December 2, 2011

Docket Management Facility
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
West Building, Ground Floor
Room W12-140
Washington, DC 20590-0001

Re: DOCKET # FTA-2011-0054 (Proposed Title VI Circular)

To Whom It May Concern,

On behalf of the more than 300 member organizations of the California Association for Coordinated Transportation (CalACT), I am writing to provide comments on the notice by the Federal Transit Administration (FTA) of their proposed Circular and request for comments regarding Title VI, published September 29, 2011. CalACT is a statewide, professional association of transit managers, planners and suppliers. Our members include many of the organizations that transport the general public, seniors and persons with disabilities throughout California, and the agencies that fund these services. Our members also include non-profit agencies that provide an additional safety net of transportation services.

CalACT, therefore, is a diverse group of transportation providers, managers, planners and suppliers committed to providing coordinated transportation, and meeting the needs of small urban, rural and specialized transportation systems and users.

CalACT and our members sincerely appreciate the efforts by FTA to update and clarify the requirements and recommendations that are intended to ensure that service to all segments of the community is provided in an equitable and non-discriminatory manner. It is in that spirit that the following comments, questions, and suggestions are offered.

General Comments about Both the Title VI and EJ Circulars

In general, the proposed circulars appear to be aimed at urban and fixed-route transit systems. FTA needs to be more attentive to the nuances of rural systems, and of systems such as “dial-a-ride” which serve the general public in a demand-responsive

mode, where the operating characteristics are very different. FTA clearly has good intentions in these new circulars, and they are a helpful improvement over the existing document, but FTA should be much more cognizant of the limited resources, both personnel and financial, of small and rural systems. The costs required to ensure compliance with FTA requirements should not be excessive compared to the benefits of the grant program(s) involved, and should not detract from providing the actual service that is so needed by the individuals and groups whose rights are being protected.

In a "majority minority" state such as California, standard federal definitions may have the unintended consequence of including "too broad" of the population within protected categories, while perhaps disenfranchising non-majority Caucasian populations. FTA should caution and protect against avoiding such outcomes. We are encouraged that the FTA Office of Civil Rights has broadened its attention from previous years and is taking steps to ensure that all people's civil rights are protected. We applaud those efforts.

FTA should provide clearer guidance as to how the impacts of cumulative effects and/or changes should be included in any analyses. Also, where state environmental law and regulations such as CEQA (the California Environmental Quality Act) provides stronger environmental protections and/or restrictions than NEPA, the state-level analysis should suffice.

When the current Title VI circular was adopted, the Federal Register material indicated that FTA did not want to cause "confusion" with regard to the Americans with Disabilities Act (ADA), and implied that Title VI did not apply to ADA services. This has since been replaced by a single "Q+A" on the FTA website. FTA should clarify the relationship between all of the civil rights statutes and directves, especially with regard to provision of ADA "complementary paratransit" services.

Particularly in rural communities, many transit providers have staff who are bilingual or multilingual, at least at a practical (rather than academic) level. This common-sense means of compliance with LEP requirements should be encouraged and allowed wherever practicable.

MPOs need to be held more clearly responsible for the effects of their planning and funding decisions, no matter what the fund source(s). In California, "unmet transit needs" often suffer when road and highway interests are held to be more important locally, and the transit systems have little recourse, often resulting in diminished service to all parts of the community. Further, any "delegation" or "designation" of MPO responsibilities should be allowed only with the voluntary agreement of the transit agency.

Our members have expressed concerns as to whether FTA has sufficient personnel and other resources to review and enforce the proposed new requirements. If approvals are not received in a timely fashion, or if questions are delayed in receiving responses, it will

detract from our ability to provide service. We urge caution to FTA to avoid having these very good intentions be spoiled by a lack of bureaucratic resources.

Comments Specific to the Draft Title VI Circular #C 4702.1B

Many of our members have policy Boards that are comprised of appointees from other public agencies. In most cases, these appointees are themselves elected officials from their jurisdiction. We recommend that these elected officials be recognized and acknowledged as such for purposes of Title VI reporting, even though they may be "appointed" to the transit policy Board.

We also believe that the provision that the policy Board "approve" the Title VI program before submittal to FTA can be unnecessarily intrusive and lead to unintended or undesirable consequences. Transit agencies should include Title VI in their normal course of business, not treat it as different and separate from other ministerial functions, however those are exercised. To call out Title VI as something "different" can inherently invoke discrimination, which is clearly not what FTA or transit agencies are intending.

It has been clear from webinars, information sessions, and the draft circular that the distinction between contractors and subrecipients needs clarification. CalACT supports the comments on this topic that have been submitted by the American Public Transportation Association (APTA). In order to help, we suggest that a definition of "contractor" be added to the circular, which could be something like "an entity which provides services under the direction and oversight of, and in the name of, a public transit agency" (to distinguish from a subrecipent which usually involves a specific grant under its own name). A procurement is different from a grant application! The procurement template and resulting contract between the client agency and its contractor should clearly spell out the responsibilities of each entity, and identify where the contractor has discretion in the performance of its duties. In addition, where the contractor has autonomy in the siting of its operations, maintenance, and/or fueling facility(ies), the procurement and contract should state the public agency's policy to ensure Title VI and EJ compliance, especially if residential communities are in the vicinity.

We support the suggestion by Steve Ponte of ECCTA (Trii-Delta) in comment # FTA-2011-0054-0035 to substitute "100 buses" (usually in peak service) as the threshold where "reporting requirements' would occur, rather than $10 million annual budget. The "100 bus" standard is already commonly accepted and understood throughout the transit industry, and commonly used for NTD and other reporting, as well as providing the sort of built-in "indexing" methodology that some systems have requested. The "100 bus" standard would be an easier threshold for FTA and grantees to put into practice than the "rolling" $10 million budget proposal.

Also, with regard to the "capital" threshold, please clarify that the $3 million capital threshold is not invoked by the receipt of Section 5307, 5310, or 5311 funds. But other

questions are raised – does the $3 million amount apply only from a single "discretionary" grant? What if this amount is received through several grants, possibly for different purposes, over several years? Some agencies may decide to forego grant applications if they will end up triggering additional, perhaps unrelated, reporting requirements. Also, how far into the future does the trigger apply? Does a single occurrence of a $3 million grant require Title VI reporting forever after, even after the useful life of the asset or project? This proposed provision should be clarified, please.

On the other hand, very small or volunteer-based programs should not be required to undergo disproportionate requirements. Particularly in the case of grant programs such as JARC and New Freedom, the MPO or designated recipient should be able to include a simple set of requirements as part of the grant application and approval package, rather than separate reporting by small subrecipients.

California transit law (PUC 99246) requires five performance measures that must be verified in a triennial "performance audit" (operating cost per passenger, operating cost per vehicle service hour, passengers per vehicle service hour, passengers per vehicle service mile, and vehicle service hours per employee) for any entity that receives state sales tax funds (TDA) for transportation. These metrics have long-established meanings and definitions, are available in a consistent manner throughout the state, and would require no new data efforts. Can these suffice instead for the "systemwide standards and policies" required in the new circular, especially for "small" transit systems? We are concerned that the standards proposed as mandatory in Chapter 4, part 3 may not be practical or even relevant in rural settings or for demand-responsive services. We also agree with other commenters that new added administrative burdens can detract from limited operating budgets where our more important goal is to provide actual mobility service to the people whom the Circular is aimed at protecting. Further, what is the purpose or intended effect of requiring standards without any data collection or monitoring? This sounds, with due respect, like a federal mandate that will simply be criticized as an ineffective paper exercise.

Because Title VI applies to "persons" rather than "citizens," FTA should broaden its technical assistance to encourage transit providers to use more inclusive terms other than "citizens" in the names and functioning of their advisory bodies. "Community advisory committee" can preserve the CAC acronym that so many locales have become used to.

Again, CalACT hopes that these comments will be useful in providing transit systems and local communities with improved tools and methods to ensure that all transit customers are served equitably. We also continue to wish that there were enough funding to serve everyone adequately.

If you have any questions or desire further information regarding these requests and recommendations, please do not hesitate to contact me at 916-920-8018 or via email at jacklyn@calact.org .

Sincerely,

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