

COVID-19: FTA Emergency Relief Program, Civil Rights for all funds used for emergency relief and other helpful COVID-19 information



- FTA's EMERGENCY RELIEF PROGRAM
- CIVIL RIGHTS REQUIREMENTS
- POSSIBLE FEMA FUNDING
- CDC RECOMMENDATIONS

I. FTA's Emergency Relief Program

Emergency Relief program requirements apply to existing Urban and Rural Formula program apportionments and are different from the additional financial aid provided under the CARES Act. CARES Act requirements were addressed in FACT SHEET 1.

A. FUNDS AVAILABLE TO AGENCIES TO DEAL WITH RESPONSE TO COVID-19

Under its Emergency Relief authority, FTA is granting recipients of Sec. 5307 Urbanized Area and Sec. 5311 Rural Area Formula program broad flexibilities in the use of these resources to address impacts associated with COVID-19.

Guidance on 100% federal share. FTA has waived the local share requirement for the Sec. 5307 and Sec. 5311 programs to respond to the COVID-19 public health emergency (49 CFR 602.9(c)), **so long as** the expenses are in response to COVID-19.

FTA has extended the availability of Secs. 5307/5311 formula funds for COVID-19-related expenses to any of the Sec. 5307 or Sec. 5311 funds currently allocated to the agency.

Any Sec. 5307 or Sec. 5311 funding that has not already been disbursed by the recipient or passed its period of availability may be used for COVID-19 response. Recipients that have open grants that are within the period of availability, and otherwise would be available to be amended or have the budget revised, may use those funds at 100% federal share for COVID-19 response.

Grantees also may apply for new awards using the increased federal share, regardless of the funding account year.

FTA recommends grantees consult their FTA regional office to ensure using the correct codes for COVID-19 related expenses.

B. OPERATING EXPENSES

Important flexibility approved by FTA for Sec. 5307 and Sec. 5311 funds for COVID-19 related activities. Capital and operating activities in response to COVID-19 are eligible for reimbursement under the Sec. 5307 and Sec. 5311 programs. For urban recipients, it allows normally unreimbursible operating expenses to be reimbursed and all expenditures to be reimbursed at 100% federal share. For rural recipients, it increases the federal share to 100% for eligible expenses.

Eligible Activities. Not all operating expenses are eligible under the additional flexibilities for existing Sec. 5307 and Sec. 5311 formula funds. Only those expenses that are emergency protective measures to eliminate or lessen threats to public health and safety in response to COVID-19 are considered emergency. Examples of such expenses include:

- Removal of health and safety hazards, such as cleaning/sanitizing rolling stock, stations, bus shelters, etc.
- Costs associated with shutting down or restarting service
- Materials such as hand sanitizer, gloves, soap and cleaners and placing hand sanitizer dispensers in high-traffic areas
- Emergency protective gear relevant to the emergency
- Temporary service, that is not part of regular service, provided in response to the emergency
- Administrative leave

Note some eligible emergency activities are considered capital, such as cleaning rolling stock and some items, such as personal protective equipment, may be categorized as capital or operating, as appropriate (e.g., capital assets are typically defined as those assets with a useful life of greater than one year).

C. OTHER PROVISIONS

FTA has articulated several provisions that harmonize the Emergency Relief program requirements with the CARES Act program elements. These include:

Pre-award authority. Transit agencies may incur COVID-19 related expenses before amending any grant in TrAMS. The president has declared a major disaster for all states, which authorizes pre-award authority from the start of the earliest incident period, which was January 20, 2020.

Operators of ferry service may use existing Sec. 5307 or Sec. 5311 formula (only – not discretionary) funds with the same increased flexibilities as other Sec. 5307 or Sec. 5311 recipients.

Emergency Relief program effective period. The Emergency Relief program flexibilities will remain in place for eligible expenses incurred for the duration of the emergency.

Non-transit activities related to COVID-19 response. Current FTA circulars allow for such service – such as meal or grocery delivery – so long as the service does not conflict with the approved purposes of the asset and must not interfere with the intended transit uses of the transit provider. In cases where a recipient has reduced service levels in response to COVID-19, the recipient may utilize FTA-funded assets for other emergency response activities as long as such use does not interfere with its remaining limited service.

Temporary charter service. Recipients may add new routes to take schoolchildren to school or other sites for meals that serve critical community needs at any time. If a recipient provides exclusive transportation for schoolchildren to meal sites, and the service is funded by a third-party, such service would be categorized as a charter service. Although normally prohibited under FTA formula funding, charter service is eligible for COVID-19 response for up to 45 days beginning January 20, 2020. For charter services lasting longer than 45 days, the recipient should submit a request to FTA's Emergency Relief Docket.

Amending the Metropolitan and Statewide Transportation Improvement Programs (STIP/TIP) is not required, so long as the emergency relief projects, such as those eligible under the expanded COVID-19 eligibility, do not involve substantial changes to the function, location, or capacity of the asset(s) involved.

D. PROGRAM OVERSIGHT

Public Transportation Agency Safety Plan (PTASP) regulation (49 CFR Part 673) July 20, 2020 compliance deadline. The FTA has issued a Notice of Enforcement Discretion stating that, until December 31, 2020, in light of the challenges of COVID-19, FTA will refrain from taking enforcement action under 49 U.S.C. Sec. 5329(g) and the FTA Master Agreement (October 1, 2019) against any FTA recipient or subrecipient subject to the PTASP regulation that is unable to certify that it has established an Agency Safety Plan that complies with the regulation. This Notice will remain in effect until December 31, 2020. In effect, this Notice gives transit agencies until December 31, 2020, to comply with and certify to the requirements in the PTASP regulation. During this period, the PTASP Technical Assistance Center will remain available to meet the PTASP technical assistance needs of states and transit agencies.

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

Oversight Reviews. FTA is postponing its remaining fiscal year 2020 program oversight reviews (triennial, state management, etc.) until early in federal fiscal year 2021.

A brief note about FTA oversight on 100% of federal funds. While the FTA staff works to get the CARES Act and formula funds obligated into grants, it will need to identify specific oversight processes for ensuring 100% of federal money is providing value to the taxpayer, consistent with the articulated purposes of the aid. One hundred percent money historically has been considered a higher risk to the federal government, since there is no local "skin in the game." HNTB will provide guidance as soon as FTA issues oversight processes for the COVID-19 related funding.

E. RELIEF FROM FEDERAL REQUIREMENTS

A reminder (see [InTransit Extra](#) for additional details) that a transit agency may request relief from an FTA requirement, if it believes any such requirement is impeding its ability to respond effectively to COVID-19. Requests are to be made to the FTA Emergency Docket, established earlier by FTA for this purpose.

II. Civil rights requirements applicable to CARES Act funding and Emergency Relief Program

Operations. A transit agency may change service from fixed route to demand-responsive for essential transportation only. There are no Title VI or ADA concerns with a proposal to move from a fixed route to a demand-responsive service. Once the system completes its move to demand-responsive service, the obligation to provide ADA complementary paratransit no longer applies. However, under 49 CFR 37.7, all vehicles used in demand-responsive service must be accessible to and usable by persons with disabilities, including wheelchair users, or equivalent service must be provided consistent with 49 CFR 37.77(c).

Title VI programs. FTA is postponing the submission of all Title VI programs with current or upcoming due dates until October 1, 2020. Recipients may use their current on-file Title VI programs through November 30, 2020, unless they decide to update their programs before that date.

Equity analyses. There is no requirement to conduct Title VI equity analyses for emergency service cuts and changes during COVID-19. Under FTA's Title VI Circular 4702.1B, large transit providers in urbanized areas with a population of 200,000 or more must perform a service equity analysis before they make a major service change. Temporary service changes in response to an emergency do not rise to the level of a major service change, so a service equity analysis is not required. This applies as well to temporary fare changes enacted as a result of an emergency. A transit agency must perform a service or fare equity analysis before they make permanent any changes made during an emergency.

Americans with Disabilities Act. A transit agency may not shut down its Americans with Disabilities Act (ADA) paratransit operations while still operating fixed route services due to COVID-19 concerns. If a transit agency makes adjustments to the fixed route system's routes or schedules to accommodate the COVID-19 public health emergency, or shuts down the fixed route service entirely, the agency may make similar adjustments to the paratransit system.

If a transit agency suspends fares temporarily on its fixed route service to limit interactions between operators and passengers or to limit public contact with fare equipment due to the COVID-19 public health emergency, it must also provide free fares on its complementary paratransit service.

A transit agency may not restrict ADA complementary paratransit trips to essential medical trips. Agencies may send a request and encouragement to their paratransit customers asking them to cancel all nonessential trips.

If a transit agency closes the front door of its buses to boarding to support social distancing, it may not refuse service to wheelchair users and other people with disabilities who would otherwise need to use the front door where the ramp is located.

A transit agency that may anticipate the need to deny service to a transit rider with a disability if they are exhibiting symptoms of COVID-19 must apply the same standard to a rider with or without a disability. For guidance on when refusing service would be appropriate, a transit agency should contact local and state public health officials, who generally coordinate information with the Centers for Disease Control and Prevention (CDC).

A transit agency may suspend its mandatory wheelchair securement policy to reduce the need for operators to be in close proximity to a rider to lessen the potential for exposure to COVID-19. However, 49 CFR 37.165(f) still requires the operator to assist with the use of the securement system should an individual passenger make a request.

An agency may suspend in-person assessments for ADA paratransit eligibility for the duration of the COVID-19 public health emergency. However, complete suspension of the eligibility process is not permitted, because 49 CFR 37.131(f)(2) specifically prohibits the use of wait lists to access the service.

III. Possible FEMA funding

FTA sought and received Emergency Authority several years ago to ensure transit agencies could get fast aid that responded to their needs. FEMA Public Assistance funding under the Stafford Act is not specifically written for transit applications, so it cannot always respond to the specific and immediate transit needs. However, FEMA aid may be available to purchase personal protective equipment for operations personnel, to sanitize public facilities, and to assist with grocery and meal delivery. Please check with your State Office of Emergency Services to determine whether those resources are available to maximize the funding available to respond to COVID-19.

IV. CDC recommendations for workplace preparedness and protection: Reprinted from FTA's website:

The following questions and answers were prepared by the CDC for posting by FTA:

CDC Q1: What is FTA's position on the transit workforce having the necessary protections, including personal protective equipment (PPE) such as masks and required social distancing practices?

A: Under the CARES Act, \$25 billion was allocated to transit agencies across the country with no local match required. These funds are available for transit agencies to provide PPE for transit workers. Consistent with the CARES Act, FTA expects that agencies use available

funding to purchase PPE for the transit workforce consistent with CDC and OSHA guidance to the maximum extent possible. Current CDC guidance includes recommendations for cloth face coverings and social distancing. Transit systems should have appropriate PPE for frontline workers and procedures in place such as rear-door entry to ensure that social distancing is being observed by the system and transit riders to protect transit operators and the public. FTA will continue to monitor COVID-19 related guidance and will update this FAQ if CDC or OSHA guidance changes.

OSHA requirements that may apply to preventing occupational exposure to COVID-19, include OSHA's PPE standards (29 CFR 1910 subpart I) and the General Duty Clause, section 5(a)(1), of the Occupational Safety and Health (OSH) Act of 1970. See OSHA's Guidance on Preparing Workplaces for COVID-19 and OSHA's COVID-19 webpage.

CDC Q2: How can transit agencies and operators best begin a constructive dialogue about COVID-19 with public health officials in their local community?

A: Transit agencies are encouraged to reach out to local public health officials to establish ongoing communications to facilitate access to relevant information before and during an outbreak.

CDC Q3: What transit interior surfaces require the most attention and what cleaning solutions are the most effective against the virus? How frequently should cleaning occur?

A: High touch surfaces should be cleaned and disinfected at least once a day.

High touch surfaces include kiosks, turnstiles, benches, railings, handrails, garbage cans, door handles, payphones, restroom surfaces (faucets, toilets, counters), poles, handrails, seats, benches, grab bars and exit buttons.

If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.

Products registered with EPA for use against novel coronavirus SARS-CoV-2 (the cause of COVID-19) are expected to be effective against COVID-19 based on data for harder to kill viruses. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.). For soft or porous surfaces such as carpeted floor, rugs and drapes, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces.

Staff should wear PPE in accordance with the disinfectant manufacturer's instructions. After removing PPE, staff should wash their hands with soap and water for at least 20 seconds.

CDC Q4: What actions can transit agencies take to increase COVID-19 preparedness for potential outbreaks in their service areas?

A: CDC has developed interim guidance for businesses that includes planning considerations and recommendations for developing an infectious disease outbreak response plan.

CDC Q5: What personal protective equipment should we provide to our employees?

A: The Occupational Safety and Health Administration (OSHA) hosts a webpage summarizing OSHA standards and directives and other related information that may apply to worker exposure to COVID-19. In addition, monitor OSHA's COVID-19 webpage for any potential updates or recommendations.

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