

DECEMBER 8, 2010
Summary of Comments and Responses to
MTC’s Draft Job Access and Reverse Commute (JARC)
and New Freedom Program Management Plan (PMP)

COMMENTS (Please note that these comments are summarized. See Attachment A for the full written comment.)	MTC STAFF RESPONSE
<p>1. Informal question posed by a few project sponsors (Sample) Will the proposed changes impact the funding and/or management of a project from a previous grant cycle that is in process and already has a fully executed agreement?</p>	<p>All agencies and organizations that currently receive JARC and New Freedom funds from MTC are already required to comply with the requirements of Title VI, as was specified in the funding agreements. Failure to comply with Title VI is considered to be a breach of contract.</p> <p>MTC is considering amending the fully executed JARC and New Freedom funding agreements in order to incorporate the new monitoring procedures in the Program Management Plan.</p>

2. Letter (Patrisha Piras)

The proposed process includes two new questions or sources of information (page 6, Section VIII “PROJECT SELECTION CRITERIA & METHOD OF DISTRIBUTING FUNDS”)

“... applicants will be required to provide the following information:

- The organization’s policy regarding Civil Rights (based on Title VI of the Civil Rights Act) and for ensuring that benefits of the project are distributed equitably among low income and minority population groups in the project’s service area.
- Information on whether the project will provide assistance to predominantly minority and low-income populations. (Projects are classified as providing service to predominantly minority and low-income populations if the proportion of minority and low-income people in the project’s service area exceeds the regional average minority and low income population.)”

- a) It is not clear how responses will be judged, or what criteria will be used. How do applicants know what is a “good” versus a “poor” response to these issues? How will MTC & CMA staff and other reviewers know what criteria to apply?
- b) For the second “new” issue, you will get more useful information if you ask “How will the project provide assistance?”, not just something that can result in a “yes/no” answer. It would be more helpful to elicit how (not just “whether”) the project actually provides service and/or benefits to people. Just because a project exists, or passes through, a relevant community does not mean that the local population benefits. But how would substantive performance measures be applied?

- a) These two new pieces of information will be collected and tracked in order to help MTC fulfill its Title VI responsibilities. They will not be used to evaluate the merits of a project or to score and rank the applications. The JARC and New Freedom grant applications have separate scoring criteria that are used to select projects.

The first new piece of information collected (the applicant’s policy regarding civil rights) will be included in the Project Eligibility section of the application. It is intended to be a screening criterion rather than a scoring criterion. Applicants’ responses will be reviewed by MTC and CMA staff, and only those applicants with satisfactory responses will have their applications scored and ranked. An example of a satisfactory response would be one in which the agency certifies that it will remain in compliance with Title VI of the Civil Rights Act provisions and assurances, and certifies that no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any of the agency’s programs or activities. MTC staff will provide guidance to the CMAs and to prospective applicants on what is a satisfactory response to this question.

- b) The second new piece of information collected (information on whether the project will provide assistance to predominantly minority and low-income populations) will be included in the General Project Information section of the application. Responses will not be scored. In this instance we are looking for a “yes/no” response because we want to know, for Title VI tracking purposes, whether the project will provide assistance to predominantly minority and low-income populations, and whether it was accepted or rejected for funding. The qualitative evaluation of the service will take place in a separate section of the application.

The purpose of the second question is to help MTC comply with FTA’s requirement that Designated Recipients “should document that they pass through Federal Transit Administration (FTA) funds under the...JARC, and New Freedom grant programs without regard to race, color, or national origin and that minority populations are not being denied the benefits of or excluded from participation in these programs” (FTA C 4702.1A Ch. VI.2). FTA further recommends—and MTC will comply with the recommendation—that Designated Recipients prepare a “record of requests for Elderly Individuals and Individuals with Disabilities, Rural and Small Urban Area Formula Funding, JARC, and New Freedom funding. The record should identify those applicants that would use grant program funds to provide assistance to predominantly minority and low-income populations. The record should also indicate whether those applicants were accepted or rejected for funding” (FTA C 4702.1A Ch. VI.2.a(3)).

<p>c) The PowerPoint material provided to the Policy Council members [at the November 10, 2011 meeting of the Equity and Access Subcommittee] identified the metric as “exceeds the <u>statewide</u> average minority and low-income population,” while the draft PMP refers to “exceeds the <u>regional</u>... population” (emphasis added). Please clarify which applies.</p>	<p>c) Staff will clarify in the PMP that the regional average will be used rather than the statewide average since MTC prepares the regional JARC and New Freedom programs.</p>
<p>d) Section XVI “DESIGNATED RECIPIENT PROGRAM MANAGEMENT” includes the following statement:</p> <p>“When FTA grantees become direct recipients of JARC and New Freedom funds, they will sign a supplemental agreement found in TEAM, and <u>MTC is released from any liability pertaining to the direct recipient grant.</u>” (emphasis added)</p> <p>If transit operators file grant information and reports solely with FTA directly, how will MTC, in its MPO role, know what projects are actually being implemented and how they are performing? This new policy of “hands off” is a significant change from the usual regional “control” exercised, and seems almost to be based on an attitude of denial. There is a possibility of even less consistency throughout the region if the proposed changes are implemented. MTC cannot – or should not be able to -- absolve itself from civil rights responsibilities just by changing bureaucratic formats.</p>	<p>d) The Supplemental Agreement is an integral part of the FTA grant program. It enables the FTA to pass funds directly to a grant recipient, bypassing the designated recipient in its application of the grant terms and conditions. Approximately 99% of the federal transit funds MTC administers are already covered by supplemental agreements. Rather than generate less consistency, the change in the JARC and New Freedom Program for FTA direct grantees brings all their FTA grants together under the Supplemental Agreement. FTA grantees with active JARC and New Freedom grants will be required to submit quarterly reports to FTA on the progress of their projects, along with their quarterly reports on other grants. They will also be required to participate in FTA’s annual JARC and New Freedom reporting, in which performance measures will be collected.</p> <p>MTC will continue to be involved with JARC and New Freedom grants at the application stage. Transit operators must compete for the funds like any other JARC or New Freedom participant.</p>
<p>e) Regarding JARC/Lifeline, MTC has received numerous comments (e.g., regarding the “Public Participation” update) from interested organizations about improving transparency of decision processes at the CMAs. Those improvements and requirements should be referenced in the PMP.</p>	<p>e) MTC requires that the CMAs maintain a transparent project selection process for the Lifeline Transportation Program. MTC also requires that the CMAs comply with all applicable requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000(d)) and the regulations of the DOT issued thereunder (49 C.F.R. Part 21).</p>
<p>f) There is at least one proposed change that appears to substitute an incorrect word for an existing correct one...The original language (“principal authority”) is correct.</p>	<p>f) The error has been corrected.</p>

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1 December 2010

via email

Kristen Mazur
Metropolitan Transportation Commission (MTC)
101 Eighth Street
Oakland, CA 94607

Dear Ms. Mazur:

I raised some questions, as an interested individual, at the November 10th meeting of the "Equity and Access Subcommittee" of the Policy Advisory Council. My intent was to try to gain greater clarity about the proposed changes, and how good competitive, constructive projects could be identified through the application and review process. Since I did not succeed then, I am raising those same questions again, plus a few additional.

The proposed process includes two new questions or sources of information (page 6, Section VIII "PROJECT SELECTION CRITERIA & METHOD OF DISTRIBUTING FUNDS"), but it is not clear how responses will be judged, or what criteria will be used:

- “. . . applicants will be required to provide the following information:
- * The organization's policy regarding Civil Rights (based on Title VI of the Civil Rights Act) and for ensuring that benefits of the project are distributed equitably among low income and minority population groups in the project's service area.
 - * Information on whether the project will provide assistance to predominantly minority and low-income populations. (Projects are classified as providing service to predominantly minority and low-income populations if the proportion of minority and low-income people in the project's service area exceeds the regional average minority and low income population.)"

When I asked what criteria would be used, and how would responses be evaluated, the answer given was that these topics are "straight out of the circular," but that does not answer my question. How do applicants know what is a "good" versus a "poor" response to these issues? How will MTC & CMA staff and other reviewers know what criteria to apply? As I mentioned at the meeting, even Rand Paul presumably has "a policy regarding civil rights", but it is not necessarily one that deserves federal funds. And for the second "new" issue, you will get more useful information if you ask "How will the project provide assistance?", not just something that can result in a "yes/no" answer.

Further the PowerPoint material provided to the Policy Council members identified the metric as "exceeds the statewide average minority and low-income population," while

the draft PMP refers to “exceeds the regional . . . population” (emphasis added). Please clarify which applies. It would also be more helpful to elicit how (not just “whether”) the project actually provides service and/or benefits to people. Just because a project exists, or passes through, a relevant community does not mean that the local population benefits. But how would substantive performance measures be applied?

Section XVI “DESIGNATED RECIPIENT PROGRAM MANAGEMENT” includes the following, rather troubling, statement:

“When FTA grantees become direct recipients of JARC and New Freedom funds, they will sign a supplemental agreement found in TEAM, and MTC is released from any liability pertaining to the direct recipient grant.”
(emphasis added)

If transit operators file grant information and reports solely with FTA directly, how will MTC, in its MPO role, know what projects are actually being implemented and how they are performing? This new policy of “hands off” is a significant change from the usual regional “control” exercised, and seems almost to be based on an attitude of denial. There is a possibility of even less consistency throughout the region if the proposed changes are implemented. MTC cannot – or should not be able to -- absolve itself from civil rights responsibilities just by changing bureaucratic formats.

Regarding JARC/Lifeline, MTC has received numerous comments (e.g., regarding the “Public Participation” update) from interested organizations about improving transparency of decision processes at the CMAs. Those improvements and requirements should be referenced in the PMP.

Also, there is at least one proposed change that appears to substitute an incorrect word for an existing correct one – page 2, beginning of Section IV “ROLES AND RESPONSIBILITIES:”

***MTC:** As the designated recipient of JARC and New Freedom funds for the Bay Area’s large urbanized areas, MTC has the principlear authority and responsibility for administering the programs.*

The original language (“principal authority”) is correct. “Principle” is generally used as a noun, not an adjective.

There are further comments but my computer is at the shop right now. If you have any questions regarding these comments, please do not hesitate to let me know.

Sincerely,



Patrisha Piras

cc: FTA Office of Civil Rights