

COVID-19 Pandemic: CARES Act Financial Aid and FTA Safety Advisory



Federal Transit Administration has provided additional guidance to transit agencies around the CARES Act funding made available, the Emergency Response Program, Civil Rights requirements during this time, and a Safety Advisory. This document, our second of three issuances, focuses on FTA advice concerning the CARES Act funding and the Security Advisory. A third publication will be provided, which will focus on the Emergency Response Program and Civil Rights requirements.

CARES Act Financial Assistance

The CARES Act funds are being made available through the Sec. 5307 and Sec. 5311 formula programs. Funds are provided to reimburse for expenses to prevent, prepare for, and respond to COVID-19 incurred on or after January 20, 2020. Eligible expenses include both operating and capital costs and are available at 100% Federal share.

Any Sec. 5307 or Sec. 5311 eligible expense is eligible under the CARES Act. While FTA has prioritized operating expenses, it has determined that all expenses incurred on or after January 20, 2020, are in response to economic or other conditions caused by COVID-19. Accordingly, all items normally eligible under the Urbanized Area Formula Program (49 USC Sec. 5307) and the Formula Grants for Rural Area Program (49 USC Sec. 5311) are eligible.

OPERATING EXPENSES

CARES Act allows operating funds to be reimbursed, without any limit. Funds under the CARES Act are available for all operating activities (net fare revenues) that occur on or after January 20, 2020.

Operating expenses are those costs necessary to operate, maintain and manage a public transportation system. They include such costs as driver salaries, fuel and items having a useful life of less than one year, including personal protective equipment and cleaning supplies. They also include administrative leave.

Administrative leave. Administrative leave is an administratively authorized absence from duty without loss of pay or reduction in an employee's available leave. In this case, administrative leave could include, but is not limited to, leave for an employee who is not required to work due to a reduction in service or leave for a worker who is quarantined after potential exposure to an individual

- CARES Act funding can be used to reimburse operating costs associated with providing fare-free service.
- CARES Act Grants for operating assistance and preventive maintenance may cover a period of time that corresponds to the expected spend-down rate of the funds.
- CARES Act funding is available without limit to pay for paratransit service provided on or after January 20, 2020.

infected with COVID-19. This includes employees who are isolating in stand-by status in order to work if another employee gets sick.

LOST REVENUES

FTA cannot make payments for lost revenues per se. However, it can and will reimburse any eligible expenses incurred on or after January 20, 2020, including eligible expenses that would have otherwise been paid for by the lost revenue. This includes all the expenses discussed above – capital or operating that are normally eligible under Urbanized Area Formula Grants (Sec. 5307) or the Formula Grants for Rural Areas Program (Sec. 5311). It also includes reimbursement of any net operating expenses (described above) for all Urbanized Area and Rural recipients.

THIRD-PARTY CONTRACTS

FTA funds may be used to reimburse third-party operations and maintenance costs for the actual costs incurred since January 20, 2020. In addition, contract employees providing these services who are placed on administrative leave due to reduced service are eligible for reimbursement. However, whether an FTA recipient is responsible for this administrative leave cost is governed by the terms (responsible for salary and benefits) of the third-party contract in question.

A recipient may modify a third-party contract to require the payment of administrative leave of operations or maintenance personnel or for other operations or maintenance expenses, including expenses to retain readiness for operations and maintenance activities, and fixed expenses such as rent, even if service is reduced.

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all federal requirements.

PARTICULAR SEC.5307/SEC. 5311 FORMULA GRANT FUND REQUIREMENTS CONTINUE TO APPLY

Examples:

- Grants must be submitted to the Department of Labor for review and certification, when applicable.
- One percent of CARES Act funds apportioned under Sec. 5307 must be used for transit security projects, unless the recipient certifies that the expenditures are unnecessary.
- While the requirement that a project be in a TIP/STIP before FTA obligates grant funds is waived under the CARES Act, there is an exception. Any project which involves a substantial change to the function, location or capacity of an asset must be in the TIP/STIP. The requirement to make public the amount made available to the grant recipient applies to all CARES Act funds, whether or not in the TIP/STIP.
- As described above, the requirements for a Program of Projects is required only when there is a substantial change to the function, location or capacity of a particular project, and the final Program of Projects must be made available to the public.
- All responsibilities under the Americans with Disabilities Act must be continued to be provided consistent with the level of service being provided during the state of emergency. (Any CARES Act funds may be used to provide paratransit – even beyond the current percentage limits for Sec. 5307 and Sec. 5311 program funds – up to 100%.)

- A split and/or sub allocation letters must be updated to include funds made available under the CARES Act.
- States must use at least 15% of the Formula Grants for Rural Area Program funding for intercity bus transportation, unless the governor certifies, after consultation with affected intercity bus service providers, that the intercity bus service needs of the state are being met adequately.

PROVISION OF OTHER ESSENTIAL SERVICES

CARES Act funds or Sec. 5307 and Sec. 5311 funds administered under the provisions of the Emergency Relief program (49 USC Sec. 5324) may be used for the operating costs of essential services such as meal delivery. FTA notes that this service must be an incidental use and does not conflict with the provision of transit services or result in a reduction of service to transit passengers. FTA also will permit recipients to use Sec. 5307/Sec. 5311 funds administered under the provisions of the Emergency Relief program or CARES Act funds for up to six months from January 20, 2020, to pay for the operational costs of such services. FEMA funds may also be eligible.

ELIGIBILITY OF NEW GRANTEES

Operators that meet the definition of public transportation service provider and that are otherwise eligible to be a recipient or subrecipient under the Urbanized Area Formula Program (Sec. 5307) or the Rural Areas Formula Program (Sec. 5311) may receive CARES Act funding, if allocated funds by the designated recipient. To receive funding as a recipient or subrecipient, the public transportation operations must meet all eligibility and program requirements of either Sec. 5307 or Sec. 5311. As a subrecipient, the operator must receive CARES Act funding through an existing designated or direct recipient of Urbanized Area or Rural Area formula funding.

PROGRAM OVERSIGHT

Recipients may delay submission of Federal Financial Reports and/or Milestone Progress reports currently due by April 30, 2020, by up to 90 days. A recipient's next report, therefore, would be for the quarter ending June 30, 2020, with the report due on July 30, 2020.

FTA is postponing the remaining program oversight reviews (Triennial, State Management, etc.) until early next fiscal year (FY2021).

FTA RESPONSES TO SPECIFIC TRANSIT AGENCY QUESTIONS

A transit worker's pay who is put on administrative leave because of a presumptive or confirmed case of COVID-19 is an eligible expense, so long as the employee is in pay status.

Rural program recipients previously approved to use a federal share sliding scale may use the larger federal share.

The operating portion of the capital cost of contracting is eligible for reimbursement at the increased federal share.

A transit provider can temporarily suspend charging fares, but needs to note that if a recipient operates fixed route service that is now fare-free, complementary ADA paratransit service also must be fare-free. (49 CFR 37.131(c)).

Costs associated with shifting transit system administrative workers to work-from-home arrangements to continue operations are eligible for federal funding. These include expenses such as laptops, remote secure access (RSA) keys, monitors, printers, etc.

FTA Issues Safety Advisory SA 20-1 in Response to the COVID-19 Crisis

On April 14, 2020, FTA issued a Safety Advisory providing guidance to transit agencies to ensure the continued safety of transit passengers and employees during this national emergency. The Advisory includes five recommended actions for transit agencies to take.

RECOMMENDED ACTIONS

FTA recommends that transit agencies take the following actions to reduce the likelihood that transit employees, contractors, and members of the public contract or spread the novel coronavirus that causes COVID-19, consistent with current CDC and OSHA guidance:

1. Establish and implement policies and procedures for transit agency employees and passengers regarding the use of face coverings and personal protective equipment to reduce the risk of COVID-19 among employees and passengers.
2. Establish and implement policies and procedures for routine cleaning and disinfection of surfaces frequently touched by employees and passengers, including equipment, digital interfaces such as touchscreens and fingerprint scanners, vehicles and facilities to reduce the risk of COVID-19 among employees and passengers.
3. Establish and implement measures to create physical separation greater than 6 feet between transit facility employees, transit operators and passengers.
4. Establish and implement policies and procedures that reinforce healthy hygiene practices, including policies to provide sufficient opportunities for employees to practice healthy hygiene and to ensure transit vehicles and facilities are appropriately cleaned.
5. Revise policies, procedures and measures developed and implemented pursuant to this Safety Advisory as new or revised CDC and OSHA guidance becomes available.

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