

Mostly Santa, Some Grinch: Congress Wraps Up FY 2021 Funding, COVID Relief, and More

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In what's likely its last major action of the year, Congress wrapped up all sorts of unfinished business into a massive piece of legislation, passed it by veto-proof margins in both the House and Senate, and sent this huge bill over to the White House to be – presumably – signed into law. Much of the mass media attention on this bill has focused on the \$908 billion in pandemic-related relief and economic stimulus, as that's the first relief bill since the CARES Act became law on March 27, nearly nine months ago, but this bill's overall federal spending is more important to most providers of public and community transportation.

Federal Transit Spending Holds the Line, More or Less

Most of this latest bill is a full-year “Consolidated Appropriations Act” covering all the federal government's spending through September 30, 2021. In general, Federal Transit Administration (FTA) funding will be maintained at the same levels as last year.

As a reminder (or as fresh information, for those who don't live and breathe federal spending topics on a daily basis), the bulk of FTA's spending derives from the Mass Transit Account of the federal Highway Trust Fund, and is distributed as formula grants to states, tribal nations and designated recipients in urbanized areas. Those trust fund allocations are authorized under the FAST Act, which extends through September 30, 2021, as well.

Congress has approved \$10.8 billion from the Highway Trust fund for those FTA programs. Below are some of the core FTA programs, and the amounts they're authorized to spend in FY 2021 under this bill (not all FTA programs are listed):

- Section 5307 urban transit formula grants: \$4.9 billion (plus more that's transferred from Section 5340)
- Section 5310 formula grants for mobility of seniors and individuals with disabilities: \$285.6 million
- Section 5311 rural transit and tribal transit grants: \$673.3 million (plus a little bit that's transferred from Section 5340)
- Section 5337 fixed-guideway state of good repair grants: \$2.7 billion
- Section 5339 bus and bus facilities grants: \$808.7 million
- Section 5340 growing states and high-density states formula funds: \$570.0 million (these are added to Section 5307 and 5311 when FTA determines its annual funding apportionments and allocations)

FTA also makes grants for new fixed-guideway transit projects through its Section 5309 Capital Investment Grants program, but those funds, like a few other items funded by FTA, come from general revenues of the federal government, and not the Highway Trust Fund. In this FY 2021 spending agreement, Congress has approved \$2.0 billion for Capital Investment Grants.

In addition to what's listed above, Congress once again has supplemented the authorized amounts with more general funding in many of FTA's programs. These "plus-ups" increase the amount of funding FTA will allocate in several of its programs, including Section 5339, Section 5311, and others, as well as a category of discretionary grants to areas experiencing persistent poverty.

The table below summarizes these "plus-ups," as well as the overall amounts for other core FTA program areas. You can see last year's amounts, what was proposed in the House and Senate as this year's spending measures advanced through Congress, and the final outcome that has been transmitted to the White House as part of this Consolidated Appropriations Act.

	FY 2020 – as signed into law	FY 2021 – as passed by House, 7/31/20	FY 2021 – as drafted in Senate, 11/10/20	FY 2021 – as passed both houses, 12/21/20
FTA Formula Grants, etc. (trust fund)	\$10.8 billion	\$16.6 billion	\$10.8 billion	\$10.8 billion
FTA Capital Investment Grants (general fund)	\$2.0 billion	\$2.2 billion	\$1.9 billion	\$2.0 billion
FTA administration (general fund)	\$117.0 million	\$121.1 million	\$121.1 million	\$121.1 million
Additional technical assistance grants (general fund)	\$5.0 million	\$7.0 million	\$5.0 million	\$7.5 million
Additional "Transit Infrastructure Grants" added to FTA programs as the following "plus-ups":	\$510.0 million, including details below	\$510.0 million, including details below	\$701.7 million, including details below	\$516.2 million, including details below
<i>Sec. 5339(a) bus & facilities formula grants</i>	<i>\$168.0 million</i>	<i>No "plus-up"</i>	<i>\$223.0 million</i>	<i>\$118.0 million</i>
<i>Sec. 5339(b) bus & facilities competitive grants</i>	<i>\$170.0 million</i>	<i>\$374.0 million</i>	<i>\$223.0 million</i>	<i>\$125.0 million</i>
<i>Sec. 5339(c) low/no-emission bus grants</i>	<i>\$75.0 million</i>	<i>\$125.0 million</i>	<i>\$80.0 million</i>	<i>\$125.0 million</i>
<i>Sec. 5337 state of good repair grants</i>	<i>No "plus-up"</i>	<i>No "plus-up"</i>	<i>\$45.0 million</i>	<i>\$40.0 million</i>
<i>Sec. 5311 rural transit</i>	<i>\$40.0 million</i>	<i>No "plus-up"</i>	<i>\$45.0 million</i>	<i>\$40.0 million</i>

Sec. 5340(d) high-density states	\$40.0 million	No "plus-up"	\$45.0 million	\$40.0 million
Sec. 5318 bus testing	\$3.0 million	No "plus-up"	\$1.7 million	\$2.0 million
Sec. 5312 innovative mobility grants	\$5.5 million	\$1.0 million	No "plus-up"	\$1.0 million
Sec. 5312 accelerating innovative mobility grants	No "plus-up"	No "plus-up"	No "plus-up"	\$1.0 million
Persistent poverty grants	\$8.5 million (new program)	No funding	\$20.0 million	\$16.2 million
Sec. 5307 (h) ferry program	No "plus-up"	\$10.0 million	\$19.7 million	\$8.0 million

Those are a lot of numbers. What do they mean?

Basically, your state, tribal nation or urbanized area probably will get about the same amount of FTA formula funding in this year's routine apportionments as it did last year. That's true for all three of the core formula grant programs: Section 5307, 5310 and 5311.

What about local match for these grants?

As CTAA and others were reporting this spring and summer, there had been some effort in Congress to suspend local match requirements for FTA grants this year. That language did not survive Congressional negotiations. However, FTA has been doing all it can to allow 100 percent federal share of grants during the nationwide COVID-19 public health emergency, and is continuing this opportunity for emergency relief through January 20, 2022. It's important to know that not all transit activities qualify, so you should be sure to work with your FTA regional office if you're seeking to take advantage of this emergency relief provision.

Big News on the Medicaid Transportation Frontier

One of the many diverse topics added to the FY 2021 Consolidated Appropriations Act was a whole title of "Health Extenders." That may draw nothing but yawns from people who aren't devotees of federal health policy, but Section 209 in that title is hugely significant: For the first time, ever, non-emergency medical transportation (NEMT) becomes codified as a mandatory item in states' Medicaid programs. Until now, NEMT was something most states included in Medicaid as a result of federal court rulings and regulatory guidance from the federal Centers for Medicare and Medicaid Services (CMS), and not because of a legal requirement. It will be interesting to see how this plays out in actual practice.

The Big Question: COVID Relief and Public Transportation

Yes, the Consolidated Appropriations Act includes \$908 billion in COVID relief, which is the largest tranche of such relief since this spring's CARES Act. And yes, this bill directs \$14.0 billion in additional funding to public transit. And yes, that funding consists of \$13.3 billion for qualifying recipients in urban areas, \$50.0 million for all Section 5310 designated recipients, and \$678.7 million for qualifying states' and possessions' rural transit programs. If you're a recipient of Section 5307 or 5311 funds, though, there's a good chance you won't see any of these dollars.

For urbanized areas, there is a cap – 75 percent of all operating expenses reported from your urbanized area in 2018, according to FTA's National Transit Database (NTD). If your urbanized area's apportionment under the CARES Act equaled or exceeded that cap, you'll get nothing under this bill. If your CARES Act apportionment was less than the cap, you can receive funding under this bill's allotment, but cannot exceed that cap.

According to estimates from our colleagues at the Transit Center, 91 percent of the urban transit dollars under this bill will be allocated to around 40 of the largest urbanized areas in the country; everyone else will get little. In fact, of the nation's 358 small-urban urbanized areas, 272 (76%) receive nothing from this stimulus.

For states' rural transit programs, there also is a cap – 125 percent of all operating expenses reported from each state's rural reporters in 2018, according to the NTD. If your state's apportionment under the CARES Act equaled or exceeded that cap, you'll get nothing under this bill. The \$678.7 million will be shared among the handful of qualifying states, using a mechanism based on the Section 5311 funding formula and the CARES Act rural apportionment methodology.

Based on a quick review of NTD rural transit data, CTAA has estimated that only 12 states and one territory will qualify to receive portions of the \$678.7 million in this bill's COVID relief for rural transit. The other four territories and 38 states? Nothing here for them, it would appear.

What's Next?

Assuming this Consolidated Appropriations Act, including its COVID relief, and its dozens upon dozens of other legislative matters (including the NEMT item mentioned above) becomes law, FTA quickly will fire up its computers, tweak their spreadsheets to fit the latest information and congressional instructions, and will issue its full-year apportionments and allocations for FY 2021 formula funds. That notice should be issued sometime in January. In all likelihood, most of those formula apportionments will be pretty close to the amounts each state and urbanized area received in FY 2020, but there will be

some changes here and there. At around the same time, FTA will publish separate tables of formula allocations for the \$14.0 billion in COVID relief: those will be interesting to see.