

Articles 1, 2.1, 2.4, 2.4.2, 9.1, 9.3, 11.2, and 18.4 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* (the Anti-Dumping Agreement); and Article XVI:4 of the WTO Agreement.

#### Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit their comments electronically to [www.regulations.gov](http://www.regulations.gov) docket number USTR-2008-0044. If you are unable to provide submissions by [www.regulations.gov](http://www.regulations.gov), please contact Sandy McKinzy at (202) 395-9483 to arrange for an alternative method of transmission.

To submit comments via [www.regulations.gov](http://www.regulations.gov), enter docket number USTR-2008-0044 on the home page and click "go". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Send a Comment or Submission." (For further information on using the [www.regulations.gov](http://www.regulations.gov) Web site, please consult the resources provided on the website by clicking on "How to Use This Site" on the left side of the home page.)

The [www.regulations.gov](http://www.regulations.gov) site provides the option of providing comments by filling in a "General Comments" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is sufficient to type "See attached" in the "General Comments" field.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395-3640. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in

the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax. A non-confidential summary of the confidential information must be submitted to [www.regulations.gov](http://www.regulations.gov). The non-confidential summary will be placed in the docket and open to public inspection. USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute; the report of the panel; and, if applicable, the report of the Appellate Body.

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR 2006.15 or information determined by USTR to be confidential in accordance with 19 U.S.C. 2155(g)(2). Comments may be viewed on the [www.regulations.gov](http://www.regulations.gov) Web site by entering docket number USTR-2008-0044 in the search field on the home page.

**Daniel Brinza,**

*Assistant United States Trade Representative for Monitoring and Enforcement.*

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary of Transportation

[Docket No. OST-2009-0115]

#### Notice of Funding Availability for Supplemental Discretionary Grants for Capital Investments in Surface Transportation Infrastructure Under the American Recovery and Reinvestment Act

**AGENCY:** Office of the Secretary of Transportation ("OST").

**ACTION:** Notice of Funding Availability.

**SUMMARY:** On May 18, 2009, the Department of Transportation published an interim notice announcing the availability of funding for TIGER Discretionary Grants (as defined below), project selection criteria, application requirements and the deadline for submitting applications. Because this is a new program, the interim notice also requested comments on the proposed selection criteria and guidance for awarding TIGER Discretionary Grants. The Department considered the comments that were submitted in accordance with the interim notice and has decided to publish this notice revising some elements of the interim notice. Each of the substantive revisions made in this notice are described below in "Supplemental Information." In the event that this solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

**DATES:** Complete applications for TIGER Discretionary Grants must be submitted by September 15, 2009 (the "Application Deadline"). While applicants are encouraged to submit applications in advance of the Application Deadline, applications will not be evaluated, and awards will not be made, until after the Application Deadline. Due to the need to expedite the grant award process to meet the requirements and purposes of the Recovery Act (as defined below), the Department will evaluate all applications and announce the projects that have been selected to receive Grant Funds (as defined below) as soon as possible after the Application Deadline, but no later than February 17, 2010. In addition, in the event that this solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

**ADDRESSES:** Applications must be submitted to the TIGER Discretionary

Grants program manager electronically via e-mail at [TIGERGrants@dot.gov](mailto:TIGERGrants@dot.gov). Applicants should receive a confirmation e-mail, but are advised to request a return receipt to confirm transmission. Only applications received via e-mail as provided above shall be deemed properly filed.

**FOR FURTHER INFORMATION:** For further information concerning this notice please contact the TIGER Discretionary Grants program manager via e-mail at [TIGERGrants@dot.gov](mailto:TIGERGrants@dot.gov). A TDD is available for individuals who are deaf or hard of hearing at 202-366-7687.

**SUPPLEMENTARY INFORMATION:** On May 18, 2009, the Department published an interim notice announcing funding availability, project selection criteria, application requirements and the deadline for submitting applications. Because this is a new program, the interim notice also requested comments on the proposed selection criteria and guidance for awarding TIGER Discretionary Grants. The Department considered the comments that were submitted in accordance with the interim notice and has decided to publish this notice revising some elements of the interim notice. Each of the substantive revisions made in this notice are described in the following paragraph. In the event that this solicitation does not result in the award and obligation of all available funds, the Department may decide to publish an additional solicitation.

This notice revises the interim notice published on May 18, 2009, as follows:

1. The notice is no longer an interim notice, and the Department is no longer considering comments on the proposed selection criteria and guidance for awarding TIGER Discretionary Grants. This notice is the operative notice of funding availability for the TIGER Discretionary Grants program.

2. This notice provides additional guidance at the end of Section II(B)(1)(a) (*Long-Term Outcomes*) regarding the required evaluation of expected project costs and benefits. This notice (i) provides a discount rate for discounting future benefits and costs to present values, (ii) identifies guidance on the value of time and statistical lives, (iii) provides sources of information on the social benefits of reducing crash costs, pollutant emissions and other externalities, and (iv) provides economic values for various benefits, including the cost of a metric ton of carbon emissions. This notice also revises this section to clarify that the required evaluation of expected project costs and benefits for any applicant seeking a TIGER Discretionary Grant in

excess of \$100 million should present a robust assessment of a project's net benefits, in addition to the project's benefit-cost ratio.

3. This notice revises the definition of "Eligible Applicants" to clarify that Metropolitan Planning Organizations (MPOs) are Eligible Applicants, and requests in Section II(B)(1)(b)(iv) (*Job Creation & Economic Stimulus*) that MPOs provide evidence that the owner of the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER Discretionary Grant.

4. This notice includes a footnote in Section II(A)(1)(b) (*Job Creation & Economic Stimulus*) regarding the Department's application of the definition of "Economically Distressed Areas" from section 301 of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3161) as a matter of policy. While "Economically Distressed Areas" are typically identified under the Act at the county level, for the purposes of this program the Department will consider municipalities or other similar political subdivisions of a State to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements for an "Economically Distressed Area" as defined in section 301 of the Public Works and Economic Development Act of 1965.

5. This notice includes a footnote in Section II(B)(1)(b)(iv) (*Job Creation & Economic Stimulus*) providing additional guidance about the requirements for a project's inclusion in State and local planning documents.

6. This notice revises Section III(B) (*Evaluation Process*) to clarify that the Department will consider whether a project has a negative effect on any of the selection criteria, and that any such effect may negatively impact the project's likelihood of being selected for a TIGER Discretionary Grant.

7. This notice revises Section II(B)(1)(a)(ii) (*Economic Competitiveness*) to clarify that the Economic Competitiveness criterion is targeting investments that facilitate net new private sector expansion, hiring, or growth, rather than those that result only in moving existing jobs or economic activity to different locations.

8. This notice revises the Section entitled "Dates" to clarify that while applications may be submitted prior to the Application Deadline, the Department will not evaluate applications or announce projects selected to receive TIGER Discretionary Grants until after the Application Deadline.

9. This notice revises Section VII (*Contents of Application*) to (i) request that applicants include certain information on the first page of their applications, and (ii) clarify that recipients of TIGER Discretionary Grants and their first-tier sub-awardees are required to have a DUNS number (<http://www.dnb.com>) and a current registration in the Central Contractor Registration (<http://www.ccr.gov>) prior to award of a TIGER Discretionary Grant.

10. This notice revises Section III(A) (*Ensuring Responsible Spending of Recovery Act Funds*) to include requirements guiding the Department's communications with registered lobbyists which were promulgated by the memorandum from the President of the United States dated March 20, 2009.

11. This notice revises the Section entitled "For Further Information" to clarify that the TDD number is provided for individuals who are deaf or hard of hearing.

12. In Section II(C)(1) (*Program-Specific Criteria*), this notice corrects the citation to the Code of Federal Regulations from "23 CFR 707" to "23 CFR 650.707."

13. In the first cell of the last row of the table in Section III(B) (*Evaluation Process*), this notice replaces the words "Project-Specific Criteria" with the words "Program-Specific Criteria."

14. Section X (*Certifications*) was amended to delete Section 1201(a) and Section 1607 Certification requirements because submissions of such Certifications are not direct requirements for potential grantees under the TIGER Discretionary Grants program.

These substantive changes to the interim notice published on May 18, 2009, have been included in this notice. All comments received prior to the June 1, 2009, deadline were received and considered by the Department.

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#### I. Background

On February 17, 2009, the President of the United States signed the American Recovery and Reinvestment

Act of 2009 (the "Recovery Act") to, among other purposes, (1) preserve and create jobs and promote economic recovery, (2) invest in transportation infrastructure that will provide long-term economic benefits, and (3) assist those most affected by the current economic downturn. The Recovery Act appropriated \$1.5 billion of discretionary grant funds to be awarded by the Department of Transportation for capital investments in surface transportation infrastructure. The Department is referring to these grants as "Grants for Transportation Investment Generating Economic Recovery" or "TIGER Discretionary Grants." This notice requests that applications for TIGER Discretionary Grants be submitted by September 15, 2009, from State and local governments, including U.S. territories, tribal governments, transit agencies, port authorities, metropolitan planning organizations (MPOs), other political subdivisions of State or local governments, and multi-State or multi-jurisdictional applicants ("Eligible Applicants"). The funds provided by TIGER Discretionary Grants ("Grant Funds") are available for obligation until September 30, 2011, and will be awarded on a competitive basis to projects that have a significant impact on the Nation, a metropolitan area, or a region.

Projects that are eligible for TIGER Discretionary Grants under the Recovery Act ("Eligible Projects") include, but are not limited to: (1) Highway or bridge projects eligible under title 23, United States Code, including interstate rehabilitation, improvements to the rural collector road system, the reconstruction of overpasses and interchanges, bridge replacements, seismic retrofit projects for bridges, and road realignments; (2) public transportation projects eligible under chapter 53 of title 49, United States Code, including investments in projects participating in the New Starts or Small Starts programs that will expedite the completion of those projects and their entry into revenue service; (3) passenger and freight rail transportation projects; and (4) port infrastructure investments, including projects that connect ports to other modes of transportation and improve the efficiency of freight movement. Federal wage rate requirements included in subchapter IV of chapter 31 of title 40, United States Code, apply to all projects receiving funds.

The Recovery Act specifies that grants funded under the program may be no less than \$20 million and no greater than \$300 million. However, the

Recovery Act gives the Department discretion to waive the \$20 million minimum grant size for the purpose of funding significant projects in smaller cities, regions, or States ("Smaller Projects"). The term "grant" in this provision of the Recovery Act does not include TIGER TIFIA Payments.

Pursuant to the Recovery Act, no more than 20 percent of the funds made available under this program may be awarded to projects in a single State. The Department must take measures to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. TIGER Discretionary Grants may be used for up to 100 percent of project costs, but priority must be given to projects for which Federal funding is required to complete an overall financing package that includes non-Federal sources of funds. Priority must also be given to projects that can be completed by February 17, 2012.

The Recovery Act allows for up to \$200 million of the \$1.5 billion to be used to pay the subsidy and administrative costs of the Transportation Infrastructure Finance and Innovation Act of 1998 ("TIFIA") program, a Federal credit assistance program, if it would further the purposes of the TIGER Discretionary Grants program. The Department is referring to these payments as "TIGER TIFIA Payments." The Department estimates that \$200 million of TIGER TIFIA Payments could support approximately \$2 billion in TIFIA credit assistance. Applicants for TIGER TIFIA Payments will be required to submit an application pursuant to this notice and a separate TIFIA loan application. Additional details are included below in Section VI (*TIGER TIFIA Payments*). Unless otherwise noted, or the context requires otherwise, references in this notice to TIGER Discretionary Grants includes TIGER TIFIA Payments.

On March 20, 2009, the President of the United States signed a memorandum for the heads of executive departments and agencies on ensuring responsible spending of Recovery Act funds. The memorandum directs all Federal agencies responsible for administering Recovery Act funds, including the Department, to develop transparent, merit-based selection criteria to guide the commitment, obligation and expenditure of the Recovery Act funds for which they are responsible, including TIGER Discretionary Grant funds.

The memorandum directs the Department to award all Recovery Act funds, including TIGER Discretionary

Grants, to projects with a demonstrated or potential ability to: "(i) deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; and (iv) satisfy the Recovery Act's transparency and accountability objectives."

The memorandum also directs Department officials not to consider the views of a registered lobbyist concerning particular projects, applications, or applicants for funding under the Recovery Act unless such views are in writing and made publicly available. For additional guidance on the lobbying disclosure requirements of the memorandum, please see the Office of Management and Budget's Interim Guidance Regarding Communications with Registered Lobbyists about Recovery Act Funds (available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m-09-16.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-16.pdf)) and any subsequent guidance issued by OMB.

The purpose of this notice is to solicit applications from Eligible Applicants interested in receiving funds under this program.

## II. Selection Criteria and Guidance on Application of Selection Criteria

This section specifies the criteria that the Department will use to evaluate applications. The criteria incorporate the limited statutory eligibility requirements for this program, which are specified in this notice as relevant. This section is split into three parts. Section A (*Selection Criteria*) specifies the criteria that the Department will use to rate projects. Additional guidance about how the Department will apply these criteria, including illustrative metrics and examples, is provided in Section B (*Additional Guidance on Selection Criteria*). Section C (*Program-Specific Criteria*) explains how the Department is going to use certain program-specific criteria to help differentiate between similar projects (for example, multiple bridge replacement projects, or multiple New Starts projects). The program-specific criteria will not be rated as the selection criteria are rated, but rather will be used

to assign priority among similar projects during the evaluation and selection process. As stated below in Section VII(F) (*Contents of Application, Selection Criteria*), applicants should address both the selection criteria and the program-specific criteria in their applications.

#### A. Selection Criteria

TIGER Discretionary Grants will be awarded based on the selection criteria as outlined below. There are two categories of selection criteria, "Primary Selection Criteria" and "Secondary Selection Criteria."

The Primary Selection Criteria include (1) Long-Term Outcomes and (2) Jobs Creation & Economic Stimulus. The Secondary Selection Criteria include (1) Innovation and (2) Partnership. The Primary Selection Criteria are intended to capture the primary objectives of the TIGER Discretionary Grants provision of the Recovery Act, which include near-term economic recovery and job creation, maximization of long-term economic benefits and impacts on the Nation, a region, or a metropolitan area, and assistance for those most affected by the current economic downturn. The Secondary Selection Criteria are intended to capture the benefits of new and/or innovative approaches to achieving programmatic objectives.

##### 1. Primary Selection Criteria

###### (a) Long-Term Outcomes.

The Department will give priority to projects that have a significant impact on desirable long-term outcomes for the Nation, a metropolitan area, or a region. Applications that do not demonstrate a likelihood of significant long-term benefits in this criterion will not proceed in the evaluation process. The following types of long-term outcomes will be given priority:

(i) *State of Good Repair*: Improving the condition of existing transportation facilities and systems, with particular emphasis on projects that minimize life-cycle costs.

(ii) *Economic Competitiveness*: Contributing to the economic competitiveness of the United States over the medium- to long-term.

(iii) *Livability*: Improving the quality of living and working environments and the experience for people in communities across the United States.

(iv) *Sustainability*: Improving energy efficiency, reducing dependence on oil, reducing greenhouse gas emissions and benefiting the environment.

(v) *Safety*: Improving the safety of U.S. transportation facilities and systems.

###### (b) *Job Creation & Economic Stimulus*.

Consistent with the purposes of the Recovery Act, the Department will give priority to projects that are expected to quickly create and preserve jobs and stimulate rapid increases in economic activity, particularly jobs and activity that benefit economically distressed areas as defined by section 301 of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3161) ("Economically Distressed Areas").<sup>1</sup>

##### 2. Secondary Selection Criteria

###### (a) Innovation.

The Department will give priority to projects that use innovative strategies to pursue the long-term outcomes outlined above.

###### (b) Partnership.

The Department will give priority to projects that demonstrate strong collaboration among a broad range of participants and/or integration of transportation with other public service efforts.

#### B. Additional Guidance on Selection Criteria

The following additional guidance explains how the Department will evaluate each of the selection criteria identified above in Section II(A) (*Selection Criteria*). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits specified below in Section VII(A) (*Length of Application*).

##### 1. Primary Selection Criteria

###### (a) Long-Term Outcomes.

In order to measure a project's alignment with this criterion, the Department will assess the public benefits generated by the project, as measured by the extent to which a project produces one or more of the following outcomes.

(i) *State of Good Repair*: In order to determine whether the project will

improve the condition of existing transportation facilities or systems, including whether life-cycle costs will be minimized, the Department will assess (i) whether the project is part of, or consistent with, relevant State, local or regional efforts to maintain transportation facilities or systems in a state of good repair, (ii) whether an important aim of the project is to rehabilitate, reconstruct or upgrade surface transportation projects that threaten future economic growth and stability due to their poor condition, (iii) whether the project is appropriately capitalized up front and uses asset management approaches that optimize its long-term cost structure, and (iv) the extent to which a sustainable source of revenue is available for long-term operations and maintenance of the project. The application should include any quantifiable metrics of the facility or system's current condition and performance and, to the extent possible, projected condition and performance, with an explanation of how the project will improve the facility or system's condition, performance and/or long-term cost structure.

(ii) *Economic Competitiveness*: In order to determine whether a project promotes the economic competitiveness of the United States, the Department will assess whether the project will measurably contribute over the long-term to growth in employment, production or other high value economic activity. For purposes of aligning a project with this outcome, applicants should provide evidence of the long-term economic benefits that are provided by the completed project, not the near-term economic benefits of construction that are captured in the Jobs Creation & Economic Stimulus criterion. In weighing long-term employment benefits, the quality of jobs supported will be considered as well as number of jobs and whether these jobs are expected to provide employment in Economically Distressed Areas. Priority consideration will be given to projects that: (i) Improve long-term efficiency, reliability or cost-competitiveness in the movement of workers or goods, or (ii) make improvements that allow for net new investments in expansion, hiring, or other growth of private sector production at specific locations, particularly Economically Distressed Areas. Applicants may propose other methods of demonstrating a project's contribution to the economic competitiveness of the country and such methods will be reviewed on a case by case basis.

Economic competitiveness may be demonstrated by the project's ability to

<sup>1</sup> While Economically Distressed Areas are typically identified under the Act at the county level, for the purposes of this program the Department will consider municipalities or other similar political subdivisions of a State to be Economically Distressed Areas if an applicant can demonstrate that any such area otherwise meets the requirements of an Economically Distressed Area as defined in section 301 of the Public Works and Economic Development Act of 1965.

increase the efficiency and effectiveness of the transportation system through integration or better use of all existing transportation infrastructure (which may be evidenced by the project's involvement with or benefits to more than one mode and/or its compatibility with and preferably augmentation of the capacities of connecting modes and facilities), but only to the extent that these enhancements lead to the economic benefits that are identified in the preceding paragraph.

(iii) *Livability*: Livability investments are projects that not only deliver transportation benefits, but are also designed and planned in such a way that they have a positive impact on qualitative measures of community life. This element of long-term outcomes delivers benefits that are inherently difficult to measure. However, it is implicit to livability that its benefits are shared and therefore magnified by the number of potential users in the affected community. Therefore, descriptions of how projects enhance livability should include a description of the affected community and the scale of the project's impact. In order to determine whether a project improves the quality of the living and working environment of a community, the Department will qualitatively assess whether the project:

(1) Will significantly enhance user mobility through the creation of more convenient transportation options for travelers;

(2) will improve existing transportation choices by enhancing points of modal connectivity or by reducing congestion on existing modal assets;

(3) will improve accessibility and transport services for economically disadvantaged populations, non-drivers, senior citizens, and persons with disabilities, or to make goods, commodities, and services more readily available to these groups; and/or

(4) is the result of a planning process which coordinated transportation and land-use planning decisions and encouraged community participation in the process.

Livability improvements may include projects for new or improved biking and walking infrastructure. Particular attention will be paid to the degree to which such projects contribute significantly to broader traveler mobility through intermodal connections, or improved connections between residential and commercial areas.

(iv) *Sustainability*: In order to determine whether a project promotes a more environmentally sustainable transportation system, the Department will assess its ability to:

(1) Improve energy efficiency, reduce dependence on oil and/or reduce greenhouse gas emissions; applicants are encouraged to provide quantitative information regarding expected reductions in emissions of CO<sub>2</sub> or fuel consumption as a result of the project, or expected use of clean or alternative sources of energy; projects that demonstrate a projected decrease in the movement of people or goods by less energy-efficient vehicles or systems will be given priority under this factor; and

(2) Maintain, protect or enhance the environment, as evidenced by its avoidance of adverse environmental impacts (for example, adverse impacts related to air quality, wetlands, and endangered species) and/or by its environmental benefits (for example, improved air quality, wetlands creation or improved habitat connectivity).

Applicants are encouraged to provide quantitative information that validates the existence of substantial transportation-related costs related to energy consumption and adverse environmental effects and evidence of the extent to which the project will reduce or mitigate those costs.

(v) *Safety*.

In order to determine whether the project improves safety, the Department will assess the project's ability to reduce the number, rate and consequences of surface transportation-related crashes, and injuries and fatalities among drivers and/or non-drivers in the United States or in the affected metropolitan area or region, and/or its contribution to the elimination of highway/rail grade crossings, the protection of pipelines, or the prevention of unintended release of hazardous materials.

*Evaluation of Expected Project Costs and Benefits*: The Department believes that benefit-cost analysis ("BCA"), including the monetization and discounting of costs and benefits to a common unit of measurement in present-day dollars, is an important discipline. For BCA to yield useful results, full consideration of costs and benefits is necessary. These include traditionally quantified fuel and travel time savings as well as greenhouse gas emissions, water quality impacts, public health effects, and other costs and benefits that are more remotely connected to vehicle-miles or are harder to measure. In addition, BCA should attempt to capture the dynamic effects of transportation investments on land use and household budgets. The systematic process of comparing expected benefits and costs helps decision-makers organize information about, and evaluate trade-offs between, alternative transportation investments.

The Department has a responsibility under Executive Order 12893, Principles for Federal Infrastructure Investments, 59 FR 4233, to base infrastructure investments on systematic analysis of expected benefits and costs, including both quantitative and qualitative measures.

Therefore, applicants for TIGER Discretionary Grants are generally required to identify, quantify, and compare expected benefits and costs, subject to the following qualifications:

This requirement will be waived for applicants seeking waivers of the \$20 million minimum grant size requirement for Smaller Projects.

Any applicant seeking a TIGER Discretionary Grant of more than \$20 million but less than \$100 million must include in its application estimates of the project's expected benefits in the five long-term outcomes identified in this Section II(A)(1)(a). The lack of a useful analysis of expected project benefits may be ground for denying award of a TIGER Discretionary Grant to any such applicant.

Any applicant seeking a TIGER Discretionary Grant in excess of \$100 million must provide a well-developed analysis of expected benefits and costs, including a calculation of net benefits and a description of input data and methodological standards used for the analysis. The analysis should indicate the values that were assigned for qualitative measures, in addition to quantitative measures. Where information on costs and benefits, including consideration of externalities, is of sufficient quality and completeness to allow for a robust assessment of a project's net benefits and benefit-cost ratio, these analyses should be presented. Applicants should discount future benefits and costs to present values using a discount rate of 7 percent, following guidance provided by OMB in Circulars A-4 and A-94 (<http://www.whitehouse.gov/omb/circulars/>). Applicants may also provide an alternative analysis using a discount rate of 3 percent. Applicants should follow the Department's guidance on the values of time and statistical lives (<http://ostpxweb.dot.gov/policy/reports.htm>). Sources of information on the social benefits of reducing crash costs, pollutant emissions, and other externalities are discussed in Chapter VIII of the Final Regulatory Impact Analysis of the National Highway Traffic Safety Administration's rulemaking on Corporate Average Fuel Economy for MY 2011 Passenger Cars and Light Trucks (<http://www.nhtsa.dot.gov/portal/site/nhtsa/menuitem.d0b5a45b55>

*bfbe582f57529cdba046a0/*). The economic values of various benefits are summarized in Table VIII–5 on page VIII–60.

The estimate of \$33 per metric ton of carbon cited on page VIII–45 of NHTSA's analysis may be used as a placeholder to measure the global benefits of reducing U.S. CO<sub>2</sub> emissions. The Administration is currently developing interim guidance on the social cost of carbon that may result in a different determination of the appropriate assumption for per metric ton global benefits achieved by emissions reductions. Following this determination, the Department may adjust the level of economic benefits of anticipated emissions reductions for applications that cite such benefits. As such, applicants should clearly indicate how and to what degree calculations of benefits in their analyses are based on this assumed value of CO<sub>2</sub> emissions reduction.

The Department recognizes that some costs and benefits are more difficult to quantify or monetize than others. In presenting benefit-cost analyses, applicants may include qualitative discussion of the likely effects of better or more complete information on the net benefits presented and the reasons such information was not available for analysis. Where quality or completeness of data are not sufficient to allow a meaningful assessment of whether a project's net benefits are positive or negative, applicants should discuss the data limitations that lead to this conclusion and present a qualitative comparison of costs and benefits. Should the Department agree that quantitative measures of the values of significant costs and benefits are not available or not reliable, the Department will do its best to weight qualitative assessments of the costs and benefits provided by the applicant. However, in the event of an unreasonable absence of data and analysis or poor applicant effort to put forth a robust quantification of net benefits, the application is unlikely to receive further consideration. In general, the lack of a useful analysis comparing expected benefits and costs for any such project is ground for denying award of a TIGER Discretionary Grant.

In all cases, if it is clear to the Department that the total benefits of a project are not reasonably likely to outweigh the project's costs, the Department will not award a TIGER Discretionary Grant to the project. Consistent with the broader goals of the Recovery Act and the specific appropriation for the TIGER Discretionary Grants program, the

Department can consider some factors that do not readily lend themselves to quantification or monetization, including distributional and geographic equity.

*Evaluation of Project Performance:* The Department also encourages applicants with the requisite wherewithal to provide a plan for evaluating the success of the project (or a program of projects) and measuring short- and long-term performance, specifically with respect to the economic recovery measures and long-term outcomes specified in this notice.

*(b) Job Creation & Economic Stimulus.*

In order to measure a project's alignment with this criterion, the Department will assess whether the project promotes the short- or long-term creation or preservation of jobs and whether the project rapidly promotes new or expanded business opportunities during construction of the project or thereafter. Demonstration of a project's rapid economic impact is critical to a project's alignment with this criterion. Applicants are encouraged to provide information to assist the Department in making these assessments, including the total amount of funds that will be expended on construction and construction-related activities by all of the entities participating in the project and, to the extent measurable, the number and type of jobs to be created and/or preserved by the project during construction and thereafter. Applicants should also identify any business enterprises to be created or benefited by the project during its construction and once it becomes operational.

Consistent with the Recovery Act, the Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009 issued by the Office of Management and Budget ("OMB") on April 3, 2009 (the "OMB Guidance"), and Federal laws guaranteeing equal opportunity, applicants are encouraged to provide information to assist the Department in assessing (1) whether the project will promote the creation of job opportunities for low-income workers through the use of best practice hiring programs and utilization of apprenticeship (including pre-apprenticeship) programs; (2) whether the project will provide maximum practicable opportunities for small businesses and disadvantaged business enterprises, including veteran-owned small businesses and service disabled veteran-owned small businesses; (3) whether the project will make effective use of community-based organizations in connecting disadvantaged workers with economic opportunities; (4) whether the project will support entities

that have a sound track record on labor practices and compliance with Federal laws ensuring that American workers are safe and treated fairly; and (5) whether the project implements best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals—regardless of race, gender, age, disability, and national origin—benefit from the Recovery Act.

To the extent possible, applicants should indicate whether the populations most likely to benefit from the creation or preservation of jobs or new or expanded business opportunities are from Economically Distressed Areas. In addition, to the extent possible, applicants should indicate whether the project's procurement plan is likely to create follow-on jobs and economic stimulus for manufacturers and suppliers that support the construction industry. A key consideration in assessing projects under this criterion will be how quickly jobs are created.

Consistent with Section 1602 of the Recovery Act (*Preference for Quick-Start Activities*), the Department will assess whether a project is ready to proceed rapidly upon receipt of a TIGER Discretionary Grant, as evidenced by:

(i) *Project Schedule:* A feasible and sufficiently detailed project schedule demonstrating that the project can begin construction quickly upon receipt of a TIGER Discretionary Grant and that the Grant Funds will be spent steadily and expeditiously once construction starts; the schedule should show how many direct, on-project jobs are expected to be created or sustained during each calendar quarter after the project is underway;

(ii) *Environmental Approvals:* Receipt (or reasonably anticipated receipt) of all environmental approvals necessary for the project to proceed to construction on the timeline specified in the project schedule, including satisfaction of all Federal, State and local requirements and completion of the National Environmental Policy Act process;

(iii) *Legislative Approvals:* Receipt of all necessary legislative approvals (for example, legislative authority to charge user fees or set toll rates), and evidence of support from State and local officials, including relevant governor(s) and/or mayors. Evidence of support from all relevant State and local officials is not required, however, the evidence should demonstrate that the project is broadly supported;

(iv) *State and Local Planning:* The inclusion of the project in the relevant State, metropolitan, and local planning documents, or a certification from the appropriate agency that the project will

be included in the relevant planning document prior to award of a TIGER Discretionary Grant;<sup>2</sup> any MPO that is applying for a TIGER Discretionary Grant should provide evidence that the owner of the project supports the application and will cooperate in carrying out the activities to be supported by the TIGER Discretionary Grant;

(v) *Technical Feasibility*: The technical feasibility of the project, including completion of substantial preliminary engineering work; and

(vi) *Financial Feasibility*: The viability and completeness of the project's financing package (assuming the availability of the requested TIGER Discretionary Grant funds), including evidence of stable and reliable financial commitments and contingency reserves, as appropriate, and evidence of the grant recipient's ability to manage grants.

The Department reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. Because projects have different schedules the Department will consider on a case-by-case basis how much time after award of a TIGER Discretionary Grant each project has before funds must be expended and construction started. This deadline will be specified for each TIGER Discretionary Grant in the project-specific grant agreements signed by the grant recipients and will be based on critical path items identified by applicants in response to items (i) through (vi) above. For example, if an applicant reasonably anticipates that National Environmental Policy Act

<sup>2</sup> All regionally significant projects requiring an action by the FHWA or the FTA must be in the metropolitan transportation plan, TIP and STIP. Further, in air quality non-attainment and maintenance areas, all regionally significant projects, regardless of the funding source, must be included in the conforming metropolitan transportation plan and TIP. To the extent a project is required to be on a metropolitan transportation plan, TIP and/or STIP it will not receive a TIGER Discretionary Grant until it is included in such plans. Projects that are not required to be in long range transportation plans, STIPs and TIPs will not need to be included in such plans in order to receive a TIGER Discretionary Grant. Freight and passenger rail projects are not required to be on the State Rail Plans called for in the Passenger Rail Investment and Improvement Act of 2008. This is consistent with the exemption for high speed and intercity passenger rail projects under the Recovery Act. However, applicants seeking funding for freight and passenger rail projects are encouraged to demonstrate that they have done sufficient planning to ensure that projects fit into a prioritized list of capital needs and are consistent with long-range goals.

requirements will be completed and final documentation received within 30 to 60 days of award of a TIGER Discretionary Grant, this timeframe will be taken into account in evaluating the application, but also in establishing a deadline for expenditure of funds and commencement of construction. The Department's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2011.

In compliance with the Recovery Act, the Department will give priority to projects that are expected to be completed on or before February 17, 2012. For purposes of this solicitation, "completed" means that all of the TIGER Discretionary Grant funds awarded to the project have been obligated and expended and construction of the project is substantially complete.

The ability of the grant recipient to complete the project by this date must be clearly demonstrated in the project schedule. The Department will give priority to projects that utilize innovative contracting approaches that encourage accelerated project delivery. The Department will consider projects that are not expected to be completed by February 17, 2012, but these projects will not be rated as highly under this criterion.

## 2. Secondary Selection Criteria

### (a) *Innovation*.

In order to measure a project's alignment with this criterion, the Department will assess the extent to which the project uses innovative technology (including, for example, intelligent transportation systems, dynamic pricing, rail wayside or on-board energy recovery, smart cards, real-time dispatching, active traffic management, radio frequency identification (RFID), or others) to pursue one or more of the long-term outcomes outlined above and/or to significantly enhance the operational performance of the transportation system. The Department will also assess the extent to which the project incorporates innovations that demonstrate the value of new approaches to, among other things, transportation funding and finance, contracting, project delivery, congestion management, safety management, asset management, or long-term operations and maintenance. The applicant should clearly demonstrate that the innovation is designed to pursue one or more of the long-term outcomes outlined above and/or significantly enhance the transportation system.

### (b) *Partnership*.

(i) *Jurisdictional & Stakeholder Collaboration*: In order to measure a project's alignment with this criterion, the Department will assess the project's involvement of non-Federal entities and the use of non-Federal funds, including the scope of involvement and share of total funding. The Department will give priority to projects that receive financial commitments from, or otherwise involve, State and local governments, other public entities, or private or nonprofit entities, including projects that engage parties that are not traditionally involved in transportation projects, such as nonprofit community groups. Pursuant to the OMB Guidance, the Department will give priority to projects that make effective use of community-based organizations in connecting disadvantaged people with economic opportunities.

In compliance with the Recovery Act, the Department will give priority to projects for which a TIGER Discretionary Grant will help to complete an overall financing package. An applicant should clearly demonstrate the extent to which the project cannot be readily and efficiently completed without Federal assistance, and the extent to which other sources of Federal assistance are or are not readily available for the project, including other funds made available pursuant to the Recovery Act. The Department will assess the amount of private debt and equity to be invested in the project or the amount of co-investment from State, local or other non-profit sources.

The Department will also assess the extent to which the project demonstrates collaboration among neighboring or regional jurisdictions to achieve National, regional or metropolitan benefits. Multiple States or jurisdictions may submit a joint application and should identify a lead State or jurisdiction as the primary point of contact. Where multiple States are submitting a joint application, the application should demonstrate how the project costs are apportioned between the States to assist the Department in making the distributional determinations described below in Section III(C) (*Distribution of Funds*).

(ii) *Disciplinary Integration*: In order to demonstrate the value of partnerships across government agencies that serve the various public service missions forwarded by the Recovery Act and to promote collaboration on the objectives outlined in this notice, the Department will give priority to projects that are supported, financially or otherwise, by non-transportation public agencies that are pursuing similar objectives. For example, the Department will give

priority to transportation projects that create more livable communities and are supported by relevant public housing agencies, or transportation projects that encourage energy efficiency or improve the environment and are supported by relevant public agencies with energy or environmental missions.

### C. Program-Specific Criteria

The Department will use certain program-specific criteria in the evaluation and selection process to help differentiate between similar projects. Similar projects are those that have similar characteristics and satisfy the eligibility requirements of existing programmatic structures (for example, two urban light rail projects eligible to participate in the New Starts program). To the extent two or more similar projects have similar ratings based on the selection criteria outlined in Section II(A) (*Selection Criteria*) the program-specific criteria will be used to assign priority among these projects.

Projects will not be given specific ratings of "highly recommended," "recommended" or "not recommended" for applicable program-specific criteria; rather, the Department will use the program-specific criteria to rank similar projects. To the extent otherwise similar projects can be differentiated based on the selection criteria, program-specific criteria will not be given any weight.

The program-specific criteria are not intended to limit the number of similar projects that can receive TIGER Discretionary Grants.

Program-specific criteria will only be applied to the types of projects identified below. Any other type of project will be differentiated from other similar projects solely based on the selection criteria outlined in Section II(A) (*Selection Criteria*). The Department will use the following program-specific criteria, where applicable, to assign priority among similar projects:

1. For bridge replacement projects, program-specific criteria are the following criteria found in 23 CFR 650.707: total daily truck and non-truck traffic, bridge sufficiency ratings, and bridges with load or geometric restrictions.

2. For transit projects, program-specific criteria are as follows: bus and rail fleet purchases that are within established FTA spare ratio policies, rehabilitation and replacement of assets that have exceeded the useful life span as identified in FTA policy, and/or the proposed project's rating under the New Starts and Small Starts program criteria, as applicable (a copy of the criteria used for this program is available at [http://](http://www.fta.dot.gov/planning/newstarts/planning_environment_5615.html)

[www.fta.dot.gov/planning/newstarts/planning\\_environment\\_5615.html](http://www.fta.dot.gov/planning/newstarts/planning_environment_5615.html)).

3. For projects involving port infrastructure investments, program-specific criteria are, for both current state and post-project completion, the port or system's:

(a) Passenger and/or freight throughput, storage or processing capacity, including but not limited to, capacity movement (in tonnage, TEU (twenty-foot equivalent unit), barrels, etc.) across the dock, storage capacity on the terminal, and gate throughput;

(b) Demand for services or demand for capacity (in the case of post-project completion, projections or estimates);

(c) Efficiency (e.g. time savings, including vessel turnaround, gate and dwell times, and/or cost savings);

(d) Reliability and/or resiliency, including but not limited to, ability of the facility or system to recover from natural or man-made disasters and provide necessary services;

(e) National security or National interest aspects of items (a) through (d) above including but not limited to movement of Department of Defense assets and strategic location; and

(f) External factors that may influence or limit items (a) through (e) above (channel or berth maintenance or deepening and other navigation issues, road, rail or waterway factors that could represent bottlenecks and backups, etc.).

4. For TIGER TIFIA Payments, program-specific criteria are the eight statutory selection criteria used by the Department's TIFIA Joint Program Office to evaluate and select projects (these criteria have been assigned weights through regulation, as indicated below):

(a) The extent to which the project is nationally or regionally significant, in terms of generating economic benefits, supporting international commerce, or otherwise enhancing the national transportation system (20 percent);

(b) The extent to which the project helps maintain or protect the environment (20 percent);

(c) The extent to which TIFIA assistance would foster innovative public-private partnerships and attract private debt or equity investment (20 percent);

(d) The creditworthiness of the project, including a determination by the Secretary that any financing for the project has appropriate security features, such as a rate covenant, to ensure repayment (12.5 percent);

(e) The likelihood that TIFIA assistance would enable the project to proceed at an earlier date than the project would otherwise be able to proceed (12.5 percent);

(f) The extent to which the project uses new technologies, including Intelligent Transportation Systems (ITS), that enhance the efficiency of the project (5 percent);

(g) The amount of budget authority required to fund the Federal credit instrument made available (5 percent); and

(h) The extent to which TIFIA assistance would reduce the contribution of Federal grant assistance to the project (5 percent).

In addition, approval for TIFIA credit assistance requires the receipt of a preliminary rating opinion letter indicating that the project's senior debt obligations have the potential to attain an investment-grade rating. Complete details regarding the TIFIA selection process can be found in the program guide, which can be downloaded from <http://tifia.fhwa.dot.gov/>.

## III. Evaluation and Selection Process

### A. Ensuring Responsible Spending of Recovery Act Funds

On March 20, 2009, the President of the United States signed a memorandum for the heads of executive departments and agencies on ensuring responsible spending of Recovery Act funds. The memorandum directs all Federal agencies responsible for administering Recovery Act funds, including the Department, to develop transparent, merit-based selection criteria to guide the commitment, obligation and expenditure of the Recovery Act funds for which they are responsible, including TIGER Discretionary Grant funds.

In accordance with the memorandum, the criteria specified in this notice help ensure that TIGER Discretionary Grants will be awarded to projects with a demonstrated or potential ability to: "(i) Deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) achieve long-term public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality; and (iv) satisfy the Recovery Act's transparency and accountability objectives."

In accordance with the memorandum, the Department will not award TIGER Discretionary Grants to any project that



is imprudent or does not further the job creation, economic recovery and other purposes of the Recovery Act. In addition, Department officials will not consider the views of a registered lobbyist concerning particular projects, applications, or applicants for funding under the Recovery Act unless such views are in writing and made publicly available. For additional guidance on the lobbying disclosure requirements of the President's Memorandum, please see the Office of Management and Budget's Interim Guidance Regarding Communications with Registered Lobbyists about Recovery Act Funds (available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m-09-16.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m-09-16.pdf)) and any subsequent guidance issued by OMB.

**B. Evaluation Process**

The Department will establish an evaluation team to review each application that is received by the Department prior to the Application Deadline. The evaluation team will be organized and led by the Office of the Secretary and will include members from each of the Cognizant Modal Administrations (as defined below). These representatives will include technical and professional staff with relevant experience and/or expertise. The evaluation team will be responsible for evaluating and rating all of the projects and making funding recommendations to the Secretary. The evaluation process will require team members to evaluate and rate applications individually before convening with other members to discuss ratings. The composition of the evaluation team will be finalized after the Application Deadline, based on the

number and nature of applications received.

The Department will not assign specific numerical scores to projects based on the selection criteria outlined above in Section II(A) (*Selection Criteria*). Rather, ratings of "highly recommended," "recommended," or "not recommended" will be assigned to projects for each of the selection criteria. The Department will award TIGER Discretionary Grants to projects that are "highly recommended" in one or more of the selection criteria, with projects that are "highly recommended" in multiple selection criteria being more likely to receive TIGER Discretionary Grants. In addition, the Department will consider whether a project has a negative effect on any of the selection criteria, and any such negative effect may reduce the likelihood that the project will receive a TIGER Discretionary Grant. To the extent the initial evaluation process does not sufficiently differentiate among highly rated projects, the Department will use a similar three-tiered rating process to re-assess the projects that were highly rated and identify those that should be most highly rated.

The Department will give more weight to the two Primary Selection Criteria (*Long-Term Outcomes* and *Jobs Creation & Economic Stimulus*) than to the two Secondary Selection Criteria (*Innovation* and *Partnership*). Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in Section II(A)(1)(a) (*Long-Term Outcomes*) will not proceed in the evaluation process. A project need not be well aligned with each of the long-term outcomes in order to be successful in the long-term

outcomes criterion overall. However, to be successful in the long-term outcomes criterion a project must be "highly recommended" for at least one of the long-term outcomes or "recommended" for multiple long-term outcomes. Projects that are strongly aligned with multiple long-term outcomes will be the most successful in this criterion.

For the Jobs Creation & Economic Stimulus criterion, projects need not receive a rating of "highly recommended" in order to be recommended for funding, although a project that is not ready to proceed quickly, as evidenced by the items requested in Section II(B)(1)(b)(i)-(vi) (*Project Schedule, Environmental Approvals, Legislative Approvals, State and Local Planning, Technical Feasibility, and Financial Feasibility*), is less likely to be successful in this criterion.

The Department will give less weight to the two Secondary Selection Criteria (*Innovation* and *Partnership*) than to the two Primary Selection Criteria (*Long-Term Outcomes* and *Jobs Creation & Economic Stimulus*). The two Secondary Selection Criteria will be rated equally.

As noted above in Section II(C) (*Program-Specific Criteria*), the Program-Specific Criteria will not be given ratings and will only be used to the extent the Department needs to differentiate and assign priority among similar projects that have similar ratings based on the selection criteria outlined above in Section II(A) (*Selection Criteria*).

The following table summarizes the weighting of the selection criteria, as described in the preceding paragraphs:

Long-Term Outcomes .....	The Department will give more weight to this criterion than to either of the Secondary Selection Criteria. In addition, this criterion has a minimum threshold requirement. Projects that are unable to demonstrate a likelihood of significant long-term benefits in any of the five long-term outcomes identified in this criterion will not proceed in the evaluation process.
Jobs Creation & Economic Stimulus .....	The Department will give more weight to this criterion than to either of the Secondary Selection Criteria. This criterion will be considered after it is determined that a project demonstrates a likelihood of significant long-term benefits in at least one of the five long-term outcomes identified in the long-term outcomes criterion.
Innovation & Partnership .....	The Department will give less weight to these criteria than to the Primary Selection Criteria.
Program-Specific Criteria .....	The Department will only give weight to these criteria to the extent the Department needs to differentiate multiple similar projects that are rated similarly based on the Primary and Secondary Selection Criteria.

To be selected for a TIGER Discretionary Grant, a project must be an Eligible Project and the applicant must be an Eligible Applicant. The Department may consider one or more components of a large project to be an Eligible Project, but only to the extent

that the components themselves, not the project of which they are a part, are Eligible Projects and satisfy the selection criteria specified in this notice. For these projects, the benefits described in an application must be related to the components of the project

for which funding is requested, not the full project of which they are a part.

**C. Distribution of Funds**

As noted above in Section I (*Background*), the Recovery Act prohibits the award of more than 20

percent of the funds made available under this program to projects in any one State. The Recovery Act also requires that the Department take measures to ensure an equitable geographic distribution of funds and an appropriate balance in addressing the needs of urban and rural communities. The Department will apply an initial unconstrained competitive rating process based on the selection criteria and program-specific criteria identified above in Section II(A) (*Selection Criteria*) and Section II(C) (*Program-Specific Criteria*) to determine a preliminary list of projects recommended for TIGER Discretionary Grants. The Department will then analyze the preliminary list and determine whether the purely competitive ratings are consistent with distributional requirements of the Recovery Act. If necessary, the Department will adjust the list of recommended projects to satisfy the statutory distributional requirements while remaining as consistent as possible with the competitive ratings.

As noted above in Section II(B)(2)(b)(i) (*Jurisdictional & Stakeholder Collaboration*), applications submitted jointly by multiple States should include an allocation of project costs to assist the Department in making these determinations. In addition, the Department will use the subsidy and administrative cost estimate, not the principal amount of credit assistance, to determine any TIGER TIFIA Payment's effect on these distributional requirements.

#### D. Transparency of Process

In the interest of transparency, the Department will disclose as much of the information related to its evaluation process as is practical. The Department expects that the TIGER Discretionary Grants program may be reviewed and/or audited by Congress, the U.S. Government Accountability Office, the Department's Inspector General, or others, and has and will continue to take steps to document its decision making process.

#### IV. Grant Administration

The Department expects that each TIGER Discretionary Grant will be administered by the modal administration in the Department with the most experience and/or expertise in the relevant project area (the "Cognizant Modal Administration"), pursuant to a grant agreement between the TIGER Discretionary Grant recipient and the Cognizant Modal Administration. In accordance with the Recovery Act, the

Secretary has the discretion to delegate such responsibilities.

Applicable Federal laws, rules and regulations will apply to projects that receive TIGER Discretionary Grants, including all of the requirements included in the Recovery Act.

As noted above in Section II(B)(1)(b) (*Jobs Creation & Economic Stimulus*), how soon after award a project is expected to expend Grant Funds and start construction will be considered on a case-by-case basis and will be specified in the project-specific grant agreements. The Department reserves the right to revoke any award of TIGER Discretionary Grant funds and to award such funds to another project to the extent that such funds are not timely expended and/or construction does not begin in accordance with the project schedule. The Department's ability to obligate funds for TIGER Discretionary Grants expires on September 30, 2011.

#### V. Waiver of Minimum Grant Size Requirement

The Department has discretion under the Recovery Act to waive the \$20 million minimum grant size requirement for Smaller Projects. Applicants for TIGER Discretionary Grants of less than \$20 million for Smaller Projects are encouraged to apply and should address the same criteria as applicants for TIGER Discretionary Grants in excess of \$20 million. The term "grant" in this provision of the Recovery Act does not include TIGER TIFIA Payments.

#### VI. TIGER TIFIA Payments

Up to \$200 million of the \$1.5 billion available for TIGER Discretionary Grants may be used for TIGER TIFIA Payments. Given the average subsidy cost of the existing TIFIA portfolio, \$200 million in TIGER TIFIA Payments could support approximately \$2 billion in Federal credit assistance. Applicants seeking TIGER TIFIA Payments should apply in accordance with all of the criteria and guidance specified in this notice for TIGER Discretionary Grant applicants and will be evaluated concurrently with all other applications. Any applicant seeking a TIGER TIFIA Payment is required to comply with all of the TIFIA program's standard application and approval requirements, including submission of a Letter of Interest prior to submission of a TIFIA application (the TIFIA program guide can be downloaded from <http://tiffa.fhwa.dot.gov/>). The Letter of Interest must be submitted at least six weeks prior to the Application Deadline.

The Department does not expect applicants for TIGER TIFIA Payments to have received an instrument from TIFIA obligating Federal credit assistance for the project before the application is submitted; however, applicants should demonstrate that they are ready to proceed rapidly upon receipt of a TIGER TIFIA Payment in accordance with the guidance specified above in Section II(B)(1)(b) (*Job Creation & Economic Stimulus*). The Department's TIFIA Joint Program Office will assist the Department in determining a project's readiness to proceed rapidly upon receipt of a TIGER TIFIA Payment.

Applicants seeking TIGER TIFIA Payments may also apply for a TIGER Discretionary Grant for the same project and must indicate the type(s) of funding for which they are applying clearly on the face of their applications. An applicant for a TIGER TIFIA Payment must submit an application pursuant to this notice for a TIGER TIFIA Payment even if it does not wish to apply for a TIGER Discretionary Grant.

Unless otherwise expressly noted herein, any and all requirements that apply to TIGER Discretionary Grants pursuant to the Recovery Act, this notice, or otherwise, including all reporting and Recovery Act related requirements, apply to TIGER TIFIA Payments. TIFIA applicants that do not receive TIGER TIFIA Payments will not be required to comply with any of these requirements.

#### VII. Contents of Application

An applicant for a TIGER Discretionary Grant should include all of the information requested below in its application. The Department reserves the right to ask any applicant to supplement the data in its application, but expects applications to be complete upon submission. To the extent practical, the Department encourages applicants to provide data and evidence of project merits in a form that is publicly available or verifiable. For TIGER TIFIA Payments, these requirements apply only to the applications required under this notice; the standard TIFIA loan application requirements, including the standard \$30,000.00 application fee, are separately described in the Program Guide and Application Form found at <http://tiffa.fhwa.dot.gov/>.

##### A. Length of Applications

The narrative portion of an application should not exceed 25 pages in length. Documentation supporting the assertions made in the narrative portion may also be provided, but should be limited to relevant

information. If possible, Web site links to supporting documentation should be provided rather than copies of these materials. At the applicant's discretion, relevant materials provided previously to a Cognizant Modal Administration (as defined below) in support of a different DOT discretionary program (for example, New Starts or TIFIA) may be referenced and described as unchanged. To the extent referenced, this information need not be resubmitted for the TIGER Discretionary Grant application.

#### *B. Contact Information*

An application should include the name, phone number, e-mail address and organization address of the primary point of contact for the applicant. The Department will use this information to inform parties of the Department's decision regarding selection of projects, as well as to contact parties in the event that the Department needs additional information about an application.

#### *C. Project Description*

An application should include a detailed description of the proposed project and geospatial data for the project, including a map of the project's location and its connections to existing transportation infrastructure. An application should also include a description of how the project addresses the needs of an urban and/or rural area. An application should clearly describe the transportation challenges that the project aims to address, and how the project will address these challenges. This description should include relevant data such as, for example, passenger or freight volumes, congestion levels, infrastructure condition, or safety experience.

#### *D. Project Parties*

An application should include information about the grant recipient and other project parties.

#### *E. Grant Funds and Sources and Uses of Project Funds*

An application should include information about the amount of grant funding requested, sources and uses of all project funds, total project costs, percentage of project costs that would be paid for with TIGER Discretionary Grant funds, and the identity and percentage shares of all parties providing funds for the project (including Federal funds provided under other programs).

#### *F. Selection Criteria*

An application must include information required for the Department

to assess each of the criteria specified in Section II(A) (*Selection Criteria*), as such criteria are explained in Section II(B) (*Additional Guidance on Selection Criteria*), and each of the relevant criteria specified in Section II(C) (*Program-Specific Criteria*). Applicants are encouraged to demonstrate the responsiveness of a project to any and all of the selection criteria with the most relevant information that applicants can provide, regardless of whether such information has been specifically requested, or identified, in this notice. Any such information shall be considered part of the application, not supplemental, for purposes of the application size limits identified above in item A (*Length of Applications*). If an applicant is unsure whether any of the program-specific criteria apply to its project and should be addressed in its application the applicant should contact the Department pursuant to the procedures specified below in Section X (*Questions and Clarifications*). Information provided pursuant to this paragraph must be quantified, to the extent possible, to describe the project's impacts on the Nation, a metropolitan area, or a region. Information provided pursuant to this paragraph should include projections for both the build and no-build scenarios for the project for a point in time at least 20 years beyond the project's completion date or the lifespan of the project, whichever is closest to the present.

#### *G. Federal Wage Rate Requirement*

An application must include a certification, signed by the applicant, stating that it will comply with the requirements of subchapter IV of chapter 31 of title 40, United States Code (Federal wage rate requirements), as required by the Recovery Act.

#### *H. National Environmental Policy Act Requirement*

An application must detail whether the project will significantly impact the natural, social and/or economic environment. If the NEPA process is completed, an applicant must indicate the date of, and provide a Web site link or other reference to, the final Categorical Exclusion, Finding of No Significant Impact or Record of Decision. If the NEPA process is underway but not complete, the application must detail where the project is in the process, indicate the anticipated date of completion and provide a Web site link or other reference to copies of any NEPA documents prepared.

#### *I. Environmentally Related Federal, State and Local Actions*

An application must indicate whether the proposed project is likely to require actions by other agencies (e.g., permits), indicate the status of such actions and provide a Web site link or other reference to materials submitted to the other agencies, and/or demonstrate compliance with other Federal, State and local regulations as applicable, including, but not limited to, Section 4(f) *Parklands, Recreation Areas, Refuges, & Historic Properties*; Section 106 *Historic and Culturally Significant Properties*; Clean Water Act *Wetlands and Water*; Executive Orders *Wetlands, Floodplains, Environmental Justice*; Clean Air Act *Air Quality (specifically note if the project is located in a nonattainment area)*; Endangered Species Act *Threatened and Endangered Biological Resources*; Magnuson-Stevens Fishery Conservation and Management Act *Essential Fish Habitat*; The Bald and Golden Eagle Protection Act; and/or any State and local requirements.

#### *J. Protection of Confidential Business Information*

All information submitted as part of or in support of an application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information that the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) Note on the front cover that the submission "Contains Confidential Business Information (CBI);" (2) mark each affected page "CBI;" and (3) highlight or otherwise denote the CBI portions. The Department protects such information from disclosure to the extent allowed under applicable law. In the event the Department receives a Freedom of Information Act (FOIA) request for the information, the Department will follow the procedures described in its FOIA regulations at 49 CFR § 7.17. Only information that is ultimately determined to be confidential under that procedure will be exempt from disclosure under FOIA.

#### *K. First Page of Application*

The first page of an application should clearly identify (i) what type of project is the proposed project (highway, transit, rail, port or other), (ii) information about the location of the project, including State, city, county and congressional district, (iii) whether

the project is in an urban or rural area, and (iv) the amount in dollars of Grant Funds that the applicant is seeking.

Recipients of TIGER Discretionary Grants and their first-tier sub-awardees will be required to have a DUNS number (<http://www.dnb.com>) and a current registration in the Central Contractor Registration (<http://www.ccr.gov>). While these items do not need to be provided as part of the application, a TIGER Discretionary Grant will not be awarded if a recipient or first-tier sub-awardee does not have these items.

### VIII. Project Benefits

The Department expects to identify and report on the benefits of the projects that it funds with TIGER Discretionary Grants. To this end, the Department may request that recipients of TIGER Discretionary Grants cooperate in Departmental efforts to collect and report on information related to the benefits produced by the projects that receive TIGER Discretionary Grants.

In addition to the creation and preservation of jobs and other benefits that the Department is required to track and report pursuant to the Recovery Act, the benefits that the Department reports on may include the following: (1) Improved condition of existing transportation facilities and systems; (2) long-term growth in employment, production or other high-value economic activity; (3) improved livability of communities across the United States; (4) improved energy efficiency, reduced dependence on oil and reduced greenhouse gas emissions; (5) reduced adverse impacts of transportation on the natural environment; (6) reduced number, rate and consequences of surface transportation-related crashes, injuries and fatalities; (7) greater use of innovative technology and innovative approaches to transportation funding and project delivery; (8) greater collaboration with State and local governments, other public entities, private entities, nonprofit entities, or other non-traditional partners; or (9) greater integration of transportation decision making with decision making by other public agencies with similar public service objectives.

Because of the limited nature of this program, these benefits are likely to be reported on a project-by-project basis and trends across projects that were selected for TIGER Discretionary Grants may not be readily available. In addition, because many of these benefits are long-term outcomes, it may be years before the value of the investments can be quantified and fully reported. The

Department is considering the most appropriate way to collect and report information about these potential project benefits.

### IX. Reporting Requirements

#### A. Section 1201(c): Maintenance of Effort: Reporting Requirements

Pursuant to the Recovery Act, entities receiving TIGER Discretionary Grants will be required to report on grant activities on a routine basis. Section 1201(c) of the Recovery Act (*Maintenance of Effort: Reporting Requirements*), under General Provision—Department of Transportation—imposes an obligation on entities receiving TIGER Discretionary Grants, along with other Department grantees receiving funds from the Department's Covered Programs, to submit periodic reports to the agency from which funds were received. Section 1201(c)(2) requires that such reports include, for each Covered Program (which includes the TIGER Discretionary Grant program) the following information: the amount of Grant Funds appropriated, allocated, obligated, and outlayed under the appropriation; the number of projects put out to bid under the appropriation and the amount of Grant Funds associated with these contracts; the number of projects for which contracts have been awarded under the appropriation and the amount of Grant Funds associated with these contracts; the number of projects for which work has begun under these contracts and the associated amount of Grant Funds; the number of projects for which work has been completed and the associated amount of Grant Funds; the number of direct, on-project jobs created or sustained by the Grant Funds for projects under the appropriation and, to the extent possible, the estimated indirect jobs created or sustained in associated supplying industries, including the number of job-years created and total increase in employment since February 17, 2009; and the actual aggregate expenditures by each recipient from State sources for projects eligible for funding under the program between February 17, 2009, and September 30, 2010, compared to the level of such expenditures planned to occur during this period as of February 17, 2009.

According to the statute, grant recipients must submit the first of these reports not later than 90 days from February 17, 2009, and must submit updated reports not later than 180 days, 1 year, 2 years, and 3 years after that date. Due to the unique timeframe for

TIGER Discretionary Grant awards, TIGER Discretionary Grant recipients should submit the first of such reports on the first due date following the award of Grant Funds and on each subsequent due date thereafter.

#### B. Section 1512: Reports on Use of Funds

Section 1512 of the Recovery Act (*Reports on Use of Funds*) requires any entity that received TIGER Discretionary Grants to submit a report not later than 10 days after the end of each calendar quarter as a condition of receiving funding under the Recovery Act. Pursuant to the OMB Guidance (which is available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-15.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf)), recipients must report to OMB beginning 10 days after the end of the first calendar quarter after funds are awarded. Recipients should refer to the OMB Guidance for more detailed instructions on such reports. OMB is currently developing a government-wide central reporting system. Detailed instructions for centrally reporting the required information will be made available at <http://www.FederalReporting.gov>.

#### C. Section 1609: Environmental Reporting

Section 1609(c) of the Recovery Act requires that Federal agencies report via the President (specifically, to the White House Council on Environmental Quality) every 90 days following enactment of the Recovery Act on the status of projects funded under the Recovery Act with respect to compliance with the National Environmental Policy Act.

To satisfy the purposes of the Recovery Act, grant recipients may be required to provide additional information in response to requests from OMB, the Congressional Budget Office, the Government Accountability Office, or the Department's Inspector General. The Department will inform grant recipients if and when such additional reports are required.

Further information about how grant recipients will be expected to comply with the reporting requirements of the Recovery Act will be provided in the individual grant agreements signed by recipients of TIGER Discretionary Grants.

#### X. Certification Requirements

To the extent applicable, grantees must comply with the Certification requirements of the Recovery Act. These include the Certification requirement in Section 1511 (*Transparency and*

*Oversight*), requiring the Governor, mayor, or other chief executive, as appropriate, to certify that the infrastructure investment has received the full review and vetting required by law and accepting responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Certification under Section 1511 is a condition for award of TIGER Discretionary Grants to State or local agencies. On February 27, 2009, Secretary of Transportation Ray LaHood sent a letter to the Governors of each State providing guidance and a template for the Certifications required by the Recovery Act, a copy of which is available on the Department's Recovery Act Web site, at <http://www.dot.gov/recovery/>.

Pursuant to Section 1511, for funds made available to State or local governments for transportation infrastructure investments, including Grant Funds under the TIGER Discretionary Grants program, the Governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment (1) received the full review and vetting required by law; and (2) that the chief executive accepts responsibility that it is an appropriate use of taxpayer dollars. This Certification must be executed and posted on a Web site and linked to Recovery.gov prior to the recipient of a TIGER Discretionary Grant receiving Grant Funds. If the potential project is a highway or transit project and it is included in the Statewide Transportation Improvement Program (STIP) with the specific information required by Section 1511 (a description of the investment, the estimated total cost, and the amount of ARRA funds to be used), it may be included in the Governor's Section 1511 Certification covering highway and transit projects in a State. One way for the Governor's Certification to satisfy the Section 1511 requirement, is for the Certification to state that the project is included in the STIP and therefore has completed the TIP/STIP planning process. In this case, the Governor's Certification must also provide a link to the public web posting of the STIP that includes (or will include) any highway and transit project designated to receive Recovery Act funding. If the project is not included in the STIP, a separate Certification for the potential TIGER Discretionary Grant project must be executed, attaching the relevant information or linking to a public Web site where the information may be obtained. This Certification must include a description of the investment, the estimated total cost, and

the amount of covered funds to be used, and must be posted online and linked to the Web site Recovery.gov. The Certification must also state that the projects have been properly reviewed and vetted and are an appropriate use of taxpayer dollars.

All Certifications, once executed, shall be submitted to the Secretary of Transportation, c/o Joel Szabat, Deputy Assistant Secretary for Transportation Policy, at [TigerTeam.Leads@dot.gov](mailto:TigerTeam.Leads@dot.gov). Certifications may be submitted via e-mail as electronic, scanned copies, with original signed versions to follow via U.S. mail. As required by the Recovery Act, Certifications under Section 1511 shall be immediately posted on a Web site and linked to the Web site Recovery.gov.

#### **XI. Questions and Clarifications**

Questions about this notice should be submitted to the TIGER Discretionary Grants program manager via e-mail at [TIGERGrants@dot.gov](mailto:TIGERGrants@dot.gov). The Department will regularly post answers to these questions and other important clarifications on the Department's Web site at <http://www.dot.gov/recovery/ost/>.

Issued On: June 12, 2009.

**Ray LaHood,**

*Secretary.*

[FR Doc. E9-14262 Filed 6-16-09; 8:45 am]

**BILLING CODE 4910-9X-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

[Docket No. FRA-2009-0001-N-13]

#### **Notice and Request for Comments**

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on April 6, 2009 (74 FR 15588).

**DATES:** Comments must be submitted on or before July 17, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS-21, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 17, Washington, DC 20590 (telephone:

(202) 493-6292), or Ms. Nakia Jackson, Office of Information Technology, RAD-20, Federal Railroad Administration, 1200 New Jersey Ave., SE., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493-6073). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, Section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501-3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On April 6, 2009, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. 74 FR 15588. FRA received no comments after issuing this 60-day notice. Accordingly, DOT announces that these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507(b)-(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The current requirements are being submitted for clearance by OMB as required by the PRA.

*Title:* Stenciling Reporting Mark on Freight Cars.

*OMB Control Number:* 2130-0520.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Railroads.

*Abstract:* Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private