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Private mass transit operators were surveyed to obtain general information about the mass transit industry and its relationship with the Urban Mass Transportation Administration (UMTA). Findings/Conclusions: Most of the private mass transit companies who responded carried fewer than 200,000 persons annually and were not financially sound. Private operators do not understand UMTA's financial assistance programs. Although UMTA has not actively discouraged private operators from seeking grant assistance, it has not encouraged them to obtain assistance or determined whether such operators need help in meeting procedural requirements for financial assistance. UMTA's primary method of preserving existing transit services has been to provide about \$200 million in Federal grant funds to assist cities in acquiring private mass transit companies. UMTA's policies and procedures do not adequately consider private operators. Recommendations: To assist private operators, UMTA should inform private companies about available Federal financial assistance programs, and provide assistance in applying for Federal grants. (BRS)

01774

REPORT TO THE CONGRESS

*BY THE COMPTROLLER GENERAL
OF THE UNITED STATES*



Private Companies Should Receive More Consideration In Federal Mass Transit Programs

**Urban Mass Transportation Administration
Department of Transportation**

The Urban Mass Transportation Administration's grant program benefits public and private companies. Public companies can apply directly for funds but a private company must be sponsored by a public agency. Most private companies were not financially sound and did not seek financial assistance. Some said this was because they did not understand the program; others said they could not find a public sponsor.

The law provides protection to private operators by assuring that no assistance shall be provided to an applicant unless its transportation program provides for maximum participation of private operators. The agency has had no clear policies to determine this.



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-169491

To the President of the Senate
and the Speaker of the House of Representatives

This is our report on the private mass transit industry and the industry's relationship with the Department of Transportation's Urban Mass Transportation Administration. It discusses the Federal agency's need to be more concerned with private mass transit operators.

We made our review pursuant to the Budget and Accounting Act of 1921, (31 U.S.C. 53), and the Accounting and Auditing Act of 1950, (31 U.S.C. 67).

We are sending copies of this report to the Director, Office of Management and Budget, and to the Secretary of Transportation.

A handwritten signature in black ink, reading "James A. Stutz".

Comptroller General
of the United States

C o n t e n t s

	<u>Page</u>
DIGEST	i
CHAPTER	1
1 INTRODUCTION	
Scope of review	3
2 UMTA AND PRIVATE TRANSIT COMPANIES	5
UMTA financial assistance	
affecting private mass transit	
companies	6
Recommendations and agency	
comments	7
Characteristics of private mass	
transit companies	7
Private operators lack a clear	
understanding of UMTA's programs	11
Conclusions	13
Recommendations	13
Agency comments and our	
evaluation	14
UMTA's policies and procedures	
do not adequately consider	
private operators	15
Conclusions	19
Recommendations	20
Agency comments and our	
evaluation	20
APPENDIX	
I Letter dated October 1, 1976, from the	
Assistant Secretary for Administration,	
Department of Transportation	22
II Principal officials responsible for	
administering activities discussed	
in this report	28

ABBREVIATIONS

MPO	Metropolitan Planning Organization
UMTA	Urban Mass Transportation Administration

D I G E S T

In 1964 the Congress passed the Urban Mass Transportation Act, designed to provide financial assistance to both public and private mass transportation systems. Congressional debate indicates that the act would help save the private transit industry.

Whereas public agencies can apply directly to the Urban Mass Transportation Administration for urban mass transportation funds, private companies cannot. But, private mass transit companies may benefit through contracts with public agencies. (See pp. 2 and 6.)

The Transportation Administration did not know how many private companies existed and did not have a system to inform the companies of the agency's financial assistance program. (See p. 13.)

Historically, public transit systems have solicited and obtained Federal mass transit funds more than private transit systems. As of September 30, 1976, about \$5.7 billion was approved for capital grant projects. Almost \$5 billion benefited about 300 public transit systems; and \$725 million benefited 127 private transit systems, 20 of which were later taken over by public agencies. About 90 percent of the public transit systems have received Federal assistance, compared to about 16 percent of the private transit systems. (See p. 6.)

Nationally, private bus and rail companies carry about 10 percent of the Nation's mass transit passengers. Even though this is a small percent of the total, without these private companies many people may have to use private automobiles. (See p. 5.)

To obtain information about the private mass transit industry and its relationship to the Urban Mass Transportation Administration, GAO mailed questionnaires to 682 private mass transit companies, and 450 responded. Most of these companies, except for commuter railroads, were small firms and were not financially sound. The majority of the respondents said they could not meet all capital and operating needs from their operating revenues; however, most of them did not seek Federal financial assistance. (See pp. 3 and 11.)

Some did not apply because they did not understand the Urban Mass Transportation Administration's financial assistance programs. They either doubted their eligibility for Federal assistance or did not understand the application policies and procedures. Others could not find public agencies to sponsor their applications. (See p. 11.)

To help private operators, the Urban Mass Transportation Administration should:

- Inform the existing private companies about the Federal financial assistance programs, and, where necessary, provide these companies with assistance in applying for Federal mass transit grants.
- Identify reasons why private operators cannot find a public agency to sponsor their applications and determine possible remedies. (See p. 13.)

Two sections of the Urban Mass Transportation Administration Act provide protection for private companies. Under section 3(e), an applicant shall not receive financial assistance unless an officially coordinated transportation program for the applicant's area provides, "to the maximum extent feasible," for private companies to participate in mass transit operations. Section 4(a) states that no Federal assistance shall be provided for facilities and equipment unless such assistance is needed to carry out a program for an officially coordinated transportation system. Such a program should encourage "to the

maximum extent feasible," the participation of private enterprise. (See p. 15.)

Urban Mass Transportation Administration officials disagree about the meaning of section 3(e) and have had difficulty interpreting the phrase "to the maximum extent feasible." They have no clear policies or criteria for making 3(e) findings. Although a 3(e) finding is now in every grant file, it is simply a standard statement that the finding is justified, with no specific documentation. Without criteria explaining what constitutes such findings, it is not clear what documentation would be sufficient. (See pp. 16 and 18.)

In the past, the Urban Mass Transportation Administration's regulations and certifications of the transportation planning process, required by section 4(a) have not referred to private companies; and, provisions have not been made for including private companies in transportation plans and programs. No internal agency guidelines tell agency planning staff to look for section 3(e) issues in transportation plans and programs. Neither potential planners nor applicants are required to ask private companies how proposed transportation plans and programs will affect them. (See p. 16.)

If private companies are to be adequately considered, the Urban Mass Transportation Administration should:

- Establish written criteria for making 3(e) findings and require documentation in grant files supporting these findings.
- Include in its instructions to grant applicants information on what is needed to show that private companies have been included "to the maximum extent feasible." The criteria which is used to make 3(e) findings and a requirement that private companies be identified and given written notice of public hearings for grant applications should be part of these instructions.
- Include in its instructions to urban mass transportation planners requirements that they perform a 3(e) analysis, which includes written

comments by private companies on what effect the transportation plans or programs will have on them, and that they give this analysis to the Urban Mass Transportation Administration.

--Issue internal instructions requiring Urban Mass Transportation Administration planning staff to consider section 3(e) and 4(a) issues when making annual certifications and evaluations of the transportation planning process. (See p. 20.)

The Department of Transportation said (1) that the Urban Mass Transportation Administration recognizes that private companies need more opportunities for involvement in local transportation programs and (2) that recent agency activities strengthen that involvement. The Department also said that:

--More efforts will be made to inform private companies of the mass transit financial assistance programs.

--Identifying reasons why private companies cannot find public agencies to sponsor them and determining possible remedies by conducting a special study are of limited usefulness but if possible, when such matters are brought to its attention through routine procedures, the reasons for lack of public agency sponsorship will be identified and remedies sought.

--Proposed rules to be published in the Federal Register will implement sections 3(e) and 4(a) of the act.

--The new external operating manual will require that evidence to support a 3(e) finding be included in transportation programs.

--Internal instructions will be issued on 3(e) and 4(a) issues once its external operating manual and proposed rules are completed. (See app. I.)

CHAPTER 1

INTRODUCTION

During the early part of the twentieth century, mass transit prospered. By the late 1920s almost 14 billion revenue passengers were riding mass transit annually. However, with the growing popularity of the automobile, ridership began to decline. By 1933, ridership was down to 9 billion revenue passengers.

During World War II, with gasoline rationing and no new automobiles being manufactured, people turned to mass transportation for their travel needs. In 1946, the alltime peak year, 19 billion revenue passengers used mass transit. However, after the war, as the Nation grew and prospered, people became increasingly dependent on the automobile and the mass transportation industry once again began to decline. Faced with decreasing ridership and increasing costs, private investors withdrew capital from the mass transit business. The number of private transit companies (bus and rail) fell from 1,380 in 1950 to 614 in 1975. The following table illustrates this decline for selected years.

<u>Year</u>	<u>Number of private transit companies</u>
1950	1,380
1955	1,450
1960	1,197
1965	1,070
1970	935
1975	614

In some cases the demise of private mass transit companies resulted in no mass transportation and an increased dependency on the automobile, while in other cases public agencies began to operate mass transit systems. Today, urban mass transportation is a public function in most large cities, and except for railroads, most of the private companies are small operations. The loss of profits and patronage in this industry has had few parallels.

The Nation began to realize that the increasing dependency on the automobile was lowering the quality of life, especially in urban areas. Living space, energy resources, and the environment were all being adversely affected by the automobile. Large cities were plagued by traffic congestion, failing commuter rail services, and high costs of renewing and improving transit services.

The Congress and the executive branch realized that the welfare and vitality of expanding urban areas was being jeopardized by the deterioration or inadequate provision of urban transportation services. In 1961 the first Federal legislation directed at urban mass transportation improvement was passed as part of the Housing Act of 1961 (Public Law 87-70 section 303). It included funds for a long term, low-interest loan program; grants for transportation planning; and grants for demonstration projects. Then in 1964, the Congress passed the Urban Mass Transportation Act (49 U.S.C. 1601) which went beyond the 1961 legislation by authorizing a new program of Federal grants for the purchase of capital equipment in order to provide for the development of comprehensive and coordinated mass transportation systems, both public and private, in metropolitan and other urban areas.

The purposes of the 1964 act are to (1) assist in the development of improved mass transportation facilities, equipment, techniques and methods, with the cooperation of both public and private mass transit companies, (2) encourage the planning and establishment of urban mass transportation systems with the cooperation of both public and private mass transportation companies, and (3) assist State and local governments in financing such systems, to be operated by public or private mass transportation companies as determined by local needs. Although private transit systems can benefit from the act, they can obtain assistance only through contractual arrangements with public agencies, such as a public transit authority.

Section 3 of the act authorizes a capital grant program which provides Federal financial assistance for

- capital grants for the acquisition, construction, reconstruction, and improvement of facilities and equipment and
- capital loans for the advance acquisition of real property for future transportation use.

Capital grants may be made in an amount equal to 80 percent of the net project cost--that part of the project cost which the Federal Government determines cannot reasonably be financed from revenues. The remainder of the project cost must be provided from other than Federal funds. Despite Federal capital funds, operating assistance remained an unmet need. This threatened the continuation of mass transit systems throughout the country. The Congress, recognizing this, amended the Urban Mass Transportation Act in November 1974 to include an operating subsidy

program. Section 5 of the act now authorizes formula grants for use in either mass transportation capital or operating assistance projects.

Formula grants for capital assistance may not exceed 80 percent of the net project cost. Formula grants for payment of operating expense subsidies may not exceed 50 percent of the cost of operating expense projects.

As in the section 3 program, only public agencies are eligible to receive Federal funds; private transit companies may benefit through contractual arrangements with the public agencies. However, eligibility for operating assistance is limited to urbanized areas of 50,000 or more people.

Both the section 3 and section 5 programs are administered by the Urban Mass Transportation Administration (UMTA), Department of Transportation.

SCOPE OF REVIEW

More than 10 years have passed since the original Urban Mass Transportation Act became law, and little information is available about the remaining private mass transit operators. To obtain information about the private mass transit industry and its relationship with UMTA, we have tried to identify and contact the remaining private operators. With the assistance of the American Public Transit Association, the United Bus Owners Association, the American Automobile Association, the Association of American Railroads, and trade magazines and books, we obtained the names of 918 private mass transit operators that were believed to be operating.

By mass transit we mean transportation service provided to the public on a regular and continuing basis. We included three modes of transportation in our review--bus, rail, and ferryboat. We developed and mailed questionnaires to the 918 companies identified in order to obtain general information about the private mass transit industry. Of the original group we found that at least 236 were either out of business or not providing mass transit service. From our reduced pool of 682 private operators--595 bus companies, 19 railroad companies and 68 ferryboat companies--450 responded to our questionnaire.

The information gathered from the questionnaire indicated basic characteristics of the private mass transit companies, such as the types of service provided, size, and ridership, and the capital and operating needs of the companies. We also obtained information on their involvement with and opinions of UMTA.

We discussed UMTA's policies and procedures relating to private mass transit companies with UMTA officials at UMTA headquarters in Washington, D.C.; officials of private industry associations, and selected private transit operators. We reviewed legislation; and UMTA policies, procedures, and selected records.

CHAPTER 2

UMTA AND PRIVATE TRANSIT COMPANIES

Most of the private mass transit companies that responded to our questionnaire, excluding commuter railroads, were small firms, serving geographical areas of less than 200,000 people, using fewer than 10 vehicles in their mass transit operations, and carrying fewer than 200,000 people a year. According to the American Public Transit Association, private transit operators (excluding ferryboats) carried about 560 million revenue passengers in 1975, or about 10 percent of the Nation's mass transit ridership. Without these private operators, and unless public agencies provided such services, many people could be without transportation, or could turn to private automobiles and add to the congestion, pollution, and energy drain.

Most of the private mass transit companies that responded were not financially sound and the majority of them indicated that they had both capital and operating needs which they could not meet from their operating revenues. Although the legislative history of the Urban Mass Transportation Act indicated that its provisions should benefit both public and private operators, in the past public transit systems have solicited and obtained Federal mass transit funds more than private transit systems.

Although UMTA has not actively discouraged private operators from seeking grant assistance, it has not encouraged private operators to obtain assistance or determined whether such operators need help in meeting procedural requirements for financial assistance. Many private operators indicating a financial need had not applied to UMTA for assistance. Two of the primary reasons were their doubts about eligibility and an inability to find a public agency to sponsor their application.

In addition to financial assistance the act also gives protection to private operators. Section 4(a) of the act states, in part, that no Federal financial capital or operating assistance will be provided under the act to any public body unless a unified or coordinated urban transportation system program is developed which encourages, "to the maximum extent feasible," the participation of private transit companies. Section 3(e) includes a provision requiring the Secretary to find that private operators have been included "to the maximum extent feasible" in the transportation program before financial assistance can be given. As of October 1, 1976, UMTA had no clear policies or criteria for making 3(e) findings and had not considered the role of

private transit companies in transportation plans or programs in making 4(a) findings.

UMTA FINANCIAL ASSISTANCE AFFECTING PRIVATE MASS TRANSIT COMPANIES

According to the language and history of the act, UMTA is to aid private as well as public transit systems. Congressional debate indicates that the act would help save the private mass transit industry. The Congress wanted to assure that privately owned transportation companies would receive fair and equitable treatment and that only rarely would they be bought out.

As of September 30, 1976, almost \$5.7 billion had been approved for capital projects funded under section 3 of the act. Of 707 capital grants approved for the Nation's transit systems we found that 77, or about 11 percent, assisted 127 private mass transit companies--11 railroads including the Penn Central and Reading which merged into ConRail ¹/ in April 1976, and 116 bus companies including 56 small bus owners in New Jersey. In some grants, assistance was provided for more than one private mass transit company. These 77 grants have provided \$725 million, or about 13 percent of the Federal dollars approved under section 3. Most of this assistance went to the railroad companies as shown in the following table.

	<u>Number of companies</u>	<u>Amount of Federal grants</u> (millions)
Rail	11	\$618
Bus	<u>116</u>	<u>107</u>
Total	<u>127</u>	<u>\$725</u>

Of these 127 private mass transit companies, 13 bus companies were subsequently bought out by public bodies with UMTA funds and 7 more were bought out by public bodies without UMTA funds.

¹/ConRail was created by the Regional Rail Reorganization Act of 1973, as amended, to acquire and operate the rail property of the seven bankrupt carriers in the Midwest and Northeast regions of the country--Penn Central, Central of New Jersey, Erie Lackawanna, Reading, Lehigh Valley, Ann Arbor, and Lehigh and Hudson Rivers. ConRail began operations on April 1, 1976.

Of the estimated 682 private mass transit companies in existence, 107 have benefited from UMTA's capital grant program while about 300 of the 333 public transit systems have benefited. However, public transit companies carry about 90 percent of the Nation's mass transit passengers and have received about 87 percent of the UMTA capital grant funds.

Major effects of the act have been to stem the decline in mass transit ridership and to revitalize the industry. This has been accomplished, in many instances, by public agencies with UMTA funds acquiring the assets of private mass transit companies and modernizing the systems. As of December 31, 1975, about 177 transit systems in over 100 cities had been taken over by public bodies with Federal capital grant assistance of over \$189 million. As of September 30, 1976, 10 more such acquisitions, costing an additional \$11 million in Federal funds, were made, bringing the total to 187 companies at a cost of over \$200 million in UMTA capital grant funds.

We have not been able to determine the impact of UMTA's operating subsidy program under section 5 on private mass transit companies. Although UMTA has a list of public agencies receiving section 5 funds, it has not identified the private mass transit companies which have received assistance through contractual agreements with public agencies. Without knowing who ultimately receives section 5 funds, UMTA management does not have a basis for assessing its role in helping private transit companies or evaluating the impact of the operating subsidy program.

Recommendations and agency comments

We recommend that the Secretary of Transportation require the Administrator of UMTA to identify the private mass transit companies that have received section 5 assistance and the amount of such assistance.

In commenting on this report (see app.I), Department of Transportation officials agreed with the recommendation and stated that their reporting system, now being developed, will routinely make section 5 financial information available.

CHARACTERISTICS OF PRIVATE MASS TRANSIT COMPANIES

Of the 450 private mass transit companies that responded to our questionnaire, 390 were bus operators, 13 were railroads, and 147 were ferryboat operators. All the companies told us that they provided mass transit service, which we had defined

as transportation service provided to the public on a regular and continuing basis. The primary service provided by ferryboat companies was commuter boat service, while the railroad companies generally provided intercity and suburban service. The most common mass transit services provided by bus companies were intercity, city transit, and suburban service.

Many of these private mass transit services were being provided in small urban areas. As indicated in the following table, over 60 percent of the bus companies and 80 percent of the ferryboat companies served population areas of less than 200,000. This was not true of railroad companies, which generally served urban areas of 1 million or more.

Population size of geographical <u>area served</u>	<u>Bus</u> <u>companies</u>	<u>Railroad</u> <u>companies</u>	<u>Ferryboat</u> <u>companies</u>
Less than 5,000	2%	0%	34%
5,000 to 49,999	32	0	23
50,000 to 199,999	27	8	23
200,000 to 999,999	25	0	7
1,000,000 or more	<u>14</u>	<u>92</u>	<u>13</u>
Total	<u>100%</u>	<u>100%</u>	<u>100%</u>

Commuter rail service operated primarily in the heavily populated areas of the east coast and the midwest. The majority of private bus companies were located in the eastern part of the United States, especially in Massachusetts, New Jersey, New York, and Pennsylvania. Comparatively few were located west of the Mississippi River except in the States of Texas, California, and Washington. Ferryboat operations were scattered nationwide.

Because the majority of private bus and ferryboat companies were providing service in small areas, the number of mass transit passengers carried by these companies was small compared to the private railroad companies who serve larger urban areas. Over 50 percent of the bus companies and over

60 percent of the ferryboat companies transported 100,000 or less passengers per year. In contrast, all the railroad companies transported more than 100,000 passengers. The following table shows the number of mass transit passengers carried by our respondents in calendar year 1974.

<u>Number of mass transit passengers carried</u>	<u>Bus companies</u>	<u>Railroad companies</u>	<u>Ferryboat companies</u>
Less than 50,000	34%	0%	29%
50,000 to 100,000	17	0	32
100,001 to 200,000	11	8	21
200,001 to 500,000	12	15	13
500,001 to 1,000,000	9	0	5
1,000,001 or more	<u>17</u>	<u>77</u>	<u>0</u>
Total	<u>100%</u>	<u>100%</u>	<u>100%</u>

The number of vehicles used also indicated the size of the existing private companies. Over 55 percent of the bus companies and 75 percent of the ferryboat companies said that they used 10 or fewer vehicles in their mass transit service. However, the majority of railroad companies responding used 51 or more railcars.

About 90 percent of the bus companies, 100 percent of the railroad companies, and 50 percent of the ferryboat companies responding said that they had capital or operating needs that they could not meet with their mass transit operating revenue. Many private bus companies are using revenue generated from nonmass transit services to subsidize their mass transit operations. Although the private ferryboat and railroad companies were not generally providing nonmass transit service, many of the private bus company respondents have told us they were providing nonmass transit services, such as charter, sightseeing, and school service. When taking all operating revenues into account, 70 percent of the bus companies, 100 percent of the railroad companies, and 24 percent of the ferryboat companies responding have indicated that they could not meet such mass transit needs as the following:

<u>Percent of respondents</u>	<u>Unmet needs</u>
85	Replacement of old equipment
71	Operating expenses
49	Expansion of service through equipment acquisition

Many of these operators said that if they continue to experience unmet capital operating needs they will probably increase fares or cut back on regular service. It is doubtful that these two actions will be beneficial, as they both may lead to a decrease in revenue passengers, resulting in revenue loss and the perpetuation of unmet needs.

A large number of private operators have experienced operating deficits and it is anticipated that, at least for bus companies, the number will increase. The following table shows the percent of private operators who had an operating deficit before taxes for 1970 through 1975 and their anticipated financial situation for 1976.

<u>Fiscal year</u>	<u>Percent reporting operating deficit</u>		
	<u>Bus</u>	<u>Railroad</u>	<u>Ferryboat</u>
1970	64	92	23
1971	65	92	25
1972	66	92	32
1973	69	92	19
1974	72	92	23
1975	78	100	24
1976 (anticipated)	79	100	23

Most respondents were experiencing operating deficits, which could result in cessation of service. About 70 percent of our respondents have said that there was no public transit system serving the same area as they served, and, 67 percent of this group have indicated that they anticipated an operating deficit in fiscal year 1976. If these private operators go out of business and no public agency provides the service, many people will have to turn to the automobile or be without transportation.

Federal financial assistance does cover operating subsidies, but only for population areas of 50,000 or more. Railroad companies did not serve these small areas, but some bus and ferryboat companies did. Although seventy percent of the bus companies and 12 percent of the ferryboat companies that served population areas of less than 50,000, anticipated an operating deficit in fiscal year 1976, they would not be eligible for this financial assistance.

Legislation was pending in the 94th Congress which would have provided Federal grants to population areas of less than 50,000 for operating subsidies. Presently, the act sets aside \$500 million to finance planning or capital projects for areas of less than 50,000 people. Two bills before the Congress, S.662, which had passed the Senate, and H.R. 3155, which was pending in the House, would have authorized expenditure of \$250 million of the \$500 million for subsidizing operating expenses. However, neither bill was enacted before adjournment in October 1976.

PRIVATE OPERATORS LACK A CLEAR UNDERSTANDING OF UMTA'S PROGRAMS

Private operators do not understand UMTA's financial assistance programs. Although 82 percent of the respondents had capital or operating needs that they could not meet through their mass transit revenues, only 10 percent had applied for UMTA assistance. This low proportion of applications can only be partially accounted for by a lack of awareness of UMTA's programs. Over 70 percent of the respondents had heard of UMTA and almost 60 percent knew Federal financial assistance was available to private operators. They had heard about this assistance primarily through State and local officials or through private trade associations.

Many private operators who were aware of UMTA's programs, lack a clear understanding of how the programs work. Many doubted their eligibility for assistance; others said that they were not able to obtain a public agency to sponsor an application. The following table lists the reasons given by these operators for not applying to UMTA.

Percent of
respondents
(note a)

Reasons given

39	Doubted eligibility for such assistance
31	Not able to get a public agency to sponsor the application
20	Had difficulty with UMTA's policies and procedures in applying for funds
13	Did not want to get involved with the Federal Government
10	Did not want to get involved with UMTA because Federal capital assistance may lead to public takeover
9	Told that they were not eligible
7	Satisfied needs by State or local funds
6	Satisfied monetary needs through operating revenues
6	Satisfied needs by commercial sources
5	Thought there would be problems with the employee protection requirement in Federal law.

a/ Does not total to 100 percent because some respondents provided more than one reason.

One of the reasons eligibility for assistance was doubted may be a misconception private operators had about UMTA's programs. Of the respondents who knew that UMTA could provide financial assistance to private operators, about 45 percent thought that having an operating deficit was a prerequisite for eligibility. The act does not state that having an operating deficit is a condition for receiving assistance. UMTA will provide capital grant funds to cover 80 percent of the cost of a project which it determines cannot reasonably be financed from revenues.

We made followup contacts with those respondents who indicated that they had difficulty with UMTA's policies and procedures. Red tape and length of time to prepare applications were mentioned as problems. What was most clear, however, was that private operators lacked information about UMTA's policies and procedures.

We also contacted some respondents who said that they could not find a public agency to sponsor an application. No single reason predominated; however, some of the respondents believed that local politics and a lack of local matching funds were responsible.

UMTA has not developed a list of private operators or a system to inform private operators of UMTA's financial assistance programs or of private operators' rights under the act. UMTA does have an informal arrangement where one official in UMTA's Office of Transit Management, designated as transit industry liaison, responds to private operators' requests for information.

Conclusions

Historically one of UMTA's primary purposes has been the preservation or stabilization of existing transit service. Although UMTA has given financial assistance to private mass transit companies, its preservation of transit service has primarily been through providing about \$200 million in Federal grant funds to assist cities in acquiring private mass transit companies. Private mass transit companies are in financial trouble; not all private systems having financial problems want to be taken over by public agencies.

At the time we developed our questionnaire, UMTA did not know how many private transit operators there were. Thus it had no means for communicating directly with such operators and informing them of available assistance. If UMTA is to help the existing private mass transit systems, it will need to make more of an effort to distribute information to them.

Recommendations

We recommend that the Secretary of Transportation require the Administrator of UMTA to:

- Inform the existing private companies about the Federal financial assistance programs and, where necessary, provide these companies with assistance in applying for Federal mass transit grants.

--Identify reasons why private operators cannot find a public agency to sponsor their applications and determine possible remedies.

Agency comments and our evaluation

In responding to our recommendations that UMTA inform the private companies about Federal financial assistance programs (see app.I), the Department of Transportation indicated that UMTA had prepared an informational brochure on UMTA programs available to assist nonurbanized areas. This brochure, dated February 1976, was distributed to groups, such as the International Taxicab Association, the National Association of Motor Bus Owners, the American Public Transit Association, and the National School Transportation Association.

Department officials said that more efforts will be made to inform private operators of UMTA programs, especially through their trade associations. We believe this is a positive step, but that more direct information is needed. Although we did not ask our questionnaire respondents if they belonged to the International Taxicab Association or the National School Transportation Association, we did ask about membership in the American Public Transit Association and the National Association of Motor Bus Owners. Only 48 of our 450 respondents belonged to the former organization, and 162 belonged to the latter. We believe that a brochure specifically explaining UMTA's programs and the impact that such programs may have on private transit companies should be prepared and sent directly to private transit companies. This would provide greater assurance that private transit companies are informed about UMTA programs and their relationship to them.

Department officials stated that identifying reasons why private operators could not find a public agency to sponsor their applications and determining possible remedies would be of limited use, but said that where possible, the reasons will be identified and remedies sought. An UMTA official clarified this response by saying that UMTA believed conducting a separate study would not be very useful but that when such matters are brought to its attention under routine procedures, it would try to identify reasons and seek remedies. Finding out why public agencies did not sponsor private operators may reveal shortcomings in present policies and procedures and could provide information which would support changes to such policies and procedures. Further, this action, along with the policy statements and

new procedures discussed on pages 17 through 19 would reinforce UMTA's commitment to provide assistance to privately owned as well as publicly owned mass transportation companies.

UMTA'S POLICIES AND PROCEDURES DO NOT ADEQUATELY CONSIDER PRIVATE OPERATORS

A few respondents complained about UMTA in their general observations about the UMTA programs, as shown in the following chart.

<u>Percent of respondents</u>	<u>Complaints</u>
9	Private operators should be able to go directly to UMTA for aid without having to go through public agencies
4	UMTA helps public transit operators, not private transit operators
4	Public transit authorities, receiving UMTA funds, are pushing private operators out of business
3	UMTA is concerned with large operators, not small ones

Consequently, we looked into UMTA's policies regarding those sections of the act which afford some protection to private mass transit companies. The Congress was concerned about the role of private transit operators in providing mass transit service. While the Senate and House reports stated that the Federal Government should be neutral in the decision of whether a private company or public agency operates the transit system, debate showed that the Congress wanted assurances that publicly owned transportation companies would not be favored over private mass transit companies. Amendments were introduced in both the Senate and the House to assure this. One of these amendments became section 3(e) which states that no Federal financial assistance shall be provided under the act to any public agency for the purpose of acquiring assets of a private mass transit company, or for providing service which is competitive or supplementary to the service provided by an existing mass transportation company unless

--the Secretary of Transportation finds that such assistance is essential to a program for a unified or officially coordinated urban transportation system;

- the Secretary of Transportation finds that such a program, to the maximum extent feasible, provides for the participation of private mass transportation companies;
- just and adequate compensation will be paid to private mass transit companies for their franchises or property to the extent required by applicable State or local laws; and
- the Secretary of Labor certifies that such assistance complies with 13(c) of the act which requires, as a condition of UMTA assistance, that fair and equitable arrangements be made to protect the interests of employees affected by such assistance.

Another amendment was included in section 4(a) which states in part, that no Federal financial assistance shall be provided under section 3 unless the Secretary determines that the facilities and equipment, for which assistance is sought, are needed to carryout a program for a unified or officially coordinated urban transportation system. Such a program shall encourage, to the maximum extent feasible, the participation of private enterprise. UMTA's Office of Planning Assistance evalutes the process which results in transportation plans and programs and annually certifies that they meet section 4(a) requirements.

UMTA officials have disagreed over the interpretation of 3(e) and have had difficulty interpreting the phrase "to the maximum extent feasible." UMTA has had no clear policies or criteria for making 3(e) findings, and in the past, findings have not been made for all grant applications. When findings are made, UMTA staff relies on information provided in the application, which includes a description of mass transit service provided in an applicant's area, public hearings, site visits reports, and a planning evaluation and certification provided by UMTA's Office of Planning Assistance. No input is required of private operators who might be affected.

The planning evaluations and certification required by section 4(a) of the act and used by UMTA to help make 3(e) determinations did not refer to private operators, and there have not been adequate provisions for including private operators in transportation plans and programs. UMTA's Office of Planning Assistance considered the inclusion of private operators a low-priority issue. According to UMTA officials, no real determination was made of whether private operators

were included to the maximum extent feasible in plans or programs. UMTA guidelines explaining how to comply with section 4(a) did not mention private operators except to state that private interests should be represented on technical or advisory committees or in other appropriate ways. We conducted telephone interviews with those private operators who indicated in the questionnaire that they needed financial assistance but could not find a public sponsor or had trouble with UMTA's policies and procedures. About half of those interviewed told us that, while they were aware of an urban transportation program for their area, they were not involved in either developing the program or serving on an advisory committee.

Historically, UMTA has not considered the role of private transit operators to be important. UMTA officials have said that most private operators wanted to go out of business because they could not make a profit. Thus, determining whether private operators had been included to the maximum extent feasible in transportation plans or programs for an area was viewed as a moot issue. Further, UMTA has viewed the decision to operate a transit service by a public authority rather than by a private operator as a local decision. However, UMTA officials have said that they have an unwritten policy of encouraging public transit authorities to cooperate with private operators, including acceptance of transfers between the two systems and refraining from undercutting fares. Although UMTA does not have the authority to require a public entity to purchase the assets of a private company which is going out of business, it encourages public authorities to purchase the assets rather than simply letting the private company end operations one day, while the public system starts a new operation the next day.

UMTA officials have told us that their policy towards private operators is changing because UMTA has become concerned about the private industry, including paratransit operators, such as taxicabs. UMTA's Associate Administrator for Policy and Program Development has stated that, while UMTA believes the issues of what service is provided and who is best qualified to provide it are matters of local concern, it will review programs and individual applications to insure that private operators have been given sufficient opportunity to participate in any arrangements for the provision of service.

The Associate Administrator said in a January 1976 speech that "subsidizing publicly owned companies in * * * communities in direct competition with private operators would be a wasteful and disruptive action resulting in ruinous competition from which no one would benefit." However, UMTA

officials said that they would not necessarily refuse to grant funds to an applicant simply because there was competitive or supplemental service to a private operator's service. UMTA officials stated that a 3(e) finding becomes most important when there is competitive or supplemental service because UMTA wants to be certain that private operators have been given the opportunity to participate in transit operations. If UMTA is assured of this and feels that private operator participation is still not feasible, it will award the grant.

According to UMTA officials, a 3(e) finding is now included in every grant approval. We checked 23 grants that have been awarded during the first 5 months of calendar year 1976 and found that while there was a 3(e) finding in every grant file, it was simply a standard statement that there is adequate justification that the transportation program, "to the maximum extent feasible," provides for the participation of private mass transportation companies. We could find no documentation unique to each grant which would justify the 3(e) findings made.

UMTA is presently writing a new external operating manual to be used as an applicant's handbook for preparing section 3 and 5 grant applications. The draft of the new manual states that as a condition for UMTA funding of sections 3 and 5 projects, the applicant must meet the planning and programming requirements of the act, and the requirements of joint UMTA-Federal Highway Administration planning and programming regulations issued in September 1975. Under these new regulations an urbanized area, through a Metropolitan Planning Organization (MPO)^{1/} must develop a transportation plan. UMTA makes an annual certification of compliance with section 4(a) of the act based on an urban area's planning process. This certification is required before an area can be eligible for UMTA funds. The joint regulations stipulate that "the urban transportation planning process shall include consideration of existing private mass transportation services." Projects anticipated for the next 3 to 5 years must be included in a transportation improvement program for the urbanized area.

According to the head of the task force which was developing the manual and one of UMTA's Assistant Chief

^{1/} The MPO is an organization designated by the Governor of a State for developing transportation plans and programs in a given geographical area. The principal elected officials of the local governments within an MPO's jurisdiction should be represented.

Counselors, the new procedures will better provide for the protection and inclusion of private operators in transportation plans and programs. Under the new procedures UMTA will require certain documents from the MPO; one of these documents is an analysis in relation to section 3(e) of the act. MPOs will have to determine if private operators can meet all or any of the transportation needs set forth in the grant application. If private operators are not to be included in a transportation plan or program, MPOs will have to give specific reasons explaining their exclusion. Private operators are to be identified and given written notice of public hearings during which the transportation improvement program will be available for review.

We noted, however, that neither the aforementioned section 3(e) analysis by the MPO nor the private operator's receipt of written notice of public hearings are in the proposed external operating manual. The proposed draft does say that a project application must contain assurances that the applicant's program either provides for or encourages participation of private mass transportation companies to the maximum extent feasible. However, the draft manual does not describe the information needed to make these assurances.

Staff from the Office of Planning Assistance told us that, as yet, there are no internal guidelines telling UMTA planning staff to look for section 3(e) issues in transportation plans and programs or specifying that written notice of public hearings will be required. However, these officials told us that the annual certification of compliance with section 4(a) is the point at which UMTA should find out if private operators have been considered.

Conclusions

Although there is a growing concern for private mass transit companies among UMTA officials, they have not issued any guidelines or policies to potential planners and applicants concerning adequate procedures and documentation to show that private mass transit companies have been included in the planned transit operations. Potential planners or applicants are not required to ask private operators how proposed transportation plans and programs will affect them; and UMTA has not sought the input of private operators. Also, a section 3(e) finding written by UMTA staff in standardized language without specific documentation does not provide UMTA management with information on how it was determined that private operators have been included to the maximum extent feasible. Without criteria explaining what constitutes such findings, it is not clear what documentation would be sufficient.

If UMTA is to insure that private operators are given adequate consideration as set forth in the act, it needs to solicit and consider the views of private operators to determine the impact that proposed transportation plans and programs will have on their operations. Also, UMTA needs to clarify what constitutes adequate consideration of private operators.

Recommendations

We recommend that the Secretary of Transportation require the Administrator of UMTA to:

- Establish written criteria on which 3(e) findings are to be based and require documentation in grant files supporting UMTA's 3(e) findings in accordance with established criteria.
- Include in the new external operating manual, instructions to potential applicants on the type of information needed to show that private operators have been included to the maximum extent feasible. The criteria UMTA uses to make 3(e) findings and a requirement that private operators be identified and given written notice of public hearings for grant applications should be incorporated in these instructions.
- Include in the new external operating manual, a requirement that the MPO perform a 3(e) analysis which would include written comments by private operators on what impact the transportation plan or program will have on them, and attach this analysis to its transportation improvement program.
- Issue internal instructions requiring UMTA planning staff to consider section 3(e) and 4(a) issues when making annual certifications and evaluations of the transportation planning process.

Agency comments and our evaluation

The Department of Transportation said that rules proposed for publication in the Federal Register will implement sections 3(e) and 4(a) of the act. (See app. I.) They will set forth requirements and procedures for applicants applying for planning, capital, or operating funds so that UMTA can make a 3(e) finding with all available documentation. As of October 12, 1976, UMTA's proposed rules for implementing 3(e) and 4(a) were still being drafted by the Chief Counsel's office and had not been circulated for initial review and comment by other UMTA offices.

Further, the Department said that the new external operating manual will require that evidence to support UMTA 3(e) findings be included in the transportation improvement program. Also, UMTA said that private operators will have the opportunity to address the urban transportation program as part of the public hearing process.

UMTA is taking action to improve consideration of private mass transit companies; however, we believe that more should be done. The most recent draft of the external operating manual, which UMTA plans to implement as of December 15, 1976, does not incorporate the criteria used to make 3(e) findings, nor does it require that private operators be identified and given written notice of public hearings.

UMTA has recognized the need for written internal instructions regarding 3(e) and 4(a) issues and has said that these will be issued when the external operating manual and proposed rules are completed. They have not, as yet, required that documentation supporting 3(e) findings be in grant files. We believe it is important that the records clearly explain the rationale behind these findings and that UMTA staff know what the criteria is to make them.

Although UMTA officials have expressed concern through speeches and policy statements regarding private paratransit operations, such as taxicab operations, it is not clear whether this concern includes all privately owned mass transportation companies. We believe that UMTA should explicitly include private operators engaged in mass transit service as well as private paratransit operators in its policies and procedures.



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

ASSISTANT SECRETARY
FOR ADMINISTRATION

October 1, 1976

Mr. Henry Eschwege
Director
Community and Economic Development Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Eschwege:

This is in response to your letter of August 2, 1976, requesting comments from the Department of Transportation on the General Accounting Office draft report entitled, "Need for Greater Assurance that Adequate Consideration is Given to Private Mass Transit Companies in Federal Mass Transportation Programs." We have reviewed the report in detail and prepared a Department of Transportation reply.

Two copies of the reply are enclosed.

Sincerely,


William S. Heffelfinger

Enclosures

I. Title: Need for Greater Assurance that Adequate Consideration is Given to Private Mass Transit Companies in Federal Mass Transportation Programs

II. GAO Findings and Recommendations:

The GAO conducted a survey of the private mass transit industry and a review of the relationship of these private operators with UMTA. The GAO accomplished the above by distributing a questionnaire to private operators identified by the American Public Transit Association, the United Bus Owners Association, the American Automobile Association, the Association of American Railroads, and trade magazines and books; by interviewing selected private operators and UMTA officials; and by reviewing applicable legislation, UMTA policies and procedures and UMTA records.

The information gathered from the GAO questionnaire gave basic characteristics of private mass transportation companies, as well as private operators' involvement with, and opinions of, UMTA.

Based upon its review, GAO has recommended that the Secretary require UMTA to:

- 1) Identify the private mass transit companies that have received Section 5 assistance and the amount of such assistance.
- 2) Inform existing private companies about the Federal financial assistance programs and, where necessary, provide these companies with assistance in applying for Federal mass transit grants.
- 3) Identify reasons why private operators cannot find a public agency to sponsor their applications and identify possible remedies.
- 4) Establish written criteria on which 3(e) findings are to be based and require documentation in grant files supporting UMTA's 3(e) findings in accordance with established criteria.
- 5) Include in the new external operating manual, instructions to potential applicants on the type of information needed to show that private operators have been included to the maximum extent feasible. Incorporated in these instructions would be the criteria UMTA uses to make 3(e) findings and a requirement that private operators be identified and given specific written notice of public hearings for grant applications.

- 6) Include in the new external operating manual a requirement that the Metropolitan Planning Organization perform a 3(e) analysis which would include writer comments by private operators on what impact, if any, the transportation plan or program will have on them, and provide this analysis as an attachment to its transportation improvement program.
- 7) Issue internal instructions requiring UMTA planning staff to consider section 3(e) and 4(a) issues when making annual certifications and evaluations of transportation plans and programs.

III. DOT Comments on Findings and Recommendations:

The GAO study made a number of recommendations relating to UMTA's relationship with private mass transit operators. GAO observations on this subject are generally constructive, and in line with current or proposed UMTA procedures.

UMTA has recognized the need for better opportunities for private operator involvement in local transportation programs, and recent UMTA activities strengthen that involvement. It has become clear that as many basic public transportation systems have stabilized, Federal, State and local interests have expanded to more actively include community-level services within small areas, rural communities and suburban fringes as well as special transportation services for elderly and handicapped persons. Private transportation operators may be well-suited to provide many of these services.

Specific UMTA initiatives designed to increase the participation of private enterprise in local transportation programs and in receiving the benefits Federal assistance include:

1. the development of proposed regulations for the equitable implementation and effective administration of Section 3(e) and 4(a) of the Urban Mass Transportation Act of 1964, as amended.
2. the development of an UMTA paratransit policy, the bases of which are:
 - a. Non-support of public or nonprofit organizations in competition with private operators when such operators are willing and able to provide these services in a economic manner;
 - b. private operator representation and involvement in the planning and programming process; and

- c. private enterprise's opportunity to bid for new paratransit services.
3. the strengthening of the Section 16(b)(2) procedures to include the notification and/or sign-off of private as well as public operators on services proposed by private nonprofit organizations, and the participation of private operators in the development of the transportation program.
 4. the strengthening of internal procedures for addressing complaints of private enterprise under 3(e) or 4(a).
 5. ongoing research activities to identify private transportation resources in non-urbanized areas. (UMTA would welcome the opportunity to receive the GAO list of private mass transportation carriers in order to further these research activities).
 6. activities with private operators in our Service and Methods Demonstration Program as means of showing communities how to integrate and better utilize private transportation carriers.
 7. The implementation of UMTA policy not to fund either new or replacement bus benches where private enterprise is willing and able to fund such equipment.
 8. requirement as a condition to an UMTA capital assistance grant to the Delaware Authority for Specialized Transportation (DAST) that a formal agreement be reached between the public agency (DAST) and private taxicab operators for the contracting of certain services to the taxi operators.
 9. the publication of Charter and School Bus regulations designed to ensure adequate protection for private transportation operators providing these services.

UMTA believes these initiatives reflect our concern for the participation of private enterprise in urban mass transportation, yet do not violate statutory requirements precluding direct UMTA assistance to private transit operators.

UMTA identify all private mass transit companies receiving Section 5 assistance and the amount of such assistance

UMTA agrees with this recommendation. UMTA ongoing research will identify all mass transportation companies in urbanized areas and the UMTA reporting system, now under design pursuant to Section 15 of the Act, will routinely make Section 5 financial information available.

Inform the existing private companies about the Federal financial assistance programs and where necessary, provide these companies with assistance in applying for Federal grants

UMTA agrees that it is important for all potential applicants to be informed of the policies and procedures appropriate to the various UMTA programs. UMTA has made efforts to keep public and private mass transit operators informed through press releases, presentations, and notification to transit industry organizations, State and local transportation planners, and public and private operators. As an example, UMTA prepared an informational brochure on UMTA programs to assist non-urbanized areas. This brochure was widely disseminated to public interest groups including the International Taxicab Association, the National Association of Motor Bus Owners, the American Public Transit Association and the National School Transportation Association. More efforts will be made to inform private operators of UMTA payments, especially through their trade associations.

With regard to assisting private operators as they apply for UMTA grants, UMTA has and will continue to assist applicants in the preparation of applications. This assistance, provided to public and private operators, includes a copy of the External Operating Manual, information on current UMTA activity in the urban area, who at the local level should be contacted for additional information, and basic information on UMTA's statutory and administrative requirements. Normally, assistance in a specific grant request is provided to the public agency as sponsoring authority, and with whom UMTA will have a contractual arrangement.

Identify reasons why private operators cannot find a public agency to sponsor their applications and identify possible remedies.

UMTA believes this suggestion to be of limited usefulness. If the purpose of identifying private operators who cannot find public agency sponsors is to foster greater involvement of those operators in the planning and provisions of transit service, UMTA believes that its current approach is preferable; i.e., to inform public and private organizations through regulation and instructional manuals which specify efforts necessary to achieve maximum feasible participation of private operators. Where possible, the reasons for lack of public agency sponsorship will be identified and remedies sought.

Establish written criteria on which 3(e) findings are to be based and require documentation in grant files supporting UMTA's 3(e) findings in accordance with established criteria

The proposed rules for implementation of Section 3(e) and 4(a) will set forth requirements and procedures for applicants for planning, capital or operating funds to follow so that UMTA can make a 3(e) finding with all available documentation.

Include in the new external operating manual, instructions to potential applicants on the type of information needed to show that private operators have been included to the maximum extent feasible. Incorporated in these instructions would be the criteria UMTA uses to make 3(e) findings and a requirement that private operators be identified and given specific written notice of public hearings for grant applicants.

Include in the new external operating manual a requirement that the Metropolitan Planning Organization perform a 3(e) analysis which would include written comments by private operators on what impact, if any, the transportation plan or program will have on them, and provide this analysis as an attachment to its transportation improvement program.

The new external operating manual will require that evidence to support an UMTA 3(e) finding be included in the Transportation Improvement Program (TIP). The Metropolitan Planning Organization (MPO) must describe, in some detail, the manner in which the participation of private mass transportation companies with respect to the program was considered, and how each separate application for Federal financial assistance is a part of that program. The analysis and documentation from the MPO will be used to support an annual certification by UMTA of compliance with 3(e) requirements in the urbanized area.

In addition to a description and analysis of 3(e) efforts in the TIP, private operators have the opportunity to address specific elements of the overall urban transportation program for the area as part of the public hearing process called for under UMTA procedures.

The proposed rules for 3(e) will include requirements and describe procedures to be followed by applicants, MPO's, private operators, and UMTA in the implementation of 3(e) and 4(a). Special requirements and procedures will also be developed to support UMTA's 3(e) and 4(a) findings for non-urbanized areas.

Issue internal instructions which require UMTA planning staff to consider section 3(e) and 4(a) issues when making annual certifications and evaluation of transportation plans and programs.

UMTA recognizes the need for written internal instructions and will promulgate such when the external operating manual and proposed rules are complete. In the interim, UMTA will stress that full consideration be given private mass transportation companies in the review of all UMTA grants.

Robert E. Rutledge

PRINCIPAL OFFICIALS
RESPONSIBLE FOR ADMINISTERING
ACTIVITIES DISCUSSED IN THIS REPORT

Tenure of office
From To

DEPARTMENT OF TRANSPORTATION

SECRETARY OF TRANSPORTATION:

William T. Coleman, Jr.	Mar. 1975	Present
John W. Barnum (acting)	Feb. 1975	Mar. 1975
Claude S. Brinegar	Feb. 1973	Feb. 1975
John A. Volpe	Jan. 1969	Feb. 1973

ADMINISTRATOR, URBAN MASS

TRANSPORTATION ADMINISTRATION:

Robert E. Patricelli	Aug. 1975	Present
Judith T. Connor (acting)	July 1975	Aug. 1975
Frank C. Herringer	Feb. 1973	July 1975
Carlos C. Villarreal	Apr. 1969	Feb. 1973