data gathered from sampling. FTA does not equate the capacity of a system's peak-hour train schedule with overall corridor capacity as one comment suggested. Instead, FTA has intentionally not required that existing service be provided at the maximum throughput possible to meet Core Capacity eligibility requirements as this would not meet the intent of the statute. Rather, the statute and FTA's measures allow that the corridor need not be at full capacity today but rather would be in ten years. FTA has allowed project sponsors over the last two years to use pre-pandemic 2019 ridership data to demonstrate eligibility for Core Capacity given the unusual circumstances surrounding recovery from the national pandemic. FTA does not wish to establish a case-by-case eligibility determination process such as one comment suggested where project sponsors could use less than current ridership data to qualify for Core Capacity if they experience recent ridership changes due to a disruption in service from construction or rehabilitation or other unanticipated events. FTA instead believes the intent of the statute is for FTA to develop a consistent eligibility and evaluation process that treats projects fairly and consistently.

Core Capacity Eligibility – Commuter Rail Threshold

FTA received seven comments specifically on the eligibility requirement for commuter rail projects that 80 percent of seats be filled in the peak hour in the peak direction to demonstrate the corridor is at capacity today or will be in ten years. Five of these commenters supported the change to the eligibility requirement for commuter rail. Another commenter stated that passenger counts for this requirement should be current passenger counts, not counts from prior to the start of the COVID-19 pandemic.

One commenter suggested that changes to evaluating capacity for commuter rail does not go far enough, and that instead of only using seat loading, FTA should use metrics based on social distancing requirements. That same commenter suggested that passenger loading at peak hour in the peak direction should not be a sole measure, with a use of average passenger loading per day being more appropriate paired with lower eligibility thresholds (due to more riders traveling outside of the peak hours in recent years). Another commenter generally agreed, suggesting that it may be unlikely that commuter rail systems recover to 80 percent passenger loading during the peak hours. Both commenters suggested consideration of the degree to which a corridor serves essential workers based on data concerning service to major hospitals, universities, schools, and other essential facilities.

One commenter suggested that FTA allow for commuter rail operators to reach agreements with freight operators to address capacity constraints and also allow commuter rail operators to implement temporary service improvements.

FTA Response: The CIG program funds major capital projects. For existing transit corridors, the law makes clear CIG funding eligibility is to be based on a corridor being at capacity today or that will reach capacity in ten years and that the proposed improvement increases capacity by no less than 10 percent. While FTA certainly understands the concerns related to the recent ridership impacts of the COVID-19 pandemic, if a commuter rail corridor is operating with less than 80 percent of its seats filled in the peak hour in the peak direction today, it is unlikely to reach capacity in a ten-year timeframe and a major capital improvement may not yet be necessary. The 80 percent threshold established by FTA is based on information contained in the Transit Cooperative Research Program Transit Capacity Manual and reflects what that manual describes as "marginally productive service, where passengers have freedom to choose where they may sit, and actual travel time reflects perceived travel time." The next level of service described in that manual is having only 50 percent of seats filled which is described as "unproductive service."

FTA uses the peak hour in the peak direction measure based on the belief that it provides project sponsors with the best chance of meeting capacity thresholds rather than using an average passenger load per day measure. Sponsors choose the peak hour and the peak direction, allowing them to choose the most advantageous time period that best reflects their local conditions.

The comment suggesting that FTA allow commuter rail operators to reach agreement with freight operators to address capacity constraints is outside of the scope of what was proposed.

Core Capacity Eligibility – Breakpoints for Capacity Criterion Ratings

FTA received two comments on the breakpoints for the capacity criterion ratings. One commenter suggested different breakpoints for ratings be included to allow more flexibility to meet higher ratings and to account for new norms of additional social distancing. That commenter specifically proposed the following breakpoints: "High = less than 3.6 square feet per passenger," "Medium High = 3.6 to 7.2 square feet per passenger," and "Medium = 7.3 to 10.8 square feet per passenger." Another commenter stated that FTA's rebalancing of the thresholds for different ratings only for commuter rail will make commuter rail projects relatively more competitive than light rail and heavy rail transit projects. The commenter suggested that FTA consider the implications of this such that one mode is not prioritized over another.

FTA Response: The capacity criterion ratings thresholds are based on transit levels of service outlined in the Transit Cooperative Research Program Transit Capacity Manual. Both the light rail/heavy rail thresholds and the commuter rail thresholds have been updated by FTA based on the change in law to the Core Capacity eligibility requirements. FTA does not have reason to believe its thresholds prioritize one mode over another.

Core Capacity Eligibility – Evaluating If a Project Increases Capacity ≥ 10%

FTA received four comments on evaluating if a project increases capacity by not less than ten percent for Core Capacity eligibility. One commenter stated that FTA's approach is in alignment with comments submitted previously by the commenter. Another commenter stated that FTA should measure and evaluate the capacity improvement of service levels in the near and short-term, not just during the peak hour. One commenter suggested that FTA apply a consistent methodology for transit agencies assessing and submitting applications for Core Capacity funding. Another commenter suggested that verification of the increase in capacity should happen two years after opening to allow enough time for riders to use it and become regular customers.

FTA Response: The law requires that FTA determine that a project increases capacity by not less than 10 percent before it is eligible for CIG funding. Therefore, FTA bases the determination on whether a project will increase capacity by not less than 10 percent by assessing the additional service levels proposed by the project sponsor to be provided the year after construction is complete and not on forecast ridership estimates. In other words, whether the project increases capacity is not based on anticipated usage but on the amount of service provided.

Core Capacity Eligibility – Eligible Activities/Scope

FTA received twelve comments concerning various types of activities and/or projects that commenters stated should be eligible activities in a Core Capacity project. One commenter stated that terminal capacity projects should be eligible because track improvements on one line can lead to realignment of service and the shifting of demand that can free up terminal capacity. Three commenters stated support for FTA encouraging project sponsors to include resilience elements in Core Capacity project designs, with one of the commenters suggesting that FTA summarize resilience elements and provide examples in the guidance. One commenter suggested that eligibility for Core Capacity be expanded to include expanded service and capacity of service on an existing fixed guideway to tap into new markets not currently well served, projects that expand or modify existing station facilities, and procurement of additional railcars as a stand-alone project as an eligible project expense. Another comment suggested that FTA consider the benefits of a project on an entire transit system rather than just benefits in a specific corridor, noting that if only stations on a specific corridor are upgraded, the project would not maximize accessibility and capacity, particularly for the disabled community. One commenter stated appreciation for FTA confirming that vehicles, parking improvements, and station facilities are eligible for funding when part of the scope of a larger project, but also suggested that FTA include in the final notice examples of other capital scope.

One commenter stated that accessibility components be eligible expenses when other station components such as platform expansion are part of the Core Capacity elements for increasing capacity. The commenter included specifically the example of elevators that expand vertical circulation, noting that accessibility requirements are triggered by other station improvements to increase capacity.

Another commenter stated that integrated stations should be projects by themselves and went on to propose station-specific evaluation criteria, including significance to the statewide network and concentration of transit/rail services; estimated savings in transit transfer times through station project; anticipated increase in daily riders and transfers within the station, surrounding density and supportive, equitable development (existing, entitled, and/or planned); universal design, especially for people with disabilities, and seamless station navigation, including intuitive wayfinding; quality of place, including the design of public spaces and the inclusion of culture, art, and/or historical elements that make stations and places unique and meaningful to people; and partnerships and governance to ensure stations are designed, managed, and operated effectively; and attempting to achieve multiple community benefit outcomes through strategic partnership initiatives.

Three commenters suggested that gondolas be determined eligible for the Core Capacity program, stating that a gondola is fixed guideway that can serve as trunk line that includes connections to local transit modes such as fixed-route bus services. One commenter stated that they were concerned about the Core Capacity program being limited only to rail projects, expressing concern that legacy transit agencies with long-haul bus routes, BRT dedicated guideways, and BRT corridors will not receive guidance on issues that rail systems experience. Another commenter supported this general comment, stating that BRT projects should be eligible for Core Capacity funding as long as the project provides improvements beyond additional rolling stock.

FTA Response: Section 5309(b)(2) does not allow station improvements, rolling stock, or parking improvements as stand-alone, individual Core Capacity projects. Only if those scope items are included as part of a broader capacity improvement project are they eligible for CIG funding. Furthermore, Section 5309(a)(2) defines an eligible Core Capacity project as a “substantial corridor-based capital investment” and not as system-wide improvements. FTA has no ability to change these statutory requirements. FTA appreciates the thoughts provided on how station capacity might be measured.

Section 5309(a)(2) allows only improvements to existing fixed guideway corridors to be eligible for Core Capacity funding. Section 5302(8) defines fixed guideway as a “public transportation facility using and occupying a separate right-of-way for the exclusive use of public transportation; using rail; using a fixed catenary system; for a passenger ferry system; or for a bus rapid transit system.” Furthermore, Section 5309(a)(4) specifies that a fixed guideway bus rapid transit is one in which, “the majority of the project operates in a separated right-of-way dedicated for public transportation use during peak periods.” The final initial CIG Policy Guidance explains that FTA does not currently have specific capacity measures for fixed guideway bus rapid transit projects or ferries and instead considers such projects for Core Capacity eligibility on a case-by-case basis. FTA is adding clarifications to the CIG Policy Guidance with similar language to address the comment received about gondolas as well.

Eligible Core Capacity project scope elements are described in Section 5309(b)(2) including acquisition of real property and right-of-way, double tracking, signalization improvements, electrification, expanding system platforms, acquisition of rolling stock associated with corridor improvements increasing capacity, construction of infill stations, etc. FTA appreciates the support for encouraging project sponsors to include resilience elements in Core Capacity project design. As part of the more comprehensive CIG Policy Guidance update that FTA is undertaking, FTA intends to expand on information regarding resiliency.

Core Capacity Eligibility – Locking in Core Capacity/State of Good Repair Split

FTA received seven comments on its proposal to continue the policy of locking in the relative Core Capacity and State of Good Repair percentages during the Project Development phase, absent special extenuating circumstances. One commenter proposed that flexibility should be allowed for changes in Standard Cost Category (SCC) line items until a Full Funding Grant

Agreement. Three commenters argued that the percentage be locked in during the Engineering phase. One commenter suggested that FTA provide a precise window within the Project Development phase schedule in which to lock in the relative percentages, with a window specified after final design, with the rationale that percentages may change many times during the design phase. Another commenter suggested that revisions to the relative percentages for Core Capacity and State of Good Repair be allowed on a limited basis, possibly at certain checkpoints, beyond what was proposed in terms of extenuating circumstances.

Finally, one commenter suggested an approach by which the project sponsor estimates State of Good Repair costs prior to the Full Funding Grant Agreement, and any changes to the project cost and State of Good Repair elements would be reported to FTA after the award of the Full Funding Grant Agreement. In a situation where, after award of all design and construction contracts, the project sponsor has underestimated the State of Good Repair share and the eligible Core Capacity costs are less than the Full Funding Grant Agreement amount, then FTA would reduce the CIG contribution for the project. The commenter specifically expressed concerns about the proposed policy on projects that do not use design-build contracts.

FTA Response: In response to the comments received, FTA is stating in the final initial CIG Policy Guidance that the percentage splits of SCC line item costs between State of Good Repair and Core Capacity expenses will be locked in during Engineering rather than during Project Development as originally proposed. FTA believes changing the percentage post FFGA grant award unnecessarily complicates management of construction and FTA oversight.

CIG Eligibility – Self-Effectuating Statutory Provisions

FTA received nine comments and questions on the self-effectuating statutory provisions not specifically addressed in guidance, such as the change in dollar thresholds for New Starts and Small Starts project eligibility and the assessment of capacity being done "without regarding to any temporary measures employed by the applicant expected to increase short-term capacity within the next ten years." Five comments were received in support of the statutory change to ten years. Two commenters stated interest in knowing when the self-effectuating changes are effective, and two other commenters urged FTA to make the New Starts and Small Starts thresholds effective from the date of the enactment of the Infrastructure Investment and Jobs Act. Two commenters stated support for the new statutory thresholds of $400 million and $150 million, with one of the commenters suggesting regular increases in these thresholds to reflect rising costs, possibly using an automatic or indexed adjustment. Three commenters stated that FTA should include information in the guidance about the statutory language concerning temporary measures used by the applicant to increase short-term capacity within the next ten years, with one commenter specifically requesting that FTA include definitions for "temporary measures" and "short term capacity."

FTA Response: The self-effectuating statutory changes discussed by the commenters became effective upon the signing of the Infrastructure Investment and Jobs Act. The law does not allow FTA to increase the cost and CIG thresholds differentiating New Starts and Small Starts projects. In a future more comprehensive proposed update to the CIG Policy Guidance, FTA plans to propose how it will consider "temporary measures" and "short term capacity." In the meantime, the final initial CIG Policy Guidance indicates FTA will make those determinations on a case-by-case basis based on information provided by project sponsors. Any project sponsor seeking FTA determinations should contact FTA's Office of Planning and Environment.

CIG Eligibility – New Idea

FTA received one comment requesting that FTA create a "Small Core Capacity" program so that projects below the $400 million capital cost and $150 million CIG thresholds can qualify for an expedited grant application process similar to Small Starts.

FTA Response: This comment is outside of the scope of what was proposed. However, FTA appreciates the comment and will consider how and if expedited grant agreements might be possible for certain types of CIG projects as it develops a more comprehensive CIG Policy Guidance update.

Core Capacity – New Measure

FTA received one comment requesting that FTA add a new measure that involves land use assessment for the Core Capacity program, stating some communities are experiencing high amounts of population and employment growth, with traditional ridership forecast models possibly warranting supplementing quantitative data sources that could establish benchmarks based on other planning initiatives.

FTA Response: FTA appreciates the comment to add a new project justification measure for evaluation of Core Capacity projects. However, this comment is outside of the scope of what was proposed. Section 5309(e)(2)(A)(iv) does not include land use as one of the six project justification evaluation criteria for Core Capacity projects.

Transit Asset Management (TAM)

FTA received comments from a total of fourteen respondents on the topic of TAM requirements for Capital Investment Grant projects.

Transit Asset Management (TAM) – General

FTA received four comments generally related to TAM and the CIG Program.

Four commenters supported the use of agency state of good repair (SGR) targets and the definition of demonstrating progress. One commenter stated that progress should not be considered the absolute achievement of an SGR target, but rather improvement and positive movement against the SGR target in recognition of the realities of a multi-year TAM program and to reduce agencies being incentivized to lower SGR targets to receive CIG funding.

FTA Response: FTA appreciates the support for the proposal. Because SGR targets can fluctuate dramatically from year to year due to the nature of transit agencies purchasing vehicles in bulk periodically versus in smaller amounts each year, FTA cannot determine an easy way to measure what the commenter refers to as "continued improvement/positive movement." For example, when FTA examined the National Transit Database (NTD) data, we often found that a transit agency's SGR target for the percent of the fleet exceeding useful life varied significantly from year to year—with one year being five percent and the next being 25 percent, etc. FTA is adopting in the final initial CIG Policy Guidance an interim approach requiring a statement signed by the CEO describing the progress the agency has made toward meeting SGR targets that should include as supporting documentation an up-to-date TAM plan and the narrative report submitted to the National Transit Database (NTD) explaining the agency's progress towards achieving the SGR targets for all asset classes. In future CIG Policy Guidance updates, FTA intends to propose an alternate approach using the NTD data and incorporating feedback received in these comments.

Transit Asset Management (TAM) – Use of Rolling Stock

FTA received eleven comments on using only the rolling stock asset class for purposes of the TAM requirement. Two commenters stated support for FTA's use of only rolling stock vehicles in making its determination under the statute.

Five commenters stated that FTA should consider using more than the rolling stock vehicle asset class in making its determination under the statute. Two of these commenters suggested that the TAM guidance and data collection should be improved for better collecting information on assets other than rolling stock. Two commenters suggested that focusing only on rolling stock may disincentivize investments in other asset classes, such as facilities and guideways. One commenter specifically requested that FTA allow project sponsors to show progress toward meeting targets in any of the four asset classes given the synergy among asset categories, with a concern that focus on only one of the four could adversely impact transit agencies that have focused on investments in core infrastructure. One commenter similarly suggested that transit agencies be allowed to select the asset category that, in the opinion of the transit agency, is most critical to their operation and use agency-defined measures for that asset. Two commenters stated that sole reliance on rolling stock could make some agencies ineligible for CIG for reasons beyond their control, such as supply chain issues and vendor capacity, even if those agencies are making substantial investments in other core infrastructure.

Two commenters opposed the consideration of rolling stock for this statutory requirement as redundant and unnecessary, stating that FTA already considers vehicle replacement in the CIG process through the finance template and the financial assessment.

In terms of the specific measure for rolling stock, two commenters suggested that even though progress on one of the rolling stock vehicle classes should constitute progress toward meeting SGR targets, in some instances it makes sense to operate vehicles beyond their useful lives given new methodologies and maintenance practices. One of these commenters suggested that FTA's proposed approach does not sufficiently account for long-term SGR targets, with this disadvantaging legacy rail systems making significant rolling stock procurements because of the long-term delivery schedule of certain rolling stock purchases.

Another commenter expressed concern about the situation in which an entity that is applying for CIG funding does not have existing revenue vehicles. That commenter specifically requested guidance on how those types of applicants can reasonably meet the target.

FTA Response: FTA agrees with the commenters that examining whether progress has been made on meeting TAM SGR targets for more than just rolling stock assets makes sense. The challenge for FTA is related to the relatively new nature of the NTD TAM reporting requirements and the limited NTD data currently available. In addition, FTA recognizes the SGR targets were not established by transit agencies with the consideration of this new CIG requirement.

In response to comments received, FTA has revised how it will examine SGR targets in the near term. In the near term, project sponsors are going to be asked to include a statement signed by the CEO describing the progress the agency has made toward meeting SGR targets that should include as supporting documentation an up-to-date TAM plan and the narrative report submitted to the NTD explaining the agency's progress towards achieving the SGR goals for all asset classes in the TAM plan.

FTA is trying to establish a fair, equitable, and transparent evaluation process rather than a process based on unique, individual, and case-by case decisions. Allowing agencies to pick and choose which asset category to use to demonstrate progress toward meeting SGR targets as was suggested by one commenter does not meet FTA's goals for a fair, equitable, and transparent process, particularly when it affects CIG grant award decisions for a national funding program.

Several comments mentioned FTA should consider long term SGR targets. Section 5309(c)(1)(C) requires FTA to make its determinations based on the SGR targets established under the requirements of Section 5326(c)(2), which are annual targets, not long-term targets.

Two comments suggested that looking at the rolling stock asset SGR targets was redundant since FTA already considers replacement of rolling stock as part of its financial reviews. Section 5309(c)(1)(C) requires FTA to specifically examine progress toward SGR targets established under Section 5326(c)(2). Furthermore, while the financial evaluation process examines ongoing state of repair costs and revenues and an agency's average bus fleet age, it does not get into specific fleet replacement details or SGR targets. Lastly, not all project sponsors receive a financial evaluation from FTA. Some are warranted for finance and receive automatic ratings without a financial evaluation, whereas the statutory requirement that a project demonstrate progress toward SGR targets is required of all projects regardless of whether they are warranted in the evaluation process or not.

Lastly, FTA is including in this final initial CIG Policy update information on the requirements for CIG grant recipients that do not have assets subject to SGR targets as requested in a comment.

Transit Asset Management (TAM) – Two Phased Approach

FTA received five comments on its proposed two-phase approach to the TAM requirement. One commenter stated general support for the two-phase approach. Two commenters stated that FTA should maintain a two-phase approach, but that the transition point should be December 31, 2027, instead of December 31, 2023, to allow more time for transit agencies to prepare for the change in decision-making made necessary by this new statutory requirement. One of these commenters also proposed that for projects anticipating a grant after January 2028, FTA should develop a new set of standards, including a rubric to qualitatively assess TAM progress that does not rely on a single asset category. That commenter suggested that the new approach be published for public comment by the end of 2022, giving transit agencies five years to understand the requirements.

One commenter suggested that there not be a two-phased approach and that the requirement begin to apply on or after January 1, 2026, and that it be based on all available NTD data instead of a 3-year average or for any other period due to data during the COVID pandemic being atypical due to ridership declines, supply chain disruptions, shutdown of vehicle auctions, and transit agency staffing issues. The commenter stated that this would also recognize new and evolving NTD requirements.

One commenter stated that FTA should allow agencies to amend their Fiscal Year (FY) 2021 and FY 2022 SGR targets before they are evaluated against the targets for the CIG program. The commenter stated that it is helpful that FTA recognizes that those targets were set without knowing the consequences for not meeting them now in the statute. The commenter stated concern that while the phase-in approach is helpful, it may punish agencies that set aspirational targets. The commenter suggested that the two phases be preceded by an implementation phase during which failure to show progress would not result in denial of a grant but rather a grant awarded with a stipulation on making progress on SGR goals during the performance of the grant.

FTA Response: In response to comments received, FTA has revised how it will examine SGR targets in the near term. As an interim approach, in the initial CIG policy guidance, project sponsors are asked to include a statement signed by the CEO describing the progress the agency has made toward meeting SGR targets and include as supporting documentation an up-to-date TAM plan and the narrative report submitted to the NTD explaining the agency's progress towards achieving the SGR targets for all asset classes in the TAM plan, not just vehicles. FTA intends to propose for public comment in a future CIG Policy Guidance update a long term approach.

SGR targets already established for FY21 and FY22 cannot be revised as was suggested in one of the comments received. As per 49 CFR Part 625, agencies set SGR targets for the following fiscal year, so 2021 targets were reported in NTD Report Year 2020. Similarly, 2022 targets were reported in NTD Report Year 2021. Both of those NTD reporting years have closed and the targets cannot be changed.

Finally, the law does not allow FTA to award a CIG grant if progress toward meeting SGR targets is not demonstrated. Thus, FTA cannot allow the grant award to be made with a stipulation that during the construction period of the grant the sponsor demonstrate progress as was suggested in a comment.

Transit Asset Management (TAM) – Data Issues

FTA received four comments specifically on data issues related to the TAM requirement.

One commenter specifically stated agreement with the use of NTD data based only on revenue vehicles. One commenter suggested that three years of data is acceptable but questioned why three years was the timeframe chosen.

Another commenter stated that FTA should use all available years of NTD data given disruptions to procurements, ridership, workforce, etc., due to the COVID pandemic.

FTA received one comment that stated that the three-year window is not a practical window of time to evaluate SGR progress for rolling stock or any other asset given that capital projects to improve SGR typically occur over several years. The commenter noted that the average rail rolling stock procurement takes approximately five years and can be affected by supply chain or other issues. The lengthy time for procurements can delay progress towards performance targets. The commenter also noted that useful life can sometimes be extended with targeted investment until a bulk rail car acquisition is made.

FTA Response: FTA understands that it can take several years to make progress on SGR goals. FTA always has to balance its streamlining and simplification desires with the appropriate level of analytical rigor to satisfy statutory requirements and intent. Upon consideration of the comments received, FTA is implementing an interim approach while it considers further the comments received before proposing a longer term approach. The interim approach asks for a statement signed by the CEO describing the progress the agency has made toward meeting SGR targets and asks that supporting documentation to the CEO statement include an up-to-date TAM plan and the narrative report submitted to the NTD explaining the agency's progress towards achieving the SGR targets for all asset classes in the TAM plan, not just vehicles.

Transit Asset Management (TAM) – Alternative Approaches

FTA received four comments that proposed alternative approaches to the TAM requirement. One commenter included the following alternative approaches to the statutory requirement on TAM: request that agencies provide a five-year forecast of performance measures to show how their current capital plans will improve SGR if implemented as planned; require submission of an up-to-date TAM plan and NTD Narrative Report to explain planned progress towards achieving SGR for all asset classes over the TAM plan; and require agencies to provide the current SGR backlog for each asset category and the planned capital spending based on the TAM Plan horizon aimed at reducing this backlog.

Two commenters suggested that transit agencies be allowed to self-certify progress towards the SGR performance targets for purposes of the CIG program and demonstrate that they are making investments to support progress in all four asset categories. One of those two commenters specifically noted that due to many complexities, FTA's proposed methods for the evaluation of TAM progress in terms of using a three-year period and focusing only on rolling stock could make some agencies ineligible for CIG grant awards despite them making good progress on their overall SGR.

One commenter suggested a qualitative approach whereby transit agencies would submit their TAM plan along with a narrative report to FTA on all four asset categories along with records showing annual investments in the categories. Those reports could be subject to FTA review through triennial reviews or another oversight mechanism. The commenter suggested the reports on which they would be evaluated should provide the current backlog dollar amount against each of the four asset categories and capital spending against those categories that is dedicated to reducing the backlog not including capital maintenance or operating budgets. The commenter also suggested that the window for consideration be the TAM plan horizon and that each agency's grant application be considered on a case-by-case basis. Where discrepancies exist, agencies would be invited to provide an explanation that could be accepted by FTA. Finally, the commenter also stated that agencies sometimes invest in assets not captured by the NTD and that agencies should be allowed to use information from the Transportation Improvement Program and Statewide Transportation Improvement Plan, and progress on SGR to support their application.

FTA Response: Several of the comments suggested FTA require project sponsors submit additional information to FTA beyond that required by Section 5326(c)(2), which would place an additional reporting burden on project sponsors and an additional evaluation burden on FTA. FTA must balance its CIG streamlining and simplification desires with the appropriate level of analytical rigor to satisfy statutory requirements and intent. FTA has adopted an interim approach in response to the comments received. In the final initial CIG Policy Guidance, project sponsors will be required to include a statement signed by the CEO describing the progress the agency has made toward meeting SGR targets that should include as supporting documentation an up-to-date TAM plan and NTD narrative report explaining the agency's progress towards achieving the TAM goals for all asset classes in the TAM plan, not just vehicles. FTA intends to propose in a future CIG Policy Guidance update a longer term approach. FTA believes this adequately addresses the concerns noted in the comments received without creating additional reporting or analysis burden on FTA or project sponsors beyond that required by Section 5326(c)(2).

Transit Asset Management (TAM) – Other

FTA received nine comments on other aspects of the TAM requirement related to the CIG Program.

One commenter stated that the proposed guidance has unintended consequences for setting TAM program goals, and that SGR targets will need to be set close to actual expectations. Another commenter provided a similar comment, suggesting that this proposed guidance might incentivize agencies to set easier targets and that failing to meet targets set on an annual basis is often due to procurement or delivery delays given that contracts for vehicles are often put into place years before delivery. One commenter agreed that an unintended consequence of FTA's approach might be that agencies set easier targets.

Another commenter stated that FTA should determine TAM compliance at entry into Engineering for purposes of predictability concerning whether a project can advance and secure a grant given that SGR targets vary year-by-year. Two commenters similarly stated concern that annual NTD reporting combined with SGR targets set annually will lead to unpredictability as to whether a project will be able to advance through the CIG process and receive a grant.

Two commenters suggested that FTA delay implementation of the TAM requirement until January 26, 2026, due to the current economic climate and labor shortages affecting the availability of rail cars and parts. The same commenters also supported FTA's approach to recognize local differences rather than create a nationwide standard given differences in weather, duty cycle, and other factors relevant to each project sponsor.

One commenter questioned whether demonstration of progress on TAM would be made once during Project Development and most likely during FTA's risk review prior to grant award. One commenter stated that any new requirements related to asset management should account for existing reporting requirements to avoid creating overlap or redundant requirements, noting that FTA's asset management program is intended to encourage data-centered decisions with long-term alignment to a strategic framework and implemented through the agency TAM plan. The commenter suggested that implementation of the statutory requirement recognize differences among operators and asset classes.

One commenter requested that FTA clearly define regulations and guidance for performance targets to be included in TAM plans.

Another commenter suggested an appeals process if a transit agency fails to meet the SGR target for any of the rolling stock asset classes to account for extenuating circumstances outside of the agency's control, such as supply chain issues, inflation, or regulatory changes that can affect procurement of vehicles, including situations where Congress prohibits use of Federal funds and penalizes a transit agency that uses non-federal funds to procure rolling stock from manufacturers subsidized by foreign governments. That commenter also requested that FTA not assume that vehicles that have already been decommissioned are operating in revenue service for purposes of assessing progress on TAM targets.

FTA Response: FTA agrees with the comments that using SGR targets to make CIG grant award determinations could influence how SGR targets are set by transit agencies in the future. However, the statute requires FTA to make these CIG determinations based on progress toward meeting the TAM goals required by Section 5326(c)(2). In the final initial CIG Policy Guidance, FTA is clarifying that it will first examine progress toward meeting TAM targets when a New Starts or Core Capacity project sponsor seeks entry into Engineering and again prior to a construction grant award so that sponsors are not caught off guard and understand their ability to qualify for CIG funding. In the guidance, Small Starts project sponsors are encouraged to look at progress toward meeting SGR targets well before an anticipated construction grant award timeframe so they are not caught off guard.

FTA agrees with the comment asking FTA to avoid overlap and redundant requirements. Thus, as an initial approach, project sponsors will be asked to include a statement signed by the CEO describing the progress the agency has made toward meeting SGR targets that should include as supporting documentation existing materials developed to meet other requirements (an up-to-date TAM plan and NTD narrative report) rather than requiring sponsors to prepare or submit additional materials. FTA believes this method is fair and not overly burdensome. FTA's website includes clear and complete information on the TAM requirements at https://www.transit.dot.gov/TAM.

FTA intends to propose in a future CIG Policy Guidance update a long-term approach. The January 2026 implementation timeframe suggested in the comments is beyond the time period covered by the current authorizing law, which FTA believes goes against the intent of the statutory requirement.

Other Topics Not Covered in FTA's Proposal

FTA received four comments not directly related to the proposed CIG Policy Guidance. One commenter included a proposal that FTA fund the maximum allowable Federal share for CIG projects, as well as suggesting changes to the project justification criteria.

Another commenter expressed support for reducing the required timeframes for cashflow statements to ten years or possibly even five years because financial forecasts produced by the project sponsor or its governing body's horizon of decision-making requirements are not actually budgets. That commenter also provided a suggestion concerning financial capacity assessments, proposing a 5 percent threshold as a proxy for demonstrating financial capacity based on the CIG project's share of the agency's overall operating budget. The commenter also suggested that project sponsors be allowed to determine the appropriate level of design, rather than the 30 percent design and engineering now specified by FTA as necessary for completion during the PD phase. The same commenter stated that FTA should not require 30 percent of non-CIG funding not be committed or budgeted for a project to move from the PD phase to the Engineering phase. Finally, that same commenter proposed that FTA modify its oversight process, as well as eliminate the risk assessment requirement that a project cost estimate meet the 65 percent probability threshold for entry into Engineering.

One commenter suggested that there be additional FTA staff for implementation of the Infrastructure Investment and Jobs Act.

Another commenter provided suggestions for improving the TAM regulations and guidance, especially as related to new technology.

FTA Response: Although these comments are outside the scope of what was proposed, FTA appreciates the comments and may take them under consideration for future updates.