



U.S. Department
of Transportation
**Federal Highway
Administration
Federal Transit
Administration**

Memorandum

Subject: Transfer of Funds for Transit Projects

Date:

DEC 11 2013

From: Mr. Fred R. Wagner
Chief Counsel, FHWA

Reply to
Attn. of:

Michael Harkins (x64928), FHWA,
or Mary Lee (x60985), FTA

Mr. Dorval R. Carter, Jr.
Chief Counsel, FTA

To: FHWA Associate Administrator for Infrastructure
FHWA Associate Administrator for Planning, Environment, and Realty
FHWA Chief Financial Officer
FHWA Division Administrators
FHWA Directors of Field Services
FTA Regional Administrators

This memorandum expresses the Department of Transportation's preference that Congestion Mitigation and Air Quality Improvement (CMAQ) Program and Surface Transportation Program funds used for projects to purchase transit vehicles be administered by the Federal Transit Administration (FTA). Because FTA's Buy America rule has provisions specific to rolling stock procurements, the administration of funds through FTA will reduce the need for Buy America waivers.

Under the Federal-aid Highway Program, States may obligate Federal highway funds, under certain conditions, to purchase transit vehicles that are also eligible for financial assistance under FTA's funding programs. Examples of such projects include the purchase of vans, buses, and paratransit vehicles. Whenever such projects are administered by the Federal Highway Administration (FHWA), those projects must be administered in accordance with title 23, United States Code, and meet all applicable FHWA requirements, including Buy America at 23 U.S.C. 313. With respect to the application of Buy America, the FHWA must apply the general standard that is applicable for highway construction since the FHWA does not have a general standard that is tailored to the purchase of vehicles. Because of this, the grantee must request that the FHWA grant a waiver from the generally applicable Buy America requirements.

Recognizing the fact that certain types of transit project are eligible for Federal highway funds, Congress enacted 23 U.S.C. 104(f)(1). Under this provision, Federal highway funds made available for transit projects may be transferred to the FTA along with the obligation authority required to obligate highway funds. Once the funds are transferred to FTA, the project must be administered in accordance with chapter 53 of title 49, United States Code, including Buy America at 49 U.S.C. 5323(j).

Division Offices should urge States to utilize this funding flexibility for transit or transit-related projects. This is especially true for projects involving the purchase of transit vehicles since the administration of such projects by the FHWA under FHWA requirements will require the FHWA to grant a waiver from Buy America. It is the FHWA's strong preference to no longer process Buy America waivers for the purchase of transit vehicles that are otherwise eligible under chapter 53 of title 49, United States Code. Therefore, in order for these projects to move forward as expeditiously as possible, the funds for these projects should be transferred to FTA to be administered under applicable FTA requirements.

When transferring CMAQ funds to FTA, you should identify the project and specifically indicate whether the project involves funding for transit operating costs.

If you have any questions, please contact Mr. Michael Harkins in the FHWA's Office of Chief Counsel at 202-366-4928 or Ms. Mary Lee in the FTA's Office of Chief Counsel at 202-366-0985.