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Decided: November 9, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9-27376 Filed 11-12-09; 8:45 am]

BILLING CODE 4915-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

[Docket No. FTA-2009-0052]

#### Proposed Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements Under Federal Transit Law

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of proposed policy statement and request for comment.

**SUMMARY:** This notice describes the eligibility of pedestrian and bicycle improvements for Federal Transit Administration (FTA) funding and proposes a formal policy on the catchment area for pedestrians and bicyclists in relationship to public transportation stops and stations. FTA seeks comment from all interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments and noting any changes made to the policy statement as a result of comments received.

**DATES:** Comments must be received by January 12, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may submit comments identified by the docket number (FTA-2009-0052) by any of the following methods:

*Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

*U.S. Mail:* U.S. Department of Transportation, Docket Operations, West Building, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

*Hand Delivery:* U.S. Department of Transportation, Docket Operations, West Building, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Fax:* (202) 493-2251.

*Instructions:* You must include the agency name (Federal Transit Administration), and Docket number (FTA-2009-0052) for this notice at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to <http://www.regulations.gov> where they will be available to internet users. Please see the Privacy Act for more information.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

For access to the DOT docket to read materials relating to this notice, please go to <http://www.regulations.gov> at any time.

*Contact Information:* For questions, please contact Matthew Lesh at (202) 366-0953 or [matthew.lesh@dot.gov](mailto:matthew.lesh@dot.gov). For legal questions, please contact Jayme L. Blakesley at (202) 366-0304 or [jayme.blakesley@dot.gov](mailto:jayme.blakesley@dot.gov). The principal office of FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

The purpose of this notice is to propose a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation.

U.S. Secretary of Transportation Ray LaHood has challenged the U.S. Department of Transportation to improve the livability of our nation's communities: "President [Obama] has made livable communities a key aspect of his agenda. \* \* \* How a community is designed—including the layout of the roads, transit systems and walkways—has a huge impact on its residents."<sup>1</sup> Funding bicycle and pedestrian

facilities that provide access to public transportation is an important way for FTA to foster livable communities.

A livable community is "a community where if people don't want an automobile, they don't have to have one; a community where you can walk to work, your doctor's appointment, pharmacy or grocery store. Or you could take light rail, a bus, or ride a bike."<sup>2</sup> According to Secretary LaHood, "[l]ivable communities are mixed-use neighborhoods with highly-connected streets promoting mobility for all users, whether they are children walking or biking to school or commuters riding transit or driving motor vehicles. Benefits include improved traffic flow, shorter trip lengths, safer streets for pedestrians and cyclists, lower greenhouse gas emissions, reduced dependence on fossil fuels, increased trip-chaining, and independence for those who prefer not to or are unable to drive. In addition, investing in a "complete street" concept stimulates private-sector economic activity by increasing the viability of street-level retail small businesses and professional services, creating housing opportunities and extending the usefulness of school and transit facilities."<sup>3</sup> To illustrate the Secretary's point, more than half of older adults who described an inhospitable environment outside their homes would walk, bicycle, or take public transportation more if their streets were improved.<sup>4</sup>

With respect to bicycle facilities in particular, Secretary LaHood has committed the Department to "work toward an America where bikes are recognized to coexist with other modes and to safely share our roads and bridges."<sup>5</sup> If we are to create livable communities, "the range of transportation choices available to all Americans—including transit, walking, bicycling, and improved connectivity for various modes—must be expanded."<sup>6</sup>

<sup>2</sup> Christie Findlay, *Living in a Post-Car World*, AARP Bulletin, October 1, 2009.

<sup>3</sup> Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

<sup>4</sup> National Highway Traffic Safety Administration, *Traffic Safety Facts: Older Population*. 2005.

<sup>5</sup> Statement of Ray LaHood, Secretary of Transportation, before the 2009 National Bike Summit in Washington, DC (March 11, 2009).

<sup>6</sup> Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

<sup>1</sup> Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

Walking, bicycling, and public transportation are complimentary. Nearly all public transportation riders are pedestrians: Some access public transportation by walking a short distance; others may arrive by bicycle or automobile and then walk to a rail platform or bus stop. Safe walking and bicycling conditions are important inducements to using public transportation.

The success of public transportation can be limited by the problem of the "first and last mile." One of "the best present options for solving the first and last mile dilemma are \* \* \* bicycles. \* \* \* Bicycles are the no-brainer of American mobility, one of our great underutilized resources. There are more bicycles in the United States than there are households but most of those bikes sit in garages except for an occasional recreational outing. And yet they are the perfect transportation choice for a short one- to three-mile trip to and from a transit station."<sup>7</sup>

Whether used for longer trips to access amenities outside the walkshed radius of a public transportation station, or whether they enable direct access to a public transportation facility, bicycle amenities play an important role in encouraging public transportation use by providing riders with greater opportunities, choice, flexibility and safety for reaching their final destinations.

In order to protect and support current public transportation riders as well as encourage and grow public transportation use, the development of safe, secure and appropriate catchment areas is essential. The users of public transportation require safe, convenient, and practical access routes as well as appropriate amenities to enhance the utility of public transportation systems across the country. This is being demonstrated in public transportation systems across the nation. In Washington, DC, for example, the Washington Metropolitan Area Transit Authority (WMATA) has been conducting a planning study to identify strategies for encouraging more people to walk and ride their bicycle to and from Metrorail stations. WMATA believes this will result in recommendations for a range of physical infrastructure improvements such as more and better bicycle parking facilities, better wayfinding and signage to and from stations, and better connections to nearby trails and on-road

bicycle lanes. A study commissioned by the Federal Highway Administration identified examples of increased ridership due to enhanced bicycle facilities near public transportation. One example of this was a bike-on-bus demonstration program in Phoenix, Arizona that led to over 1,400 new public transportation riders per month.<sup>8</sup>

Walking, bicycling, and public transportation provide low-cost mobility that places fewer demands on local roads and highways. Studies suggest that developments that incorporate bicycling and walking infrastructure in proximity with public transportation can reduce fiscal outlays of local municipalities towards roads and other infrastructure expansion by twenty-five percent.<sup>9</sup> In a recent report comparing public transportation use by U.S. and German citizens, researchers found that German household budgets for transportation were lower than their U.S. counterparts despite smaller government subsidies for public transportation. These differences are attributed, in part, to the successful integration of public transportation services with safe walking and bicycling facilities.<sup>10</sup> In fact, a recent survey commissioned by a major real estate franchise indicates that over half of the firm's clients want access to public transportation and seventy-five percent agreed that the ability to walk to more destinations made a location more appealing.<sup>11</sup>

Moreover, public transportation riders spend less on transportation than persons that rely primarily on automobiles. When residents can walk, bike, and take public transportation, they have more control over their expenses. For example, public transportation riders in Wisconsin save almost \$7 per trip over driving. These savings result in spending that, collectively, is responsible for 11,671 new jobs, \$163.3 million in tax revenue, and \$1.1 billion in total output.<sup>12</sup> It is also documented that a continuous and integrated sidewalk network flanked by street trees and other amenities directly

stimulates public transportation ridership by providing both a safe and visually attractive setting between residences and public transportation nodes.<sup>13</sup>

Adequate sidewalks, pathways, and roadway crossings in the area around public transportation access points and amenities such as benches, shelters, and lighting at stops and stations are important for pedestrian comfort and safety. The most successful and useful public transportation systems have safe and convenient pedestrian access and provide comfortable waiting areas, all of which encourage greater use.<sup>14</sup> Well-connected sidewalks should be installed in all areas with regular public transportation service so that public transportation patrons will not be forced to walk in the street while traveling to or from a stop or station. In addition, roadway crossings should be made safer with an appropriate combination of facilities, such as marked crosswalks, median crossing islands, warning signs, and pedestrian signals.<sup>15</sup>

Distances beyond the walkshed of public transportation stops and stations may in fact be within the range of a short bicycle trip. Providing secure parking and other amenities for bicycles and cyclists at public transportation stops or stations can be less expensive than providing parking for automobiles. Access to public transportation allows bicyclists the opportunity to make longer trips. Where physical conditions prevent a continuous bicycle trip, public transportation can provide a link to previously inaccessible destinations.

Examples of destinations that generate bicycle traffic include major employment centers, schools, parks, shopping centers, neighborhoods, recreational facilities, colleges and military bases. According to a guide published by the American Association of State Highway and Transportation Officials, convenient access and bicycle parking should be provided at public transportation stations, ferries and other intermodal transfer points; all highways as well as arterials, except those where cyclists are legally prohibited, should be designed and constructed under the assumption that they will be used by cyclists; and bicycles should be considered in all phases of

<sup>8</sup> Federal Highway Administration. *Bicycle and Pedestrian Connections to Transit: Lesson 9*, retrieved from: [http://safety.fhwa.dot.gov/PED\\_BIKE/univcourse/pdf/swless09.pdf](http://safety.fhwa.dot.gov/PED_BIKE/univcourse/pdf/swless09.pdf).

<sup>9</sup> TCRP Report 102: *Transit-Oriented Development in the United States: Experiences, Challenges, and Prospects*, Transportation Research Board, 2004.

<sup>10</sup> R. Buehler and J. Pucher, *Sustainable Transport that Works: Lessons from Germany*, World Transport Policy & Practice, V.15, No.1, April 2009.

<sup>11</sup> *Interest in Urban Homeownership Survey*, Coldwell Banker, June 2008.

<sup>12</sup> Khalid Bekka, *Economic Benefits of Public Transportation*, Wisconsin Department of Transportation, November 2003.

<sup>13</sup> R. Untermaier, *Accommodating the Pedestrian: Adapting Towns and Neighborhoods for Walking and Bicycling*, Van Nostrand Reinhold, New York, 1984.

<sup>14</sup> *Pedestrian Safety Guide for Transit Agencies*, Federal Highway Administration, United States Department of Transportation, February 2008.

<sup>15</sup> *Pedestrian Safety Guide for Transit Agencies*, Federal Highway Administration, United States Department of Transportation, February 2008.

<sup>7</sup> Andrea White-Kjoss, *Building Multimodal Transit Facilities: The One Clear Step Toward the New Transportation Paradigm*, Mass Transit, July/August 2009, at 36–37.

transportation planning, new roadway design, roadway reconstruction, and capacity improvement and public transportation projects.<sup>16</sup>

## II. Planning Requirements

The joint planning regulations of the Federal Transit Administration and Federal Highway Administration require States and metropolitan planning organizations to integrate bicycle and pedestrian facilities into all transportation plans and improvement programs. Pedestrians and bicyclists must be provided with a reasonable opportunity to comment on long-range statewide transportation plans and metropolitan transportation master plans.<sup>17</sup>

## III. Pedestrian and Bicycle Improvements Under Federal Transit Law

Most grant programs administered by the Federal Transit Administration (FTA) may be used to fund the design, construction, and maintenance of bicycle and pedestrian projects that enhance or are related to public transportation facilities. Improvements made expressly eligible by statute include capital projects like pedestrian and bicycle access to a public transportation facility<sup>18</sup>; and transit enhancements like pedestrian access, walkways, and bicycle access, including bicycle storage facilities and equipment for transporting bicycles on public transportation vehicles.<sup>19</sup> In addition, certain funding programs administered

by the Federal Highway Administration (FHWA), including the Surface Transportation Program and the Congestion Mitigation and Air Quality Program, may be used for public transportation purposes. Once transferred to FTA for a public transportation purpose, these "flexible" funds are administered as FTA funds and take on all the eligibility and requirements of the FTA program to which they are transferred, except for the Federal share, which remains that required under the FHWA program.<sup>20</sup> The following is a description of the eligibility requirements for pedestrian and bicycle improvements under Federal Transit Law.

### a. Capital Projects

FTA grantees may use any of the following programs to fund capital projects for pedestrian and bicycle access to a public transportation facility:

- Section 5307 Urbanized Area Formula Program
- Section 5309 New Starts and Small Starts Major Capital Investment Programs
- Section 5309 Fixed Guideway Modernization Program
- Section 5309 Bus and Bus Facilities Discretionary Program
- Section 5310 Elderly Individuals and Individuals with Disabilities Formula Program
- Section 5311 Non-Urbanized Area Formula Program
- Section 5311 Public Transportation on Indian Reservations
- Section 5316 Job Access and Reverse Commute Formula Program
- Section 5317 New Freedom Program
- Section 5320 Paul S. Sarbanes Alternative Transportation in Parks and Public Lands

Federal Transit Law defines the term "capital project" to mean, among other things, "a public transportation improvement that enhances economic development or incorporates private investment, including \* \* \* pedestrian and bicycle access to a [public] transportation facility."<sup>21</sup>

This eligibility is not without restrictions, however.<sup>22</sup> Bicycle and pedestrian projects made eligible under the aforementioned definition of capital

project must satisfy additional statutory criteria, including requirements to enhance economic development or incorporate private investment; to enhance the effectiveness of public transportation project and relate physically or functionally to that project, or to establish new or enhanced coordination between public transportation and other transportation; and to provide a fair share of revenue for public transportation.<sup>23</sup>

### b. Transit Enhancement Activities

One percent of Urbanized Area Formula program funds apportioned to urbanized areas with populations of at least 200,000 are set aside for transit enhancements. Eligible transit enhancement projects include pedestrian access and walkways, bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles.<sup>24</sup> As an added incentive, the Federal share of transit enhancement grants covers 90 percent of the cost of the project.<sup>25</sup> If the project involves providing bicycle access to public transportation, the grant or portion of that grant may be at a Federal share of 95 percent.<sup>26</sup>

## IV. Proposed Policy

### a. Background

FTA encourages the use of its funds for the type of well-designed pedestrian and bicycle amenities that attract new public transportation riders by expanding the catchment area and utility of public transportation stations. Therefore, FTA has decided to issue this statement of proposed policy on the eligibility of pedestrian and bicycle improvements for FTA funding. In particular, this notice proposes and seeks comment on threshold catchment areas for pedestrian and bicycle improvements near public transportation stops and stations.

A key requirement for determining the eligibility of a pedestrian or bicycle improvement is whether it has a functional relationship to a public transportation facility. FTA grantees have been left without adequate guidance, however, because FTA has made no determination of the specific distances pedestrians or bicyclists can be expected to travel to access a public transportation stop or station. The

<sup>16</sup> American Association of State Highway and Transportation Officials, *Guide for the Development of Bicycle Facilities*, 1999.

<sup>17</sup> Federal Transit Law, Title 49, Chapter 53, United States Code, encourages States and metropolitan areas to develop innovative transportation plans and programs which better integrate public transportation, bicycle facilities, pedestrian walkways, and other modes of travel into the existing transportation system. To this end, the statewide transportation plan and the transportation improvement program developed for each state must "provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system." 49 U.S.C. 5304(a)(2). Similarly, the plans and transportation improvement programs (TIP) of all metropolitan areas must "provide for the integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities)." 49 U.S.C. 5303(c)(2). Moreover, when preparing long-range statewide transportation plans and transportation master plan, each state and metropolitan planning organization (MPO) must provide a reasonable opportunity to comment to the "representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities," among others. 49 U.S.C. 5303(i)(5) and 5304 (f)(3).

<sup>18</sup> 49 U.S.C. 5302(a)(1)(G)

<sup>19</sup> 49 U.S.C. 5302(a)(15)(f).

<sup>20</sup> 49 U.S.C. 5334(i).

<sup>21</sup> 49 U.S.C. 5302(a)(1)(G).

<sup>22</sup> Note: The restrictions described in this paragraph do not apply to projects funded under 49 U.S.C. 5320, Paul S. Sarbanes Alternative Transportation in Parks and Public Lands. Alternative transportation expressly includes activities that provide "a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft)."

<sup>23</sup> For more information, see FTA's February 7, 2007, guidance on the Eligibility of Joint Development Projects under Federal Transit Law at 72 FR 5788.

<sup>24</sup> 49 U.S.C. 5302(a)(15).

<sup>25</sup> 49 U.S.C. 5319.

<sup>26</sup> 49 U.S.C. 5319.

purpose of this notice is to propose a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation.

FTA's existing guidance on the eligibility of joint development improvements serves as the foundation for this proposed policy. According to that guidance, "the functional relationship test of activity and use permits the use of FTA funds for joint development improvements [including pedestrian and bicycle improvements] located outside the structural envelope of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, [but] should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service."<sup>27</sup>

Relying on this guidance, in most circumstances FTA has considered pedestrian improvements within about 1,500 feet of a public transportation stop or station to be functionally related. Improvements beyond a 1,500 foot radius were considered functionally related to public transportation only if they satisfied a test of activity and use.

The distance stated in FTA's existing guidance is too short. "While distance is very important for pedestrians, on average they will walk further than the anecdotal rule of thumb of 400 meters used in many planning applications."<sup>28</sup> Research indicates that pedestrians are willing to walk at least one-half mile to train stations or other forms of reliable public transportation when the environment surrounding the station is safe and well-designed.<sup>29</sup> That equals a fifteen minute walk at a pace of two miles per hour. A one-half mile catchment area is a conservative estimate of the distance a pedestrian is willing to travel to a public transportation stop or station. FTA has reason to believe that pedestrians are willing to spend more than fifteen minutes walking to public transportation stops and stations: A study published in the American Journal of Preventative Medicine concluded that Americans who use public transportation spend a median of

nineteen minutes daily walking to and from public transportation; and people in high-density urban areas were more likely to spend approximately thirty minutes walking to and from public transportation daily.<sup>30</sup>

Applying the same timeframes to bicyclists yields at least a three mile catchment area. Bicycle paths would extend further than a pedestrian facility and still be functionally related because "bicyclists are willing to travel much longer distances than pedestrians, largely due to higher average speeds attainable by bicycle."<sup>31</sup> Inasmuch as the average bicycle commuter travels at ten miles per hour,<sup>32</sup> FTA proposes a bicycle catchment area of three miles from public transportation stops and stations.

#### *b. Proposed Policy*

For purposes of determining whether a pedestrian or bicycle improvement has a physical or functional relationship to public transportation, regardless of whether it is funded as a capital project or public transportation enhancement, all pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation. According to a test of activity and use, pedestrian and bicycle improvements beyond these threshold distances may be eligible for FTA funding if the improvement is within the distance most people can be expected to safely and conveniently walk or bicycle to use that particular transit service.

FTA seeks comment from all interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the policy statement as a result of comments received.

Issued this 6th day of November 2009.

**Peter M. Rogoff,**

*Administrator, Federal Transit Administration.*

[FR Doc. E9-27240 Filed 11-12-09; 8:45 am]

**BILLING CODE 4910-57-P**

<sup>27</sup> FTA guidance on the *Eligibility of Joint Development Improvements under Federal Transit Law*, 72 FR 5790 (Feb. 7, 2007).

<sup>28</sup> Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 29.

<sup>29</sup> Schlossberg, M. *et al.*, How Far, By Which Route, and Why? A Spatial Analysis of Pedestrian Reference, Mineta Transportation Institute, June 2007.

<sup>30</sup> L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations*, Am. J. Prev. Med., November 2005, at 273.

<sup>31</sup> Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 18.

<sup>32</sup> League of American Bicyclists. Retrieved From: <http://www.bikeleague.org/resources/better/commuters.php>.

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

November 6, 2009.

The Department of the Treasury is planning to submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before January 12, 2010 to be assured of consideration.

#### Terrorism Risk Insurance Program (TRIP)

*OMB Number:* 1505-0190.

*Type of Review:* Extension.

*Title:* Terrorism Risk Insurance Program Rebuttal of Controlling Influence Submission.

*Description:* 31 CFR 50.8 specifies a rebuttal procedure that requires a written submission by an insurer that seeks to rebut a regulatory presumption of "controlling influence" over another insurer under the Terrorism Risk Insurance Program to provide Treasury with necessary information to make a determination.

*Respondents:* Businesses or other for-profit institutions.

*Estimated Total Reporting Burden:* 400 hours.

*Clearance Officer:* Howard Leiken, 202-622-7139, 1425 New York Avenue, Room 2113, Washington, DC 20220.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. E9-27203 Filed 11-12-09; 8:45 am]

**BILLING CODE 4810-25-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 1099-OID

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort