



July 2020

CAPITAL INVESTMENT GRANTS PROGRAM

FTA Should Improve the Effectiveness and Transparency of Its Reviews

GAO Highlights

Highlights of [GAO-20-512](#), a report to congressional committees

Why GAO Did This Study

FTA's Capital Investment Grants program helps fund investments in public transit in the United States. To be considered for funding through the program, sponsors of projects, such as investments in rail transit, must complete a multi-step, multi-year development process outlined in statute and meet FTA requirements.

The Moving Ahead For Progress in the 21st Century Act includes a provision for GAO to biennially review FTA's implementation of this program. This report discusses: (1) the extent to which, if at all, sponsors reported experiencing delays moving through the program's development process and (2) the extent to which FTA's policies and practices for the program help ensure the effectiveness and transparency of FTA's reviews. GAO reviewed relevant laws and FTA guidance and compared FTA's policies and practices with three systematic practices that help ensure the effectiveness and transparency of agency reviews. GAO also interviewed FTA officials and the sponsors of the 66 projects in the program as of February 2018.

What GAO Recommends

GAO recommends that FTA take steps to: (1) clarify aspects of the methods it uses and factors it considers when reviewing projects, (2) review agency guidance to identify aspects that may be outdated or confusing, and (3) communicate information, such as the reason why a project is not advancing, to sponsors in a timely manner. FTA concurred with reviewing agency guidance but disagreed with the other recommendations, stating additional action is not needed for such purposes. But GAO believes FTA needs further action to help ensure the effectiveness and transparency of its reviews.

View [GAO-20-512](#). For more information, contact Andrew Von Ah (202) 512-2834 or VonahA@gao.gov.

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CAPITAL INVESTMENT GRANTS PROGRAM

FTA Should Improve the Effectiveness and Transparency of Its Reviews

What GAO Found

Sponsors of most of the 66 projects in the Federal Transit Administration's (FTA) Capital Investment Grants program told GAO that they have experienced delays moving through at least one aspect of the program's development process. This program is a significant source of federal financial assistance that transit agencies across the United States can use to build new transit systems or extend existing service. Projects compete for funding, and FTA's role is to evaluate and rate projects based on statutory criteria and make recommendations to Congress. Based on GAO's analysis, the causes of delays sponsors reported experiencing during the program's development process were frequently factors unique to each project or local in nature, such as challenges completing agreements with local utility companies or other rail operators.

FTA's policies and practices for the Capital Investment Grants program do not fully align with three practices GAO has previously identified that federal agencies should follow to help ensure the effectiveness and transparency of their reviews. FTA officials told GAO the agency takes steps to help sponsors understand the agency's review processes and the factors that affect FTA's reviews. However, GAO found that some sponsors reported aspects of FTA's reviews confusing or expected FTA to take action sooner than may be reasonable. The practices with which FTA's policies and actions do not fully align include:

- **Using a standards-based approach** includes clearly specifying the methods an agency uses and the factors it considers when performing its reviews. GAO found that FTA provides sponsors with information that describes how it administers the Capital Investment Grants program and performs its reviews. However, based on GAO's review of FTA documentation and interviews with sponsors, FTA does not always provide sponsors with information that clearly describes some of its methods, such as how it uses documents to help sponsors advance through the development process, or the timeframes for FTA's review and response to sponsors.
- **Documenting review processes and results** includes communicating the results of agency decisions in a timely manner. GAO found that FTA documents its reviews but, according to several sponsors, did not always communicate decisions to sponsors in a timely manner, taking weeks, months, or longer. Some sponsors also told GAO that they thought FTA was sometimes reluctant to communicate certain decisions, such as the reason why their project was not advancing, to them in writing.
- **Incorporating public involvement** helps position agencies to be better prepared to address issues that might affect their reviews. GAO found that FTA's current approach to incorporating public involvement largely relies on informal mechanisms, such as meeting with sponsors at industry conferences and workshops, and that FTA has used a more formal mechanism in the past to solicit public comment. While FTA's approach has benefits, some sponsors told GAO that the frequency of meetings has varied over the years or that there were limitations with FTA's approach as not all sponsors attend those meetings.

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Abbreviations

FAST Act	Fixing America's Surface Transportation Act
FTA	Federal Transit Administration
MAP-21	Moving Ahead for Progress in the 21st Century Act

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July 16, 2020

The Honorable Mike Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Peter A. DeFazio
Chairman
The Honorable Sam Graves
Ranking Member
Committee on Transportation and Infrastructure
House of Representatives

The Capital Investment Grants program is a significant source of federal financial assistance that transit agencies across the United States can use to build new transit systems or extend existing service. Projects compete for federal funding through the program and include investments in heavy and light rail, commuter rail, street cars, ferries and bus rapid transit. The Federal Transit Administration’s (FTA) role is to evaluate and rate projects seeking funding through the program based on statutory criteria, recommend to Congress proposed funding amounts, and recommend such projects for funding.¹ To receive funding, projects must complete a multi-step, multi-year development process and meet specific statutory requirements. As we reported in July 2019, the types of projects that compete for funding through the program can be complicated, taking years to plan and construct, and cost hundreds of millions to billions of dollars.² Consequently, those projects can be the subject of interest and scrutiny, especially if they encounter delays.

The Moving Ahead for Progress in the 21st Century Act (MAP-21) includes a provision for us to biennially review FTA’s processes and procedures for evaluating and rating projects seeking funding through the

¹ The Capital Investment Grants program is governed by statutory provisions, codified at 49 U.S.C. § 5309 as amended most recently in 2015 by the Fixing America’s Surface Transportation Act (FAST Act), Pub. L. No. 114-94, 129 Stat. 1312 (2015).

² GAO, *Rail Transit: Federal Transit Administration Could Improve Information on Estimating Project Costs*, [GAO-19-562](#) (Washington, D.C.: July 22, 2019).

Capital Investment Grants program.³ We issued our most recent report in response to this provision in May 2018 and reported that the Capital Investment Grants program was facing an uncertain future.⁴ At the time, the President’s budget request proposed phasing out the program, and FTA was recommending that Congress limit future funding for the program. Since then Congress has continued to fund the program—appropriating about \$2.55 billion for projects in fiscal year 2019 and about \$1.98 billion in fiscal year 2020—and FTA has continued to advance projects through the program. However, questions have been raised about the pace, effectiveness, and transparency of FTA’s reviews. This report examines:

- the extent to which, if at all, sponsors reported experiencing delays moving through the Capital Investment Grants program’s development process and how any delays affected projects, and
- the extent to which FTA’s policies and practices for the program help ensure the effectiveness and transparency of FTA’s reviews.

To address both of these objectives, we reviewed the statutory provisions governing the Capital Investment Grants program; FTA’s policy guidance for the program;⁵ and other pertinent agency guidance. We also reviewed FTA’s recent annual reports to Congress with funding recommendations for the Capital Investment Grants program and our prior reports on the program.⁶ To determine the extent to which sponsors may have experienced delays moving through the program’s development process, we interviewed the sponsors of each of the 66 projects listed in FTA’s February 2018 report to Congress with funding recommendations for the program, the most recent as of our May 2018 report.⁷ During the interviews, we asked sponsors to describe their experiences moving through selected aspects of the program’s development process, aspects that we identified by reviewing the statutory provisions governing the

³ Pub. L. No. 112-141, 126 Stat. 405, 674 (2012) (codified at 49 U.S.C. § 5309(o)(3)).

⁴ GAO, *Capital Investment Grants Program: FTA Should Address Several Statutory Provisions*, [GAO-18-462](#) (Washington, D.C.: May 31, 2018).

⁵ FTA, *Final Interim Policy Guidance Federal Transit Administration Capital Investment Grant Program* (June 2016).

⁶ FTA is required to issue an annual report to Congress with funding recommendations for the program. FTA’s report is to help inform the appropriations process for the upcoming fiscal year by providing Congress with information on the projects in the program.

⁷ FTA, *Annual Report on Funding Recommendations: Fiscal Year 2019* (Washington, D.C.: February 2018).

program and FTA guidance, and we asked sponsors whether or not they felt they had experienced a delay. If sponsors told us they had experienced a delay, we then asked them what they viewed as the cause of the delays, how if at all the delay affected their project, and if there were any documentation regarding the matter that they could provide us. In order to elicit candid responses from the individual sponsors, we informed them that the results of our interviews would be reported in summary form, and that we would not include information that could be used to identify individuals or specific projects. Therefore, we did not provide specific details regarding individual sponsors' perceptions of delays to FTA for validation.

To assess the extent to which FTA's policies and practices for the program help ensure the effectiveness and transparency of FTA's reviews, we reviewed FTA guidance, other pertinent documents specifying the criteria, methods, and factors FTA uses to evaluate, rate, and recommend projects, and interviewed FTA officials and the sponsors of the 66 projects in our scope. We also reviewed prior GAO reports on agency reviews and discretionary grant programs such as the Capital Investment Grants program. We compared FTA's guidance and practices to three systematic review practices that we have identified in prior work as important to help ensure the effectiveness and transparency of agency reviews: using a standards-based approach, documenting review processes and results, and incorporating public involvement.⁸ For more details on our scope and methodology, see appendix I.

We conducted this performance audit from April 2019 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that

⁸ See for example, GAO, *Discretionary Transportation Grants: DOT Should Take Actions to Improve the Selection of Freight and Highway Projects*, [GAO-18-38](#) (Washington, D.C.: Nov. 2, 2017) and *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007). In addition, our prior work had identified recommended practices for awarding discretionary grants, such as communicating key information to applicants and documenting rationales for awards decisions. See GAO, *Intercity Passenger Rail: Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices*, [GAO-11-283](#) (Washington, D.C.: Mar. 10, 2011).

the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Capital Investment Grants program is a discretionary and competitive grant program that provides roughly \$2 billion in appropriated funds each year to help cities, states, and other localities across the country plan and build new “fixed-guideway” systems or extensions to existing systems.⁹ Projects compete for funding through this program and are designed and implemented by sponsors—usually local transit agencies, but also states’ departments of transportation or local governments. Projects that are eligible to compete for funding through the program include capital investments in heavy and light rail, commuter rail, streetcars, and ferries as well as bus rapid transit. Projects receive funding in the form of a grant agreement, which is subject to congressional appropriations.¹⁰

There are three categories of projects within the Capital Investment Grants program: New Starts; Core Capacity Improvement (hereafter Core Capacity); and Small Starts. New Starts projects are capital investments whose sponsors request \$100 million or more in Capital Investment Grants funding or have an anticipated capital cost of \$300 million or more. Core Capacity projects are “corridor-based capital investments” in existing fixed-guideway systems that increase the capacity of a corridor by not less than 10 percent, in a corridor that is at or above capacity or is expected to be within 5 years.¹¹ Small Starts projects are capital investments whose sponsors request less than \$100 million in Capital

⁹ The term “fixed-guideway” means a public transportation facility: (1) using and occupying a separate right-of-way for the exclusive use of public transportation; (2) using rail; (3) using a fixed catenary system (i.e., a system using overhead power lines); (4) for a passenger ferry system; or (5) for a bus rapid transit system.

¹⁰ According to FTA, a grant agreement defines the project, including its cost, scope, schedule, and level of service; commits to a maximum level of annual and total Capital Investment Grants program financial assistance (subject to congressional appropriations); establishes the terms and conditions of federal financial participation; defines the period of time for completion of the project; and helps FTA oversee and the project sponsor manage the project in accordance with federal law. Upon completion of the payment schedule outlined in the agreement, the Capital Investment Grants funding commitment has been fulfilled.

¹¹ Examples of Core Capacity projects are projects that expand a transit system’s platforms, involve the acquisition of real property, rights-of-way, and rolling stock associated with increasing capacity, but under statute, Core Capacity projects cannot include elements to improve general station facilities, parking, acquisition of rolling stock alone, or elements designed to maintain a state of good repair of the existing fixed-guideway system.

Investment Grants funding and have an anticipated capital cost of less than \$300 million.

To request entry into the Capital Investment Grants program, sponsors submit an application to FTA with information on their project, such as a description of the transportation problem the project seeks to address, among other requirements. If accepted into the program, sponsors must then follow a multi-step, multi-year development process outlined in statute during which FTA determines if the project is eligible to receive funding through the program. The development process that sponsors must follow varies, depending on whether the project is a New Starts, Core Capacity, or Small Starts project.

New Starts and Core Capacity projects are required to complete a two-phase development process before receiving a grant agreement through the program.¹² During the first phase, called Project Development, sponsors must select a “locally preferred alternative,” which is the term for the project that FTA is to evaluate for funding; complete an environmental review process required by the National Environmental Policy Act of 1969;¹³ and address other statutory requirements. Sponsors must also develop and provide sufficient information for FTA to evaluate and rate their project and address FTA requirements. For example, during Project Development, FTA requires sponsors to complete 30 percent of all design and engineering activities associated with their project and obtain commitments for 30 percent of the total non-Capital Investment Grants funds needed for the project.¹⁴ Once sponsors have completed these activities, they must then request to enter the second phase, called Engineering. During Engineering, sponsors must complete all critical third-party agreements, such as agreements with utility companies, complete sufficient engineering and design to develop a firm and reliable cost, scope, and schedule for their project, and obtain commitments for all required non-Capital Investment Grants funds needed for the project.

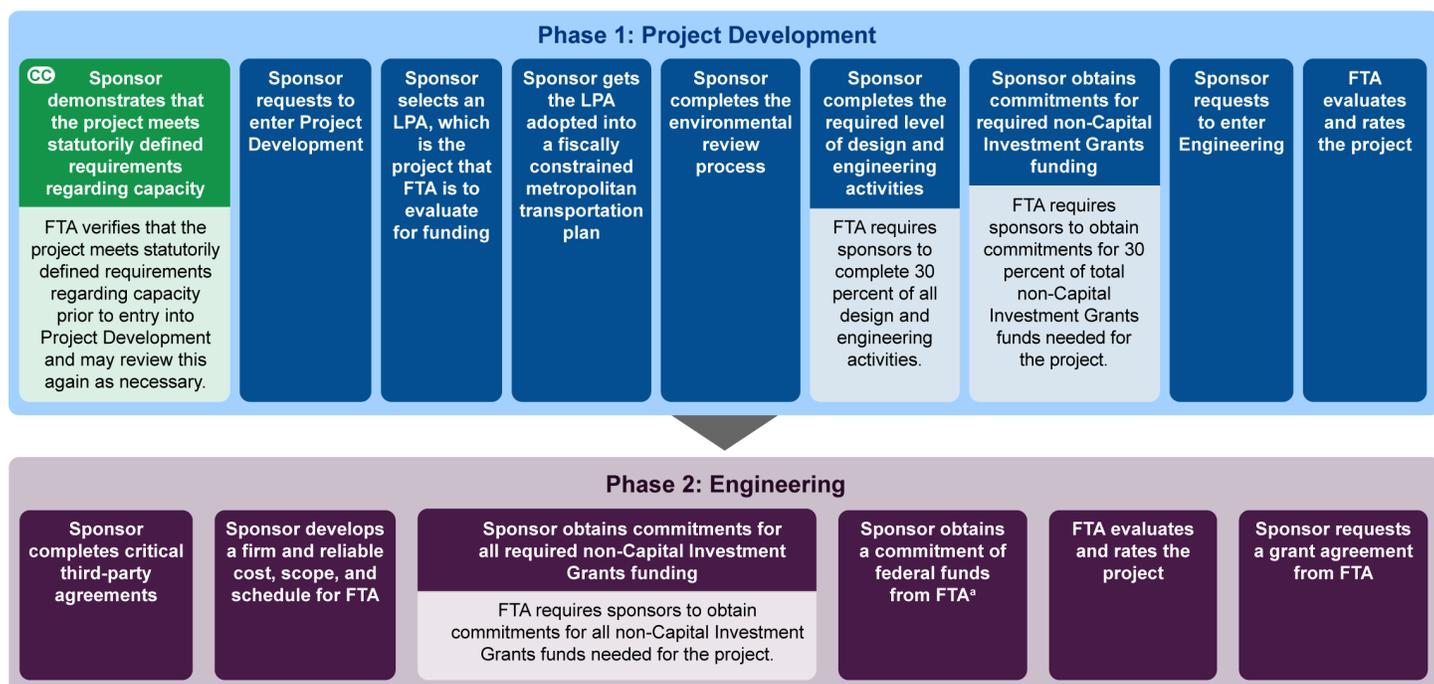
¹² To receive a grant agreement, the sponsor must apply for evaluation and rating by FTA and receive a Medium or better rating. FTA and the sponsor develop the grant agreement documents. The statute then requires that Congress be given a 30-day advanced notice before FTA can award the grant agreement.

¹³ See Pub. L. No. 91-190, 83 Stat. 852 (1970), codified, as amended at 42 U.S.C. § 4321 et seq. See also 40 C.F.R. § 1501.2; 23 C.F.R. Part 771.

¹⁴ Non-Capital Investment Grants funds can include funding from local or state government authorities, the private sector, and other federal (non-Capital Investment Grants) sources.

Figure 1 provides an overview of aspects of the development process discussed in this report for New Starts and Core Capacity projects.¹⁵

Figure 1: Selected Aspects of the Capital Investment Grants Program’s Development Process for New Starts and Core Capacity Projects



CC An aspect specific to the Core Capacity project development process.

FTA: Federal Transit Administration LPA: Locally preferred alternative

Source: GAO analysis of FTA information. | GAO-20-512

Note: Sponsors and FTA may not necessarily complete each aspect of the development process in the linear sequence reflected here.

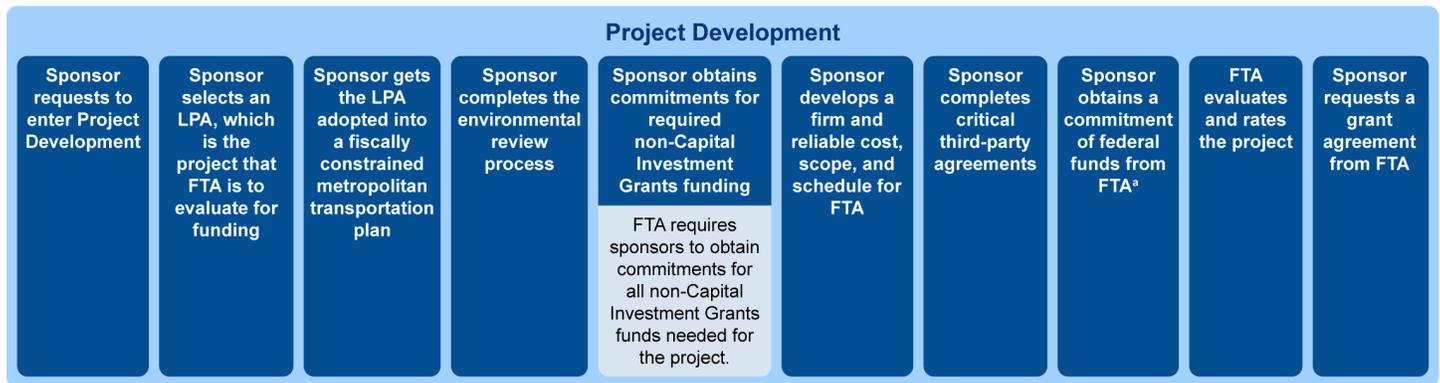
^aSponsors may seek to obtain a Letter of Intent or an Early Systems Work Agreement in advance of a grant agreement.

Small Starts projects complete a development process that is similar to that of New Starts and Core Capacity projects but consists of only one phase, called Project Development. Figure 2 provides an overview of

¹⁵ Because statutory provisions require that Core Capacity projects be a substantial corridor-based capital investment located in a corridor that is at or over capacity, or projected to be at or over capacity within the next 5 years, FTA determines whether Core Capacity projects meet that requirement before allowing entry into Project Development.

aspects of the development process discussed in this report for Small Starts projects.

Figure 2: Selected Aspects of the Capital Investment Grants Program’s Development Process for Small Starts



FTA: Federal Transit Administration LPA: Locally preferred alternative

Source: GAO analysis of FTA information. | GAO-20-512

Note: Sponsors and FTA may not necessarily complete each aspect of the development process in the linear sequence reflected here.

^aSponsors may seek to obtain a Letter of Intent or an Early Systems Work Agreement in advance of a grant agreement.

Before FTA can recommend a New Starts, Core Capacity, or Small Starts project to Congress for funding, it is required by statute to evaluate and rate the project using a number of statutorily defined criteria designed to assess the merit of a project.¹⁶ For example, for New Starts and Small Starts projects, FTA is required to evaluate and rate a project against six project justification criteria: mobility improvements, environmental benefits, cost-effectiveness, economic development, land use, and congestion relief. FTA is also required to evaluate and rate the local financial commitment to the project, including evidence of stable and dependable financing sources.¹⁷ For Core Capacity projects, the criteria are similar, except FTA is required to evaluate and rate a project against the existing capacity needs of the corridor in lieu of land use. FTA’s ratings are “point-in-time” evaluations—meaning that they can change as a project progresses through the development process.¹⁸ To be

¹⁶ 49 U.S.C. § 5309(o)(1)(B).

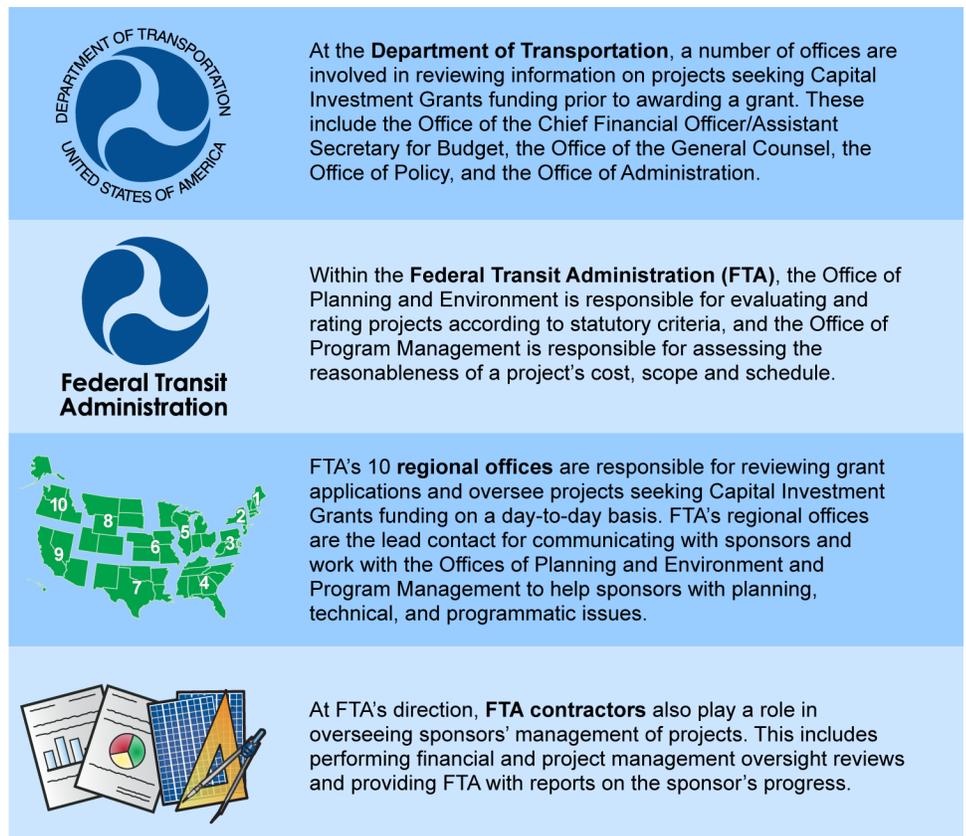
¹⁷ 49 U.S.C. §§ 5309(f)(1), (g)(2)(A).

¹⁸ For more information on FTA’s evaluation and rating of projects, see [GAO-16-495](#).

considered for funding, sponsors must complete the development process outlined in statute for their project, meet all statutory requirements, and address all FTA requirements.

Within FTA and other parts of the Department of Transportation, various offices and other entities play a role in administering the Capital Investment Grants program. Figure 3 provides an overview of selected offices and other entities involved in evaluating, rating, or recommending projects.

Figure 3: Selected Offices and Entities Involved in Reviewing Projects Seeking Funding through the Capital Investment Grants Program



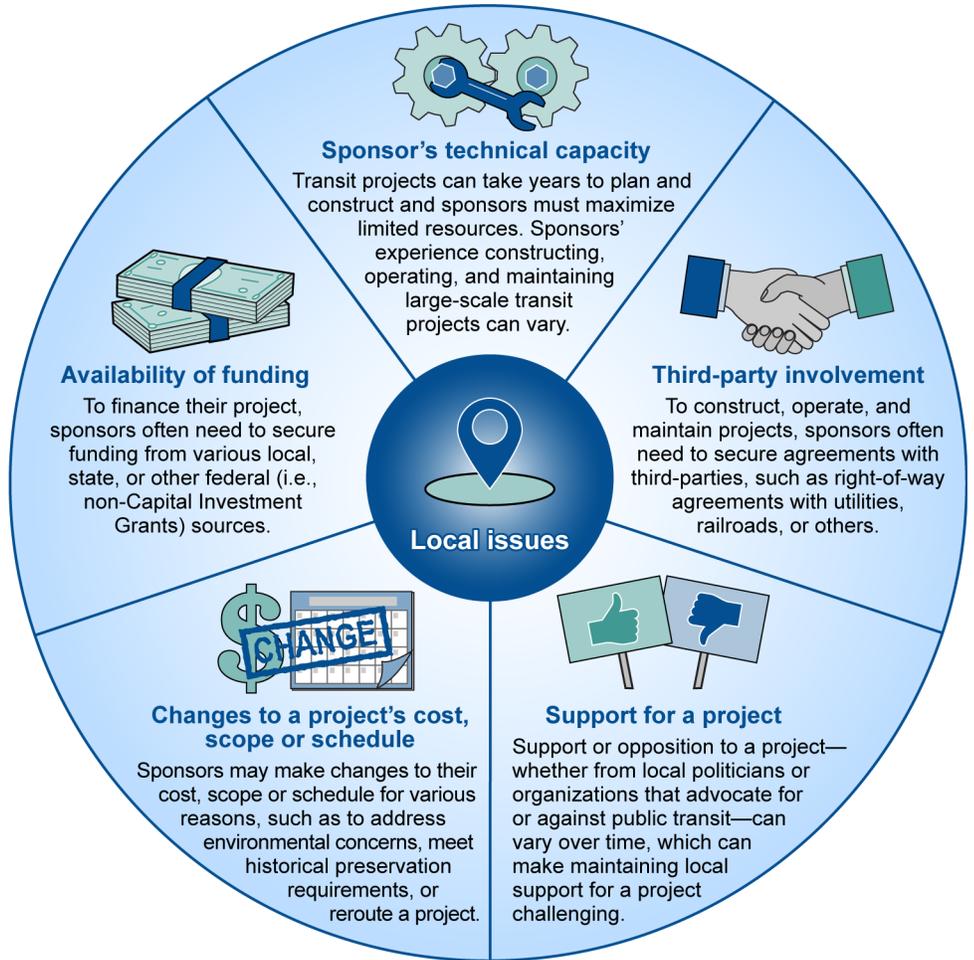
Source: GAO analysis of FTA information. | GAO-20-512

As we have previously reported, the Capital Investment Grants program's development process encompasses both federal and local activities. With the exception of specifying time frames for New Starts and Core Capacity projects to complete the Project Development phase, the statutory

provisions governing the program do not limit how long projects can spend in the development process. Specifically, under statute, New Starts and Core Capacity projects have 2 years to complete the activities required to obtain a rating and submit completed documentation to FTA during Project Development, unless FTA grants an extension. FTA reviews requests for an extension on a case-by-case basis. Projects that are denied an extension are removed from the program but may reapply for entry into Engineering once the sponsor has completed the requirements specified in statute. Also, when we last reviewed issues surrounding how long projects spend in the development process in May 2014, we reported that the time varied from as short as 2 years to as long as 14 years and was generally driven by factors that were unique to each project or local in nature.¹⁹ Figure 4 provides examples of the types of factors typically considered local issues.

¹⁹ GAO, *Public Transit: Length of Development Process, Cost Estimates, and Ridership Forecasts for Capital-Investment Grant Projects*, [GAO-14-472](#) (Washington, D.C.: May 30, 2014).

Figure 4: Examples of Local Issues That Can Affect the Time Projects Spend in the Capital Investment Grant Program’s Development Process



Source: GAO analysis. | GAO-20-512

Most Sponsors Reported Experiencing Delays during at Least One Aspect of the Development Process; They Reported Delays Affected Projects in Various Ways

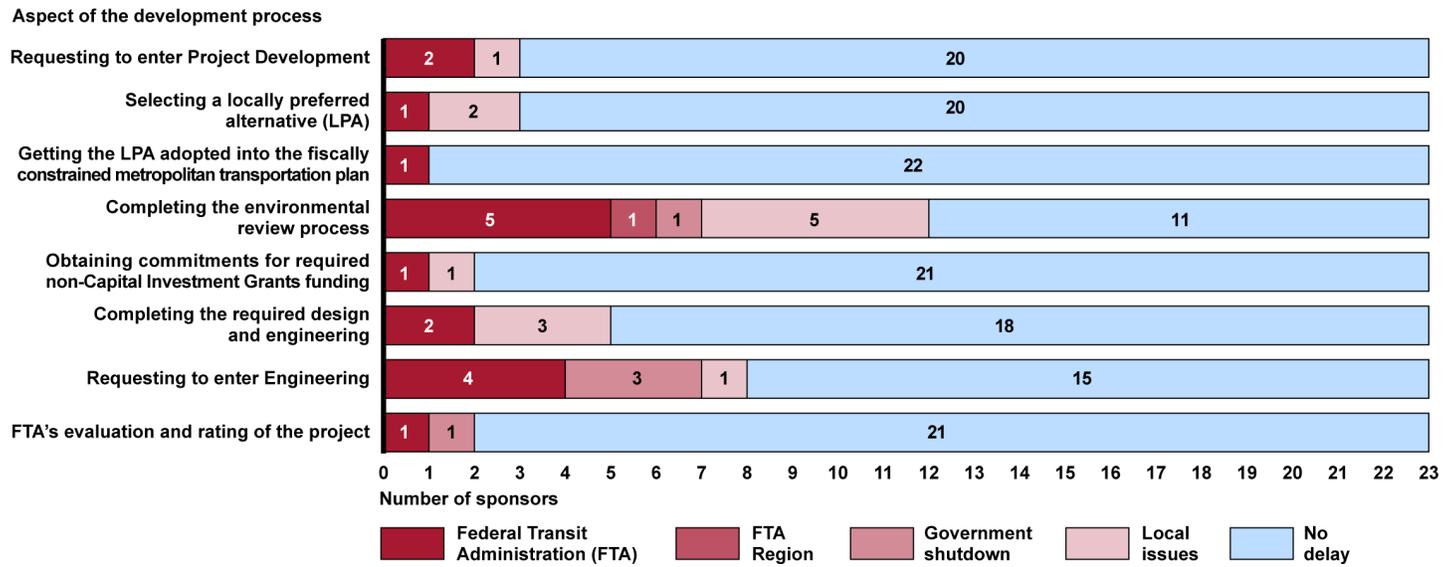
Most (51 of 66) of the sponsors we interviewed told us they have experienced delays moving through at least one aspect of the Capital Investment Grant program's development process that has affected their project. Given the unique complexities and different statutory requirements of individual projects, direct comparisons of sponsors' experiences across all 66 projects—23 New Starts, 8 Core Capacity, and 35 Small Starts—are not possible. Nevertheless, we found that the aspects of the development process that sponsors most frequently reported experiencing delays with involved completing the environmental review process and moving from one phase of the development process to another. With the exception of New Starts during Project Development, factors unique to each project or local in nature were more frequently the cause for those delays compared to other reasons. In cases where sponsors attributed the cause of delays to FTA, they often described experiencing gaps in expectations.

Most Sponsors Reported Experiencing Delays during at Least One Aspect of the Program's Development Process, Frequently due to Local Issues

New Starts Sponsors' Experiences during Project Development

Of the 66 projects in our scope, 23 were New Starts. Of those, the sponsors of 17 projects reported experiencing delays during at least one aspect of Project Development that affected the project and the sponsors of six reported experiencing no delays. Based on our interviews, the aspects of the development process with which these sponsors most frequently reported experiencing delays were completing the environmental review process (12 of 23 projects) and requesting to enter Engineering (8 of 23 projects), as shown in figure 5. However, overall relatively few sponsors we interviewed reported experiencing delays.

Figure 5: Frequency and Causes of Delays That New Starts Sponsors Reported Experiencing during Project Development



Source: GAO analysis of interviews with the sponsors of 23 New Starts projects. | GAO-20-512

The sponsors that reported experiencing delays completing the environmental review process described various reasons for the delays.

- In cases where sponsors attributed the delay to FTA, three told us they had to perform more work during the environmental review process than they had planned and another told us it felt pressured to perform a more in-depth assessment than the one it had anticipated. In some cases, the sponsors were critical of FTA staff or their regional office. For example, one sponsor told us it submitted paperwork to FTA during the environmental review process but did not hear back for months. Another told us it thought the entire environmental review process took longer than it should have. According to that sponsor, there was always one more thing to do or one more requirement that the regional office needed met, which prolonged the entire process.
- Sponsors also told us that local issues were the reason for some of the delays they experienced. For example, several sponsors told us they had to perform additional work as part of the environmental review process to address community concerns or mitigate potential environmental risks. In one case, a sponsor told us it had a very public debate in the community about certain aspects of the project; the debate delayed the project's advancement by about a year as the sponsor worked with stakeholders to resolve certain issues. In

another case, a sponsor told us that several years after it completed the environmental review process, it had to perform additional work due to local opposition to the project and litigation.

With respect to requesting to enter Engineering, several sponsors that attributed the cause of delays to FTA also described experiencing gaps in expectations. For example, one sponsor told us that FTA provided a checklist of requirements that needed to be met prior to entering Engineering but said this checklist changed over multiple iterations of reviews. This issue, from the sponsor's perspective, made the process long and cumbersome. Another sponsor described what it viewed as a "disconnect in the process." Specifically, according to the sponsor, FTA staff told it that certain agreements it had in place were sufficient to satisfy FTA requirements related to obtaining commitments for non-capital Investment Grants funding. However, according to the sponsor, after having its documentation regarding those agreements for more than 6 months, FTA then said the sponsor lacked adequate documentation, a response that left the sponsor scrambling. According to a third, FTA's process for requesting entry into Engineering is clear on paper but not in practice, as it took FTA over a year to approve the sponsor's request to enter Engineering. Others told us the delays they experienced were caused by a government shutdown. For example, one sponsor told us a government shutdown delayed its advancement into Engineering because following the shutdown FTA staff had to catch-up and review a backlog of projects while simultaneously reviewing new requests. Government shutdowns are not something an agency can control and can affect agency reviews; according to FTA officials, the agency's offices were closed for more than 5 weeks during 2018 and 2019 due to government shutdowns, making such delays unavoidable.

At other points during the Project Development phase, sponsors that attributed the cause of delays to FTA also described experiencing gaps in expectations. For example, one sponsor told us it submitted its request to enter Project Development to FTA but was asked over the phone to withdraw that request and reapply to the program. The sponsor did not know why FTA did not accept the initial request or why there was a need to reapply. Another sponsor told us it submitted its request to enter Project Development to FTA expecting a yes or no response. Instead, according to the sponsor, FTA staff expressed skepticism about the project and asked if the sponsor was really going to undertake the project or not. Another told us that changes FTA recently made to the Capital Investment Grants program's risk assessment process caught it by surprise. More specifically, during the development process, FTA

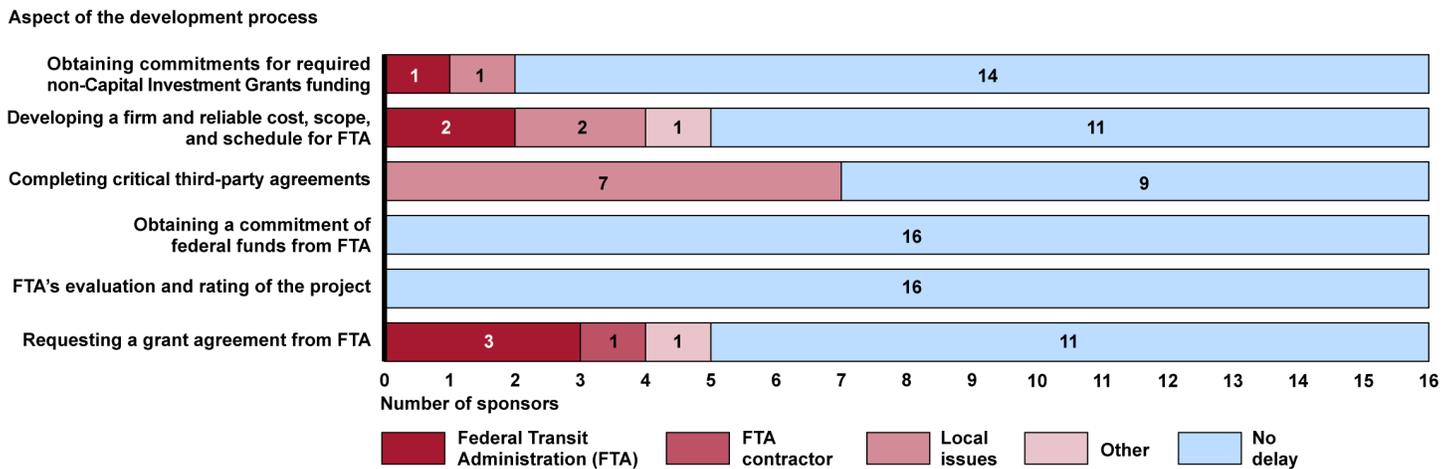
New Starts Sponsors'
Experiences during
Engineering

performs a risk assessment on projects to identify potential risks and the potential effect of those risks to a project's cost and schedule. In July 2018, FTA communicated to sponsors that it would be performing this risk assessment earlier in the development process for New Starts and Core Capacity projects and prior to advancing those projects into Engineering because of concerns the agency had that the number of projects completed on schedule and within budget was decreasing.²⁰ While this sponsor and others we spoke with were generally supportive of FTA's performing its risk assessment of projects earlier during the development process, the sponsor said that having to go through the risk assessment process earlier meant that it was unable to meet its target date to enter Engineering.

At the time we began our interviews with sponsors in August 2019, 16 of the 23 New Starts projects had advanced to the Engineering phase. Of those, the sponsors of 10 of the projects reported experiencing delays during at least one aspect of Engineering that affected the project and the sponsors of 6 reported experiencing no delays. As shown in figure 6, these sponsors most frequently reported experiencing delays completing critical third-party agreements (7 of 16 projects), developing a firm and reliable cost, scope, and schedule for FTA (5 of 16 projects), and requesting a grant agreement from FTA (5 of 16 projects). For two aspects of Engineering—obtaining a commitment of federal funds from FTA and FTA's evaluation and rating of the project—no sponsors reported experiencing delays. In contrast to during Project Development, according to our analysis, local issues were more frequently the cause of delays sponsors reported experiencing during Engineering compared to other reasons.

²⁰ Prior to 2018, FTA performed this risk assessment during the Engineering phase for New Starts and Core Capacity projects or at a sponsor's request.

Figure 6: Frequency and Causes of Delays That New Starts Sponsors Reported Experiencing during Engineering



Source: GAO analysis of interviews with the sponsors of 16 New Starts projects. | GAO-20-512

Multiple sponsors told us that during the Engineering phase they had difficulty securing critical agreements with third parties—typically utility companies or other rail operators—for a number of reasons. For example, sponsors described facing challenges reaching agreements with utility companies regarding the relocation of sewer lines and electrical wires and reaching agreements with other rail operators, such as freight or commuter rail operators. According to one sponsor, “We needed more time than we expected to secure certain agreements, but none of those agreements have anything to do with FTA.” Another told us that its project was held up by litigation. And one sponsor described how the challenges it faced locally slowed its advancement at multiple points during Engineering. Specifically, the sponsor told us the challenges it faced securing agreements with a freight rail operator also hampered its ability to develop a firm and reliable cost, scope, and schedule for FTA.

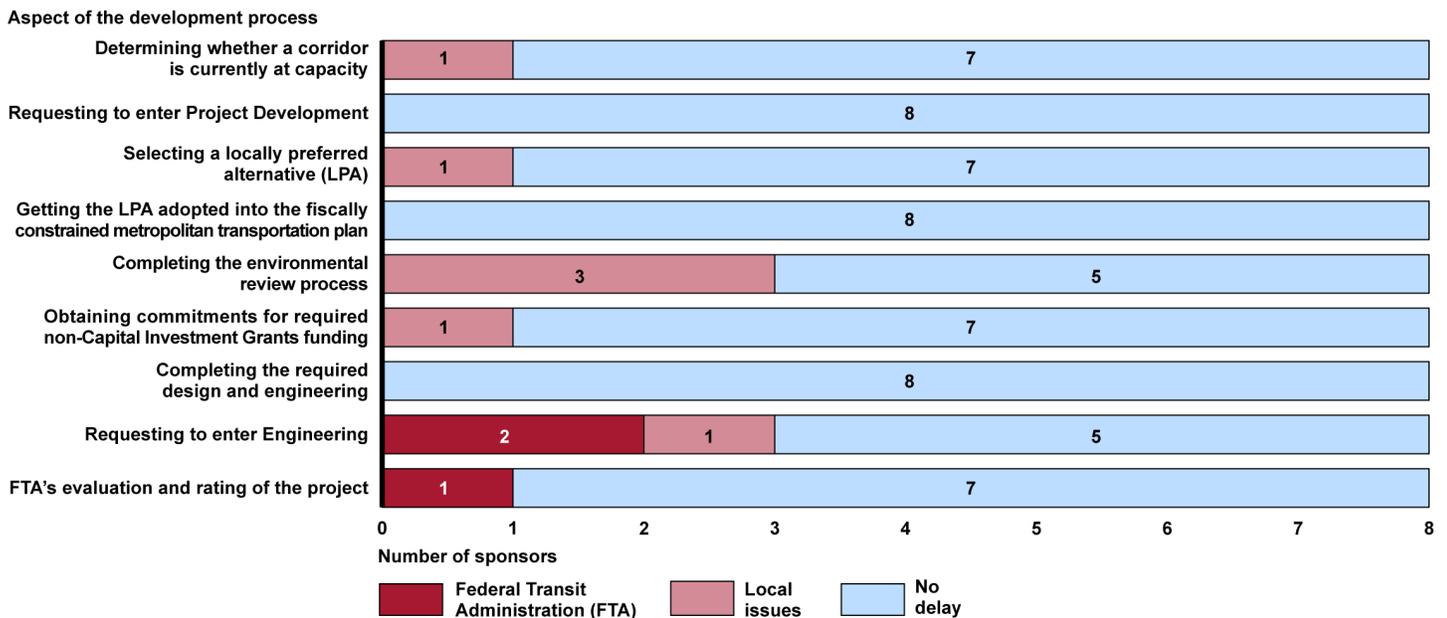
However, in cases where New Starts sponsors attributed the reason for the delays they experienced to FTA there were gaps in expectations. For example, two of the sponsors told us they had expected it to take about 6 months to receive their grant agreement after requesting one from FTA. Yet, according to the sponsors, it took much longer than that. According to one, it took about a year to receive a grant agreement, while the other told us it did not hear much from FTA on the status of its request for a grant agreement for over a year. In cases such as these, the sponsors may have expected FTA to take action sooner than reasonable. In others, though, the sponsors could readily identify the reason. For example, one

**Core Capacity Projects
Sponsors' Experiences during
Project Development**

sponsor told us that FTA provided it with a project “roadmap,” which is a timeline of activities that need to be completed prior to signing a grant agreement. However, according to that sponsor, whenever it completed an activity on its roadmap, FTA added another, a process that the sponsor viewed as frustrating. According to the sponsor, it would have been better to know what its complete roadmap would have looked like from the start.

Eight of the projects in our scope were Core Capacity projects. The sponsors of seven of the eight projects reported experiencing delays during at least one aspect of the Project Development phase that affected the project. As with New Starts, the aspects of the development process the sponsors most frequently reported experiencing delays with were completing the environmental review process (3 of 8 projects) and requesting to enter Engineering (3 of 8 projects). Few sponsors reported experiencing delays during the remaining seven aspects of Project Development as shown in figure 7.

Figure 7: Frequency and Causes of Delays That Core Capacity Project Sponsors Reported Experiencing during Project Development



Source: GAO analysis of interviews with the sponsors of 8 Core Capacity projects. | GAO-20-512

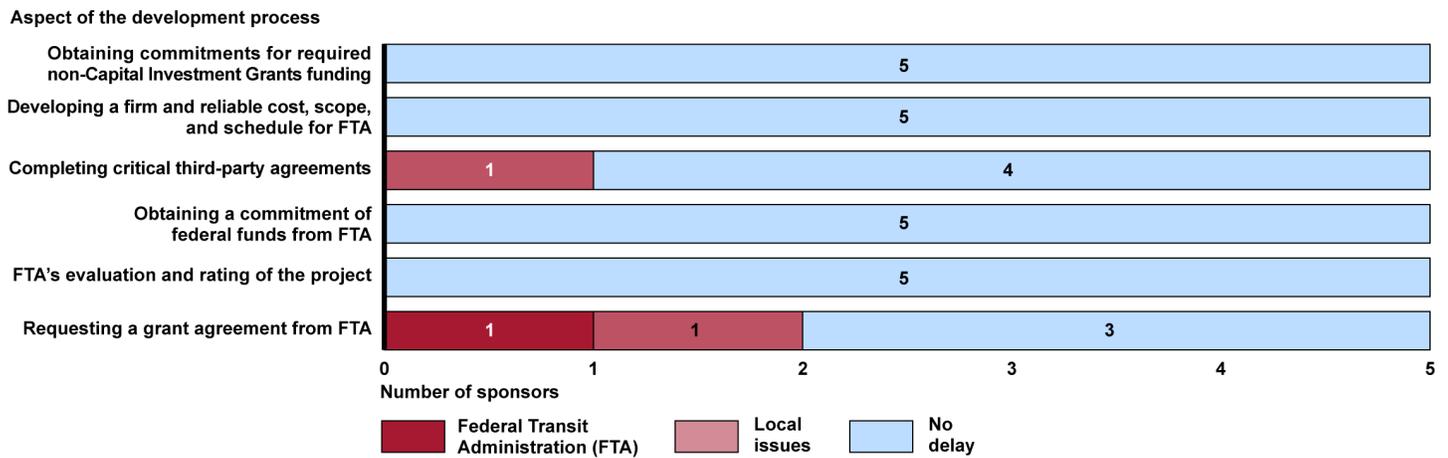
In most cases, the Core Capacity sponsors that reported experiencing delays during Project Development told us factors that were unique to each project or local in nature were the cause. For example, projects were held up by local opposition to the project or because local decisions affected advancement. In one case, a sponsor told us that decisions made at the local level effectively meant it had to start over from the beginning.

In the few cases where sponsors attributed the cause of delays to FTA, there were also gaps in expectations. For example, in one case a sponsor told us it submitted its request to enter Engineering but did not advance into Engineering for over a year. According to the sponsor, during that time it experienced some fairly long, unexplained periods of silence and periodic meetings it might have with FTA were cancelled. In another case, a sponsor told us it submitted its request to enter Engineering to FTA but never received a formal response either approving or denying that request despite continuing to have ongoing conversations about the project with FTA.

Core Capacity Projects
Sponsors' Experiences during
Engineering

As of August 2019, five of the eight Core Capacity projects had advanced to the Engineering phase. During our interviews, sponsors reported experiencing delays during just two aspects of the development process. Specifically, the sponsors of two of those projects reported experiencing a delay requesting a grant agreement and one reported experiencing a delay completing critical third-party agreements (fig. 8). With regard to completing critical third-party agreements, one sponsor told us it took longer than expected to complete critical agreements with another rail operator that operates in the project's corridor. With regard to requesting a grant agreement from FTA, in one case, a sponsor told us it had expected to receive its grant agreement in the fall, prior to a presidential election, but found FTA was not advancing projects around the election. In the case of the other, we found that the sponsor proposed changes to the project's construction means and methods while in Engineering that affected its advancement.

Figure 8: Frequency and Causes of Delays That Core Capacity Project Sponsors Reported Experiencing during Engineering



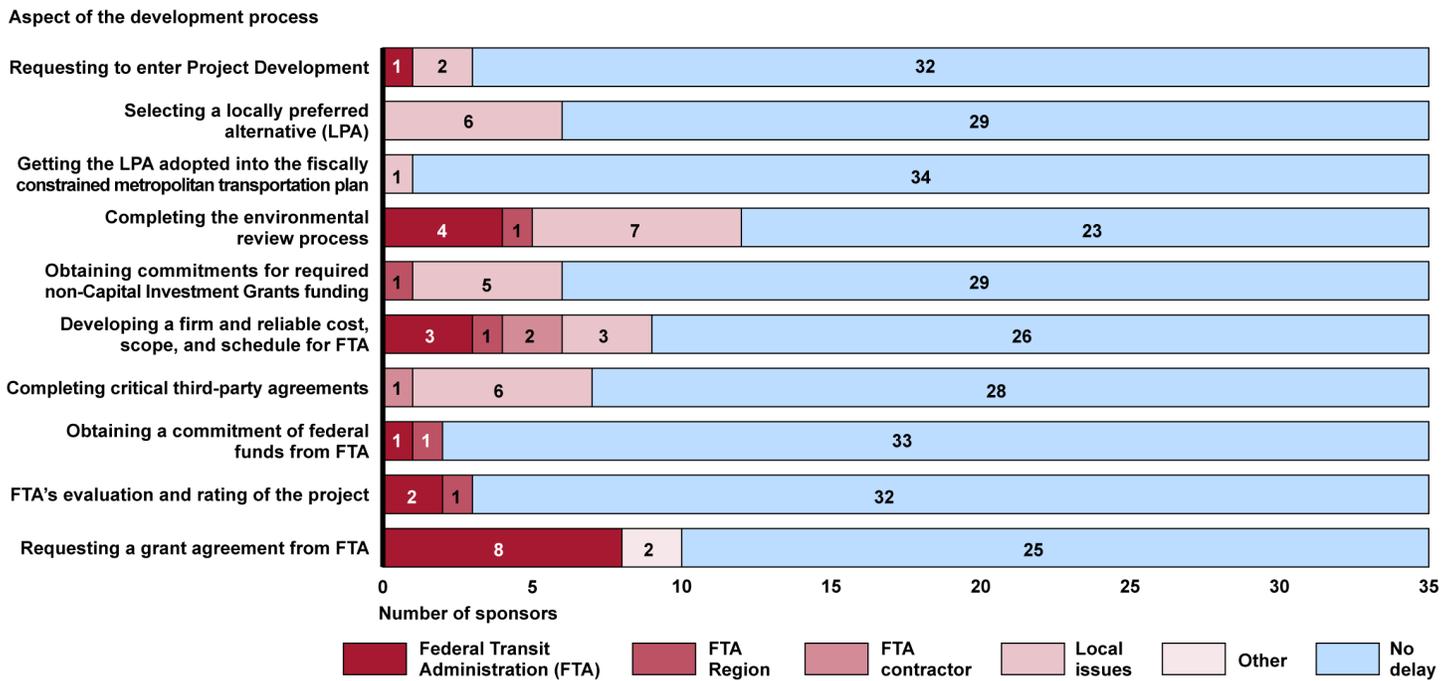
Source: GAO analysis of interviews with the sponsors of 5 Core Capacity projects. | GAO-20-512

Small Starts Sponsors' Experiences during Project Development

Of the 66 projects in our scope, the remaining 35 projects—or about half—were Small Starts. Of those, the sponsors of 25 reported experiencing delays moving through at least one aspect of the development process for Small Starts and the sponsors of 10 reported experiencing no delays.²¹ Based on our interviews, the aspects sponsors told us they most frequently experienced delays with were completing the environmental review process (12 of 35 projects); requesting a grant agreement from FTA (10 of 35 projects); and developing a firm and reliable cost, scope, and schedule for FTA (9 of 35 projects), as shown in figure 9. However, relatively few sponsors we interviewed reported experiencing delays during the remaining aspects of Project Development. According to our analysis, local issues were more frequently the cause for delays Small Starts sponsors experienced during Project Development compared to other reasons.

²¹ As mentioned previously, the development process for Small Starts is similar to New Starts and Core Capacity projects but consists of only one phase.

Figure 9: Frequency and Causes of Delays That Small Starts Sponsors Reported Experiencing during Project Development



Source: GAO analysis of interviews with the sponsors of 35 Small Starts projects. | GAO-20-512

As with New Starts projects, the Small Starts sponsors that reported experiencing delays completing the environmental review process described various reasons for those delays. For example, multiple sponsors told us they had to perform additional work as part of the environmental review process to address community concerns or address changes made to the scope of their project. Also, several sponsors told us it was challenging coordinating with stakeholders to address federal historic preservation requirements. For example, under the National Historic Preservation Act, FTA is required to take into account the effects of transit projects on historic properties.²² FTA provides sponsors with guidance, which includes taking steps to initiate and complete a process to help meet that requirement. This involves working with states' historic

²² Under section 106 of the National Historic Preservation Act and its implementing regulations, federal agencies are to take into account the effects of their undertakings on historic properties through consultation between agency officials and other parties with an interest in the effects of the undertakings on historic properties. Pub. L. No. 89-665, § 106, 80 Stat. 915, 917 (1966) (codified as amended at 54 U.S.C. § 306108). See also 36 C.F.R. Part 800.

preservation offices, federally recognized Indian tribes, and sometimes others—such as historic preservation groups, developers, neighborhood associations, or other local governments. According to some of the sponsors we spoke with, working with stakeholders can be challenging and sometimes stakeholders are not responsive to their inquiries.

At the same time, several sponsors that attributed the cause of delays at least in part to FTA also described experiencing gaps in expectations. For example, several sponsors told us they were asked to do more work than they had expected. In one case, a sponsor told us that while it had already put 2 years' work into the environmental review process, it was asked to do a more in-depth environmental assessment because of concern its project might impact another transit project. Also, with regard to addressing the federal historic preservation requirements mentioned above, one sponsor told us there was confusion about who had the lead in meeting those requirements—the state historical preservation office, or FTA. Another sponsor told us it tried to be responsive to FTA and respond to FTA's requests within a week but described how there were times when weeks would pass and FTA staff did not respond to inquiries.

With regard to requesting a grant agreement, most of the sponsors we interviewed told us the delay they experienced was due to FTA. For example, several sponsors described having issues with their roadmaps. According to one of the sponsors, its roadmap contained a lot of dates that were to be determined, a situation that made determining future tasks challenging. Another acknowledged that there are limitations with FTA's roadmaps, describing them as a best-case scenario of how long things will take because some things are outside of FTA's or sponsors' control. Others cited issues surrounding the uncertainty of the program's future in recent years, such as FTA's recent recommendations that Congress limit future funding for the program.

With regard to developing a firm and reliable cost, scope, and schedule for FTA, Small Starts sponsors described a range of issues similar to those mentioned previously as the cause for the delays they experienced. These issues include challenges coordinating with utility companies, needing to complete additional work and gaps in expectations when working with FTA. For example, one sponsor told us it recently completed a project and thought it knew what to expect but found that was not the case. According to the sponsor, FTA staff had many questions about its project, though the sponsor acknowledged that the use of multiple sources of non-Capital Investment Grants funding was a contributing factor. Another told us that it had also previously gone through the

program and based on that experience was not expecting to go through FTA's risk assessment process.

Delays Can Affect Projects in Various Ways, Which Sponsors Reported Sometimes Created Significant Challenges

During our interviews, sponsors told us delays, regardless of their cause, can affect a project's schedule, cost, and scope in various ways. However, based on our assessment, how significant that effect is depends on factors unique to each project more than the specific cause of the delay. For example:

- Several sponsors told us delays extended their projects' schedules by weeks or several months to sometimes a year or more. To compensate for the potential of delays such as these, several sponsors noted that they typically build extra time—called contingency time—into a project's schedule. However, in some cases sponsors told us the delays they experienced consumed all of the contingency time they had planned. When this happens for New Starts and Core Capacity projects during Project Development, sponsors may have to request an extension from FTA to remain in the program. At the time of our review, seven projects had requested such an extension, of which FTA granted four.
- Sponsors told us delays can also lead to increased costs or cost estimates for a project. For example, one sponsor provided us documentation illustrating how delays it experienced led to an 8 percent increase to the project's total cost estimate while another sponsor told us that delays it experienced resulted in increased capital costs for its project due to inflation.
- In a few cases, sponsors told us that delays can cause sponsors to change plans for a project or reduce a project's scope. For example, one sponsor told us that it originally underestimated how much its project would cost by more than 12 percent. This underestimate, in turn, led to delays selecting a project for FTA to review. Ultimately, according to the sponsor, it opted to reduce the scope of its project so it could undertake work that was more in-line with the sponsor's original cost estimates.

In some cases, sponsors told us delays they experienced due to local issues caused them to withdraw or cancel their projects. For example, one sponsor told us it chose to withdraw its project from the program after local officials repeatedly required it to change the project's route. According to the sponsor, those changes made meeting the requirements for completing Project Development within 2 years impossible. The sponsor told us that FTA staff were understanding about the difficulties and even helped explain to local officials the challenges making changes

to the project's route might create. Another sponsor told us problems it experienced securing critical third-party agreements, among other factors, caused it to cancel its project entirely.

In cases where sponsors told us delays they experienced were caused by FTA, sponsors noted that delays or uncertainty at the federal level are problematic because they can reduce support for projects at the local level or create other challenges. For example, according to one sponsor, a lack of clear time frames for FTA's decision-making coupled with recent uncertainty surrounding the Capital Investment Grants program led to a 2-year delay in receiving the sponsor's grant agreement.²³ This outcome, in turn, delayed the project's start of service by a year and also increased the project's total costs. During our discussion, the sponsor also told us its risk assessment, which FTA performed, identified the federal government itself as a risk to the project, due in part to uncertainty about FTA's time frames for awarding a grant agreement.

In a handful of cases, sponsors told us delays or uncertainty at the federal level required them to take action on their own to keep their projects moving. For example, one sponsor told us FTA regional staff took several weeks longer than expected to draft a letter for it to local tribal governments during the environmental review process. The sponsor told us it decided to draft the letter itself to accommodate a waiting period for the tribes to respond that was required by state statute. According to the sponsor, having to deal with delays such as this caused tension among local stakeholders. Another sponsor told us it had concerns that FTA's regional staff applied subjective measures, in the sponsor's view, while reviewing its project. As a result, the sponsor chose to withdraw the project from the program and instead complete the project using state and local funding.

²³ As mentioned previously, at the time of our 2018 review, the President's budget request had proposed phasing out the program, and FTA had recommended that Congress limit future funding for the program.

FTA's Policies and Practices Do Not Fully Align with Systematic Practices for Effective and Transparent Agency Reviews

We have previously identified three systematic practices that federal agencies should follow to help ensure that their reviews are effective and transparent—(1) use of a standards-based approach, (2) documenting agency review processes and results, and (3) incorporating public involvement. As discussed below, FTA's policies and practices for the Capital Investment Grants program partially align with all three systematic practices.

FTA Does Not Always Provide Sponsors with Clear Information on Its Methods or the Factors It Considers when Performing Its Reviews

According to the first systematic practice, federal agencies should implement a standards-based approach to help ensure that their reviews are effective and transparent. A standards-based approach establishes a set of standards the agency uses for each review. Having a standards-based approach allows agencies to justify that each standard they use is appropriate, objective, and gains credibility for their reviews. According to FTA officials, FTA takes steps to help sponsors understand the agency's review processes and the factors that affect its reviews. FTA provides sponsors with information that describes how it administers the Capital Investment Grants program and performs its reviews in its Final Interim Policy Guidance and other agency guidance, such as reporting instructions and templates for the program and agency circulars. That guidance discusses how to get into and through the development process, what to do to be considered for funding, and how FTA evaluates and rates projects against the criteria specified in statute, among other things. For example, the templates FTA provides on its website allows sponsors to input information to see how FTA would evaluate and rate them on multiple criteria.

However, we identified a number of areas in FTA's administration of the program where FTA did not provide sponsors with information that clearly specifies the methods it uses or the criteria it considers when performing its reviews. These areas include FTA's (1) use of roadmaps, (2) time frames for performing its reviews or responding to sponsors, (3) use of geographic diversity as a factor when making decisions, and (4) use of guidance that includes aspects that are outdated or unclear. Taking steps to clarify these areas of FTA's review process could help better align FTA's policies and practices with the systematic practice of using a standards-based approach and also minimize these issues as sources of confusion for sponsors as they navigate the program's development process.

FTA's use of roadmaps: According to FTA officials, during the development process FTA provides sponsors with project roadmaps or timelines for activities that need to be completed to advance from one phase of the development process to the next or prior to receiving a grant agreement.²⁴ Documents such as these can be a tool to help sponsors navigate the development process and set expectations. However, FTA guidance provides sponsors with few details regarding when they will receive roadmaps or what to expect from roadmaps. For example, while FTA's policy guidance specifies when FTA will begin developing a roadmap for entry into Engineering for New Starts and Core Capacity projects, it does not specify for any categories of projects when FTA will develop a roadmap for receiving a grant agreement. FTA's policy guidance also does not specify what developing a roadmap entails, what types of activities might be included, or when FTA's list of activities is finalized. The most comprehensive discussion we found of what sponsors should expect from FTA's roadmaps was either in presentations FTA has provided its staff and contractors or at an industry conference in 2016. However, as one sponsor told us, not every sponsor attends those conferences.

Based on our review of roadmaps sponsors provided us, the level of detail roadmaps include varies. For example, while all of the 12 roadmaps we reviewed identified specific activities for sponsors to complete, some provided few details on timelines for FTA's reviews. Consequently, sponsors had varying opinions about the quality and usefulness of the roadmaps they received. For example, two sponsors told us their roadmaps were not helpful because FTA repeatedly revised the list of activities that sponsors needed to address or added new activities. In another case, a sponsor told us that while it considered roadmaps a written mechanism to hold FTA accountable to sponsors, it was under the impression that FTA no longer provided roadmaps to sponsors.

Providing sponsors with roadmaps is not a statutory requirement, and FTA officials told us project roadmaps can change as project circumstances change, such as whether the sponsor experiences any delays in getting non-Capital Investment Grants funding or obtaining third-party agreements. According to FTA officials, such delays can affect

²⁴ According to FTA, roadmaps provide a rough timeline of both sponsor and FTA activities to reach the next major milestone in the development process. According to FTA officials, "roadmaps" are not required by statute and are not a substitute for other forms of FTA guidance, but rather are a tool FTA chose to develop to help sponsors through the process.

FTA's timing to evaluate the project. We recognize that each project may be unique and the timing of activities can depend on various factors, including on FTA's receiving timely and complete submittals from sponsors. However, by not following a standards-based approach, which includes standardizing and clearly specifying when FTA develops roadmaps for sponsors and what roadmaps entail, FTA's roadmaps may not be as useful a tool as they could be to help sponsors navigate the development process. In addition, without taking actions to address this situation, some sponsors are likely to continue to view roadmaps as a source of confusion or reason to question the transparency of FTA decisions.

FTA's time frames for performing its reviews or responding to sponsors: According to Office of Management and Budget guidance, it is important for federal agencies to estimate the time it will take to perform their reviews and communicate those estimates to applicants.²⁵ Providing time frames aligns with a standards-based approach because sponsors can set their expectations for the pace of FTA's decision-making. In turn, FTA can justify that it reviews one project as objectively as another and gain credibility for its review. Our review found FTA guidance references a statutory requirement that FTA must respond to sponsors within 45 days of requesting to enter Project Development. Beyond this, while we found that FTA provides rough timelines for its reviews in a number of the individual project roadmaps we reviewed, FTA guidance that is publicly available does not set or communicate time frames for FTA's reviews or responding to project sponsors requests. During our interviews, a number of sponsors told us that FTA did not set or communicate the agency's time frames for performing its reviews or provide timely responses, and some of those sponsors said as a result, working with FTA felt unpredictable. For example, two sponsors told us they might respond to a question received from FTA staff about their project, but not hear back from FTA for several weeks or even months. In another example, a sponsor told us it submitted a grant request to FTA and the experience was like "entering a black box"—for a long time the sponsor was uncertain of the project's status and FTA's time frame to approve the grant, if it would at all. While sponsors noted that they continued to meet with FTA staff periodically, several sponsors also told us they were unable to obtain clarification regarding FTA's time frames during those meetings.

²⁵ 2 C.F.R. Part 200, App. I(E)(4).

According to FTA officials, following entry into Project Development, it is difficult to provide sponsors with information such as exact time frames for performing FTA's reviews or making decisions in advance because of the timing of sponsors' actions that are specific to each project, such as completing critical third-party agreements. In addition, FTA officials said that time frames would depend on the quality and content of the materials the sponsor submits. For example, if the sponsor's submission is missing items, or otherwise incomplete, FTA officials would need to request this information. However, without taking steps to provide sponsors with a clear understanding of FTA's time frames for performing its reviews, such as the minimum number of weeks FTA requires to complete a certain review, or for responding to sponsors, some sponsors noted it can be difficult to plan effectively. It can also lead to gaps in expectations in which sponsors expect FTA to take action sooner than is reasonable. During our interviews, the sponsors of 10 projects told us they thought it would help if FTA or Congress set clearer expectations for how long FTA's reviews should take. According to one, setting time frames could help FTA set expectations, and sponsors, in turn, could then share those expectations with local stakeholders. Accordingly, without taking steps to more clearly communicate FTA's time frames for its reviews and responding to sponsors, sponsors are likely to continue to view issues regarding the time frames for FTA's reviews as a source of confusion.

FTA's use of geographic diversity as a factor when making decisions: Under statute, FTA is to evaluate and rate projects against a number of statutorily defined criteria, and FTA describes in detail how it does that in its policy guidance. However, during our review FTA officials told us they also consider other factors not specified in law or FTA guidance in order to make what FTA officials emphasize are discretionary funding decisions. Specifically, FTA officials told us that as part of a long-standing practice documented in Federal Register entries dating from the 1970s, they also consider the geographic diversity of projects. In discussing this topic with FTA officials, they noted that in June 2018 FTA issued a "Dear Colleague" letter citing geographic diversity as one of several factors FTA considers in its funding decisions. According to officials, FTA issued that letter in an effort to be transparent about the factors FTA considers when making funding decisions. (For a copy of this letter, see app. II.)

However, FTA's issuance of the June 2018 "Dear Colleague" letter has caused confusion within the transit industry because, among other things, it mentions geographic diversity but does not explain in any detail how FTA considers the geographic diversity of projects during its reviews or

when making decisions.²⁶ Further, neither FTA’s policy guidance nor other FTA guidance we reviewed explains how concepts related to geographic diversity factor into FTA’s decisions. Similarly, Federal Register entries FTA provided to us do not clearly specify how FTA considers the geographic diversity of projects when making decisions. For example, two such entries state that federal investments in mass transportation should be made in increments to prioritize an area’s greatest needs, or to spread out the fiscal burden, but do not clearly specify how these issues relate to geographic diversity. Taking steps to clarify how FTA considers factors such as geographic diversity when reviewing projects could help better align FTA’s policies and procedures with the systematic practice of using a standards-based approach to minimize confusion on this issue.

Aspects of FTA’s guidance are outdated or unclear: While FTA provides sponsors with a variety of guidance specifying how to navigate the development process, we found some of FTA’s publicly available guidance is either unclear or outdated. Leaving outdated guidance on its website reduces FTA’s ability to use a standards-based approach, because it reduces the clarity of what standards FTA is currently following in its reviews and makes it less transparent to sponsors. For example:

- FTA’s Capital Investment Grants *Final Interim Policy Guidance*, dated June 2016, states this “document will serve as a guide for running the [Capital Investment Grants] program through approximately [fiscal year] 2016 until FTA completes the updates to the Major Capital Investment Projects final rule to fully implement MAP-21 and now [the] FAST [Act].”
- Some FTA guidance documents we reviewed refer to aspects of the development process, such as “preliminary engineering” and “final design,” that are no longer part of the current statutory process.²⁷

²⁶ Both the transit industry and Congress have raised concerns about FTA’s issuance of the June 2018 “Dear Colleague” letter and its mention of geographic diversity. For example, the American Public Transportation Association—a transit industry group representing more than 1,500 public- and private-sector member organizations—has reported to Congress that policies outlined in the letter, such as the consideration of geographic diversity, has created considerable confusion among project sponsors.

²⁷ See, for example, FTA, *Guidance for Transit Financial Plans* (June 2000); FTA, *Full-Funding Grant Agreements Guidance*, C 5200.1 (December 2002); and FTA, *Capital Investment Program Guidance and Application Instructions*, FTA C 9300.1B (November 2008).

According to FTA officials, the Department of Transportation has concluded that Congressional actions constrained FTA from developing and issuing any new policy guidance. Specifically, the Department has concluded that FTA is prohibited from implementing or furthering any new policies including those contained in the June 2018 “Dear Colleague” letter that deviate from its current guidance.²⁸ FTA officials told us that they have not updated certain aspects of their guidance for the Capital Investment Grants program as a result, and noted that they are responding to requests for information from sponsors about the program. FTA officials also noted that they provide sponsors with current information about the program on FTA’s website. While we recognize that agencies can face competing priorities, providing unclear or outdated guidance can confuse sponsors. In reviewing FTA’s website, we found that FTA provides both sponsors and FTA staff with information that is outdated or confusing on the methods and criteria that FTA uses when reviewing projects. For example, in addition to the examples of guidance discussed above, we also found that FTA’s website continues to feature a link to the June 2018 “Dear Colleague” letter mentioned previously even though Congress has passed legislation for fiscal years 2019 and 2020 prohibiting FTA from implementing or furthering any new policies detailed in that letter.²⁹ As another example, we found that guidance FTA provides to its own staff who manage the environmental review process while dated in 2019 references statutory requirements that pre-date MAP-21, and notes that staff should keep in mind the statutory changes MAP-21 and the FAST Act made to the program.

During our interviews, sponsors identified aspects of FTA’s policies and practices that they thought were unclear or said they had difficulty finding current information regarding FTA’s requirements. For example, one

²⁸ Following issuance of the June 2018 “Dear Colleague” letter, Congress, through both the Consolidated Appropriations Act, 2019, and the Further Consolidated Appropriations Act, 2020, included language prohibiting FTA from implementing or furthering any new policies outlined in that letter for fiscal years 2019 and 2020, respectively. See Pub. L. No. 116-6, §165, 113 Stat. 13, 423; Pub. L. No. 116-94, § 166, 133 Stat. 2534, 2964. In addition, the conference report accompanying FTA’s fiscal year 2019 appropriations act provided that the language in the act “prohibits the use of funds to implement or further new CIG [Capital Investment Grants] policies *such as those*” detailed in the letter (emphasis added). H. R. Conf. Rep. No. 116-9 at 914 (2019). The explanatory statement accompanying FTA’s fiscal year 2020 appropriations act also contained this “such as those” language. Explanatory Statement accompanying H.R. 1865 / Public Law 116-94 at 1189 (2020).

²⁹ See Consolidated Appropriations Act, 2019 (Pub. L. No. 116-6, §165, 113 Stat. 13, 423). FTA’s fiscal year 2020 appropriations act contained the same prohibition. See Pub. L. No. 116-94, § 166, 133 Stat. 2534, 2964.

sponsor told us it had learned a circular it was referring to was out of date, but had no indication that FTA had since updated it. By not taking steps to address sponsors' concerns, such as by first identifying which aspects of FTA's guidance are unclear, outdated, or hard to find, FTA risks not aligning its policies and procedures with the systematic practice of using a standards-based approach.

FTA Does Not Always Respond to Sponsors in a Timely Manner or Provide Information in Writing

According to the second systematic practice, federal agencies should document their review processes and results to help ensure their reviews are effective and transparent. This practice provides the agency's considerations and rationale for its decision-making, such as what information it used and what analysis the agency conducted to form its conclusions. Furthermore, we have previously reported that there is value in documenting agency review decisions in a timely manner.³⁰

Documenting review processes and results helps the public understand how an agency implements its processes and the criteria it applies when making decisions and helps others verify that an agency performs its reviews in a fair and transparent manner. In the case of the Capital Investment Grants program, documenting decisions or providing information in a timely manner is also important because the sooner FTA informs a sponsor of potential problems, the sooner the sponsor can take appropriate action to remain in the program or pursue funding elsewhere.

We found that FTA documents the results of its reviews as projects advance through the development process and as FTA evaluates and rates a project. We also found that FTA shares summaries of the results of its evaluations and ratings in project profiles on FTA's website and in its annual reports to Congress. Beyond these summaries, FTA generally provides sponsors more detailed written assessments explaining the ratings for certain criteria. These assessments include recommended steps sponsors can take to improve their rating in the future.³¹ In addition, according to FTA and sponsors, FTA takes steps to guide sponsors

³⁰ GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014) and *Discretionary Transportation Grants: DOT Should Take Actions to Improve the Selection of Freight and Highway Projects*, [GAO-18-38](#) (Washington, D.C.: Nov. 2, 2017).

³¹ In certain cases, FTA does not prepare written assessments if the project qualifies for automatic ratings on criteria. For example, according to FTA policy guidance, Core Capacity projects are given automatic environmental benefits and economic development ratings.

throughout the process by communicating with sponsors on a reoccurring basis to discuss their project.

However, during our interviews several sponsors told us FTA did not communicate information to them in a timely manner. Specifically, as mentioned previously, several sponsors told us it took weeks, months, or longer for FTA to make decisions during the environmental review process or before signing a grant agreement. According to some of these sponsors, this delay caused confusion and sometimes tensions among the sponsor, FTA, and local officials. Also, some sponsors told us they thought FTA was sometimes reluctant to communicate certain information to them in writing, such as the reasons why a project was not advancing. Problems like this one might occur because FTA does not require that sponsors receive information, such as information on the reasons why a project is not advancing, within a specific time frame or in writing upon request. Consequently, sponsors are left to speculate on the reasons why, a situation that can result in some questioning the fairness and transparency of FTA's decisions.

In Recent Years, FTA Has Largely Used Informal Mechanisms to Incorporate Public Involvement in Its Reviews

According to the third systematic practice, federal agencies should take steps to incorporate public involvement in their reviews. By incorporating public involvement and receiving input from external parties, agencies demonstrate their commitment to achieving an effective and transparent review process, and agencies help position themselves to be better informed and prepared to address any risks or other issues that might affect their reviews.

FTA takes steps to incorporate public involvement in its reviews. In recent years, that approach has relied largely on using informal mechanisms. For example, FTA officials told us they have sought feedback on the Capital Investments Grants program from sponsors and others during industry conferences, workshops, and during periodic meetings with sponsors. While incorporating public involvement in this manner has benefits, during our interviews sponsors told us there are limitations with FTA's current approach. For example, some sponsors pointed out that not all sponsors attend these meetings or told us that the frequency with which FTA holds industry workshops has varied over the years.

FTA has used more formal mechanisms in the past to incorporate public involvement in its reviews. For example, as we previously reported, FTA is required by statute to invite and respond to public comment via the

Federal Register prior to issuing new policy guidance for the program.³² FTA last solicited public comment in this manner in 2015, prior to the enactment of the FAST Act.³³ As of May 2020, FTA was not in the process of issuing new policy guidance for the program or, in turn, soliciting public comment in this manner. As discussed earlier, according to FTA officials, the Department of Transportation concluded that Congressional actions prohibit FTA from implementing or furthering any new policy guidance. We are not recommending that FTA take steps to incorporate public involvement using formal mechanisms—such as soliciting public comment on the program—at this time. However, notwithstanding such restrictions, taking steps to consider obtaining feedback from sponsors and others using formal mechanisms when appropriate could help FTA better address issues sponsors may have regarding FTA’s policies and procedures for the program.

Conclusions

Since our last biennial review, some of the uncertainty surrounding the future of the Capital Investment Grants program appears to have dissipated. Whereas in 2018 it was unclear if the Administration might seek to phase out the program, at the time of this review, the program remains a significant source of federal financial assistance for transit projects across the country, and FTA continues to advance projects and recommend that Congress fund the program. However, some uncertainty continues to persist. Because some sponsors reported finding some aspects of the program confusing, there can be gaps in expectations, which can call into question the effectiveness and transparency of FTA’s reviews. In some instances, that uncertainty can also negatively affect projects seeking funding through the program. Taking steps to provide sponsors with additional clarity, such as by better specifying the methods and factors FTA considers when performing its reviews and ensuring that FTA communicates to sponsors in a timely manner, can help FTA bridge gaps in expectations and help address areas of uncertainty. Taking such steps could also help FTA demonstrate to sponsors and Congress that the agency is committed to ensuring that the agency’s reviews for the Capital Investment Grants program are effective and transparent.

³² [GAO-18-462](#). FTA, in general, is required to follow applicable rulemaking procedures when imposing binding obligations on recipients of federal assistance. The term “binding obligation” is defined to mean a substantive policy statement, rule, or guidance document issued by FTA that grants rights, imposes obligations, produces significant effects on private interests, or effects a significant change in existing policy. 49 U.S.C. § 5334(k).

³³ 80 FR 18796.

Recommendations for Executive Action

We are making the following three recommendations to the Department of Transportation:

- The FTA Administrator should take steps to provide information to Congress and sponsors to better clarify how FTA applies the methods and factors it considers when performing its review of sponsors' projects. Clarification could include how FTA uses documents, such as project roadmaps, to help sponsors advance through the development process; estimated time frames for reviewing submissions and responding to sponsors' requests; and how FTA considers geographic diversity of projects in its decision-making. (Recommendation 1)
- The FTA Administrator should take steps to review all agency guidance pertaining to the Capital Investment Grants program's development process and identify aspects that may be outdated or confusing for sponsors, and communicate to Congress and sponsors the steps needed to update FTA's guidance or otherwise provide sponsors with more current information on the Capital Investment Grants program. As part of FTA's efforts, FTA could obtain feedback from sponsors and the industry on these issues as appropriate. (Recommendation 2)
- The FTA Administrator should take steps to ensure its staff communicates information, such as the reason why a project is not advancing, to sponsors in a timely manner and in writing upon the sponsor's request. (Recommendation 3)

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Transportation for review and comment. In its comments, which are summarized below and reproduced in appendix III, the Department raised concerns with several aspects of the report, concurred with the second recommendation, and did not concur with the first and third recommendations. The Department also provided us with technical comments which we incorporated as appropriate.

In its general comments on our report, the Department stated that FTA has demonstrated a clear commitment to the effective and transparent management of the Capital Investment Grants program. The Department also stated that the report did not adequately consider the current statutory environment under which the program must operate. We describe several aspects of the current statutory environment. For example, as discussed in the report, we recognized that following issuance of FTA's June 2018 "Dear Colleague" letter, Congress—through

recent appropriations acts—including language prohibiting FTA from implementing or furthering any new policies contained in that letter. We also discussed conference report and explanatory statement language accompanying those appropriations acts that the Department has concluded further constrain FTA from implementing or furthering any new policies that deviate from its current guidance, not just those contained in the letter. Further, the recommendations, as discussed below, address areas where FTA could take steps to enhance its guidance or practices within the current statutory environment.

The Department also stated that the report does not acknowledge the effectiveness of FTA's existing guidance for the program or adequately describe FTA's existing practices and procedures for communicating with sponsors. In the report, we describe how FTA provides sponsors with a variety of guidance regarding the program and note that our prior reports have discussed that guidance in detail. For example, in our 2018 report on the Capital Investment Grants program we discussed how FTA verifies that statutory requirements are met before recommending projects for funding.³⁴ We also acknowledge that FTA staff are in frequent communication with sponsors, as discussed in the report. However, for this report, we compared FTA's guidance and procedures to systematic review practices that our prior work found important for helping ensure the effectiveness and transparency of agency reviews. Accordingly, we identified areas where FTA's guidance and procedures were not fully aligned with these systematic review practices—and where there were opportunities to enhance the effectiveness and transparency of FTA's reviews. We also identified opportunities where sponsors stated that FTA could take steps to address their concerns. As discussed in more detail below, the recommendations encompass these opportunities for improvement.

In addition, the Department commented that FTA was not provided the opportunity to respond to statements made by individual project sponsors about FTA delays, so the accuracy of those statements was unclear to FTA. In order to elicit candid responses from the individual sponsors, we informed them that the results of our interviews would be reported in summary form and that we would not include information that could be used to identify individuals or specific projects. Therefore, we did not provide specific details regarding individual sponsors' perceptions of delays to FTA for validation. However, we requested documentation from

³⁴ [GAO-18-462](#).

sponsors to corroborate the cause and effect of any delays they described and reviewed the documentation provided. Further, toward the end of our review, we discussed aggregate themes identified by project sponsors with FTA officials, including sponsors' concerns over FTA's time frames for performing its reviews, the use of roadmaps, and FTA guidance. We added language to our objectives, scope, and methodology to further clarify our approach.

The Department concurred with the second recommendation—to take steps to review the agency's guidance pertaining to the Capital Investment Grants program's development process and identify aspects that may be outdated or confusing for sponsors. The Department agreed but also noted that various statutory provisions and language contained in recent annual appropriations acts have limited its ability to take action. In comments, the Department did not specify when FTA might take further action, including issuing new guidance. As FTA determines steps it can take in light of statutory provisions and constraints, we note the importance of communicating those steps to Congress and sponsors.

The Department did not concur with the first recommendation—to take steps to provide Congress and sponsors with information to clarify how FTA applies the methods and factors it considers when performing its reviews. The Department stated that it believes FTA already provides ample information to Congress and sponsors and, as each project is unique, additional guidance is not feasible. As we noted in the report, FTA provides sponsors with information on how to get into and through the development process, what to do to be considered for funding, and how it evaluates and rates projects against the criteria specified in statute. However, we have also reported that federal agencies should help ensure that their reviews are effective and transparent and identified ways that FTA could clarify certain aspects of its review. For example, as we reported:

- FTA guidance mentions roadmaps as a resource but provides sponsors with few details regarding how tools such as these should be used.
- FTA communicates the required time frame to respond to projects, but there are many interim steps and sponsors reported being unaware of the pace of FTA's decision-making process.
- Information FTA provides Congress and sponsors about its reviews does not explain how it considers factors not specified in statute, such as geographic diversity.

Taking steps such as these to clarify aspects of FTA's review process can help sponsors navigate the development process, bridge gaps in expectations, and address the areas of confusion they mentioned to us. Additional guidance from FTA could also help alleviate any questions regarding the effectiveness and transparency of FTA reviews.

Finally, the Department did not concur with the third recommendation—that FTA take steps to ensure that agency staff communicates information—such as the reason why a project is not advancing—to sponsors in a timely manner and in writing upon the sponsor's request. The Department stated that FTA already does this and plans to continue to do so. The Department also noted that FTA provided us with examples of its communication with sponsors regarding the status of projects and reiterated that FTA staff are in communication with sponsors on a recurring basis to discuss their projects. We noted in the report that both FTA and sponsors told us that FTA communicates with sponsors on a recurring basis to discuss their projects. We reported as well that we have identified the value of documenting agency review decisions and informing sponsors in a timely manner so that the sponsor is aware of and can promptly address potential problems. Several sponsors we interviewed told us it took weeks, months, or longer for FTA to make certain decisions, and FTA did not communicate information to them in a timely manner. Others told us that FTA was sometimes reluctant to communicate certain information to them in writing, such as why their project was not advancing. Without FTA taking action to ensure FTA staff communicates information to sponsors in a timely manner and in writing upon request, some sponsors may continue to have questions about FTA actions.

We are sending copies of this report to interested congressional committees and the Secretary of the Department of Transportation. In addition, this report will be available at no charge on GAO's website at <http://www.gao.gov>.

If you or your staff have any questions or would like to discuss this work, please contact me at (202) 512-2834 or VonahA@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may

be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.



Andrew Von Ah
Director, Physical Infrastructure Issues

Appendix I: Objectives, Scope, and Methodology

Our objectives were to: (1) describe the extent to which, if at all, sponsors reported experiencing delays moving through the Capital Investment Grants program's development process and how any delays affected projects, and (2) assess the extent to which FTA's policies and practices for the program help ensure the effectiveness and transparency of FTA's reviews.

To determine the extent to which sponsors may have experienced delays moving through the Capital Investment Grants program development process, we reviewed the statutory provisions governing the Capital Investment Grants program and FTA's policy guidance for the program.¹ We also reviewed other pertinent agency guidance, such as FTA's instructions for applying to the program, among others, as well FTA's recent annual reports to Congress with funding recommendations for the Capital Investment Grants program and our prior reports on the program. Additionally, we held structured interviews with the sponsors of each of the 66 projects listed in FTA's February 2018 report to Congress with funding recommendations for the program, the most recent such report as of our May 2018 report.² These 66 projects included projects at every stage of the Capital Investment Grants project development process, including projects that have obtained a grant agreement. Because we interviewed the full population of Capital Investment Grants project sponsors, our findings are representative of that population. To identify aspects of the project development process to discuss with sponsors, we synthesized lists of selected aspects based on our review of the statutory provisions governing the program and policy documents related to FTA's administration of the program. We developed lists of selected aspects for three categories of projects: New Starts, Small Starts, and Core Capacity projects. We validated those lists by obtaining feedback from FTA and the American Public Transportation Association, which is a transit industry group. We focused on aspects of the development process in which sponsors were directly involved and therefore able to speak from experience about those aspects where they felt they experienced a delay that affected their projects. We conducted our interviews with sponsors by telephone and in person.

¹ FTA, *Final Interim Policy Guidance Federal Transit Administration Capital Investment Grant Program* (June 2016).

² FTA, *Annual Report on Funding Recommendations: Fiscal Year 2019* (Washington, D.C.: February 2018).

To identify the primary causes to which sponsors attributed delays, we asked sponsors who reported experiencing a delay what they thought caused the delay. We then performed a content analysis of their answers to identify the primary causes and classified those causes into six categories. We then assigned each cause to a category. For example, we categorized a delay as “Attributed to FTA” if a sponsor told us a delay it experienced was due to action or inaction by FTA, FTA headquarters staff, “the agency,” or “the department.” We categorized a delay as “Attributed to other” if a sponsor told us a delay was due to a cause not described in the other five categories or due equally to the action or inaction of multiple entities. Similarly, a delay was put into the “Other” category if the sponsor did not attribute the cause of the delay to any specific entity. Two analysts performed this analysis. One analyst reviewed interviews and identified a primary cause to which each sponsor attributed each delay it reported. A second analyst independently reviewed the interview results and performed the same analysis for each delay. Analysts conferred on any disagreement and deliberated until they reached agreement. We used the results of this review to determine: (1) how often sponsors reported experiencing delays, (2) during what aspects of the development process sponsors reported experiencing delays, and (3) what sponsors identified as the primary cause for each delay. In order to elicit candid responses from the individual sponsors, we informed them that the results of our interviews would be reported in summary form, and that we would not include information that could be used to identify individuals or specific projects. Therefore, we did not provide specific details regarding individual sponsors’ perceptions of delays to FTA for validation.

To determine how delays affected projects, we asked sponsors who reported experiencing one how if at all it affected their project. When appropriate, we requested documentation from sponsors to corroborate the cause and effect of any delays they described and reviewed the documentation provided. In some cases, sponsors provided such documentation for our review, but we did not independently verify the cause or effect of any delays sponsors described.

To assess the extent to which FTA’s policies and practices for the program help ensure the effectiveness and transparency of FTA’s reviews, we reviewed the statutory provisions governing the Capital Investment Grants program and FTA’s policies, guidance, and other pertinent documents specifying the criteria, methods, and factors FTA uses to evaluate, rate, and recommend projects. We also reviewed prior GAO reports on agency reviews and discretionary grant programs such

Appendix I: Objectives, Scope, and Methodology

as the Capital Investment Grants program. We compared FTA’s guidance and practices to three systematic review practices that we have previously identified in prior work as being important to help ensure the effectiveness and transparency of agency reviews: using a standards-based approach, documenting review processes and results, and incorporating public involvement.³ In addition, we interviewed FTA officials and the sponsors of the 66 Capital Investment Grants projects described above about the effectiveness and transparency of FTA’s decision-making.

Table 1 provides information on those projects; their modes (bus rapid transit, commuter rail, heavy rail, light rail, or streetcar); and their sponsors.

Table 1: Information on the Projects Included in the Scope of This Review

State	Project	Sponsor	Mode
Arizona	Northwest Extension Phase II	Valley Metro	Light rail
	South Central Light Rail Extension/Downtown Hub	Valley Metro	Light rail
	Tempe Streetcar	Valley Metro	Streetcar
	Transit Spine Bus Rapid Transit	Northern Arizona Intergovernmental Public Transportation Authority	Bus rapid transit
California	BART Silicon Valley Phase II Extension to San Jose and Santa Clara	Santa Clara Valley Transportation Authority	Heavy rail
	Downtown Riverfront Streetcar Project	Sacramento Regional Transit District	Streetcar
	Mid-Coast Corridor Transit Project	San Diego Association of Governments	Light rail
	Peninsula Corridor Electrification Project	Joint Powers Board	Commuter rail
	Redlands Passenger Rail Project	San Bernardino County Transportation Authority	Commuter rail
	Regional Connector Transit Corridor	Los Angeles County Metropolitan Transportation Authority	Light rail
	Restoration of Historic Streetcar in Downtown Los Angeles	City of Los Angeles Department of Transportation	Streetcar

³ See for example, GAO, *Discretionary Transportation Grants: DOT Should Take Actions to Improve the Selection of Freight and Highway Projects*, [GAO-18-38](#) (Washington, D.C.: Nov. 2, 2017) and *Reexamining Regulations: Opportunities Exist to Improve Effectiveness and Transparency of Retrospective Reviews*, [GAO-07-791](#) (Washington, D.C.: July 16, 2007). In addition, our prior work had identified recommended practices for awarding discretionary grants, such as communicating key information to applicants and documenting rationales for awards decisions. See GAO, *Intercity Passenger Rail: Recording Clearer Reasons for Awards Decisions Would Improve Otherwise Good Grantmaking Practices*, [GAO-11-283](#) (Washington, D.C.: Mar. 10, 2011).

Appendix I: Objectives, Scope, and Methodology

State	Project	Sponsor	Mode
	Santa Ana/Garden Grove Streetcar Project	Orange County Transportation Authority	Streetcar
	SMART San Rafael to Larkspur Extension	Sonoma-Marín Area Rail Transit District	Commuter rail
	Transbay Corridor Core Capacity Project	Bay Area Rapid Transit District	Heavy rail
	Westside Purple Line Extension Section 1	Los Angeles County Metropolitan Transportation Authority	Heavy rail
	Westside Purple Line Extension Section 2	Los Angeles County Metropolitan Transportation Authority	Heavy rail
	Westside Purple Line Extension Section 3	Los Angeles County Metropolitan Transportation Authority	Heavy rail
Florida	Central Avenue Bus Rapid Transit Project	Pinellas Suncoast Transit Authority	Bus rapid transit
	First Coast Flyer Bus Rapid Transit Southwest Corridor	Jacksonville Transportation Authority	Bus rapid transit
	JTA First Coast Flyer BRT East Corridor	Jacksonville Transportation Authority	Bus rapid transit
	SunRail Connector to the Orlando International Airport	Florida Department of Transportation	Commuter rail
	SunRail Phase II North	Florida Department of Transportation	Commuter rail
Illinois	Red and Purple Line Modernization Phase One Project	Chicago Transit Authority	Heavy rail
Indiana	Double Track - Northwest Indiana	Northern Indiana Commuter Transportation District	Commuter rail
	IndyGo Purple Rapid Transit Line	Indianapolis Public Transportation Corporation	Bus rapid transit
	IndyGo Red Line Rapid Transit	Indianapolis Public Transportation Corporation	Bus rapid transit
	West Lake Corridor	Northern Indiana Commuter Transportation District	Commuter rail
Louisiana	TramLinkBR	City of Baton Rouge-Parish of East Baton Rouge	Streetcar
Maryland	Maryland National Capital Purple Line	Maryland Transit Administration	Light rail
Massachusetts	Green Line Extension	Massachusetts Bay Transportation Authority and the Massachusetts Department of Transportation	Light rail
Michigan	Capital Area Transportation Authority Bus Rapid Transit Project	Capital Area Transportation Authority	Bus rapid transit
	Laker Line BRT	Interurban Transit Partnership	Bus rapid transit
Minnesota	METRO Blue Line Extension (Bottineau LRT)	Metropolitan Council	Light rail
	METRO Gold Line Bus Rapid Transit	Metro Transit	Bus rapid transit
	METRO Orange Line Bus Rapid Transit	Metropolitan Council	Bus rapid transit
	Southwest Light Rail Transit Project	Metropolitan Council	Light rail
Missouri	Kansas City Streetcar Main Street Expansion	City of Kansas City	Streetcar

Appendix I: Objectives, Scope, and Methodology

State	Project	Sponsor	Mode
	Prospect MAX	Kansas City Area Transportation Authority	Bus rapid transit
Nevada	Virginia Street Bus RAPID Transit Extension	Regional Transportation Commission of Washoe County	Bus rapid transit
New Jersey	Portal North Bridge	New Jersey Transit Corporation, Gateway Program Development Corporation, the Port Authority of New York and New Jersey, and the National Railroad Passenger Corporation (Amtrak)	Commuter rail
New Jersey-New York	Hudson Tunnel	New Jersey Transit Corporation, Gateway Program Development Corporation, the Port Authority of New York and New Jersey, and the National Railroad Passenger Corporation (Amtrak)	Commuter rail
New Mexico	Albuquerque Rapid Transit Project	Transit Department of the City of Albuquerque	Bus rapid transit
New York	Canarsie Line Power and Station Improvements	Metropolitan Transportation Authority	Heavy rail
	River Corridor Bus Rapid Transit	Capital District Transportation Authority	Bus rapid transit
	Second Avenue Subway Phase 2	Metropolitan Transportation Authority	Heavy rail
	Washington-Western Bus Rapid Transit	Capital District Transportation Authority	Bus rapid transit
	Woodhaven Boulevard Select Bus Service	New York City Department of Transportation	Bus rapid transit
North Carolina	Durham-Orange Light Rail Transit	GoTriangle	Light rail
	North South Bus Rapid Transit Project	Chapel Hill Transit	Bus rapid transit
Oregon	Division Transit Project	Tri-County Metropolitan Transportation District of Oregon	Bus rapid transit
	Portland-Milwaukie Light Rail Project	Tri-County Metropolitan Transportation District of Oregon	Light rail
Pennsylvania	Downtown-Uptown-Oakland-East End Bus Rapid Transit	Urban Redevelopment Authority of Pittsburgh	Bus rapid transit
Texas	Dallas CBD Second Light Rail Alignment (D2 Subway)	Dallas Area Rapid Transit	Light rail
	DART Red and Blue Line Platform Extensions	Dallas Area Rapid Transit	Light rail
	Montana RTS Corridor	City of El Paso	Bus rapid transit
	TEX Rail	Fort Worth Transportation Authority	Commuter rail
Virginia	West End Transitway	City of Alexandria	Bus rapid transit
Washington	Center City Connector	Seattle Department of Transportation	Streetcar
	Central City Line	Spokane Transit Authority	Bus rapid transit
	Federal Way Link Extension	Central Puget Sound Regional Transit Authority	Light rail
	Lynnwood Link Extension	Central Puget Sound Regional Transit Authority	Light rail
	Madison Street BRT	Seattle Department of Transportation	Bus rapid transit

Appendix I: Objectives, Scope, and Methodology

State	Project	Sponsor	Mode
	Roosevelt RapidRide Project	Seattle Department of Transportation	Bus rapid transit
	Swift II BRT	Snohomish County Public Transportation Benefit Area	Bus rapid transit
	Tacoma Link Extension	Central Puget Sound Regional Transit Authority	Light rail
Wisconsin	Milwaukee East-West BRT	Milwaukee County	Bus rapid transit

Source: GAO and the Federal Transit Administration. | GAO-20-512

Note: For more information about the projects participating in the Capital Investment Grants program, including FTA's annual reports and project profiles, see <https://www.transit.dot.gov/CIG>.

We conducted this performance audit from April 2019 to July 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: The Federal Transit Administration's June 2018 "Dear Colleague" Letter



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

Administrator

1200 New Jersey Avenue, SE
Washington, DC 20590

June 29, 2018

Dear Colleague:

This letter highlights elements of current policy regarding the Federal Transit Administration's (FTA) advancement of projects through the Capital Investment Grants (CIG) program. The CIG program is a discretionary grant program in which projects are selected for funding based on eligibility and merit. The FTA reviews, assesses, and evaluates the quality of the projects seeking funding to inform its decision making. While 49 U.S.C. 5309 (Section 5309) provides for a phased process through which projects must advance before being eligible for funding and identifies evaluation criteria to be used by FTA, the process through which a project advances, and FTA decides whether to enter into a construction grant agreement, is ultimately a discretionary one.

The FTA bases its discretionary funding allocation decisions for the CIG program on a variety of factors, including the extent of the local financial commitment, project readiness, and geographic diversity. The FTA also considers the extent to which value capture, private contributions, and other innovative approaches to project development and delivery are used, including public-private partnerships.

Before advancing a project, Section 5309 requires FTA to evaluate all projects seeking CIG funding on local financial commitment. Given the competitive nature of this discretionary program, the statute specifically urges FTA to consider the extent to which the project has a local financial commitment that exceeds the required non-government share of the cost of the project. To this end, FTA considers U.S. Department of Transportation loans in the context of all Federal funding sources requested by the project sponsor when completing the CIG evaluation process, and not as separate from the Federal funding sources. Strong local financial commitment and stable, reliable, and dependable non-Federal funding sources are necessary for projects to do well in the CIG program. The FTA strongly encourages project sponsors to consider innovative financing and funding approaches, including value capture and private contributions.

If FTA decides to proceed with a construction grant agreement, FTA does not sign the agreement committing CIG funding until after the project sponsor has demonstrated that its project is ready for such an agreement. This includes assurance that the project's development and design have progressed to the point where its scope, costs, benefits, and impacts are considered firm and final; the project sponsor has obtained all non-CIG funding commitments; and the project sponsor has completed all critical third-party agreements.

**Appendix II: The Federal Transit
Administration's June 2018 "Dear Colleague"
Letter**

Lastly, as required by statute, FTA intends to publish revised CIG Policy Guidance later this year for notice and comment. If you have questions about the CIG program, please contact Elizabeth S. Riklin, Acting Associate Administrator for Planning and Environment at 202-366-4033 or Sherry.Riklin@dot.gov.

Sincerely,



K. Jane Williams
Acting Administrator

Appendix III: Comments from the Department of Transportation



U.S. Department of
Transportation

Assistant Secretary
for Administration

1200 New Jersey Ave., SE
Washington, DC 20590

Office of the Secretary
of Transportation

June 15, 2020

Andrew Von Ah
Director, Physical Infrastructure Issues
U.S. Government Accountability Office (GAO)
441 G Street NW
Washington, DC 20548

Dear Mr. Von Ah:

The discretionary Capital Investment Grants (CIG) program of the Federal Transit Administration (FTA) provides funding for fixed guideway investments such as new and expanded rapid rail, commuter rail, light rail, streetcars, bus rapid transit, as well as corridor-based bus rapid transit investments that emulate the features of rail. The CIG program receives approximately \$2.3 billion in appropriated funds annually. The authorizing statute (49 U.S.C. § 5309) outlines a multi-year, multi-step process project sponsors must complete to be eligible for consideration for CIG funding.

FTA has demonstrated a clear commitment to the effective and transparent management of the CIG Program, and agrees that there are opportunities to enhance project sponsors' awareness of CIG program requirements and timelines. The draft GAO report does not adequately consider the current statutory constraints under which the program must operate. It also does not acknowledge the effectiveness of existing FTA CIG guidance, which was subject both to a formal public notice and comment process and Congressional review before being finalized. Further, the GAO report does not adequately describe FTA's existing practices and procedures to communicate updates, guidance, and technical assistance to project sponsors via email, phone calls, letters, and other communications. Since 2016, FTA has continuously updated and published the environmental standard operating procedures and related guidance on FTA's website to promote transparency, efficiency, and consistency on the environmental review process for transit projects. Finally, FTA was not provided the opportunity to respond to statements made by individual project sponsors about FTA delays that were included in the GAO report, so the accuracy of those statements remains unclear to FTA.

Upon review of the draft report, FTA non-concurs with Recommendation 1, concurs with Recommendation 2, and non-concurs with Recommendation 3.

With respect to Recommendation 1, FTA believes it already provides ample information to Congress and sponsors regarding how FTA applies the methods and factors it considers when performing its review of projects. Any additional guidance is not feasible given that many approval steps are by their nature unique to each project. The CIG Final Interim Policy Guidance, which was subject to a public notice and comment process, discusses in detail the methods and factors FTA uses to review and evaluate CIG projects. Further, the law specifies only one timeframe within which FTA must review and respond to project sponsors' requests, and that is with respect to Project

**Appendix III: Comments from the Department
of Transportation**

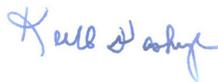
Development requests. Regarding other CIG approval steps, such as entry into Engineering and award of a construction grant agreement, timeframes for FTA approvals are highly dependent on actions the project sponsor must complete and on the quality and completeness of the information submitted by the project sponsor to FTA for review. These project sponsor actions include securing non-CIG funding commitments and completing critical third-party agreements. FTA sometimes uses project roadmaps to help high-level decision-makers at project sponsor agencies understand at a glance how their actions impact the timing of FTA actions. Roadmaps are not required by law or regulation. In many cases roadmaps cannot be developed due to uncertainty on the timing and duration of project sponsor actions.

FTA concurs with Recommendation 2 to review all agency guidance pertaining to the CIG program development process and identify aspects that may be outdated or confusing to sponsors. FTA is required by authorizing statute to update the CIG Policy Guidance through a notice and comment process no less frequently than every two years. However, various statutory provisions and Congressional report language in annual appropriations acts over the past several years have limited FTA's ability to implement new policies and guidance. FTA is determining what, if any, CIG guidance it may issue through a public notice and comment process in accordance with these various provisions.

FTA non-concurs with Recommendation 3, to communicate information to sponsors in a timely manner, such as the reason why a project is not advancing and in writing upon the sponsor's request because FTA already does this and plans to continue. FTA has provided GAO its internal standard operating procedures for working with CIG project sponsors and provided examples to GAO of communication on project status including emails, written reports, and written CIG approval letters. FTA staff are already in frequent communication through regularly scheduled and reoccurring conference calls they establish with each project sponsor. FTA has and will continue to take steps to ensure that FTA staff communicate with sponsors in a timely manner.

We appreciate the opportunity to respond to the GAO draft report. We will provide a detailed response to the recommendations within 180 days of the final report's issuance. Please contact Madeline M. Chulumovich, Director, Audit Relations and Program Improvement, at (202) 366-6512 with any questions.

Sincerely,



Keith Washington
Deputy Assistant Secretary for Administration

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Andrew Von Ah, (202) 512-2834 or VonahA@gao.gov

Staff Acknowledgments

In addition to the contact above, Brandon Haller (Assistant Director); Susan Fleming; Geoffrey Hamilton; Bonnie Ho; Mark L. Goldstein; Adam Gomez; Wesley A. Johnson; Elke Kolodinski; Josh Ormond; Michelle Weathers; and Elizabeth Wood made key contributions to this report.

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