

MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: February 9, 2022
RE: Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program

REQUEST

The Members of the Board are requested to approve a \$25,625,000 non-recurring pandemic relief program targeted at commuter and transit bus private carriers operating in New Jersey. The Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program (“the Program”) is funded by an allocation in the State 2022 fiscal year budget from the Coronavirus State Fiscal Recovery Fund (SFRF). The Program will provide a one-time grant to eligible commuter and transit bus private carriers that operated as essential service providers in New Jersey during the COVID-19 pandemic and experienced significant revenue loss due to reduced ridership. To comply with the duplication of benefits provisions within the Stafford Act and as outlined in Executive Order No. 267, Program grants will only reimburse revenue losses that have not been addressed through any other funding sources (i.e., “unmet need”).

Based on the Authority Staff’s prior experience implementing COVID-19 response programs with SFRF requirements, the significant financial impact the pandemic has had on the private carrier industry, and the non-discretionary nature of the criteria of the Program, the Board is asked to approve delegated authority to:

- The Authority’s Chief Executive Officer (CEO) to accept \$25,625,000 in funds from the SFRF through the execution of the corresponding Memorandum of Understanding (MOU) with the Department of Community Affairs (DCA).
- The CEO or delegate(s) of the CEO to approve applicants as eligible and allocate award amounts;
- The CEO or delegate(s) of the CEO to, upon recommendation of the reviewing officer, decline grant eligibility based solely on non-discretionary reasons;
- In connection with any appeal from declination based solely on non-discretionary reasons, the CEO or delegate(s) of the CEO to designate one or more Hearing Officers who have not previously been directly involved in the eligibility determination, to prepare a Final Administrative Decision. The Final Administrative Decision must be approved by the CEO or delegate(s) of the CEO upon recommendation of the Hearing Officer

BACKGROUND

COVID-19 Pandemic and Its Impacts:

On March 9, 2020, Governor Phil Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of COVID-19. Containing the COVID-19 pandemic necessitated restrictions on public gatherings and led to mandated closing for non-essential businesses. New Jersey businesses and residents faced significant economic challenges due to these public health measures. Even essential services that maintained operations through the public health shutdown faced additional financial strain due to increased sanitation protocols and reductions in customers.

The transportation industry was among one of the industries hardest hit during the pandemic. It was defined as an essential service in P.L. 2020, c. 84, signed by Governor Murphy on September 14th, 2020. Executive Order No. 125, signed by Governor Murphy on April 11th, 2021, mandated additional mitigation requirements on NJ Transit and all private carriers to limit the spread of COVID-19, including requirements that both directly and indirectly decreased ridership, resulting in a significant loss of revenue to private transportation companies. Despite public health-related restrictions being lifted and the broader economy showing signs of recovery, ridership has still not returned to its pre-pandemic levels. As such, grant funding is necessary to help private carriers recover from their lost revenues, allowing them to retain or create jobs.

To provide financial relief to address the continued impact of COVID-19 on the economy, the Federal government passed the American Rescue Plan Act (ARP) of 2021. Within the ARP, the Coronavirus State and Local Fiscal Recovery Fund (SFRF) provided approximately \$6.2 billion in funds to the State of New Jersey for a variety of recovery-specific uses. The State's Fiscal Year 2022 Appropriations Act allocated \$25,000,000 of these monies to The Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program (the Program). These funds, in alignment with Executive Order 267 and the Stafford Act, must be used only to address an unmet need to avoid duplication of benefits.

OVERVIEW

The Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program is proposed as a non-recurring grant program to help commuter and transit bus transportation companies alleviate the revenue loss resultant from the COVID-19 pandemic, allowing them to retain or create jobs. Helping the state's private carrier industry will both benefit New Jerseyans who rely on the state's commuter bus services as well as the residents employed by the private carrier companies.

To receive funding, applicants must meet all eligibility criteria described below. The eligibility criteria are non-discretionary and program funds will be allocated based on a predefined formula to ensure the program can be efficiently administered. As authorized by the State Fiscal Year 2022 Appropriations Act, NJEDA will implement and administer this program using a 2.5% administrative fee based on the \$25,000,000 program budget (fee equal to \$625,000) to cover costs such as staff time, technology development, marketing, etc. Such funds will be requested within the application to and subsequent MOU with the Department of Community Affairs, which manages the SFRF funds on behalf of the State. NJEDA Staff will be responsible for reviewing applications, coordinating good standing reviews, disbursing funds, reporting on fund usage in compliance with Federal requirements, maintaining a

program website, and providing educational resources, such as FAQs and webinars, to applicants when needed.

TRANSPORTATION INDUSTRY-SPECIFIC DEFINITIONS

The National Transit Database (NTD) is a publicly available repository of data about the financial, operating, and asset condition of transit systems, providing a public accounting of these services. The NTD is designed to support local, state, and regional planning efforts through the availability of multi-year data for trend analyses. Transit agencies report data on a number of key metrics including Vehicle Revenue Miles (VRM), Vehicle Revenue Hours (VRH), Passenger Miles Traveled (PMT), Unlinked Passenger Trips (UPT), and Operating Expenses (OE). This resource, as a Federally maintained and validated register, will serve as the basis for the allocation of funds within the Program.

The Program will use the definitions of the following terms as quoted from the Federal Transit Administration in the NTD Glossary:¹

Vehicle Revenue Miles are the miles that vehicles are scheduled to or actually travel while in revenue service. Vehicle revenue miles include layover and recovery time. Vehicle revenue miles exclude deadhead, operator training, vehicle maintenance testing, and other non-revenue uses of vehicles.

Fixed Route Services are services provided on a repetitive, fixed schedule basis along a specific route with vehicles stopping to pick up and deliver passengers to specific locations; each fixed route trip serves the same origins and destinations, such as rail and bus (MB); unlike demand responsive (DR) and vanpool (VP) services.

Commuter Bus (CB) is a local fixed-route bus transportation primarily connecting outlying areas with a central city. Characterized by a motorcoach (aka over-the-road bus), multiple trip tickets, multiple stops in outlying areas, limited stops in the central city, and at least five miles of closed-door service.

Charter Service is a vehicle hired for exclusive use that does not operate over a regular route, on a regular schedule and is not available to the general public.

For the purposes of the Program, Vehicle Revenue Miles reported to the NTD, as recorded in Annual Data Tables 2020 Service for New Jersey, or through NJ Transit as their private carrier in 2020, will be used in the calculation for the pro-rata allocation of funding.

For the purposes of the Program, eligible applicants need to provide a fixed route service by bus (MB); other transit modes are not eligible.

¹ Federal Transit Administration (2021, December 22). *National Transit Database (NTD) Glossary*. United States Department of Transportation. Retrieved December 22, 2022 from <https://www.transit.dot.gov/ntd/national-transit-database-ntd-glossary>

PROPOSED PROGRAM STRUCTURE & DESIGN

The Program will be structured as a non-competitive grant. As such, the Program’s application will remain open for a fixed period of time (to be set by the CEO or staff delegated by the CEO based on anticipated demand, but no less than two weeks) and all applicants that apply within this period and meet the eligibility requirements will receive a grant.

Program Eligibility:

To be eligible, an applicant must, demonstrated in a manner acceptable to the Authority:

- Have been in business prior to February 15, 2020;
- Be a for-profit business (non-profits are excluded from the Program based on other required criteria); public agencies, authorities, or government entities are not eligible;
- Be registered to do business in and operating in the state of New Jersey, as evidenced by a current New Jersey Tax Clearance Certificate;
- Provide fixed route bus service (MB) or commuter bus (CB) service as defined in the Federal Transit Administration’s December 22, 2021, *National Transit Database (NTD) Glossary*. Other services, including but not limited to those provided by charter buses, school buses, municipal shuttles, vanpool, and on-demand bus services, are not eligible;
- Have reported Vehicle Revenue Miles for fixed route bus service (MB) or commuter bus service (CB) greater than 0 in New Jersey directly to the NTD, as recorded in Annual Data Tables 2020 Service, or through NJ Transit as a private carrier in 2020;
- Demonstrate revenue losses in the state of New Jersey in 2020 due to the pandemic (calculated as the difference between each applicant company’s 2020 revenues reported in New Jersey and 2019 revenues reported in New Jersey) that has not been fully addressed by other public or private relief funding sources;
- Self-certify best effort not to furlough or lay off any individual from the time of application through six months after the end of the declared state of emergency. Applicants that have already furloughed or laid off workers from the time of application must make a best-effort pledge to re-hire those workers as soon as possible. Any material breach of its best effort certification may result in the NJEDA seeking repayment of the grant;
- Satisfy the Authority’s debarment/disqualification review and not have any defaults or outstanding obligations to the Authority; and
- Be in good standing with the following sister agencies: New Jersey Department of Labor, New Jersey Department of Environmental Protection, New Jersey Division of Taxation, and New Jersey Transit.

Program Funding Levels:

The total Program grant budget will be \$25,000,000. NJEDA will utilize a 2.5% administrative rate in addition, assessed on the Program grant budget (\$625,000) for administrative costs incurred in the administration of programs.

NJEDA will charge Applicants a \$1,000 fee for applying to this program.

Calculation of Awards:

Grants will be allocated to eligible applicants using a predefined formula, consisting of a flat award amount and a share of the remaining program funds proportional to the applicant's total vehicle revenue miles, capped at unmet need.

Once application period closes, Staff will review all applicants' submissions for completeness. Applicants who submit incomplete applications will be given the opportunity to remedy, per Program's standard operating procedures. All complete applications will be reviewed for eligibility, with grant award amounts determined as follows.

Each approved applicant will be eligible for a flat grant amount of \$500,000. This value was determined based on an even division of a quarter of the overall Program budget (\$6,250,000), using the anticipated Program applicant pool (approximately twelve eligible organizations). The flat grant amount is intended to equitably address base overhead costs that are independent of revenue miles operated, for example, the cost of vehicle maintenance, employee salaries, and garage depots for buses. However, if there are more than twenty eligible applicants with unmet needs greater than \$500,000, the flat amount provided to each eligible applicant will be reduced such that all applicants receive an equal share of \$10,000,000, in addition to the allocation of the remaining funds (as described below). This is to ensure that sufficient funding remains for distribution of funds proportional to vehicle revenue miles operated, as an essential service, during 2020 in New Jersey. Any amounts unused from the \$10,000,000 maximum available for the flat grant amount in aggregate will be included in the allocation of the remainder of the funds.

The remainder of the funds will be allocated based on each eligible applicant's proportional share of the total vehicle revenue miles in New Jersey for 2020 for all eligible applicants, as reported in the NTD directly or through NJ Transit as a private carrier. This methodology is being used to account for additional variable revenue losses and cost increases associated with volume of service maintained during the COVID-19 pandemic.

The maximum award, inclusive of the flat amount and pro-rata allocation, will not exceed the applicant's unmet need. For this Program, as aligned with duplication of benefits requirements, unmet need is defined as 2020 New Jersey revenue losses (calculated as the difference between each applicant company's 2020 revenues reported in New Jersey and 2019 revenues reported in New Jersey), less any other public or private COVID-19 relief funds that a company received for 2020.

Public or private funds that companies may have received include, but are not limited to, Federal or State loans and grants – such as Coronavirus Economic Relief for Transportation Services (CERTS) grants, forgivable portions of Payroll Protection loans, and Economic Injury Disaster grants – and insurance payouts. As such, this funding allocation design will comply with duplication of benefits provisions within EO 267 and the Stafford Act, as required by the funding source.

Any funding, flat amount or pro-rata share, that exceeds unmet need will be re-allocated to the pool to be disbursed to other eligible applicants.

Based on data sourced from the NTD and currently available public records of relief funds (that is, without fully taking into account loss of revenue or duplication of benefits), the average award size is anticipated to be \$1.65 million.

Diversity, Equity, and Inclusion:

The NJEDA believes that diversity, equity, and inclusion are inherent to creating a stronger and fairer New Jersey economy. The Program, outlined by the State legislature, has a tightly defined purpose targeted to provide support to private carrier companies. To support NJEDA's commitment to diversity, equity, and inclusion, the application will include voluntary disclosures about applicant company demographic data and request a diversity, equity, and inclusion plan, policy, or statement for their organization.

Appeals:

Applicants will have the right to appeal the Authority's determination of eligibility and award amount. Appeals must be filed within the timeframe set in the declination letter (which must be at least 3 business days but no longer than 10 business days). The CEO or delegate(s) will designate Hearing Officers, who will be a staff member who has not up until that point been directly involved, to review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a Final Administrative Decision, which must be approved by the CEO or delegate(s). Due to the proportional distribution of funds, all funds will be held from assignment until all appeals are resolved, after which funds will be disbursed.

DELEGATED AUTHORITY

Beginning in July 2003 the Members of the Authority have been asked to delegate signing authority to staff on certain financing and incentive transactions, to create efficiencies for our customers and provide fluidity to our business. Delegated authority is requested, as more specifically described in the Request section, for the CEO (and in most instances for the CEO to delegate to staff) to accept \$25,625,000 in SFRF funds, executed the standard form of SFRF MOU with DCA, approve applicants and award amounts, decline applicants, and make final administrative decision on appeals. The SFRF MOU will outline the program design approved within this memorandum and assign federal reporting requirements to EDA for such funds that are released – both for administration of the Program and for the grant funding pool itself. The MOU requires EDA to repay to NJ DCA (who in turn would repay to US Treasury) any funds the use of which are inconsistent with those federal requirements. Delegated authority for the administration of this program is consistent with delegated authority for other programs, based on Authority familiarity with SFRF funding requirements, experience in implementing programs associated with the on-going COVID-19 pandemic, anticipated applicant pool's significant and urgent need of funds, and the eligibility for and allocation of funds being on a fully non-discretionary basis. The average award size is anticipated to be \$1.65 million.

SUMMARY

The Members of the Board are requested to approve a \$25,625,000 non-recurring pandemic relief program targeted at commuter and transit bus private carriers operating in New Jersey. The Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program (“the Program”) is funded by an allocation in the State 2022 fiscal year budget from the Coronavirus State Fiscal Recovery Fund (SFRF).

Delegated authority is requested, as more specifically described in the Request section, for the CEO (and in most instances for the CEO to delegate to staff) to accept \$25,625,000 in SFRF funds, executed the standard form of SFRF MOU with DCA, approve applicants and award amounts, decline applicants, and make final administrative decision on appeals.

Tim Sullivan
Chief Executive Officer

Prepared by:

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