

PROGRAMMING ECONOMIC RECOVERY FUNDS: DRAFT GUIDANCE TO MPOS

Introduction

As you know, New York State and the nation are anticipating the passage of federal economic recovery legislation in the coming weeks which will provide additional federal funding for transportation and other purposes to stimulate the national economy. In order to expedite the positive impact on the economy, this funding is expected to come to the States with conditions that require it to be used within a very short timeframe.

NYSDOT's overriding goal in providing the subject guidance is to ensure that we and our local partners seize the opportunity under economic recovery to progress critical transportation improvements, thereby strengthening our economic competitiveness for the future. In order to do this we must position ourselves to be able to spend economic recovery funding as quickly as possible. States that do not use the recovery funding within required federal timeframes are expected to lose it for redistribution to other states. Although there are many unknowns, we are preparing with the best available information we have at this time. Our biggest priority is to keep the federal economic recovery dollars in New York State to create jobs and deliver needed projects.

Why We Need to Act Now

NYSDOT and the MPOs need to take action now in order to be in the position to take advantage of federal transportation funding made available by an economic recovery program. The current expectation for the passage of an Economic Recovery Act is mid-February. We anticipate that the Economic Recovery Act will have mandated triggers to withdraw funds from states after a specific deadline if projects have not advanced past mandated milestones. The window of opportunity to use these funds is anticipated to be very short and will not be known until the federal recovery bill is passed. However, time frames could be as short as 90 days to project award or as long as 180 days to award, or something else. To meet these deadlines requires us to expedite the TIP/STIP approval process. Those states that cannot deliver projects in this time frame will lose funding and funds will be redistributed elsewhere. The good news from FHWA is that we can act now to program up to \$1.4 billion of recovery funds, or one year's apportionment, on the STIP. Additional projects above this amount can be added as "illustrative projects".

Until an Economic Recovery Act is passed it is assumed that all Federal laws and regulations continue to apply. This includes the planning and conformity requirements. Please note that the regular/core federal-aid program is still expected to be fiscally constrained.

How Will Economic Recovery Dollars be Allocated to States

We do not know yet how (in what form or funds sources) the economic recovery dollars will come to the states until we see the language in the recovery bill. Based on current information from FHWA, we anticipate the funding will be provided through existing Federal programs and be managed centrally by State DOT's. Because these are new funds, fiscal constraint will be automatically demonstrated with the Economic Recovery funds. FHWA has indicated that until an Act is passed, the figure of approximately \$1.4 billion in recovery funds will be assumed and will be used to determine Statewide fiscal constraint of the STIP. In addition, FHWA has indicated that the State and MPOs may now consider the Economic Recovery funds as fiscally constrained.

NYSDOT proposes to distribute the recovery dollars to ready to go projects on a first come first serve basis regardless of ownership with geographic equity considerations. All ready to go projects must be federal-aid eligible. To facilitate project delivery, NYSDOT and the MPOs should give priority to projects that are currently programmed on the TIP and STIP for which existing funds may not be sufficient or available and that can be let to contract soon after the economic recovery bill passes. Please note that projects that require other Federal actions such as NEPA determinations or permit requirements are unlikely to be ready within the timeframe anticipated.

How Much Economic Recovery Funding Will be Available by MPO

We will not know funding levels or any sub-allocation requirement until the recovery bill is passed. MPOs should be planning to program an extra year's worth of federal funds to be in a position to use funding that others cannot obligate within the required timeframe. These projects can be placed on the TIP right now. In addition, if the MPO has ready to go projects that exceed one year's worth of federal funding these projects may be included in the public review and added to the TIP as illustrative projects.

Regions and MPOs should encourage local project sponsors to send PS&E information to Regional offices for review ASAP, for local projects that are on the TIP or are being added to the TIP by amendment. Additionally, local project sponsors should pass resolutions now that will enable them to enter into State-local agreements and accept federal recovery funds. A standard resolution with instructions will be distributed to NYSDOT Regions in the near future and will also be available on the NYSDOT Local Programs website. MPOs and others as applicable will be notified when the resolution is posted.

Actions Needed Now

With the tight timelines, it can be assumed that there may be more than one round of recovery funding. The MPOs should be working with the Regions and local jurisdictions and strategize the projects to be moved forward. For example, one strategy could be to move the all projects on two consecutive tracks: Track 1, fast track the projects that can be moved immediately after the act is passed, and then track two move on the “slower” projects that may take 3 – 4 months to process. Also, as projects are being advanced for the Economic Recovery funds, NYSDOT and MPO implementing agencies are still required to deliver the “regular” Federal-aid program. Regions and MPOs need to be moving projects to use the regular Federal-aid program.

1) NYSDOT and the MPOs should immediately finalize the economic recovery project list in each Region. It is critical that projects be appropriately screened to insure they are deliverable to award/obligation within 90 days. Project lists should be reviewed for any “red flags” such as permits, which might delay a project from award. FHWA recommends that permits be already in place as permitting agencies such as EPA and the ACOE may be overwhelmed by applications. Projects should be prioritized by “ready to go” status and to maximize delivery, existing TIP/STIP projects should receive priority consideration. Non-exempt projects should not be added to the TIP due to the length of the conformity process. Projects that advance ADA compliance, transit accessibility and connectivity between modes should also be given priority.

FHWA has noted that there will be no relaxation of federal programming requirements. This includes any requisite reviews by the air quality conformity Interagency Consultation Group of new projects being amended into the TIP/STIP in non-attainment areas, any significant schedule or scope changes to existing non-exempt projects and any scope changes to exempt projects.

2) NYSDOT and the MPOs should determine which economic recovery projects need to be added to the TIP by amendment or revised by amendment and which can be progressed outside the amendment process via project selection or administrative modification.

3) NYSDOT and the MPOs should begin the TIP amendment process immediately for potential economic recovery projects. If MPO procedures require an advance notice of upcoming public review prior to the release of a TIP amendment, that notice should go out immediately and should indicate that the existing TIP is being adjusted for an anticipated recovery program, the list of projects for which will be forthcoming.

NYSDOT MPO Section analysts will contact each MPO individually the week of January 12 to determine how quickly TIP amendments can be processed for economic recovery projects. This will include a discussion of upcoming planning and policy committee meeting dates and any expedited or emergency procedures that can be employed to

ensure that Policy board approval of TIP amendments for economic recovery can occur as soon as possible.

4) Prepare and release TIP amendment for public review in anticipation of Planning Committee approval. Since the level of recovery dollars by area will not be known during this step, the TIP amendment will list potential projects and an estimated dollar value for each project or the block of projects. The MPOs should not program more than the 'typical' amount of an annual program in order to continue to demonstrate fiscal constraint. Project fund source should be listed as "FY 09 ECON STIM" This is already set up in ESTIP as a funding category. Existing federal fund sources (NHS, STP etc.) should **not** be used to avoid over-programming these fund sources and to avoid confusion from mixing recovery and regular program projects. MPOs should limit the total value of TIP amendments for recovery funding to one year's worth of federal funding for projects being added to the TIP. Additional projects to be added that exceed that threshold will be considered illustrative projects that can be funded if additional funds become available. Illustrative recovery projects should be distinguished in TIP/STIP databases from regular recovery projects.

Upstate Regions should transmit MPO TIP amendments at this point to the NYSDOT Project Management Bureau so that amendments can be entered into the ESTIP in anticipation of submission to FHWA/FTA as soon as Policy Committee approval occurs.

5) Approve TIP amendments at Policy Committee level. Regions and/or MPOs submit amendments in ESTIP as applicable or notify the NYSDOT Project Management Bureau to submit to FHWA/FTA.