



October 30, 2013
Via Electronic Submission

U.S. Department of Transportation
1200 New Jersey Avenue, Southeast
Room W120-140
Washington, DC 20590

Federal Transit Administration
Federal Highway Administration

Re: Proposed Policy Guidance on Metropolitan Planning Organization
Representation - Docket No. FTA-2013-0029

I. Introduction

The Association of Metropolitan Planning Organizations (AMPO)¹ submits these comments in response to the Federal Transit Administration and Federal Highway Administration, U.S. Department of Transportation, *Notice of Proposed Policy Guidance on Metropolitan Planning Organization Representation*, 78 Fed. Reg. 60015 (Sept. 30, 2013), detailing the proposed guidance requiring representation by providers of public transportation in each metropolitan planning organization (MPO) that serves a transportation management area (TMA). This proposed policy guidance is to assist MPOs and providers of public transportation in complying with revisions to 23 U.S.C. § 134(d)(2)(B) and 49 U.S.C. § 5303(d)(2)(B), as amended by the Moving Ahead for Progress in the 21st Century (MAP-21) transportation reauthorization statute, Pub. L. 112-141, 126 Stat. 405 (July 6, 2012). As a national association representing the interests of federally established metropolitan transportation planning organizations, AMPO appreciates the opportunity to provide comments to this policy guidance.

¹ AMPO is the transportation advocate for metropolitan regions and is committed to enhancing MPOs' abilities to improve metropolitan transportation systems. AMPO is a nonprofit, membership organization established in 1994 to serve the needs and interests of metropolitan planning organizations (MPOs) nationwide.

Sections 1201 and 20005 of MAP-21 added the below italicized phrase to the parallel provisions in 23 U.S.C. § 134(d)(2) and 49 U.S.C. § 5303(d)(2):

2) Structure.— Not later than 2 years after the date of enactment of MAP-21, each metropolitan planning organization that serves an area designated as a transportation management area shall consist of—

(A) local elected officials;

(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, *including representation by providers of public transportation*; and

(C) appropriate State officials.

AMPO supports and will continue to welcome participation by providers of public transportation in the metropolitan transportation planning process. Before the enactment of MAP-21, 23 C.F.R. § 450.314 required that MPOs, States, and public transportation operators cooperatively determine their mutual roles and responsibilities in carrying out the planning process. In many MPOs serving areas designated as TMAs, providers of public transportation have long served on MPO policy boards and advisory committees. Through this cooperative process, providers of public transportation play a valuable role in metropolitan transportation. Public transportation offers a wide variety of transportation options, eases congestion, and is an integral component to improving air quality in metropolitan areas. AMPO looks forward to working with FHWA and FTA as they develop a joint notice of proposed rulemaking to amend 23 C.F.R. Part 450 in order to build on this existing tradition of transit providers involvement in the metropolitan planning process.

II. Effect on MPO Structure

In a letter to Secretary Foxx dated September 19, 2013, we expressed our view that MPOs already have the authority to meet the intent of MAP-21 regarding transit representation. 23 C.F.R. § 450.104 defines an MPO as follows: *“Metropolitan planning organization (MPO) means the policy board of an organization created and designated to carry out the metropolitan transportation planning process.”*

AMPO recommends that MPOs retain the authority to decide who will be the specifically designated representative. MAP-21 does not amend or change how MPO boards are designated. Section 134(d)(1)(A) & (B) of 23 U.S.C. and 5303 Section (d)(1)(A) & (B) of 49 U.S.C. vest the authority to designate MPOs and establish their governance structure in the Governors of the various States and units of general purpose local government that together represent at least 75 percent of the affected population or in accordance with procedures established by applicable State or local law. The structure of an MPO under current law (which was not altered by MAP-21) requires that MPOs consist of categories of officials but does not mandate which officials, or how many officials, serve in

those roles. This is reflected in the language of section 134(d)(2) which simply states that the structure “shall consist of--...(B) officials of public agencies that administer or operate major modes of transportation in the metropolitan area, including representation by providers of public transportation...” Therefore, as under prior law, MAP-21 reinforces that the decision as to how the representation will be composed is a determination made by the respective jurisdictions and carried out by the MPOs. As is pointed out in Section II of the FTA-FHWA proposed guidance, a specifically designated representative could be an elected official currently serving on an MPO board.

MPOs, particularly those serving larger metropolitan areas qualifying as transportation management areas (TMAs), have a well-established history of including providers of public transportation on our boards and current regulation already provides the authority to increase representation. 23 C.F.R. § 450.310(d) provides that: “*Where appropriate, MPOs may increase the representation of local elected officials, **public transportation agencies**, or appropriate State officials on their policy boards and other committees as a means for encouraging greater involvement in the metropolitan transportation planning process, subject to the requirements of paragraph (k) of this section.*” (emphasis added). Accordingly, MPOs have authority under their own procedures to adjust their boards and committees as needed to comply with MAP-21 and will do so over the phase-in period, which ends October 1, 2014. Notably, MAP-21 does not evince any congressional intent that would require a redesignation of the MPO or otherwise affect an MPO’s existing governance structure if it can meet these requirements. We request that MPOs be provided the flexibility to use existing processes or develop, within their own discretion, additional steps to implement any needed changes to meet the intent of change in MAP-21.

AMPO agrees with FTA and FHWA that application of the structuring requirements for MPOs in section 134(d)(2) and 5303(d)(2) are subject to the grandfathering provision in section 134(d)(3) applicable to certain public agencies with multimodal transportation responsibilities, and that the function of agencies under the umbrella of this provision should not be affected by the addition of the new language added by MAP-21.

III. Providers of Public Transportation

AMPO agrees with the FTA-FHWA interpretation that representation of transit providers must be assigned to representatives of public transportation agencies that sit on MPO governing boards, 78 Fed. Reg. at 60017 (Section II). The text of MAP-21 compels this conclusion by including the reference to “providers of public transportation” within the sub-category of “officials of public agencies that administer or operate major modes of transportation.” In fact, as discussed further in part IV of our comments, MAP-21 seems to suggest that representation of transit providers must take place within the existing MPO governance

structures, and through whatever representation is designated for public modal agencies.

FTA and FHWA's further interpretation that transit representatives must be direct recipients of Urbanized Area Formula Funding, 78 Fed. Reg. at 60017 (Section III), however, does not seem to have support in the statutory text, and AMPO does not fully understand the agencies' intent in including this caveat. Accordingly, AMPO suggests that FTA and FHWA delete this section of the guidance, or provide a fuller explanation of the meaning and consequences of such a requirement.

IV. Specifically Designated Representative

Although nowhere stated expressly in MAP-21, FTA and FHWA have proposed that MPOs must provide for a "specifically designated representative" for providers of public transportation on MPO boards. AMPO in general supports the concept of a specifically designated representative, provided that MPOs retain flexibility to incorporate this role into the governance structure chosen through the statutory mandates of title 23 and title 49, which as previously noted, were unaffected by MAP-21.

Rights and Authorities of Board Members

FTA and FHWA have stated what they believe to be the intent of the MAP-21 amendments to 23 U.S.C. § 134(d)(2)(B) and 49 U.S.C. § 5303(d)(2)(B): *"The FHWA and FTA construe that the intent of this provision is that representatives of providers of public transportation, once designated will have equal decision-making rights and authorities as other members listed in 23 U.S.C.134 (d)(2)(B) and 49 U.S.C. 5303(d)(2)(B) that are on the policy board of an MPO that serves a TMA."* 78 Fed. Reg. at 60017.

Prior to the enactment of MAP-21, neither 23 U.S.C. § 134(d)(2) nor 23 C.F.R. Part 450, which addressed the governing structure of MPO boards, automatically conveyed a voting right to any designated member of the policy board of an MPO serving a TMA. The voting rights of members on policy boards of MPOs have conventionally been decided by the individual jurisdictions and may vary across the country within the MPO community. MAP-21 did not purport to change this authority or alter this long-standing practice.

A frequently asked question (FAQ) posted on the FHWA website, under the Office of Planning, Environment, and Real Estate webpage, illustrates this principal in responding to a question about voting rights by transit operators:²

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http://www.fhwa.dot.gov/planning/census_issues/urbanized_areas_and_mpo_tma/faq/page04.cfm#Two_or_more (updated 7/03/12).

FAQ: If there are 5 transit agencies in my area, should each transit operator have a seat on the MPO Policy Board?

23 CFR Part 450 requires the MPO for a TMA to include "officials of public agencies that administer or operate major modes of transportation," if the MPO has been designated or redesignated since TMA designation. In most cases, the actions necessary to reflect Census 2010 UZA delineations will not require a formal MPO redesignation. 23 CFR 450.310(l)(3) allows MPOs to add members to satisfy the specific membership requirements for an MPO that serves a TMA without undertaking formal redesignation, provided this does not trigger any of the significant changes noted elsewhere in the regulation. Statutory and regulatory provisions do not require voting membership on the MPO policy board for every transit agency operating in the MPA. Typically, voting membership will be extended to the "designated recipient" of 49 USC 5307 funding, who will involve and seek to represent other operators through on-going consultation and coordination. (Emphasis added).

Although the response to the frequently asked question states that *"Typically, voting membership will be extended to the 'designated recipient' of 49 U.S.C. 5307 funding, who will involve and seek to represent other operators through on-going consultation and coordination,"* this does not require voting membership to be provided by an MPO to a provider of public transportation, whether or not the provider is a designated recipient of federal funds or a public agency. AMPO would reiterate that voting rights on board members are determined by the jurisdictions by virtue of the powers granted in the transportation statutes to designate and decide on the composition of MPOs.

AMPO interprets the amendments made by MAP-21 to sections 134(d)(2)(B) and 5303(d)(2)(B) as not altering, in any way, the manner in which voting rights are assigned to members of an MPO policy board. AMPO requests that any subsequent guidance or rulemaking clarify this essential point – amendments made to sections 134(d)(2)(B) and 5303(d)(2)(B) did not affect an MPO's authority to determine voting rights and decision-making rights of board members.

The proposed guidance suggests that a "specifically designated representative" should be an elected official or a direct representative employed by the agency being represented, such as a member of a public transportation provider's board of directors, or senior transit agency official, like a chief operating officer or general manager. For some MPOs, transit providers are represented directly by local elected officials, by virtue of the fact that they serve both on the board of the MPO, as well as the board of a local transit provider. In other instances, elected officials on the MPO boards represent local jurisdictions that own and operate, or

are part of the governing structure of a transit provider. Representation by such local elected officials would fully satisfy the amendment to sections 134(d)(2)(B) and 5303(d)(2)(B), and we would recommend that any further guidance or rulemaking specifically acknowledge such board structure satisfies the requirements of MAP-21.

Again, the authority of who will serve as a representative of a public agency administering or operating a major mode of transportation is determined by the MPO and the inclusion of representatives of providers of public transportation did not limit or amend that authority under current law.

IV. Process for the Selection for Specifically Designated Representatives

The proposed guidance suggests that MPOs that serve an area designated as a TMA should cooperate with providers of public transportation and the State to amend their metropolitan planning agreements to include a cooperative process for selecting the specifically designated representative(s) for inclusion on the MPO board and for identifying the representative's roles and responsibilities. AMPO agrees that cooperative process should be employed to select a specifically designated representative, but only at the discretion of the MPO, taking into consideration existing precedent and policy within the MPO's jurisdiction, and not necessarily requiring amendments to existing metropolitan planning agreements that may not be necessary. AMPO recommends that any final guidance or rule not require changes to metropolitan planning agreements if existing agreements include a process that accomplishes the goals in this section of the guidance or if existing MPO structure include representation as discussed in the seventh paragraph of Section IV of these comments.

V. Role of Specifically Designated Representative

The guidance proposes that *“to the extent an MPO has bylaws, the MPO should, in consultation with transit providers in the TMA, develop bylaws that describe the establishment, roles, and responsibility of the specifically designated representative.”* AMPO recommends that further guidance or rule not require this action. The current processes under 23 U.S.C. §§ 134(h), (i), and (j) and 23 C.F.R. § 450.314, Metropolitan Planning Agreements, already meet the intent of this proposal.

VI. Restructuring MPOs to Include Representation by Providers of Public Transportation

AMPO agrees with the proposal *“that an MPO that serves an area designated as a TMA that has multiple providers of public transportation should cooperate with the eligible providers to determine how the MPO will include representation by providers of public transportation.”* MPOs and the transit operators in a TMA should be given flexibility to make this determination.

VII. Questions, Comments, and Clarification

Is the intent of this guidance to require a new or additional seat on the boards of all MPOs that serve an area designated as a TMA? Under the designation process in current law there are instances where state law may be in conflict with the intent of this proposed guidance (if the intent is to add new seats to an MPO board). In some states the number of representatives on an MPO board, regardless of the size of the planning area, are statutorily capped. In one MPO the citizens directly elect MPO board members. Is it the intent of this guidance to require MPOs to remove board representative(s) in order to accommodate a representative that provides public transportation? Are states expected to amend state laws to assist with MPO compliance with the guidance and eventual rule? Please provide clarity on this matter.

Conclusion

Metropolitan transportation planning has for half a century been rooted in a cooperative and collaborative relationship with our partners in the public transportation arena, as well as with other stakeholders and residents of metropolitan areas. MPOs will continue to maintain and develop strong planning roles for public transportation. To summarize our comments to this guidance:

- Maintain the flexibility MPOs have historically had in appointing policy board members. MAP-21 did not amend the process by which members of the board are designated.
- The authority to assign voting rights to policy board members should continue to be retained by the jurisdictions. MAP-21 did not change this authority.
- Specifically tying policy board membership to recipients of urban area formula funds may not provide full representation to all providers of public transportation and is inconsistent with current law.

Thank you for the opportunity to provide our input and comments. We look forward to working with USDOT in accommodating the role of providers of public transportation on MPO boards.

Should you have any questions or seek further input from AMPO on the information provided above, please contact me at (202) 624-3680 or dhardy@ampo.org.

Respectfully submitted,



DeLania Hardy, Executive Director

