



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Transit Administration**

#### **Expedited Public Transportation Improvement Initiative**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Initiative and Online Dialogue

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**SUMMARY:** The Federal Transit Administration (FTA) announces the establishment of a multi-faceted Expedited Public Transportation Improvement Initiative (“XPEDITE”) and solicits participation in a forthcoming Online Dialogue on the initiative. The goal of XPEDITE is to facilitate the transit industry’s implementation of:

- Proven technologies to improve service delivery and maintenance for the public transit industry
- Proven methods to speed up planning, development, approval and delivery of FTA supported capital investments; and
- Innovative financing methods and opportunities for public-private partnerships that support capital investments

During the XPEDITE Online Dialogue FTA will be asking you to identify 1) possible improvements in the technology of public transportation and any barriers to their implementation, 2) procedural improvements which can be made to the delivery of all capital projects, program-wide, 3) ways to improve project delivery through innovations in financial arrangements and partnerships with private sector project developers.

**DATES:** FTA will open its XPEDITE Online Dialogue on its website no later than September 8, 2015.

**FOR FURTHER INFORMATION CONTACT:** For specific information regarding the initiative please contact Tom Yedinak, Office of Budget and Policy, phone: (202) 366-5137, or email: tom.yedinak@dot.gov.

**SUPPLEMENTARY INFORMATION:**

1. Background

Each year the Federal Transit Administration (FTA), together with its transit industry partners, invests billions of dollars in capital projects designed to improve public transportation by reinvesting in existing assets to assure that they are in a state of good repair, implementing technological improvements in public transportation equipment and facilities, and increasing the extent and quality of public transportation service by making new investments. These projects take considerable amounts of time to plan, design, develop, approve and deploy. While it is important to take time to ensure that only well-conceived projects are implemented in the most efficient and effective manner, taking too much time delays the delivery of the intended benefits of the projects to the riding public and may increase the cost of the project. In addition, there is a wide range of technological innovations which are not being adopted as widely as possible, resulting in missed opportunities to improve the efficiency and effectiveness of public transportation.

FTA funds larger-scale capital projects in a number of its grant programs, including the Urbanized Areas, Rural Areas, State of Good Repair, and Bus and Bus Facilities Formula Programs, as well as the Capital Investment Grants Program. While

the very large investments in new projects in the Capital Investment Grants program tend to garner the most attention, significant efforts to innovate and expedite such projects are well underway. Capital projects supported by the formula programs also take considerable effort to plan, design, obtain approval, and deliver. FTA is interested in improving each aspect of the project delivery process for all of its programs.

FTA already has made considerable progress to expedite FTA's project delivery processes. Pursuant to Accelerated Project Delivery provisions of Subtitle C of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Public Law 112-141 (July 6, 2012), FTA and FHWA undertook a series of rulemakings that expedite compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.* Above and beyond these joint efforts, FTA established sixteen new Categorical Exclusions that are specific to public transportation projects. In addition, FTA has taken steps to improve its oversight processes by eliminating duplicative reviews and taking a more risk-based approach to determining oversight topics needing special attention. FTA also has streamlined the risk assessment process for major projects, recently concluded a top to bottom review of its project management oversight program, and in the near future will implement a series of improvements to better focus oversight of major projects. Additionally, FTA has put in place a number of features designed to streamline the Capital Investment Grants program, discussed in more detail below. Finally, FTA has developed and promoted a series of technological improvements.

On a multimodal level, the Department of Transportation (DOT) has established a new Build America Transportation Investment Center (BATIC). This center is serving as a one-stop shop for state and local governments, public and private developers, and

investors seeking to use innovative financing strategies for transportation infrastructure projects. Through this website and hands-on support, advice, and expertise, the Center provides navigator services for all types of projects and project sponsors. The Center is housed within the Office of the Secretary, and draws on expertise from across DOT's operating administrations.

By this notice, FTA is announcing a multi-faceted program entitled the Expedited Public Transportation Improvement Initiative ("XPEDITE"). The initiative will identify: 1) improvements in the technology of public transportation and any barriers to their implementation, 2) procedural improvements which can be made to the delivery of all capital projects, program-wide, 3) ways to improve project delivery through innovations in financial arrangements and partnerships with private sector project developers. Each of these facets of the initiative is discussed in the following sections. By a separate notice, FTA is initiating implementation of the Section 20008(b) Pilot Program for Expedited Project delivery for certain meritorious new fixed guideway capital projects.

#### 1. XPEDITE Innovation

As noted, each year, FTA invests significantly in capital investments through its formula programs. In addition, FTA has invested significant resources in the development of new technologies which can make transit more efficient and effective. Similar to the Federal Highway Administration's Every Day Counts (EDC) program <http://www.fhwa.dot.gov/everydaycounts/>, FTA's new XPEDITE Innovation initiative will identify and assist in rapidly deploying proven but underutilized innovations. Proven innovations and enhanced business processes promoted through XPEDITE Innovation will aim to improve the efficiency and effectiveness of public transportation and facilitate

greater efficiency in delivering projects, saving time and resources that can be used to deliver more projects for the same or less money.

In selecting innovations to be advanced, FTA would consider market readiness, impacts, benefits and ease of adoption of the innovation based on transit leaders' shared best practices. Specifications, lessons learned and relevant data are anticipated to be shared among stakeholders through case studies, webinars and round tables. The result is intended to be rapid technology transfer and accelerated deployment of innovation across the nation.

Shortly, FTA will be initiating its XPEDITE Online Dialogue. As part of this effort, participants will be asked to identify innovative concepts for the first round of the XPEDITE Innovation initiative. Concepts could cover either technological innovations, including those related to the construction of transit capital improvements, or improved business practices and design and construction techniques which can accelerate project deployment. FTA is particularly interested in information about barriers to the implementation of technological improvements that may exist in the administration of our programs. These concepts would be reviewed by FTA staff and a selected set of concepts would become part of FTA's technical assistance to project sponsors. Importantly, these innovations could be applied to a wide variety of capital projects, funded under any of FTA's programs. In addition, FTA would consider the input received as it updates its administrative requirements and, if necessary, propose changes in those requirements, through its normal notice and comment processes, to help advance technological innovations.

## 2. XPEDITE Project Delivery Procedures

While the Capital Investment Grants (CIG) program often receives the most attention when it comes to ways in which project delivery can be expedited, it is important to note that the vast majority of transit improvements are made through FTA's formula programs. As noted earlier, FTA has made significant strides in improving the process for delivering these projects, such as through streamlining of the NEPA process. However, FTA is interested in learning more about innovations that might be applicable to accelerate project delivery. Thus, this part of the XPEDITE initiative will address all facets of FTA's programs.

FTA recognizes that improvements in the CIG program are especially important to expediting project delivery. Congress has recognized this issue by enacting changes to FTA's CIG program in MAP-21. FTA has already made significant progress in putting in place the process streamlining changes made by MAP-21. In implementing the changes in the project justification evaluation criteria for CIG projects, in its 2013 final rule (49 CFR Part 611), FTA adopted measures which streamline the evaluation process. FTA also developed a simplified method that project sponsors can use, at their option, to predict the transit ridership, a key component of these measures. Procedurally the process has improved as well. For example, the New Starts process now requires only acknowledgement of entry into Project Development, and approval of entry into the Engineering phase, eliminating the requirement for an Alternatives Analysis and approval of entry into Final Design prior to the development of a construction grant agreement. Further, FTA has been working to better tailor the requirements for Project Management Oversight to the scope of CIG projects and characteristics of project sponsors.

On April 8, 2015, FTA issued draft CIG program guidance to fully implement the process changes made by MAP-21 (80 FR 18796). On August 5, 2015, FTA issued this guidance in final form (80 FR 46514). In this guidance, FTA specified in more detail how the streamlined procedures will work and established criteria for the new Core Capacity category of eligibility established under MAP-21. In laying out the process details and criteria FTA focused on the need to simplify and expedite project delivery. In establishing the criteria for eligibility and evaluation of Core Capacity projects, FTA defined terms in a way that the measures can be easily applied. FTA established a series of “warrants” or pre-qualification measures which will allow project sponsors to receive ratings on a number of evaluation criteria for New Starts, Small Starts, and Core Capacity projects without requiring detailed travel forecasts. In the guidance, FTA also indicated it will continue to streamline the process for establishing the cost, scope, and schedule for CIG projects to a reasonable level of confidence, which is now accomplished in a number of ways, such as risk assessments, at several steps in the project development process. FTA acknowledges that there may be ways to achieve the same goals in a manner which may take less time and effort and asked that comments to the docket on the draft guidance address this issue.

Under MAP-21, Congress also enacted Section 20008(b), which established a pilot program for new fixed guideway or core capacity projects providing that project sponsors who demonstrate innovative project development and delivery methods or innovative financing arrangements and are in a state of good repair could be allowed to receive a full funding grant agreement under an expedited process. FTA must select three projects for the program, one of which requests greater than \$100 million in Section

5309 Capital Investment Grant funds, one of which requests less than \$100 million in Section 5309 funds, and the third being unspecified. Section 20008(b) requires that projects seeking to be included in the pilot program have a Government share that does not exceed 50 percent of the total project cost (not just the Section 5309 share but the entire Federal share of the project). Projects already in receipt of a Full Funding Grant Agreement (FFGA) are not eligible. FTA has published a separate **Federal Register** notice to implement this pilot program (80 FR 38801).

In this spirit of expediting project delivery, FTA is interested in learning about ways in which the procedures for deploying transit capital projects can be improved, program-wide. As a part of the XPEDITE Online Dialogue, FTA will be asking project sponsors who have successfully implemented new methods of delivering transit capital improvements to submit their ideas. These ideas can include all aspects of project delivery including approval, construction administration, procurement, compliance with NEPA, and right-of-way acquisition. FTA also is interested in learning more about barriers to quick implementation of projects both in terms of its own internal business processes as well as processes related to the delivery of projects by grantees. The focus should be on ways to speed up the delivery of projects and to address the challenges presented by limited budgets without compromising quality or safety. Even as the Section 20008(b) pilot program proceeds, FTA believes that there may be steps that can be taken to expedite the delivery of CIG projects, beyond the changes being presented in the draft interim guidance implementing the process changes made by MAP-21. Accordingly, project sponsors should feel free to submit any such ideas to the XPEDITE Online Dialogue as well. As with XPEDITE Innovation, FTA would consider the input

received as it updates its administrative requirements and, if necessary, propose changes in those requirements, through its normal notice and comment processes, to help advance methods to expedite project delivery procedures.

### 3. XPEDITE Financial Innovation

Many observers of public transportation believe that there are efficiencies in the delivery of capital projects which can be achieved through the application of improvements in the financing of these projects and through an enhanced partnership role for the private sector. FTA is already undertaking efforts in this area both on its own and as a part of the DOT's BATIC, described earlier. On August 25, 2014, FTA published a final circular clarifying the requirements related to Joint Development projects, with an eye toward facilitating these important adjuncts to FTA's capital investments (79 FR 50728). In addition, this circular provides a framework under which Value Capture techniques could be brought to bear to help finance transit capital investments. Public transportation infrastructure investments can increase adjacent land values, generating an "unearned" profit for private landowners. A portion of these increases in land value can be "captured" and used for, among other things, public transportation infrastructure or revenue service operation. Thus, Value Capture internalizes the positive externalities of public transportation investments. In June 2013, FTA held a Value Capture forum with experts that had proven experience with Value Capture techniques to learn more about how these techniques can be used throughout the industry.

Congress enacted Section 20013 and amended 49 U.S.C. 5315 (Section 5315) in MAP-21. Specifically, FTA is to: a) identify public transportation laws, regulations or practices that impede public-private partnerships or private investment in transit capital

projects, and develop procedures through regulation to address, on a project basis, legal impediments to the use of public-private partnerships and private investment as well as procedures to protect the public interest and any public investment in public transportation capital projects that involve public-private partnerships or private investment in public transportation capital projects; b) develop guidance to promote greater transparency and public access to public-private partnerships agreements; and c) provide technical assistance on best practices and methods for using private providers of public transportation and using public-private partnerships for alternative project delivery of fixed guideway capital projects. However, FTA may not waive any provision of Federal law, including labor protections of 49 U.S.C. 5333 and NEPA. FTA has undertaken a number of steps to implement these provisions.

To initiate this effort, FTA has posted information on the basics of public-private partnerships identified through workshops and studies and also included successful public-private partnership contract terms on its Private Sector Participation web page, <http://www.fta.dot.gov/grants/16030.html>. Further, in December 2014, FTA conducted an on-line dialogue on the subject of Section 5315. More information may be found at <http://usdot.uservoice.com/forums/268166-private-sector-participation-in-public-transportat/category/88630-impediments-to-greater-private-sector-involvement>. FTA is now in the process of reviewing the comments, and expects to publish a notice of proposed rulemaking (NPRM) in the near future which will lay out ways in which FTA can improve its processes to expedite project delivery through public-private partnerships. This notice and ultimate final rule will be the main way in which the goal of expediting project delivery is addressed through involvement of private sector

partners. Parties interested in this facet of FTA's Expedited Project Delivery Initiative should participate in that rulemaking process by providing comments on the NPRM when it is issued.

In the interim, FTA invites interested parties to include comments in the upcoming XPEDITE Online Dialogue. FTA is particularly interested in hearing from project sponsors who are considering pursuing Value Capture as part of their project financing arrangements. FTA would like to explore what mechanisms might be used, and how FTA could work to facilitate such arrangements. FTA invites comments on this issue. Again, FTA would consider the input received as it updates its administrative requirements and, if necessary, propose changes in those requirements, through its normal notice and comment processes, to help advance financial innovation in public transportation.

Signed this 28th day of August, 2015, in Washington, DC.

Matthew J. Welbes  
Executive Director

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