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RE: DOT DMS Docket Number FTA 2005-23089

To Whom It May Concern:

The Metropolitan Transportation Commission (MTC) is the metropolitan planning organization (MPO) for the nine-county San Francisco Bay Area. MTC serves as the designated recipient for the FTA formula funds for the Bay Area and is responsible for preparing the region's Transportation Improvement Program (TIP) and conducting the Regional Transportation Plan (RTP). MTC appreciates the opportunity to comment on the Federal Transit Administration's (FTA) summary of the changes in SAFETEA-LU in its November 30, 2005 Federal Register. This letter contains comments specific to this Federal Register and the Federal Transit Administration (FTA) program changes.

Our comments focus primarily on various social service transportation programs authorized through SAFETEA-LU and their companion planning requirements; specifically, the Job Access and Reverse Commute (JARC) Program, the New Freedom Program, and Special Needs Program of Elderly Individuals and Individuals with Disabilities (Section 5310 Program). In some cases, our comments reiterate the need for further guidance and clarification from FTA. Finally, we have also provided comments on the Section 5307 program and are requesting clarification on specific program provisions.

Mobility Management Definition

Mobility Management is essential to good coordination and should be considered a capital expense. MTC concurs with the approach that Mobility Management be considered a capital expense, thereby reducing the match requirement from 50% to 20% of total project costs. This will encourage the development and implementation of mobility managers at the local level. In our experience, the most successful programs are those that have identified a mobility manager to assume the lead role of coordinating funding and planning activities for social service transportation programs within their jurisdiction.

The definition included in the Federal Register provides sufficient guidance, and also allows for some flexibility at the local level. We assume mobility management to be an eligible expense for JARC, New Freedom Program, Section 5310 Program, and all other FTA programs for which capital is an eligible expense.

Planning and Consultation

Beginning in FY 2007, FTA requires that recipients of the Section 5310, JARC, and New Freedom Programs must certify that selected projects are “derived from a locally developed, coordinated public transit-human services transportation plan. . . .” MTC has several comments pertaining to the content and structure of this plan.

Refer to the plan as “Coordinated Public *Transportation*-Human Services Plan.”

One theme that has emerged from our local planning specific to low-income communities is that a variety of solutions are needed to address gaps faced by residents of those communities. Such solutions may include, for example, access to automobiles, employer shuttles, guaranteed ride home programs, etc., in addition to the provision of new or expanded fixed route transit services. The term *transportation* is more inclusive and more accurately reflects the range of projects that may be funded through both New Freedom and the JARC programs.

Projects should be *consistent with the planning process* rather than *derived from the planning process*. The Federal Register stipulates that project must be “derived from a locally developed, coordinated public transit-human services transportation plan.” We fully support a coordinated planning effort among transportation and human service partners, and we also agree that projects in this locally developed plan be integrated into and consistent with the metropolitan and state planning processes. We prefer the language that recipients certify that projects selected “be consistent with” the planning process rather than “derived from” the planning process to clarify that specific projects need not be identified in a plan but rather that identification of need areas and project themes are sufficient.

Provide greater coordination among federal agencies to encourage and fund programs that provide transportation services for transit dependent populations. Coordination is a two-way street, requiring the active participation of **both** transportation and social service agencies in planning and funding these unique types of transportation programs. Often, there is no incentive on the part of social service agencies to engage in these planning efforts or to provide necessary data about their programs that could help facilitate coordination efforts. We urge the FTA-- and other federal agencies-- to actively seek opportunities to include similar coordination requirements in the authorizing legislation for all federal programs receiving federal dollars to provide transportation for their clients (e.g. Medicare, Older Americans Act, Vocational Rehabilitation Programs, etc.) At a minimum, guidance should be provided to those programs to authorize and encourage the use of their funds to serve as match to federal transportation programs subject to SAFETEA-LU.

Clarify ambiguity in New Freedom, Section 5310, and JARC language to require that grant recipients also certify that selection of projects was conducted on a fair and equitable basis.

According to the guidance included in the Federal Register, projects funded with New Freedom, Section 5310 or JARC funds must be selected through a competitive process. This requirement

implies that specific funding criteria be established for selecting projects, and that successful those applications for funding either address the criteria directly or can otherwise demonstrate they are of the highest quality. Yet, the grant recipient must also certify that allocations of the grants to subrecipients are distributed “on a fair and equitable basis” – implying some basis for ensuring that all eligible populations are given a reasonable chance to access these funds, and that no single project be given a disproportionate amount of available resources. We perceive a potential conflict could arise in these seemingly contradictory requirements. We suggest the following modified language: “Each grant recipient must certify that *the process used to allocate grants* to subrecipients was conducted on a fair and equitable basis.”

FTA should provide greater technical assistance and further guidance on planning requirements. FTA seeks comments on specific aspects of the collaborative planning process, including participants, elements, measures, etc. While we appreciate FTA’s efforts at further defining elements of the local plan, the specific planning elements and approach for conducting the plan are best determined at the local level, in consultation with local stakeholders. We suggest that a “toolkit” or technical assistance approach would be most appropriate to provide further guidance to local entities that may request or require further planning guidance.

Plan requirements for the Section 5310, JARC, and New Freedom programs should be consolidated into one plan and be a collaborative effort between transportation and social service providers. We support the suggestion included in the Federal Register that a single plan be completed for all three program areas, rather than conducting three separate plans. While each of the program constituency groups may be unique and specific to a fund source (e.g. low-income or welfare recipients, persons with disabilities, the elderly), some overlap exists among these groups. Likewise, both transportation and social service programs span a range of activities that are not limited to one particular subset of the population.

At the same time, it is important that the unique characteristics and needs of each group be recognized as part of the planning process. The needs and gaps facing persons with disabilities needing to access employment will differ, for example, from the needs of the clientele intended to be served through the Section 5310 or the JARC programs.

We also fully support the requirement that the plan be developed in a collaborative process including the participation of both transportation and social service providers, as well as members of the public and other relevant stakeholders. In order to engage in the comprehensive and meaningful planning activities we envision for this effort, and to avoid deferring programming of these important sources of funds, we strongly urge that guidelines be issued as quickly as possible. If this is not possible, designated recipients should be allowed, pending completion of a new plan, to defer to existing adopted relevant plans, or to develop an interim plan where none exists.

Special Needs of Elderly Individuals and Individuals with Disabilities Program (Section 5310)

Section 5310 funds, along with JARC and New Freedom funds, are subject to the coordinated human services transportation plan referenced above. We offer several comments on this program.

The Section 5310 program should contain language that requires eligible recipients to coordinate with public transit agencies providing ADA service to avoid duplicative services and public transit providers should be able to compete for funds on an equal basis with non-profit organizations. The guidance is virtually silent with respect to the need to coordinate services and programs with existing paratransit programs sponsored by public transit agencies as required by the Americans with Disabilities Act (ADA). These paratransit programs by far represent the most significant investment to provide services for persons with disabilities, including many elderly persons with disabilities. The ADA programs need to be recognized and included in the spectrum of activities included in the planning process.

One requirement of the Section 5310 Program, as defined in the Federal Register, is that funds can only be made available to public bodies “which certify that no nonprofit corporations are readily available.” In our view, this requirement is more restrictive with respect to public transit entity participation than federal statute and runs counter to the purpose of promoting coordination, and does not recognize the significant infrastructure already in place to deliver ADA paratransit programs. Public transit entities should be able to compete for these funds along with other eligible recipients of funds without having to stipulate to such a condition.

Provide greater training and technical assistance. FTA is asking for comments on any technical assistance or training that may be beneficial. We would support ongoing training activities to assist smaller programs that may not have an extensive transportation infrastructure in such topic areas as insurance, disability awareness training, and mobility management.

Job Access and Reverse Commute Program (JARC)

Correct the basis for determining apportionment formula to low income persons and clarify the phrase “other eligible low-income persons.” The Federal Register indicates that the basis for formula apportionment is based upon the number of persons with *disabilities*, which we presume to be in error since the statute discusses distribution based on numbers of persons in poverty. We request corrected clarification on how JARC funds will be distributed (presumably on numbers of persons in poverty), and the source that will be used to determine the apportionment. The Federal Register also refers to “other eligible low-income persons.” Please clarify whether the “eligible low-income persons” are as defined in federal statute, and if the definition differs from that used to determine the program apportionments.

Clarify whether the JARC program guidelines have changed since TEA-21. The Federal Register provides several helpful examples of the types of projects that can—and cannot—be funded with JARC funds. We request clarification regarding whether these guidelines have changed at all as a result of SAFETEA-LU. Have program guidelines remained consistent with

those outlined in the Federal Register dated April 8, 2002? The April 8, 2002 Federal Register guidelines provide more specific guidance as to eligible programs and projects, and have been the basis for our program requirements.

New Freedom Program

Provide clarification on eligible uses and definition of “beyond ADA” requirements. Program guidelines indicate that New Freedom Program funds are to be used to “assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services.” We request that future program guidance explicitly indicate that New Freedom funds are, in fact, intended to address gaps specific to access *employment and training*. Such clarification will greatly assist fund recipients in clarifying expectations and establishing realistic criteria for use in programming the funds. Future program guidance should also indicate that New Freedom Program funds should not supplant or replace current sources of funds used to provide services for persons with disabilities.

Because this is a new program, further program guidance would be very helpful, as well as further suggestions on the types of projects that would, or would not, be appropriately funded through the New Freedom Program. In order to encourage innovative and unique projects, we support flexibility in defining eligible programs, and latitude on the part of the fund recipient in determining local program priorities.

Period of Availability

Make the period of availability for funds for the Section 5310, Section, 5311, JARC, and New Freedom consistent with the Section 5307 and Section 5309 Fixed Guideway formula funds. The proposed period of availability for the Section 5310, Section 5311, JARC, and New Freedom programs is 2 years plus the year of apportionment. Eligible projects sponsors for these funds include non-profit or other eligible sub-recipients who may not have the expertise to easily access these funds. Moreover, the new planning regulations requiring a coordinated public transit-human services transportation plan will likely necessitate extensive coordination with these agencies to assure that regional needs are being adequately met. Given the nature of these programs, we recommend that the deadline for obligation be made consistent with the obligation deadline for the Urbanized Area and Fixed Guideway modernization formula funds, which is 3 years plus the year of apportionment.

FTA Section 5307 Formula Program

10% Americans with Disabilities Set-aside

Confirm the continuation of 10% ADA operating eligibility with the Section 5307 Large Urbanized Area program funds. TEA-21 allowed 10% of Section 5307 large urbanized area funds to be used to meet Americans with Disabilities (ADA) operating needs. We assume that SAFETEA-LU continues this provision. Please clarify on pages 71958 and 71959 of the Federal Register that the 10% set-aside for ADA continues to be an exception to the large Urbanized Area operating limitations.

1% Transit Enhancements

Provide flexibility to satisfy the 1% Transit Enhancement requirement at the Urbanized Area or grantee level. Similar to TEA-21, SAFETEA-LU requires that 1% of Section 5307 funds

apportioned to large urbanized areas be used for eligible transit enhancements. Under TEA-21, this requirement applied to 1% of each large urbanized area, and not specifically to each eligible grantee. The November 30th Federal Register states that with the implementation of SAFETEA-LU this requirement “will now be treated as a certification” and that “grantees in UZAs with population of 200,000 or more will be certifying they are spending not less than one percent of section 5307 funds for transit enhancements and will be required to submit an annual report on how they spent the money.” The Bay Area has some 22 recipients in 5 large urbanized areas. In some urbanized areas, there are as many as 10 eligible recipients. To streamline this requirement and to facilitate meaningful funding investments, we are recommending the flexibility to apply this requirement to 1% of the large urbanized area funds rather than to each eligible recipient. This will allow the Bay Area to concentrate the funds on projects that both meet the federal requirement but will also make a substantive impact on local enhancement priorities. We recognize that other areas may have multiple designated recipients within one UA and need flexibility to meet this requirement at the grantee level; therefore, FTA should allow the greatest flexibility in implementing the enhancement provisions.

1% Security Requirement

Clarify that recipients can satisfy the 1% security requirement by expending an equivalent amount of non-federal funds on security. SAFETEA-LU requires that operators claiming Section 5307 large urbanized area funds must spend 1% of their apportionment on eligible security projects. Under TEA-21, grantees could meet this requirement by certifying that an equivalent amount of non-federal funds was expended to meet security needs. The November 30th Federal Register stipulates that operators can request an exemption from meeting this requirement. FTA Region IX has stated that operators expending 1% of non-federal funds on eligible security projects would be eligible for an exemption. We request that FTA clarify in the federal register that recipients expending local funds for security equivalent to 1% of their apportionment satisfy the 1% security requirement.

Further, given the expanded focus on safety and security within SAFETEA-LU without a commensurate increase in federal transportation funding or a new program devoted specifically to safety and security, MTC cautions FTA from asking sponsors to certify that all security needs are met. While surveillance needs may be met, the increased security needs associated with Homeland Security require additional resources such as that provided by the Department of Homeland Security (DHS). A certification in an FTA grant should not hinder an applicant from competing for DHS funding.

Section 5340 and 5336 – Small Transit Intensive Cities and Growing States and High Density Programs. We applaud the streamlined approach of including the bonus funds from the newly created 5336 and 5340 in Section 5307 apportionments. However, given the potential instability of this funding from year-to-year, especially with respect to the Small Transit Intensive Cities programs, we recommend listing a subtotal contribution for this program within the Section 5307 total by operator in the annual appropriation Federal Register to allow better budget planning for operators.

Thank you for the opportunity to submit comments on FTA program changes. If you have any questions about these comments, please feel free to contact Alix Bockelman, Director of MTC’s

Docket Management Facility
December 30, 2005
Page 7 of 7

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Sincerely yours,

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