

Summary of FTA's Proposed Expansion of Eligible New Freedom Projects

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The Federal Transit Administration (FTA) published a notice of proposed policy change to the New Freedom program on January 23, 2009 to expand the type of projects it considers to be "beyond the ADA." The proposed changes are described in this brief.¹

When initially working on the guidelines to the New Freedom Program, the FTA proposed to fund either new transportation services *or* public transportation alternatives beyond those required by the American's with Disabilities Act (ADA); however the Congressional authors objected, and insisted that New Freedom funding be provided to projects that meet *both* criteria, new and go beyond the ADA.

Projects are only "beyond the ADA" if a funding recipient exceeds its obligations under the ADA. Department of Transportation (DOT) regulations interpreting and explaining the ADA determined that projects establishing or expanding fixed route or demand responsive service do not go beyond the ADA, and therefore cannot receive funds under New Freedom. This is because the ADA does not require a minimum level of public transit service in a given area, and once a service is provided, it must be ADA compliant, which would not be exceeding the obligations under the act.

Rural transit providers have expressed concern that the FTA's interpretation of "beyond ADA" prevents them from using New Freedom funds to provide new fixed route or demand responsive services for people with disabilities. They argue that these projects go beyond the ADA because they are transportation services that are not required under the ADA or under DOT ADA implementing regulations. They point out that even though New Freedom funds can be used for accessible taxis, travel training, and mobility management, rural transit's most urgent need is fixed route or demand responsive transportation services.

To answer this concern, the FTA has proposed to fund fixed route or demand responsive transportation services with New Freedom funds provided that²:

1. The service is identified in the locally developed, coordinated public transit-human services transportation plan;
2. The service is designed to meet the needs of individuals with disabilities;
3. The service removes transportation barriers and assists persons with disabilities with transportation;
4. The service was not operational on August 10, 2005, and did not have an identified funding source as of August 10, 2005, as evidenced by inclusion in the Transportation Improvement Program (TIP) or the State Transportation Improvement Program (STIP); and

¹ For information on the New Freedom program please see the California Coordinated Human Service Transportation Matrix and the Summary of the Americans with Disabilities Act of 1990.

² Language provided from the proposed rule.

5. The service is not designed to allow an agency to meet its obligations under the ADA or DOT ADA implementing regulations.

Examples of projects that would be eligible for New Freedom funds include:

- Fixed route service extended to serve a congregate living facility or a workplace serving large numbers of individuals with disabilities.
- New or expanded demand responsive service, including new hours or days of operation, or increased geographic coverage, to meet the needs of individuals with disabilities.

As a result of the expanded fixed route service, an organization's complementary paratransit service might also be expanded; however, since complementary paratransit service is required under the ADA, it would not be eligible for New Freedom funds.

The FTA encourages transit providers to be inclusive to the general public, and not provide the fixed route or demand responsive transportation only to the disabled.