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Memorandum Regarding Stimulus Funds for Transit Agencies

General Overview

On March 27, 2020 the President of the United States signed H.R. 748, otherwise known as the Coronavirus Aid, Relief, and Economic Security (CARES) Act into law in response to the severe and acute economic disruption caused by the response to the novel coronavirus COVID-19. The CARES Act is a far-reaching economic stimulus package that, among other provisions, provides direct cash payments to industries and organizations adversely effected by the pandemic. Among these impacted entities are public transportation providers. Public transportation providers have seen precipitous declines in farebox revenue and dedicated tax revenue due to many states enacting “Stay at Home Orders” and the subsequent cessation of non-essential economic activity, as well as general public unease about using public transit during the pandemic. The following is a quick summary of the conditions for and uses of public transportation-related CARES Act funds:

Important Points

- Funds are distributed as if they are formula grants under §5307 or §5311, but the funds are supplemental and not a replacement for funds already allocated
- The FTA will use the FY2020 distribution formula
- In a webinar hosted by the FTA, FTA officials encouraged transit agencies to spend CARES Act monies first, noting that existing §5307 or §5311 funds will not be taken away, but unused CARES money could potentially be pulled back
- FTA officials stated that CARES funds may not be used for anticipated or projected costs, only those that are based on actual expenses
- The percentage for State Safety Oversight Agencies (SSOAs) has been waived, so while rail transit agencies will be receiving more money, SSOA funding will still be calculated based on non-CARES Act funding levels
- The funds are to be used for any costs associated with COVID-19, including operating expenses
- FTA officials noted that since COVID-19 has significantly affected the operating budget, nearly any §5307 or §5311 approved activity can be funded with CARES money
- The existing cap of 20% of §5307 funding to be allotted to paratransit does not exist for CARES funds, but it remains for §5307 funds

- All other restrictions on the formula grants not explicitly waived in the CARES Act still apply
- The money is exempt from the local match requirement
- FTA officials stated that transit agencies may *not* use CARES money to serve as a local match to other federal allocations
- The money has no date when it has to be spent. As long as the money is used to cover a cost associated with COVID-19, such as making up for a decline in ridership or loss of a local revenue source such as a sales tax, the agency can take as long as it wishes to allocate the funds
- The funds do not create an obligation to continue operating a service once they have been used on that service
- It is unlikely that transit agencies will be able to tap into the funds allocated to state and local governments except to coordinate efforts directly related to testing and treatment of COVID-19
- Nothing in the CARES Act changes an agency's duties or responsibilities with respect to existing formula grant funds
- Transit agencies will apply for their allocation of CARES funds just as they would under the process for §5307 or §5311
- The CARES Act provides a separate stream of funding to Amtrak. Transit agencies whose services are coordinated may see an opportunity cooperate on fund utilization
- The FTA requires tracking of fund expenditures through its existing channels within the Transit Aware Management System (TrAMS); there are separate funding codes for CARES funds

Distribution of Funds

In order to help the finances of public transportation in the United States, the CARES Act allocates \$25 billion to be distributed to public transportation providers throughout the United States. The act specifically dictates that these funds should be distributed as if they were formula grant funds under 49 USC §5307 and §5311. This means that each agency will receive its funding as a grant payment directly from the United States Department of Transportation. These funds will be distributed using the same ratio by which regular 2020 funds were allocated.

“the Secretary of Transportation shall provide funds appropriated under this heading in this Act as if such funds were provided under section 5307 of title 49, United States Code, and section 5311 of title 49, United States Code and apportion such funds in accordance with section 5336 of such title (other than subsections (h)(1) and (h)(4)), section 5311 (other than subsection (b)(3) and (c)(1)(A)), section 5337 and section 5340 of title 49, United States Code”.

Fiscal Year (FY) 2020 §5307 and §5311 formula grant fund allocations totaled about \$6 billion between the two programs. With allocated stimulus fund totaling \$25 billion, each agency will receive an amount that is between four and five times that which they received through the existing formula grants. In other words, if an agency received \$100 million in formula grant funds in 2020, they will receive between \$400 and \$500 million in CARES Act funds.

Especially relevant to the work performed by TRA and our SSOA clients, the stimulus funds are specifically exempt from the half percent for the SSOA requirement laid out in 49 USC §5336(h)4 which states:

*“0.5 percent shall be apportioned to eligible States for State safety oversight program grants in accordance with section 5329(e)(6); and...”. As noted in the previous paragraph the CARES Act states, “funds in accordance with section 5336 of such title **(other than subsections (h)(1) and (h)(4))**” (emphasis added).*

In other words, stimulus fund recipient states are not required to put any of the stimulus funds into their SSO programs as the funds are intended to keep existing services running.

Use of Funds

The CARES Act specifies that the stimulus funds should be used to cover operating costs to make up for farebox deficits and additional expenses incurred because of the COVID-19 pandemic. While the funds are to be apportioned under the existing formula used to distribute §5307 funds, the stimulus funds are specifically exempt from the normal limitations on their use. For regular formula grants, 49 USC §5307 parts (a)(1) and (b) place limits on what the grant funds can normally be used. The language in this section cancels those requirements and replaces them with the requirement that the funds be used to cover operating costs, a normally prohibited use by large agencies for federal formula grant funds.

“That notwithstanding subsection (a)(1) or (b) of section 5307 of title 49, United States Code, funds provided under this heading are available for the operating expenses of transit agencies related to the response to a coronavirus public health emergency as described in section 319 of the Public Health Service Act, including, beginning on January 20, 2020 reimbursement for operating costs to maintain service and lost revenue due to the coronavirus public health emergency, including the purchase of personal protective equipment, and paying the administrative leave of operations personnel due to reductions in service”.

Other Restrictions and Exemptions

Nothing in this act is intended to waive any other requirements of Chapter 53 of Title 49 not specifically waived within the text of the CARES Act. For example, 49 USC §5337 describes fair labor standards and prevailing wage requirements and Part 5340 describes apportionment among states. The requirements of these sections still apply to CARES Act funds. Additionally, §5307 and 5311 themselves contain restrictions, such as the §5307 requirement that agencies will maintain equipment and facilities in accordance with their Transit Asset Management (TAM) Plan. These types of restrictions still apply to funds distributed under the CARES Act.

“That the Secretary shall not waive the requirements of section 5333 of title 49, United States Code, for funds appropriated under this heading in this Act or for funds previously made available under section 5307 of title 49, United States Code, or sections 5311, 5337, or 5340 of such title as a result of the coronavirus: Provided further, That unless otherwise specified, applicable requirements under chapter 53 of title 49, United States Code, shall apply to funding made available under this heading in this Act”.

One of the other key differences between the CARES Act stimulus money and normal federal formula grants is that this money has been exempted from the local match requirement. Normally, formula grants require that state and local governments cover a certain percentage of the overall cost of an expenditure which can vary depending on what an expenditure is. This requirement has been waived with respect to CARES Act funds allowing for the grant money to cover 100 percent of cost.

“except that the Federal share of the costs for which any grant is made under this heading in this Act shall be, at the option of the recipient, up to 100 percent”.

Additionally, there are no strings attached to the receipt of this money as there would be with a normal federal grant (i.e., a service must remain running or the federal government has the right to claw-back the money). If an agency uses CARES Act funds to operate a route, it is not obligated to continue running that route and can discontinue it following the agency’s standard procedures and protocols.

“That the amount made available under this heading in this Act shall be derived from the general fund and shall not be subject to any limitation on obligations for transit programs set forth in any Act”.

There is no timeframe in which CARES Act funds must be spent. Once an agency has received the funds they can be spent in a manner and time frame which is entirely at the discretion of the transit agency as long as the expenditure complies with the previous restrictions laid out in the act. FTA confirmed on April 2, 2020 that these funds do not have a deadline by which they need to be spent.¹ However, FTA officials noted in a webinar that transit agencies should strongly consider spending CARES funds first since Congress could decide to not allocate portions of the funding, or reduce other grant funds, in future budgets.

Other Payments to States and Municipalities

Title VI the CARES Act provides for direct payments to states in proportion with their population. The total amount allotted for these payments is \$150 billion. However, these payments have more limits on their final use than the payments directly to transit agencies. Congress intended that these funds are to be on expenses directly related to COVID-19 such as the establishment and operation of testing sites, the state share of Medicaid patients receiving treatment, construction of temporary hospitals, or the purchase of personal protective equipment (PPE) and other materials for state and municipal workers. It does not appear that this funding is intended to replace declining tax revenue due to unemployment and reduced economic activity.

*“(d) Use Of Funds.—A State, Tribal government, and unit of local government shall use the funds provided under a payment made under this section to cover only those costs of the State, Tribal government, or unit of local government that—(1) **are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID–19)**;(2) were not accounted for in the budget most recently approved as of the date of enactment of this section for the State or government; and(3) were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.(emphasis added)”.*

¹ FTA, *Frequently Asked Questions*, <https://www.transit.dot.gov/frequently-asked-questions-fta-grantees-regarding-coronavirus-disease-2019-covid-19#CARES>, Accessed 4/2/2020

Unlike the section allotting funds for the FTA there is a claw-back provision included in Title VI of the CARES Act. This section allows the federal government to require states and municipalities to pay back funds that were improperly spent. With respect to these funds, the Department of the Treasury plans to issue guidance on allowable expenditures. A further stimulus package will likely be needed to address budget shortfalls at the state and local levels.

“(2) RECOUPMENT.—If the Inspector General of the Department of the Treasury determines that a State, Tribal government, or unit of local government has failed to comply with subsection (d), the amount equal to the amount of funds used in violation of such subsection shall be booked as a debt of such entity owed to the Federal Government. Amounts recovered under this subsection shall be deposited into the general fund of the Treasury.”