PolicyLink

May 8, 2015

Therese W. McMillan: Acting Administrator
Federal Transit Administration
1200 New Jersey Avenue, SE
Washington, DC 20590

RE: Comments on April-May 2015 FTA Capital Investment Grant Rulemaking [Docket No. FTA–2015–0007]

Dear Administrator McMillan,

On behalf of PolicyLink, I am writing in response to the recently released 2013 Final Rule and Guidance,[1] to offer our comments and highlight our support for including affordable housing in both the Land Use and Economic Development Effects ratings.

PolicyLink is a national research and action institute advancing economic and social equity by Lifting Up What Works®. Our work is guided by the belief that our nation can only achieve and sustain growth and prosperity by integrating all into the economy, including the low-income communities and communities of color that have too often been left behind. We seek to ensure that everyone can contribute to, and benefit from, local and regional growth and development.

PolicyLink is pleased that the Federal Transit Administration (FTA) has issued guidance for the capital investment grants that (1) prioritize mobility and connectedness for low-income people and transit-dependent populations; and (2) incentivizes the provision of affordable housing close to public transportation. Such measures are critical to ensuring that low-income and communities of color are not displaced by transit investments and that regional development patterns do not segregate these communities from economic opportunity. We encourage FTA to maintain that priority and hold transit agencies and other recipients of FTA capital grants accountable for ensuring that low-income people and communities of color benefit from this federal investment in public transportation projects.

With respect to the specific questions in the notice, PolicyLink offers the following comments, informed by a decade of advancing regional equity policy and 5 years of providing capacity-building support to MPOs and municipalities conducting sustainability, resilience, and economic opportunity planning and implementation activities.

Affirmatively Furthering Fair Housing is key tool to inform TOD capital investments:

The proposed though not yet finalized July 2013 U.S. Department of Housing and Urban Development Proposed Guidance to Implement the Fair Housing Rule (78 FR 43709), is due to be released this summer. If implemented as currently proposed, this rule, also known as the the Affirmatively Furthering Fair Housing (AFFH) rule, would provide a robust toolset to combat race-based housing discrimination, invest in high-poverty neighborhoods, and increase affordable housing options in high-opportunity neighborhoods. The AFFH rule should encourage investment in transit sites that better connect high-unemployment communities with jobs, opening up employment opportunities at a regional level and driving local economic growth in previously underserved areas. It is essential that investments in Transit-Oriented Development (TOD) be paired with policies that target low-opportunity communities that have historically been ignored or purposefully shut off from investment.

Under the new rule, an Assessment of Fair Housing (AFH) will be required of all HUD entitlement jurisdictions and housing authorities every five years. The AFH will utilize HUD-provided data to conduct spatial mapping of access to opportunity (access to high quality schools, transit, and job centers), and exposure to disparities (e.g. exposure to environmental hazards, racially concentrated poverty, and underinvestment in infrastructure). After conducting the AFH, jurisdictions are supposed to set goals to increase access to opportunity for low-income residents and protected classes, and align Consolidated Plans with making progress on those goals.

Because the conducting of an AFH includes diverse agency and community stakeholders, this process can provide an important screen for FTA investments. FTA should grant competitive points to TODs that advance the identified goals of the AFH and Consolidated plans. For instance, if an AFH goal is to increase access to affordable housing in high performing school districts for families with children, and an applicant proposes affordable family housing in a TOD in a high performing school district, that applicant should be awarded significant competitive points. Similarly, a point system should favor projects that provide a high poverty community with added transit access to job centers, whether it is a light rail line or a new Bus Rapid Transit connection. Another example would be TOD projects that bring missing amenities to the neighborhood, such as grocery stores or health clinics. FTA guidance for capital investments should work to align Title VI compliance with AFFH compliance--helping HUD and FTA investments leverage one another for improving opportunity for low-income and advancing AFH equity goals.

The Land Use and Development Effects metrics are complementary:

Under the Land Use criterion, project sponsors and their partners are encouraged to consider the location of low- and moderate-income households and existing legally-binding affordability restricted housing within the planning process. This creates an important incentive to locate transit stations where they can be accessed by underserved communities. As a secondary impact, the criterion would influence future affordable housing developments locations. The Economic Development Effects criterion complements this measure by encouraging project sponsors and their partners to identify housing needs and develop plans, policies, and tools to ensure that affordable housing options are preserved and expanded within project corridors. We continue to believe that both elements are important considerations when evaluating new investments in public transportation infrastructure.

Potential impact of ratings on station locations:

We believe it is too soon to fully assess the effectiveness of these ratings in influencing station location decision making. Many projects subject to the new rating system have been in the Capital Investment Grant pipeline for years and had already identified station locations. New applicants into the pipeline will ideally be able to take this factor into account from the beginning, which will hopefully yield the desired results. We will continue to monitor this situation as it unfolds.

However, this should not imply that the rating has not had impact. This exercise has the potential to spur local conversations about the location of stations and the proximity of affordable housing. These conversations – and in some cases, the cross-sector partnerships that result – can create a foundation for equitable planning and investment decisions in the future.

These partnerships and ongoing collaborative efforts will be useful in complying with the AFFH Rule, which encourages collaboration between the housing and transportation sectors to ensure that diverse communities have access to opportunity-rich communities. FTA should directly refer to the AFFH rule, the Assessments of Fair Housing, and the resulting Consolidated Plans as critical to siting decision making.

Potential impact on the number of legally binding affordability restricted units in the project area and/or greater area:

Similar to station area siting decisions, it is likely too early to show many examples where the location of legally binding affordability restricted units were influenced specifically by this measure. The development of affordable housing – through subsidy programs such as the Low-Income Housing Tax Credit (Housing Credit) is generally a multi-year process, and many of the developments being placed-in-service now would have been started prior to the adoption of the final rule and guidance. Likewise, policies such as inclusionary zoning often require a significant amount of due diligence to properly calibrate requirements and incentives, and to build local support.

That being said, we are aware of local conversations and efforts to expand affordable housing opportunities within proposed station areas, including in Denver, Durham, the Twin Cities, Puget Sound region, the Bay Area, St Louis, and many more. The Denver region has an acquisition fund solely dedicated to acquiring sites for affordable housing near existing or future transit.[2] A coalition of local housing and equity stakeholders is engaging local government in Durham to develop a strategy to support affordability within a planned transit corridor.[3] In the Twin Cities, there are initial discussions around developing inclusionary zoning ordinances in suburban station locations where affordable housing is less prevalent.[4] While some of these efforts preceded the FTA Final Rule and Guidance, they represent concrete efforts to advance the goals of the affordable housing assessments under Land Use and Economic Development Effects. The FTA Rule should leverage local efforts like the above initiatives to encourage other jurisdictions to adopt housing affordability reforms tailored to their particular circumstances.

The compliance burden is reasonable:

We believe that project sponsors that are engaging in the type of partnerships necessary to advance equitable station-area planning and investment would not face an undue burden in accessing and analyzing the data necessary to respond to this measure.

FTA guidance cites the public housing authority (PHA) as the primary source for data on this measure. While the local PHA will be able to provide some data, in many jurisdictions public housing does not constitute the majority of legally binding affordability restricted housing, nor are they the regulatory agency responsible for such units. The requirement that project sponsors provide a letter from the relevant local housing agency or agencies certifying the accuracy of the data could create some minor challenges. Project sponsors may have some difficulty in getting an agency to sign off on a comprehensive dataset if it includes units for which they have no regulatory authority. While the guidance does state that project sponsors may turn in letters from multiple public housing agencies, we recommend that FTA either:

a) allow for self-certification, with FTA conducting random spot-checks for accuracy using HUD- or state-locally maintained data sources;[5] or
b) clarify that multiple letters are acceptable from other sources such as local housing departments and state housing finance agencies.

However, it should be noted that the latter approach could create additional compliance burden for project sponsors.

Using a ratio is preferable to awarding points based on the total number of affordable housing units:

We believe that a ratio represents the best method of assessing the amount of affordable housing within a corridor. While no measure is perfect, a ratio best captures the local context when combined with the existing ability to provide supplemental information.

Measurement based on the total number of affordable housing units would disadvantage smaller or less-dense metropolitan areas, and would provide less incentives for larger urban areas from increasing their supply of affordable housing.

We recommend that FTA continue to give project sponsors the option to provide supplemental information. Each location is different and context is crucial. For example, a system that does a good job of reaching affordable homes overall that seeks to expand into a job corridor with little-to-no housing would be expanding opportunity for low-income residents, and could deserve additional consideration under this metric.

We appreciate that FTA provided project sponsor data for this metric. While the sample size to-date is insufficient to draw any firm conclusions, we observed that there is a reasonable distribution of high, medium and low scores, both overall and when broken down by jurisdiction size. Therefore, we recommend maintaining current break-points in the short-term, which can be reassessed when more data is available.

Thank you for the opportunity to share our perspective on these important matters,

Sincerely,

Kalima Rose
Senior Director, Center for Infrastructure Equity
PolicyLink

[1] "Capital Investment Program: New Starts, Small Starts and Core Capacity Improvements," Federal Transit Administration, USDOT. http://www.fta.dot.gov/12304.html

[2] Denver Regional Transit-Oriented Development (TOD) Fund. http://www.enterprisecommunity.com/financing-and-development/community-development-financing/loan-fund-products/denver-regional-tod-fund-term-sheet

[3] Jim Wise, "Officials to get ideas on housing along Durham-Orange Light Rail Project," *Durham News*, May 4, 2015. http://www.newsobserver.com/news/local/community/durham-news/article20178720.html

[4] "The MN Challenge: To Lower the Cost of Affordable Housing," http://www.mnchallenge.com/

[5] See, for example, the National Housing Preservation Database: http://www.preservationdatabase.org/datasources.php