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Public Transportation New Starts Program: Background

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Summary

The New Starts program is a discretionary funding program for the construction of new fixed-guideway public transportation systems and the expansion of existing systems. Eligible projects include transit rail, including subway/elevated rail (heavy rail), light rail, and commuter rail, as well as bus rapid transit (BRT) and ferries. Public transportation, as defined in federal law, does not include transportation by school bus, intercity bus, or intercity passenger rail (Amtrak).

The New Starts program is one element of the federal public transportation program that is administered by the Federal Transit Administration (FTA) within the Department of Transportation. In July 2012, the New Starts program was reauthorized through FY2014 as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141). Funding is authorized at $1.9 billion for FY2013 and FY2014, or about 18% of the overall federal public transportation program budget. Unlike FTA's other major programs, funding for the New Starts program comes from the general fund of the U.S. Treasury, not the mass transit account of the highway trust fund. Moreover, the New Starts program provides discretionary funding whereas the other major programs provide funding by formula.

The program underwent several significant changes in MAP-21:

- Funding can now be used for substantial investments in *existing* fixed guideway lines that increase the capacity of a corridor by at least 10%, termed "core capacity improvement projects." MAP-21 also authorizes the evaluation and funding of a program of interrelated projects.
- MAP-21 retains the definition of Small Starts projects as those costing less than $250 million and seeking $75 million or less in federal funding. But MAP-21 does not specifically reserve funding for Small Starts projects as was the case in prior law.
- MAP-21 simplifies the New Starts process by reducing the number of major stages from four to three. The new stages are termed project development, engineering, and construction.
- MAP-21 eliminates the alternatives analysis that is separate from the alternatives analysis required by National Environmental Policy Act of 1969 (NEPA).
- MAP-21 provides FTA with authority to advance projects more quickly in certain circumstances.

A recent focus of both Administration and congressional concern has been the rating scheme by which projects are evaluated, particularly the notion of cost effectiveness. Among other things, MAP-21 changes the definition of cost effectiveness from incremental travel time saved to cost per rider. This would likely improve the rating of projects that generally provide shorter trips, such as streetcars.

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Introduction

The New Starts program provides federal funds to public transportation agencies on a largely competitive basis for the construction of new fixed guideway transit systems and the expansion of existing systems (49 U.S.C. §5309). In federal law, "fixed guideway" is defined 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;[1] for a passenger ferry system; or for a bus rapid transit system" (49 U.S.C. §5302(7)). Bus rapid transit (BRT) is distinguished from regular bus transit by high-frequency service at widely spaced stops and a combination of various elements that might include transit stations, level-platform boarding, separate right-of-way, traffic signal priority, and special branding.[2] It should be noted that public transportation, as defined in federal law, does not include transportation by school bus, intercity bus, or intercity passenger rail (Amtrak).

Most New Starts funding has been provided to transit rail systems for subway/elevated rail (heavy rail), light rail, or commuter rail projects. With federal support, a number of cities, such as Charlotte, Denver, Minneapolis, and Salt Lake City, have opened entirely new rail systems, and many other cities have added to existing systems. Two current extension projects supported by New Starts funding are the Second Avenue subway in New York City and the Dulles Airport Corridor Metrorail extension in northern Virginia.[3] Rail transit route-mileage almost doubled between 1985 and 2009, with light rail mileage almost quadrupling, commuter rail mileage doubling, and subway mileage growing by 25%. Transit rail systems now provide about 44% of public transit trips (up from 31% in 1985), with most of the rest, about 51%, provided by bus.[4] BRT systems have proliferated over the past few years, partly with the help of New Starts

[1] A catenary system involves overhead wires that supply electrical power to transit vehicles.

[2] In federal law there are two types of BRT projects (49 U.S.C. §5309(a)(3)): (1) **fixed guideway BRT** projects defined as "a bus capital project: (A) in which the majority of the project operates in a separated right-of-way dedicated for public transportation use during peak periods; (B) that represents a substantial investment in a single route in a defined corridor or subarea; and (C) that includes features that emulate the services provided by rail fixed guideway public transportation systems, including: (i) defined stations; (ii) traffic signal priority for public transportation vehicles; (iii) short headway bidirectional services for a substantial part of weekdays and weekend days; and (iv) any other features the Secretary may determine are necessary to produce high-quality public transportation services that emulate the services provided by rail fixed guideway public transportation systems"; and (2) **corridor-based BRT** projects defined as "a small start project utilizing buses in which the project represents a substantial investment in a defined corridor as demonstrated by features that emulate the services provided by rail fixed guideway public transportation systems, including defined stations; traffic signal priority for public transportation vehicles; short headway bidirectional services for a substantial part of weekdays and weekend days; and any other features the Secretary may determine support a long-term corridor investment, but the majority of which does not operate in a separated right-of-way dedicated for public transportation use during peak periods." See also, U.S. Department of Transportation, Federal Transit Administration, *Characteristics of Bus Rapid Transit for Decision-Making*, Washington, DC, February 2009, http://www.nbrti.org/docs/pdf/High%20Res%20CBRT%202009%20Update.pdf.

[3] U.S. Department of Transportation, Federal Transit Administration, *Annual Report on Funding Recommendations Fiscal Year 2013: Capital Investment and Paul S. Sarbanes Transit in Parks Program*, Washington, DC, 2012, pp. 10-11 and 13, http://www.fta.dot.gov/documents/FY13_Annual_Report_main_text_1_30_12.pdf.

[4] U.S. Department of Transportation, Research and Innovative Technology Administration, Bureau of Transportation Statistics, *National Transportation Statistics*, Washington, DC, table 1-1, http://www.bts.gov/publications/national_transportation_statistics; American Public Transportation Association, *Public Transportation Fact Book 2012: Appendix A* (Washington, DC, 2012), table 1, http://www.apta.com/resources/statistics/Pages/transitstats.aspx.

funding.[5] BRT has particularly benefited from a category of less costly New Starts projects known as Small Starts.

The New Starts program is one element of the federal public transportation program that is administered by the Federal Transit Administration (FTA) within the Department of Transportation. In July 2012, the New Starts program was reauthorized through FY2014 as part of the Moving Ahead for Progress in the 21st Century Act (MAP-21; P.L. 112-141). The program underwent several significant changes in MAP-21. This background report explains how the New Starts program is structured under MAP-21. It begins by discussing program funding and concludes with a legislative history.

Funding

The New Starts program is one of six major funding programs administered by FTA, accounting for about 18% of FTA's budget (**Figure 1**).[6] Unlike FTA's other major programs, funding for New Starts comes from the general fund of the U.S. Treasury, not the mass transit account of the highway trust fund. Moreover, the New Starts program provides discretionary funding whereas the other major programs provide funding by formula.[7]

New Starts funding averaged about $1.5 billion per year in the period from FY2004 to FY2008. Since FY2009 New Starts funding has tended to be greater than this, but more variable (**Figure 2**). The regular appropriation in FY2009 was supplemented with $750 million from the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). Rescission of New Starts budget authority affected FY2009 and FY2010 funding; the FY2010 rescission of $280 million approximately matches funding for the Access to the Region's Core (ARC) tunnel project, which was cancelled by New Jersey in October 2010. The cancellation of ARC likely contributed to the reduction of funding in FY2011.[8]

For FY2012, Congress decided to fund bus rapid transit projects recommended by FTA for New Starts funding from the discretionary Bus and Bus Facilities program instead. The Senate Appropriations Committee report noted: "these projects are eligible for funding from Bus and Bus Facilities, and this shift will make it possible for the Committee to better support the rail transit projects in the Capital Investment Grants [New Starts] program."[9] Prior to the passage of

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[5] According to data from the Bus Rapid Transit Institute, as of May 2012 there were 25 transit agencies operating 60 BRT routes. See, Bus Rapid Transit Institute, "Currently Operating BRT," http://www.nbrti.org/docs/pdf/Survey/Currently%20_Operating_May_2012.pdf.

[6] For a discussion of all FTA programs, see CRS Report R42706, *Federal Public Transportation Program: An Overview*, by (name redacted).

[7] Formula funds are distributed to transit agencies, local governments, and state governments based on a variety of factors including population, population density, and bus and fixed-guideway route miles and vehicle miles.

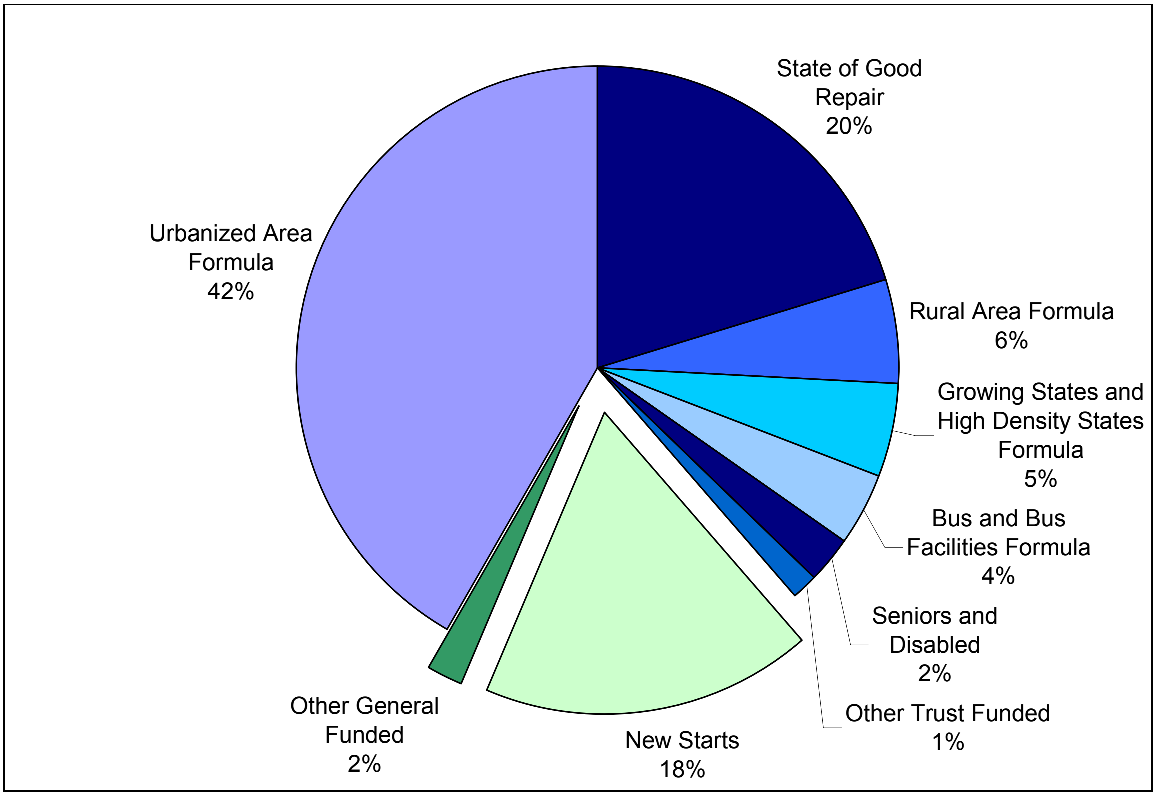
[8] *Transportation Weekly*, "Final FY11 Approps Deal Provides Zero High Speed Rail Funding, Slashes Mass Transit New Starts," Volume 12, Issue 19, April 12, 2011, p.1; Federal Transit Administration, *Annual Report on Funding Recommendations Fiscal Year 2011: New Starts, Small Starts, and Paul S. Sarbanes Transit in Parks Program*, Washington, DC, 2010, p. 7., http://fta.dot.gov/documents/NewStarts_mainText_Jan_2010.pdf.

[9] U.S. Congress, Senate Committee on Appropriations, Subcommittee on Transportation and Housing and Urban Development, and Related Agencies, *Transportation and Housing and Urban Development, and Related Agencies Appropriations Bill, 2012*, 112th Cong., 1st sess., September 21, 2011, S.Rept. 112-83, p. 75, http://www.gpo.gov/fdsys/pkg/CRPT-112srpt83/pdf/CRPT-112srpt83.pdf.

MAP-21, bus program funding was discretionary, but heavily earmarked. In MAP-21, the Bus and Bus Facilities program is about half its previous size and funding is distributed by formula.

Figure 1. Federal Public Transportation Program Funding Shares

FY2013-FY2014

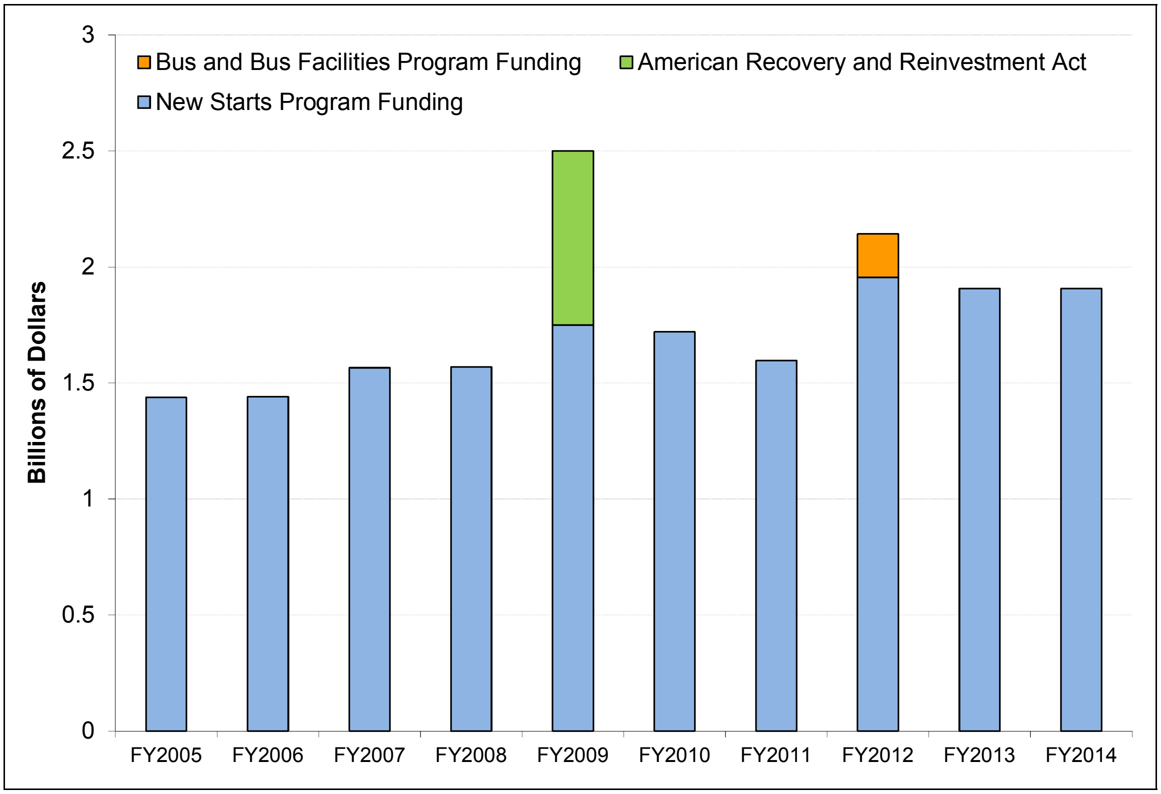


Source: Federal Transit Administration, *MAP-21 Fact Sheet: Funding Summary*, http://www.fta.dot.gov/documents/FTA_Funding_Summary_Fact_Sheet.pdf.

The majority of federal funding for New Starts and Small Starts projects has come through the New Starts program, but such projects may also be supported by other federal programs, such as the FTA's Urbanized Area Formula program and the Federal Highway Administration's (FHWA's) Congestion Mitigation and Air Quality Improvement (CMAQ) program. Funding amounts from these other programs tend to be relatively small. In an analysis of New Starts and Small Starts projects from October 2004 through June 2012, the Government Accountability Office (GAO) found that almost 92% of federal funding for New Starts projects came from the New Starts program, 5% from FHWA flex funding (such as CMAQ), 1% from other FTA programs, and 2% from other federal sources. In Small Start projects, 80% came from the New Starts program, 14% from FHWA flex funds, and 7% from other FTA programs.[10]

[10] U.S. Government Accountability Office, *Public Transit: Funding for New Starts and Small Starts Projects, October 2004 through June 2012*, GAO-13-40, November 2012, http://www.gao.gov/assets/660/650030.pdf.

Figure 2. New Starts Program Funding
FY2005-FY2014



Source: Senate Appropriations Reports; Federal Transit Administration, *MAP-21 Fact Sheet: Funding Summary*, http://www.fta.dot.gov/documents/FTA_Funding_Summary_Fact_Sheet.pdf.

Notes: FY2004 through FY2012 is appropriated funding. FY2013 through FY2014 is authorized funding. Includes rescissions of budget authority in FY2009 ($58.5 million) and FY2010 ($280 million).

Whatever the funding source, the maximum federal share of a New Starts project is 80%. Every year since FY2002, however, the Senate Appropriations Committee has included in its report a directive to FTA not to sign any grant agreements for New Starts projects (though not Small Starts projects) with more than a 60% federal share. Projects approved for New Starts funding typically have had less than a 60% federal share, often much less.[11] MAP-21, however, establishes an exception to these limitations for up to three BRT projects per fiscal year; these are required to have a federal share of at least 80% (49 U.S.C. §5309(l)(8)).

Consistent with the law, GAO found that the federal government paid 45% of the cost of New Starts projects, on average, with local sources paying 48% and state sources 7%. The average federal share in Small Starts projects, by contrast, was 67%, with 24% from local sources and 9% from state sources. The vast majority of state and local contributions come from public funds raised by taxes, bonds, and tolls. Only about 4% of the local funding of New Starts projects came from private investment or public-private partnerships, according to GAO.

[11] See, for example, U.S. Department of Transportation, Federal Transit Administration, *Annual Report on Funding Recommendations Fiscal Year 2013: Capital Investment and Paul S. Sarbanes Transit in Parks Program*, Washington, DC, 2012, pp. 6, 7, and 25, http://www.fta.dot.gov/documents/FY13_Annual_Report_main_text_1_30_12.pdf.

Program Characteristics

Types of Eligible Projects

MAP-21 made substantial changes to the New Starts program, including project eligibility. New Starts program funds now may be used for substantial investments in *existing* fixed guideway lines that increase the capacity of a corridor by at least 10%. These types of projects are termed "core capacity improvement projects." MAP-21 also authorizes the evaluation and funding of a program of interrelated projects.

Since the enactment of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA; P.L. 109-59) in 2005, the New Starts program has distinguished between projects costing less than $250 million and seeking $75 million or less in New Starts funding, known as Small Starts, and projects above these thresholds, known as New Starts. Beginning in FY2007, SAFETEA reserved $200 million per year of the overall New Starts program authorization for Small Starts. While the distinction between Small Starts and New Starts remains, MAP-21 does not specifically reserve funding for Small Starts projects. As discussed in more detail below, however, Small Starts projects do pass through a simpler approval process.

As enacted in MAP-21, there are three types of projects eligible for New Starts funding:

- **Fixed Guideway Capital Projects**, involving construction of an operable segment of a new fixed guideway system or an extension of an existing system, including BRT projects in which the majority of the project operates in a separated right-of-way dedicated to public transportation during peak periods.
- **Small Starts Projects**, defined as a new fixed guideway project or a corridor-based BRT which costs less than $250 million and receives less than $75 million of federal assistance. A corridor-based BRT is required to emulate rail service, but the buses do not need to run most of the way in a separated right-of-way dedicated to public transportation use.
- **Core Capacity Projects**, involving expansion of an existing fixed guideway corridor to increase capacity by 10% or more. These types of projects, aimed at eliminating what are sometimes called core capacity constraints, might include expanding stations to handle more cars, upgrading electrical systems to allow longer trains, and upgrading signaling systems to allow more trains per hour.[12]

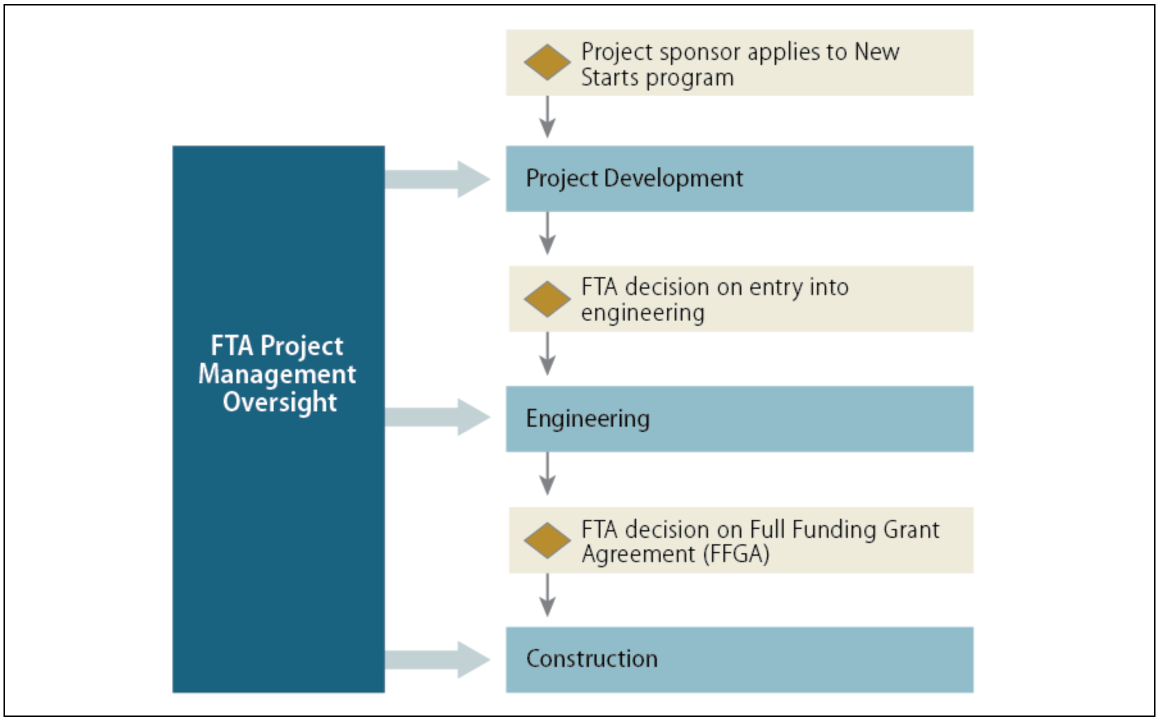
These projects may also be combined in a **Program of Interrelated Projects**, which is defined as the simultaneous development of two or more fixed guideway or core capacity projects.

[12] Cambridge Systematics, "Implications of Investments Targeted at Reducing Transit Passenger Bottlenecks," National Surface Transportation Policy and Revenue Study Commission, Briefing Paper 4L-04, March 3, 2007, http://transportationfortomorrow.com/final_report/pdf/volume_3/technical_issue_papers/paper4l_04.pdf.

New Starts Funding Process

Federal funding for major New Starts projects is typically committed in a Full Funding Grant Agreement (FFGA), usually a multi-year agreement between the federal government and a transit agency. An FFGA establishes the terms and conditions for federal financial participation, including the maximum amount of federal funding being committed.[13] To obtain an FFGA a project must pass through an approval process specified in law (**Figure 3**).

Figure 3. New Starts Planning and Project Development Process



Source: Congressional Research Service; Federal Transit Administration, *Capital Investment Program Listening Session*, Presentation at APTA Annual Meeting, October 3, 2012, http://www.fta.dot.gov/map21/index.html.

MAP-21 simplifies the New Starts process by reducing the number of major stages from four to three. The new stages are termed project development, engineering, and construction.[14] To enter the project development phase, the applicant now needs only to apply to FTA and initiate the review process required by the National Environmental Policy Act of 1969 (NEPA; P.L. 91-190). The bill eliminates the duplicative alternatives analysis previously required to be conducted separately from the alternatives analysis required by NEPA. In general, alternatives analysis is an evaluation of different solutions to a transportation problem in a specific area or corridor and the choice of locally preferred alternative (49 C.F.R. §611.5; 40 C.F.R. §1502.14).

[13] U.S. Government Accountability Office, *Public Transportation: Improvements Are Needed to More Fully Assess Predicted Impacts of New Starts Projects*, GAO-08-844, Washington, DC, July 2008, http://www.gao.gov/new.items/d08844.pdf.

[14] Previously, the New Starts process involved four major phases: planning and alternatives analysis; preliminary engineering; final design; and construction.

Along with the NEPA work during project development, the project sponsor must develop the information needed by FTA to review the project's justification and local financial commitment. Generally, the applicant has two years to complete project development, although an extension can be granted in certain circumstances. MAP-21 requires FTA to use an expedited process to review a sponsor's technical capacity if it has successfully completed a fixed guideway or core capacity project in the recent past. MAP-21 also provides authority to advance projects more quickly using special warrants for projects of which the federal share is $100 million or less or 50% or less of the total project cost. According to FTA, special warrants are "ways in which projects may qualify for automatic ratings on the project justification criteria,"[15] thus not requiring further detailed analysis. In a rulemaking FTA provided this cost-effectiveness example:

> if there is a certain level of transit ridership in the corridor today, and the proposed project falls within total cost and cost per mile parameters defined by FTA, then it would be ''warranted'' by FTA as cost-effective, it would receive an automatic medium rating on the cost-effectiveness criterion, and the project sponsor would not need to undertake or submit the results of certain analyses.[16]

FTA permits a project to enter into the engineering phase once the NEPA process is concluded, the project is selected as the locally preferred alternative, the project is adopted into the metropolitan plan, and the project is justified on its merits, including an acceptable degree of local financial commitment. If the project is a core capacity project it also has to be in a corridor that is over capacity or is projected to be at or over capacity within the next five years. There are additional requirements for interrelated projects: the projects must be logically connected; when evaluated as a whole, they must meet the requirements of the New Starts program; and there must be a project implementation plan showing that construction of each project will start in a reasonable time frame. The engineering phase is when the preparation of final construction plans and cost estimates are made, and may also include right-of-way acquisition and utility relocation.

After engineering work is completed, FTA determines whether to sign an FFGA allowing the project to enter construction. FTA retains some oversight of a project as it is constructed to ensure compliance with the terms of the FFGA. Moreover, FTA must request the funding that is to be provided under the terms of the FFGA for each approved project from Congress each fiscal year.[17] In some cases, FTA may assure a project sponsor of its intention to obligate funds for a project through what is known as a Letter of Intent (49 U.S.C. §5309(k)(1)). FTA may also obligate some of the funding expected to be provided in an FFGA through an Early Systems Work Agreement (49 U.S.C. §5309(k)(3)). Although not a guarantee of full funding, an Early Systems Work Agreement provides funding so that work can begin before an FFGA is awarded.

Several of the changes made to the New Starts process under MAP-21 address the criticism that it has taken too long to develop and deliver projects. Along these lines, MAP-21 also creates a pilot program, limited to three projects, for expediting New Starts project delivery.

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[15] Federal Transit Administration, *Fact Sheet: Fixed Guideway Capital Investment Grants ("New Starts"), Section 5309*, http://www.fta.dot.gov/documents/MAP-21_Fact_Sheet_-_Fixed_Guideway_Capital_Investment_Grants.pdf.

[16] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 78 *Federal Register* 1992-2037, January 9, 2013, p. 2026, http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31540.pdf.

[17] See, for example, U.S. Department of Transportation, Federal Transit Administration, *Annual Report on Funding Recommendations Fiscal Year 2013: Capital Investment and Paul S. Sarbanes Transit in Parks Program*, Washington, DC, 2012, http://www.fta.dot.gov/documents/FY13_Annual_Report_main_text_1_30_12.pdf.

Small Starts

For Small Starts projects, those requesting $75 million or less in federal assistance and costing $250 million or less in total, there are just two phases, project development and construction. As with New Starts, entry into project development only requires the project sponsor to apply to FTA and initiate the NEPA process. Consequently, for Small Starts there is only one formal decision for FTA and that is whether to award funding and, hence, move the project into construction. Funding for a successful Small Starts project is provided in a single grant, if possible, or in an expedited grant agreement which provides a multi-year commitment similar to an FFGA.

Unlike SAFETEA, which reserved $200 million of the overall program authorization for Small Starts, MAP-21 does not reserve funds for Small Starts projects in FY2013 and FY2014. This may change the mix of New Starts and Small Starts projects that are funded, particularly because the newly permitted grants for core capacity projects could reduce the amount of funding available for other projects. Core capacity projects are unlike all existing New Starts and Small Starts projects because, by definition, they are located in cities and corridors that already have fixed guideway service. It remains to be seen, however, how many core capacity projects will be submitted for New Starts funding, and the relative cost of these applications.

Project Rating

In determining whether to approve a project's move from one step to the next in the New Starts process, FTA computes an overall project rating by averaging the summary ratings of the project justification criteria and local financial commitment criteria.[18] In order to advance from project development to engineering and from engineering to construction, a project must achieve an overall rating of at least medium on a five-point scale (low, medium-low, medium, medium-high, high). The project justification criteria for New Starts projects are enumerated in MAP-21. Some of the specific measures are defined in a rulemaking which began before enactment of MAP-21 and further detailed in proposed policy guidance.[19] Other measures will be dealt with in subsequent policy guidance and rulemaking.

The project justification criteria in MAP-21 are the following:

- **Mobility improvements.** Prior to MAP-21 this criterion included the number of transit trips and travel time savings, giving greater weight for benefits going to people who are transit-dependent, compared with a hypothetical baseline alternative that represented "the best that can be done to address identified transportation needs in the corridor without a major capital investment in new infrastructure."[20] FTA has redefined the mobility improvements criterion. It is

[18] For the rating system immediately prior to MAP-21 see, U.S. Department of Transportation, Federal Transit Administration, *Capital Investment Program FY2013 Annual Report: Evaluation and Rating Process,* Washington, DC, August 2011, http://www.fta.dot.gov/documents/FY13_Evaluation_Process.pdf.

[19] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 78 *Federal Register* 1992-2037, January 9, 2013, p. 2026, http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31540.pdf; U.S. Department of Transportation, Federal Transit Administration, "Proposed New Starts and Small Starts Policy Guidance," January 9, 2013, Washington, DC, http://www.fta.dot.gov/documents/NewStartsPolicyGuidance.pdf.

[20] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 75 *Federal Register* 31385, June 3, 2010.

now measured by total trips on the project, but retains the extra weight given to trips made by transit-dependent passengers. This measure is no longer compared to a baseline alternative. Apart from being simpler, FTA notes that this new measure will increase the relative importance of shorter transit trips.[21] In the previous scheme, projects serving shorter trips were at a disadvantage in the competition for funds because riders would have had less opportunity to save time than those using projects serving longer trips.

- **Environmental benefits.** Previously these benefits were measured as the air quality designation of the project's location, but in its rulemaking FTA broadens this to the "direct and indirect benefits to the natural and human environment, including air quality improvement from changes in vehicular emissions, reduced energy consumption, reduced greenhouse gas emissions, reduced accidents and fatalities, and improved public health."[22]
- **Congestion relief.** This was previously included in the cost effectiveness criterion, but only by assuming that "congestion relief adds about 20 percent to the travel time savings generated by the project."[23] Because this criterion was added by MAP-21 the specific measures used in the evaluation will be decided upon in future policy guidance and rulemaking.
- **Economic development effects.** Prior to MAP-21, this was evaluated on the basis of transit-supportive plans and policies, such as zoning regulations near transit stations, that would foster economic development should the project go forward. In its rulemaking, FTA includes an evaluation of affordable housing plans and policies in the project area.
- **Land use (or capacity needs of the corridor for core capacity projects).** In the past this has involved measuring existing land uses and parking supply in the corridor and station areas. FTA, in its rulemaking, adds a measure of publically supported housing in the corridor.
- **Cost-effectiveness as measured by cost per rider.** Prior to MAP-21, cost effectiveness was measured by a project's cost and predicted effect on reducing users' travel time.[24] FTA will now use the cost per rider measure instead. According to FTA, this measure will simplify the evaluation and balance the benefits of long- and short-distance trips.

MAP-21 eliminated operating efficiencies as a project justification criterion and added congestion relief. FTA proposes to give equal weight to each of the six factors within the project justification

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[21] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 78 *Federal Register* 1992-2037, January 9, 2013, p. 2027, http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31540.pdf.

[22] Ibid., p. 2026.

[23] Ibid., p. 2025.

[24] The definition used by FTA prior to MAP-21 was "the incremental cost per hour of transportation system user benefit between the baseline and build alternatives." See, Federal Transit Administration, *Capital Investment Program FY 2012 Evaluation and Rating Process*, Washington, DC, 2012, p.8, http://www.fta.dot.gov/documents/FY12_Evaluation_Process(2).pdf. See also, U.S. Government Accountability Office, *Public Transportation: Improvements Are Needed to More Fully Assess Predicted Impacts of New Starts Projects*, GAO-08-844, July 2008, pp. pp. 16-18, http://www.gao.gov/assets/280/278603.pdf.

evaluation. FTA also proposes to give the project justification criteria a 50% weight of the overall score; the other 50% will be determined by a project's local financial commitment.

To be approved for federal funding a New Starts project must have an acceptable degree of local financial commitment. This includes financing that is stable, reliable, and timely; sufficient resources to maintain and operate both the existing public transportation system and the new addition; and contingency money to support cost overruns or funding shortfalls (49 U.S.C. §5309(f)(1)). These factors are largely unchanged in MAP-21, as is FTA's authority in assessing these factors to evaluate the extent to which local financing exceeds the required non-federal share. However, MAP-21 did add another consideration in assessing local financial commitment: "private contributions to the project, including cost effective project delivery, management or transfer of project risks, expedited project schedule, financial partnering, and other public-private partnership strategies" (49 U.S.C. §5309(f)(2)(F)).

Prior to MAP-21, the weighted measures determining a project's local financial commitment were capital finances (50%), operating finances (30%), and non-New Starts funding share (20%). In the new proposed scheme, local financial commitment will be judged on current capital and operating condition (25%), commitment of capital and operating funds (25%), and the reasonableness of capital and operating cost estimates and planning assumptions as well as capital funding capacity (50%). FTA also proposes that if the New Starts funding share is less than 50% of the project's capital cost then the overall local financial commitment rating will be raised one level.

New Starts Program Legislative History

The New Starts program evolved from Section 3 of the Urban Mass Transportation Act of 1964 (P.L. 88-365). In 1994, Section 3 became Section 5309 in a revision without substantive change of Title 49 of the United States Code.[25] Beginning in the 1970s, as the commitment of, and demand for, federal funding began to grow, the Department of Transportation issued a series of policy statements on the principles by which it would distribute discretionary money to so-called "new starts." These statements issued in 1976, 1978, 1980, and 1984 introduced a series of principles that were written into federal law, including long-range planning, alternatives analysis incorporating a baseline alternative, cost effectiveness, local financial commitment, multi-year contracts specifying the limits of federal participation, supportive local land use planning, and a ratings system.[26]

Congress inserted many of these principles into law in the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA; P.L. 100-17). STURAA established the criteria by which New Starts projects would be judged in order to be eligible for federal funding, and also required DOT's recommendations for funding in the subsequent fiscal year to be detailed in an annual report to Congress. The criteria enacted in STURAA required a New Starts project to be

[25] Revision of Title 49, Transportation, United States Code (P.L. 103-272).

[26] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects; Final Rule," 65 *Federal Register* 76863-76884, December 7, 2000, http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2000_register&docid=00-30921-filed.pdf. See also Daniel Duff, Edward J. Gill, Jr., and G. Kent Woodman, *Legal Handbook for the New Starts Process*, Legal Research Digest 30, Transit Cooperative Research Program, February 2010.

based on an alternatives analysis and preliminary engineering, to be cost-effective, and to be supported by an acceptable amount of local financial commitment that is stable and dependable.

In the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA, P.L. 102-240), Congress added to the cost-effectiveness criterion the *justifications* of mobility improvements, environmental benefits, and operating efficiencies. ISTEA also added a list of lesser *considerations* such as congestion relief, energy consumption, transit supportive land use policies and future patterns, and economic development. A New Starts project would still need to be based on alternatives analysis and preliminary engineering and to have an acceptable amount of local financial commitment.[27]

The Transportation Equity Act for the 21st Century (TEA-21; P.L. 105-178) left the existing law mostly unchanged, but added a few additional considerations such as the costs of sprawl and the technical capacity of a grantee (usually a transit agency) to undertake a project. TEA-21 also required FTA to rate projects overall as "highly recommended," "recommended," or "not recommended." TEA-21 also made it a requirement that FTA formally approve a project to move from preliminary engineering into final design. FTA published its Final Rule in response to TEA-21 in 2000,[28] and subsequently published several program guidance documents.[29]

SAFETEA changed the three-point scale, introduced in TEA-21, to a five-point scale of high, medium-high, medium, medium-low, and low. It also elevated two factors—economic development effects and public transportation supportive land use policies and future patterns—from considerations to project justifications. SAFETEA also created the Small Starts program.

Prior to the enactment of SAFETEA, FTA issued a "Dear Colleague" letter announcing that it would target funding to those projects which received a medium or better rating for cost effectiveness.[30] According to FTA this was in response to concerns expressed by Congress, GAO, and the DOT's Inspector General about recommending for funding projects that received a medium-low on cost effectiveness.[31] Following the passage of SAFETEA, in a Notice of Proposed Rulemaking (NPRM) on August 3, 2007, FTA proposed that a medium rating be required for FTA to recommend a project for funding, and for cost effectiveness to be weighted as 50% of the project justification measure. The other 50% would consist of land use and economic

[27] FTA issued a Notice in 1996 explaining the way in which it would evaluate New Starts projects, and amended that Notice in 1997. See U.S. Department of Transportation, Federal Transit Administration, "Section 5309 (Section 3(j) FTA New Starts Criteria," 61 *Federal Register* 67093-67107, December 19, 1996; U.S. Department of Transportation, Federal Transit Administration, "Section 5309 (Section 3(j)) FTA New Starts Criteria," 62 *Federal Register* 60756-60758, November 12, 1997.

[28] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects: Final Rule," 65 *Federal Register* 76864-76884, December 7, 2000.

[29] These were Advancing Major Transit Investments Through Planning and Project Development (2003), Additional Guidance on Local Initiation of Alternatives Analysis Planning Studies, and New Starts Baseline Alternative Review and Approval Procedures.

[30] Jennifer L. Dorn, Administrator, Federal Transit Administration, "New Starts Rating and Evaluation," Dear Colleague Letter, C-03-05, March, 9, 2005, http://www.fta.dot.gov/newsroom_297.html.

[31] U.S. Government Accountability Office, *Public Transportation: Opportunities Exist to Improve the Communication and Transparency of Changes to the New Starts Program*, GAO-05-674, Washington, DC, 2005, p. 23, http://www.gao.gov/assets/250/246862.pdf.

development combined into one criterion at a weight of 20%, mobility benefits (20%), environmental benefits (5%), and benefits to transit-dependent riders (5%).[32]

This proposal was not well received by the House Transportation and Infrastructure Committee,[33] or by those responding to the notice.[34] Some of the concerns were that, contravening the intent of SAFETEA, the rule would place too much emphasis on cost effectiveness and would not sufficiently evaluate or weight the economic development effects of transit projects. This, critics contended, would favor projects designed for suburban commuters, such as commuter rail and bus rapid transit projects, over more centrally located transit projects such as streetcars.[35] Because of these concerns, Congress included language in the Consolidated Appropriations Act, 2008 (P.L. 110-161), preventing FTA from implementing a final rule. In the SAFETEA-LU Technical Corrections Act of 2008 (P.L. 110-244), Congress amended 49 U.S.C. Section 5309 to require that FTA "give comparable, but not necessarily equal, numerical weight to each project justification criteria in calculating the overall project rating." This was carried forward in MAP-21 (49 U.S.C. §5309(g)(2)(B)(ii) and 49 U.S.C. §5309(h)(6)).

FTA withdrew the 2007 NPRM in February 2009, and then in July 2009 issued final guidance establishing cost effectiveness as 20% of the project justification rating. The other factors were economic development (20%), mobility improvements (20%), land use (20%), environmental benefits (10%), and operating efficiencies (10%). This was followed in January 2010 with an announcement that FTA was withdrawing the policy of only recommending for funding projects that received a medium cost-effectiveness rating or better in favor of recommending projects with an overall rating of medium or better (although projects must score a medium or better on both project justification and local financial commitment).[36] At the same time FTA announced that it intended to issue a new NPRM for changes to the evaluation for New Starts and Small Starts projects. In this regard, FTA issued an Advance Notice of Proposed Rulemaking on June 3, 2010, requesting comments on how to improve measurement of cost effectiveness, environmental benefits, and economic development.[37] An NPRM was issued January 25, 2012, along with

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[32] Federal Transit Administration, "Major Capital Investment Projects," 72 *Federal Register* 43328-43377, August 3, 2007.

[33] U.S. Congress, House Committee on Transportation and Infrastructure, *Hearing on the Federal Transit Administration's Proposed Rule on the New Starts and Small Starts Programs*, "Summary of Subject Matter," 110th Cong., 1st sess., September 26, 2007, H.Hrg. 110-72 (Washington: GPO, 2007).

[34] U.S. Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 74 *Federal Register* 7388, February 17, 2009, http://www.gpo.gov/fdsys/pkg/FR-2009-02-17/pdf/E9-3208.pdf.

[35] K. Siggerud, Director of Physical Infrastructure, U.S. Government Accountability Office, *Preliminary Analysis of Changes to and Trends in FTA's New Starts and Small Starts Programs*, Statement Before House Subcommittee on Highways and Transit, May 10, 2007, GAO-07-812T, http://www.gao.gov/new.items/d07812t.pdf; T. Herrick, "A Streetcar Named Aspire: Lines Aim to Revive Cities," *Wall Street Journal*, June 20, 2007, B1.

[36] Ray LaHood, Secretary of Transportation, "Dear Colleague New Starts and Small Starts Project," January 13, 2010, http://www.fta.dot.gov/documents/Dear_Colleague_New_Starts_and_Small_Starts_Project.pdf.

[37] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 75 *Federal Register* 31385, June 3, 2010.

proposed New Starts/Small Starts policy guidance.[38] A final rule was published January 9, 2013, along with revised proposed policy guidance.[39]

Before the changes in the proposed rulemaking were finalized Congress enacted MAP-21, making substantial changes to the New Starts program. Some of the changes proposed by FTA in its January 2012 NPRM were incorporated into the law. For example, MAP authorizes the use of warrants for projects in which the federal funding is $100 million or less or the federal funding share is 50% or less (49 U.S.C. §5309(g)(3)). Some other elements of the program subject to proposed new rules were changed by the law and some changes in the law were not considered in the proposed new rules. For example, operating efficiencies has been dropped from the list of project justifications and congestion relief added. FTA will deal with these sorts of issues in future rulemaking and policy guidance.

The rulemaking and revised proposed policy guidance establish some significant changes in the evaluation of New Starts/Small Starts projects. According to the rulemaking, FTA has two broad goals: to measure a broader range of benefits and to simplify the evaluation process. To accomplish the first goal FTA will, for example, evaluate environmental benefits by measuring anticipated changes in air quality criteria pollutants, energy use, greenhouse gas emissions, and safety. Environmental benefits in the previous evaluation scheme were based solely on an area's air quality designation. To accomplish the second goal, FTA will take a number of steps including simplifying measures, eliminating the baseline alternative requirement, and improving the ways in which data are submitted to FTA and evaluated. One of the simplified measures is to evaluate mobility improvements as the estimated total number of trips generated by the project with an extra weight for trips by transit-dependent people. Prior to the rulemaking five measures were used to estimate mobility improvements including incremental travel time saved per passenger mile over the baseline alternative. This change, along with changes to the cost effectiveness measure required by law, will likely improve the rating of projects that generally provide shorter trips, such as streetcars.

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[38] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 77 *Federal Register* 3848-3909, January 25, 2012, http://www.gpo.gov/fdsys/pkg/FR-2012-01-25/pdf/2012-1198.pdf; Department of Transportation, Federal Transit Administration, "Proposed New Starts/Small Starts Policy Guidance," January 25, 2012, http://www.fta.dot.gov/12304_14971.html.

[39] Department of Transportation, Federal Transit Administration, "Major Capital Investment Projects," 78 *Federal Register* 1992-2037, January 9, 2013, p. 2026, http://www.gpo.gov/fdsys/pkg/FR-2013-01-09/pdf/2012-31540.pdf; U.S. Department of Transportation, Federal Transit Administration, "Proposed New Starts and Small Starts Policy Guidance," January 9, 2013, Washington, DC, http://www.fta.dot.gov/documents/NewStartsPolicyGuidance.pdf.