



## DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

### **Allocation of Public Transportation Emergency Relief Funds in Response to Hurricane Sandy**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of allocation of Emergency Relief funds.

**SUMMARY:** The Federal Transit Administration (FTA) announces the allocation of \$2,000,000,000 under the Public Transportation Emergency Relief Program (Emergency Relief Program, Catalogue of Federal Domestic Assistance #20.527) for FTA recipients affected by Hurricane Sandy, which impacted the northeastern seaboard in October 2012 and had a particularly devastating impact on transit systems in New York and New Jersey. FTA is allocating funds as outlined in a Notice of Availability of Emergency Relief Funds published in the Federal Register on February 6, 2013 (78 FR 8691), and consistent with the requirements of the Disaster Relief Appropriations Act of 2013 (Appropriations Act, Pub. L. 113-2).

Concurrently with this notice of allocations, FTA is publishing in today's Federal Register an interim final rule (IFR) for the Emergency Relief Program (49 CFR Part 602). This rule outlines general program requirements that will apply to all funds allocated in this notice and to subsequent grant awards under this program. The rule takes effect immediately.

FTA's Emergency Relief Program was authorized by Congress in the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21, Pub. L. 112-141) and provides FTA with primary responsibility for reimbursing emergency response and recovery costs after an emergency or major disaster that affects public transportation systems. The Appropriations Act provides \$10.9 billion for FTA's Emergency Relief Program for recovery, relief and resiliency efforts for public

transportation in areas affected by Hurricane Sandy. As a result of the Budget Control Act of 2011 (Pub. L. 112-25), five percent of the \$10.9 billion made available under the Appropriations Act (\$545,000,000) is subject to the significant spending cuts known as sequestration and is unavailable for Hurricane Sandy disaster relief.

The Appropriations Act requires that not more than \$2 billion shall be made available no later than March 30, 2013. With this notice, FTA is allocating the initial \$2 billion, excluding funds to be used for program implementation and oversight, to recipients affected by Hurricane Sandy (affected recipients) for eligible emergency response and recovery costs.

In the February 6, 2013, Federal Register notice, FTA instructed affected recipients to submit requests for reimbursement of eligible expenses incurred in advance of January 29, 2013, and for the costs of contract work advertised and force account work budgeted prior to January 29, 2013. FTA announced individual allocations on a rolling basis beginning March 6, 2013. Table 1 shows a summary of the allocations made in this notice. Table 2 shows the allocation for each affected recipient.

In addition to funds allocated for the reimbursement of costs meeting the above criteria, FTA is allocating the remainder of the initial \$2 billion, based on the anticipated cost of recovery for each affected recipient. These funds are available for eligible emergency operations, emergency protective measures, and emergency and permanent repairs to and replacement of assets that suffered serious damage as a result of the storm. Recipients should develop a list of eligible projects, consistent with the Emergency Relief Program rule, at 49 CFR § 602.17, and review the list of projects with the applicable FTA Regional Office prior to submitting a grant application in FTA's Transportation Electronic Award Management (TEAM) system. FTA granted affected recipients pre-award authority for projects eligible for the initial \$2 billion allocation in the

February 6, 2013 Federal Register notice. Prior to exercising pre-award authority, recipients are encouraged to work with the appropriate Regional Office to ensure that the applicable Federal requirements are followed. All allocations, including these pro-rated allocations, are included in Table 2.

Guidance regarding project eligibility and determinations regarding applicability of certain FTA requirements issued in the February 6, 2013 notice will only apply to costs incurred prior to January 29, 2013, and to other expenses that meet the requirements specified in that notice for inclusion under Category One, Two or Three. Recipients may request waivers of FTA administrative requirements by submitting a request to FTA docket number FTA-2013-0001, as described in the February 6, 2013 Federal Register notice, and in the Emergency Relief Program rule at 49 CFR § 602.15, however, recipients should not proceed with a project under the expectation that waivers will be provided. Additional program requirements, considerations and grant application procedures specific to these funds are included in this notice.

**FOR FURTHER INFORMATION CONTACT:** Contact the appropriate FTA Regional Office found at <http://www.fta.dot.gov> for application-specific information and other assistance needed in preparing a TEAM grant application. For program-specific questions, please contact Adam Schildge, Office of Program Management, 1200 New Jersey Ave, SE, Washington, DC 20590, phone: (202) 366-0778, or e-mail, [Adam.Schildge@dot.gov](mailto:Adam.Schildge@dot.gov). For legal questions, contact Bonnie Graves, Office of Chief Counsel, same address, phone: (202) 366-4011, or e-mail, [Bonnie.Graves@dot.gov](mailto:Bonnie.Graves@dot.gov).

**SUPPLEMENTARY INFORMATION:**

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## **I. Considerations for Recipients of Emergency Relief Funds**

### **A. Allocation of Funds**

FTA is allocating the first \$2 billion to affected recipients in two steps. In the first step, FTA prioritized the reimbursement of immediate response and recovery expenses related to Hurricane Sandy. While the list of eligible activities is the same for all allocations under this notice, in order to qualify for reimbursement in this first step, costs must have met the requirements of one of the following three categories: Category One includes costs incurred or disbursed prior to

January 29, 2013. Category Two includes costs related to requests for proposals or invitations to bid that were advertised prior to January 29, 2013. Category Three includes the costs of future force account work that was budgeted prior to January 29, 2013. FTA has already allocated \$576,620,159 for expenses under Categories One, Two and Three. The specific grant requirements listed in section II.D. in the February 6, 2013, Federal Register notice apply to these three categories of projects.

In the second step, FTA is allocating additional funding for pending validated costs requested under Categories One, Two, and Three and for additional eligible recovery and rebuilding costs. For this second step, which involves a pro-rated allocation, FTA is allocating funds based on detailed damage assessments submitted by affected agencies and prepared in cooperation with FTA and FEMA staff and firms contracted by FTA to provide assistance in compiling and reviewing these assessments. FTA, in coordination with FEMA, performed preliminary assessments of the damage caused by Sandy to assets owned by those transit providers in the states of New York and New Jersey most affected by the storm. These transit providers included the following major transit agencies:

- The Metropolitan Transportation Authority, doing business as:
  - o MTA New York City Transit (NYCT)
  - o MTA Bus Company (MTA Bus)
  - o MTA Metro-North Railroad (MNR)
  - o MTA Long Island Railroad (LIRR)
  - o MTA Capital Construction Division (MTACC)
- The New York City Department of Transportation (NYCDOT)

- The Port Authority of New York and New Jersey (PANYNJ) which operates Port Authority Trans Hudson (PATH) service and the rebuilding of the World Trade Center Transportation Hub and site

- New Jersey Transit

Affected recipients have had the opportunity to review and provide comments on these damage assessments. The damage assessments include an initial overall cost of recovery and rebuilding for the affected agencies, excluding projects to improve the resiliency of the affected systems to future disasters, is approximately \$5.83 billion. Using these initial costs estimates based on these damage assessments, FTA is allocating the remaining \$1,402,424,841, less pending validation of Category One, Two, and Three expenses, on a pro-rated basis to the agencies listed above and setting aside two percent of this amount for agencies other than these four that suffered damage. From FTA's earlier damage assessment efforts, it knows that New York State Department of Transportation and many smaller transit agencies such as the City of Long Beach and Nassau County Intercounty Express (NICE); and the counties of Putnam, Rockland and Westchester suffered serious damage. Two percent, or \$28,048,497, is available for affected recipients, such as these, that may have eligible expenses not yet reimbursed to date. Affected recipients should contact their regional office to discuss outstanding response and recovery expenses.

As of the date of publication of the Emergency Relief Program rule, FTA is authorized to allocate additional funding beyond the initial \$2 billion allocated in this notice. FTA intends to issue a second Notice of Availability of Emergency Relief Funding in the near future for this additional Hurricane Sandy disaster relief funding, over and above the \$2 billion allocated in this notice.

## B. Use of Funds

Consistent with the February 6, 2013, Federal Register notice, funds allocated in this notice are available to reimburse eligible emergency operations, emergency protective measures, and emergency and permanent repairs to and replacement of assets that suffered serious damage as a result of the storm.

FTA has determined that the operating costs of re-establishing regular transit service in the immediate aftermath of the storm are eligible emergency operating expenses and are eligible under this program, subject to the determination by FTA of the appropriate time period and extent of operations as warranted by the condition of the transit system in the immediate aftermath of the storm.

## C. Pre-award Authority

In the February 6, 2013, Federal Register notice, FTA granted pre-award authority to affected recipients for expenses incurred in preparation for Hurricane Sandy (e.g., evacuation, relocation, protecting and safeguarding assets) and for response and recovery expenses incurred as a result of Hurricane Sandy. Pre-award authority allows affected recipients to incur certain project costs before grant approval and retain the eligibility of those costs for subsequent reimbursement after grant approval.

If a recipient intends to use pre-award authority for the funds allocated in this notice, FTA recommends the recipient submit a proposed program of projects to FTA to verify that all pre-requisite requirements have been met, and that the proposed costs are all eligible under the Emergency Relief program, in advance of incurring any costs. Since this program is new and interim final regulations are being published concurrently with this allocation, recipients may not be familiar with all applicable statutory and regulatory requirements for this program, including

those that might be different from other FTA grant programs. If funds are expended for an ineligible project or activity, or for an eligible activity but at an inappropriate time (e.g., prior to environmental review completion), FTA will be unable to reimburse the project sponsor and, in certain cases, the entire project may be rendered ineligible for FTA assistance.

Pre-award authority is described in the Emergency Relief Program rule at 49 CFR § 602.11.

In considering the use of pre-award authority, recipients should be aware of the following:

- (i) Pre-award authority is not a legal or implied commitment that the subject project will be approved for FTA assistance or that FTA will obligate Federal funds. Furthermore, it is not a legal or implied commitment that all activities undertaken by the applicant will be eligible for inclusion in the project.
- (ii) Except as provided for Categories One, Two and Three in section II.D. of the February 6, 2013, Federal Register notice, all FTA statutory, procedural, and contractual requirements must be met.
- (iii) The recipient must take no action that prejudices the legal and administrative findings that the FTA Regional Administrator must make in order to approve a project.
- (iv) The Federal amount of any future FTA assistance awarded to the recipient for the project will be determined on the basis of the overall scope of activities and the prevailing statutory provisions with respect to the Federal/non-Federal match ratio at the time the funds are obligated.
- (v) When FTA subsequently awards a grant for the project, the Federal Financial Report in TEAM-Web must indicate the use of pre-award authority.

#### D. Application Process

Amounts allocated for costs in Categories One, Two and Three are based on a recipient's demonstration of expenses incurred for emergency operations and capital repair, reconstruction and replacement expenses in response to Hurricane Sandy. FTA has reviewed each recipient's justification for reimbursement, and has validated specific costs as eligible for reimbursement. Recipients are permitted to submit grant applications in TEAM upon the announcement of an allocation for these expenses. FTA's Regional Offices will review these grant applications for consistency with each agency's request for reimbursement.

Amounts allocated for costs outside these three categories are based on damage assessments prepared by FTA staff, FEMA staff, and contractors. Prior to submitting a grant application or modification for new recovery and rebuilding projects, recipients should submit a proposed list of projects and expenses to FTA's Regional Office for review, consistent with 49 CFR § 602.17. Upon verification by FTA that such projects are eligible, recipients may submit grant applications in TEAM. This review will ensure that all proposed projects and costs are eligible under the Emergency Relief Program.

Recipients are required to maintain records, including but not limited to all invoices, contracts, time sheets, and other evidence of expenses to assist FTA in periodically validating the eligibility and completeness of a recipient's reimbursement requests.

#### E. 24 Month Expenditure Requirement

Projects funded through the Disaster Relief Appropriations Act of 2013 are subject to section 904(c) of that Act, which requires expenditure of funds within 24 months of grant obligation, unless this requirement is subsequently waived for this program in accordance with guidance to be issued by the Office of Management and Budget. In all cases, oversight procedures will be put in place to ensure that projects are implemented in accordance with the project schedule.

#### F. Waiver of Remaining Useful Life Requirement

FTA is implementing a blanket waiver to relieve FTA recipients from its useful life requirement with respect to assets that were destroyed or seriously damaged as a result of the storm and taken out of service before the end of their useful life. Due to the damage inflicted by Hurricane Sandy, facilities and equipment that have suffered serious damage and hence qualify for replacement under the Emergency Relief Program are presumed to have no remaining useful life. As a result of this waiver, recipients may apply for funds to replace assets at a 90% Federal share without regard to the Federal share remaining in the destroyed asset.

#### G. Disposition of Damaged or Destroyed Assets

Although FTA has determined that federally-funded assets seriously damaged or destroyed by Hurricane Sandy have no remaining useful life, recipients may have a financial obligation to FTA for assets that have a fair market value (FMV) in excess of \$5,000 at the time of disposition.

Each recipient must notify FTA of how it is disposing of any federally-funded assets that have reached the end of their useful life (or those for which FTA has waived remaining useful life) that have a FMV greater than \$5,000 and calculate the pro-rata share of the FMV if FTA funded the asset.

Consistent with the common grant rule at 49 CFR § 18.32(e), FTA Circular 5010.1D, “Grant Management Requirements,” October 1, 2008, Chapter IV, subsection 3, [http://www.fta.dot.gov/documents/C\\_5010\\_1D\\_Finalpub.pdf](http://www.fta.dot.gov/documents/C_5010_1D_Finalpub.pdf), discusses disposition of equipment that has reached the end of its service life. If the unit has a FMV of \$5,000 or more, then the recipient must reimburse FTA’s share of the fair market value of the FTA assisted equipment. Reimbursements and documentation should be documented in the Sandy grant in TEAM.

#### H. Treatment of Insurance Proceeds

As stated in the February 6, 2013, Notice of Availability of Emergency Relief Funding, recipients that have received insurance payments for damaged equipment and facilities prior to the receipt of FTA Emergency Relief funding must reduce their reimbursement request by the amount of insurance proceeds allocated for the repair or replacement of a given asset. FTA will participate at a 90 percent Federal share of the net project cost after application of insurance proceeds. If a recipient receives or allocates insurance proceeds to a project after receiving FTA Emergency Relief funds, the recipient must repay to FTA either 90 percent or 100 percent of the insurance proceeds received, depending on the Federal share for that project. Remaining insurance proceeds after repayment may be used as local match. In the event a recipient receives insurance proceeds for an asset and decides not to replace that asset, the waiver of useful life described in section F does not apply, and the recipient must reimburse FTA the remaining Federal interest in that asset in accordance with FTA Circular 5010.1D.

#### I. Executive Order 11988, Floodplain Management

Executive Order 11988, Floodplain Management, requires Federal agencies to avoid to the extent possible the long and short-term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct and indirect support of floodplain development wherever there is a practicable alternative. In accordance with the Executive Order, recipients shall not use grant funds for any activity in an area delineated as a ‘special flood hazard area’ or equivalent, as labeled in the Federal Emergency Management Administration’s (FEMA) most recent and current data source, unless, prior to seeking FTA funding for such action, the recipient designs or modifies its actions in order to minimize potential harm to or within the floodplain. To guide decision making, recipients shall use the “best available information” as identified by

FEMA, which includes advisory data (such as Advisory Base Flood Elevations), preliminary and final Flood Insurance Rate Maps (FIRMs), and Flood Insurance Studies (FISs). If FEMA data is mutually determined by FTA and the recipient to be unavailable or insufficiently detailed, other Federal, State, or local data may be used as the “best available information” in accordance with Executive Order 11988.

For Hurricane Sandy, the Secretary of Transportation has determined that if a Federally-funded project or activity is located in a floodplain, that the “best available information” requires a minimum baseline standard for elevation no less than that found in FEMA’s Advisory Base Flood Elevations, where available, plus one foot (ABFE+1). This determination recognizes that the existing Flood Insurance Rate Maps (FIRMs) for the New Jersey and New York coastlines were developed more than 25 years ago. Updated FIRMs are yet to be finalized and will not be available in time to provide updated information to support vital and immediate reconstruction efforts. This determination is based on FEMA’s assessment that, following recent storm events including Hurricane Sandy, the base flood elevations shown on some existing FIRMs do not adequately reflect the current coastal flood hazard risk. FEMA recognizes that the ABFEs are based on sound science and engineering, and are derived from more recent data and improved study methodologies compared to existing FIRMs. To reduce the likelihood of future damage from such risks as storm surge, coastal hazards, and projections of sea level rise, the application of an ABFE+1 standard provides a limited safeguard against the natural recurrence of flood hazards.

Thus, for projects in floodplains, when considering alternatives to avoid adverse effects and determining how to design or modify its actions in order to minimize potential harm to or within the floodplain consistent with Executive Order 11988, recipients should consider that the “best

available information” for baseline elevation is ABFE, or, if that is not available, FIRM+1. This standard does not mean that transit agencies will be required to move existing facilities to a higher elevation; however, in order to minimize potential harm within the floodplain in accordance with Executive Order 11988, recipients must consider the best available information (ABFE or FIRMs), including sea level rise consistent with the addition of at least one foot over the most up to date elevations. Particularly with respect to existing facilities where relocating them may not be feasible, examples of actions to minimize potential harm to or within the floodplain and reduce the risk of damage from future disasters include but are not limited to updated design features or added protective features (resiliency projects). Consistent with FTA’s interim final rule, if State or locally adopted code or standards require higher elevations, those higher standards would apply.

## **II. Award Administration**

### **A. Grant Application**

Once FTA allocates Emergency Relief funds to a recipient, the recipient will be required to submit a grant application electronically via FTA’s TEAM system. Recipients should work with their FTA Regional Office to develop and submit their application in TEAM so that funds can be obligated expeditiously. Grant applications in TEAM may only include eligible activities under the Emergency Relief program.

A discretionary project identification number has been assigned to each recipient’s allocation for tracking purposes and must be used in the TEAM application.

### **B. Payment**

Upon award, payments to recipients will be made by electronic transfer to the recipient’s financial institution through FTA’s Electronic Clearing House Operation (ECHO) system.

C. Grant Requirements

Emergency Relief funds may only be used for eligible purposes as defined under 49 U.S.C. 5324 and as described in the Emergency Relief Program Rule (49 CFR Part 602) and the February 6, 2013, Notice of Availability of Emergency Relief Funds.

Recipients of section 5324 funds must comply with all applicable Federal requirements, including FTA's Master Agreement. Each grant for section 5324 funds will include special grant conditions, including but not limited to, application of insurance proceeds, application of any FEMA funds received, section 904(c) of the Disaster Relief Appropriations Act of 2013, Federal share, and enhanced oversight.

D. Reporting Requirements

Post-award reporting requirements include a monthly submission of the Federal Financial Report and Milestone reports in TEAM consistent with FTA's grants management Circular 5010.1D, as well as any other reporting requirements FTA determines are necessary.

E. Oversight and Audits

Recipients are advised that FTA will implement an enhanced oversight process for funds awarded under the Emergency Relief Program in response to Hurricane Sandy. FTA will issue separate guidance on the applicable oversight procedures for grants awarded in response to Hurricane Sandy. In addition, recipients should anticipate a high likelihood of additional scrutiny by the Government Accountability Office (GAO) and the Department of Transportation's Office of the Inspector General (OIG).

Issued in Washington, DC, this 25th day of March, 2013.

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Peter Rogoff  
Administrator

# FEDERAL TRANSIT ADMINISTRATION

## Table 1

### FTA Section 5324 Emergency Relief Program

*Allocation of \$2 Billion for Hurricane Sandy Disaster Relief*

<b>FY 2013 Disaster Relief Appropriations Available</b>	<b>\$</b>	<b>2,000,000,000</b>	
<b>Less Transfer to DOT Office of the Inspector General (OIG)</b>	<b>\$</b>	<b>(6,000,000)</b>	
<i>Actual amount available for DOT OIG<sup>1</sup></i>	<i>\$</i>	<i>(5,700,000)</i>	
<b>Less Program Administration and Oversight</b>	<b>\$</b>	<b>(14,955,000)</b>	
<b>Less Allocations to Date (Categories One, Two, Three)<sup>2</sup></b>	<b>\$</b>	<b>(576,620,159)</b>	
<b><u>Total Available for Pro-Rated Allocation</u></b>	<b>\$</b>	<b><u>1,402,424,841</u></b>	

<sup>1</sup> The actual amount reflects a five percent reduction as a result of the Budget Control Act of 2011 (Pub. L. 112-25) and the March 1, 2013, OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013. The reduction is applied to the total appropriation for Hurricane Sandy (less the transfer to the OIG) and for purposes of this allocation was applied to the amount transferred to the OIG.

<sup>2</sup> FTA has allocated funds to date for eligible expenses in three categories. The three categories represent eligible disaster response and recovery expenses incurred, advertised or budgeted prior to January 29, 2013, as described in the February 6, 2013 Notice of Availability of Emergency Relief Funding.

**FEDERAL TRANSIT ADMINISTRATION**

**Table 2**

**FTA Section 5324 Emergency Relief Program**

*Allocations for Hurricane Sandy, by Agency*

<u>State(s)</u>	<u>Agency</u>	<u>Discretionary Funding ID</u>	<u>Allocated to Date</u>	<u>Pro-Rated Allocations</u>	<u>Total Allocations</u>
CT	Greater Bridgeport Transit District	D2013-SAND-009	\$ 21,783	\$ -	\$ 21,783
CT	Milford Transit District	D2013-SAND-007	\$ 5,352	\$ -	\$ 5,352
CT	Connecticut Department of Transportation	D2013-SAND-010	\$ 55,622	\$ -	\$ 55,622
MA	Massachusetts Bay Transportation Authority	D2013-SAND-011	\$ 344,311	\$ -	\$ 344,311
NY	New York Metropolitan Transportation Authority	D2013-SAND-001	\$ 193,893,898	\$ 1,000,415,662	\$ 1,194,309,560
NY	New York City Department of Transportation <sup>1</sup>	D2013-SAND-012	\$ 21,889,326	\$ 12,029,487	\$ 33,918,813
NY, NJ	Port Authority of New York and New Jersey <sup>2</sup>	D2013-SAND-002; D2013-SAND-008	\$ 213,963,997	\$ 275,156,637	\$ 489,120,634
NJ	New Jersey Transit Corporation	D2013-SAND-004	\$ 144,416,559	\$ 86,774,558	\$ 231,191,117
NY	City of Long Beach	D2013-SAND-006	\$ 518,364	\$ -	\$ 518,364
NY	Westchester County Department of Transportation	D2013-SAND-005	\$ 317,200	\$ -	\$ 317,200
PA	Southeastern Pennsylvania Transportation Authority	D2013-SAND-003	\$ 1,192,568	\$ -	\$ 1,192,568
RI	Rhode Island Public Transit Authority	D2013-SAND-013	\$ 1,179	\$ -	\$ 1,179
N/A	Other (2% of pro-rated allocation) <sup>3</sup>		\$ -	\$ 28,048,497	\$ 28,048,497
	<b>Grand Total</b>		<b>\$ 576,620,159</b>	<b>\$ 1,402,424,841</b>	<b>\$ 1,979,045,000</b>

<sup>1</sup>New York City Department of Transportation's pro-rated allocation includes an allocation of \$11,700,000 for an expense that is pending validation.

<sup>2</sup> Includes two project-specific allocations. A total of \$159,720,171 has been allocated for the Port Authority Trans Hudson Rail Service and \$54,243,826 has been allocated for the World Trade Center Hub Project

<sup>3</sup> Pro-rated allocation for "other" is reserved for agencies that have additional costs that were not allocated under the Category One, Two, Three allocation and have not received an allocation based on their currently estimated cost of recovery.