

MPO Feedback on Requirements to Add Transit Representation

*A Joint Publication of the Association of Metropolitan Planning Organizations
and the National Association of Regional Councils*

In the most recent transportation authorization bill, *Moving Ahead for Progress in the 21st Century* (MAP-21; P.L. 112-141), Congress made a change to the governance structure of the metropolitan planning organizations (MPOs)¹ serving the country's largest regions. Previous to MAP-21, MPOs that serve a Transportation Management Area (TMA) – generally defined as a metropolitan area with greater than 200,000 residents – were required by law to consist of “local elected officials,” “appropriate State officials,” and “officials of public agencies that administer or operate major modes of transportation in the metropolitan area.” MAP-21 added a phrase – seven simple words to the end of the last requirement – “including representation by providers of public transportation.”²

On June 2, 2014, the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) jointly released a notice of proposed rulemaking (NPRM) addressing Metropolitan Planning and Statewide and Nonmetropolitan Planning (hereinafter, the Planning NPRM).³ In the Planning NPRM, FHWA and FTA explain the changes to the rules that govern how MPOs operate. As such, the Planning NPRM outlines the changes it proposes to the structure of MPO Boards. Prior to the Planning NPRM, FHWA and FTA also released a Policy Guidance on this issue.⁴ Policy Guidance is not law, but merely serves as suggestions as to how the agencies feel the MPOs should act to ensure compliance with a new regulation. Once the Planning NPRM is finalized, however, it will be enforced, and what it contains will define how FHWA and FTA will determine whether MPOs are complying with the law.

Further complicating matters is that MAP-21 contains a deadline requiring that MPOs representing TMAs must act to comply by October 1, 2014. The problem is that the requirements outlining steps that MPOs must take to comply will not be finalized until the Planning NPRM itself is finalized, which could take a year or more beyond this October 1, 2014 deadline. Therefore, the MPOs that represent TMAs are in a difficult position: they know there is a looming October 1st statutory deadline imposed by Congress, but they do not have final word from FHWA and FTA as to what changes are required.

In the Planning NPRM, FHWA and FTA propose changes to MPO structure that go beyond the intent of Congress. Instead of focusing on ensuring that transit is represented at the MPO level, which seems to be the Congressional intent of the language, FHWA and FTA impose a mandate on all MPOs that represent a TMA by requiring that MPOs provide voting representation for providers of public transportation. This will require changes to the structure and associated by-laws of MPOs that have been and continue to receive certifications that stakeholders representing “public agencies that administer or operate major modes of transportation in the metropolitan area” are appropriately included in the metropolitan transportation planning process. The Policy Guidance issued by FHWA and FTA states that it is not sufficient for local elected officials, who serve on the board of the local or regional transit agency, to also fulfill this new transit requirement for the MPO board. It is our position that where this is the case, the interests of transit are represented on the MPO by these elected officials.

Given the importance of this issue, the two national associations that represent the nation's MPOs – the Association of Metropolitan Planning Organizations (AMPO) and the National Association of Regional Councils (NARC) – surveyed their members that represent TMAs to get a sense of what these proposed changes to MPO structure would mean. The following findings illustrate some of the information learned from these surveys.

¹ MPOs are the federally-mandated transportation planning organizations that each metropolitan area of 50,000 or more residents must create. MPOs play a vital role in planning local and regional transportation systems, conducting public outreach, preparing short- and long-term transportation plans, and helping to prioritize the spending of federal dollars. The Federal Highway Administration (FHWA) certifies the planning process employed by MPOs not less than every four years to ensure they are conducting said process in a cooperative, comprehensive, and continuous manner.

² P.L. 112-141 §§ 1201 and 20005.

³ Statewide and Nonmetropolitan Transportation Planning; Metropolitan Transportation Planning. 79 FR 31783. [Link](#).

⁴ Policy Guidance on Metropolitan Planning Organization (MPO) Representation. 79 FR 31214. [Link](#).

1. For a Large Minority of MPOs, this Rule would Require a Change to State Law

One striking result these surveys revealed is that 22% of the MPOs that represent TMAs would require a change in state law to comply with the requirement that their boards have a dedicated voting position for representatives of transit operators. In fact, these transit operators often fall under the direct jurisdiction of existing voting board members (i.e., elected officials). A few MPOs would require *two states* to change their laws to comply, because these MPOs were created in state law as multi-state organizations.

2. Many MPOs Are Unclear of Expectations

Two-thirds of respondents report they believe they have already fulfilled the requirement, because they have transit represented on their MPO board. However, the responses to this question highlight the uncertainty and confusion surrounding this rule. In a number of cases, MPOs indicated their compliance based on the fact that a member of their board also serves on the board of a local or regional transit agency. A plain reading of the original legislation indicates that this should be sufficient to fulfill the Congressional intent of the law, yet FHWA and FTA indicated this “two-hat” approach is insufficient to meet the requirement. FHWA and FTA have not clarified for the nation’s MPOs the nature of the requirements it is presenting in the proposed rule, and this has left a great deal of ambiguity and uncertainty. MPOs face a statutory deadline of October 1, 2014 to comply with this change to the law; clarification on this issue is critical or MPOs could face corrective action(s) during certification.

3. Transit is Well Represented

One of the most overwhelming findings from the survey is transit representation at the board level. In more than 90% of cases, members indicated their board consists of either direct transit representation or indirect representation (elected officials serving on both the MPO board and the transit agency board). This indicates an extraordinary existing commitment on the part of the nation’s MPOs to ensure that transit has a voice in the planning and execution of transportation projects at the local level. Furthermore, this indicates a high level of conformity with the intent of Congress to ensure that transit has an adequate voice in the MPO process. A better approach would be for FHWA and FTA to consider those cases where transit representation at the MPO level may be lacking, and work on an individual basis to improve the situation where necessary.

AMPO-NARC Transit Representation Survey Summary Report *September 2014*

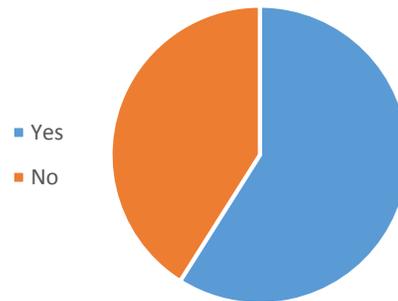
AMPO and NARC conducted member surveys to gather information about transit representation on current board structure and implementation of U.S. DOT's recent Policy Guidance on Metropolitan Planning Organization Representation (79 Federal Register 31214, June 2, 2014). The questions and responses are provided in this report.

Issue – Current Board Structure

Does your MPO policy board currently have a voting position for a specifically designated public transportation representative (i.e., not an elected official representing a local jurisdiction who also serves on a local transit board, or a state representative who also serves on a state or local transit agency board)?

23 Yes (59%)

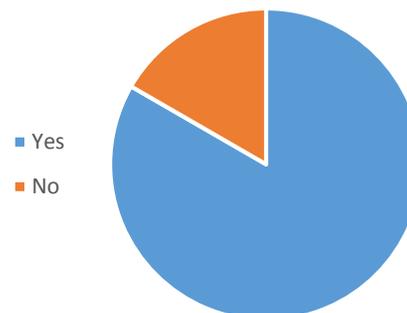
16 No (41%)



Do you believe you currently meet the requirements of the policy guidance regarding voting transit representation on your policy board?

20 Yes (83%)

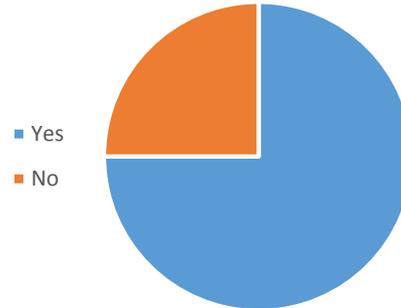
4 No (17%)



Is there a transit representative currently on your policy board?

18 Yes (75%)

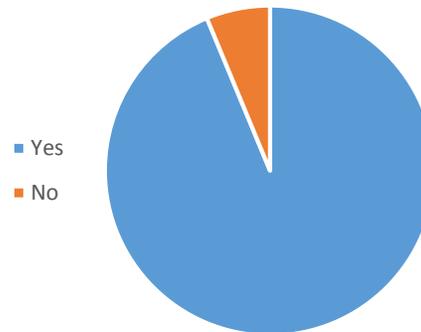
6 No (25%)



If your MPO policy board does not currently have a voting position for a specifically designated public transportation representative, does it have a voting position that represents transit indirectly?

15 Yes (94%)

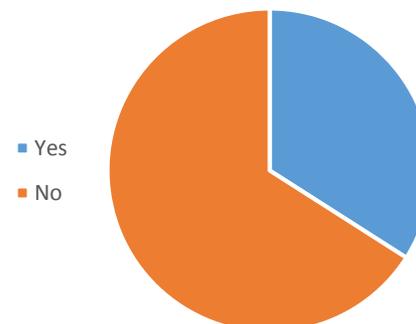
1 No (6%)



Do you believe your MPO will be grandfathered based on the exemption in USDOT's Policy Guidance on MPO Representation (79 Federal Register 31214, June 2, 2014) for MPOs operating under state law that was in effect on or before December 18, 1991 and has not been amended since, and have not been designated or re-designated after that date?

15 Yes (33%)

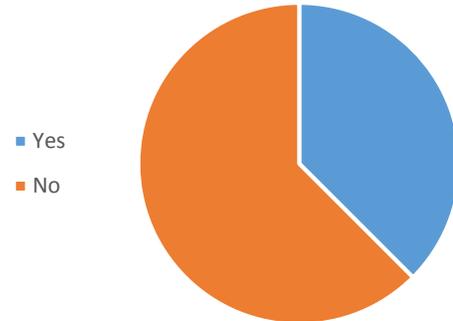
31 No (67%)



Do you have direct, internal control over the make-up and structure of your policy board?

9 Yes (38%)

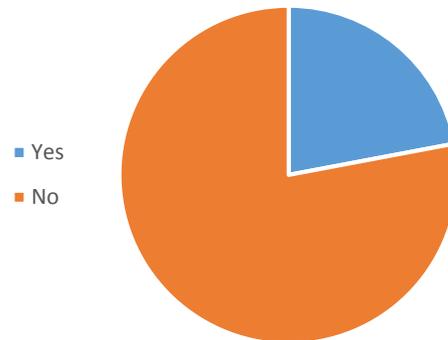
15 No (62%)



Do changes to your MPO voting policy board structure require changes to state law?

13 Yes (22%)

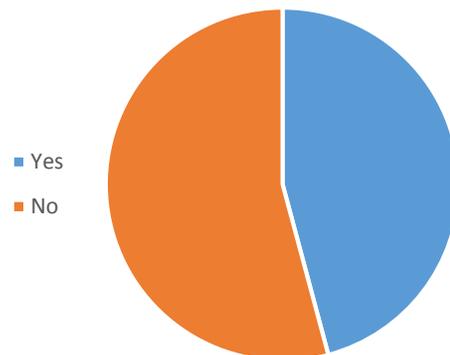
46 No (78%)



Do changes to your policy board require action outside of your organization (i.e. state administrative action, JPA, MOU etc.), short of changes to state law?

11 Yes (46%)

13 No (54%)



If your MPO will make changes to its policy board based on the U.S. DOT guidance, what steps will need to be taken?

Change in Bylaws.
Changes in State law may be needed.
May require designation of one of the County Commissioners as the "official" transit representative.
Needs to go through the Steering Committee and full RPC to update the Bylaws and Policies for a Voting representative for Public Transportation and an appropriate State representative.
On June 26 our Executive Board adopted a change to the Transportation Policy Board structure to add 5 voting transit agency seats (one for the regional transit agency and one for each county to represent local transit interests - previously, there were 4 non-voting transit agency seats on the transportation policy board). This change was by action of our Executive Board.
One of the two (5307) transit providers will be given a voting member seat on the Policy Committee.
Our policy board approved adding the transit operator as a voting member. Required a revision to the MPO bylaws and 28-E agreements between the MPO and its member governments.
Revised Interlocal Agreement if it was applicable
The Cooperative Agreement that governs the MPO will have to be amended. The amended agreement will have to be adopted by resolution by the existing municipal and county members, and then ratified by each jurisdiction (city council, village board and county board). The state will sign the agreement last.
The Policy Committee (Board) and the Governor must concur on the changes.
To ensure public transit representation for our fixed rail system, we will revise the MPO bylaws and agreements to require that the county commissioner appointed to the regional transit board must also be appointed to the MPO Board.
Update to bylaws to reflect voting status and MOU to spell out coordination between transit operators.
We are making changes because of "reapportionment" of our membership.
We believe the U.S. DOT guidance on the representation of transit providers on MPO policy boards goes well beyond the statutory requirement in MAP-21. Our staff position is that transit providers on our board are adequately represented by the regional public transportation system provider, and by the state and local officials on our board who provide statewide or local transit service within their jurisdiction. Indeed, these state and local officials on our board who provide statewide or local transit service within their jurisdiction are truly multi-modal in their metropolitan planning and decision-making. Nonetheless, because there are multiple state and local jurisdiction transit providers in our region, we are convening a meeting with all of them and to discuss the U.S. DOT guidance, our staff position on it, and their thoughts on the best and most effective way to represent transit providers on our board. In the meeting with all of the transit providers we hope to reach a consensus and basic agreement on representing providers of public transportation on our MPO board in response to the MAP-21 statutory requirement. If such a consensus can be reached, and we believe it can be, we will ask our board in September to adopt a resolution approving the consensus reached. This anticipated board resolution will describe how providers of public transportation are to be represented on our MPO board and outline the process for updating our bylaws and planning agreements in the future in response to this and other MAP-21 requirements. Updating our bylaws and planning agreements in our multi-state region is not a quick and simple process. Other modifications to our bylaws and planning agreements may be necessary in response to other MAP-21 requirements and rulemaking once these requirements and rulemaking become known. Updating our bylaws and planning agreements is a very deliberative process and we would like to incorporate all of these MAP-21 required modifications all together in a single update.
We have amended our MOU to allow for the implementation of U.S. DOT guidance.
We will consultant with our Board Members, State, FHWA and other representatives to comply with U.S. DOT guidance.
We will need to amend our Joint Powers Agreement, because it specifies the composition of our board.
We will need to open our bylaws - which may trigger other actions and is, therefore, undesirable - and our Board would have to adopt the change. We would then need to take it to the full membership for approval at our annual meeting.
We will need to transition members that are not elected officials to those that are elected officials....procedures for doing this have already been written into the bylaws.