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Memorandum

TO: Transit Finance Working Group

DATE: February 4, 2015

FR: Glen Tepke

RE: FTA Final Section 5337 State of Good Repair Program Circular

FTA recently published the final circular for its Section 5337 State of Good Repair funding program. The circular is available at:

http://www.fta.dot.gov/documents/FTA_Circular_5300_published_02-28-15_clean_without_track_changes.pdf

The Federal Register notice regarding the circular is available at:

<http://www.gpo.gov/fdsys/pkg/FR-2015-01-28/pdf/2015-01530.pdf>

MTC, in consultation with TFWG, submitted comments on the draft circular last April. Following are the comments with an update on how the issue was addressed in the final circular.

Exclusion of High-Occupancy Toll Lane Miles from High Intensity Motorbus Apportionment Formula - Federal Register Vol. 79, No. 41, Page 11866

Proposed Provision: “FTA proposes that all high-occupancy toll lanes miles be excluded from the calculation including those systems that were previously grandfathered after conversion from high-occupancy vehicle lanes.”

MTC Comment: MTC staff opposes this proposal and is unable to identify a policy rationale for the proposal in the draft circular of Federal Register. Chapter I, Section 5 of the draft circular states that “The State of Good Repair Grants program provides capital assistance for replacement and rehabilitation projects for existing fixed guideway systems (including rail, bus rapid transit, and passenger ferries) and high intensity motorbus (buses operating in high-occupancy vehicle (HOV) lanes or toll lanes with free access to HOVs) to maintain public transportation systems in a state of good repair” (emphasis added). In the Bay Area, high-occupancy toll lanes provide free access to HOVs, including buses. Therefore, MTC considers “high-occupancy toll lanes” and “toll lanes with free access to HOVs” to be equivalent terms, so the proposal to exclude high-occupancy toll lane miles from the apportionment formula appears to conflict with the fundamental purpose of the High Intensity Motorbus program.

The proposal would also disadvantage regions of the country that are pioneering congestion management approaches that will benefit public transit. High-occupancy toll lanes are intended to increase vehicle speeds for all vehicles, including public transit buses, by making more efficient use of existing lanes.

This proposal appears in the Federal Register notice but not in the draft circular itself. Given the significance of this policy to the apportionment of Section 5337 funds, if it is implemented it should be explained in the circular's section on apportionments, and definitions of "high occupancy toll lanes" and "toll lanes with free access to HOVs" should be included in the definitions section.

Final Circular Provision: FTA disregarded this comment and will exclude bus service provided in HOT (Express) lanes from the High Intensity Motorbus apportionment formula. The contradictory language pointed out in MTC's comment was addressed by deleting the phrase "or toll lanes with free access to HOVs" from the circular. The primary rationale offered for FTA's policy is that High Intensity Motorbus is defined in statute as service in HOV lanes, but FTA does not consider HOT lanes to be HOV lanes. As discussed under item 15 in the Working Group's agenda, MTC is considering seeking a legislative remedy to this issue as part of its advocacy on the upcoming federal transportation reauthorization.

Exclusion of Projects That Modernize Assets – Federal Register Vol. 79, No. 41, Page 11867

Proposed Circular Provision: "SGR grants are not available for projects that expand system capacity or service or modernize assets."

MTC Comment: MTC staff opposes the proposal to exclude projects that modernize assets. When transit capital assets are replaced, they are rarely replaced with exactly the same type of asset. Rather they are replaced with new, more modern assets that incorporate technological advances that increase the performance or functionality of the asset, or enable the asset to provide the same functionality more efficiently or more cost-effectively. For example, buses are not replaced with identical buses, but with new, modern models that may offer better mileage, reduced emissions and noise, improved loading and unloading, etc. Therefore, excluding projects that modernize assets would also exclude many projects that replace assets, which is the primary purpose of the Section 5337 program.

This proposal appears in the Federal Register notice but not in the draft circular itself. Given the significance of this policy to determining project eligibility for Section 5337 funds, if it is implemented it should be explained in the circular's section on eligibility, and a definition of "modernize" should be included in the definitions section.

Final Circular Provision: The Federal Register notice states "The purpose of the SGR Grants Program is to maintain transit systems in a state of good repair, not to alter or modernize them. However, modernization that occurs as part of bringing assets into a state of good repair may be permissible. For example, rebuilding and rehabilitation projects, which are eligible activities under the SGR Grants Program, include the replacement of older features with new ones and the incorporation of current design standards."

Exclusion of Projects in High-Occupancy Toll Lanes – Chapter 1, Section 5

Proposed Circular Provision: "Projects in high-occupancy toll lanes are not eligible for State of Good Repair funding."

MTC Comment: The circular should clarify what "Projects in high-occupancy toll lanes" means. If it includes projects related to buses that operate in high-occupancy toll lanes, MTC opposes the exclusion. The proposed circular provision would conflict with the preceding sentence of the circular: "The State of Good Repair Grants program provides capital assistance for replacement

and rehabilitation projects for existing fixed guideway systems (including rail, bus rapid transit, and passenger ferries) and high intensity motorbus (buses operating in high-occupancy vehicle (HOV) lanes or toll lanes with free access to HOVs) to maintain public transportation systems in a state of good repair” (emphasis added). As discussed above, MTC considers “high-occupancy toll lanes” and “toll lanes with free access to HOVs” to be equivalent terms.

A portion of bus services provided in HOV lanes in the Bay Area are provided in high-occupancy toll lanes. Therefore, if “Projects in high-occupancy toll lanes” means projects related to buses that operate in high-occupancy toll lanes, a portion of the Bay Area’s High Intensity Motorbus state of good repair needs would be ineligible for Section 5337 funding. The exclusion of high-occupancy toll lanes would disadvantage not only the Bay Area but other regions that convert high-occupancy vehicle lanes to high-occupancy toll (HOT) lanes. The circular offers no rationale for making a distinction between services operated in HOV lanes and services operated in HOT lanes.

Final Circular Provision: “High intensity motorbus funds must be used for capital expenses associated with public transportation systems that provide regular, continuing shared-ride surface transportation services to the general public. Eligible projects include maintenance, rehabilitation, and replacement of vehicles that are used for providing transit service on high occupancy vehicle lanes, and equipment and facilities that are used for maintaining the vehicles. Projects that maintain and rehabilitate high occupancy vehicle lanes are not eligible for the high intensity motorbus funds. Projects that maintain and rehabilitate capital assets used for bus service other than on HOV lanes are not eligible for the high intensity motorbus funds.”

Project Eligibility for High Intensity Motorbus – Chapter 3, Section 4

Proposed Circular Provision: “Projects that maintain and rehabilitate capital assets used for bus service not on HOV lanes are not eligible for the high intensity motorbus funds.”

MTC Comment: The circular language should provide more explicit guidance for determining what project costs are eligible for High Intensity Motorbus funding. All buses that operate in HOV lanes also operate outside of HOV lanes, i.e., no bus route is 100% within HOV lanes. It is unclear how the provision cited above affects eligibility for projects related to bus service that is provided both in and outside of HOV lanes. For example, if a bus is used on a route that is 50% in HOV lanes and 50% outside of HOV lanes, what percentage of the cost of replacing the bus is eligible for HIM funds? The circular offers no guidance to help answer this question.

Final Circular Provision: See the final circular provision quoted under the previous comment. The final circular does not provide any more explicit guidance on determining what costs are eligible for HIM funds.

Another significant HIM eligibility issue that MTC did not comment on is the question of whether 5337 funds that are apportioned by the HIM formula can be used for fixed guideway projects or must be used for HIM projects. The statutory language is ambiguous on this question. The final circular states “Funds apportioned for high intensity fixed guideway shall be available exclusively for fixed guideway projects. High intensity motorbus funds can be used interchangeably on any eligible high intensity motorbus or high intensity fixed guideway project.”