



United States Department of Transportation

Federal Transit Administration

Docket No. FTA-2013-0023

Comments of the American Bus Association

Formula Grants for Rural Areas; Guidance and Application Instructions

November 19, 2013

The American Bus Association appreciates this opportunity to comment on the Federal Transit Administration's (hereinafter "FTA" or "the Agency") request for comments in the matter of the FTA's proposed guidance in the form of a circular (hereinafter "proposed guidance" or "circular") to assist recipients in their implementation of the section 5311 Rural Area Formula Program.

INTRODUCTION

In the Thursday, September 26, 2013, issue of the Federal Register (Volume 78, No. 187, pages 59415 to 59419), the FTA published its proposed circular as guidance to assist recipients in the implementation of the Section 5311 Rural Area Formula Program. The changes in the current circular were necessary "...as a result of changes made to the Rural Area Formula Program by the Moving Ahead for Progress in the 21st Century Act (MAP-21)" 78 Fed. Reg. 59415. Comments on the proposed circular are due to the docket on or before November 25, 2013.

The American Bus Association (hereinafter "ABA") is the premier private bus and motorcoach industry trade association in North America. The ABA has existed for over 75 years. The ABA is home to some 3,800 member companies, organizations and attractions and approximately 850 bus operator companies. ABA operator members provide all manner of transportation services to the public, including fixed route intercity and scheduled service, charter and tour, dedicated employee transportation, airport shuttle and commuter service. In addition, there are ABA members that provide services to bus companies, and finally ABA members that include tour, travel and tourism companies, convention and visitors' bureaus, destinations, and attractions.

CONCLUSION

ABA and its members disagree with FTA's determination that the "in-kind" match program allowing States to use the capital costs of unsubsidized private intercity bus service as the local match for a

section 5311(f) project should be limited to capital costs 78 Fed. Reg. 59418. Specifically, ABA does not agree with the Agency's conclusion that "...generally only the capital costs of the unsubsidized service may be used as in-kind match" because "...FTA can only fund the net project cost and the private operator is presumed to be collecting at least enough in fares to cover the operating costs of the service..." (Proposed FTA Circular 9040.1G, page VIII-4). As demonstrated infra the language of the statute and its legislative history compels the conclusion that all costs must be included in determining the in-kind match.

ABA's view is this proposed change to the existing circular will be detrimental to the development and continuation of transportation services in rural America.

COMMENTS

With respect to the Intercity Pilot Match Program established by FTA in 2007, MAP-21 codified this program and FTA has included the in-kind match language in Chapter VIII of its proposed guidance 78 Fed. Reg. 59418. However, ABA believes that the in-kind match program approved by MAP-21 expanded the eligible in-kind match to include the "costs" of the unsubsidized connecting intercity bus service, not just the "capital costs". 49 U.S.C. 5311(g), as amended by MAP-21, authorizes rural projects to be funded at 80% of net capital project costs and 50% of net operating project costs and Section 5311(g)(3) provides that the remainder of new project costs –

"(D) in the case of an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, may be derived from the costs of a private operator for the unsubsidized segment of intercity bus service as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under subsection (f) if the private operator agrees in writing to the use of the costs of the private operator for the unsubsidized segment of intercity bus service as an in-kind match." (*Emphasis supplied*).

Moreover, the legislative history of MAP-21 demonstrates that Congress intended that all of the costs of the unsubsidized service would be eligible for use as an in-kind match. Section 20012(b)(2) of S. 1813, the Senate – passed version of MAP-21, provided:

"(2) IN-KIND MATCH – the Secretary shall establish a pilot program under which the Secretary may allow not more than 20 States using funding provided to carry out section 5311(f) of title 49, United States Code, as amended by this section, to support intercity bus service using the *capital costs* of unsubsidized service provided by a private operator as in-kind match for an eligible project." (*Emphasis supplied*).

Section 2000(h) of H.R. 7 (House Report 112-397) added a new subparagraph (D) to Section 5311(g)(3) as follows:

(D) "may be derived from the costs of a private operator's intercity bus service as an in-kind match for the operating costs of connecting rural intercity bus feeder service funded under

subsection (f), except that this subparagraph shall apply only if the project includes both feeder service and a connecting unsubsidized intercity route segment and if the private operator agrees in writing to the use of its subsidized costs as an in-kind match.” (*Emphasis supplied*).

The MAP-21 Conference Report (Conf. Rept. 112-557), Section 20010, page 286) and the final language of MAP-21 adopted the House approach. Although the Report made some changes to the House language, it did not change the House term, “costs” to the Senate’s term, “capital costs”. Thus the conferees intended that the private operator’s “costs” of intercity bus service would be eligible as in-kind match, not just the “capital costs” of such service.

The Agency attempts to avoid this conclusion by stating that as it has only enough to “...fund a portion of the net project cost of a section 5311(f) project and the private operator is presumed to be collecting at least enough in fares to cover the operating costs of the service, generally only the capital costs of the unsubsidized service may be used as in-kind match” (Proposed Circular page VIII-4). With all respect that justification is not relevant to the question of how the remainder of the net project cost is derived.

Congress provided in Section 5311(g)(3)(D) that States may use the costs of connecting private-sector intercity bus service as the source of the remainder. It is important to note that in fashioning this subsection, Congress used the term “costs” unlimited by “net project” or “capital” costs. ABA believes that the proposed guidance should likewise be unlimited.

Respectfully submitted,



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