

MARYLAND STATE MANAGEMENT PLAN

SECTION 5310 (ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES), SECTION 5316 (JOB ACCESS AND REVERSE COMMUTE) AND SECTION 5317 (NEW FREEDOM) PROGRAMS

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ATTACHMENT A:

Application Forms - Section 5310 (ENHANCED MOBILITY OF SENIORS AND INDIVIDUALS WITH DISABILITIES), Section 5316 (JARC), and Section 5317 (New Freedom) Programs

I. INTRODUCTION

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) legislation was enacted on August 10, 2005 and authorized the Section 5310 (Elderly Individuals and Individuals with Disabilities), Section 5316 Program (Job Access and Reverse Commute (JARC)), and Section 5317 (New Freedom) Programs. Under this legislation, the U.S. Secretary of Transportation is authorized to apportion funds to each state for grants to these programs.

The U.S. Department of Transportation's (DOT) Federal Transit Administration (FTA) that administers the Section 5310, JARC, and New Freedom Programs issued Program Guidance Circulars C 9070.1G, , for this program on April 20, 2015. These circulars incorporated the current statutory and programmatic requirements and use citations based on the codification of the Federal Transit Act, as amended, and other related federal transit laws into the United States Code.

FTA Circulars C 9070.1G, (Section 5310), C 9050.1 (JARC), and C 9045.1 (New Freedom) state that designated recipients are required to have an approved State Management Plan (SMP) that describes the State's policies and procedures for administering the Section 5310 Program and the State-managed portions of the JARC and New Freedom Programs. In Maryland, the Maryland Transit Administration (MTA) of the Maryland Department of Transportation (MDOT) has been designated by the Governor to receive these funds and administer the program.

On July 6, 2012, President Obama signed into law *Moving Ahead for Progress in the 21st Century (MAP-21)* that went into effect on October 1, 2012. The program changes in this legislation included the repeal of the Section 5316 and 5317 Programs and establishment of an enhanced Section 5310 Program (Enhanced Mobility of Seniors and Individuals with Disabilities) that serves as single formula program to support mobility of seniors and individuals with disabilities.

On June 7 2014, FTA issued a final circular FTA C9070.1G with guidance on the administration and preparation of the transit assistance program for seniors and individuals with disabilities under 49 U.S.C 5310.

Additionally, Fixing America's Surface Transportation (FAST) Act, Pub. L. 114-94, signed into law on December 4, 2015 and effective FY2016 through FY2020 provides guidance on the administration of the 5310 (Elderly Individuals and Individuals with Disabilities) Program and is incorporated here within.

Congress established the funding for FTA programs through authorizing legislation that amends Chapter 53 of Title 49 of the U.S. Code. On November 15, 2021, President Biden signed the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58, also known as the “Bipartisan Infrastructure Law”) into law. The legislation reauthorizes surface transportation programs for FY 2022-2026 and provides advance appropriations for certain programs. The Bipartisan Infrastructure Law authorizes up to \$108 billion to support federal public transportation programs, including \$91 billion in guaranteed funding.

In addition to the authorization of surface transportation programs, Congress also authorized additional support for transit agencies during the COVID-19 public emergency:

The Coronavirus Aid, Relief, and Economic Security (CARES) Act provides \$25 billion to transit agencies to help to prevent, prepare for and respond to the COVID-19 pandemic.

On December 27, 2020, the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA), which includes \$900 billion in supplemental appropriations for COVID-19 relief, \$14 billion of which will be allocated to support the transit industry during the COVID-19 public health emergency

The American Rescue Plan Act of 2021 (ARP), which President Biden signed on March 11, 2021, includes \$30.5 billion in federal funding to support the nation’s public transportation systems as they continue to respond to the COVID-19 pandemic and support the President’s call to vaccinate the U.S. population.

Since the MDOT MTA is still administering funding through the JARC and New Freedom Programs, this SMP reviews policies and procedures for all three programs. This SMP will be appropriately revised after all JARC and New Freedom Program funds are appropriated.

II. PURPOSE OF THE STATE MANAGEMENT PLAN

The Section 5310/JARC/New Freedom SMP is intended to facilitate both MTA’s management and FTA oversight by documenting the state’s procedures and policies for administering the three programs in a single reference. While the SMP is intended to be useful to MTA as well as to subrecipients, its primary purpose is to

serve as the basis for the FTA to perform designated recipient-level management review of the Section 5310, JARC and New Freedom Programs, and to provide public information on the MTA's administration of the three programs.

A. PROGRAM GOALS AND OBJECTIVES

The goals of the Section 5310, Section 5316, and Section 5317 Programs are to provide 1) assistance in meeting the special transportation needs of seniors and persons with disabilities, 2) service for low income workers to access jobs and employment related activities, and 3) improved mobility for individuals with disabilities through services beyond current Americans with Disabilities Act (ADA) minimum standards.

These programs are designed to supplement other capital and operating assistance programs by funding transportation projects for seniors, persons with disabilities, and low-income individuals in all areas -- urbanized, small urban, and rural. These programs seek to enhance coordination of State and federally-assisted programs and services in order to encourage the most efficient use of resources and achieve the programs' goal of improved mobility.

The objectives of the Section 5310, Section 5316, and Section 5317 Programs in Maryland are to:

- Maximize the use of funds available to the State of Maryland;
- Distribute funds in an equitable and effective manner;
- Promote and encourage applications from a broad spectrum of interested agencies;
- Establish criteria for evaluating applications for program funds;
- Provide technical assistance to organizations through workshops and administrative assistance; and
- Coordinate Maryland's efforts to provide quality human services transportation services by working with appropriate federal, State and local agencies, transit customers and transportation providers to develop a cooperative, coordinated, and human services transportation system.

Overview of Programs

Section 5310 Program

The federal grant funds under the Section 5310 Program provide financial assistance for operating expenses and purchasing equipment to be used to transport seniors and persons with disabilities, and for providing preventative maintenance services for said equipment. Private non-profit corporations and associations are eligible to receive these grant funds for the specific purpose of assisting them in providing transportation services meeting the special needs of seniors and persons with disabilities for whom transportation services are unavailable, insufficient, or inappropriate.

The goal of the Section 5310 Program is to promote effective, efficient, and safe transportation services that enhance the mobility of Maryland's seniors and disabled persons of human service agencies.

JARC Program

The JARC Program provides funding for developing new or expanded transportation services that connect welfare recipients and other low-income persons to jobs and other employment-related services. The funds are available for use by local agencies and private non-profit organizations. A major impact to the JARC Program in the SAFETEA-LU legislation was a change from a discretionary grant to a formula grant, which has significantly reduced the amount of funds that Maryland invested in projects that offer the potential for the greatest use.

The goal of the JARC Program is to improve access to transportation services to employment and employment-related activities for welfare recipients and eligible low-income individuals and to transport residents of the urbanized areas (populations over 200,000) small urbanized areas (50,000 to 200,000) and nonurbanized areas (under 50,000) to employment opportunities. MTA administers this program for individuals living in the urban, rural and small urban areas of the state.

New Freedom Program

The New Freedom Program provides funding for capital and operating expenses designed to assist individuals with disabilities with accessing transportation services, including transportation to and from jobs and employment support services. Specifically, projects funded through the New Freedom Program must be both new and go beyond the requirements of the ADA of 1990.

The goal of the New Freedom Program is to support new public transportation services beyond those required by the ADA and new public transportation alternatives beyond those required by the ADA designed to assist individuals with disabilities with accessing transportation services, including transportation to and from jobs and employment support services. MTA administers this program for individuals living in the urban, rural and small urban areas of the State.

B. ROLES AND RESPONSIBILITIES

The principal responsibility and authority for administering the program is with the Governor of Maryland through the designated State agency. The State is responsible for: ensuring adherence to federal program guidelines by all subrecipients, notifying private, non-profit organizations of the availability of the program, developing project selection criteria, determining applicant eligibility, and selecting projects for funding. Each eligible private, non-profit organization must apply directly to the MTA for assistance under this program.

State Coordinating Committee for Human Services Transportation (SCCHST)

MDOT MTA OLTS chairs the State Coordinating Committee for Human Services Transportation (SCCHST), which includes representation from the State's Departments of: Aging; Disabilities; Education; Health & Mental Hygiene; Housing & Community Development; Human Resources; Labor, Licensing, & Regulation; Planning; Transportation; Veterans Affairs; as well as the Governor's Office of the Deaf & Hard of Hearing and the Maryland Developmental Disabilities Council.

The Governor created the SCCHST in October 1997 (Executive Order 01.01.1997.06). It was reconstituted in September 2006 and again in April 2010 (Executive Order 01.01.2006.09; Executive Order 01.01.2010.10).

The SCCHST examines and plans for the transportation needs of seniors, people with disabilities, and those who need affordable, accessible transportation to get to work, job training, and education programs. To ensure Marylanders continue access to education, health care, jobs, senior citizen activities, and training, the SCCHST prepared and works with MDOT MTA OLTS to update a five-year plan for human services transportation. The SCCHST also coordinates the efforts and resources of Federal, State and local agencies; serves as a clearinghouse for transportation issues; and investigates the need for standards for vehicles and drivers. In addition, the SCCHST participates in planning for the allocation of human services transportation resources for emergency evacuations.

A sub-committee of the SCCHST is responsible for the review, evaluation, and selection of private, non-private organizations for funding under the program. They have developed the criteria and established the process for candidate projects.

MDOT MTA's Office of Local Transit Support

The Governor has designated MDOT MTA to administer the grant application process and program management for Section 5310/JARC/New Freedom Program funds. These responsibilities are to be performed in cooperation with the SCCHST for the Section 5310 Program. Specifically, it is the responsibility of MTA's Office of Local Transit Support (MDOT MTA OLTS) to carry out the effective implementation of the programs, including:

- Statewide grant application development and submission to the FTA.
- Development of program information materials and dissemination to prospective applicants.
- Allocation of available funds in a fair and equitable manner.
- Administration of agreements with individual non-profit organizations, government bodies, and operators of public transportation services approved under the programs, to define the terms and conditions under which the project will be undertaken, in accordance with federal requirements.

- Procurement of all vehicles approved under the program.
- Processing reimbursement payment requests from subrecipients, and preparing requests for federal reimbursement.
- Monitoring and evaluation of the local provision of transportation under the program, including data collection and compilation, reporting to FTA, and ensuring compliance with state and federal regulations.
- Provision of technical assistance to subrecipients to assist them in grants management, compliance, and the provision of safe, effective, and efficient services.
- Administration of grant funds.

In addition to the administration of the Section 5310, JARC, and New Freedom Programs, the MDOT MTA OLTS provides technical and financial assistance to the Locally Operated Transit Systems (LOTS) serving each of Maryland's 23 counties plus several towns and cities. MDOT MTA OLTS staff is responsible for intergovernmental relations with the LOTS, planning, capital programming, training, regulation and policy compliance, financial management and monitoring, and public relations on behalf of the MDOT MTA in the local communities. The MDOT MTA is responsible for the data collection and compilation from each subrecipient in the State serving the general public. MDOT MTA OLTS leads efforts to coordinate the funding and delivery of specialized transportation services at the State and local level.

While this State Management Plan addresses the FTA requirement to document Section 5310, JARC, and New Freedom Programs management in Maryland, due to the myriad of responsibilities associated with these programs and other FTA programs the MDOT MTA OLTS provides additional comprehensive guidance to its staff through Standard Operating Procedures, and to its subrecipients through a Section 5310, JARC, and New Freedom Programs manual (MTA 5310 Program Manual) and a Locally Operated Transit Systems (LOTS) Manual as well as the annual grant application packages.

The MDOT MTA OLTS coordinates with several other offices within MTA and MDOT that have roles in program implementation. Specific program functions that are shared with other offices: The Office of Planning, the Office of Finance, the Office of Procurement, the Equal Opportunity Compliance Program (EOCP), the Office of Engineering, and the Office of Human Resources.

- The Office of Planning (Capital Programming), the Office of Finance, and MDOT MTA OLTS are jointly responsible for the financial elements of grants management - Administration of FTA grant funds under the Section 5310, JARC, and New Freedom Programs. In general, MDOT MTA OLTS is responsible for most of the administrative functions required for MTA to manage the subgrants with the local subrecipients (including the public transportation providers, private non-profit agencies, and local governments), while the Capital Programming Division is primarily responsible for grant management activities between MTA and FTA (including the administration of all grants for MTA-operated or contracted services). Capital Programming staff tracks the reimbursement requests against the estimated milestone/timeline information provided by the subrecipients in their annual grant applications, sign letters attesting to the availability of funds for State procurements of Section 5310, JARC, and New Freedom Programs funded vehicles, process Section 5310, JARC, and New Freedom Programs-funded payments once MDOT MTA OLTS Regional Planners approve an invoice or request for reimbursement, reconcile each grant by line item on a quarterly basis, prepare quarterly Milestone Progress Reports (MPRs). The Office of Finance is responsible for Financial Status Reports (FSRs) for each Federal grant, and submits these reports to FTA. They track the financial payments through the State's and Federal government's systems.
- The Equal Opportunity Compliance Program (EOCP) is responsible for civil rights programs compliance - MTA's EOCP reviews subrecipient Title VI, DBE and EEO programs for compliance with Federal and State requirements and submits these documents to FTA on behalf of those subrecipients meeting Federal thresholds for FTA program submissions. The EOCP also submits Title VI, DBE and EEO programs and reports required for the State as the grantee.

- MDOT is responsible for public outreach on the Program of Projects (POP) - Every fall, the Maryland Secretary of Transportation and MDOT representatives physically visit each County and Baltimore City to distribute and present Maryland's Draft Consolidated Transportation Plan (CTP) in public meetings, a process known as the MDOT/CTP Tours. The CTP is an annual plan that also serves as Maryland's statewide POP for FTA funding. During the tours, members of the public provide comments on the plan and program, as well as input on local priorities. MDOT MTA OLTS staff play a key role in supporting the tours, including documentation of and response to public comments.
- The Programming Division, MDOT, and the MDOT MTA OLTS work together in the development of and amendments to the Statewide Transportation Improvement Program (STIP) - Maryland's STIP is the collection of the CTP along with the regional Transportation Improvement Programs (TIPs) from each metropolitan planning organization (MPO).
- The Office of Procurement is responsible for procuring small buses and other large quantity items granted to subrecipients on a statewide basis.
- The Office of Planning's Environmental Division and Project Development Division provide technical assistance in planning and environmental work related to large scale capital facilities projects.
- The Office of Engineering provides technical assistance and assists with construction oversight on an as needed basis for large scale construction projects being undertaken by subrecipients.
- The Office of Human Resources is responsible for oversight of subrecipients' drug and alcohol programs, reporting, and compliance.

Local Grant Application Process

The Section 5310/JARC/New Freedom grant applications process is tasked to MDOT MTA OLTS . The Section 5310 grant application process and JARC and New Freedom programs are directed by the Program Manager, Human Services. Funding decisions are made by the SCCHST. As noted above, review, evaluation,

and selection of private, non-profit organizations for funding under the Section 5310 program is conducted by the SCCHST. More information on the requirements pertaining to the local Section 5310/JARC/New Freedom Applications can be found in the most recent applicant packages that are included in Attachment A.

C. COORDINATION

Coordinated Transportation Planning Requirements

SAFETEA-LU required that projects funded through the Section 5310, JARC, and New Freedom Programs “must be derived from a locally developed, coordinated public transit-human services transportation plan”. In partnership with regional bodies and other key stakeholders the MDOT MTA OLTS facilitated the development of regional Coordinated Public Transit-Human Services Transportation Plans (Coordinated Transportation Plans) through a statewide process that included regional forums, regional planning committees, public meetings, and a project website. Each of these activities incorporated representatives of human service agencies, transportation providers, user groups, and MDOT MTA OLTS .

The locally developed Coordinated Transportation Plans meet the coordinated planning requirements for the three programs established under SAFETEA-LU, and those included in the proposed guidance for the revised Section 5310 Program. The regional Coordinated Transportation Plans were initially completed in September 2007, and updated in December, 2015. These plans serve as the basis for selection of projects to be funded through the MTA administered Section 5310, Program. These plans include the identified transportation needs of individuals with disabilities, older adults, and people with low incomes, strategies for meeting these local needs, and potential projects that correspond to each strategy.

Through the coordinated transportation planning process each region in the State established a Regional Coordinated Planning Committee to provide an ongoing forum to discuss any local transportation needs, especially those of older adults, people with disabilities, and people with lower incomes. These committees were involved with updating the Coordinated Public Transit-Human Services Transportation Plans.

Development of the Coordinated Transportation Plans involved a variety of key stakeholders throughout the State, and included:

- Area transportation planning agencies, including Metropolitan Planning Organizations (MPOs), States, and local governments;
- Public transportation providers (including ADA paratransit providers and agencies administering the projects funded under the FTA urbanized and non-urbanized programs);
- Private transportation providers, including private transportation brokers, taxi operators, van pool providers, and intercity bus operators;
- Non-profit transportation providers;
- Past or current organizations funded under the Job Access Reverse Commute, the Elderly Individuals and Individuals with Disabilities, and/or the New Freedom programs;
- Human service agencies funding, operating, and/or providing access to transportation services;
- Existing and potential riders, including both general and targeted population passengers (individuals with disabilities, older adults, and people with low incomes);
- Protection and advocacy organizations;
- Representatives from independent living centers;
- Advocacy organizations working on behalf of targeted populations;
- Agencies that administer health, employment, and other support programs for targeted populations;
 - Departments of Social/Human Services
 - Workforce Development
 - Vocational Rehabilitation
 - Health Department/Medicaid Transportation
 - Agency on Aging (AoA)

- Developmental Disability Council
- Non-profit human service provider organizations that serve the targeted populations;
- Job training and placement agencies;
- Housing agencies;
- Health care facilities;
- Mental health providers;
- Security and emergency management agencies;
- Economic development organizations;
- Faith-based and community-based organizations;
- Representatives of the business community (e.g. employers); and
- Local and State officials and elected officials.

Local and Regional Coordination Planning

Through the development of the Coordinated Transportation Plans that responded to the planning requirements established by SAFETEA-LU, each of five regions in the State established a Regional Coordinated Planning Committee to provide an ongoing format to discuss any local transportation needs, especially those of older adults, people with disabilities, and people with lower incomes. These committees were also charged with updating the Coordinated Transportation Plans as needed, but at a minimum of every three years. The state-level Maryland Coordinated Public Transit-Human Services Transportation Plan (the State Plan) is updated every four years by the MDOT MTA OLTS working in conjunction with the SCCHST and a State Coordinated Planning Committee that includes representatives from each of the five regional planning efforts.

MDOT MTA OLTS also supports coordination at the local and regional level through technical assistance and strategic planning projects.

Maryland Coordinated Community Transportation Website

In conjunction with regional and statewide coordination efforts the MTA provides this website that features links to the regional coordinated transportation plans, information on funding through the MTA administered programs, information on meetings, applications materials, and previous grant awards. This website also includes resources to support mobility management efforts across Maryland. The website is available through the following link: <http://www.kfhgroup.com/marylandcoordinationplans/>

D. ELIGIBLE SUBRECIPIENTS/PROJECTS

Eligible Subrecipients

Section 5310 Program

Eligible applicants for Section 5310 funds are private non-profit corporations that submit either:

- A copy of the Articles of Incorporation filed with the Maryland Department of Assessments and Taxation, or
- A copy of the determination from the U.S. Internal Revenue Service documenting their organization's private, non-profit status.

Although the Federal Section 5310 program permits eligibility of public bodies under certain circumstances, the State of Maryland has determined that public bodies will not be eligible to apply for Section 5310 funds for the following reasons:

- The limited funding available through the Section 5310 program is not adequate to meet the equipment needs of the non-profit organizations now eligible for funding. Approximately 50 percent of those applying each year actually receive funding.
- Non-profit organizations have extremely limited financial resources and few grant programs. Public bodies have access to expanded resources and broader access to grant programs.

JARC and New Freedom Programs

There are three categories of eligible subrecipients of JARC and New Freedom funds:

- 1) Private non-profit organizations. A non-profit organization is a corporation or association determined by the Secretary of Treasury to be an organization described by 26 U.S.C. 501(c) which is exempt from taxation under 26 U.S.C. 501(a) or one which has been determined under State law to be non-profit and for which the designated State agency has received documentation certifying the status of the non-profit organization;
- 2) State or local governmental bodies; and
- 3) Operators of public transportation services.

Private operators of public transportation services can partner with an eligible subrecipient and receive Federal funds. However, they cannot be a direct subrecipient.

Eligible Projects

Section 5310 Program

Funds for the Section 5310 program are available for operating and capital expenses to support the provision of transportation services to meet the specific needs of seniors and persons with disabilities.

Section 5310(b) provides that the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate.

Eligible projects for the required 55 percent of capital projects include the capital cost of contracting for the provisions of transit service for seniors and individuals with disabilities and other specialized shared-ride transportation services. The purchase of rolling-stock for or the acquisition of ADA-complementary paratransit service are eligible capital expenses that may also qualify as public transportation capital projects planned, designed, and carried out to meet the specific needs of

seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate provided the project are carried out by eligible subrecipients and the projects are included in the area's coordinated plan.

In addition to the 55 percent traditional projects, up to 45 percent of an area's apportionments may be utilized for additional public transportation projects that:

- Exceed the ADA minimum requirements,
- Improve access to fixed-route service and decrease reliance by individuals with disabilities on ADA-complementary paratransit service, or
- Provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

Such projects must be targeted toward meeting the transportation needs of seniors and individuals with disabilities, although they may be used by the general public.

JARC and New Freedom Programs

Funding under the two programs is limited, therefore the intent of these funds is for new and innovative projects to meet the unmet transportation needs of people with disabilities and individuals with low incomes. Continued funding of ongoing projects is considered based on the results of the competitive selection process and the success of the project. Funding may be used for capital or operating projects that meet the JARC and New Freedom Program goals and respond to one or more of the strategies identified in the regional Coordinated Public Transit-Human Services Transportation Plan.

JARC Projects - Activities that are eligible for funding may vary from region to region. Examples of activities include, but are not limited to:

Operating Activities

- Late night and weekend service
- Guaranteed ride home service
- Shuttle service
- Expanded fixed-route public transit routes
- Demand-responsive service
- Ridesharing and carpooling activities
- Voucher programs

Capital Activities

- Intelligent Transportation Systems (ITS)
- Promotion of operating activities
- Vehicles
- Mobility management activities

New Freedom Projects - Activities that are eligible for funding may vary from region to region. Examples of activities include, but are not limited to:

Operating Activities

- Expansion of paratransit service beyond the minimum requirements of ADA
- Expansion of current hours for paratransit service

Capital Activities

- Acquisition of accessibility equipment beyond ADA requirements

- Enhancement of services
- Voucher programs
- Volunteer driver programs
- Purchasing accessible vehicles to support taxi, vanpooling, and/or ridesharing programs
- Mobility management activities

E. LOCAL SHARE AND LOCAL FUNDING REQUIREMENTS

Local share requirements for the Section 5310, JARC, and New Freedom Program funds are consistent with FTA matching requirements. The federal share of eligible capital expenses may not exceed 80% of the net project costs, and the federal share of eligible operating expenses may not exceed 50% of the net operating costs.

Match Requirements		
<i>Type of Funding</i>	<i>Federal Share</i>	<i>Local Share</i>
Capital	80%	20%
Operating	50%	50%

All of the local share must come from sources other than Federal Department of Transportation (DOT) funds. Federal DOT program funds cannot be used as a source of local match for other FTA programs, even when used to contract for service. Applicants are provided with examples of other non-DOT Federal funds that can be used as sources of local match monies, including those highlighted by the federal United We Ride Program. Other examples of sources for local match monies that may be used for any or all the local share include local appropriations, dedicated tax revenues, private donations, revenue from human service contracts, and net income generated from advertising and concessions.

Additionally, the JARC and New Freedom Guidance notes that income from contracts to provide human service transportation may be used to either reduce the net project cost (treated as revenue) or provide local match for JARC and/or New Freedom operating assistance. In either case, the cost of providing the contract service is included in the total project cost.

F. PROJECT SELECTION CRITERIA AND METHOD OF DISTRIBUTING FUNDS

As per FTA Circulars C 9045.1 (New Freedom Program Guidance and Application Instructions), C 9050.1 (The Job Access and Reverse Commute (JARC) Program Guidance and Application Instructions), and C 9070.1G (Elderly Individuals and Individuals with Disabilities Program Guidance and Application Instructions), MTA is the State agency designated by the chief executive officer of Maryland charged with developing project selection criteria. In addition, as required by these circulars, the MDOT MTA OLTS conducts a competitive selection process that is separate, but coordinated with, the planning process.

Section 5310 Program

Each local application must be submitted to the appropriate metropolitan planning office/regional coordinating body for review by the deadline indicated in the application package.

The regional Metropolitan Planning Offices (MPO)/Regional Coordinating Bodies (RCB) are as follows:

- Baltimore Metropolitan Council (BMC) - (Annapolis, Baltimore, Carroll, Harford, and Howard Counties and Baltimore City)
- Metropolitan Washington Council of Governments (MWCOG) - (Frederick, Montgomery, and Prince George's Counties)
- Maryland Upper Shore Transit (MUST) - (Caroline, Cecil, Dorchester, Kent, Queen Anne's, and Talbot Counties)
- Tri-County Council for the Lower Eastern Shore of Maryland (TCC)- (Somerset, Wicomico, and Worcester Counties)
- Tri-County Council for Southern Maryland (TCCSMD) - (Calvert, Charles, and St. Mary's Counties)
- Tri-County Council for Western Maryland (TCCWMD) - (Allegany, Garrett, and Washington Counties)

The MPOs/RCBs are responsible for reviewing local applications before they are submitted to MDOT MTA and only endorsing those applications that are derived from/included in the current regional coordinated plan. The MPOs/RCBs provide each applicant with a Certificate of Endorsement, which is to be

included in the final complete application submission to MDOT MTA. In addition, the MPOs/RCBs forward their recommendations to the MDOT MTA.

The MDOT MTA then reviews the applications to ensure compliance and sends those that are responsive to the 5310 Review Sub-committee of the SCCHST to be scored and ranked for selection.

The SCCHST meets to discuss applications and complete the final scoring process. All Section 5310 applications require sign-off by the SCCHST.

Recipients for funding are selected from the applications received during the bi-annual solicitation process. MDOT MTA OLTS does not use a formula nor impose any limitations on the use of funds.

Only those applications that have received endorsement from their respective MPOs/RCBs will be complete the final scoring process for possible funding recommendations.

Each application is scored on four criteria with a total high score of 50 points possible for an application. Failure to complete any criteria section will result in a score of zero for that section. The criteria are:

1. Extent and Urgency of Local Needs (10 pts.)

This criterion relates to project justification; i.e. the transportation needs to be met by an agency's proposed project, the urgency of these transportation needs, and the benefits that will accrue to elderly persons and persons with disabilities because of the transportation proposed in the application.

2. Coordination and Cooperation (20 pts.)

Proposed projects must be derived from the region's Coordinated Transportation Plan. Other considerations include the degree to which the proposed project demonstrates coordination or cooperation among local service agencies and existing transit and paratransit operators. Coordination among agencies serving the elderly and agencies serving persons with disabilities is very important. Coordination may include the sharing of vehicles among agencies, or one agency transporting

clients of another agency, or coordinating unused vehicle time with another agency, so that maximum vehicle utilization is achieved. This coordination will also take into consideration projects that do not include vehicles.

3. Vehicle Utilization (10 pts.)

Refers to the degree to which the service plan provides for the fullest possible utilization of the requested vehicle(s) as well as vehicles currently or proposed to be operated, i.e., ridership projections, miles, and hours of operations, etc. This also refers to proposed operational arrangements for project services.

4. Fiscal and Managerial Capability (10 pts.)

The degree to which the applicant appears to be capable of conducting the proposed project, with particular reference to the source and availability of both capital and operating funds and to the capacity of the agency for providing an efficient service. In particular, the provision of efficient transportation services, maintenance, driver training, and administrative oversight will be evaluated.

The selection process provides for a broad and equitable approach for selection of recipients for Section 5310 funds that meets the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs and activities receiving Federal financial assistance. The MDOT MTA OLTS encourages participation of minority organizations and organizations that serve minority communities in the Section 5310 Program area.

Once the SCCHST has reached a decision on the award of grant funds, the MDOT MTA completes a single State-wide application that includes all the equipment and all necessary information on the successful applicant organizations.

The Statewide application is submitted for Federal approval. Local funding awards are contingent upon Federal funding awarded to the State.

JARC and New Freedom Programs

Projects applied for through the JARC and New Freedom Programs are selected through a statewide competitive review and selection process. As noted earlier a Regional Coordinating Committee has been established in each of the five regions, and they are responsible for reviewing the local application submissions. Any application coming from the non-urbanized areas of Montgomery or Prince George's County will go to MWCOG (if the service is exclusively provided in non-urbanized areas of Montgomery and/or Prince George's County) or to the neighboring region where service is provided (i.e. Baltimore Region, Southern Maryland Region or Western Maryland Region). All the proposed projects will be scored based on the selection criteria defined in the JARC/New Freedom Program application.

Eligible applications within each geographic region will be evaluated and scored for the following criteria:

1. Local Needs - Project Goals/Objectives (up to 20 points)
2. Coordination and Cooperation (up to 25 points)
3. Implementation Plan (up to 15 points)
4. Management Capability (up to 15 points)
5. Fiscal Capability (up to 15 points)
6. Program Effectiveness (up to 10 points)

Each JARC and New Freedom application will be scored up to a maximum of 100 points, based upon the score for each of the six criteria.

The Regional Coordinating Committees will then forward the projects that they endorse and meet the standards set forth within the region's Coordinated Public Transit-Human Services Transportation Plan to the State Planning Subcommittee of the SCCHST. The State Planning Subcommittee will assist MDOT MTA OLTS with recommendations for which projects should be awarded grants, based on the same scoring criteria employed by the regional committees.

Although each applicant may apply for funding for more than one project, it is possible awards could be made for one proposed activity and not another.

Furthermore, projects may not be fully funded up to the dollar amount requested on the application.

Support for (JARC and New Freedom) mobility management and coordination programs among public transportation providers and other human service agencies providing transportation. Mobility management activities may include

- a. The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, seniors, and low-income individuals;
- b. Support for short-term management activities to plan and implement coordinated services;
- c. The support of State and local coordination policy bodies and councils;
- d. The operation of transportation brokerages to coordinate providers, funding agencies, and passengers;
- e. The provision of coordination services, including employer-oriented transportation management organizations' and human service organizations' customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;
- f. The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and
- g. Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of geographic information systems (GIS) mapping, global positioning system technology, coordinated vehicle scheduling, dispatching and monitoring technologies, as well as technologies to track costs and billing in a coordinated system, and single smart customer payment systems. (Acquisition of technology is also eligible as a standalone capital expense).

Appeals Process

An applicant whose application was not approved by MDOT MTA OLTS may file a protest to MDOT MTA OLTS within 60 days following notification of non-acceptance.

An applicant that files a protest must send a letter to the Director of the MDOT MTA Office of Local Transit Support explaining the reason for the protest and including a copy of the applicant's FTA Section 5310, JARC or New Freedom application. The Director of MDOT MTA OLTS will officially respond to the Section 5310/JARC/New Freedom protest within 30 days.

G. ANNUAL PROGRAM OF PROJECTS DEVELOPMENT AND APPROVAL PROCESS

Application requirements are described in the current Fiscal Year edition of the Section 5310 and JARC/New Freedom Applications that are developed, updated and distributed on a bi-annual basis. The applications are transmitted to all current Section 5310 subrecipients in September of the year of the application. A public notice is published through press releases and on applicable websites announcing to the general public and any public or private agency interested in the program. Forms and instruction for completing the forms to apply can be found within each application, and copies of the current applications are included by reference in this SMP and are also provided in Attachment A.

The solicitation of applications is accomplished through the described statewide public notice and a letter announcing the availability of Section 5310, JARC, and New Freedom funding. MDOT MTA OLTS has developed an extensive statewide mailing list that is a compilation of the regional Coordinated Public Transit-Human Services Transportation Plans outreach effort, where this mailing list will be updated annually. MTA's Statewide Programs Coordinator (Section 5310 Program) and the Program Manager, Human Services/Training (JARC and New Freedom Programs) are available for public meetings to discuss the application with eligible recipients. The statewide letter and public notice are issued September for the Section 5310, JARC and New Freedom Programs.

The application process is described earlier in the SMP. Additional information may need to be included:

- Articles of Incorporation/profit non-profit (for private non-profit or

- for-profit partners of eligible public applicants)
- Copy of Letter of Exemption IRS Section 501 C (for private non-profit or for-profit partners of eligible public applicants)
- Copies of public notice
- Public hearing information (public applicants only)
- Letter of notice to human service agencies
- List of agencies sent notice
- Letter of notice to regional MPOs/coordinating bodies
- Signed FTA Certifications and Assurances
- Completed Title VI Civil Rights Forms

Public Notice Requirements for Subrecipient Applications

Subrecipients also have public notice requirements as part of developing their applications. All applicants that apply for funding are required to provide an adequate opportunity for public review and comment on a project, and, after providing notice, must provide an opportunity for a public hearing if it is requested. Each Section 5310/JARC/New Freedom applicant is required to publish a public notice of intent to apply for a Section 5310/ JARC/New Freedom Program grant. Each applicant must publish a public notice in a local area wide newspaper briefly describing the transportation services your organization is proposing to provide with the vehicle or equipment for which you are applying in this application. Members of the public must be given an opportunity to submit comments on the proposed project to the applicant, and the applicant must respond to any comments received. All such comments and responses must be included as part of the final application.

In addition, each applicant is required to send written notification to transportation providers to ensure that the Section 5310 program does not fund projects that will duplicate or compete with existing services, all transportation providers in the proposed service area of the Section 5310 grant application must be notified in writing, by postal mail, of the intended submittal. Transportation operators to be notified include public transit operators, private transit and paratransit operators such as charter bus and taxi operator, social service operators, particularly those funded previously under the Section 5310 or other Federal programs, and specialized transit operators funded by the Maryland Statewide Special Transportation Assistance Program (SSTAP). The grant application provides a list of all providers in the proposed service area.

These public notice requirements are detailed in the respective application for Section 5310/JARC/ New Freedom Program funds.

Once the comment period has closed, the applicant must make a self determination if the community has expressed significant economic, social, or environmental concerns about the project. If no concerns are identified, the applicant must complete the public outreach certification contained in the application. If significant concerns are identified during the public comment period, the applicant must conduct a formal public hearing. If a public hearing is required, the applicant should contact their MDOT MTA OLTS representative for details on how to proceed.

Development of the MDOT MTA Program of Projects (POP)

Those projects that are selected are included in the draft FTA Program of Projects (POP) through the following process.

The draft FTA Section 5310/JARC/New Freedom POP is then presented to the Director of MDOT MTA OLTS for review. A Final JARC/New Freedom POP is presented to the MDOT MTA Director of Planning (Capital Programming) for funding consideration. Upon approval by the Director of Planning (Capital Programming) the final POP is presented to the MTA Administrator. Upon the review and approval by the MTA Administrator the FTA Section 5310/JARC/New Freedom POP is submitted to FTA.

After developing the proposed POP, the Director of MDOT MTA OLTS will inform all applicants by correspondence as to whether or not their project(s) are to be funded. Those applicants selected for funding will be notified of their local match requirements after FTA approves the POP.

Following execution of the FTA Section 5310/5316/5317 grants, MTA grant agreements are prepared and executed with each subrecipient.

The Section 5310/JARC/New Freedom Annual POP is included as part of the MDOT's State Transportation Improvement Program (STIP).

STIP/Transportation Improvement Program (TIP) Requirement

Proposed projects must be a product of the metropolitan planning process and/or the statewide planning process specified in 49 CFR Part 613 and 23 CFR Part 450. That is, all transit projects for which Federal funds are expected to be used and that are within metropolitan planning boundaries must be included in a metropolitan TIP approved by the MPO and the chief executive officer of a State and in a STIP that has been approved by FTA and Federal Highway Administration (FHWA). Projects not within metropolitan planning boundaries are required only to be in the STIP. The project application identifies the latest approved STIP (or amendments) containing the project(s), the appropriate page numbers, and a statement identifying the date that FTA and FHWA approved the STIP (or STIP amendment) that contains the proposed project(s). Projects listed in the TIP and STIP must be derived from and consistent with the State's Long-Range Plan. If a project is selected and is part of an MPO, it must be included in the local TIP. However, if a project is outside of an MPO, MTA's Office of Planning (Capital Programming) ensures that the project is included in the STIP.

H. ADMINISTRATION, PLANNING, AND TECHNICAL ASSISTANCE

The MDOT MTA OLTS will use funds from the Section 5310, JARC, and New Freedom Programs (up to the ten percent limitation) for program administration, planning and technical assistance. These funds may be utilized for staff salaries for time related to the planning and administration of these programs. In addition, funding may be used for outside consultants to perform tasks related to the implementation of these programs, including activities related to the development of state procedures for review and evaluation, reporting and reimbursement, FTA program compliance review, contract development, training, and drug and alcohol review/compliance. The MDOT MTA OLTS will be administering these programs and will be available to provide technical assistance to subrecipients, and subrecipients will be eligible for the on-going MDOT MTA OLTS training for rural and small urban transit systems, including required passenger assistance training, drug and alcohol training (if required), and appropriate specialized training provided on an as needed basis. If subrecipients need additional local project planning or assistance, they can apply to MDOT MTA OLTS for additional funding.

I. FLEXIBLE FUNDING

Flexible funds are certain legislatively specified funds that may be used either for transit or highway purposes. MDOT may transfer Surface Transportation Program (STP) funds, Congestion Mitigation and Air Quality (CMAQ) funds, and certain other flexible funds, from FHWA to FTA to use for transit projects. The funds may be transferred for any non-operating purpose eligible under FTA's Urbanized Area Formula Program (Section 5307), the Elderly Individuals and Individuals with Disabilities Program (Section 5310) and the Nonurbanized Area Formula Program (Section 5311), including preventive maintenance and project administration. The primary flexible fund programs are the STP, and the Congestion Mitigation and Air Quality (CMAQ) Improvement programs, although other programs have some limited intermodal flexibility. Opportunities for transfer of FHWA funds to FTA-sponsored programs will be considered by MDOT/MTA on a case-by-case basis.

Congestion Mitigation and Air Quality (CMAQ)

The primary purpose of the CMAQ program is to improve air quality in areas designated by the U.S. Environmental Protection Agency (EPA) as "nonattainment" areas. Because CMAQ funds are intended to improve air quality, funds must be spent in nonattainment or maintenance areas. A nonattainment area is an area formally designated by EPA as not meeting the National Ambient Air Quality Standards (NAAQS). A maintenance area is an area that was nonattainment but has subsequently attained the NAAQS and officially designated to attainment by EPA. CMAQ funds may be used for transit capital projects and operating expenses for new service. Funds may only be used in nonattainment and maintenance areas and projects must demonstrate an air quality benefit. Operating assistance is limited to new or expanded transportation service and is limited to three (3) years.

Surface Transportation Program (STP)

The primary purpose of STP funds is for construction, reconstruction, rehabilitation, resurfacing, restoration, and operational improvements for highways and bridges including construction or reconstruction necessary to accommodate other transportation modes. Capital costs of transit projects that are eligible under 49 U.S.C. 53, including vehicles and facilities, publicly or privately owned, that are used to provide intercity bus service; carpool projects and fringe and corridor parking facilities; transit safety infrastructure improvements and

programs; transit research, development and technology transfer; surface transportation planning programs; or public transportation management systems under 23 U.S.C. 303.

J. PRIVATE SECTOR PARTICIPATION

In addition to the subrecipient application public notice requirements described earlier in this SMP, to ensure that the Section 5310 Program does not fund projects that will duplicate or compete with existing services all transportation providers in the proposed service area of the Section 5310 grant application must be notified of grant submittal in writing. All providers in the proposed service area must be informed of the proposed service to determine whether they can provide the proposed service in an appropriate manner at a sufficient level. This notification must be postmarked using regular mail in a time period sufficient for transportation providers to inspect the grant application for capital funds and comment upon the intended service prior to submission to the ICST.

Operators to be notified include:

- Public transit operators funded under FTA Section 5307 or 5311;
- Private transit and paratransit operators such as charter bus and taxi operators;
- Social service operators, particularly those funded previously under the FTA Section 5310 program or other federal programs; and
- Transit operators funded by the Maryland Statewide Special Transportation Assistance Program (SSTAP).

In the event a private provider has indicated that they can provide the same service, the applicant must examine the feasibility of purchasing transportation services from the private sector. Should private transportation providers raise any objections, the applicant will address them during the application process. MDOT MTA OLTS staff will review all objections to the application/program as well as the applicant's response.

Complaints regarding involvement of private providers in the local project development process and in the provision of service must be submitted in writing to

the local applicant from the private operator. The local applicant will arrange a meeting within 15 days after receiving the written comments with the private provider and appropriate local officials to discuss these concerns. This meeting will be open to the public and minutes will be taken. The local applicant will submit his/her decision in writing within 15 days after the meeting. All written comments, correspondence, and meeting minutes must be submitted to the MDOT MTA OLTS.

The decisions made by the local applicant as a result of this are final; however, the private provider has the right to challenge the decision made by the applicant to the MDOT MTA OLTS . Review by the MDOT MTA OLTS will be limited to violations of applicable State and/or Federal law or regulations and violation of the local applicant's protest procedures or failure to review a complaint or protest. The MDOT MTA OLTS will not review procedural protests prior to the disposition of complaints at the local level.

Complaints arising after the award of services to a provider, or a decision not to award such services, will use the subrecipient's established bid protest procedure (which is part of the procurement requirements for subrecipients).

K. CIVIL RIGHTS

MDOT MTA OLTS requires that all Section 5310, JARC, and New Freedom recipients certify through the annual application process that they are in compliance with all applicable Civil Rights statutes and implementing regulations associated with the programs, including but not limited to the following as outlined in the 2007 FTA circulars for the three programs and updated to reflect the those listed in the 2013 draft Section 5310 circular:

- a. Nondiscrimination in Federal Transit Programs. The recipient agrees to comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the Project, with the provisions of 49 U.S.C. 5332. These provisions prohibit discrimination on the basis of race, color, religion, national origin, sex, age, and disability, and prohibit discrimination in employment or business opportunity.
- b. Nondiscrimination on the Basis of Disability. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with the applicable laws and regulations, discussed below, for nondiscrimination on the basis of disability.

- (1) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), prohibits discrimination on the basis of disability by recipients of Federal financial assistance.
- (2) The ADA, as amended (42 U.S.C. 12101 et seq.), prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities, as well as imposes specific requirements on public and private providers of public transportation.
- (3) DOT regulations implementing Section 504 and the ADA include 49 CFR parts 27, 37, 38 and 39. Among other provisions, the regulations specify accessibility requirements for the design and construction of new transportation facilities and vehicles; require that vehicles acquired (with limited exceptions) be accessible to and usable by individuals with disabilities, including individuals using wheelchairs; require public entities (including private entities “standing in the shoes” of a public entity as a subrecipient or under a contract or other arrangement) providing fixed-route service to provide complementary paratransit service to individuals with disabilities who cannot use the fixed-route service; and include service requirements intended to ensure that individuals with disabilities are afforded equal opportunity to use transportation systems.
- (4) Providers of demand responsive service must utilize accessible vehicles, as defined at 49 CFR 37.7 or meet the applicable equivalent service standard. For private and public entities, the service must be equivalent in regards to schedules, response times, geographic areas of service, hours and days of service, availability of information, reservations capability, constraints on capacity or service availability, and restrictions based on trip purpose.
- (5) Providers of fixed route service must generally utilize accessible vehicles. Private entities may utilize non-accessible vehicles if they can provide equivalent service in terms of schedules and headways, in addition to the equivalent service requirements described above for demand responsive service. Public entities must also provide complementary paratransit service to fixed route service as defined in 49 CFR 37.121.

- (6) In addition, recipients of any FTA funds should be aware that they also have responsibilities under Titles I, II, III, IV, and V of the ADA in the areas of employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.
- c. Nondiscrimination – Title VI. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the Project, with all of the following requirements under Title VI of the Civil Rights Act of 1964
- (1) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance;
 - (2) U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act,” 49 CFR part 21;
 - (3) FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out DOT Title VI regulations (49 CFR part 21);
 - (4) U.S. DOT Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient (LEP) Persons (70 FR 74087, December 14, 2005). This guidance clarifies the responsibilities of recipients of Federal financial assistance from DOT and assists them in fulfilling their responsibilities to LEP persons, pursuant to Title VI of the Civil Rights Act of 1964 and Executive Order 13166;
 - (5) FTA Circular 4703.1 “Environmental Justice Policy Guidance for Federal Transit Administration Recipients.” This document provides FTA recipients and subrecipients with guidance and instructions necessary to carry out U.S. DOT Order 5610.2 to Address Environmental Justice in Minority Populations and Low-Income Populations, and Executive Order 12898 on Environmental Justice that describes the process that the Office of the Secretary of Transportation

and each operating administration will use to incorporate environmental justice principles into existing programs, policies, and activities.

- (6) U.S. DOT Order to Address Environmental Justice in Minority Populations and Low-Income Populations. DOT Order 5610.2 describes the process that the Office of the Secretary of Transportation and each operating administration will use to incorporate environmental justice principles (as embodied in Executive Order 12898 on Environmental Justice) into existing programs, policies, and activities;
- d. Equal Employment Opportunity. The recipient agrees to comply, and assures the compliance of each third party contractor and each subrecipient at any tier of the project, with all equal employment opportunity (EEO) requirements of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e), and with 49 U.S.C. 5332 and any implementing regulations DOT may issue.
- e. Nondiscrimination on the Basis of Sex. The recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, (20 U.S.C. 1681 *et seq.*), with DOT implementing regulations, “Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance,” 49 CFR part 25.
- f. Nondiscrimination on the Basis of Age. The recipient agrees to comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*), and Department of Health and Human Services’ (DHHS’) implementing regulations, “Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance,” (45 CFR part 90), which prohibit discrimination against individuals on the basis of age. In addition, the recipient agrees to comply with all applicable requirements of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, “Age Discrimination in Employment Act” (29 CFR part 1625), which prohibit employment discrimination against individuals on the basis of age.
- g. Disadvantaged Business Enterprise (DBE). To the extent required by Federal law, regulation, or directive, the recipient agrees to take the following measures to facilitate participation by DBEs:

- (1) The recipient agrees and assures that it will comply with MAP-21 Section 1101(b) (23 U.S.C. 101 note), which directs the Secretary of Transportation to expend not less than 10 percent of authorized federal funds with DBE's. This 10 percent national goal is aspirational and is used by the Department of Transportation to help monitor and evaluate DBE participation in DOT assisted contracting opportunities.
- (2) The recipient agrees and assures that it will comply with DOT regulation, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR part 26. Among other provisions, this regulation requires certain recipients of DOT Federal financial assistance, namely State and local transportation agencies, to establish goals for the participation of disadvantaged entrepreneurs and certify the eligibility of DBE firms to participate in their DOT-assisted contracts.

The recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin, in the award and performance of any third party contract, or sub-agreement supported with Federal assistance derived from DOT, or in the administration of its DBE Program, and will comply with the requirements of 49 CFR part 26. The recipient agrees to take all necessary and reasonable steps set forth in 49 CFR part 26 to ensure nondiscrimination in the award and administration of all third party contracts and sub-agreements supported with Federal assistance derived from DOT. As required by 49 CFR part 26 and approved by DOT, the recipient's DBE Program is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement. The recipient agrees that implementation of this DBE Program is a legal obligation, and that failure to carry out its terms shall be treated as a violation of the Grant Agreement or Cooperative Agreement. Upon notification by DOT to the recipient of a failure to implement its approved DBE Program, DOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001, and/or the Program Fraud Civil Remedies Act, (31 U.S.C. 3801 *et seq*).

L. SECTION 504 AND ADA REPORTING

Each applicant will sign a certification that it has reviewed the policies, practices,

and facilities used in the provision of transportation services in order to fulfill the requirements of the ADA, 49 U.S.C. 322, and the implementing regulations of the FTA, 49CFR Part 37 and 38.

M. PROGRAM MEASURES

In accordance with state and federal requirements, each subrecipient must report financial and operating data on the use of funds and equipment purchased with Section 5310, JARC, and/or New Freedom Program funds on a quarterly basis. The reporting forms must be submitted to MDOT MTA OLTS electronically, no more than 45 days after each quarter, in support of the Quarterly Request for Payment (if applicable for operating, preventive maintenance, and mobility management projects).

- Quarterly reports on Operating projects, as well as ongoing Capital projects including preventive maintenance, information-based services, and mobility management activities, must be submitted until all grant funds are expended and the grant is closed out (typically 1-2 years).
- Quarterly reports on use of vehicles purchased under a Capital grant must be submitted until there is no longer an MTA security lien on the title of vehicle to the subrecipient (typically at least 6 years for small buses and at least 4 years for smaller vehicles). Once an MTA/FTA-funded vehicle has reached the end of its useful life and has been retitled to your agency, it no longer needs to be reported except in the context of questions addressed to your agency's client transportation program as a whole.

Each type of grant has a separate quarterly reporting form tailored to include the specific items the FTA requires for each funding source, in addition to general questions common to all programs. The items unique to each program are described below.

Section 5310 Program-Specific Measures:

- Gaps in Service Filled: Provision of transportation options that would not otherwise be available for older adults and individuals with disabilities measured in numbers of older adults and people with disabilities afforded mobility they would not have without program support.

- Ridership: Actual or estimated number of rides (as measured by one-way trips) provided annually for individuals with disabilities and older adults on Section 5310 – supported vehicles and services.

JARC Program-Specific Measures:

- Actual or estimated number of jobs that can be accessed as a result of geographic or temporal coverage of JARC projects implemented in the current reporting year.
- Actual or estimated number of rides (as measured by one-way trips) provided as a result of the JARC projects implemented in the current reporting year.

New Freedom Program-Specific Measures:

- Increases or enhancements related to geographic coverage, service quality and/or service times that impact availability of transportation services for individuals with disabilities as a result of the New Freedom projects implemented in the current reporting year.
- Additions or changes to environmental infrastructure (e.g., transportation facilities, sidewalks, etc.), technology, and vehicles that impact availability of transportation services as a result of the New Freedom projects implemented in the current reporting year.
- Actual or estimated number of rides (as measured by one-way trips) provided for individuals with disabilities as a result of the New Freedom projects implemented in the current reporting year.

N. DESIGNATED RECIPIENT PROGRAM MANAGEMENT

MTA has the responsibility for the State’s Section 5310, JARC, and New Freedom Programs. The MDOT MTA OLTS has been assigned this responsibility and the Director of OLTS has the overall responsibility for the Section 5310, JARC, and New Freedom Programs. At MDOT MTA the OLTS performs program management functions through the efforts of the Program Manager, Human Services. .with assistance from the RP’s when appropriate.

The three positions have varying roles in the Section 5310, Section 5316, and Section 5317 Programs as well as other transit programs. As can be seen, they

perform specialized overall program functions and state-level roles with regard to the Section 5310, Section 5316, and Section 5317 Programs:

1. Updating the TIPs with regard to Section 5310, Section 5316, and Section 5317 projects;
2. Distributing the local grant application package;
3. Project review to ensure consistency with adopted Public Transit-Human Services Transportation Plan.
4. Management of the project evaluation and selection process for Section 5310, Section 5316, and 5317 projects.
5. Conveying program requirements to local grantees and third-party operators;
6. Notification of the non-participating but eligible agencies of availability of Section 5310, Section 5316, and Section 5317 funding for the upcoming year,
7. Review of reimbursement requests for projects under these programs.
8. Provision of technical assistance to local subrecipients on questions and issues that arise during the course of program administration.
9. Monitoring compliance with FTA and MDOT MTA OLTS program requirements, including Drug and Alcohol program compliance; insurance compliance; reporting and financial compliance, civil rights, and
10. Attending regional coordination meetings when required to support projects under Section 5310, Section 5316, and 5317.

a) Procurement

All procurement activities are the responsibility of the subrecipient. However, the MDOT MTA OLTS conducts a centralized procurement for vehicles funded by the Section 5310 program and strongly encourages

JARC and New Freedom subrecipients to participate in the state procurement of vans and small buses rather than procuring FTA grant-funded vehicles locally.

Subrecipients can use the procurement procedures of their jurisdiction as long as they conform to the minimum standards prescribed by the MDOT MTA OLTS and FTA Circular 4220.1F to ensure full and open competition and equitable treatment of all potential sources in the procurement process. In addition, the subrecipient must maintain a contract administration system that ensures that all procurements funded wholly or in part with Section 5310/JARC/New Freedom funds are done in accordance with MDOT MTA OLTS and federal regulations.

The MDOT MTA OLTS has adopted the procurement requirements and standards delineated by FTA for the Section 5310/JARC/New Freedom subrecipients in Maryland with the following exception: the State small purchase threshold is \$25,000. For projects over \$25,000 the subrecipient must pursue the same methods of procurement that are followed for FTA-funded projects that are \$100,000 or more as described in Circular 4220.1F.

For projects up to \$25,000 (State limit), the subrecipient must solicit price or rate quotations from an adequate number of sources; the State requires at least two and preferably three quotes.

The State categorizes small procurements as follows, each with its own procurement guidelines:

- **Category I (known as Micro-purchases under Federal methods):** For purchases valued up to \$3,500 (Federal threshold), oral or written solicitation may be used. A written purchase order or contract is required if written solicitation is used. The subrecipient is responsible for ensuring that the price is fair and reasonable, and is encouraged to distribute multiple purchases equitably among local qualified suppliers. The basis for the award should be the judgment of the subrecipient's procurement officer. Once a subrecipient has identified a preferred vendor, MDOT MTA OLTS concurrence is required prior to the issuance of a purchase order.

- **Category II:** for procurements more than \$3,500 but not more than \$25,000, oral or written solicitation may be made. A written purchase order or contract is required for Category II small procurements.
- **Category III:** for procurements more than \$25,000 written solicitation must be made (although it may be supplemented by oral solicitation), and the solicitation must be posted on the eMaryland Marketplace.

All of these categories require an Independent Cost Estimate (ICE).

For all items purchased with capital funds, as well as for all items purchased through sealed bids, competitive proposals, or noncompetitive negotiations, the MDOT MTA OLTS must review and concur with the solicitation documents prior to publication and the initiation of the procurement process. The MDOT MTA OLTS must also concur in writing with the recommendation for award prior to the execution of a local contract or purchase order for all items purchased through the methods mentioned previously. The MDOT MTA OLTS will defer to the local subrecipient's procurement requirements if theirs are more stringent than the State's requirements.

b) Financial Management and Accounting Procedures

The MDOT MTA OLTS provides for fiscal controls and accounting procedures in accordance with State laws and in compliance with all FTA requirements.

Information received from subrecipients provides detailed information on expenditures and services provided in support of projects for payment for Section federal funds. The grant agreements held with subrecipients require that all funds be expended and accounted for as required by Federal, State, and Local Law. Closeouts of subrecipients are conducted upon receipt of all final requests for payment and supporting information.

c) Property Management

Real property and equipment are all tangible, non expendable property having a useful life of more than one year and an acquisition cost of \$5,000

or more per unit. The Title (if applicable) to all equipment must be vested in the name of the local recipient.

Property records must be maintained by the local recipient that includes a description of the equipment, a serial number or other identification number, the source of property, title, the acquisition date, the cost of the equipment, percentage of Federal/State participation in the cost of the equipment, grant or project number, the location, use and condition of the equipment, and any disposition date, including the date of disposal and sale price of the equipment. A compilation of all local recipient's real property will be maintained by the MDOT MTA OLTS in a master list. This list will be updated every year by cross referencing property records that are submitted within the annual ATP and comparing it to MDOT MTA OLTS 's master real property list.

A physical inventory of real property and equipment must be taken and the results reconciled with the property records at least once every two years. The Section 5310/JARC/New Freedom applications also contains the FTA Certifications and Assurances requiring the applicant to have satisfactory continuing control over the use of project equipment and facilities. As part of their review of the annual applications, MDOT MTA OLTS staff will analyze 1) the previous awards made and 2) whether the capital still holds value to warrant listing. Staff will validate presence and condition of equipment during annual site visits.

A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of equipment. Any loss, damage, or theft shall be investigated. Adequate maintenance procedures must be developed to keep the property in good condition. In cases of accidental or casual loss of project equipment, fair market value shall be deemed the value of the equipment prior to its destruction. The local subrecipient must reinvest the insurance proceeds from the settlement for public transit purposes.

The MDOT MTA OLTS also requires a Facility Maintenance Plan for all federally funded facilities and equipment. Specifically, the plan needs to:

- Identify the facilities and equipment that are to be maintained;

- Define an organization and assign responsibility for on-going maintenance;
- Assign a series of inspections and routine maintenance actions to be performed at appropriate intervals; and
- Prescribe a record-keeping system that maintains adequate permanent records of maintenance and inspection activity for each building and equipment.

Before final reimbursement for a new facility, local recipients must submit a Facility Maintenance Plan to MDOT MTA OLTS for approval.

d) Vehicle Useful Life and Replacement Standards

Minimum Useful Life Standards

To ensure that vehicles are adequately maintained and remain in service for their normal service life, the MDOT MTA OLTS has established minimum useful life standards for vehicles funded with state or federal funds. These standards apply to all vehicles purchased with Sections 5307, 5309/5339, 5310, 5311, 5316, 5317, and State funds, and to all vehicles that will be replaced with vehicles funded from these programs, regardless of the initial funding source.

Service-life begins on the date the vehicle was placed in service and continues until it is removed from service.

Classification	Yrs.	Miles	LENGTH
Revenue Specialized Vehicles (Accessible Minivans, Vans, Accessible Taxicabs & Sedans)	4 years	100,000	n/a
Light Duty Bus	5 years	150,000	25' - 35'
Medium Duty Bus	7 years	200,000	25' - 35'
Heavy Duty Bus-Medium Size	10 years	350,000	30' - 35' '
Heavy Duty Bus-Large Size	12 years	500,000	Over 35'
Non-Revenue Specialized/ Fleet Support Vehicles (Pick-Up Trucks, Utility Vehicles & Sedans)	10 years	200,000	n/a

Useful life for trolley-buses (simulated, with rubber tires and internal combustion engines) is determined using the above useful life classifications.

Vehicle Classifications

If there is ever a question about what a certain vehicle's classification might be, the Altoona Test used for that vehicle is always the substantiating documentation as to its classification.

Although a minimum standard for useful life is adopted, additional information about the condition of the vehicle is necessary for all replacement requests. Vehicles will not be replaced based solely on age and accumulated mileage, therefore details such as repair records or estimated repair costs must be provided with the request. Also, it is important to note that if a vehicle is out of service/not being utilized for an extended period of time, the subrecipient must contact MDOT MTA OLTS to determine how this will affect the vehicle's useful life criteria.

Below is minimum information that is requested to submit for a replacement vehicle, using forms provided in the annual grant application.

- Fleet Vehicle Number,
- Present Mileage,
- Vehicle Identification Number and delivery date (if the vehicle to be replaced was purchased under a previous Section 5307, 5309/5339, 5310, 5311, 5316, 5317, or State grant),
- A description of the condition of the vehicle to be replaced, including the reasons for replacing the vehicle at this time, and
- An indication of how the vehicle will be disposed of (sell, salvage, or used as backup or other). NOTE: any insurance proceeds received for this vehicle will be deducted from MTA's state and federal portion of the eligible cost of a replacement vehicle.

Replacement Prior to Meeting Minimum Useful Life Criteria

The MDOT MTA OLTS considers the value prior to the end of normal useful-life to be based on straight line depreciation and that removal of an MDOT MTA OLTS funded vehicle before the end of its normal service life, for any reason, requires notification to the MDOT MTA OLTS . The subrecipient must describe the circumstances necessitating the replacement of the vehicle. The subrecipient would need to complete the information above, in addition to providing the following information:

- A list of any repairs that will be required to keep the vehicle in service, and an estimated cost of each repair,
- A description and cost of repairs made to the vehicle to date (attach the repair and preventive maintenance records, if available).

Upon notification, the MDOT MTA OLTS will determine whether it retains further interest in the vehicle and whether reimbursement of the federal/state share of its remaining value must take place. For FTA/MTA-funded vehicles, after the normal service life is met, the MDOT MTA OLTS no longer retains a financial interest in the vehicle.

Vehicle Status Monitoring

The MDOT MTA OLTS monitors vehicles funded through the Section 5310/JARC/New Freedom Programs. “Active” vehicles are those for which the MTA is a lien holder on the title. This is required until a vehicle reaches its useful life standard as outlined above. After the normal service life is met, the MDOT MTA no longer retains a financial interest in the vehicle. The subrecipient is then required to re-title the vehicle, removing MDOT MTA from the title. Any Proceeds from the sale or disposal of the re-titled vehicle, is required to be re-invested by the agency back into the agency’s transportation program. If proceeds are greater than \$5,000, they must be used to towards the Federal share for a future bus replacement and need FTA approval prior to doing so. MDOT MTA will request concurrence from FTA.

e) Maintenance and Disposition

All Section 5310/JARC/New Freedom subrecipients, except where specifically exempted by State law, must register and comply with the regulations of the Maryland Public Service Commission, including vehicle inspection and maintenance standards. All operators of vehicles with capacity for ten or more passengers must comply with the Maryland Preventive Maintenance Program. Each vehicle must carry a certification documenting that preventive maintenance and inspections are performed and in compliance. In addition, all Section 5310/JARC/New Freedom subrecipients receiving vehicles must submit their preventive maintenance program to the MDOT MTA OLTS with their application.

All subrecipients need a proper vehicle disposition policy that is approved by the MDOT MTA OLTS . The subrecipient may not dispose of vehicles and other equipment at the end of their useful life until after notifying and receiving disposition instructions and concurrence from the MDOT MTA OLTS .

f) Evaluation and Monitoring

Monitoring is necessary to ensure that the MTA's subrecipients meet Federal and State requirements. While the local subrecipients are required to sign and submit annual certifications and assurances to the MDOT MTA OLTS , the MDOT MTA OLTS actively examines all subrecipients to ensure that funds are being used as intended.

Monitoring local subrecipients serves several functions, including review of compliance with Federal and State requirements and review of LOTS service performance. Monitoring ranges from informal observation and review, to auditing compliance with Federal and State requirements, to enforcement of requirements in which a subrecipient is found to be deficient.

MTA conducts oversight of the Section 5310/JARC/New Freedom subrecipients through the following procedures:

1. Reporting Requirement: To provide for the efficient administration of the Section 5310/JARC/New Freedom Programs, subrecipients must report basic operating and financial data on at least a quarterly basis, as described earlier in this SMP.

2. Subrecipient Annual Grant Applications: The MDOT MTA OLTS requires each subrecipient to submit a grant application providing detailed program description and information demonstrating compliance with federal and state requirements, certifications and assurances.
3. Subrecipient Compliance Reviews. The MDOT MTA OLTS maintains a policy of conducting full compliance reviews of each of the Section 5310, JARC, and New Freedom Program subrecipients in the State of Maryland. These reviews occur every three years to ensure FTA program requirements are being followed.
4. On-Site Visits: Periodic site visits are conducted by MDOT MTA OLTS staff to provide technical assistance and to review program accomplishments and management. During these visits MDOT MTA OLTS staff will also monitor subrecipient's maintenance of federally funded vehicles and facilities (where applicable). Specifically for vehicles, spot checks will be made by pulling vehicle records to ensure that they comply with the state standards and guidelines – required to meet manufacturer's established maintenance intervals.
5. Identification of Subrecipient's Common and Program-specific Deficiencies. On an ongoing basis, the MDOT MTA OLTS will review all compliance oversight activities that have occurred over the prior year to identify common and program specific deficiencies found for its subrecipients. The review will help determine new training opportunities, outstanding subrecipient deficiency findings for follow-up and new areas of compliance emphasis at quarterly meetings.
6. Establishing and Maintaining an Active Review Process. MDOT MTA OLTS will ensure subrecipients implement timely actions and plans required to resolve deficiencies identified in the specific FTA program requirement reviews by establishing achievable and mutually agreed deadlines, conducting as-needed and programmed status meetings, and providing sample templates and acceptable program specific information to subrecipients. Subrecipient failure

to meet deadlines will be reviewed on a case-by-case basis to determine further remedial or corrective actions.

8. Providing Ongoing Subrecipient Training and Education. Mandatory training will be provided at least once per year. Examples of upcoming topics include new Title VI program requirements; revised ADA program requirements; and new MAP 21 requirements for Transit Asset Management Plans and State of Good Repair Programs. The MDOT MTA OLTS will provide periodic monitoring of subrecipients compliance with new program requirements.

g) Construction/Renovation of Facilities

The MDOT MTA OLTS assists, reviews, and approves local projects during all phases of construction or renovation. Technical assistance is available for local recipients in the development and evaluation stage, for environmental reviews and compliance, for design and engineering, and during construction. An in-house team of appropriate experts is compiled to work with the local project manager and the local contractors. Projects that require environmental review/guidance will be administered through the MTA Department of Environmental Planning. MTA will work with subrecipients to ensure full compliance with FTA's environmental impact regulation (49 CFR part 622, referencing 49 CFR part 771).

O. OTHER PROVISIONS

To ensure compliance with other federal requirements, subrecipients of Section 5310, JARC, and New Freedom funds are required to sign Federal Certifications and Assurances for FTA Assistance Programs as part of the annual application, and these are reviewed as part of the overall application review process. For monitoring compliance by subrecipients, MDOT MTA OLTS performs a site review once during the lifetime of the project for each grant recipient.

A grant applicant applying for assistance under any FTA grant program must submit certifications and assurances that are applicable to the grant applicant's grant request during the fiscal year. FTA's annual Certifications and Assurances include basic program requirements for the JARC and New Freedom programs. It is MDOT MTA OLTS 's responsibility to competitively select projects and certify

that they are derived from a coordinated plan and that the local applicant's authorized representative has signed the affirmation page binding the applicant's compliance (located in the Assurance Package).

Twenty-three categories of Certifications and Assurances are listed. Category I applies to all Applicants. Category II applies to all applications exceeding \$100,000. Categories III through XXIII will apply to and be required for some, but not all, applicants and projects. FTA and the applicant understand and agree that not every provision of these certifications and assurances will apply to every applicant or every project for which FTA provides federal financial assistance through a Grant Agreement or Cooperative Agreement. The type of project and the section of the statute authorizing federal financial assistance for the project will determine which provisions apply.

Category I:

- A. Assurance of Authority of the Applicant and its Representative
- B. Standard Assurances
- C. Intergovernmental Review Assurance
- D. Nondiscrimination Assurance
- E. Assurance of Nondiscrimination on the Basis of Disability
- F. U.S. Office of Management and Budget (OMB) Assurances

Category II: Lobbying Certification Required for Each Application Exceeding \$100,000

Category III: Procurement Compliance

Category IV: Private Providers of Public Transportation

Category V: Public Hearing Requirements as stated in 49 U.S.C. 5323(b)

Category VI: Acquisition of Rolling Stock

Category VII: Acquisition of Capital Assets by Lease

Category VIII: Bus Testing

- Category IX: Charter Service Agreement
- Category X: School Transportation Agreement
- Category XI: Demand-Responsive Service
- Category XII: Alcohol Misuse and Prohibited Drug Use
- Category XIII: Interest and Other Financing Costs
- Category XIV: Intelligent Transportation Systems
- Category XV: Urbanized Area Formula Program
- Category XVI: Clean Fuels Grant Program
- Category XVII: Elderly Individuals and Individuals with Disabilities Formula Program and Pilot Program
- Category XVIII: Nonurbanized Area Formula Program
- Category XIX: JARC Formula Grant Program
- Category XX: New Freedom Program
- Category XXI: Alternative Transportation in Parks and Public Lands Program
- Category XXII: Infrastructure Finance Projects
- Category XXIII: Deposits of Federal Financial Assistance to State Infrastructure Banks

Some of the particular Federal requirements are addressed through the fact that MDOT MTA OLTS performs the vehicle procurements for these programs, thus the state procurement will deal with Buy America, pre- and post-delivery reviews, etc. Drug and alcohol testing is also addressed by having subrecipients and their contractors attend MDOT MTA OLTS training in FTA Drug and Alcohol policies and testing requirements, and

through Drug and Alcohol site reviews. In general, MDOT MTA OLTS does not utilize these programs for the development of facilities, so many of the environmental requirements associated with facilities are moot.

Applicable Provisions

Several laws and administrative requirements apply in common to all federal grant programs. Compliance features for some of these requirements have been further defined by the FTA; inclusive of several unique provisions applicable to all FTA grant assistance programs, which are detailed below.

Public Hearing Requirements

The public hearing requirement in 49 U.S.C. 5323(b) for capital projects was amended by SAFETEA-LU. The law now associates more clearly the public involvement and hearing requirements for capital projects with the environmental review required by the National Environmental Policy Act (NEPA) and its implementing regulations. It also broadens the requirement to apply to all capital projects (as defined in 49 U.S.C. 5302). Now, the grant applicant must provide an adequate opportunity for public review and comment on a capital project, and, after providing notice, must hold a public hearing on the project if the project affects significant economic, social, or environmental interests. These requirements will be satisfied through compliance with the NEPA requirements for a public scoping process, public review and comment on NEPA documents, and a public hearing on every draft environmental impact statement (EIS). FTA will also require a public hearing on environmental assessments (EAs) that have a high probability of being elevated to EISs, ensuring that the applicant has complied with the public hearing requirement to include in the environmental record for the project. Pursuant to 49 U.S.C. 5323(b), any application for a project that will “substantially affect a community or the public transportation service of a community” shall include a certification to the effect that the applicant has:

- a) Provided an adequate opportunity for public review and comment on the project;
- b) After providing notice, held a public hearing on the project if the project affects significant economic, social, or environmental interests;

- c) Considered the economic, social, and environmental effects of the project; and
- d) Found that the project is consistent with official plans for developing the community.

Section 5323(b)(2) further states, “Notice of hearings under this subsection shall include a concise description of the proposed project; and shall be published in a newspaper of general circulation in the geographic area the project will serve.”

Section 5323(b) must be read in concert with Section 5324(b) which states that FTA must review the public comments and hearing transcript to ascertain that an adequate opportunity to present views was given to all parties having a significant economic, social, or environmental interest in the project, and that FTA must make a written finding to this effect.

The public hearing requirements of 49 U.S.C. 5323(b) are separate and apart from the requirements for public participation in statewide and metropolitan planning. All capital projects financially supported by FTA are subject to statewide transportation planning requirements and, in metropolitan areas, to metropolitan planning requirements. FTA and FHWA have codified procedures for compliance with the statewide and metropolitan planning statutory mandates – including the mandates for public participation in the development of long-range plans and Transportation Improvement Programs – in the two agencies’ joint planning regulations. (See 23 CFR part 450 and 49 CFR part 613).

Transit Employee Protection – Title 49 U.S.C. 5333(b)

Title 49 U.S.C. 5333(b) requires that the interests of employees affected by assistance under most FTA programs shall be protected under arrangements the Secretary of Labor concludes are fair and equitable. Employee protections under Section 5333(b) are required for the JARC program. The Section 5311 special warranty does not apply to rural JARC projects, and FTA must submit all JARC grants to Department of Labor (DOL) for certification.

When Federal funds are used to acquire, improve, or operate a transit system, Federal law requires arrangements to protect the rights of affected transit employees. These arrangements must be approved by the Department of Labor (DOL) before the Department of Transportation’s FTA can release funds to

grantees. The terms and conditions of the protective arrangements are included in the grantee's contract with FTA.

The requirement to protect transit employees is contained in Section 5333(b) of Title 49 U.S. Code (formerly Section 13(c) of the Federal Transit Act). Section 5333(b) specifies that the arrangements must provide for the preservation of rights and benefits of employees under existing collective bargaining agreements, continuation of collective bargaining rights, protection of individual employees against a worsening of their positions in relation to their employment, assurances of employment to employees of acquired transit systems, priority of reemployment, and paid training or retraining programs.

DOL Procedural Guidelines (Federal Register 29 CFR Part 215), encourage the development of employee protections through local negotiations, but establish time frames for certification to expedite the process and make it more predictable, while assuring that the required protections are in place. Under the guidelines, a DOL certification permitting the release of transit funds will occur within 60 days from the date the DOL begins processing a grant application. This may be a final certification or an interim certification.

Pursuant to the Guidelines, DOL refers for review the grant application and the proposed terms and conditions to unions representing transit employees in the service area of the project and to the applicant and/or subrecipient. No referral is made if the application falls under one of the following exceptions: 1) employees in the service area are not represented by a union; 2) the grant is for routine replacement items; 3) the grant is for a Job Access project serving populations less than 200,000.

When a grant application is referred to the parties, DOL recommends the terms and conditions to serve as the basis for certification. The parties have 15 days to inform DOL of any objections to the recommended terms including reasons for such objections. If no objections are registered, or if objections are found not sufficient, DOL certifies the project on the basis of the recommended terms.

If DOL determines that the objections are sufficient, the parties are directed to negotiate for up to 30 days, limited to issues defined by DOL. If the parties are unable to reach agreement within 30 days, DOL will review the final proposals and issue an interim certification permitting FTA to release funds, provided that

no action is taken relating to the issues in dispute that would irreparably harm employees.

Following the interim certification, the parties may continue negotiations. If they are unable to reach agreement, DOL sets the terms for Final Certification within 60 days. DOL may request briefs on the issues in dispute before issuing the final certification.

Employees who believe they have been adversely affected as a result of Federal transit assistance may file claims under the procedures set forth in the protective arrangements certified by DOL.

Restrictions on Lobbying

FTA recipients are prohibited from using federal financial assistance to influence any Member of Congress or an officer or employee of any agency in the connection with the making of any federal contract, grant, or cooperative agreement. MDOT MTA OLTS and Section 5311 recipients of grants exceeding \$100,000 must sign a certification so stating and must disclose the expenditure of non-federal funds for such purposes (49 CFR part 20). Other Federal Laws also govern lobbying activities. For example, federal funds may not be used for lobbying Congressional representatives or senators indirectly, such as by contributing to a lobbying organization or funding a grass-roots campaign to influence legislation (31 U.S.C § 1352). General advocacy for transit and providing information to legislators about the services a recipient provides in the community are not prohibited, nor is using non-federal funds for lobbying, so long as the required disclosures are made.

Currently, subrecipients certify to MDOT through the grant agreements and the annual certifications and assurances. Specific contracts, grants or cooperative agreements are actions covered by the restrictions on lobbying. Activities such as submitting grant applications, status inquiries, and professional and technical services are not lobbying and do not need to be disclosed. Efforts to influence Federal officials about specific grants and contracts or to ask Congressional representatives for support of a particular application or bid must be disclosed. Also, lobbying restrictions do not apply to activities that might influence policy issues.

Subrecipient responsibilities:

- Sign a certification of compliance pertaining to lobbying activities.
- Where third party contractors are involved, subrecipients must obtain a signed certification of compliance from the contractor.
- If non-federal funds have been used to support lobbying activities in connection with a grant from MTA, and the subrecipient receives federal grants exceeding \$100,000, fill out Standard Form-LLL and submit it to MTA.
- If contractors received more than \$100,000 in federal funds and used non-federal funds to support lobbying, subrecipients must obtain the completed Standard Form-LLL from the contractor and submit it to MTA.

Drug and Alcohol Testing

Recipients or subrecipients that receive only JARC, New Freedom, or Section 5310 assistance are not subject to FTA's Drug and Alcohol testing rules, but must comply with the Federal Motor Carrier Safety Administration (FMCSA) rule for employees who hold Commercial Driver's Licenses (CDLs) (49 CFR part 382). JARC recipients and subrecipients that also receive funding under one of the covered FTA programs should include any employees funded under JARC projects in their testing program. An FTA compliant testing program, as required by the receipt of FTA operating or capital funding (5307, 5309, 5311), can be used for Section 5310, JARC, and New Freedom employees; there is no need to have two testing programs. Employees of a subrecipient of Section 5310, JARC, or New Freedom funds from a designated recipient of another FTA program (such as 5307 or 5311) should also be included in the designated recipient's testing program.

To assure compliance with the drug and alcohol testing requirements, FTA has promulgated a regulation titled, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations" (49 CFR part 655). The regulation applies to recipients of funds identified above. The regulation requires that FTA recipients follow the drug and alcohol testing procedures found in applicable FTA (49 CFR part 655) and DOT (49 CFR part 40) regulations.

FTA's regulation applies to "employers," and the term employer is defined as "a recipient [of FTA funding] or other entity that provides public transportation service or which performs a safety-sensitive function for such recipient or other entity." The term includes subrecipients, operators, and contractors. The direct recipient of FTA funding, however, remains responsible to FTA both for carrying

out the regulations and for ensuring that any person or organization performing a safety-sensitive function on its behalf is in compliance with FTA regulations. Applicability to capital funding is limited to revenue operations; it does not apply to construction phases of funded projects.

FTA's regulation requires testing of employees who perform a safety-sensitive function, which is defined in 49 CFR 655.4. The regulation requires the following six types of testing: pre-employment for drugs (including transfer from a non-safety-sensitive position to a safety-sensitive position); reasonable suspicion; random; post-accident; return-to-duty; and follow-up.

FTA's regulation requires each employer to establish and implement a substance abuse prevention program consisting primarily of a testing program but with elements requiring training, educating, and evaluating safety-sensitive employees. The regulation requires the development of a detailed policy statement that must be distributed to all safety-sensitive employees and employee organizations. In addition, 49 CFR part 655 Subpart D establishes alcohol concentration levels and prohibited behavior, and employers are directed to take specific action on the basis of the level of alcohol concentration. Technical assistance materials and training information to help grantees implement the rules are available through the FTA Office of Safety and Security, FTA Headquarters.

Drug-Free Workplace

In accordance with the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.), and 49 CFR part 32, each recipient is required to maintain a drug-free workplace for all employees and to have an anti-drug policy and awareness program. The grant applicant must agree that it will provide a drug-free workplace and comply with all requirements of 49 CFR part 32.

The recipient is required to provide a written Drug-Free Workplace policy statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and stating specific actions that will be taken for violations.

The ongoing drug-free awareness program must inform employees about the dangers of drug abuse; about any available drug counseling, rehabilitation, and employee assistance programs; about penalties that may be imposed; and that employees are to be aware that the recipient operates a drug-free workplace.

An employee of an FTA recipient is required to report in writing any conviction for a violation of a criminal drug statute occurring in the workplace, and the recipient/employer is required to provide written notice to FTA within ten days of having received the notice. Within 30 days of receiving the notice of a conviction, the recipient/employer must have taken appropriate action against the employee or have required participation in a drug abuse assistance or rehabilitation program.

Technical assistance materials and training information to help grantees implement the Drug-Free Workplace and Drug and Alcohol Testing rules are available through the FTA Office of Safety and Security, FTA Headquarters.

**ATTACHMENT A
APPLICATION FORMS**

**SECTION 5310 - ENHANCED MOBILITY OF SENIORS AND
INDIVIDUALS WITH DISABILITIES PROGRAM**