



May 2018

CAPITAL INVESTMENT GRANTS PROGRAM

FTA Should Address Several Statutory Provisions

Accessible Version

GAO Highlights

Highlights of [GAO-18-462](#), a report to congressional committees

Why GAO Did This Study

FTA's Capital Investment Grants program is the primary source of federal financial assistance to support transit projects that are locally planned, implemented, and operated. FTA evaluates and rates projects seeking funding through this program according to statutory criteria and recommends to Congress which projects to fund. The funding that project sponsors receive is subject to congressional appropriation.

MAP-21 includes a provision for GAO to biennially review FTA's implementation of the Capital Investment Grants program. This report discusses: (1) FTA's progress in addressing statutory provisions contained in MAP-21 and the FAST Act and (2) how the evaluation and rating process FTA has established for Core Capacity Improvement projects enables FTA to verify that statutory requirements are met before recommending such projects for funding. GAO reviewed the relevant laws and FTA's guidance. GAO also interviewed FTA officials and six project sponsors, representing seven of the eight Core Capacity Improvement projects in the Capital Investment Grants program at the time of GAO's review.

What GAO Recommends

FTA should initiate a rulemaking regarding the evaluation and rating process for Core Capacity Improvement projects and take steps to address two other statutory provisions. FTA agreed with the recommendations but disagreed with certain findings on which they are based. GAO believes these findings are valid, as discussed in this report. View [GAO-18-462](#). For more information, contact Mark L. Goldstein at (202) 512-2834 or GoldsteinM@gao.gov.

May 2018

CAPITAL INVESTMENT GRANTS PROGRAM

FTA Should Address Several Statutory Provisions

What GAO Found

The Federal Transit Administration (FTA) has not addressed three statutory provisions concerning the Capital Investment Grants program contained in the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Fixing America's Surface Transportation Act (FAST Act). Specifically, FTA has not:

- issued regulations regarding the evaluation and rating process for Core Capacity Improvement projects, which are a category of eligible projects within the program;
- established a *program of interrelated projects* designed to allow for the simultaneous development of more than one transit project within the Capital Investment Grants program; or
- implemented a pilot program designed to create a fast-track approval process for transit projects that meet specific statutory criteria.

Throughout this review, FTA officials told GAO they do not have immediate plans to address these three statutory provisions. Officials cited a proposal by the President to phase out the Capital Investment Grants program as one of the factors influencing this decision. However, in March the Consolidated Appropriations Act, 2018, provided the program with more than \$2.6 billion and required FTA to continue to administer the program in accordance with the procedural and substantive requirements specified in statute. Subsequently, FTA officials told GAO that they are reviewing the Act and determining next steps. However FTA officials did not indicate that they intend to address these provisions. If FTA does not implement the outstanding provisions, FTA and project sponsors—that is, local transit agencies—may be missing opportunities to deliver transit projects more efficiently.

Based on a review of FTA's policy guidance, on FTA's instructions for applying to the Capital Investment Grants program, and on other documentation supporting the two Core Capacity Improvement projects that FTA has recommended for funding as of June 2017, GAO found that FTA has established a process to verify that proposed Core Capacity Improvement projects meet statutory requirements before recommending projects for funding. Core Capacity Improvement projects are capital investments designed to increase the capacity of an existing transit system and must meet specific statutory requirements to be eligible for funding through the program. GAO found that prior to recommending a project for funding FTA works with project sponsors to verify that their proposed project includes elements that will increase transit system capacity versus maintaining the current system, that the required amount of local funding is committed to the project, and that sponsors have the technical and financial capacity to complete the project they are proposing, among other statutory requirements.

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	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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May 31, 2018

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

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

Since the 1970s, the Federal Transit Administration’s (FTA) Capital Investment Grants program has been the primary source of federal financial assistance to new “fixed-guideway” projects or extensions to existing fixed-guideway systems across the United States.¹ Projects that compete for funding through this program are planned and implemented locally, and include capital investments in heavy and light rail, commuter rail, streetcars, and ferries as well as bus rapid transit. FTA evaluates and rates projects seeking funding through this program based on statutory criteria, recommends to Congress which projects to fund, and awards funding to projects. Program funding is provided through the annual appropriations process, and over the last 10 fiscal years FTA has awarded over \$19 billion to cities, states, and other localities across the country.

In March 2017, the President’s fiscal year 2018 budget proposed phasing out the program, stating that future investments in new transit projects should be funded by the localities that use and benefit from those projects,² and the administration reiterated that intent as part of its fiscal

¹ 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.

² Office of Management and Budget, *America First: A Budget Blueprint to Make America Great Again, Budget of the United States Government, Fiscal Year 2018*.

year 2019 budget proposal in February 2018.³ Consequently, FTA recommended that Congress limit future funding for the Capital Investment Grants program.⁴ However, in March 2018 the Consolidated Appropriations Act, 2018, provided the program with more than \$2.6 billion, and required FTA to continue to administer the Capital Investment Grants program in accordance with the program's procedural and substantive requirements.⁵

The Moving Ahead for Progress in the 21st Century Act (MAP-21), enacted in 2012, included a provision for us to biennially review FTA's processes and procedures for evaluating and rating projects seeking funding through the Capital Investment Grants program.⁶ In April 2016, we issued our most recent report in response to the provision, focusing on FTA's efforts in implementing changes that MAP-21 made to the program's processes, changes that were aimed at expediting project delivery.⁷ We reported that FTA was taking steps to implement MAP-21, such as by implementing a provision directing FTA to issue policy guidance⁸ outlining the review and evaluation process for new fixed-guideway projects and Core Capacity Improvement projects (hereafter

³ Office of Management and Budget, *Efficient, Effective, Accountable: An American Budget, Budget of the United States Government, Fiscal Year 2019*.

⁴ See FTA, *Annual Report on Funding Recommendations: Fiscal Year 2018* (Washington, D.C.: May 2017) and *Annual Report on Funding Recommendations: Fiscal Year 2019* (Washington, D.C.: February 2018). FTA is required to issue an annual report to Congress with funding recommendations for the Capital Investment Grants program. FTA's report helps inform the appropriations process for the upcoming fiscal year by providing Congress with information on the projects in the program.

⁵ Pub. L. No. 115-141, 132 Stat. 348 (2018).

⁶ Pub. L. No. 112-141, 126 Stat. 405, 674 (2012).

⁷ GAO: *Public Transit: Observations on Recent Changes to the Capital Investment Grant Program*, [GAO-16-495](#) (Washington, D.C.: Apr. 28, 2016).

⁸ Under 49 U.S.C. § 5309(g)(5)(B), FTA is required to issue policy guidance regarding the review and evaluation process and criteria for the Capital Investment Grants program each time the Secretary makes significant changes to the review and evaluation process and criteria, but not less frequently than once every 2 years. Under 49 U.S.C. § 5334(k)(1), FTA's policy guidance must undergo the same type of notice-and-comment procedures that govern rulemakings under the Administrative Procedure Act. See 5 U.S.C. § 553.

Core Capacity projects),⁹ and reported that FTA intended to take action to address other provisions over the next few years. However, we also reported that the Fixing America's Surface Transportation Act (FAST Act),¹⁰ enacted in 2015, contained new provisions for FTA to address.

This report examines:

- FTA's progress in addressing outstanding statutory provisions as amended by MAP-21 and the FAST Act, and
- how FTA's evaluation and rating process enables it to verify that statutory requirements are met before recommending a Core Capacity project for funding.

In conducting this review, we focused on reviewing FTA's progress addressing statutory provisions that were outstanding at the time of our previous biennial review as well as the evaluation and rating requirements specified in statute for Core Capacity projects. To address our objectives, we reviewed the relevant provisions of MAP-21 and the FAST Act. We also reviewed FTA's policy guidance;¹¹ other pertinent agency documents, such as FTA's instructions for applying to the program, its templates for evaluating and rating projects in the program, and its annual reports to Congress with funding recommendations; and prior GAO reports. We also reviewed documentation, such as FTA's assessments, supporting the two grant agreements it had awarded for Core Capacity projects at the time we initiated this review. For both objectives, we compared the requirements specified in statute with FTA's implementation of those requirements. In addition, we interviewed FTA officials, representatives of the American Public Transportation Association, and representatives of six project sponsors in the Capital Investment Grants program. The six project sponsors we interviewed represented seven of the eight Core Capacity projects in the program at

⁹ 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. A corridor is a largely linear geographic band defined by existing and forecasted travel patterns involving both people and goods.

¹⁰ Pub. L. No. 114-94, 129 Stat. 1312 (2015).

¹¹ FTA periodically issues updates to its guidance for the Capital Investment Grants program. We used FTA's June 2016 version, which was the most current version at the time we initiated this review. See FTA, *Final Interim Policy Guidance Federal Transit Administration Capital Investment Grant Program* (June 2016).

the time we initiated this review.¹² We also visited the sites of those seven projects, which are located in California, Illinois, Indiana, New Jersey, and Texas. During our visits we obtained information about the transportation challenges that these projects are attempting to address and the sponsors' perspectives on FTA's processes and procedures for evaluating and rating Core Capacity projects. For a description of the Core Capacity projects in the program at the time we initiated this review, see appendix I.

We conducted this performance audit from June 2017 to May 2018 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.

Background

The primary source of federal funding for new fixed-guideway projects or extensions to existing fixed-guideway systems is FTA's Capital Investment Grants program, which is a discretionary and competitive grant program funded through annual appropriations. The program is governed by statutory provisions,¹³ and funding is provided in the form of a construction grant agreement,¹⁴ which is subject to congressional appropriations.

¹² One of the seven project sponsors is the sponsor of two Core Capacity projects in the Capital Investment Grants program and another declined to respond to our questions.

¹³ At the time of our review, the Capital Investment Grants program was governed by statutory provisions in place as amended in 2015 by the FAST Act. Prior to the enactment of the FAST Act, the program was governed by statutory provisions in place as amended by MAP-21.

¹⁴ According to FTA, the construction grant agreement between FTA and the project sponsor 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 construction grant agreement, the Capital Investment Grants program funding commitment has been fulfilled.

Projects that compete for funding through the Capital Investment Grants program are designed and implemented by project sponsors, which are usually local transit agencies. Prior to 2012, project sponsors typically applied for funding as either a New Starts or Small Starts project. 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. Small Starts projects are capital investments whose sponsors request less than \$100 million in Capital Investment Grants funding and have an anticipated capital cost of less than \$300 million.

In 2012, Congress created a third category of eligible projects called Core Capacity projects. Unlike New Starts and Small Starts, for which the amount of funding project sponsors request and the anticipated capital cost of a project are key factors, Core Capacity projects are not defined by cost. Instead, 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. Examples of Core Capacity projects include capital investments to expand a transit system’s platforms and acquire real property, rights of way, or rail cars associated with corridor improvements increasing capacity.

To enter the Capital Investment Grants program, project sponsors submit an application to FTA with information on the proposed project, such as a description of the transportation problem the project seeks to address, among other requirements. If accepted into the program, project sponsors must then follow a multi-step, multi-year development process outlined in statute during which FTA determines if the project is eligible for funding through the Capital Investment Grants program. The development process that project sponsors must follow varies depending on whether the project is a New Starts or Core Capacity project, or a Small Starts project. For example, New Starts and Core Capacity projects are required to complete a two-phase development process. During the first phase, called Project Development, project sponsors must complete an environmental review process outlined in the National Environmental Policy Act of 1969 and address other statutory requirements.¹⁵ Project

¹⁵ 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. For more information on the environmental review process, see 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).

sponsors must also provide FTA with sufficient information for FTA to evaluate and rate the project, among other FTA requirements. To complete the second phase, called Engineering, project sponsors must, among other requirements, develop a firm and reliable cost, scope, and schedule for their project and obtain all non-Capital Investment Grants program funding commitments.¹⁶ Small Starts projects complete a development process that is similar but consists of only one phase, called Project Development.

During the development process, FTA is required to evaluate and rate projects using a number of statutory criteria designed to assess the merit of a project (i.e., project justification).¹⁷ For example, for Core Capacity projects, FTA is required to evaluate and rate a project against six criteria: (1) mobility improvements, (2) environmental benefits, (3) cost-effectiveness, (4) the congestion relief associated with the project, (5) the economic development effects associated with the project, and (6) the existing capacity needs of the corridor. FTA is also required to evaluate and rate the local financial commitment to a project, including evidence of stable and dependable financing sources, as well as the project sponsor's ability to operate the project and continue to operate any related transit system.¹⁸ FTA's ratings are "point-in-time" evaluations—meaning that they can change—as a project progresses through the development process.¹⁹

To receive funding, project sponsors must complete the development process outlined in statute and meet all statutory eligibility requirements. Projects must also address all FTA requirements, and FTA must recommend the project for funding to Congress. FTA's recommendations are based on its evaluation and rating of the project using the criteria specified in statute, the availability of Capital Investment Grants program funds, and the readiness of the project, such as whether the project's cost, scope, and schedule are advanced enough to be considered

¹⁶ Non-Capital Investment Grants program funding commitments are part of the "local financial commitment" referred to in statute, which includes funding from local or state government authorities, the private sector, and other federal funds.

¹⁷ 49 U.S.C. § 5309(g)(2).

¹⁸ 49 U.S.C. § 5309(f), (g)(2).

¹⁹ For more information on the evaluation and rating process, see [GAO-16-495](#).

reliable. As mentioned earlier, the funding that projects receive is subject to congressional appropriations.

As we previously reported,²⁰ both MAP-21 and the FAST Act made numerous changes to the Capital Investment Grants program. For example, in addition to establishing Core Capacity projects as a new category of eligible projects, MAP-21 reduced the number of phases in the development process that projects in the Capital Investment Grants program must follow to be eligible for and receive funding. According to FTA officials, changes the FAST Act made to the program include raising the dollar threshold for eligibility for New Starts and Small Starts projects and increasing the number of projects that are eligible for funding by allowing joint public transportation and intercity-passenger-rail service to compete for funding.

FTA Has Not Addressed Three Out of Four Outstanding Statutory Provisions

FTA has not addressed three of four outstanding statutory provisions concerning the Capital Investment Grants program. As shown in table 1, three of these provisions stem from MAP-21, which was enacted in 2012, and the fourth stems from the FAST Act, enacted in 2015.

Table 1: Status of Selected Statutory Provisions Pertaining to the Capital Investment Grants Program, as of March 2018

	Statutory provision	Status
MAP-21	Issue regulations regarding the evaluation and rating process for Core Capacity Improvement projects.	Not addressed
	Establish a program, referred to as a <i>program of interrelated projects</i> , designed to allow for the simultaneous development of more than one project within the Capital Investment Grants program. ^a	Not addressed
	Use an expedited technical-capacity review process for project sponsors that have recently and successfully completed at least one new fixed-guideway project or Core Capacity Improvement project under specified circumstances. ^b	Addressed
FAST Act	Implement a pilot program, called the "Expedited Project Delivery for Capital Investment Grants Pilot Program," designed to create a fast-track approval process for no more than eight projects that meet specific statutory criteria, such as having a maximum federal share of 25 percent.	Not addressed

Legend:

MAP-21: Moving Ahead for Progress in the 21st Century Act (2012)

²⁰ [GAO-16-495](#).

FAST Act: Fixing America's Surface Transportation Act (2015)

Source: GAO analysis. | GAO-18-462

^aMAP-21 defined a *program of interrelated projects* as the simultaneous development of (1) two or more new fixed-guideway capital projects or Core Capacity Improvement projects or (2) one or more new fixed-guideway capital projects and one or more Core Capacity Improvement projects. Under this definition, Small Starts were not eligible to be included in a *program of interrelated projects*. The FAST Act amended this definition and specified that Small Starts are eligible to be included in a *program of interrelated projects*.

^bMAP-21 required FTA to use such a process if project sponsors have recently and successfully completed at least one new fixed-guideway capital project or Core Capacity Improvement project if the sponsor achieved budget, cost, and ridership outcomes for the project that are consistent with or better than projections and demonstrated that it continues to have the staff expertise and other resources necessary to implement a new project.

When we initiated our review, FTA officials told us FTA did not have immediate plans to address the outstanding statutory provisions due to the administration's stated intent to phase out the Capital Investment Grants program. As mentioned earlier, in 2017 the President's Fiscal Year 2018 budget first proposed phasing out the program, stating that future investments in new transit projects should be funded by the localities that use and benefit from those projects. Since then, FTA's annual reports to Congress, which contain funding recommendations for the program, have reflected this direction. For example, FTA's Fiscal Year 2018 report recommended that Congress only fund those projects that had already received a grant agreement through the program, and FTA's Fiscal Year 2019 report stated that FTA neither requests nor recommends any funding for projects in the Capital Investment Grants program beyond those that have already received a grant agreement. However, as also mentioned earlier, in March 2018 the Consolidated Appropriations Act, 2018, provided the program with more than \$2.6 billion, and also directed FTA to continue to administer the Capital Investment Grants program in accordance with the program's procedural and substantive requirements. Following the enactment of the Consolidated Appropriations Act, 2018, FTA officials told us that they are reviewing the law and determining next steps. However, they did not indicate that they have any immediate plans to address those provisions. Moving forward, if FTA does not take steps to address the outstanding provisions, FTA runs the risk of violating federal law.

During our review, FTA officials told us that other factors have also influenced FTA's decisions. For example, FTA officials noted that since our last report, issuing regulations regarding the evaluation and rating process for Core Capacity projects was not identified as one of the Department's regulatory priorities and, currently, FTA has no plans to issue such regulations. However, issuing regulations to address this provision is important. FTA's policy guidance notes that aspects of the development process, such as the steps to get into and through the

development process, were not subject to public outreach and are open to be discussed in future updates to the Major Capital Projects rule.²¹ While FTA officials emphasized that the agency's policy guidance is intended to serve as a guide for running the program until such time that FTA initiates further rulemaking, FTA's policy guidance also notes that further rulemaking is needed to fully implement the changes MAP-21 and the FAST Act made to the Capital Investment Grants program. Until FTA initiates this rulemaking, it is unclear when if at all, FTA might address most of these outstanding provisions.

With respect to addressing the *program of interrelated projects* provisions, FTA officials reiterated their concerns, as we noted in our last report, that establishing an evaluation and rating process for a *program of interrelated projects* is difficult. As an example, FTA officials noted that as part of the New Starts, Small Starts, and Core Capacity evaluation process, FTA takes into account factors such as a corridor's current ridership estimates and future ridership projections. According to FTA officials, evaluating and rating projects that encompass multiple corridors is challenging because it requires that FTA establish new measures and breakpoints—that is, thresholds for FTA's ratings.²² Both FTA officials and the American Public Transportation Association representatives we spoke with told us that FTA has sought input from the transit industry in the past to help address these concerns. However, FTA officials also told us that addressing their concerns requires additional research and public outreach on FTA's part and that undertaking that work has not been a priority of the Department of Transportation. Representatives from two of the sponsors we spoke with, as well as representatives of the American Public Transportation Association, told us that the transit industry is interested in seeing FTA implement the *program of interrelated projects* provisions and that doing so could help transit agencies deliver projects more efficiently. For example, according to one sponsor, implementing those provisions could help this sponsor purchase materials in bulk and reduce costs. Until FTA takes steps to address this provision, the federal government or project sponsors may be missing opportunities to deliver transit projects more efficiently.

²¹ See 78 Fed. Reg. 1992 (Jan. 9, 2013). For more information on FTA's previous rulemaking efforts for the Capital Investment Grants program, see [GAO-16-495](#).

²² 49 U.S.C. § 5309(g)(2)(A) requires that FTA rate projects on a 5-point scale (high, medium-high, medium, medium-low, or low). FTA, in turn, determines the thresholds for those ratings.

In the case of the FAST Act's provision establishing a pilot program—called the “Expedited Project Delivery for Capital Investment Grants Pilot Program,” designed to create a fast-track approval process for projects that meet specific statutory criteria, such as having a maximum federal share of 25 percent—FTA published a notice in the Federal Register in 2016 stating that it would publish guidance describing the process project sponsors should follow to apply for consideration as a pilot project.²³ However, at the time of our review, FTA had not provided sponsors with information that describes the process they should follow to apply for consideration as a pilot project. FTA officials told us that project sponsors have generally not expressed interest in participating in the program under the FAST Act,²⁴ and most of the project sponsors that we spoke with agreed. Specifically, four of the six Core Capacity project sponsors told us that some FAST Act requirements, such as a requirement that projects in the program be supported in part by a public-private partnership, made participating in the program less attractive.²⁵ According to two of the sponsors, private investors do not have an incentive to invest in public transit projects unless they can profit from their investment, but the FAST Act limits that opportunity by requiring that projects participating in the pilot program be operated and maintained by employees of an existing public transportation provider. Nonetheless, in February 2018, the President's infrastructure plan recommended restructuring this program, with changes, to better achieve the goals of expediting project delivery.²⁶ Among the changes recommended are allowing the pilot program to be available to all projects and not just on a pilot basis, and increasing the federal share from 25 to 50 percent. Taking steps to describe the steps project sponsors should follow to apply for

²³ See 81 Fed. Reg. 7894, 7906 (Feb. 16, 2016).

²⁴ See Pub. L. No. 114-94, 129 Stat. 1312, 1454-62 (2015). MAP-21 included a provision establishing a similar pilot program but with different requirements. See Pub. L. No. 112-141, 126 Stat. 405, 674 (2012). We did not discuss the MAP-21 provision in our April 2016 report because the FAST Act repealed it. See Pub. L. No. 114-94, 129 Stat. 1312, 1496 (2015). FTA took steps to address the MAP-21 provision, such as by soliciting interest via the *Federal Register*. See 80 Fed. Reg. 38801 (July 7, 2015). However, according to FTA officials, none of the sponsors interested in participating in the pilot program under MAP-21 were eligible to participate in the pilot program under the FAST Act.

²⁵ Of the other two sponsors, one was interested in participating in the program and the other did not comment on whether or not it would be interested in participating in the program.

²⁶ The White House: *Legislative Outline for Rebuilding Infrastructure in America* (February 2018).

consideration as a pilot project under this program could help FTA better understand whether further changes are needed.

The statutory provision FTA has addressed relates to a MAP-21 provision directing FTA to use an expedited technical-capacity review process for certain experienced project sponsors.²⁷ At the time of our 2016 report, FTA was in the process of finalizing the development of a tool to address this provision, and since then, FTA has implemented that tool. Specifically, the tool helps FTA staff determine the level of review required of project sponsors based on a number of risk factors, such as the complexity of a proposed project and the sponsor's experience level. According to FTA, this tool helps FTA staff develop project-specific oversight plans that specify the resources FTA should devote when overseeing a particular project. Projects that FTA determines are at lower risk have fewer oversight resources allocated to them, and FTA officials told us that they have been using this tool on all projects in the program since mid-2017.

FTA Has a Process to Verify That Requirements Are Met before Recommending a Core Capacity Project for Funding

Based on our review of FTA's policy guidance, instructions for applying to the Capital Investment Grants program,²⁸ and interviews with FTA officials and six Core Capacity project sponsors, we found that FTA has established a process to verify that proposed Core Capacity projects meet statutory requirements before recommending projects for funding.²⁹ In addition, based on our review of documentation supporting FTA's

²⁷ Specifically, as mentioned previously, MAP-21 required FTA to use an expedited technical-capacity review process for project sponsors that have recently and successfully completed at least one new fixed-guideway capital project or Core Capacity Improvement project if the sponsor achieved budget, cost, and ridership outcomes for the project that are consistent with or better than projections, and demonstrated that it continues to have the staff expertise and other resources necessary to implement a new project. Pub. L. No. 112-141, 126 Stat. 405, 658-59 (2012).

²⁸ FTA, *Final Interim Policy Guidance Federal Transit Administration Capital Investment Grant Program* (June 2016).

²⁹ As mentioned previously, for the purpose of this review, we focused on the evaluation and rating requirements specified in statute for Core Capacity projects.

funding recommendations for the two Core Capacity projects with grant agreements as of June 2017, as well as interviews with FTA officials and both project sponsors, we found that FTA took steps to verify that the statutory requirements were met before recommending those two projects for full funding grant agreements.³⁰ Representatives of the other four sponsors we spoke with also confirmed that FTA is taking steps to verify that their projects meet the statutory requirements. Such requirements include specific project eligibility and other requirements that projects must meet during the Project Development and Engineering phases of the development process.³¹

Project Eligibility: Under statute, Core Capacity projects must meet specific eligibility requirements. For example, along the lines previously noted, statutory provisions require that a Core Capacity project 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.³² These projects must also increase the corridor's capacity in the peak hour and direction of travel by not less than 10 percent.³³ To verify that projects meet these requirements, project sponsors and FTA officials told us that FTA staff assisted project sponsors in refining their project's corridor (see fig. 1),³⁴ and reviewed information provided by the sponsors on such things as the corridor's current ridership estimates; the type, configuration, and capacity of light- and heavy-rail cars; and the number of seats on commuter rail cars. FTA's policy guidance outlines the criteria that FTA uses, criteria that FTA developed after consulting industry standards and reaching out to the transit industry. FTA officials emphasized that they apply these criteria consistently across projects when evaluating whether a project's corridor is at capacity.³⁵

³⁰ A full funding grant agreement is a type of construction grant agreement.

³¹ 49 U.S.C. § 5309(a)(2), (e)(2)(A)(iii).

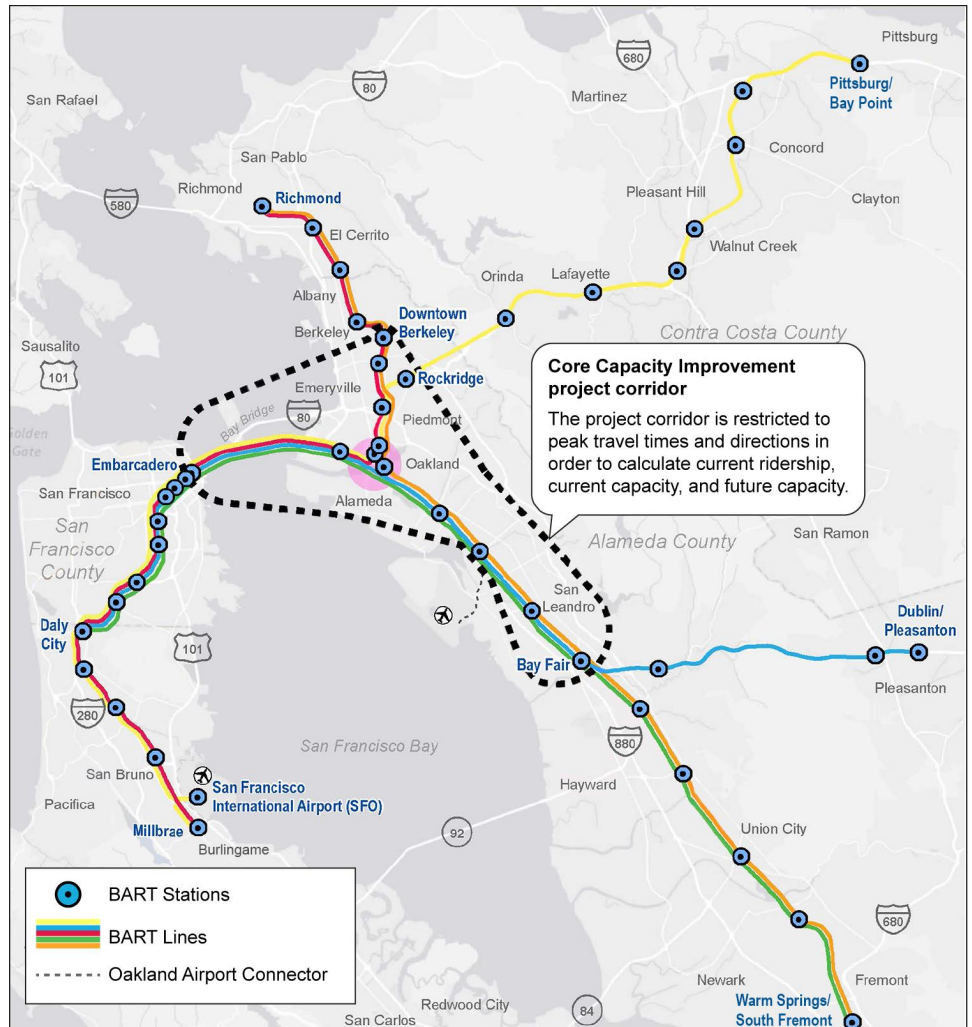
³² 49 U.S.C. § 5309(a)(2), (e)(2)(A)(iii).

³³ 49 U.S.C. § 5309(a)(2).

³⁴ The Core Capacity project corridor comprises the project's location along the fixed-guideway's route and the peak hours and directions of travel.

³⁵ The industry standard that FTA consulted is: Transit Cooperative Research Program, *Transit Capacity and Quality of Service Manual*, Report 165 (Washington, D.C.: 2013).

Figure 1: Example of a Core Capacity Improvement Project’s Corridor



Sources: GAO presentation of Bay Area Rapid Transit District (BART) and Federal Transit Administration information. | GAO-18-462

As another example, under statute, Capital Investment Grant funding for Core Capacity projects may not be applied to “state of good repair” improvements to the transit system.³⁶ “State of good repair” improvements include, among other things, the replacement or rehabilitation of existing rail cars, tracks, or communications equipment due to normal wear and tear or preventive maintenance. Core Capacity projects are likely to be intertwined with state of good repair

³⁶ 49 U.S.C. § 5309(b)(2).

improvements, however, and FTA staff work with project sponsors to identify which project costs within the project corridor are eligible to receive Core Capacity funding and which are related to maintaining a state of good repair.

Project Development Phase: As with the project eligibility requirements discussed above, statutory provisions identify specific requirements that must be met during the Project Development phase,³⁷ and we found that FTA has a process to verify that those requirements are met. For example, under statute, Core Capacity projects have 2 years after the day on which they enter into Project Development to complete the activities required to obtain a project rating by FTA.³⁸ Completion of the Project Development phase is marked by the completion of the environmental review process required under the National Environmental Policy Act of 1969 and FTA's assignment of a project rating.³⁹ FTA's policy guidance encourages project sponsors to perform whatever work they feel is necessary prior to requesting entry into Project Development to enable them to complete this phase within 2 years. According to both FTA officials and representatives from each of the six Core Capacity project sponsors, FTA staff work closely with project sponsors to assist them with preparations to enter Project Development, review their documentation, and complete this phase on time. Further, each of the six Core Capacity project sponsors we spoke with told us that FTA follows up with sponsors to ensure that all statutory and FTA requirements for the Project Development phase are met. For example, the project sponsors reported that FTA officials hold a variety of periodic (e.g., weekly, monthly, quarterly) meetings with project sponsors during which they discuss various aspects of the sponsor's progress toward meeting the statutory requirements.

Under statute, to assign a project rating, FTA must evaluate and rate Core Capacity projects against specific project justification criteria and local financial commitment criteria, as well as ensure that the project has satisfied the project eligibility and other statutory requirements, such as having been selected as the locally preferred alternative and adopted into

³⁷ 49 U.S.C. § 5309(b)(2).

³⁸ 49 U.S.C. § 5309(e)(1)(C)(ii). If project sponsors are unable to complete Project Development within 2 years, they may request an extension that FTA will consider and render a decision on.

³⁹ Pub. L. No. 91-190, 83 Stat. 852 (1970), codified at 42 U.S.C. §§ 4321-4347.

the appropriate regional transportation plans.⁴⁰ To obtain the information needed to make these evaluations, FTA provides project sponsors with reporting instructions and templates on its website specifying its documentation requirements. These instructions and templates allow for the standardized review of the project eligibility requirements previously discussed, as well as aspects of the project justification and local financial commitment criteria. Representatives of two of the six Core Capacity project sponsors described these instructions and templates as helpful, and said the templates enable them to gauge what their project's potential rating might be. Representatives of four sponsors also reported that when completing the templates they are in frequent contact with FTA officials to help ensure they are appropriately providing all required information. FTA officials inform sponsors that the agency reviews completed templates along with other information to assign project ratings.

Pursuant to statute, once FTA determines that a Core Capacity project meets the specified project eligibility requirements,⁴¹ assigns the project a rating,⁴² and determines that the environmental review process has been completed,⁴³ among other requirements, the project is ready to enter the Engineering phase. Before advancing the project to Engineering, FTA requires project sponsors to provide proof that at least 30 percent of the non-Capital Investment Grants funding necessary to complete the project is committed, as well as a variety of other documentation, such as a 20-year financial plan; a detailed cost estimate; a detailed project management plan and project schedule; a preliminary safety hazard, threat, and vulnerability analysis; and a draft "before and after" study plan.⁴⁴ Once a project sponsor indicates it is ready to advance its project to the Engineering phase, FTA assigns oversight contractors, who take a

⁴⁰ The statute and FTA guidance require that project sponsors ensure that the project being proposed for Core Capacity funding is the locally preferred project among the existing alternatives; subsequently, the proposed locally preferred alternative must be adopted into metropolitan and long-range statewide transportation plans.

⁴¹ 49 U.S.C. § 5309(a),(b)(2),(e).

⁴² 49 U.S.C. § 5309(g).

⁴³ 49 U.S.C. § 5309(e)(2)(A).

⁴⁴ 49 U.S.C. § 5309 (k)(2)(E) requires full funding grant agreements to, in turn, require that project sponsors who receive a grant through the Capital Investment Grants program to conduct "before and after" studies. These studies are designed to allow project sponsors the opportunity to assess the outcomes of a project after it is completed by comparing predicted versus actual construction costs, service levels, project scope, and ridership.

prominent role in overseeing the day-to-day management of the project in order to provide FTA with ongoing reports of the project sponsor's financial and technical progress.

Engineering Phase: Based on our review of documentation for the two Core Capacity projects that have received a grant agreement, we found that FTA also has a process to verify that the requirements specified in statute applicable to the Engineering phase are met before recommending a Core Capacity project for funding. Pursuant to statute, during the Engineering phase the project sponsor must continue to show the financial capability to complete the project and maintain and operate the future transit system with stable and dependable funding sources.⁴⁵ FTA requires that project sponsors show increasing financial capacity during the first 3 years in this phase by providing proof of commitments for at least 50 percent of all non-Capital Investment Grants funding. Pursuant to statute, project sponsors must also continue to show the technical capability to complete the project. FTA requires that project sponsors show increasing technical capacity during this phase by making sufficient progress advancing the level of project design.⁴⁶

According to representatives from the two Core Capacity projects that have received a grant agreement, FTA's oversight contractors interact with project sponsors frequently throughout the Engineering phase, and are responsible for assisting FTA in determining whether sponsors have the technical and financial capacity to complete their projects. Both FTA officials and the two project sponsors reported that these oversight contractors review project documentation throughout the Engineering phase to verify that the sponsor meets FTA requirements to execute a grant agreement, and are otherwise acceptable for advancing a project. In reviewing documentation for the two Core Capacity projects that have received a grant agreement, we found these oversight contractors provided FTA with their comprehensive assessments of the project sponsor's technical and financial capacity. FTA officials said they use these assessments when evaluating whether a project should be recommended for a grant agreement.

⁴⁵ 49 U.S.C. § 5309 (c)(1)(B)(i), (f)(1)(C), (g)(1).

⁴⁶ If a project sponsor does not make sufficient progress obtaining funding commitments or advancing the level of design, FTA may withdraw the project from the Capital Investment Grants program.

Conclusions

For years, the Capital Investment Grants program has served as the primary source of federal financial assistance to new transit projects across the United States. During this review, however, the future of that program has been unclear, given the administration's stated intent to phase out the program and FTA's actions, which have reflected that direction. The Consolidated Appropriations Act, 2018, provided FTA with both the funding to continue awarding grants through the program and the direction to administer the program in accordance with the requirements specified in law. FTA stated that it is reviewing the law and determining next steps but did not indicate that it has specific plans or timeframes for addressing the three outstanding provisions discussed in this report. By not addressing those provisions, FTA runs the risk of failing to implement provisions of federal law, and the federal government or project sponsors may be missing opportunities to deliver transit projects more efficiently.

Recommendations for Executive Action

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

- The FTA Administrator should initiate a rulemaking regarding the evaluation and rating process for Core Capacity Improvement projects, consistent with statutory provisions. (Recommendation 1)
- The FTA Administrator should take steps, such as undertaking additional research or public outreach, to enable FTA to evaluate and rate projects in a *program of interrelated projects*, in a manner consistent with statutory provisions. (Recommendation 2)
- The FTA Administrator should take steps to describe the process project sponsors should follow to apply for consideration as a pilot project under the Expedited Project Delivery for Capital Investment Grants Pilot Program. (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 reproduced in appendix II, the Department concurred with our recommendations. However, the Department also stated in its letter that our report did not adequately

describe the steps FTA has completed to implement the statutory provisions discussed in this report. Further, the Department stated that FTA has demonstrated its intent to address the outstanding provisions.

We agree with the Department that FTA has taken numerous actions toward addressing various statutory provisions of the Capital Investment Grants program, provisions contained in either MAP-21 or the FAST Act. As noted above in this report, we discussed many of those actions in our April 2016 review of the Capital Investment Grants program. At that time, we reported that FTA was making progress implementing MAP-21 and that FTA intended to take action over the next 2 years toward addressing the remaining provisions of MAP-21 and the new requirements of the FAST Act. However, as of this report, FTA has still not addressed all the provisions, and as the Department stated in its letter, FTA cannot specify when action will be taken to address the outstanding provisions. Accordingly, we believe that our assessment is an accurate reflection of FTA's progress in addressing the outstanding statutory provisions of the Capital Investment Grants program as amended by MAP-21 and the FAST Act.

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 GoldsteinM@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 III.



Mark L. Goldstein
Director, Physical Infrastructure Issues

Appendix I: Core Capacity Improvement Projects

Table 2: Core Capacity Improvement Projects in the Capital Investment Grants Program, as of June 2017

Project	Project description
Canarsie Line Power and Station Improvements, New York	The Metropolitan Transportation Authority proposes to implement capacity improvements to the Canarsie L Line, which operates between South Brooklyn and Manhattan. Improvements include three new power substations and other upgrades necessary to increase capacity on the line. The Metropolitan Transportation Authority estimates that when the project is complete, capacity in the corridor will be increased 10 percent.
Dallas Area Rapid Transit Red and Blue Line Platform Extensions, Texas	The Dallas Area Rapid Transit is proposing to extend and modify platforms along two existing light rail lines to accommodate longer trains. The Dallas Area Rapid Transit estimates that when the project is complete, capacity in the corridor will be increased 12 percent.
Dallas Central Business District Second Light Rail Alignment, Texas	The Dallas Area Rapid Transit is proposing to implement a second light-rail alignment through the central business district of Dallas to supplement the existing alignment. The Dallas Area Rapid Transit estimates that when the project is complete, capacity in the corridor will be increased 100 percent.
Double Track—Northwest, Indiana	The Northern Indiana Commuter Transportation District is proposing to construct a second track and make additional improvements along a 26.6-mile segment of its South Shore commuter rail line between Gary and Michigan City.
Peninsula Corridor Electrification Project, California ^a	The Joint Powers Board (also known as Caltrain) is implementing capacity improvements that include upgrading and electrifying a 51-mile commuter rail line extending from San Francisco to San Jose. Caltrain estimates that when the project is complete, capacity in the corridor will be increased 11 percent.
Portal North Bridge, New Jersey	The New Jersey Transit Corporation, in cooperation with the Port Authority of New York and New Jersey, the Gateway Program Development Corporation, ^b and Amtrak are proposing to replace an over 100-year-old drawbridge across the Hackensack River in Hudson County, New Jersey, with a new, two-track bridge, among other capacity improvements. The sponsors estimate that when the project is complete, capacity in the corridor will be increased 10 percent.
Red and Purple Modernization Phase One Project, Illinois ^a	The Chicago Transit Authority is implementing capacity improvements along a 5.6-mile corridor on the north side of Chicago. Improvements include the reconstruction of four stations, the installation of a new higher-capacity signal system, and the procurement of 32 new railcars. The Chicago Transit Authority estimates that when the project is complete, capacity in the corridor will be increased 15 percent.
Transbay Corridor Core Capacity Project, California	The Bay Area Rapid Transit District is proposing to implement capacity improvements between Oakland and Daly City in South San Francisco. Improvements include implementing communication-based train control equipment, the procurement of 252 rail cars, additional power substations, and the expansion of a maintenance facility. The Bay Area Rapid Transit District estimates that when the project is complete, capacity in the corridor will be increased 37 percent.

Source: GAO and the Federal Transit Administration (project descriptions). | GAO-18-462

**Appendix I: Core Capacity Improvement
Projects**

Note: Project descriptions are as of February 2018.

^aDenotes projects for which the Federal Transit Administration has awarded a grant agreement.

^bThe Gateway Program Development Corporation is a non-profit that was established to oversee a series of infrastructure projects between Newark, New Jersey, and Pennsylvania Station in New York City known as the Gateway Program.

Appendix II: Comments from the Department of Transportation



U.S. Department of
Transportation
Office of the Secretary
of Transportation

Assistant Secretary for Administration

1200 New Jersey Avenue SE
Washington, DC 20590

Mark Goldstein
Director, Physical Infrastructure Issues
U.S. Government Accountability Office (GAO)
411 G Street NW
Washington, DC 20548

MAY 11 2018

Dear Mr. Goldstein:

The Federal Transit Administration (FTA) is administering the Capital Investment Grants (CIG) program in accordance with the law, including advancing projects into and through the steps in the program, evaluating and rating projects according to statutory criteria, and making funding recommendations to Congress. FTA issued both a final rule (January 2013) and CIG policy guidance (June 2016) as required by Federal public transportation law (49 U.S.C. § 5309), both of which followed a public notice and comment process as required for rulemakings under the Administrative Procedure Act and 49 U.S.C. § 5334.

While FTA acknowledges that further updates to the CIG policy guidance and the regulation are necessary, FTA believes the GAO draft report is inaccurate in citing that FTA has “not addressed” three requirements in statute. The report does not adequately describe the steps FTA has completed to implement those statutory requirements. Also, with respect to the statement in the report that “FTA officials told GAO they do not have plans to address these three statutory provisions,” FTA cited that it could not specify when action would be taken to address the outstanding provisions and explained the factors involved. Regarding the recent passage of the Consolidated Appropriations Act, 2018, FTA told GAO that FTA is reviewing the Act and explanatory statement in depth and determining next steps.

FTA has clearly demonstrated its intent to address the three provisions by implementing the following actions:

- **Core Capacity:** In 2015, after a public notice and comment process, FTA issued CIG Final Interim Policy Guidance that fully implements the Core Capacity program, including detailed criteria to evaluate and rate projects, as well as the requirements project sponsors must follow to advance projects through the steps in the CIG process and award CIG funding. FTA updated the Policy Guidance in 2016 to ensure that it was consistent with changes enacted in the Fixing America’s Surface Transportation (FAST) Act (P.L. 114-94). The Policy Guidance makes clear that it “will serve as a guide for running the CIG program until FTA completes updates to the Major Capital Investment Projects final rule...to fully implement MAP-21 and now FAST.” FTA’s full implementation of Core Capacity is evidenced by the multiple Core Capacity projects currently in the CIG program and the two Full Funding Grant Agreements that have been awarded for Core Capacity projects in California and Illinois, both of which are now in receipt of CIG funds and under construction.

- **Program of Interrelated Projects:** Since passage of the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141) in 2012, when the Program of Interrelated Projects provisions were first included in statute, FTA has routinely sought input from the transit industry on how the agency might implement the provisions. To date, FTA has received little feedback from the industry about how to implement these provisions.
- **Expedited Project Delivery Pilot Program:** FTA issued a Federal Register notice in July 2015 soliciting expressions of interest from stakeholders in the Expedited Project Delivery Pilot Program. Eight projects applied, and FTA was near completion of the selection process when the FAST Act was enacted, which significantly changed the pilot program requirements. None of the eight projects that had applied were eligible under the new FAST Act provisions. Furthermore, the Administration's infrastructure proposal, released with the President's Budget in February 2018, includes policy proposals for how the pilot program could be modified to ensure it is more appealing to project sponsors, and recommends that the pilot program be made a permanent program. In addition, one project sponsor has recently expressed interest in the program. FTA is actively considering proposals from that sponsor in advance of a formal application being submitted. The provisions in the FAST Act allow FTA to carry out the pilot program without the need for issuance of guidance or regulation.

Upon review of GAO's draft report, FTA concurs with the three recommendations. The Department will provide a detailed response to each recommendation within 60 days of the final report's issuance.

We appreciate the opportunity to respond to the GAO draft report. Please contact Madeline M. Chulumovich, Director, Audit Relations and Program Improvement, at (202) 366-6512 with any questions, or if you would like to obtain additional details.

Sincerely,



Keith Nelson
Assistant Secretary for Administration

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

Mark L. Goldstein, (202) 512-2834 or GoldsteinM@gao.gov

Staff Acknowledgments

In addition to the contact above, Brandon Haller (Assistant Director); Melissa Bodeau; Kelsey Burdick; Geoffrey Hamilton; Wesley A. Johnson; Elke Kolodinski; Malika Rice; and Elizabeth Wood made key contributions to this report.

Appendix IV: Accessible Data

Agency Comment Letter

Text of Appendix II: Comments from the Department of Transportation

Page 1

Mark Goldstein

Washington , DC 20590

Director, Physical Infrastructure Issues

U.S. Government Accountability Office (GAO) 411 G Street NW

Washington, DC 20548

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Page 2

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Sincerely,

Keith Nelson

Assistant Secretary for Administration

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