



U.S. Department
of Transportation
**Federal Transit
Administration**

Deputy Administrator

1200 New Jersey Avenue, SE
Washington, D.C. 20590

FEB 19 2014

Dear Colleague:

I am pleased to inform you that the Federal Transit Administration (FTA) has adopted a policy to guide the treatment of insurance proceeds received by transit agencies affected by Hurricane Sandy. Under existing guidance, FTA requires grantees to apply any insurance proceeds to the repair or replacement of federally funded assets. Due to the severity of Hurricane Sandy, several transit operators received large lump-sum insurance settlements covering both transit and non-transit losses. Under this scenario, additional steps are required to identify the appropriate amount of insurance to apply to transit projects, as well as to identify specific projects to which these funds should be applied.

In response to Hurricane Sandy, and effective for future disasters, FTA will require that grantees that receive lump-sum insurance settlements allocate a percentage of the proceeds to transit projects based on the proportion of the insured damage eligible under FTA's Emergency Relief Program. FTA will allow a grantee flexibility in identifying the specific project(s) to which the insurance proceeds will be applied.

This policy will ensure that insurance proceeds received for damaged transit assets are applied to the recovery and rebuilding of those assets, while allowing flexibility for the various scenarios and extent of damage experienced by FTA recipients. This policy will also ensure that the Federal interest in insured assets is appropriately protected, consistent with other Federal agency practices. FTA and the affected transit agencies will work together in two steps.

First, FTA will work with the grantee to identify the share of the insurance settlement that is attributable to transit losses. The insurance settlement must be allocated to eligible FTA Emergency Relief projects in the proportion that insurable losses eligible under FTA's Emergency Relief Program bear to total insured losses, including those ineligible for assistance under the Emergency Relief Program. Second, FTA and the recipient will work together to apply insurance payments to individual transit projects. This may involve assigning an equal portion of the settlement to all projects, to a defined set of projects, or to one or more individual projects.

FTA staff is available to assist you with determining and documenting the pro-rated share to apply to FTA Emergency Relief Projects, as well as determine how to apply the funds to specific projects. We look forward to working with you to see these payments invested in transit projects.

As a reminder, section 23 of the Master Agreement requires all recipients to comply with the flood insurance purchase provisions of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012a), with respect to projects in a special flood hazard area (SFHA) (i.e., a 100-year flood zone). Recipients must obtain and maintain flood insurance for structures in an SFHA in an amount equal to the Federal investment or the maximum amount of flood insurance available, whichever is less.

Sincerely yours,



Therese W. McMillan

Enclosure: Policy Statement-Treatment of "Lump-Sum" Insurance Settlements
Involving Damage to Transit Assets as a Result of Hurricane Sandy

FTA Policy Statement Regarding the Treatment of “Lump-Sum” Insurance Settlements involving Damage to Transit Assets as a Result of Hurricane Sandy

February 19, 2014

Summary:

Under existing FTA guidance in Circular 5010.1D, if a grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee agrees to:

- (a) Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service (Listed below are two examples of the application of insurance proceeds.), or
- (b) Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

This guidance requires additional clarification as a result of the situation caused by Hurricane Sandy, which caused extensive damage to transit assets owned by FTA grantees, as well as to other non-transit assets owned by the same grantees. In the aftermath of the storm, several FTA grantees received insurance settlements based on policy maximums or settlement agreements, which were not attributable, in whole or in part, to specific assets that were damaged. As a result, FTA must implement a policy guiding the application of these insurance proceeds to eligible transit projects.

While FTA waived the remaining useful life of assets damaged or destroyed by the storm, effectively reducing the remaining Federal interest on such assets to zero, FTA will ensure that an appropriate share of any insurance proceeds received by a grantee is applied to the repair, reconstruction, or restoration of transit assets for which FTA provides financial assistance under the FTA Emergency Relief Program, as authorized under the Disaster Relief Appropriations Act of 2013 (Pub. L. 113-2).

Implementation:

A grantee that receives an insurance settlement for damage to both transit and non-transit assets, and which does not include amounts attributable to specific assets, will be required to work with FTA as outlined in the steps below. *If a grantee receives insurance proceeds that are directly attributable to specific assets, the provisions of Circular 5010.1D will apply.* FTA will review the allocation and application of insurance proceeds through standard oversight meetings and reviews.

Step One:

FTA will work with the grantee to identify the share of the insurance settlement attributable to transit losses. The insurance settlement must be allocated to eligible FTA Emergency Relief

projects in the proportion that insured losses eligible under FTA's Emergency Relief Program bear to total insured losses, including those ineligible for assistance under the Emergency Relief Program.

For example, if an agency suffered a total of \$100 million in damage to insured bridges and transit assets, and the transit damage was assessed at \$50 million, then 50 percent of any unallocated insurance settlement must be applied to transit projects eligible for FTA funding. The grantee may allocate the remaining \$50 million without obligation to FTA, including as local share for FTA grants.

FTA will work with the grantee and other cognizant agencies to identify the share of damage attributable to transit and non-transit losses. Documentation of insured losses may include insurance claims, documentation of the insurance settlement, the grantee's insurance policy documents, damage assessments prepared in cooperation with FTA, FEMA, or another Federal agency, FEMA project worksheets, or other satisfactory documentation of the extent of insured damage.

The amount of insurance proceeds attributable to transit losses will be documented by FTA, and this information must be attached to any emergency relief grant awarded after the insurance proceeds are received.

If a grantee receives an insurance settlement for transit assets only, but for which specific assets are not identified, step one is not required and the FTA will begin with step two.

Step Two:

If the amount of insurance proceeds attributable to transit losses is greater than the remaining unfunded cost of disaster recovery projects, FTA will reduce the grantee's emergency relief allocation such that the emergency relief allocation plus the attributable insurance proceeds are equal to the total estimated cost of disaster recovery. FTA will not allocate recovery funding in an amount greater than the total cost of disaster recovery less insurance proceeds attributable to transit losses, as determined in step one. FTA may allocate funding for resilience improvements in excess of the estimated total cost of disaster recovery.

A grantee may request that FTA update the total estimated cost of disaster recovery. In this case, the grantee must provide documentation of increased recovery costs, or previously unknown damage.

FTA and the recipient will work together to identify specific transit projects to which the attributable insurance proceeds will be applied. FTA will allow a grantee flexibility in identifying the specific project(s) to which the insurance proceeds will be applied.

Possible alternatives include: (1) Assigning an equal portion of the attributable insurance proceeds to all transit recovery projects; (2) Assigning the attributable insurance proceeds equally to a defined set of transit recovery projects; or (3) Assigning the attributable insurance proceeds to one or more individual transit recovery projects. FTA will consider alternative approaches upon request.

Once insurance proceeds are applied to a specific transit recovery project, FTA will deduct the amount of the applied insurance proceeds from the net project cost and will account for this in the recovery grant. The application of transit-attributable insurance proceeds to recovery projects will be documented by FTA as an attachment to any emergency relief grant to which insurance proceeds are applied. If the insurance proceeds are applied to a disaster relief project for which FTA has already awarded funds, the grantee must reimburse FTA for the resulting difference in the Federal cost share.

A grantee must be aware that if it chooses to fund a recovery project entirely from insurance proceeds without FTA assistance, that recovery project would only be eligible for future FTA assistance (e.g. for cost overruns) provided that all Federal requirements are met prior to incurring costs on the project. In this case, FTA will require additional documentation of how the attributable insurance proceeds are used.