

# FTA

FEDERAL TRANSIT ADMINISTRATION

## **Tribal Transit Program Assessment Manual Fiscal Year 2023**



U.S. Department of Transportation  
Federal Transit Administration

# **TABLE OF CONTENTS**

- 1. LEGAL**
- 2. TECHNICAL CAPACITY - AWARD MANAGEMENT AND PROJECT MANAGEMENT**
- 3. FINANCIAL MANAGEMENT AND NATIONAL TRANSIT DATABASE**
- 4. TRANSIT ASSET MANAGEMENT**
- 5. SATISFACTORY CONTINUING CONTROL**
- 6. MAINTENANCE**
- 7. CHARTER BUS**
- 8. PROCUREMENT**
- 9. AMERICANS WITH DISABILITIES ACT**
- 10. DRUG-FREE WORKPLACE ACT AND DRUG AND ALCOHOL PROGRAM**

# 1. LEGAL

## PURPOSE OF THIS ASSESSMENT AREA

Recipients must be properly authorized to receive Tribal Transit Program (TTP) funds and must promptly notify the Federal Transit Administration (FTA) of legal matters and additionally notify the U.S. DOT Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud.

## QUESTIONS TO BE DISCUSSED

1. Has the TTP recipient submitted, and maintained, the required forms and documentation to enter into award agreements with FTA?
2. Did the TTP Recipient sign the Annual certifications and assurances?
3. Did the TTP recipient promptly notify FTA of any legal matters that may affect the FTA?

## INFORMATION NEEDED FROM RECIPIENT

### Recipient Information Request

- List of litigations, breaches, defaults, disputes or instances where the Federal government was named as a party to litigation or a legal disagreement since the last review
- Listing of false claims received or criminal violation committed related to Federal assistance since the last review
- List of law enforcement investigations concerning the recipient's federally-funded projects, to the extent known to the recipient

---

---

## TTP L1. Has the TTP recipient submitted, and maintained, the required forms and documentation to enter into award agreements with FTA?

### BASIC REQUIREMENT

TTP recipients must be a Federally-recognized tribe to request, receive, and dispense FTA funds and to execute and administer FTA- funded tribal transit projects. The authority to take all necessary action and responsibility on behalf of the Indian Tribe must be properly delegated and executed.

### APPLICABILITY

All TTP recipients

### EXPLANATION FOR TTP RECIPIENT

TTP recipients must submit and maintain the following required forms and documentation:

- Opinion of Counsel letter. This letter cites the legal authority that enables a government's eligibility to apply for, receive and spend FTA funds and to provide local match, if required.
- Authorizing Resolution that authorizes an individual(s) to execute and file an application for federal assistance on behalf of the grant applicant with the Federal Transit Administration for federal assistance authorized by 49 U.S.C. Chapter 53, title 23, United States Code, or other federal statutes authorizing a project administered by the Federal Transit Administration.
- Obtain access to FTA's grant system of record, TrAMS, to apply for allocated funding and manage awards. The TTP recipient must provide following information, forms, and documentation, including but not limited to:

- General contact information for the tribal government
- TrAMS User Manager Form
- Designation of Signature Authority forms for all users with signature authority for handling various functions in TrAMS
- Obtain access to [FTA's Electronic Clearing House Operation Web \(ECHO-Web\)](#) system. The ECHO-Web system/application allows FTA grant recipients to request payments from their grant awards.
- If you are a current or returning TTP recipient, you must provide/submit the following on an annual or as-needed basis, including but not limited to:
  - The [Annual Certifications and Assurances](#) for FTA grants and cooperative agreements
  - Maintain access to TrAMS by submitting updates to the following forms, as needed:
    - TrAMS User Manager Form
    - Designation of Signature Authority forms for all users with signature authority for handling various functions in TrAMS
- Once awards have been obligated by FTA, TTP recipients must obtain access from FTA to the [Electronic Clearing House Operation Web \(ECHO-Web\)](#) to submit reimbursement requests to draw down FTA grant funds.

TTP recipients are required to sign the Annual Certifications and Assurances in TrAMS. TTP recipients may certify all categories (1 – 21) in the Annual Certifications and Assurances and FTA will not enforce any category that does not apply. However, tribes that only receive formula or competitive TTP funding may elect to only certify the following specific categories:

- Category 1 – Certifications and Assurances required of every applicant.
- Category 20 – Public Transportation on Indian Reservations Formula and Discretionary Program (Tribal Transit Programs)

Tribes applying for funds in other FTA grant programs (e.g., Section 5310 program) must also certify the applicable category for the associated funding program(s) in the Annual Certifications and Assurances.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the TTP recipient have all of the required forms and documentation to enter into award agreements with FTA? Are they current and uploaded to TrAMS?*
- b. *Do the officials acting on behalf of the TTP recipient have the proper authority?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the required forms and documentation in TrAMS to ensure they are available and current. If any of the required forms or documents are missing, ask the TTP recipient if they are available, and if so, to upload them to TrAMS. The reviewer should examine authorizing resolutions and/or delegation(s) of authority to ensure the official acting on behalf of the TTP recipient was properly authorized. The TTP recipient should be asked to identify the individuals authorized to act on its behalf. The reviewer needs to ensure the person signing or using an electronic PIN on behalf of the TTP recipient has proper authorization.

## POTENTIAL TECHNICAL ASSISTANCE DETERMINATION

The TTP recipient needs technical assistance if one or more of the required forms or documents is missing or no longer current

TECHNICAL ASSISTANCE CODE TTP L1-1: Required forms and documents uploaded to TRAMS

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in updating its required forms and documents (Opinion of Counsel, Authorizing Resolution, Delegations of Authority, and/or ECHO-Web authorizations and certifications, etc.) using the templates provided in the FTA TrAMS and ECHO-Web User Manuals.

---

---

### TTP L2. Did the TTP recipient sign (PIN) the Annual Certifications and Assurances in TrAMS?

**Was it signed (PINned) by an Authorized Official and Attorney with the proper authority?**

#### BASIC REQUIREMENT

FTA is authorized to consolidate the certifications and assurances required by Federal law or regulations for its programs into a single document that an applicant for, or recipient of, Federal assistance under 49 U.S.C. chapter 53 must submit annually or as part of its application for Federal assistance. FTA is also required to publish a list of these certifications and assurances annually.

#### APPLICABILITY

All TTP recipients

#### EXPLANATION FOR TTP RECIPIENT

TTP recipients are required to make the requisite certifications and assurances by: 1) selecting, from a list provided, those Certifications and Assurances that apply to all awards for the fiscal year; 2) submitting appropriate electronic signatures in TrAMS or uploading the signature page signed by the Authorized Official and by the Attorney; and 3) submitting properly signed Certifications and Assurances.

The Annual Certifications and Assurances are due within 90 days of issuance or by the first grant application in the fiscal year, whichever is sooner. The Annual Certifications and Assurances require two signatures or electronic PINs: one from an Authorized Official and the other from the Attorn.

Officials acting on behalf of the TTP recipient must have appropriate authority as required by tribal law or by the governing body of the TTP recipient. The authority must be delegated properly to other individuals acting on behalf of the TTP recipient, if necessary. If the attorney does not PIN in the TrAMS, he or she must sign a hard copy of the affirmation and maintain the hard copy in the file.

An affirmation of applicant's Attorney affirming the legal authority of the TTP recipient and indicating whether any pending legislation or litigation may affect the legal status of the TTP recipient is part of the signature page for the Certifications and Assurances.

#### INDICATORS OF COMPLIANCE

- a. *Did the TTP recipient submit an Annual Certifications and Assurances in TrAMS?*
- b. *If yes, who executed the Certifications and Assurances on behalf of the TTP recipient?*

- c. *Was the authority properly delegated and executed?*
- d. *Did the Attorney PIN the Annual Certifications and Assurances in TrAMS or upload a signed copy in TrAMS?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the Annual Certifications and Assurances for the past three years, if applicable, to ensure it was correctly executed. The reviewer needs to ensure that the Official and Attorney (or their designee) certifying the Annual Certifications and Assurance has been properly authorized.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if the Annual Certifications and Assurances were not executed, the incorrect categories were certified, or the officials who signed (PINned) the most recent Annual Certifications and Assurances were not properly authorized.

TECHNICAL ASSISTANCE CODE TTP L2-1: Execution of Annual Certifications and Assurances or updating Authorizing Resolution and/or Delegations of Authority

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient in how to sign (PIN) the Annual Certifications and Assurances in TrAMS and/or the required categories to be certified

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient in updating its Authorizing Resolution and/or Delegations of Authority using the templates provided in the TrAMS User Guide

#### **GOVERNING DIRECTIVE**

##### 49 USC 5323 (n) Submission of Certifications

A certification is required under this chapter and any additional certification or assurance required by law or regulation to be submitted to the Secretary may be consolidated into a single document to be submitted annually as part of a grant application under this chapter. The Secretary shall publish annually a list of all certifications required under this chapter with the publication required under section 5336(d)(2).

##### FTA Circular 9040.1G, Chapter. IV, Section 6. Certifications and Assurances

To receive a grant under Section 5311, the designated state agency must annually assure FTA that the state and subrecipients meet certain requirements. The state should maintain adequate files documenting the basis for all assurances it makes to FTA.

Each fiscal year, FTA publishes the required Certifications and Assurances in the *Federal Register* and updates the Certifications and Assurances in the FTA electronic award management system. This notice indicates which Certifications and Assurances apply to all recipients or to certain kinds of awards, and which are required for grants under specific sections.

The state electronically submits the appropriate Certifications and Assurances each fiscal year for all

active grants and new grants that it expects FTA to make during that fiscal year. Recipients should use the most recent version of current year notice for a list of required Certifications and Assurances FTA has issued. Recipients can find the current list in FTA electronic award management system. Certifications and Assurances can also be accessed at [http://www.fta.dot.gov/grants/12825\\_93.html](http://www.fta.dot.gov/grants/12825_93.html).

---

---

### **TTP L3. Did the TTP recipient promptly notify FTA of any legal matters that may affect**

## the FTA?

### **BASIC REQUIREMENT**

TTP recipients must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

The TTP recipient is required to promptly notify the FTA Chief Counsel or the FTA Regional Counsel for the region in which the recipient is located of any current or prospective legal matters that may affect the Federal government. The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming of the Federal government as a party to litigation or a legal disagreement in any forum for any reason.

### **INDICATORS OF COMPLIANCE**

- a. *Were there any legal matters including major disputes, breaches, defaults, or litigation where the Federal government was named as a party or FTA-funded assets could be affected? If no, move to the next question.*
- b. *If yes, did the TTP recipient notify the FTA's Chief Counsel or its Regional Counsel?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review information from the TTP recipient and regional office, and information based on internet research of the recipient for documentation of legal matters including major disputes, breaches, defaults, or litigation where the Federal government was named as a party, or FTA-funded assets could be affected since the last Technical Assistance Assessment.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if it did not notify FTA's Chief Counsel or Regional Counsel about a major dispute, breach, default, litigation, or any instances when the Federal government was named as a party to litigation or a legal disagreement.

TECHNICAL ASSISTANCE: ODE TTP L3-1: Notification to FTA of pending litigation

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in submitting documentation to the regional office that it has submitted the applicable information to the FTA Chief Counsel or Regional Counsel along with a process to ensure timely notification in the future.

### **GOVERNING DIRECTIVE**

FTA Master Agreement, Section 39(b)(3)

*The recipient must promptly notify the US DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the recipient is located, if the recipient has knowledge of potential fraud, waste, or abuse occurring on a project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729 et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving Federal assistance. This responsibility occurs whether the project is subject to this agreement or another agreement between the recipient and FTA, or an agreement involving a principal, officer, employee, agent, or third party participant of the recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other*

*investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the recipient, including divisions tasked with law enforcement or investigatory functions.*

---

---

## **RESOURCE SUPPLEMENT**

FACES User’s Guide

ECHO Web User’s Manual



## 2. TECHNICAL CAPACITY – AWARD AND PROJECT MANAGEMENT

### PURPOSE OF THIS ASSESSMENT AREA

The TTP recipient must report progress of projects in awards to the FTA in a timely manner.

The TTP recipient must be able to implement FTA-funded projects in accordance with the award application, FTA Master Agreement, and all applicable laws and regulations, using sound management practices.

### QUESTIONS TO BE DISCUSSED

1. Has the TTP recipient submitted milestone progress reports (MPRs) and Federal Financial Reports (FFRs) to FTA on time?
2. Are the TTP recipient's FFRs complete and accurate?
3. Are the TTP recipient's MPRs complete and accurate?
4. Does the TTP recipient ensure timely expenditure of funds and close out of awards?
5. Has the TTP recipient entered into an agreement with a subrecipient? Does the agreement include all the information required by 2 CFR part 200 and FTA? Is the TTP recipient ensuring subrecipient compliance with Federal requirements?
6. For FTA-funded construction or planning projects, did the TTP recipient provide technical inspection and supervision of the project?
7. Does the TTP recipient hire contractors or consultants to operate and/or maintain vehicles for public transit service?
8. How does the TTP recipient manage safety and security for the public transit system? Does the recipient have a written safety and security plan? What are current safety issues? Who is responsible for safety? Does the TTP recipient have a safety awards program?

### INFORMATION NEEDED FROM TTP RECIPIENT

#### Recipient Information Request

- If written, award management and reporting procedures not included in financial procedures that address:
  - Completing FFRs and MPRs
  - Developing ECHO draws
  - Submitting and managing Single Audits
- Closeout schedule for all open awards Standard transit management or service operator contract and/or lease agreement
- List of transit service contractors and lessees
- Oversight procedures including sample oversight checklists/monitoring materials, training materials/manuals for contractors/lessees
- Sample documentation of oversight conducted of transit service contractors and/or lessees
- List of subrecipient agreements
- Subrecipient oversight procedures

**TTP T-1. Has the TTP recipient submitted Milestone Progress Reports (MPRs) and Federal Financial Reports (FFRs) to FTA on time?**

**BASIC REQUIREMENT**

TTP recipients must report progress to FTA via submittal of complete, accurate, and timely MPRs and FFRs at the required intervals.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

TTP recipients are required to submit MPRs and FFRs based on the reporting frequency established by FTA. TTP recipients must report MPRs and FFRs on an annual basis, by October 30, unless otherwise directed by the FTA regional office.

**FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

Per OMB Memorandum M-17, a recipient may delay submission of financial, performance, and other reports up to three (3) months beyond the normal due date. Recipients were permitted to draw down Federal funds without the timely submission of these reports. These reports must be submitted at the end of the postponed period. Therefore, due dates for quarterly MPRs and FFRs for the period ended March 31, 2020, would be extended from April 30, 2020, to July 30, 2020. Reports selected for review that were not submitted within 90 days of the original due date would be considered late. This flexibility expired June 16, 2020 and was rescinded per OMB Memorandum M-20-26.

**INDICATORS OF COMPLIANCE**

- a. *Is the TTP recipient required to submit MPRs and FFRs annually? Has FTA specified a different reporting frequency? If yes, what is that frequency?*
- b. *Did the TTP recipient submit all MPRs and FFRs on time? If not, how many reports were missing/late during any reporting period?*

Late or missing MPRs or FFRs by reporting period due dates for the past two years								
Year	Quarter 1 (Jan 1 – Jan 30)		Quarter 2 (Apr 1 – Apr 30)		Quarter 3 (July 1 – July 30)		Quarter 4/Annual (Oct 1 – Oct 30)	
	MPR	FFR	MPR	FFR	MPR	FFR	MPR	FFR
FY 20XX	-	-	-	-	-	-	-	-
FY 20XX	-	-	-	-	-	-	-	-

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Discuss with the FTA regional office required reporting frequencies and if any more frequent reporting frequencies have been required of the recipient in the past three years or if the recipient or specific award has a different reporting schedule based on a risk analysis. Sample up to three TTP awards for the most recent reporting period. If there is a pattern of late reporting, discuss with the regional office. Confirm reporting frequency with the recipient.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if it does not submit MPRs and FFRs for each open award, does not submit them at the required intervals, or submits them late.

## TECHNICAL ASSISTANCE CODE TTP- T1-1: Late MPRs/FFRs

**SUGGESTED TECHNICAL ASSISTANCE:** Assist the TTP recipient in submitting the delinquent report(s) for the most recent reporting period. If the TTP recipient is no longer able to submit the reports electronically, it must upload hard copies of the reports to TrAMS and notify the FTA regional office when the delinquent reports are submitted.

### **GOVERNING DIRECTIVES**

#### 2 CFR 200.328 Financial reporting

Unless otherwise approved by OMB (Office of Management and Budget), the Federal awarding agency may solicit only the standard, OMB-approved government wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

#### 2 CFR 200.329 Monitoring and reporting program performance

(b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).

(1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

(c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.

#### FTA Circular 5010.1E, Chapter. III, Section 3. Reporting Requirements

e. Report Due Dates. For FFRs and MPRs, the following reporting dates apply:

(1) Recipients located in urbanized areas of 200,000 or more populations. Recipients located in urbanized areas of 200,000 or more populations who receive more than \$1 million in funds from FTA, FFRs and MPRs must be submitted and are due to FTA within 30 days after the end of each quarter, *i.e.*, by January 30, April 30, July 30, and October 30. The

FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

Recipients located in urbanized areas of 200,000 or more populations who receive less than \$1 million in funds from FTA, FFRs and MPRs must be submitted and are due October 30, one month after the federal fiscal year (FY) ends. The FTA regional or metropolitan office may request more

frequent reporting or additional reports if circumstances warrant additional reporting.

- (2) Recipients located in urbanized areas of less than 200,000 populations. FFRs and MPRs must be submitted and are due October 30, one month after the federal fiscal year (FY) ends. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.
- (3) FTA may utilize a risk based approach to change the frequency of reporting requirements for a particular Award or recipient. This will be noted in the Grant Agreement or Cooperative Agreement.
- (4) Exceptions:
  - (a) Section 5309 Grants: All grant recipients, regardless of location and population area, are required to submit quarterly reports in TrAMS according to the dates in subsection 3.e.(1) above when grants include construction of facility.
  - (b) State Departments of Transportation (State DOTs): State DOTs are required to report annually for all state administered programs; this includes Sections 5303, 5304, 5307 (Governor's Apportionment), 5310, 5311, former Section 5316, and former Section 5317 programs. The exception described in the preceding paragraph applies to the State DOTs.
  - (c) If the provisions of this FTA Circular 5010.1 differ from the provisions of the applicable FTA Programmatic Circular, the Program Circular takes precedence. FTA at its discretion may always require more stringent reporting or specialized reports. Depending on project complexity, at its discretion, FTA may also request other special reports or quarterly project management meetings."

FTA Dear Colleague Letter on Risk-Based Reporting Policy, October 9, 2017

*OMB Memorandum M-20-17, "Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID-19) due to Loss of Operations," March 19, 2020*

10. Extension of financial, performance, and other reporting. (2 CFR§ 200.327, 2 CFR§ 200.328)

Awarding agencies may allow grantees to delay submission of financial, performance and other reports up to three (3) months beyond the normal due date. If an agency allows such a delay, grantees will continue to draw down Federal funds without the timely submission of these reports. However, these reports must be submitted at the end of the postponed period. In addition, awarding agencies may waive the requirement for recipients to notify the agency of problems, delays or adverse conditions related to COVID-19 on a grant by grant basis (200 CFR 200.328(d)(l)).

OMB Memorandum M-20-26 "Audit Extension" June 18, 2020

Extension of Single Audit Submission from Appendix A, M-20-26:

1. Extension of Single Audit Submission and COVID-19 Emergency Acts Fund Reporting. (2 CFR § 200.512)

Awarding agencies, in their capacity as cognizant or oversight agencies for audit, may allow recipients and subrecipients that have not yet filed their single audits with the Federal Audit Clearinghouse as of March 19, 2020 that have normal due dates from March 30, 2020 through June 30, 2020 to delay the completion and submission of the Single Audit reporting package, as required under Subpart F of 2 CFR § 200.501 -Audit Requirements, up to six (6) months beyond the normal due date. Audits with normal due dates from July 31, 2020 through September 30, 2020 will have an extension up to three (3) months beyond the normal due date. No further action by awarding agencies is required to enact this extension. This extension does not require individual recipients and subrecipients to seek approval for the extension by the cognizant or oversight agency for audit; however, recipients and subrecipients should maintain documentation of the reason for the delayed filing. Recipients and subrecipients taking advantage of this extension would still qualify as a "low-risk auditee" under the criteria of 2 CFR § 200.520 (a) Criteria for a low-risk auditee.

Additionally, in order to provide adequate oversight of the COVID-19 Emergency Acts funding and programs, recipients and subrecipients must separately identify the COVID-19 Emergency Acts expenditures on the Schedules of Expenditures of Federal Awards and audit report findings.

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), AD2

Recipients may delay submission by up to 90 days. A recipient's next report, therefore, would be for the quarter ending June 30, 2020, with the report due on July 30, 2020.

---

---

## **TTP T-2. Are the TTP recipient's FFRs complete and correct?**

### **BASIC REQUIREMENT**

TTP recipients are required to provide a current, complete, and correct financial picture of each award through the submission of FFRs.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

FFRs accompany MPRs. The FFR reports on the use of project funds and is submitted on the same schedule as MPRs for each open award. Reports are submitted electronically using TrAMS. TTP Recipients report the following financial data in FFRs:

- **Federal cash receipts** are the amount of FTA funds received for the period and are reported on a cash basis—when the funds are actually received.
- **Federal cash disbursements** are the amount of FTA funds disbursed as of the end of the reporting period and are reported on a cash basis, i.e., when the funds are actually disbursed. For recipients that draw funds on a reimbursement basis, Federal funds are reported as disbursed only after they are received.
- **Unliquidated obligations** are binding commitments that have been entered into and for

which expenditures have not yet been recorded because goods and services have not been received and are reported on an accrual basis. Examples of these are: a signed contract for bus purchases for which delivery of vehicles has not yet occurred, a contract for construction services not rendered, open purchase orders, contract retentions, and unexpended portions of signed subrecipient agreements.

- **Unobligated balance** is the amount of an award that has not been expended and is not covered by a binding commitment (unliquidated obligation) and is reported on an accrual basis.
- **Indirect expense** is the amount of indirect costs charged to an award by the reporting organization and is reported on an accrual basis. The rate must be based on a previously approved cost allocation plan or indirect cost proposal. The recipient must report the total amount of indirect expenses incurred on a cumulative basis. The information should include the type of rate (whether it is provisional, predetermined, final or fixed), the rate approved by the cognizant agency, the total base amount from which the indirect cost rate is determined, the period covered by the approved rate, amount charged to the award, and the Federal share of the indirect expenses charged. For indirect costs of other organizations or subrecipients that are charged to the award, notes are added to the FFR regarding the rates of these organizations. FTA has limited the amount of indirect costs that can be charged against TTP competitive grants to ten percent of the total award amount.
- The recipient should address any **FTA comments** either in a revised or the next report.

The TTP recipient should ensure that FFRs are accurate. Many TTP recipients have program managers that prepare MPRs while financial personnel prepare FFRs. FTA has found frequent instances of data in FFRs not being reflected in MPRs and vice versa. For example, an MPR may indicate that the TTP recipient has awarded a construction contract but the FFR does not report unliquidated obligations.

#### **INDICATORS OF COMPLIANCE**

- a. Are Federal cash receipts and disbursements reported? Are they reported on a cash basis?*
- b. Does the recipient report outlays and unliquidated obligations on an accrual basis of accounting?*
- c. Does the information in the FFR match the last award budget? Are any identified cost overruns or identified savings explained?*
- d. Is cash on hand reported in any FFR? If yes, has the recipient provided an explanation? Did the FTA regional office determine the explanation was adequate?*
- e. How does the recipient calculate unliquidated obligations? Is the calculation consistent with 2 CFR §200.97 Unliquidated Obligations? Are unliquidated obligations reported accurately? Are any not reported?*
- f. If the recipient charges indirect costs to awards, have the correct rates and amounts been entered in the FFR?*
- g. Are there any discrepancies in information or data reported on MPRs and FFRs? If yes, obtain an explanation from the recipient?*
- h. Has the recipient responded to any FTA comments on FFRs?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

Sample up to three awards for the most recent reporting period. Discuss with the FTA regional office what awards to review, as multiple awards may be funding the same project.

- Determine if Federal cash receipts and disbursements are reported on a cash basis and if income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid.
- Review award budgets and ensure information on FFRs matches. If it does not, ascertain the reason for the difference.
- If FFRs contain reconciliations, ascertain the reason the reconciliations were required.
- If cash on hand is reported, determine if an explanation is provided in the remarks and certifications tab. Discuss with the FTA regional office whether the explanation of cash on hand is adequate.
- Review FFRs, MPRs, and award dates of procurements to determine if unliquidated obligations are not reported and should be. For example, an MPR may indicate that the recipient has awarded a construction contract but the FFR does not report unliquidated obligations. During the site visit, discuss with the recipient how it calculates unliquidated obligations and confirm the calculation is based on obligations incurred by the non-Federal entity for which an expenditure has not been recorded.
- If indirect costs are charged, confirm the recipient is charging the approved rate or the de minimis rate, if allowed.
- Review FTA comments in TrAMS regarding reports and look for evidence the recipient has addressed the comments. Discuss the adequacy of the recipient's responses with the FTA regional office. During the site visit, follow up with the recipient on any outstanding FTA comments.
- Review financial management procedures for discussion on how the recipient captures and reports information in the progress reports.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not:

- Use accrual basis of accounting for lines other than b and c
- Properly report Federal cash receipts or disbursements
- Explain Federal cash on hand
- Report unliquidated obligations correctly
- Report indirect costs correctly
- Respond to FTA comments

TECHNICAL ASSISTANCE CODE TTP T2-1: FFR reporting

**SUGGESTED TECHNICAL ASSISTANCE:** Assist the TTP recipient in submitting revised reports that include the missing/corrected information and/or addresses FTA comments. If the TTP recipient is no longer able to submit the reports electronically, it must upload hard copies of the reports to TrAMS and notify the regional office when the revised reports are submitted.

The TTP recipient needs technical assistance if data in the FFR do not reflect the data in the MPR

## TECHNICAL ASSISTANCECODE TTTP T2-2: MPR/FFR reporting

**SUGGESTED TECHNICAL ASSISTANCE:** Provide technical assistance to TTP recipient on the requirements for FFR and MPR reporting and reconciling FFRs and MPRs. The TTP recipient must notify the regional office when the next reports are submitted.

### **GOVERNING DIRECTIVES**

#### 2 CFR 200.328 Financial reporting

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB- approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

#### 2 CFR 200.97 Unliquidated obligations

Unliquidated obligations means, for financial reports prepared on a cash basis, obligations incurred by the non-Federal entity that have not been paid (liquidated). For reports prepared on an accrual expenditure basis, these are obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

#### FTA Circular 5010.1E, Chapter. III, Section 3. Reporting Requirements

c. Federal Financial Report (FFR). FTA's electronic FFR report is consistent with and includes information identified in OMB's Standard Form FFR (SF FFR). A recipient must submit an FFR for each active Award. The FFR accompanies the MPR (described below) and is used to monitor the federal assistance awarded. The purpose of the FFR is to provide a current, complete, and accurate financial picture of the Award. This report is submitted electronically through TrAMS and must be prepared on the accrual basis of accounting; that is, income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid. The FFR may not be prepared on the cash basis of accounting, even though a recipient may keep its books on the cash basis during its accounting year. If this is the case, at the submission of the FFR, the recipient must prepare the necessary accruals and submit the FFR on the accrual basis of accounting. (See Appendix B, "Federal Financial Report").

The FFR must contain the following elements:

- (1) All financial facts (e.g., expenditures and obligations) relating to the Award (scope of work and supporting activities); the purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.
- (2) Reported financial data should be accurate to the last Award Budget (this may be the initial Award, or last revision to the Award Budget or amendment to the Award) and the reporting period. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay. Financial data reported may reconcile data included in the prior report, and must be explained in the explanation/remarks section of the report.
- (3) Financial reports must be based on the required supporting documentation maintained in the recipient's official financial management system that produces information that objectively discloses financial aspects of events or transactions.
- (4) Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis; material changes in accounting policies or methods and their effect must be clearly explained.



- (5) Reporting terminology used in financial reports to FTA should be consistent with receipt and expense classifications included in the latest Award.
- (6) The recipient is responsible for indicating whether or not it is charging indirect costs to the Award at the time of application. If the recipient is charging indirect costs to the Award, the recipient is responsible for having an approved Indirect Cost Rate Proposal or Cost Allocation Plan approved by the cognizant agency on file, and uploading the documentation into their TrAMS "Recipient Profile." The recipient must report on related indirect expenditures.
- (7) The recipient must provide financial information related to the FFR categories: Federal Cash, Recipient Share, Unliquidated Obligations, and Program Income.

---

---

### **TTP T-3. Are the TTP recipient's MPRs complete and accurate?**

#### **BASIC REQUIREMENT**

TTP Recipients are required to submit MPRs that discuss progress toward project objectives and any potential problem areas.

#### **APPLICABILITY**

All TTP Recipients

#### **EXPLANATION FOR TTP RECIPIENT**

Progress reports are the primary written communication between recipients and FTA. TTP Recipients must submit MPRs in TrAMS for each open award within 30 days of the end of the reporting period. Reports must be submitted for all active/executed awards, even if no activity occurred on those awards since the last report. 2 CFR part 200, Subpart D and FTA C. 5010.1E detail the information that, at a minimum, must be included in these reports. Reporting on operating assistance is limited to the estimated and actual date when funding has been expended.

#### **INDICATORS OF COMPLIANCE**

- a. *Do the MPRs provide the status of each milestone that has passed during the prior reporting period including the actual completion dates for any milestones and revised completion dates for any milestones not met?*
- b. *Do the MPRs contain a narrative of activity status and any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, or third-party contract awards?*
- c. *If there were award budget changes, is there discussion of the change?*
- d. *Is there an analysis of each significant project cost variance? Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project using quantitative measures, such as hours worked, sections completed, or units delivered.*
- e. *If there were schedule changes, is there:*
  - *An explanation of why scheduled milestones or completion dates were not met?*
  - *Identification of problem areas and a narrative on how the problems will be solved?*
  - *A discussion of the expected impacts and the efforts to recover from the delays?*
- f. *If there are rolling stock ALIs, is a contract award milestone included?*

- g. *If there were outstanding claims exceeding \$100,000 or claims settled during the reporting period, is a brief description, estimated costs, and the reasons for the claims included?*
- h. *If change orders are listed for the reporting period, is a description provided, including amount exceeding \$100,000, and which are pending or settled?*
- i. *If real property was acquired since the last Technical Assistance Assessment, were all actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel reported?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

For each program, sample awards for the most recent reporting period to determine if MPRs include the required information in the indicators above. Determine if the regional office has any issues with MPRs.

Review project budgets in TrAMS to determine if budget changes were made, verify they were properly included in the correct MPRs, and determine if the recipient is reporting changes prior to them being made.

Review the TTP recipient's list of change orders and verify the MPRs indicated potential and executed change orders, as defined in Circular 4220.1, where amounts exceeded \$100,000. Verify that any additional change orders identified in the Procurement section of the review are included in the appropriate MPRs.

Review all claims or litigation involving third-party contracts, potential third-party contracts discussed, or other parties in the Legal section to ensure that any exceeding \$100,000 or involving a controversial matter or highly publicized matter were included in MPRs.

Review the TTP recipient's real property inventory to determine if any real property was acquired in the past three years and verify all actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel are included in the MPR during the reporting period.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if progress reports are not complete or fail to highlight progress towards meeting project objectives and any potential problem areas, as detailed in the governing directive below.

TECHNICAL ASSISTANCE CODE TTP T-3-1: MPR required information.

SUGGESTED TECHNICAL ASSISTANCE: Provide technical to the TTP recipients on reporting requirements, and assist the TTP recipient in submitting revised reports that include the missing information. If the recipient is no longer able to submit the reports electronically, it must upload hard copies of the reports to TrAMS and notify the regional office when the revised reports are submitted.

#### **GOVERNING DIRECTIVES**

*2 CFR 200.329 Monitoring and reporting program performance.*

- (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also § 200.331 Requirements for pass-through entities.

- (b) Non-construction performance reports. The Federal awarding agency must use standard, OMB- approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
- (1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.
  - (2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
    - (i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
    - (ii) The reasons why established goals were not met, if appropriate.
    - (iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- (c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass- through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- (d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
- (1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
  - (2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

- (e) The Federal awarding agency may make site visits as warranted by program needs.
- (f) The Federal awarding agency may waive any performance report required by this part if not needed.

FTA Circular 5010.1E, Chapter. III, Section 3. Reporting Requirements

d. Milestone Progress Reports (MPR). The MPRs must be submitted for each active Award. The MPR is the primary written communication between the recipient and FTA. This report must be submitted electronically. If only operating assistance is included in the Award, the reporting requirements are limited to the actual dates when all federal assistance has been expended. The information provided in MPR reports should be as complete as possible, highlighting progress toward project objectives and any potential problem areas.

Each MPR must include the following data as appropriate:

- (1) The current status, at a minimum, of each milestone that has passed during the prior reporting period, within an active Award. FTA, at its discretion, may request a recipient to update each milestone within an active Award. MPRs should identify:
  - The actual completion dates for any milestones completed during the reporting period, and
  - Any revised dates when any original (or last revised) completion dates were not met.
  - A narrative of the activity status, any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and third-party contract Awards.
- (2) A detailed discussion of all Award Budget or schedule changes.
- (3) An explanation of why scheduled milestones or completion dates were not met.
- (4) Identification of problem areas and a narrative on how the problems will be solved.
- (5) A discussion of the expected impacts and the efforts to recover from the delays.
- (6) An analysis of each significant project cost variance: Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project. Use quantitative measures, such as hours worked, sections completed, or units delivered.
- (7) A list of all outstanding claims exceeding \$100,000, and all claims settled during the reporting period. This list should be accompanied by a brief description, estimated costs, and the reasons for the claims.
- (8) A list of all potential and executed change orders, as defined in Circular 4220.1, and amounts exceeding \$100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description. Identification of change orders does not imply notification, acceptance, or approval of budgetary changes that might be required.
- (10) A list of claims or litigation involving third-party contracts and potential third-party contracts that:
  - Have a value exceeding \$100,000;
  - Involve a controversial matter, irrespective of amount; or
  - Involve a highly publicized matter, irrespective of amount.
- (11) A list of all real property acquisition actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel during the reporting period.

- (12) All rolling stock ALIs must include a milestone for Contract Award.

---

---

**TTP T-4. Does the TTP recipient ensure timely expenditure of funds and close out of awards?**

**BASIC REQUIREMENT**

The TTP recipient should expend awards timely and close out projects and awards when project activity is completed.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

The period of availability for the TTP funds is the year of apportionment, plus two years. TTP recipients may not excessively prolong the life of the award merely for the purpose of expending all award funds. Awards should be closed when the scope of work is completed; if funds remain these should be deobligated as part of the award closeout. TTP recipients should have procedures for tracking project funds and reprogramming unused balances to other projects or closing out the award if funds cannot be utilized.

A final FFR and MPR are required at the time of closeout. It is not necessary to wait for the single audit or final indirect cost rates before closing an award.

Examples of good award management practices include:

- 1) As part of the annual award development process, identify available funds in existing awards before applying for new funds.
- 2) Unless directed by the region, apply for remaining apportionments in the next year's award instead of amending awards to add apportionment balances. An award may contain multiple years' apportionments.
- 3) Spend oldest funds first for on-going expenses such as program administration (financial purpose code (FPC) 6), operating assistance (FPC 4), ADA complementary paratransit (FPC 8), and preventive maintenance (FPC 0).
- 4) Accumulate program administrative expenses in a generic account and then draw from the oldest award with available program administrative funds instead of charging the expenses directly to awards.
- 5) Set project time limits (less than two years).
- 6) Transfer small remaining balances to new line items.
- 7) Move delayed projects to newer awards and active projects to older awards.
- 8) Deobligate project balances and reapply for funds (if within period of availability and allowed by the FTA regional office).
- 9) Regularly reconcile balances with those in TrAMS.
- 10) Tie third party contracts to projects, then tie projects to award.
- 11) When funding a project out of multiple awards, develop a drawdown plan.

- 12) When funding a project out of multiple awards, charge retainage to the newest award (and report it as an unliquidated obligation) to enable the closing of older awards.

FTA places a priority on closing out awards for which activity has ceased. FTA identifies awards that should be potentially closed out as those that are 100 percent disbursed or those that were obligated more than three years before and have not had a disbursement within the past 12 months.

Awards that have been inactive for a substantial length of time should also be closed unless the recipient has a plan and is likely to resume activity soon. Inactivity may be a result of delays in project implementation or lack of resources.

If an award has been delayed for a substantial period of time and the recipient does not have a reasonable explanation, FTA may determine that the funds should be deobligated and the award closed. Occasionally, a project may be delayed indefinitely because of factors beyond the recipient's control. If there is no realistic chance of a project going forward, FTA will deobligate the funds and make them available for other projects that are ready to proceed.

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

TTP recipients with awards that expired (the period of performance ended) prior to June 16, 2020, may request an extension by submitting written notice to FTA regarding the reporting delay. This delay in submitting closeout reports may not exceed one year after the award expires. (OMB Memorandum M-20-17, Appendix A at 12, which authorized this flexibility, expired June 16, 2020 and was rescinded per OMB Memorandum M-20-26).

#### **INDICATORS OF COMPLIANCE**

- a. *Does the TTP recipient take into account the status of current awards before applying for a new project?*
- b. *Does the TTP recipient have any delayed or inactive awards that should be closed?*
- c. *Does the TTP recipient initiate award closeout with FTA within 90 days of completion of all activity in the program of projects and/or after the applicable Federal assistance has been expended for all eligible costs?*

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

- d. *Did the recipient experience any delay in submitting closeout reports for awards closed between January 20 and June 16, 2020 due to the COVID-19 public health emergency?*
  - o *If yes, did the recipient submit a written notice to FTA regarding the reporting delay?*
  - o *If yes, did the recipient submit closeout reports within one year after the period of performance for the award?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review procedures for documentation of award management and closeout processes. Review the projected close-out dates for open awards. For on-going expenses, such as operating assistance, determine whether the recipient draws from the oldest funds first. Identify awards that are old, have small balances remaining, or are more than three years old and have not had disbursement activity within the past 12 months. Review progress reports in TrAMS and other correspondence to identify major delays in projects or, if and when, projects have been completed. Prior to the site visit, discuss the status of awards with FTA regional office staff.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if it does not spend the oldest funds first, track the progress of projects, close out completed awards, reprogram unused balances to other activities, initiate award closeout timely, or has open awards that should be closed.

## TECHNICAL ASSISTANCE CODE TTP T-4-1: Award closeouts

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient in developing an award closeout plan.

SUGGESTED TECHNICAL ASSISTANCE 2: Provide technical assistance to the TTP recipient on more effective procedures for award management, including spending older funds first, tracking project progress, identifying project balances, reprogramming unused project funds to other projects, reassigning older projects to newer awards or closing out projects, to enable it to close awards more timely.

SUGGESTED TECHNICAL ASSISTANCE 3: Advise TTP recipient to work with the FTA regional office to revise award budgets to ensure funds can be spent and drawn down in active awards.

SUGGESTED TECHNICAL ASSISTANCE 4: Advise TTP recipient to work with the FTA regional office to deobligate funds and close awards if funds remain in inactive awards or if projects are indefinitely delayed.

### **GOVERNING DIRECTIVES**

#### **2 CFR 200.344 Closeout**

The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

- (a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.
- (b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- (c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.
- (d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.
- (e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- (f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property.
- (g) The Federal awarding agency or pass-through entity should complete all closeout actions

for Federal awards no later than one year after receipt and acceptance of all required final reports.

FTA Circular 5010.1E, Chapter III: Administration of the Award

1. **AWARD CLOSEOUT.** Closeout, in general, is the term used to signify the process by which the recipient and FTA agree that all activities approved for the Award have been completed and/or the federal assistance awarded has been expended for eligible costs. Recipients are required to close an Award 90 days after the end of the period of performance. FTA, or the recipient, may initiate the closeout process. Closeout, by either party, does not preclude FTA's ability to seek repayment or other remedies for a recipient's breach of the terms and conditions of the Grant or Cooperative Agreement.
  - a. **Closeout by Recipient.** "The recipient is responsible to initiate closeout of the Award, within 90 days after the end of the period of performance, or after all approved activities are completed and/or the applicable federal assistance has been expended for all eligible costs. Any deviation from the approved Award must be documented in the closeout amendment.

FTA Circular 9040.1G, Chapter V Program Management and Administrative Requirements

15. **CLOSEOUT.** States should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. The states should similarly initiate program of project closeout with FTA within ninety days after all work activities for the program of projects are completed. A final federal financial report (SF 424), final budget, and final program of projects must be submitted electronically via the FTA electronic award management system at the time of closeout. FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame, generally two to three years. If small amounts of funds remain in an inactive grant, the state should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can re-obligate the funds in a new grant to the state along with other currently available funds. Otherwise, the deobligated funds lapse and are reapportioned by FTA among all the states in a subsequent year.

---

---

**TTP T-5. Has the TTP recipient entered into an agreement with a subrecipient? Does the agreement include all the information required by 2 CFR part 200 and FTA? Is the TTP recipient ensuring subrecipient compliance with Federal requirements?**

**BASIC REQUIREMENT**

TTP recipients must enter into an agreement with each subrecipient. Agreements must state the terms and conditions of assistance and include information required by 2 CFR part 200 and FTA.

**APPLICABILITY**

All TTP recipient with subrecipients

**EXPLANATION FOR TTP RECIPIENT**

The TTP recipient must enter into a written agreement with each subrecipient. The written agreement must include applicable Federal requirements and require the subrecipient to undertake responsibilities for the project usually performed by the recipient. The federally required clauses that the recipient is required to incorporate in agreements (see Procurement section) reference some, but not all, of the basic Federal requirements. Many recipients pass through FTA requirements to subrecipients by incorporating



the FTA Master Agreement by reference. Doing so (for subrecipient agreements only) meets the requirement for inclusion of FTA-required clauses.

TTP recipients must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information required by 2 CFR part 200 at the time of the subaward and, if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the recipient must provide the best information available to describe the Federal award and subaward.

TTP recipients must develop a subrecipient monitoring program to ensure that the subaward is used for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

### **Subrecipient Agreements**

For awards in which the State DOT and/or its subrecipients will use the expanded flexibilities afforded in the Emergency Relief program, recipients must complete an award amendment or submit a new application. Award recipients will need to realign funds provided to subrecipients specifically for COVID-19 Response Activities to the “ER” Account Classification Code (ACC), which was set up by the recipient for the increased flexibility.

### **INDICATORS OF COMPLIANCE**

- a. *Does the TTP recipient have written agreement with each subrecipient?*
- b. *Does the TTP subrecipient award documentation include the information required by 2 CFR part 200?*

<b>Required Agreement Information</b>	
<b>Information</b>	<b>Comment</b>
<b>Federal award identification</b>	
Subrecipient name (which must match the name associated with its unique entity identifier)	-
Subrecipient’s unique entity identifier (DUNS)	-
Federal award identification number (FAIN)	-
Federal Award Date (see the definition of <i>Federal award date</i> in §200.1 of this part) of award to the recipient by the Federal agency	-
Subaward Period of Performance Start and End Date	-
Subaward Budget Period Start and End Date	-
Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient	-

<b>Required Agreement Information</b>	
<b>Information</b>	<b>Comment</b>
Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation	-
Total Amount of the Federal Award committed to the subrecipient by the pass-through entity	-
Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA)	-
Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity	-
Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement	-
Identification of whether the award is research and development (R&D) (only required of R&D awards)	-
Indirect cost rate for the Federal award (including if the application of the de minimis rate per §200.414 Indirect (F&A) costs)	-
<b>Pass-through Requirements:</b>	
All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award	-
Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports	-

<b>Required Agreement Information</b>	
<b>Information</b>	<b>Comment</b>
<p>Indirect Costs: An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either</p> <ul style="list-style-type: none"> <li>• The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;</li> <li>• The de minimis indirect cost rate.</li> <li>• The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with §200.405(d)</li> </ul>	-
<p>A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and</p>	-
<p>Appropriate terms and conditions concerning closeout of the subaward.</p>	-

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Using the table and the clause list in the Procurement review area, review the standard subrecipient award document template and the executed subrecipient award document prior to the site visit to determine if the award documents contain the information required by 2 CFR part 200. Note that when some of the information required by 2 CFR part 200 is not available, the pass-through entity must provide the best information available to describe the federal award and subaward.

Review subrecipient application(s) and monitoring materials, such as performance and progress reports and site visit checklists, to determine how the recipient addresses risks and the review areas overseen.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

TECHNICAL ASSISTANCE CODE TTP T-5-1: Missing written agreements/required elements

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient in developing procedures for entering into award agreement with each TTP subrecipient.

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient with developing an award agreement template that includes missing FTA requirements.

TECHNICAL ASSISTANCE CODE TTP T-5-2

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing procedures for monitoring TTP subrecipients for compliance with Federal requirements.

## **GOVERNING DIRECTIVE**

### **2 CFR 200.332 Requirements for pass-through entities**

All pass-through entities must:

(a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:

- (1) Federal award identification.
  - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
  - (ii) Subrecipient's unique entity identifier;
  - (iii) Federal Award Identification Number (FAIN);
  - (iv) Federal Award Date (see the definition of *Federal award date* in §200.1 of this part) of award to the recipient by the Federal agency;
  - (v) Subaward Period of Performance Start and End Date;
  - (vi) Subaward Budget Period Start and End Date;
  - (vii) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;
  - (viii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current financial obligation;
  - (ix) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
  - (x) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
  - (xi) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
  - (xii) Assistance Listings number and Title; the pass-through entity must identify the dollar amount made available under each Federal award and the Assistance Listings Number at time of disbursement;
  - (xiii) Identification of whether the award is R&D; and
  - (xiv) Indirect cost rate for the Federal award (including if the de minimis rate is charged) per §200.414.

- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
- (4) (4)(i) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, the pass-through entity must determine the appropriate rate in collaboration with the subrecipient, which is either:
  - (A) The negotiated indirect cost rate between the pass-through entity and the subrecipient; which can be based on a prior negotiated rate between a different PTE and the same subrecipient. If basing the rate on a previously negotiated rate, the pass-through entity is not required to collect information justifying this rate, but may elect to do so;
  - (B) The de minimis indirect cost rate.
    - (ii) The pass-through entity must not require use of a de minimis indirect cost rate if the subrecipient has a Federally approved rate. Subrecipients can elect to use the cost allocation method to account for indirect costs in accordance with §200.405(d).
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.

*FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)*

*Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards*

Please see Procurement review area for the required clauses.

**TTP T-6. For FTA-assisted construction or planning projects, did the TTP recipient provide technical inspection and supervision of the project?**

**BASIC REQUIREMENT**

The TTP recipient must ensure project schedules, budgets, and performance objectives are achieved; provide technical inspection and supervision of all projects in progress; ensure conformity and compliance with all applicable Federal, state, and local regulations; and obtain all necessary approvals prior to incurring costs

**APPLICABILITY**

All TTP recipients who carry out FTA-assisted construction or planning projects.

**EXPLANATION FOR TTP RECIPIENT**

The TTP recipient must ensure continuous management of projects under an award. TTP recipient responsibilities include, but are not limited to, providing, directly or by contract, adequate technical inspection and supervision of all FTA assisted construction or planning projects. Monitoring mechanisms may include:

- Use of Tribal government resources, such as in-house engineers, construction managers or planners
- Contracting with a consultant to provide project management oversight
- Reviewing requests for proposals and construction contracts
- Reviewing plans and drawings
- Conducting periodic site inspections
- Requiring progress reports
- Attending project review meetings
- Withholding payment of a portion of the award until final inspection and acceptance of the project

### **INDICATOR OF COMPLIANCE**

- a. How does the recipient ensure technical inspection and supervision of FTA-assisted construction projects?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review copies of project management plans, procedures for quality control, procedures for administering and monitoring projects. During the Assessment, discuss the TTP recipient's quality control procedures, monitoring activities and the resources the TTP recipient dedicates or plans to dedicate to project management and how it mitigates/plans to mitigate any projected shortfalls.

If the TTP recipient contracts for such services, review the scope of work of these contracts along with progress reports from the contractors to ascertain the recipient's process for overseeing construction or planning projects.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if it did not ensure technical inspection and supervision of projects that it undertakes.

TECHNICAL ASSISTANCE CODE T 6: Oversight of construction or planning projects lacking

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to develop procedures or retain consultants for providing adequate technical oversight of FTA- assisted construction or planning projects.

### **GOVERNING DIRECTIVES**

*FTA Circular 5010.1E, Ch. II Section 3. Roles and Responsibilities of the Management of Awards*

Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects...

- Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that "passes through" to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, "Audits", audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's Certifications and Assurances (See Chapter V, "Oversight," of this circular). The recipient's responsibilities include, but are not limited to, actions that:

- (1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;
- (2) Provide administrative and management support of project implementation;
- (3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;
- (4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;
- (5) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;
- (6) Keep expenditures within the latest approved Award Budget;
- (16) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;
- (17) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions;

---

---

**TTP T-7. Does the TTP recipient hire contractors or consultants to operate and/or maintain vehicles for public transit service?**

**BASIC REQUIREMENT**

The TTP recipient must ensure project schedules, budgets, and performance objectives are achieved; ensure conformity and compliance with all applicable Federal and local regulations; and obtain all necessary approvals prior to incurring costs.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

The TTP recipient must ensure continuous management of transit service under an award. Many FTA requirements flow through the TTP recipient to transit management or service contractors and lessees. The TTP recipient is responsible for ensuring that these entities are aware of and comply with the requirements. Before expending any FTA funds on projects, the TTP recipient certifies to FTA that it and others operating on its behalf have met all statutory and program requirements. The recipient must have sufficient documentation to support the certifications to FTA.

The TTP recipient must have an ongoing system to ensure that transit management or service contractors and lessees adhere to Federal requirements. While FTA does not prescribe specific monitoring activities for ensuring compliance, it does expect the recipient to look behind certifications and assurances, contracts, and agreements. FTA relies on each TTP recipient to develop and implement effective systems for monitoring and ensuring compliance with requirements.

Appropriate monitoring systems may include the following:

- Review contract terms and statement of work
- Prepare and review monthly, quarterly or annual reports
- Conduct meetings

- Conduct site visits
- Inspect vehicles/facilities

Once an issue is discovered, FTA expects the TTP recipient to follow up with the transit management or service contractor, or lessee to ensure that corrective action is taken. Efforts, including the follow-up on deficiencies, should be documented. It is not necessary for the recipient to perform all of its monitoring functions in-house.

### **INDICATORS OF COMPLIANCE**

- How does the TTP recipient provide administrative and management support of project implementation?*
- For all FTA-funded projects, including those carried out by contractors and/or lessees, what is the TTP recipient's process for determining the applicability of, and ensuring compliance with, all Federal requirements?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

If written, review the TTP recipient's procedures for oversight of transit management or service contractors, Review site visit checklist(s)/report and vehicle and facility checklists to ascertain what FTA requirements each address. Examine documented follow-up of corrective actions on any deficiencies discovered during the monitoring of a transit management or service contractor and/or lessee to determine how the recipient ensures issues are resolved and mitigated in future projects. Confirm implementation of the oversight provided during the site visits to the transit contractor and/or lessee.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not ensure that transit management or service contractors comply with Federal requirements.

TECHNICAL ASSISTANCE CODE T7-1: Inadequate oversight of transit management contractor(s)/lessee(s)

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing procedures for ensuring that transit management or service contractors comply with contract terms and Federal requirements.

### **GOVERNING DIRECTIVE**

FTA Circular 5010.1E, Ch. II Section 3. Roles and Responsibilities of the Management of Awards

Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects.

- Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that "passes through" to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, "Audits", audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's Certifications and Assurances (See Chapter V, "Oversight," of this circular). The recipient's responsibilities include, but are not limited to, actions that:
  - (1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;
  - (2) Provide administrative and management support of project implementation;



- (3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;
  - (4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;
  - (5) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;
  - (6) Keep expenditures within the latest approved Award Budget;
  - (7) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter- agency agreements;
  - (8) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions.
- 
- 

**TTP T-8. How does the TTP recipient manage safety and security for the public transit system?**

**BASIC REQUIREMENT**

The goal of FTA's Office of System Safety is to achieve the highest practical level of safety in all modes of transit. To this end, FTA continuously promotes the awareness of safety and security throughout the transit community by establishing programs to collect and disseminate information on safety/security concepts and practices. In addition, FTA develops guidelines that transit systems can apply in the design of their procedures and by which to compare local actions. As such, many of the questions in this area are designed to determine what efforts recipients have made to develop and implement safety, security, and emergency management plans. While there may not be specific requirements associated with all of the questions, TTP recipients are encouraged to implement the plans, procedures, and programs referenced in these questions.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR RECIPIENT**

Recognizing that safety is an integral part of transit operations, TTP recipients are encouraged to have a written safety policy and safety plan. The safety plan should assign responsibilities for safety management from the most senior executive to the first-line supervisory level.

These questions are intended to provide an overall understanding of how safety is incorporated into the organization, what kind of emphasis is placed on safety, how the safety program is managed, and how various responsibilities are communicated to personnel at all levels.

Safety issues include more than vehicle and passenger accidents and workplace injuries. As such, the TTP recipients' safety-related responsibilities may be numerous. They may include, for example:

- Investigating major incidents
- Identifying workplace hazards
- Proper handling of hazardous materials
- Emergency preparedness

**INDICATORS OF COMPLIANCE**

- a. *Does the TTP recipient have a written safety and security plan?*
- b. *Who is responsible for safety?*
- c. *What are current safety issues?*
- d. *Do you have a safety awards program?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

If the TTP recipient has a written safety policy or system safety program plan, it should be examined at the site visit. Discuss with the TTP recipient the reporting relationships in regard to safety to ensure that the safety function is managed adequately.

Review minutes from safety committee and/or accident/incident review committee meetings during the site visit. Emergency management plans and procedures should be requested. The TTP recipient should be able to provide safety statistics for the past three years for major incidents involving passengers, property damage and work-related accidents. Conduct website searches to locate newspaper articles or other publications describing accidents or safety incidents. Claims records and insurance costs identified in financial reports also provide information.

Employee handbooks may contain information related to safety. Determine who is responsible for maintaining safety information, handbooks and procedures manuals.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if it does not have a system in place to manage safety and security for the public transit system.

TECHNICAL ASSISTANCE CODE TTP T 8-1: Management of safety and security lacking

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to develop a safety plan using the template found at [transit.gov](http://transit.gov).

## **GOVERNING DIRECTIVES**

*Note:* This is a suggested practice not a requirement. FTA has deferred applicability of the Public Transportation Agency Plan Final Rule for operators that only receive funds through FTA's Formula Grants for the Enhanced Mobility of Seniors and Individuals with Disabilities Program under 49 U.S.C. § 5310 (Section 5310 Grant Program) and/or Formula Grants for Rural Areas Program under 49 U.S.C. § 5311 (Section 5311 Grant Program).

## **REFERENCES**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. FTA Circular 5010.1E, "Award Management Requirements"
4. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
5. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
6. Office of Management and Budget (OMB) Open Government Directive - Federal Spending Transparency
7. 2 CFR 180.300 What Must I Do Before I Enter Into A Covered Transaction With Another Person At The Next Lower Tier?
8. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
9. 23 CFR 450.210 Interested parties, participation, and consultation

10. 49 CFR Part 20, “New Restrictions on Lobbying”

**USEFUL WEBLINKS**

1. The Federal Financial Report (FFR)
2. FFR Instruction Guide for Recipients
3. Construction Project Management Handbook (2009 Update)
4. Coronavirus Aid, Relief, and Economic Security Act
5. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
6. Notice of Concurrence
7. Emergency Relief rule
8. OMB Memorandum M-20-17, Appendix A
9. OMB Memorandum M-20-26
10. Federal Funding Accountability and Transparency Act Subaward Reporting System
11. [www.USASpending.gov/news](http://www.USASpending.gov/news)
12. Office of Management and Budget Open Government Directive - Federal Spending Transparency
13. Project and Construction Management Guidelines (2003 Update)
14. Project Management Oversight Lessons
15. Quality Management System Guidelines
16. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools
17. Public Transportation Agency Safety Plan

## **RESOURCE SUPPLEMENT**

FTA TRAMS Guidance and Training webpage

- TrAMS User Basics
- Application Development
- Budget Revisions & Amendments
- Closeouts & Reporting (MPR/FFR's)
- User Manager
- Certs & Assurances
- ECHO
- Civil Rights

### **3. FINANCIAL MANAGEMENT AND NATIONAL TRANSIT DATABASE (NTD)**

#### **PURPOSE OF THIS ASSESSMENT AREA**

The TTP recipient must have financial policies and procedures; an organizational structure that defines, assigns and delegates authority; and financial management systems in place to match, manage, and charge only allowable cost to the award. The recipient must conduct required single audits, as required by 2 CFR part 200 and provide financial oversight of subrecipients.

#### **QUESTIONS TO BE DISCUSSED**

1. Does the TTP recipient have financial management policies and procedures in place for managing Federal awards, establishing internal controls, ensuring timely distribution of funds, and determining allowability of costs?
2. Does the TTP recipient's organizational structure clearly define, assign, and delegate appropriate authority for all financial duties and require that those duties are 1) carried out by properly qualified personnel, 2) segregated within the organization, and 3) subject to review to ensure that adequate internal checks and balances exist?
3. Does the TTP recipient's financial management system allow it to prepare reports and trace funds adequately to establish compliance with award terms and conditions?
4. Does the TTP recipient correctly draw down and track the use of Federal funds for eligible expenses and disburse advance payment funds within three business days?
5. Has the TTP recipient complied with requirements for charging indirect costs to Federal Transit Administration (FTA) awards?
6. Has the TTP recipient conducted the required Single Audit, submitted the required documentation to the Federal Audit Clearinghouse (FAC) and FTA, and resolved any identified issues?
7. Does the TTP recipient have financial resources to provide local share for active awards and to adequately maintain and operate FTA-funded assets?
8. Does the TTP recipient adequately ensure oversight of subrecipient's financial management system?
9. Did the TTP recipient provide a complete NTD report of all transit operations?

#### **INFORMATION NEEDED FROM TTP RECIPIENT**

##### **TTP Recipient Information Request**

- Financial policies and procedures that includes allowability of cost and timely distribution of funds
- Organizational chart for Tribe as a whole and the transit and financial office(s)
- Sample worksheet(s) used to track transit-related operating and capital expenditures and support ECHO drawdowns
- Current indirect cost rate approval letter from the Department of Interior, if not in TRAMS
- Most recent variance report(s) demonstrating that budget/actual comparisons are completed for awards
- Financial plan projecting revenues and expenses for the next three years (or longer), including the assumptions and notes to the financial plan

- Operating and capital budgets for the past three years
- Listing of sources of funding used for local match, along with a description (TTP competitive grants only)
- Financial statements or comprehensive annual financial reports for the past three years Internal audits for the past three years prepared by the recipient, if applicable
- Total Federal (non-FTA) funds expended for the past three years, by year
- Documentation of progress towards closing open single audit findings related to FTA programs

---



---

**TTP F1. 1. Does the TTP recipient have financial management policies and procedures in place for managing Federal awards, establishing internal controls, ensuring timely distribution of funds, and determining allowability of costs?**

**BASIC REQUIREMENT**

TTP recipients must have financial management policies and procedures to ensure effective financial management of FTA awards and establish a system of internal controls to safeguard against waste, loss, and misuse of Federal funds.

**APPLICABILITY**

All TTP recipients

**DETAILED EXPLANATION FOR TTP RECIPIENT**

Recipients should have detailed financial management policies and procedures for managing FTA funds; outlining the recipient's internal control practices to prevent waste, loss, and misuse of Federal funds; delegating levels of authority; addressing the accounting software being used; providing financial reports; overseeing subrecipients; etc. Procedures must be written for determining allowability of costs and to ensure the timely distribution of funds.

2 CFR Part 200 identifies that recipient's written financial management policies and procedures must allow it to ensure that costs meet the following general criteria in order to be allowable under the Federal award:

- Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306 Cost sharing or matching paragraph (b).
- Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.
- Cost must be incurred during the approved budget period.

2 CFR Part 200 also identifies that recipients' written financial management policies and procedures must address *Cash Management and Payment in accordance with 2 CFR 200.305 Federal payment*. For non-state recipients, financial management policies and procedures must ensure that payment

methods minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient have written financial management policies and procedures?*
- b. *Do the recipient's written financial management policies and procedures include the two elements required by 2 CFR part 200?*
- c. *How do the recipient's financial management policies and procedures address internal control practices to prevent waste, loss, and misuse of Federal funds?*
- d. *Is the recipient implementing its financial management policies and procedures as written and/or described?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain and review the recipient's financial management policies and procedures to ensure its procedures for determining allowability of costs and cash management are included. Procedures for determining allowability of costs and cash management must be written. Merely stating or referencing the regulations, is not sufficient to meet these requirements.

Obtain and review the recipient's procedures to ascertain how it will ensure that costs:

- a. Are in accordance with the budget and projects in the award.
- b. Meets the requirements of the award agreement, i.e., cost, project description, etc.
- c. Are treated the same for both Federal and non-Federal activities, i.e., cost typically charged as indirect for the Federal activity is charged as indirect for non-Federal activities also.
- d. Can be assigned to the appropriate funding sources within the recipient's financial management systems.
- e. Used to match the Federal award are from allowable sources and adequately supported, i.e., in-kind, other DOT or Federal funds, state and local funds, etc.
- f. Are verified, approved, necessary, and reasonable for the completion of the project.

Obtain and review the recipient's procedures to ascertain how it will ensure that Federal funds are disbursed within three (3) business days between the transfer of funds from the Federal agency and disbursement by the recipient.

Review findings from external and internal audits to determine if deficiencies were noted in the recipient's policies and procedures. Verify the procedures were updated as required.

If not explicitly stated in the financial management policies and procedures, discuss with the recipient and document in the worksheets, their process for complying with the requirements.

Substantiate implementation of the recipient's financial management policies and procedures, through the review of the remaining questions in this section.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not have financial management policies and procedures that include written procedures for determining the allowability of costs and ensuring funds are distributed in a timely manner.

TECHNICAL ASSISTANCE CODE TTP1-1: Written financial management policies and procedures

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing financial management policies and procedures for managing FTA award funds in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. Written procedures must include procedures for determining allowability of cost and timely distribution of funds. The recipient should train appropriate staff on the new policies and procedures.

The recipient needs technical assistance if it does not have nor can demonstrate implementation of established policies and procedures for internal financial controls.

TECHNICAL ASSISTANCE CODE TTP1-2: Internal financial controls

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing new policies and procedures for establishing and maintaining effective internal control over the Federal award that provides reasonable assurance that it is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award.

## **GOVERNING DIRECTIVE**

### 2 CFR Part 200.302 Financial management

- a. Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds.
- b. The financial management system of each non-Federal entity must provide for the following (see also §§200.334, 200.335, 200.336, and 200.337):
  - (1) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes.
  - (2) Written procedures to implement the requirements of §200.305.
  - (3) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

### 2 CFR Part 200.303 Internal controls

The non-Federal entity must:

- a. Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- b. Comply with the U.S. Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
- c. Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- d. Take prompt action when instances of noncompliance are identified including noncompliance



identified in audit findings.

- e. Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

#### 2 CFR Part 200.305 Federal Payment

(a) For non-Federal entities other than states, payment methods must minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the non-Federal entity whether the payment is made by electronic funds transfer, or issuance or redemption of checks, warrants, or payment by other means. See also §200.302(b)(6). Except as noted elsewhere in this part, Federal agencies must require recipients to use only OMB-approved standard government wide information collection requests to request payment.

#### 2 CFR Part 200.403 Factors affecting allowability of costs

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

- a. Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.
- d. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- e. Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.
- f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also §200.306(b).
- g. Be adequately documented. See also §§200.300 through 200.309 of this part.
- h. Cost must be incurred during the approved budget period. The Federal awarding agency is authorized, at its discretion, to waive prior written approvals to carry forward unobligated balances to subsequent budget periods pursuant to §200.308(e)(3).

*(f) Standards of Internal Control and Audit Resolutions.*

(1) General

- a. Recipient management policies that govern implementation of the Award must be clearly stated, understood throughout the organization, and conformed to applicable legislative and administrative requirements.
- b. The recipient's formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.
- c. Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.
- d. A system of organizational planning should exist to determine financial, property, and personnel resource needs.
- e. Written operating procedures must exist and be simply stated, yet meet the recipient's operating, legal, and regulatory requirements. In developing its procedures, the recipient should consider such factors as feasibility, cost, risk of loss or error, and availability of suitable personnel; other important considerations are the prevention of illegal or unauthorized transactions or acts.
- f. The recipient's information system must reliably provide needed operating and financial data for decision-making and performance review.
- g. The recipient must provide proper supervision and performance must be subject to review of an effective internal audit program.
- h. All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work; all must be held fully accountable for the proper discharge of their assignments.
- i. Expenditures must be controlled so that construction, equipment, other property, and services are acquired and received as contracted for (as to quality, quantity, price, and time of delivery); authorizations for expenditures must conform to applicable statutes, regulations, and policies.
- j. All real property, equipment, expendables, and funds must be safeguarded to prevent misuse, misappropriation, waste, or unwarranted deterioration or destruction.

---

---

**F2. Does the TTP recipient's organizational structure clearly define, assign, and delegate appropriate authority for all financial duties and require that those duties are 1) carried out by properly qualified personnel, 2) segregated within the organization, and 3) subject to review to ensure that adequate internal checks and balances exist?**

**BASIC REQUIREMENT**

TTP recipients must have an organizational structure that clearly defines, assigns, and delegates' appropriate authority for all financial duties regarding the management of Federal funds. Those duties must be carried out by properly qualified personnel and be segregated within the organization.

## **APPLICABILITY**

All TTP recipients

### **DETAILED EXPLANATION FOR TTP RECIPIENT**

A recipient's formal organizational structure must clearly define, assign, and delegate appropriate authority for all financial duties. Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.

All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work. All personnel must be held fully accountable for the proper discharge of their assignments. The recipient must provide proper supervision including an adequate system of internal checks and balances.

### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient's organizational structure define, assign, and delegate authority for all financial duties?*
- b. *What are the recipient's minimum required qualifications for senior financial and accounting staff?*
- c. *Are financial functions and responsibilities segregated?*
- d. *Describe the recipient's process for financial supervision?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's organizational charts to determine lines of authority for financial duties.

To verify segregation of duties, during the review of the Electronic Clearinghouse Operation (ECHO) documentation, verify that:

- The approving/authorized official who approved the draw is not the same person who drew the funds.
- Internal approval for the draw was executed prior to the draw being performed.
- The approving official designated on the ECHO payment request form actually approved the draw or delegated that authority in writing to the person who approved the draw.

NOTE: These components do not reflect the entire ECHO verification process, only the elements needed to verify segregation of duties.

On-site, discuss the recipient's process for supervision of financial and accounting personnel. Spot check supervisory approvals of financial reports/documents to verify that the recipient's actual process matches the process described in its financial management policies and procedures.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not segregate financial duties and functions.

TECHNICAL ASSISTANCE CODE TTP2-1: Segregation of financial duties and functions

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing an organizational structure that adequately segregates financial duties and functions, including roles and responsibilities, to create an internal system of financial checks and balances.

### **GOVERNING DIRECTIVE**

2 CFR Part 200.303 Internal Controls

The non-Federal entity must:

- (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in ‘Standards for Internal Control in the Federal Government’, issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission.
- (b) Comply with the US Constitution, Federal statutes, regulations, and the terms and conditions of the Federal awards.
- (c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.
- (d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- (e) Take reasonable measures to safeguard protected personally identifiable information and other information the Federal awarding agency or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

FTA Circular 5010.1E Award Management Requirements Chapter VI (2) Internal Controls

- (f) Standards of Internal Control and Audit Resolutions.

- (1) General.

- b) The recipient’s formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.
  - c) Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.
  - g) The recipient must provide proper supervision and performance must be subject to review of an effective internal audit program.
- h) All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work; all must be held fully accountable for the proper discharge of their assignments.

---

**TTP F3. Does the TTP recipient’s financial management system allow it to prepare reports and trace funds adequately to establish compliance with award terms and conditions?**

**BASIC REQUIREMENT**

TTP recipients must have financial management systems in place to accurately account for and report on federal funds.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

A recipient's financial management system must provide for the following:

- (1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received.
- (2) Accurate, current, and complete disclosure of the financial results of each Federal award or program.
- (3) Records that adequately identify the source and application of funds for federally-funded activities.
- (4) Effective control over, and accountability for, all funds, property, and other assets.
- (5) Comparison of expenditures with budget amounts for each Federal award.

#### **INDICATORS OF COMPLIANCE**

- (a) *How does the recipient track and account for federal awards and generate required financial reports?*
- (b) *Are federal awards identified with the Catalog of Federal Domestic Assistance (CFDA) title and number, federal award identification number and year, name of the federal agency, and name of the pass-through entity, if any?*
- (c) *Do records contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest? Are these supported by source documentation?*
- (d) *Are required reports accurate and current and do they disclose complete financial results?*
- (e) *Are there comparisons of expenditures to budget by federal award?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain sample records/documents produced by the financial systems to substantiate:

- Federal awards received and expended are identified with the CFDA title and number, Federal Award Identification Number (FAIN) and year, name of the Federal agency, and name of the pass-through entity, if any
- The amounts generated are accurate and current at time of publication for the quarterly or annual Federal Financial Report(s) reporting requirements of Federal funding source(s)
- Financial records include Federal award information, amounts awarded, authorized, encumbered and expended; including income earned; and are adequately supported
- Periodic reconciliation of budget to actual expenditures by Federal award are conducted

In TrAMS obtain the most recent Federal Financial Report for one award and compare to the recipient's internal records generated from its financial systems to determine that amounts reported, i.e. expenditures, encumbrances, awards, can be reconciled to the internal systems.

Obtain variance reports completed during the review period to verify that budget to actual comparisons are completed as discussed in procedures and significant variances (as defined by the recipient) are explained and/or reconciled.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if its financial management systems do not permit the preparation of reports required by general and program-specific terms and conditions; and do not allow the tracing of funds to a level of expenditures adequate to establish that such funds have been used

according to Federal statutes, regulations, and the terms and conditions of the award agreement.

TECHNICAL ASSISTANCE CODE TTP F3-1: Financial management systems and financial reporting

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to establish financial systems that allow for preparation of required reports and permit the tracking of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

## **GOVERNING DIRECTIVE**

CFR Part 200.302 (f) Financial Management

- (a) ...the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.
- (b) The financial management system of each non-Federal entity must provide for the following:
  - 1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
  - 2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §200.327 Financial reporting and 200.328 Monitoring and reporting program performance.
  - 3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
  - 4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes.
  - 5) Comparison of expenditures with budget amounts for each Federal award.

---

---

### **TTP F4. Does the TTP recipient correctly draw down and track the use of Federal funds for eligible expenses and disburse advance payment funds within three business days?**

#### **BASIC REQUIREMENT**

TTP recipients may only request necessary and eligible Federal funds through FTA's Electronic Clearing House Operation (ECHO) system. Drawdowns must be tracked by activity line item (ALI), fully supported by backup documentation, and for advanced payment, funds must be dispersed within three business days.

#### **APPLICABILITY**

All TTP recipients

#### **EXPLANATION FOR TTP RECIPIENT**

TTP recipients request Federal funds through ECHO. The TTP recipient's records must support ECHO

requests. The information should be traced back to an invoice for goods or services or internal records, i.e. timesheets, and be supported by information from the recipient's accounting system.

Requests for reimbursement of in-kind contributions are eligible as long as the value of each is documented and supported, represents a cost that would otherwise be eligible under the program, and is included in the net project costs in the project budget.

Either the individual who is the registered ECHO approving official, or a person to whom this person has delegated the authority in writing, must approve each ECHO request. The approving/authorizing official must not draw the funds.

Recipients may initiate draws only when cash is needed for immediate reimbursement and must disburse the funds within three business days. Disbursement means that the recipient no longer controls the money (e.g., a check has been sent to a vendor). If the funds are not disbursed within three business days, FTA can charge interest beginning on day four. In most cases, recipients request funds on a reimbursement basis (after expenses have been incurred and paid). In some cases, (e.g., large bus procurements), recipients request funds prior to issuing a check. This procedure is acceptable as long as the funds are disbursed within three business days.

#### **INDICATORS OF COMPLIANCE**

- a. *Are drawdowns tracked by ALI? Were any ALIs overcharged?*
- b. *Does backup documentation support the amount of the ECHO draw? If the recipient uses volunteered services or in-kind contributions, does it fully document these services?*
- c. *Are all expenses charged to the award eligible?*
- d. *Did the recipient return any amounts due to the Federal Government resulting from federal claims and debts, excess payments, disallowed costs, refunds due, and other amounts or similar transactions?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review award applications for budgeted/allocated amounts defined to match the federal funds. Review progress reports to verify changes in allocated amounts and/or changes in sources of funds used for competitive grant local match. Review the Tribe's financial statements and/or Single Audits to identify if there are any concerns relating to local share. During discussion with the regional office, inquire if there were any federal claims and debts, excess payments, disallowed costs, refunds due, and other amounts demanded from the recipient and if such accounts have been returned.

Review the audited financial statements and Single Audit reports to determine if there are ECHO process findings. On site, review a sample of ECHO draws in accordance with the Records Selection Procedures below to ensure that documentation supports the draws. Review documentation to determine if:

- The purpose of the draw was eligible under the award.
- The recipient's records show funds requested by ALI, the ALI is not overcharged or erroneously charged for unallowable amounts, and the recipient has made the appropriate requests for budget amendments or revisions.
- The calculation and documentation were accurate and complete.
- If documentation includes indirect cost, review cost allocation plan to confirm the correct rate was used.
- The funds were disbursed within three business days.

- FTA was timely notified for drawdowns exceeding \$50 million.
- If any refunds, obtain and review documentation that the recipient returned amounts as demanded.

If the recipient charges in-kind costs, specifically request as part of the ECHO sample a drawdown that includes these charges. On site, review in-kind charges to the award to determine eligibility, and that the value is documented and supported, and represents a cost that would otherwise be charged.

Complete Exhibit 2.1 at the end of this section.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if its records do not support ECHO requests; if the ECHO transaction cannot be traced back to an invoice for goods or services or internal records (i.e. timesheets), and the information cannot be supported by the recipient's accounting system.

TECHNICAL ASSISTANCE CODE TTP F4-1: ECHO documentation

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to develop procedures for documenting ECHO draws. Discuss with the FTA regional office if it wants to require the recipient to submit ECHO requests for prior approval.

The recipient needs technical assistance if it held FTA funds for four or more business days after FTA funds were received; if the recipient drew more funds than were allowed.

TECHNICAL ASSISTANCE CODE TTP F4-2: Funds disbursed timely

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to develop procedures for disbursing FTA funds within three business days along.

NOTE: The FTA regional office will determine if interest is owed in accordance with 31 CFR Part 205 and additional corrective action steps necessary.

The recipient needs technical assistance if it failed to return to FTA funds for federal claims and debts, excess payments, disallowed costs, refunds due, and other amounts owed the Federal Government, including interest.

TECHNICAL ASSISTANCE CODE TTP F4-3: Return Federal funds, when applicable

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient to work with the FTA regional to obtain direction related to the Federal funds owed. Discuss with the FTA regional office if it wants to require the recipient to submit ECHO requests for prior approval.

### **GOVERNING DIRECTIVES**

#### 2 CFR Part 200.302 (b)(4) Financial Management

The financial management system of each non-Federal entity must provide for the following... (4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See §200.303 Internal controls.

#### 2 CFR Part 200.303 Internal Controls

The non-Federal entity must (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in 'Standards for Internal Control in the Federal



Government', issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

CFR Part 200.306 Cost sharing or matching

- b. For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:
  - (1) Are verifiable from the non-Federal entity's records;
  - (2) Are not included as contributions for any other Federal award;
  - (3) Are necessary and reasonable for accomplishment of project or program objectives;
  - (4) Are allowable under Subpart E—Cost Principles of this part;
  - (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
  - (6) Are provided for in the approved budget when required by the Federal awarding agency; and
  - (7) Conform to other provisions of this part, as applicable.

FTA Circular 5010.1E 2 f (3) b) 7 Cash Management

Payment received from FTA must be disbursed within three business days

FTA Circular 5010.1E Chapter V (9) Payment Procedures (d) Policy for ECHO Payments (2)

Reporting large disbursements to the appropriate FTA regional office in advance of the transaction settlement date. The recipient must provide a minimum notice of two business days for a disbursement totaling \$50 million or more, and a minimum notice of five days when a disbursement of more than \$500 million is anticipated. When specific information has not been finalized, the recipient must inform the FTA Regional Office of approximate amount(s) and approximate deposit date(s). The FTA Headquarters Accounting Payable Division should be notified by the Regional Office due to the requirement that FTA must provide the Treasury 48 hour's notification prior to drawdown of federal assistance exceeding \$50 million."

FTA Master Agreement Section 10 (c)

Amounts Owed to the Federal Government. The Recipient agrees to return to the Federal Government any excess federal payments it receives for disallowed costs, and the Federal Government's proportionate part of any amounts it recovers from third parties or other sources, including refunds due and amounts recovered from third parties or other sources, interest assessed, penalties, and administrative charges.

---

---

**TTP F5. Has the TTP recipient complied with requirements for charging indirect costs to FTA awards?**

**BASIC REQUIREMENT**

To charge indirect costs to an award, a TTP recipient 1) must have an approved negotiated indirect cost

rate proposal (ICRP) OR 2) may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC) if it has never had an approved indirect cost rate.

#### **APPLICABILITY**

All TTP recipients

#### **EXPLANATION FOR TTP RECIPIENT**

Under federally funded award programs, recipients may incur both direct and indirect costs. An ICRP is required to support the distribution of indirect costs to the award program.

The Department of Interior, Bureau of Indian Affairs (DOI) is charged with approving all Indian Tribe ICRPs. FTA has limited indirect cost charged to competitive TTP awards to a maximum of 10% of the award amount.

Effective December 26, 2014, non-Federal entities that have never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to 2 CFR Part 200, "States and Local Government and Indian Tribe Indirect Cost Proposals," paragraph D.1.b (receive below \$35 million in direct Federal funding), may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient charge indirect costs to awards? If no, move to next question*
- b. *Does the recipient charge indirect costs using the de minimis rate? If no, move to next indicator. If yes, can the recipient document that it is eligible to charge the de minimis (does not have a current approved indirect cost rate agreement)?*
- c. *Does the recipient have an approved ICRP? (If a formal approval is not available, verify whether the recipient complied with the submission requirements of its cognizant agency).*
- d. *Was the annual ICRP submitted to the cognizant agency in accordance with the agency's requirements? If annual submission or approval is not required, is a copy of the annual plan retained for audit?*
- e. *Does the recipient charge indirect cost amounts that exceed 10% of competitive awards?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review Federal Financial Reports (FFRs) and award application project budgets in TrAMs to determine if the recipient charges indirect costs. If the recipient charges the de minimis rate, verify that the recipient does not have a current approved rate. If the recipient is charging other than the de minimis rate, verify if the rate is consistent with the recipient's approved ICRP. Review award applications in TrAMS if different rates are used. In some cases, recipients will have different approved rates for different projects. Discuss with the regional office staff and verify on site if this is the case.

If approval has not yet been obtained from the cognizant agency, obtain a copy of the submitted ICRP. Note whether there was a previously approved ICRP. Compare the amounts in the current ICRP to the amounts listed in the FFRs in TrAMS to confirm that the amount charged to the award is supported by the ICRP submitted for and pending DOI approval.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The recipient needs technical assistance if it charges indirect costs to FTA awards but does not have an approved ICRP, or has submitted an updated ICRP to DOI and is pending approval.

TECHNICAL ASSISTANCE CODE TTP F5-1: Indirect costs charged to awards

SUGGESTED TECHNICAL ASSISTANCE: Discuss appropriate technical assistance with

the FTA regional office and regional counsel.

### **GOVERNING DIRECTIVES**

#### *Appendix III to 2 CFR Part 200, C. 11 A (1) Indirect (F&A) Costs Identification and Assignment, and Rate*

The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the nonprofit organization. The cognizant agency for indirect costs must make available copies of the agreement to all concerned Federal agencies.

#### *Appendix VII to 2 CFR Part 200, D. b. and d States and Local Government and Indian Tribe Indirect Cost Proposals, Submission and Documentation of Proposals*

A governmental department or agency unit that receives more than \$35 million in direct Federal funding must submit its indirect cost rate proposal to its cognizant agency for indirect costs. Other governmental department or agency must develop an indirect cost proposal in accordance with the requirements of this Part and maintain the proposal and related supporting documentation for audit. These governmental departments or agencies are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a non-Federal entity only receives funds as a subrecipient, the pass-through entity will be responsible for negotiating and/or monitoring the subrecipient's indirect costs... Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect costs.

#### *2 CFR Part 200.414 (f)*

In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200 - States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely.

#### *2 CFR Part 200.414 (g)*

Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is awarded the non-Federal entity may not request a rate review until the extension period ends. At the end of the 4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

---

---

## **TTP F6. Has the TTP recipient conducted the required Single Audits, submitted and resolved any identified issues?**

### **BASIC REQUIREMENT**

TTP recipients that expend \$750,000 or more in Federal awards in their fiscal year are required to conduct an independent single audit, submit required documentation timely, and resolve identified issues.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

2 CFR 200 Subpart F requires all non-Federal entities that expend \$750,000 or more in Federal awards in a year to conduct an independent single audit. In the case of independent transit authorities, the audit will cover all aspects of that authority. Where the transit provider is a municipal department or part of a larger

governmental organization, the audit may cover the entire organization, including the Federal funds used for transit.

Single audit reports must be completed and data collection form and reporting package (financial statements, summary schedule of prior audit findings, auditor’s report and technical assistance plan) must be submitted to the FAC within the earlier of 30 calendar days after receipt of the auditor’s report or nine months after the end of the audit period

Recipients must resolve single audit findings promptly and upon discovery of the issue for audits under the Uniform Guidance requirements. The recipient must resolve the deficiencies or opportunities for improvement identified in their audit. The status of outstanding audit findings and recommendations should be monitored and reported by the recipient in quarterly progress reports and, where appropriate, significant events reported.

**FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

Per OMB Memorandum M-20-26, FTA recipients with single audit due dates from March 30, 2020, through June 30, 2020, may delay single audit submission by up to six months beyond the due date. Single audits with a due date from July 31, 2020, through September 30, 2020, may delay single audit submission by up to three months. This extension does not require individual recipients and subrecipients to seek approval for the extension from FTA; however, recipients and subrecipients should maintain documentation of the reason for the delayed filing.

Recipients and subrecipients taking advantage of this extension would still qualify as a "low-risk auditee" under the criteria of 2 CFR § 200.520 (a) - *Criteria for a low-risk auditee*.

**INDICATORS OF COMPLIANCE**

a. *For what years was the recipient required to conduct a Single Audit?*

Fiscal Year	Amount of Federal Funds Expended	Single Audit Conducted? (Y/N)
-	-	-
-	-	-
-	-	-

b. *When were the audits required to be submitted? What are the actual submission dates?*

Audit Year	Required Submission Date	Actual Submission Date
-	-	-
-	-	-
-	-	-

c. *If there were Single Audit findings, what is the status of addressing those that related to FTA or US DOT programs? If there were no audit findings, move to the next question.*

- o *Does the Single Audit demonstrate that the recipient implemented recommendations related to audit findings made under an FTA or other DOT program?*
- o *If there are open findings, how is the recipient working to address and/or resolve single audit findings?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain from the recipient a schedule of federal expenditures during the review period, by fiscal year to determine if the \$750,000 threshold was met. If the recipient was not required to conduct a single audit,

move to the next question.

Review information available from the FAC website via the link provided below to determine if the required single audits were conducted and submitted. If the information is not available from FAC, follow-up with the recipient for copies of the Single Audits. Obtain the audit reports to determine the end of the recipient's fiscal year and to review the date the auditor issued the report.

Request documentation from the recipient of the date the single audit was submitted to the FAC and assess if it was submitted within the earlier of 30 calendar days of receipt of the auditor's report or nine months after the end of the recipient's fiscal year.

Download a copy of the SF-SAC and each fiscal year's Single Audit from FAC to determine if the auditor identified findings in the recipient's major program(s). If not submitted, discuss with the regional office the steps taken to address the non-submission. The recipient's failure to submit a single audit package, results in the recipient losing the ability to qualify as a "low-risk auditee" per the single audit, which could result in FTA reviewing its oversight efforts.

For prior year findings found in the Schedule of Prior Federal Award Findings of each Single Audit report, determine whether the related technical assistance(s) has been implemented and findings resolved and closed based on the single auditor's assessment.

Review the current year findings detailed in the Schedule of Findings and Questioned Costs of each Single Audit report. Review progress reports submitted in TrAMS to determine if the recipient has been reporting on its progress to implementing recommendations made by the single auditor in the respective report.

If necessary, review the Single Audit module in OTRAK to determine the recipient's progress towards addressing audit findings. If findings are unresolved, follow up with the regional office. If necessary, ask follow-up questions or conduct an onsite interview to determine the recipient's progress towards resolution.

FAC website address: <https://harvester.census.gov/facdissem/SearchA133.aspx>.

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

For recipients that have delayed single audit submissions, confirm that the single audit, SF-SAC and reporting package was submitted to the FAC by the new due date.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it meets the threshold for conducting a single audit but has not done so.

TECHNICAL ASSISTANCE CODETTP F6-1: Annual Single Audit

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must conduct outstanding annual single audit(s) in accordance with 2 CFR Part 200, Subpart F; the recipient must submit documentation to the FTA regional office that it has completed annual single audits for all missing years.

TECHNICAL ASSISTANCE CODETTP F6-2: Outstanding annual audit deficiencies

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient to develop a schedule for resolving single audit findings. The TTP recipient must report on the status of addressing audit findings in its progress reports.

#### **GOVERNING DIRECTIVES**

2 CFR Part 200.501 (a) Audit required

A non-Federal entity that expends \$750,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

2 CFR Part 200.512 Report submission (a) General

- (1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period.

If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

2 CFR Part 200.512 Report submission (b) Data Collection

- (1) The auditee must submit required data elements described in Appendix X to Part 200 - Data Collection Form (Form SF-SAC), which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site.

2 CFR Part 200.513 Responsibilities (a)(3) Cognizant agency for audit responsibilities

- (vii) Coordinate a management decision for cross-cutting audit findings (see in § 200.1 of this part) that affects the Federal programs of more than one agency when requested by any Federal awarding agency whose awards are included in the audit finding of the auditee.

FTA Circular 5010.1E, Chapter VI, Section 8. Annual Audit (d) Resolution of Audit Findings (3)

The recipient must resolve the deficiencies or opportunities for improvement identified in their audit. The resolution of audits begins with FTA's report to the recipient and continues until the recipient corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action. The audit cannot be closed until FTA concurs in the documentation of steps taken to implement any needed corrective actions. The status of outstanding audit findings and recommendations should be monitored and reported by the recipient in quarterly progress reports and, where appropriate, significant events reported.

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)

**AD19: Can an organization receive an extension to submit its Single Audit Report?**

A: Yes. Per the Office of Management and Budget Memorandum M-20-26, FTA recipients with fiscal year end dates through June 30, 2021 may delay the completion and submission of their single audit reporting package to six months beyond the normal due date. Recipients are not required to seek approval for the extension but should maintain documentation of the reason for the delayed filing.

The recipient must resolve the deficiencies or opportunities for improvement identified in their audit. The resolution of audits begins with FTA's report to the recipient and continues until the recipient corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action... The status of outstanding audit findings and recommendations should be monitored and reported by the recipient in quarterly progress reports and, where appropriate, significant events reported.

---

---

**TTP F7. Does the TTP recipient have financial resources to provide to adequately maintain and operate FTA-funded assets?**

**BASIC REQUIREMENT**

TTP recipients must have the financial capacity to carry out their proposed program of projects.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

Annually, the recipient certifies to FTA (as part of the annual certifications and assurances process) that it has the legal, financial, and technical capacity to carry out the activities described in its award application.

Upon request from FTA, the recipient agrees to provide a financial plan delineating the source of non-federal share, the amounts applicable to the different sources, and the time frame for acquisition of the non-federal share. Recipients must have multi-year financial plans (3–5 years) for operating and capital revenues and expenses to implement FTA awards. The financial plans should indicate adequate revenues to maintain and operate the existing system.

TTP formula funds do not require a local share. However, FTA recognizes that TTP funds may not cover all operating and capital costs, therefore non-FTA funding is important. TTP competitive funds awarded prior to FY2021 required a 10% local share, unless a hardship waiver is granted. For FY2021 and FY2022 TTP competitive funds there is no local match provision. TTP competitive funds are awarded at 100 percent Federal share, unless the Tribe chooses to provide a local match at its own discretion.

All local share used to match TTP competitive awards must come from non-US DOT sources, except for Federal Lands Highway Program funds. No FTA program funds can be used as a source of local match for other FTA programs, even when the funds are contract revenue. Depending on the award program, FTA permits the use of the following as local share: cash (or in-kind contribution); non-farebox revenues from transit operations (e.g., advertising and concession revenues); amounts received under a service contract with a state, local, or private social service agency or organization; undistributed cash surpluses; replacement or depreciation cash funds; reserves available in cash or new capital; revenue bond proceeds (capital only); transportation development (toll) credits; program income generated from an earlier award; non-US DOT Federal funds if authorized by the originating program to be used for transportation; funds used to purchase vanpool vehicles by private providers of public vanpools (capital match only); and in-kind match for intercity bus service.

A recipient's financial condition, future financial capacity, and ability to match FTA funds could be affected greatly if one or more of its sources of non-FTA funding is affected by pending legislation or "sunset" provisions in current legislation. The recipient's eligible and available non-Federal funds may be diverted from serving as match for an FTA award if there are other Federal awards which are at risk of lapsing. Similarly, when state and/or local sources of funding decrease, the recipient may be unable to meet the non-Federal match requirements for existing FTA awards. This may also result in service reductions and/or fare increases, redirection of funds to meet critical operating and maintenance needs, and/or staff reductions.

**INDICATORS OF COMPLIANCE**

- a. *For the past three years, what were the amounts and sources of funds to support transit programs? Were all sources eligible? Are any funds in jeopardy?*

<b>Source</b>	<b>Amount</b>	<b>Status (elected, discretionary, by law, etc.)</b>	<b>Eligible Source? (Y/N)</b>
-	-	-	-
-	-	-	-
<b>Total</b>	-	-	

- b. *What are the anticipated amounts and sources for the next three years? Are all sources eligible?*

<b>Source</b>	<b>Amount</b>	<b>Status (elected, discretionary, by law, etc.)</b>	<b>Assumptions</b>
-	-	-	-
-	-	-	-
<b>Total</b>	-	-	-

- c. *How are expenses, and local and Federal sources of funds budgeted/projected and how are adjustments made to projections, when necessary?*
- d. *In the short-term financial plan (next three years) what are the underlying assumptions that could affect the financial condition of the recipient?*
- e. *Has the recipient had deficits, layoffs, service cuts, or deferred or late maintenance in the past three years? If no, does the recipient project any such changes in its operations?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the TTP recipient’s financial plan projecting revenues and expenses for the next three years (or longer), and the following documents for the assessment period: annual audit reports, Tribal legislation, and/or the budget and/or financial statements.

- Review sources of funding (i.e., farebox revenue, toll tax, etc.) to determine if amounts are discretionary, elected, or provided by law.
- Review local sources of funding to determine if they are eligible and for significant changes that may affect the recipient’s revenues.
- Review revenue and expense categories to compare amounts allocated to determine if there has been any significant change in funds; to ensure that reports are not showing or projecting deficits, layoffs, service cuts, or deferred or late maintenance and/or going concerns. Determine if there is discussion from management explaining the changes in financial condition and/or service operations from year to year.
- Review the assumptions and notes to the financial plan, the budget and/or financial statements to evaluate:
  - i. Whether the reported amounts for sources of funding are confirmed or there are pending approval actions (i.e., pending legislation or “sunset” provisions in current legislation).
  - ii. How the recipient has addressed or is addressing any changes in local funding.
  - iii. Reason(s) for any projected increase and/or decrease in revenues and/or expenses.



- iv. Justification for the use of capital funds to cover operating expenses.
- Ensure reports are not projecting deficits and/or ongoing concerns.

Review the TTP recipient's project status subsection of the quarterly/annual milestone progress reports (MPRs) in the reporting module of TrAMS for discussion relating to projects involving FTA funds and whether they are being deferred or have stalled because the non-Federal match is not available. In OTRAK, access prior TTP assessment reports, if available, to determine if there were comments or suggested improvements related to preventive maintenance of FTA funded equipment due to deferred maintenance. Review correspondence with the FTA program manager to determine whether FTA has concerns regarding asset impairment.

Review the TTP recipient's three-five year financial plan to determine if the Tribe has adequate revenues to maintain and operate the existing system.

If documentation provided is insufficient to address the questions above, ask follow-up questions and conduct on site interviews with staff.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if 1) it reports financial deficits or lack of funding is impacting the ability to maintain and operate existing systems or to complete programs of projects, and there is no mitigation plans and/or 2) there is pending legislation that could affect local funding sources negatively, or lack of funding is impacting the ability to maintain and operate existing.

TECHNICAL ASSISTANCE CODE TTP-F7-1: Financial capacity to carry out program

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient in developing a plan for reducing expenditures, increasing revenues, or a combination of both to compensate for a budget shortfall.

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient in developing a new or revised multi-year financial plan if the recipient fails to demonstrate financial capacity.

The recipient needs technical assistance if it cannot document that the funds used for TTP competitive local match are eligible.

TECHNICAL ASSISTANCE CODE TTP-F7-2: Local match for TTP competitive project

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that the funds it uses for local match are eligible. If ineligible funds have been used as local match, work with the FTA regional office to develop a technical assistance.

### **GOVERNING DIRECTIVES**

#### 49 U.S.C. 5307(d)(1)(a) Grant Recipient Requirements

The recipient may receive a grant in a fiscal year only if...has or will have the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program.

#### FTA Circular 5010.1E, Ch. VI, Section 4 Financial Plan

Upon request from FTA, the recipient agrees to provide a financial plan delineating the source of non-federal share, the amounts applicable to the different sources, and the time frame for acquisition of the non-federal share. Recipients must have multi-year financial plans (3–5 years) for operating and capital revenues and expenses to implement FTA Awards. The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects (POP).

CFR Part 200.306 Cost sharing or matching

- (b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:
- (1) Are verifiable from the non-Federal entity's records;
  - (2) Are not included as contributions for any other Federal award;
  - (3) Are necessary and reasonable for accomplishment of project or program objectives;
  - (4) Are allowable under Subpart E—Cost Principles of this part;
  - (5) Are not paid by the Federal Government under another Federal award, except where the Federal statute authorizing a program specifically provides that Federal funds made available for such program can be applied to matching or cost sharing requirements of other Federal programs;
  - (6) Are provided for in the approved budget when required by the Federal awarding agency; and
  - (7) Conform to other provisions of this part, as applicable.

---

---

**TTP F8. Does the TTP recipient adequately ensure oversight of subrecipient's financial management systems?**

**BASIC REQUIREMENT**

TTP recipients are responsible for ensuring that subrecipients have financial management systems that meet standards for financial reporting, accounting records, internal control, budget control, allowable costs, source documentation, and cash management; comply with requirements regarding the use of indirect costs when reimbursement is sought from a Federal award program; and complete annual independent Single Audits if the subrecipients expended \$750,000 or more in Federal awards in a year.

**APPLICABILITY**

TTP recipients with subrecipients

**DETAILED EXPLANATION FOR TTP RECIPIENT**

Annually, the recipient certifies to FTA (as part of the annual certifications and assurance process) that it and its subrecipients have the financial capacity to carry out its proposed program of projects. Some TTP recipients provide financial assistance to a subrecipient to support public transit services for the Tribe.

The recipient is responsible for ensuring that subrecipients have financial management systems that meet standards for financial reporting, accounting records, internal control, budget control, allowable cost, source documentation, and cash management. The recipient is not required to monitor the financial management systems of subrecipients that do not receive Federal cash (e.g., subrecipients for which the recipients procure vehicles). Some recipients require subrecipients to describe their accounting systems during the application process or may perform a pre-award review of accounting systems. Other recipients require subrecipients to maintain separate accounting records for projects. In addition to financial and Single Audits, some recipients require subrecipients to have their auditors certify year-end financial statements or perform a program audit of their transit operations.

The recipient is required to ensure that subrecipients can trace funds to a level of expenditures adequate to establish, that the funds are used for eligible expenditures under the program. Common practices among pass-through entities include but are not limited to:

- Reviewing Single Audits
- Requiring subrecipients to submit supporting documentation periodically
- Requiring new and high-risk recipients to submit supporting documentation with every reimbursement request

#### **INDICATORS OF COMPLIANCE**

- a. How does the recipient ensure that its subrecipients have sufficient financial resources to provide local share for projects and to adequately maintain and operate FTA-funded assets?*
- b. How does the recipient ensure that its subrecipients have sufficient financial controls in place?*
- c. How does the recipient ensure that subrecipients comply with Federal indirect cost rate requirements?*
- d. How does the recipient ensure that Single Audits of subrecipients are conducted, and FTA program related findings resolved?*
- e. How does the recipient ensure that subrecipients seek reimbursement for eligible expenditures?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review award applications and MPRs in TrAMS to identify:

- Whether the recipient has subrecipients and the type of subrecipients
- The types of projects implemented by subrecipients, amount of funding received, and charges reimbursed from the award, i.e. operating, capital, administrative, etc.

Discuss with FTA Tribal Liaison the financial capacity, financial management, and awards management procedures of the recipient to verify whether FTA has concerns regarding:

- The recipient's financial oversight of subrecipients
- Subrecipient's Single Audit results, corrective action plan status and/or resolution

For each fiscal year, review the Report of Independent Auditors on Internal Control Over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards and Report on Internal Control Over Compliance sections of the recipient's and/or subrecipient's Single Audit report to verify no material misstatements and/or significant deficiencies were reported relating to:

- Recipient's oversight of its subrecipients
- Subrecipient's financial controls
- Subrecipient's indirect cost rate allocations
- Subrecipient's unresolved findings

Review the recipient's application process to determine if subrecipient's financial resources and capabilities are assessed.

Review the financial policies and procedures and/or subrecipient oversight procedures to determine:

- The recipient's process to confirm evidence of financial control of subrecipients
- How the recipient confirms that subrecipients comply with the Federal indirect cost rate and Single Audit requirements
- The frequency of submittals from subrecipients and assessment of compliance (i.e., oversight is performed quarterly, bi-annual/annually etc.)

Review the recipient's subrecipient invoice process to determine if it ensures that subrecipients calculate operating and or capital assistance correctly and that amounts submitted for the reimbursement are supported.

Review the recipient's oversight tools (checklists, reports, etc.) to verify implementation of its oversight process (desk review reports, site visits conducted, etc.) and whether the process addressed the subrecipient's:

- Financial controls over award records, assets, and personnel
- Fiscal capabilities

**For subrecipients selected for a site visit:**

- Review the subrecipient application and oversight program to verify the recipient assessed the financial resources and capabilities of the subrecipient.
- Determine whether documents were reviewed/obtained from subrecipients to:
  - Establish that the correct indirect cost rates are used for eligible expenditures under the program. Documents may include the subrecipient's CAP or approval letter from its cognizant agency of its indirect cost rate; results of sampled invoices reviewed; and follow-up items, if applicable, to assess compliance.
  - Verify whether the subrecipient's expenditures exceeded the \$750,000 Single Audit threshold. Documents may include annual financial statements and/or annual budgets.
    - If subrecipient expenditures exceeded the \$750,000 Single Audit threshold, verify the subrecipient completed the required Single Audit on-time.
    - If there were findings in the Single Audit, review correspondence between the recipient and its subrecipients regarding documentation of corrective action plans and/or closure of findings.
- Verify that reports can be generated by the subrecipient to identify FTA-funded assets, liabilities, revenues, and expenses.
- During the site visit, follow up on items for which documentation is not available in the recipient's office or for which oversight appears insufficient.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not ensure that subrecipients have the financial capacity to carry out its proposed activities agreed to in the subaward.

TECHNICAL ASSISTANCE CODE F8-1: Oversight of subrecipient financial capacity

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing procedures for ensuring that subrecipients have the financial capacity to carry out its proposed activities agreed to in the subaward.

The TTP recipient needs technical assistance if it does not ensure that subrecipients have the financial management systems to carry out the programs and to receive and disburse Federal funds or if the recipient does not ensure that subrecipients can adequately document reimbursement requests.

TECHNICAL ASSISTANCE CODE F8-2: Oversight of subrecipient financial management systems

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing procedures for ensuring that subrecipients have the financial management systems to carry out the programs, receive and disburse Federal funds, and adequately support reimbursement requests.

The recipient needs technical assistance if it does not review/verify its subrecipients' application of indirect costs to FTA awards for compliance with related requirements.

TECHNICAL ASSISTANCE CODE F8-3: Oversight of subrecipient indirect cost

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing procedures for ensuring that subrecipients that claim indirect costs have and comply with the requirements of their cost allocation plans.

The recipient needs technical assistance if it does not ensure that the subrecipient's Single Audits are completed and submitted as required; if the recipient does not review subrecipient audits and ensure that audit findings related to the FTA-funded program are resolved.

TECHNICAL ASSISTANCE CODE F8-4: Oversight of subrecipient audits

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with developing procedures for obtaining and reviewing subrecipients' Single Audits and monitoring the resolution of audit findings.

The recipient needs technical assistance if it does not ensure that subrecipients seek reimbursement for eligible expenditures in compliance with FTA guidance.

TECHNICAL ASSISTANCE CODE F8-5: Oversight of subrecipient request for reimbursement

SUGGESTED TECHNICAL ASSISTANCE: Assist TTP recipient with developing procedures for ensuring that subrecipients seek reimbursement for eligible expenditures in compliance with FTA guidance.

---

---

## **TTP F9. Does the TTP recipient submit a complete report to the NTD of all transit operations?**

### **BASIC REQUIREMENT**

TTP recipients must collect, record, and report financial and non-financial data in accordance with the Uniform System of Accounts (USOA) and the *National Transit Database (NTD) Reporting Manual* as required by 49 USC 5335(a).

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

TTP recipients must report directly to the NTD following NTD's established guidelines. If a tribe is both a direct recipient of §5311 TTP funds as well as §5311 funds through the State, the tribe must complete both the direct report to NTD and an abbreviated summary to the State report as an Urban/Tribal

subrecipient. The subrecipient report under the State is a shortened form to report expenditures from non-Tribal Transit §5311 grants. TTP recipients may also report data from Indian Health Services (IHS) if the service meets the definition of public transportation.

Public transportation is defined in the NTD Reduced Reporting Manual as follows:

*Regular, continuing shared-ride surface transportation services that are open to the general public or open to a segment of the general public defined by age, disability, or low income; and*

*(B) does not include —*

- (i) intercity passenger rail transportation provided by the entity described in chapter 2431 (or a successor to such entity)*
- (ii) intercity bus service*
- (iii) charter bus service*
- (iv) school bus service*
- (v) sightseeing service*
- (vi) courtesy shuttle service for patrons of one or more specific establishments, or*
- (vii) intra-terminal or intra-facility shuttle services*

Sponsored services are defined in the NTD Reduced Reporting Manual as transit service paid in whole or in part by a third party who, in many cases, handles trip arrangements. Common sponsored services include

- Medicaid
- Meals-On-Wheels
- Head Start
- The Arc of the United States
- Shelter workshops
- Independent living centers

The NTD considers these services as public transportation if they are part of a coordinated human services transportation plan and there is an attempt to group rides. Local areas develop coordinated plans to identify transportation needs and assist individuals with disabilities, older adults, and people with low incomes. TTP recipients must include sponsored Unlinked Passenger Trips (UPT) in their total UPT.

Deadlines for reporting into NTD are based on the Tribe’s fiscal year end date and are as follows:

Fiscal Year End Date	Waiver, Special Request, etc. Deadline	Annual Report Due Date	Last Date to Submit Report Revisions	Report Closeout Date
June 30	August 31	October 31	March 1	March 15
September 30	November 30	January 31	May 1	May 15
December 31	February 28	April 30	July 2	July 15

**NOTE – 2020 Census Updates:**

FTA is required to use the most recently released Census data in the apportionment. The U.S. Census Bureau anticipates the release of updated Urbanized Area Data in December 2022. Most Tribes will not be affected by the new urbanized area data in the 2020 Census.

All Federal Funding Allocation Statistics (FFA-10) forms will be unavailable for data entry in the 2022 NTD Report. Tribes will not see this form in the report package, but will complete the rest of the forms as usual.

In accordance with the TAM Final Rule (49 CFR part 625), TTP recipients that receive Chapter 53 funds (including TTP funds) and own capital assets that are used for public transportation services are required to report asset information to the NTD, even if the TTP recipient does not manage or operate those assets. Per the TAM Final Rule, 100% Condition Assessments were required in Report Year 2021. Starting in Report Year 2022, Condition Assessments older than 4 years must be updated.

**FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

FTA requires all public transportation modes to provide shared rides to be considered reportable to the NTD. Tribes may report public transportation services if rides sharing was temporarily suspended during the COVID-19 emergency. Services must still meet other public transportation requirements. Tribes should notify the NTD Analyst regarding the details of the service suspension.

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the TTP recipient’s NTD reports to determine if it is reporting all services. Compare the TTP recipients’ financial statements to the NTD report to identify differences in operating expenses.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not report on its complete operations in NTD. It needs technical assistance if it does not report on operations that it provides on behalf of another public transit operator, or if it reports on transit operations that are physically operated by another public entity.

TECHNICAL ASSISTANCE CODE TTP-F9-1: Reporting to NTD

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient in identifying which services operated by the TTP recipient are eligible for including in the NTD report. Advise the TTP recipient to work with its assigned NTD representative to file a complete NTD report.

**GOVERNING DIRECTIVES**

49 U.S.C. 5335 (a)

(a) NATIONAL TRANSIT DATABASE. To help meet the needs of individual public transportation systems, the United States Government, State and local governments, and the public for information on which to base public transportation service planning, the Secretary of Transportation shall maintain a reporting system, using uniform categories to accumulate public transportation financial and operating information and using a uniform system of accounts. The reporting and uniform systems shall contain appropriate information to help any level of government make a public sector investment decision. The Secretary may request and receive appropriate information from any source.

49 CFR Part 630

§ 630.1 Purpose. The purpose of this part is to prescribe requirements and procedures necessary for compliance with the National Transit Database Reporting System and Uniform System of Accounts, as mandated by 49 U.S.C. 5335, and to set forth the procedures for addressing a reporting entity’s failure to comply with these requirements.

§ 630.2 Scope. This part applies to all applicants for, and any person that receives benefits directly from, a grant under 49 U.S.C. 5307 or 5311.

§ 630.3 Definitions. (a) Except as otherwise provided, terms defined in 49 U.S.C. 5302 et seq. apply to this part. (b) Except as otherwise provided, terms defined in the current editions of the National Transit Database Reporting Manuals and the NTD Uniform System of Accounts are used in this part as so defined. (c) For purposes of this part: Administrator means the Federal Transit Administrator or the Administrator's designee. Applicant means an applicant for assistance under 49 U.S.C. 5307 or 5311. Assistance means Federal financial assistance for the planning, acquisition, construction, or operation of public transportation services.

Beneficiary means any entity that receives benefits from assistance under 49 U.S.C. 5307 or 5311. Current edition of the National Transit Database Reporting Manuals and Uniform System of Accounts means the most recently issued editions of the reference documents. Days mean calendar days.

Reference Document(s) means the current editions of the National Transit Database Reporting Manuals and Uniform System of Accounts. These documents are subject to periodic revision. Beneficiaries and applicants are responsible for using the current editions of the reference documents. Reporting entity means a transit agency, a State Department of Transportation that is a recipient of grants under 49 U.S.C. 5311, or a Federally-recognized Indian Tribe that is a direct recipient of grants under 49 U.S.C. 5311. State Department of Transportation means the Department of Transportation of a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, or the U.S. Virgin Islands. Transit agency means an entity providing public transportation as defined in 49 U.S.C. 5302. § 630.4 Requirements. (a) National Transit Database Reporting System. Each applicant for and beneficiary of Federal financial assistance under 49 U.S.C. 5307 or 5311 must comply with the applicable requirements of 49 U.S.C. 5335, as set forth in the reference documents. State Departments of Transportation shall provide reports on behalf of their subrecipients of grants under 49 U.S.C. 5311 as specified in the reference documents. Transit agencies that are beneficiaries of grants under both 49 U.S.C. 5307 and 5311 must file an individual report as an urbanized area transit agency. Federally-recognized Indian Tribes that are direct beneficiaries of grants under 49 U.S.C. 5311 must file an individual report. State Departments of Transportation should not report on behalf of transit agencies that have filed individual reports as urbanized area transit agencies nor on behalf of Indian Tribes that are required to file an individual report. (b) Copies. Copies of reference documents are available from the National Transit Database Web site located at <http://www.ntdprogram.gov>. These reference documents are subject to periodic revision. Revisions of reference documents will be posted on the National Transit Database Web site and a notice of any significant changes to the reporting requirements specified in these reference documents will be published in the FEDERAL REGISTER.

§ 630.5 Failure to report data. Failure to report data in accordance with this part will result in the noncompliant reporting entity being ineligible to receive any Section 5307 or 5311 grants directly or indirectly until such time as a report is filed in accordance with this part. § 630.6 Late and incomplete reports. (a) Late reports. Each reporting entity shall ensure that FTA receives its report by the due dates prescribed in the reference documents. A reporting entity may request a 30 day extension to submit its report. FTA will treat a failure to submit the required report by the due date or the extension date as failure to report data under §630.5. (b) Incomplete reports. FTA will treat an NTD submission that does not contain all of the required data; or does not contain the required certifications, where applicable; or that is not in substantial conformance with the definitions, procedures, and format requirements set out in the reference documents as a failure to report data under §630.5, unless the reporting entity has exhausted all possibilities for obtaining this information. § 630.7 Failure to respond to questions. FTA will review each NTD submission to verify the reasonableness of the data submitted. If any of the data do not appear reasonable, FTA will notify the reporting entity of this fact in writing and request written justification from the reporting entity to either document the accuracy of the questioned data, or to revise the questioned data with a more accurate submission. Failure of a reporting entity to make a good-faith written response to this request will be treated as a failure to report data under §630.5. § 630.8 Questionable data items. FTA may enter a zero, or adjust any questionable data item(s), in any reporting entity's NTD submission that is used in computing the Section 5307 apportionment. These adjustments may be made if any data appears to be inaccurate, have not been collected and reported in accordance with FTA reference documents, or if there is not adequate documentation and a reliable recordkeeping system. § 630.9 Notice of FTA action. Before taking final action under §§630.5 or 630.8, FTA will transmit a written request to the reporting entity to provide the necessary information within a specified reasonable period of time. FTA will advise the reporting entity of its final decision. § 630.10 Waiver of reporting requirements.



Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a written showing that the party seeking the waiver cannot furnish the required data without unreasonable expense and inconvenience. Each waiver will be for a specified period of time. § 630.11 Data adjustments. Errors in the data used in making the Section 5307 apportionment may be discovered after any particular year's apportionment is completed. If so, FTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

### NTD Reduced Reporting Manual

TTP recipients must report directly to the NTD. If a tribe is both a direct recipient of §5311 TTP funds as well as §5311 funds through the State, the tribe must complete both the direct report to NTD and an abbreviated summary to the State report as an Urban/Tribal subrecipient. The subrecipient report under the State is a shortened form to report expenditures from non-Tribal Transit §5311 grants. TTP recipients may report data from Indian Health Services (IHS) if the service meets the definition of public transit and sponsored services.

Sponsored services are defined in the NTD reduced reporting manual as transit service paid in whole or in part by a third party who, in many cases, handles trip arrangements. Common sponsored services include:

- Medicaid
- Meals-On-Wheels
- Head Start
- The Arc of the United States
- Shelter workshops
- Independent living centers

The NTD considers these services as public transportation if they are part of a coordinated human services transportation plan. Local areas develop coordinated plans to identify transportation needs and assist individuals with disabilities, older adults, and people with low incomes. TTP recipients must include sponsored UPT in their total UPT.

---

---

## **REFERENCES**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. FTA Circular 5010.1E, "Award Management Requirements"
4. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
5. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"

## **USEFUL WEBLINKS**

1. Flexible Funds: FHWA and FTA Programs Revenue Bonds
2. Electronic Clearing House Operation (ECHO) Web User Manual for FTA and FAA Federal Audit

Clearinghouse (FAC)

3. A Guide for States and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government
4. Coronavirus Aid, Relief, and Economic Security Act
5. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
6. Notice of Concurrence State Declaration of Emergency Related to Covid-19
7. Emergency Relief rule
8. OMB Memorandum M-20-17, Appendix A
9. OMB Memorandum M-20-26

**ECHO TRANSACTION SAMPLING PROCEDURES**

Select a sample of ECHO transactions. To develop this sample:

Download TrAMS Data – Prior to the site visit, prepare a list of ECHO transactions for the period over the last three years

1. Select ECHO Transactions – Select one or two ECHO transactions from each year of the assessment period, up to three ECHO transactions. Use the following characteristics as guide for selecting these transactions:
  - a. Select large capital draws
  - b. Select flat dollar amounts such as \$80,000
  - c. Select any unusual credits that appear to be systematic
  - d. If the recipient uses in-kind costs as match, request ECHO drawdown where such costs were used
2. Prior to the site visit, request that the TTP recipient have available the entire ECHO drawdown that contains the ECHO transactions selected, along with supporting documentation.
3. During the site visit, analyze the selected ECHO transactions to identify the underlying transactions. Underlying transactions consist of checks, invoices, personnel data, in-kind charges, etc.
4. The following attributes should be reviewed:
  - a. Ensure that an individual other than the one preparing the drawdown approves the drawdown.
  - b. Ensure that someone other than the approving official draws the funds.
  - c. Ensure that the individual approving ECHO drawdowns is either the registered ECHO approving official or a person to whom this person has delegated the authority in writing. The approving official appears on the print out of the ECHO screen.
  - d. Ensure the sum of the underlying transactions equals the amount of the ECHO transactions selected in Step 2.
  - e. For each selected ECHO transaction, select a minimum of one underlying transaction to verify that supporting source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contracts, and subaward documents are maintained to support the underlying transaction(s) selected. If documentation includes indirect cost, review cost allocation plan to confirm the correct rate was used.
  - f. Ensure that expenses are at the correct Federal share and are reasonable, allowable, and allocable to the award charged.
  - g. Ensure that advanced funds drawn down were expended within three business days.

**EXHIBIT 3.1 REVIEW OF ECHO DRAWDOWNS**

*Note: This table is to be completed by the Assessment Team. Prior to the site visit, the Assessment Team will provide a list of ECHO draws that will be reviewed.*

Project Number (Award Number)	Financial Purpose Code	ECHO Transaction Date	ECHO Transaction Amount (minimum of 9)	Segregation of Duties (Y/N)	Underlying Transaction Amount	Federal Share	Source Documentation for Underlying Transaction Amount (i.e. invoice, payroll, etc.)	Award Eligible (Y/N)	Date of Disbursement (a)
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-

*1. This should be the date the funds leave the recipient's control if not drawn down on a reimbursement basis.*

## **RESOURCES SUPPLEMENT**

Five Year Financial Plan Example

DOI Indirect Cost Guidance website

ECHO Web User Manual

ECHO Web Help Desk Email: [FTA.EchoWeb@dot.gov](mailto:FTA.EchoWeb@dot.gov); Phone: 202-366-1004;  
Business hours: 8 a.m.-5 p.m. ET, M-F

FTA Scope Codes and Activity Line Items

Budget and Finance 101 – Transit Manager’s Toolkit

Cost Allocation Calculator

Federal Audit Clearinghouse website

Link to NTD Reduced Reporting Manual

Webinar: NTD Annual Reporting for Indian Tribes  
Webinar NTD: Annual Reporting for Indian Tribes 082522

Revenue Service – Demand Response Chart (page 72)

Revenue Service – Motor Bus Chart (page 70)

NTD Reporting Forms Chart (excerpt from PPT)

# 4. TRANSIT ASSET MANAGEMENT

## PURPOSE OF THIS ASSESSMENT AREA

TTP recipients must comply with 49 CFR part 625 to ensure public transportation providers develop and implement transit asset management (TAM) plans.

## QUESTIONS TO BE DISCUSSED

1. Has the TTP recipient developed a TAM plan?
2. Did the TTP recipient develop the appropriate tier plan and does the plan have the required elements?
3. Has the group plan sponsor fulfilled its obligations in the development of the group TAM plan?
4. Have TAM responsibilities been assigned to an accountable executive?
5. Have group plan participants fulfilled their obligations in the development and implementation of the group TAM plan?
6. Has the TTP recipient set performance targets annually?
7. Does the TTP recipient share its TAM plan, any supporting records or documents, performance targets, investment strategies, and annual condition assessment report with the state and/or metropolitan planning organization (MPO) that provides funding?

## INFORMATION NEEDED FROM TTP RECIPIENT

### Recipient Information Request

#### *Recipients with individual TAM plans and group TAM plan sponsors*

- TAM plan
- National Transit Database (NTD) target report
- Documentation of performance measures and targets set annually
- Position and job description for accountable executive
- Evidence that the TAM plan was shared with the State and/or MPO that provides funding
- Supporting records or documents of the recipient's TAM plan:
  1. Performance targets
  2. Investment strategies, and
  3. The annual condition assessment report provided to the state(s) and/or MPO that provide the recipient funding

#### *Group TAM plan sponsors*

- Documentation of coordination with group plan participants
- Notification from each group plan participant's accountable executive that the participant approves the group plan, i.e. email, memorandum, etc.
- A list of subrecipients that have opted out of a group plan and copies of all group plan opt-out letters
- Documentation of the group plan sponsor making the TAM plan available to all participants in an easily accessible format

#### *Group TAM plan participants*

- Evidence that the recipient is participating in a group TAM plan, such as a listing of group plan participants

- Position and job description for accountable executive

---

---

## **TTP-TAM1. Has the TTP recipient developed a TAM Plan?**

### **BASIC REQUIREMENT**

TTP recipients that own, operate or manage public transit service are required to develop a TAM plan.

### **APPLICABILITY**

All TTP recipients of FTA funds that own, operate, or manage capital assets used for providing public transportation

Group plan sponsors

### **EXPLANATION FOR TTP RECIPIENT**

TTP recipients that own, operate or manage public transit service must develop a TAM plan or participate in a group TAM plan. Group plan sponsors include entities, such as state departments of transportation and MPOs that administer FTA grant programs but do not operate service. The requirement does not apply to vessels.

- **Tier I** providers must develop their own TAM plan.
- **Tier II** providers may develop their own TAM plan or participate in a group plan. A Tier II provider may participate in a group plan even if it is not a subrecipient of the group plan sponsor. For example, an urban provider may participate in a state's TAM plan even though it is a direct recipient and does not receive any FTA funds as a subrecipient of the state.
- Recipients with subrecipients must develop a **group plan** for Tier II subrecipients that do not opt out of the group plan.

### **INDICATORS OF COMPLIANCE**

- a. Does the recipient have a written TAM plan? If not, is the recipient a participant in a group plan?*
- b. If the recipient has subrecipients, has it included all Tier II subrecipients that have not opted out of the group plan in its plan?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Request and review the TAM plan. If the recipient is a participant in the group plan, review the plan to ensure that the recipient is listed.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The recipient needs technical assistance if it does not have a TAM Plan or is not participating in a group TAM plan.

TECHNICAL ASSISTANCE CODE TTP-TAM 1-1: TAM Plan

SUGGESTED TECHNICAL ASSISTANCE: Assist TTP recipient with developing a TAM Plan or participating in a group TAM Plan

### **GOVERNING DIRECTIVE**

49 CFR 625.3 Applicability

This part applies to all recipients and subrecipients of Federal financial assistance under 49 U.S.C. Chapter 53 that own, operate, or manage capital assets used for providing public transportation.

49 CFR 625.5 Definitions

Tier I provider means a recipient that owns, operates, or (1) manages either one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes or in any

one non-fixed route mode, or (2) rail transit.

Tier II provider means a recipient that owns, operates, or (1) manages one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.

49 CFR 625.25 Transit Asset Management Plan requirements.

(a) General.

- (1) Each Tier I provider must develop and carry out a TAM plan that includes each element under paragraph (b) of this section.
- (2) Each Tier II provider must develop its own TAM plan or participate in a group TAM plan. A Tier II provider's TAM plan and a group TAM plan only must include elements under paragraphs (b)(1) through (4) of this section.

---

---

**TTP-TAM2. Did the TTP recipient develop the appropriate tier plan and does the plan have the required elements?**

**BASIC REQUIREMENT**

A TTP recipient's TAM plan must include the required elements listed in 49 CFR 625.25 Transit Asset Management Plan requirements.

**APPLICABILITY**

TTP recipients of FTA funds that own, operate, or manage capital assets used for providing public transportation and are not a group TAM plan participant.  
Group plan sponsors.

**EXPLANATION FOR TTP RECIPIENT**

**Tier I** providers are recipients that own, operate, or manage either (1) 101 or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or

(2) rail transit. Tier I providers must develop their own TAM plan. **TTP recipients are not included in Tier I.**

**Tier II** providers are recipients that own, operate, or manage (1) 100 or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe. Tier II providers may develop their own TAM plan or participate in a group plan. Recipients with subrecipients must develop a group plan for Tier II subrecipients that do not opt out of the group plan.

As a Tier II provider, Tribal agencies must include the following four elements in their TAM Plan:

- 1) **An inventory of the number and type of capital assets.** The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under \$50,000 that is not a service vehicle. An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation. The asset inventory must be organized at a level of detail commensurate with the level of detail in the provider's program of capital projects.
- 2) **A condition assessment.** A condition assessment of those inventoried assets for which a provider has direct capital responsibility. A condition assessment must generate information in a level of detail



sufficient to monitor and predict the performance of the assets and to inform the investment prioritization.

- 3) **Analytical processes or decision support tools.** The plan must provide a description of analytical processes or decision-support tools that a provider uses to estimate capital investment needs over time and develop its investment prioritization.
- 4) **Project-based prioritization of investments.** The plan must contain the providers project-based prioritization of investments that identifies a provider’s programs and projects to improve or manage over the TAM plan horizon period the state of good repair of capital assets for which the provider has direct capital responsibility. A provider must rank projects to improve or manage the state of good repair of capital assets in order of priority and anticipated project year.

**Group Plan Participation**

Tribal agencies may develop their own TAM plans or participate in their state Department of Transportation (DOT)’s group TAM plan. If the Tribe only receives 5311(c) funds directly through FTA, then the state DOT is not required to solicit the Tribe’s participation in its group plan. However, if the Tribe requests to participate, then the state DOT must accept the Tribe into its group plan.

In addition, a Tribe can choose to develop its own plan, or serve as the sponsor of a tribal group plan that includes other tribal agencies of similar interests and experiences. Unlike traditional group plan sponsors, a Tribe can both sponsor and participate in the group plan. The group plan sponsor will report TAM data, including targets, for group plan participants. Tribes completing their own group plan will report their TAM data and targets on their own.

A Tribe’s accountable executive may be the tribal councilman, CEO equivalent, or another senior staff member. This accountable executive approves the TAM plan.

**INDICATORS OF COMPLIANCE**

*a. Does the TAM plan contain the appropriate required elements?*

Required Elements	Addressed? (Y/N)	Page Reference	Comments/Notes
<i><b>Tier II</b></i>			
An inventory for all assets used in the provision of public transportation, including those owned by third parties	-	-	-
A condition assessment of all assets in the recipient’s asset inventory for which it has direct capital responsibility	-	-	-
A description of analytical processes or decision-support tools that a provider uses to estimate capital investment needs over time and develop its investment prioritization	-	-	-
An investment prioritization that:	-	-	-

Required Elements	Addressed? (Y/N)	Page Reference	Comments/Notes
<b>Tier II</b>			
<ul style="list-style-type: none"> <li>Ranks projects to improve or manage the state of good repair over the horizon period</li> </ul>	-	-	-
<ul style="list-style-type: none"> <li>Includes all capital assets for which the recipient has direct capital responsibility, not just federally funded assets.</li> </ul>	-	-	-
<ul style="list-style-type: none"> <li>Is at least the asset class level</li> </ul>	-	-	-
<b>Group Plans</b>			
A list of participants in the group plan	-	-	-

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Using the table above, review the recipient’s TAM plan for the required elements. Review the NTD report.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The recipient needs technical assistance if its TAM plan does not address all the required elements.

TECHNICAL ASSISTANCE CODE TTP-TAM 2-1: TAM plan required elements

SUGGESTED TECHNICAL ASSISTANCE: Assist the recipient in developing a TAM Plan that includes all the required elements.

**GOVERNING DIRECTIVE**

49 CFR 625.5 Definitions

*Tier I provider* means a recipient that owns, operates, or (1) manages either one hundred and one (101) or more vehicles in revenue service during peak regular service across all fixed route modes or in any one non-fixed route mode, or (2) rail transit.

*Tier II provider* means a recipient that owns, operates, or (1) manages one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.

49 CFR 625.25 Transit Asset Management Plan Requirements

(a) General. (1) Each Tier I provider must develop and carry out a TAM plan that includes each element under subsection (b) of this section.

(2) Each Tier II provider must develop its own TAM plan or participate in a group TAM plan. A Tier II

provider's TAM plan and a group TAM plan only must include elements (1)-(4) under subsection (b) of this section.

(3) A provider's Accountable Executive is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with this part.

(b) Transit asset management plan elements. Except as provided in subsection (a)(3) of this section, a TAM plan must include the following elements:

(1) An inventory of the number and type of capital assets. The inventory must include all capital assets that a provider owns, except equipment with an acquisition value under \$50,000 that is not a service vehicle. An inventory also must include third-party owned or jointly procured exclusive-use maintenance facilities, passenger station facilities, administrative facilities, rolling stock, and guideway infrastructure used by a provider in the provision of public transportation. The asset inventory must be organized at a level of detail commensurate with the level of detail in the provider's program of capital projects;

(2) A condition assessment of those inventoried assets for which a provider has direct capital responsibility. A condition assessment must generate information in a level of detail sufficient to monitor and predict the performance of the assets and to inform the investment prioritization;

(3) A description of analytical processes or decision-support tools that a provider uses to estimate capital investment needs over time and develop its investment prioritization;

(4) A provider's project-based prioritization of investments, developed in accordance with section 625.33 of this part;

(5) A provider's TAM and SGR policy;

(6) A provider's TAM plan implementation strategy;

(7) A description of key TAM activities that a provider intends to engage in over the TAM plan horizon period;

(8) A summary or list of the resources, including personnel, that a provider needs to develop and carry out the TAM plan;

(9) An outline of how a provider will monitor, update, and evaluate, as needed, its TAM plan and related business practices, to ensure the continuous improvement of its TAM practices.

---

---

### **TTP TAM3. Has the group plan sponsor fulfilled its obligations in the development of the group TAM plan?**

#### **BASIC REQUIREMENT**

Group plan sponsors must develop a group TAM plan that, at a minimum, includes all Tier II subrecipients that do not opt out of the group plan. In addition, Tribes may serve as the sponsor of a tribal group plan that includes other tribal agencies of similar interests and experiences.

#### **APPLICABILITY**

Group plan sponsors

## **EXPLANATION FOR TTP RECIPIENT**

A group plan sponsor must develop a group TAM plan for its Tier II provider subrecipients. A group plan sponsor may, but is not required to, include 1) its Tier II provider subrecipients that are also direct recipients of Section 5307 funds, or 2) any Tier II provider direct recipients of Section 5307 funds (even if they are not subrecipients of the sponsor), in its group TAM plan. Tier II provider subrecipients include Section 5311 subrecipients and Section 5310 subrecipients providing public transportation (also referred to as “open door” service) that do not opt out of the group plan. For those Tier II subrecipients that opted out of the plan, the group sponsor must obtain opt-out letters.

Tribes may serve as the sponsor of a tribal group plan that includes other tribal agencies of similar interests and experiences. Unlike traditional group plan sponsors, a tribe can both sponsor and participate in the group plan.

The group plan sponsor must ensure that each plan participant has designated an accountable executive responsible for implementation of the TAM plan locally and coordinate with them in the development of the group plan. The group plan sponsor must make the plan available to participants.

## **INDICATORS OF COMPLIANCE**

- a. *Does the plan include all Tier II subrecipients as defined above that have not opted out of the plan?*
- b. *For any Tier II subrecipient that opted out of the group TAM plan, did the group sponsor obtain an opt-out letter?*
- c. *Has the accountable executive been identified for all plan participants?*
- d. *Did the recipient coordinate with all participants’ accountable executives in the development of the group plan?*
- e. *How does the recipient make the group TAM plan available to participants?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review TTP awards and discuss with Tribe whether it has any subrecipients or is a group plan sponsor. Inquire whether any subrecipients have opted out of a group plan and obtain copies of opt-out letters. If Tribes serves as the sponsor of a group plan, review the group TAM plan for evidence of coordination with group plan participants, such as participant asset inventories and condition assessments. If coordination was conducted in person or over the phone, meeting agendas and attendance lists would fulfil this requirement. Determine how the group plan sponsor has made the TAM plan available to all participants, such as posting the plan to the sponsor’s website.

## **POTENTIAL TECHNICAL ASSISTANCE CODES**

The TTP recipient needs technical assistance if (1) all Tier II subrecipients that have not opted out of the plan are not included in the group plan; or (2) the group plan sponsor did not obtain opt-out letters from those Tier II subrecipients that have opted out of the plan.

TECHNICAL ASSISTANCE CODE TAM3-1: Group plan missing Tier II subrecipients/No opt-out letter

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient with required revisions to group TAM plan that includes all Tier II subrecipients that have not opted out of the plan.

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient with understanding the requirements to obtain opt-out letters from those Tier II subrecipients that have opted out of the plan.

The TTP recipient needs technical assistance if group plan participants have not identified an accountable executive who is responsible for implementation of the TAM plan.

TECHNICAL ASSISTANCE CODE TAM3-2: Designation of accountable executive by group plan participants

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with understanding the requirement that each group plan participant must designate an accountable executive.

The TTP recipient needs technical assistance if it did not coordinate with group plan participants in the development of the plan.

TECHNICAL ASSISTANCE CODE TAM3-3: Group plan development and coordination with participants

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with understanding the requirement to coordinate with plan participants to review the plan or to obtain additional information required for the plan.

The TTP recipient needs technical assistance if it has not made the group plan available to plan participants.

TECHNICAL ASSISTANCE CODE TAM3-4: Group plan available to plan participants

SUGGESTED CORRECTIVE ACTION: Assist TTP recipient with understanding requirement to make group TAM plan available to plan participants.

## **GOVERNING DIRECTIVE**

### **49 CFR 625.5 Definitions**

*Accountable Executive* means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out transit asset management practices; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. 5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

*Tier II provider* means a recipient that owns, operates, or (1) manages one hundred (100) or fewer vehicles in revenue service during peak regular service across all non-rail fixed route modes or in any one non-fixed route mode, (2) a subrecipient under the 5311 Rural Area Formula Program, (3) or any American Indian tribe.

### **49 CFR 625.27 Group plans for transit asset management**

(a) Responsibilities of a group TAM plan sponsor.

(1) A sponsor must develop a group TAM plan for its Tier II provider subrecipients, except those subrecipients that are also direct recipients under the 49 U.S.C. 5307 Urbanized Area Formula Grant Program. The group TAM plan must include a list of those subrecipients that are participating in the plan.

(2) A sponsor must comply with the requirements of this part for a TAM plan when developing a group TAM plan.

(3) A sponsor must coordinate the development of a group TAM plan with each participant's Accountable Executive.

(4) A sponsor must make the completed group TAM plan available to all participants in a format that is easily accessible.

*(b) Responsibilities of a group TAM plan participant.*

(1) A tier II provider may participate in only one group TAM plan.

(2) A tier II provider must provide written notification to a sponsor if it chooses to opt-out of a group TAM plan. A provider that opts-out of a group TAM plan must either develop its own TAM plan or participate in another sponsor's group TAM plan.

(3) A participant must provide a sponsor with any information that is necessary and relevant to the development of a group TAM plan.

---

---

#### **TTP-TAM4. Have TAM responsibilities been assigned to an accountable executive?**

##### **BASIC REQUIREMENT**

TTP recipients must designate an accountable executive who is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with 49 CFR part 625.

##### **APPLICABILITY**

TTP recipients of FTA funds that own, operate, or manage capital assets used for providing public transportation.

##### **EXPLANATION FOR TTP RECIPIENT**

The recipient must designate an accountable executive that is responsible for the TAM plan. The accountable executive is a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out TAM practices; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. 5329(d), and the agency's TAM plan in accordance with 49 U.S.C. 5326. An accountable executive must balance transit asset management, safety, day-to-day operations, and expansion needs in approving and carrying out a TAM plan and a public transportation agency safety plan.

##### **INDICATORS OF COMPLIANCE**

- a. *What position has been designated as the accountable executive?*
- b. *Do the accountable executive's responsibilities include ensuring that the TAM plan is developed and implemented in accordance with the required elements?*

##### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the TTP recipient's organizational chart to identify the accountable executive's level of authority and to ensure that the position is an executive level position. Verify the accountable executive position and job description align with responsibilities of the accountable executive as described in the regulations. Discuss any differences between the job description, the organizational chart with the recipient and the accountable executive responsibilities. Obtain documentation from the recipient that demonstrates that the accountable executive is exercising its responsibilities, i.e. signs off on the TAM plan, annual performance targets, etc.

##### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it has not identified an accountable executive who is responsible for implementation of the TAM plan.

TECHNICAL ASSISTANCE CODE TTP-TAM4-1: Designation of accountable executive

SUGGESTED TECHNICAL ASSISTANCE: Assist the recipient with designating an accountable executive to be responsible for the implementation of the TAM plan.

The recipient needs technical assistance if the recipient was unable to demonstrate that the accountable executive is exercising its responsibilities.

TECHNICAL ASSISTANCE CODE TTP-TAM4-2: Accountable executive responsibilities

SUGGESTED TECHNICAL ASSISTANCE: Assist recipient with understanding the responsibilities of the accountable executive and developing procedures to ensure the plan is developed/updated and implemented.

## **GOVERNING DIRECTIVES**

### 49 CFR 625.5 Definitions

*Accountable Executive* means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out transit asset management practices; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49

U.S.C. 5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

### 49 CFR 625.25 Transit Asset Management Plan Requirements

(a) General.

(3) A provider's Accountable Executive is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with this part.

---

---

## **TTP-TAM5. Have group plan participants fulfilled their obligations in the development and implementation of the group TAM plan?**

### **BASIC REQUIREMENT**

Group plan participants must participate in only one group plan and provide the necessary and relevant information for the development of the group plan.

### **APPLICABILITY**

Group plan participants

### **DETAILED EXPLANATION FOR TTP RECIPIENT**

TTP recipients can participate in only one group plan. Group plan participants must provide the necessary and relevant information for the development of the group plan.

### **INDICATORS OF COMPLIANCE**

- a. *What position has been designated as the accountable executive?*
  1. *Do the accountable executive's responsibilities include ensuring that the TAM plan is developed and/or implemented in accordance with the required elements?*
  2. *Is the accountable executive exercising its responsibilities?*

3. *Did the accountable executive approve annual performance targets?*
- b. *Is the recipient participating in only one group TAM plan?*
- c. *Did the recipient provide the necessary and relevant information for the development of the group TAM plan?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain a copy of the group plan in which the TTP recipient is participating. Confirm with the recipient that it is participating in only the one group plan. Obtain information provided to the group plan sponsor for inclusion in the group plan such as asset inventories and condition assessments, identification of the accountable executive, approval of annual performance targets, description of analytical processes or decision-support tools, financial estimates for the horizon years, etc.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it is participating in more than one TAM plan.

TECHNICAL ASSISTANCE CODE TTP-TAM5-1: Participating in more than one group TAM plan

SUGGESTED TECHNICAL ASSISTANCE: Assist the recipient with identifying which group plan to participate and removal from other plan/s.

The recipient needs technical assistance if it did not provide the necessary and relevant information for the development of the group TAM plan.

TECHNICAL ASSISTANCE CODE TTP-TAM5-2: Information required for group plan participation.

SUGGESTED TECHNICAL ASSISTANCE: Assist the recipient in submitting the required information to the group TAM plan sponsor.

#### **GOVERNING DIRECTIVES**

##### 49 CFR 625.5 Definitions

*Accountable Executive* means a single, identifiable person who has ultimate responsibility for carrying out the safety management system of a public transportation agency; responsibility for carrying out transit asset management practices; and control or direction over the human and capital resources needed to develop and maintain both the agency's public transportation agency safety plan, in accordance with 49 U.S.C. 5329(d), and the agency's transit asset management plan in accordance with 49 U.S.C. 5326.

##### 49 CFR 625.25 Transit Asset Management Plan Requirements

- A. General.
- (3) A provider's Accountable Executive is ultimately responsible for ensuring that a TAM plan is developed and carried out in accordance with this part.

##### 49 CFR 625.27 Group plans for transit asset management

- (b) Responsibilities of a group TAM plan participant.
- (1) A Tier II provider may participate in only one group TAM plan.
- (2) A Tier II provider must provide written notification to a sponsor if it chooses to opt-out of a group TAM plan. A provider that opts-out of a group TAM plan must either develop its own TAM plan or participate in another sponsor's group TAM plan.
- (3) A participant must provide a sponsor with any information that is necessary and relevant to the development of a group TAM plan.



---

---

## **TTP-TAM6. Has the TTP recipient set performance targets annually?**

### **BASIC REQUIREMENT**

A TTP recipient must set one or more performance targets for each applicable performance measure.

### **APPLICABILITY**

TTP recipients of FTA funds that own, operate, or manage capital assets used for providing public transportation and are not a group TAM plan participant

### **EXPLANATION FOR TTP RECIPIENT**

A TTP recipient must set one or more performance targets to define the state of good repair goals in the following asset categories: equipment, rolling stock, and facilities. A recipient must set performance targets based on realistic expectations; up- to-date data; and financial resources from all sources that can be reasonably expected to be available during the TAM plan horizon period. The group plan sponsor is responsible for performance measures and targets for all assets in a group TAM plan environment.

The recipient may adopt FTA default useful life benchmarks (ULBs) or develop customized ULBs based on analysis of their data. Default ULBs represent maximum useful life based on the Transit Economic Requirements Model (TERM) model.

The NTD collects current year performance data as well as the updated goals for the TAM plan horizon.

The TAM Rule requires agencies to submit a TAM narrative report to the NTD annually. The report describes conditions in the prior year that led to target attainment status, as well as decision tools and prioritization methods to assist in setting and attaining future performance measures.

The following data must be reported to the NTD.

- **Rolling stock:** Targets are set for each asset class a recipient or subrecipient has in its inventory. Targets must be set using the FTA provided default ULBs or customized ULBs based on agency data.
- **Equipment:** Only three classes of non-revenue service vehicles are collected and used for target setting: 1) automobiles, 2) other rubber tire vehicles, and 3) other steel wheel vehicles. Targets must be set using the FTA provided default ULBs or customized ULBs based on agency data.
- **Facilities:** Four types of facilities are reported to NTD. The four types of facilities are combined into two groups used for target setting: 1) administrative and maintenance and 2) passenger and parking. The targets for facilities are set based upon the TERM condition codes calculated using the FTA methodology.

### **INDICATORS OF COMPLIANCE**

a. *Does the recipient have calculations for the following performance targets?*

- *Equipment (non-revenue service vehicles, support-service and maintenance vehicles equipment): the percentage of those vehicles that have either met or exceeded their ULB for all assets for which it has direct capital responsibility.*
- *Rolling stock: the percentage of revenue vehicles by vehicle type that have either met or exceeded their ULB for all assets for which it has direct capital responsibility.*
- *Facilities: the percentage of facilities within an asset group rated below condition 3 on the TERM scale for all assets for which the recipient has direct capital responsibility.*

- b. *Does the recipient set performance targets annually to define the state of good repair goals for the following fiscal year for equipment, rolling stock, , and facilities?*
- c. *Did the accountable executive approve annual performance targets?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain a copy of the performance measures being applied to the recipient's assets. Compare the performance measures with the ULBs or condition assessment to verify that performance has been measured for all assets included in the TAM plan. The performance measures must include all assets for which the recipient has direct capital responsibility.

The NTD target report can also be used to verify for which assets a provider has direct capital responsibility.

Obtain documentation of the recipient's performance targets, including when they were set. Review these targets to ensure that they address each applicable performance measure and cover all assets for which the recipient has direct capital responsibility.

The performance targets submitted to NTD for the current year and previous years can be used to verify that the appropriate targets have been set.

Obtain documentation from the group plan sponsor that all necessary and relevant information has been obtained from plan participants, including asset inventories and condition assessments from each participant.

Discuss with the recipient's accountable executive their process for coordination with all participating accountable executives to develop performance targets. This can be as little information as an email thread. If coordination was conducted in-person or over the phone, meeting agendas and attendance lists would fulfil this requirement. Obtain documentation of how the group plan sponsor is making the TAM plan available to all participants.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The recipient needs technical assistance if its TAM plan does not include targets for all applicable performance measures.

TECHNICAL ASSISTANCE CODE TTP-TAM6-1: Performance target calculations

SUGGESTED TECHNICAL ASSISTANCE: Assist recipient with its methodology and calculation for performance targets.

The recipient needs technical assistance if its TAM plan does not demonstrate performance targets are set annually.

TECHNICAL ASSISTANCE CODE TTP-TAM6-2: Annual performance targets

SUGGESTED TECHNICAL ASSISTANCE: Assist recipient in submitting annual performance targets and developing a process for submittals moving forward.

The recipient needs technical assistance if its accountable executive did not approve the annual performance targets.

TECHNICAL ASSISTANCE CODE TTP TAM6-3: Accountable executive approval of annual performance targets.

SUGGESTED TECHNICAL ASSISTANCE: Assist recipient in developing a procedure for the

accountable executive's review and approval of annual performance targets.

## **GOVERNING DIRECTIVE**

### **49 CFR 625.5 Definitions**

Equipment means an article of nonexpendable, tangible property having a useful life of at least one year.

Facility means a building or structure that is used in providing public transportation.

Rolling stock means a revenue vehicle used in providing public transportation, including vehicles used for carrying passengers on fare-free services.

### **49 CFR 625.45 Setting performance targets for capital assets**

- (a) General. (1) A provider must set one or more performance targets for each applicable performance measure.
- (2) A provider must set a performance target based on realistic expectations, and both the most recent data available and the financial resources from all sources that the provider reasonably expects will be available during the TAM plan horizon period.
- (b) Timeline for target setting.
  - (1) Within three months after the effective date of this part, a provider must set performance targets for the following fiscal year for each asset class included in its TAM plan.
  - (2) At least once every fiscal year after initial targets are set, a provider must set performance targets for the following fiscal year.
- (c) Role of the accountable executive. A provider's Accountable Executive must approve each annual performance target.
- (d) Setting performance targets for group plan participants.
  - (1) A Sponsor must set one or more unified performance targets for each asset class reflected in the group TAM plan in accordance with subsections (a)(2) and (b) of this section.
  - (2) To the extent practicable, a Sponsor must coordinate its unified performance targets with each participant's Accountable Executive.

---

---

## **TTP- TAM7. Does the TTP recipient share its TAM plan, any supporting records or documents, performance targets, investment strategies, and annual condition assessment report with the state and/or MPO that provides funding?**

### **BASIC REQUIREMENT**

TTP recipients must make its TAM plan and related information available to a state agency and MPO that provides funding to the provider.

### **APPLICABILITY**

TTP recipients of FTA funds that own, operate, or manage capital assets used for providing public transportation and are not a group TAM plan participant

Group plan sponsors

## **EXPLANATION FOR TTP RECIPIENT**

A provider must make its TAM plan, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to a state and MPO that provides funding to the provider to aid in the planning process.

## **INDICATOR OF COMPLIANCE**

a. *How has the recipient shared its TAM plan with MPOs and states?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain documentation of the recipient's communication with the state and/or MPO regarding the recipient's TAM planning activities.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The recipient needs technical assistance if it does not have a record of providing its TAM plan, any supporting records or documents, performance targets, investment strategies, and the annual condition assessment report to the state(s) or MPO(s) that provide the recipient funding.

TECHNICAL ASSISTANCE CODE TTP-TAM7-1: TAM plan shared with state and MPO

SUGGESTED TECHNICAL ASSISTANCE: Assist recipient in developing procedures for making available to the state(s) and MPO(s) the TAM plan any supporting documents, performance targets, investment strategies, and the annual condition report and evidence of its implementation and evidence of its implementation.

## **GOVERNING DIRECTIVE**

49 CFR 625.53 Recordkeeping for transit asset management

(b) A provider must make its TAM plan, any supporting records or documents performance targets, investment strategies, and the annual condition assessment report available to a State and Metropolitan Planning Organization that provides funding to the provider to aid in the planning process.

## **REFERENCES**

49 CFR 625, Transit Asset Management

2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

## **USEFUL WEBLINKS**

FTA Transit Asset Management Plans

FTA TAM for Tribes

Tribal Reporting Tool

National RTAP Transit Asset Management Webpage

Group Plan Sponsor Workbook

## 5. SATISFACTORY CONTINUING CONTROL

### PURPOSE OF THIS ASSESSMENT AREA

Tribal Transit Program (TTP) recipients must ensure that Federal Transit Administration (FTA)-funded property will remain available to be used for its originally authorized purpose throughout its useful life until disposition.

### QUESTIONS TO BE DISCUSSED

1. Does the TTP recipient maintain control over FTA funded equipment?
2. Was equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and FTA requirements?
3. Does the TTP recipient have an FTA-funded facility? If so, is there a current or planned joint or shared use with any other tribal agency or private company, such as a charter or school bus operator or the public works department?
4. Does the TTP recipient have flood insurance for any FTA-funded buildings located in areas that have been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?

### INFORMATION NEEDED FROM TTP RECIPIENT

#### Recipient Information Request

- List of FTA-funded facilities and equipment.
- Documentation of last physical inventory conducted along with documentation that an inventory reconciliation was completed
- List of vehicles identified as:
  1. Active, contingency or awaiting disposal
  2. FTA or locally funded
  3. FTA program under which was funded (Section 5307, Section 5310, etc.)
  4. Leased or directly operated (identify lessee or operator)
  5. Third party maintained (identify maintenance contractor)
  6. Under warranty
  7. With incidental use
- List of FTA funded equipment disposed of within past three years identifying
  1. Useful life remaining
  2. Value at disposition
  3. How proceeds were utilized
- Notification to FTA for facilities removed from the service originally intended at the time of award approval or put property to additional or substitute use
- Disposition request/approval correspondence
- Proof of funds reimbursed to FTA (sale records or financial reports), if required

---

---

### TTP SCC 1. Does the TTP recipient maintain control over FTA-funded equipment?

#### BASIC REQUIREMENT

TTP recipients must maintain control over FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

#### APPLICABILITY

TTP recipients that operate or lease FTA-funded equipment

## EXPLANATION FOR TTP RECIPIENT

Equipment means an article of nonexpendable, tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost that equals or exceeds the lesser of the capitalization level established by the recipient or subrecipient for financial statement purposes, or \$5,000. Equipment includes rolling stock, computing devices, information technology systems, and all other such property used in the provision of public transit service.

TTP recipients are required to follow the equipment management requirements of 2 CFR 200.313 Equipment including maintaining property records, conducting, and reconciling a physical inventory, and developing an adequate property control system.

Equipment use for non-federally assisted programs or projects is permissible in some cases. Non-transit use of FTA assisted property is acceptable so long as it is incidental, does not interfere with transit use (transit has priority), all costs are accounted for, and income generated is retained by the recipient for transit use.

Recipients may lease FTA-funded assets to others for use in transit service. Prior FTA concurrence is required. If the lease is described in the award application, FTA approval of the award constitutes approval of the lease. When FTA-funded assets are leased to a private operator, the lease should contain certain provisions.

## FLEXIBILITIES AND ADMINISTRATIVE RELIEF

### Biennial Inventory

A recipient should notify its FTA Regional Office of any delays in conducting a physical inventory of its federally funded assets due to local public health emergency conditions, including stay-at-home restrictions. If the physical inventory could not be carried out in compliance with local public health restrictions, the recipient should have documented the reason for the delay in its files. The recipient should have conducted the physical inventory once permissible under local public health restrictions and deemed safe to do so, and have notified the FTA Regional Office once it was completed

## INDICATORS OF COMPLIANCE

- a. *Do recipient equipment records provide the required information?*

<b>Equipment Inventory Required Data Elements</b>	<b>Comment</b>
Description	-
Identification number or serial number	-
Title holder	-
Federal Award Information Number (FAIN)	-
Acquisition date	-
Acquisition cost	-
Federal participation percentage	-
Location	-
Useful life ( <i>per FTA C. 5010.1E</i> )	-

<b>Equipment Inventory Required Data Elements</b>	<b>Comment</b>
Use and condition	-
Disposition data, including date of disposal and sale price, or method used to determine fair market value	-

- b. *When did the recipient conduct physical inventories?*
- i. *Were the inventories performed at least every two years?*
  - ii. *If not, did the recipient delay conducting its biennial physical inventory due to the COVID-19 public health emergency?*
    - 1. *If yes, did the recipient notify FTA and document the reason for the delay in its files?*
    - 2. *If yes, did the recipient notify FTA once its biennial physical inventory was completed?*
  - iii. *Was there a reconciliation of the results?*
- c. *What procedures and systems does the TTP recipient have in place to prevent loss, damage, or theft of FTA-funded equipment?*
- d. *Does the recipient have incidental use of any FTA-funded equipment? If yes,*
- i. *Was FTA prior approval obtained?*
  - ii. *Does the incidental use interfere with public transit operations?*
  - iii. *Are costs related to the incidental use fully accounted for?*
  - iv. *Are revenues used to support public transportation?*
- e. *Has the recipient received written approval from FTA for leases of FTA-funded assets to private operators? (Does not include transit operating contractors.)*
- f. *Do the leases to private operators contain the required provisions? (Does not include transit operating contractors.)*

<b>Required Lease Provisions</b>	<b>Comments</b>
The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement.	-
The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement.	-

Required Lease Provisions	Comments
The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property.	-
The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.	-

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain from the recipient equipment records that provide the data elements required. Review the records to verify that the required data elements listed in the table above are identified for each FTA-funded asset. It is acceptable if no single report shows all the required data as long as the recipient can demonstrate that the records are complete.

Obtain and review the recipient’s inventory control procedures, if written, to determine how the recipient tracks inventory and reconciles to its equipment records. Onsite obtain and review the recipient’s annual or biennial inventory to ensure the inventory was completed and the results were reconciled to the equipment records. In a tour of facilities, sample an item purchased prior to when the physical inventory was conducted to confirm that it is listed in the equipment records. Using each fiscal year’s single audit obtained from the Federal Audit Clearinghouse (FAC) in the Financial Management and Capacity area, ascertain if there are any findings related to the recipient’s compliance with the inventory control and if they were resolved.

Review the recipient’s equipment management and security procedures to ascertain how the recipient stores, tracks, and secures the FTA-funded assets to deter against the loss and/or damage of such assets. Review insurance coverage to confirm that the Federal interest is protected. During the site visit, discuss any losses to FTA-funded equipment and how the losses were investigated or documented. Tour facilities to ascertain how the recipient has implemented its control procedures to secure the FTA-funded asset to prevent loss, damage, or theft.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if its FTA-funded equipment records are missing required data elements.

TECHNICAL ASSISTANCE CODE TTP SCC1-1: Equipment records

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing updated equipment records which include all of the required information. Provide a template and show the TTP recipient how to enter equipment records.

The TTP recipient needs technical assistance if it does not inventory equipment biennially or reconcile the results.



TECHNICAL ASSISTANCE CODE TTP SCC1-2: Physical inventory or reconciliation

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a procedure for performing biennial physical inventories of FTA-funded equipment and reconciliation.

The TTP recipient needs technical assistance if it has not investigated and documented any loss, damage, or theft of FTA-funded equipment.

TECHNICAL ASSISTANCE CODE TTP SCC1-3: Property control system

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in implementing an adequate control system to prevent future loss, damage, or theft of FTA-funded equipment.

The TTP recipient needs technical assistance if it does not have FTA concurrence for leasing FTA-funded assets to private operators.

TECHNICAL ASSISTANCE CODE SCC 1-4: FTA concurrence for leases

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in submitting lease agreements of FTA-funded assets to FTA for review and approval.

The TTP recipient needs technical assistance if the lease for FTA-funded assets to private operators does not include the required provisions.

TECHNICAL ASSISTANCE CODE SCC 1-5: Required lease provisions

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient with reviewing and ensuring leases of FTA-funded assets to private operators include the required terms and conditions, along with procedures for including the terms and conditions in future leases.

The TTP recipient needs technical assistance if has incidental use of FTA-funded equipment but did not receive prior FTA approval; the incidental use interferes with public transit operations; costs related to incidental use are not fully accounted for; or revenue are not used to support public transportation.

TECHNICAL ASSISTANCE CODE SCC 1-5: Incidental use of FTA-funded equipment

SUGGESTED TECHNICAL ASSISTANCE 1: The TTP recipient to obtain permission from the FTA regional office for the incidental use of the FTA-funded equipment.

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient to develop procedures for ensuring that the incidental use of the FTA-funded equipment does not interfere with public transportation services.

SUGGESTED TECHNICAL ASSISTANCE 3: Assist the TTP recipient to develop procedures for fully accounting for costs associated with the incidental use of FTA-funded equipment.

SUGGESTED TECHNICAL ASSISTANCE 4: Assist the TTP recipient to develop procedures for using revenues gained from incidental use of FTA-funded equipment for public transportation.

**GOVERNING DIRECTIVE**  
**2 CFR 200.313 Equipment**

- (b) *General.* A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

- (1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
- (2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.
- (3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.

FTA Circular 5010.1E, Ch. IV, Section 4e(3). Incidental Use

Incidental Use. Any incidental use of federally assisted property will not exceed that permitted under applicable federal laws, regulations, and directives. Incidental use requires prior FTA approval except when it involves coordinated public transit human services transportation. Consult your FTA regional or metropolitan office prior to incorporating incidental use activities in projects. See section 2 of this chapter, above, for further information related to incidental use for real property whose principles apply to equipment. Incidental use will be permitted if:

- (a) The incidental use does not interfere with the recipient's project or public transportation operations;
- (b) The recipient fully recaptures all costs related to the incidental use from the non- transit public entity or private entity, including all applicable excise taxes on fuel for fueling facilities and wear and tear to capital improvements;
- (c) The recipient uses revenues received from the incidental use for capital and/or operating expenses that were or will be incurred to provide the public transportation; and
- (d) Private entities pay all applicable excise taxes on fuel.

FTA Circular 5010.1E, Ch. IV, Section 4l(4) – (5). Leases

- (4) The Recipient as Lessor. In all instances in which the recipient is a lessor (the party leasing an asset to another), the recipient must obtain FTA's written concurrence before leasing federally assisted assets to others. In addition, for equipment leasing, recipients must comply with FTA's Charter Service regulations, School Bus Operations regulations, and with requirements below:
- (5) Leasing FTA Assisted Assets to Others for Transit Service. The recipient may enter into a contract for leasing its federally assisted property to a private operator (the lessee). The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement. Under this arrangement, the recipient (the lessor) should include the following provisions in the proposed lease agreement:
  1. The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement;
  2. The lessee shall maintain the federally assisted property at a high level of cleanliness, safety,

and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property; and

3. The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.

### Frequently Asked Questions (FAQ) from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19) AD20

A recipient should notify its FTA Regional Office of any delays in conducting a physical inventory of its federally funded assets due to local public health emergency conditions, including stay-at-home restrictions. If the physical inventory cannot be carried out in compliance with local public health restrictions, the recipient should document the reason for the delay in its files. The recipient should conduct the physical inventory once permissible under local public health restrictions and deemed safe to do so, and notify the FTA Regional Office upon completion.

---

---

## **TTP SCC2. Was equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and FTA requirements?**

### **BASIC REQUIREMENT**

TTP Recipients must use and dispose of FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

**All recipients:** The Infrastructure Investment and Jobs Act (IIJA) changed the provisions for transit asset disposition [49 USC § 5334(h)(4)(B)]. For rolling stock, equipment and aggregate supplies that have met their minimum useful life and were (1) purchased with federal assistance, (2) with a fair market value of more than \$5,000, and (3) sold after November 15, 2021, the recipient may retain a portion of the funds, \$5,000 plus the percentage of its local share in the original award. Any remaining federal share must be returned to FTA. The federal share of the sales proceeds cannot be retained for public transportation use. The remaining federal share must be returned to FTA using pay.gov.

**Non-state recipients:** Prior to November 15, 2021, all non-state recipients must notify FTA immediately when any project property is withdrawn from project use prior to the end of its useful life or when any project property is used in a manner substantially different from the representations the recipient made in the award agreement or cooperative agreement for the project.

Disposition of equipment before the end of useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C. 5010.1E Appendix E, must accompany the request. Service life for rolling stock and facilities is defined at the end of this section. The useful life in years refers to total time in service, not time spent otherwise unavailable for regular transit use. The recipient should have a mechanism to adjust the service life of any FTA-funded vehicle for significant time (i.e., six months) or mileage not spent in regular transit use.

Even after the equipment's useful life is expended, FTA is entitled to its share of the remaining Federal interest (subject to the next paragraph). The Federal interest is the greater of the FTA share of the straight-line depreciated value (based on years or miles for rolling stock) or the sale price. The recipient

may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

Equipment with a unit market value of \$5,000 or less that has reached the end of its useful life requires no FTA reimbursement. Equipment that has reached the end of its useful life and for which the unit market value exceeds \$5,000 requires reimbursement to FTA of the proportionate share of the fair market value or the net proceeds of the sale. Net proceeds are the amount realized from the sale of property no longer needed for transit purposes less allowable deductions for selling and handling expenses (i.e., the recipient may deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses).

With prior FTA approval, the recipient can use sale proceeds to reduce the gross project cost of future FTA eligible capital transit awards. The recipient is expected to record the receipt of the proceeds in its accounting system, showing that the funds are restricted for use in a subsequent capital award, and reduce the liability as the proceeds are applied to one or more FTA-approved capital awards. The subsequent capital award application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.

For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds \$5,000, the recipient must compensate FTA for its share or transfer the sales proceeds to reduce the gross project cost of another capital project.

If the recipient or a subrecipient receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the recipient must:

- Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service, or
- Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

#### **INDICATORS OF COMPLIANCE**

- a. *Was FTA notified when equipment with remaining useful life was withdrawn from project use or applied to a different use?*
- b. *Did the recipient obtain prior FTA approval for disposition of equipment removed from service before the end of service life?*
- c. *Prior to November 15, 2021, did the recipient dispose of equipment with a unit market value over \$5,000 or sell equipment in which the net proceeds of the sale were over \$5,000?. If no, skip to Indicator d*
  - *If yes, was FTA reimbursed for its share of proceeds, if required? Were retained proceeds applied to reduce the project's eligible cost?*
- d. *Were insurance proceeds applied to the cost of replacing any damaged or destroyed project equipment or rolling stock?*
- e. *Effective November 15, 2021, did the recipient dispose of equipment with a unit market value over \$5,000 or sell equipment in which the net proceeds of the sale were over \$5,000?*
  - *If yes, was FTA reimbursed for its share of proceeds via pay.gov?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Confer with the regional office regarding requests for disposition of equipment, returned proceeds, and like-kind exchanges since the last Comprehensive Review. Obtain and review the recipient's disposition

records to confirm that the approved disposition method was used. Obtain verification of proceeds transferred back to FTA (i.e., pay.gov). Review records documenting how fair market value was arrived at for any equipment not sold competitively.

**Non-state recipients:** Confer with the regional office regarding requests for disposition of equipment, returned proceeds, and like-kind exchanges since the last Comprehensive Review. Obtain notifications to FTA regarding equipment withdrawn from project use or applied to a different use. Obtain requests to FTA for disposition instructions for equipment removed from service before the end of useful life. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. Obtain verification of proceeds transferred back to FTA (i.e., sale records and financial reports). Review records documenting how fair market value was arrived at for any equipment not sold competitively. Review the recipient's accounting system to verify the sale proceeds are restricted for use in subsequent capital awards. Review TrAMS to ensure that in any subsequent capital award the application/awards contain information showing FTA that the gross project cost has been reduced by the amount of the proceeds.

The following table defines the useful life of several typical FTA-funded items based on FTA Circular 5010.1E. For items not listed by FTA in the table below, useful life definitions may be obtained from other reasonable sources, including the Department of Defense (DOD) and Internal Revenue Service (IRS), based on acceptable accounting principles. It should be noted that the Altoona bus test reports for individual bus models do not define the useful life of rolling stock.

Vehicle	FTA-Defined Useful Life
35'-40' heavy duty bus and articulated transit buses	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus (body on chassis)	7 years or 200,000 miles
25'-35' light duty transit bus (body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (small buses, vans, sedans)	4 years or 100,000 miles
Rail vehicles	25 years
Fixed guideway steel-wheeled trolley	25 years
Fixed guideway electric trolleybus	15 years
Passenger ferry	25 years
Other ferries without refurbishment	30 years
Other ferries with refurbishment	60 years
Note: A heavy duty transit bus is built as a bus whereas a medium duty bus is built on a truck chassis.	

#### POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS

The recipient needs technical assistance if it did not notify FTA of equipment prematurely removed from service.

TECHNICAL ASSISTANCE CODE TTP SCC2-1: Notification to FTA of equipment removed from service

**SUGGESTED TECHNICAL ASSISTANCE:** Assist the TTP recipient in notifying the FTA regional office of equipment prematurely removed from service and develop procedures for notifying FTA of any future premature removal of equipment from service.

The recipient needs technical assistance

If it did not reimburse FTA for proceeds from disposition occurring after November 15, 2021

If it is a non-state and did not obtain FTA permission to apply the proceeds to another capital project for dispositions occurring prior to November 15, 2021.

**TECHNICAL ASSISTANCE CODE TTP SCC2-2: Equipment disposal proceeds**

**SUGGESTED TECHNICAL ASSISTANCE 1:** Assist the TTP recipient with requirement to submit to the FTA regional office documentation of the reimbursement calculation of FTA's share of proceeds from disposed property, along with the receipt from pay.gov. In addition, assist the TTP recipient with the requirement to the FTA regional office procedures for reimbursing FTA for disposition proceeds.

**SUGGESTED TECHNICAL ASSISTANCE 2:** Assist TTP recipient with requirement to submit to the FTA regional office procedures for reimbursing FTA for disposition proceeds or applying the proceeds to another capital project.

## **GOVERNING DIRECTIVES**

### **CFR 200.313 Equipment**

- (b) A state must...
- (c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:
  - i. Activities under a Federal award from the Federal awarding agency which funded the original program or project, then
  - ii. Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.
- (2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.
- (3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.
- (4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement

property....

- (e) Disposition. When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award.

Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

- (1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.
- (2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- (3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.
- (4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.

FTA Circular 5010.1E, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock)

o. Disposition of Equipment and Supplies. Disposition requirements apply to equipment that has met its useful life, as well as equipment that is prematurely withdrawn from service before its useful life has been ended. FTA retains financial interest in equipment with a unit value exceeding \$5000, and supplies with an aggregate value exceeding \$5000, even if useful life has been met. State recipients must dispose of federally assisted property acquired under an Award by the state in accordance with state laws and procedures. Subrecipients of states will follow such policies and procedures allowed by the state with respect to disposition of equipment acquired under an FTA Award.

- (3) Disposition or Inappropriate Use Before the End of the Asset's Useful Life: Any disposition of project property before the end of its useful life requires prior FTA approval. FTA is entitled to its share of the remaining Federal interest.
- (c) Insurance Proceeds. If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee agrees to:
  - 1 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
  - 2 Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The federal interest does not depend on the extent of insurance coverage or on the insurance adjustment received.

- (d) Like-Kind Exchange Policy. With prior FTA approval, equipment may be disposed of before the end of its minimum useful life. In lieu of returning the federal share to FTA, a recipient may elect to transfer the remaining federal interest to a replacement vehicle of like kind. "Like-Kind" is defined as a bus for a bus with a similar useful life and a rail vehicle for a rail vehicle. Under the Like-Kind Exchange Policy, proceeds from the federal share of the vehicle disposition are not returned to FTA; instead, all proceeds are reinvested in acquisition of the like-kind replacement vehicle. If the disposition proceeds are less than the amount of the federal interest in the vehicle at the time it is being replaced, the recipient is responsible for providing the difference, along with the recipient's share of the cost of the replacement vehicle. If sales proceeds are greater than the amount of the federal interest in the vehicle traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement vehicle results in a reduction of the gross project cost.
- (4) Disposition or Use of Assets for Other Than Purposes of the Award after the End of Their Useful Life.
- (a) Retain and Use Elsewhere. After the minimum useful life of federally assisted property is reached or the property is no longer needed for the original Award, it may be used by the recipient for other transit projects or programs. FTA prior approval of this alternative is not required. FTA retains its interest in the federally assisted property if its fair market value exceeds \$5,000.
- (b) Disposition of Property with a Fair Market Value of More Than \$5,000. After the useful life of federally assisted property is reached, or the property is no longer needed for the original Award, rolling stock and equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold. FTA is entitled to an amount calculated by multiplying the current market value, or proceeds from sale, by FTA's percentage of participation in the cost of the original purchase. Rolling stock and equipment that is sold may have the amount due FTA reduced by an amount of \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.
- (c) Sell and Use the Proceeds for Other Capital Awards, 49 U.S.C. § 5334(h)(4). After the useful life is met, or the property is no longer needed, and with prior FTA approval, the recipient may sell its federally assisted property for which there is no longer any public transportation purposes and use the proceeds to reduce the gross project cost of other future FTA eligible capital transit Awards. The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a future capital Award, and reduce the liability as the proceeds are applied to one or more FTA approved capital Awards. If new applications are not immediately anticipated, the recipient must inform the appropriate FTA contact of the disposition within a reasonable amount of time. Otherwise, the subsequent capital application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction. The proceeds cannot retroactively be applied to an existing Award or project unless the Award is still open.
- (d) Disposition of Property with a Fair Market Value of \$5,000 or Less Value. After the useful life of its federally assisted property is reached, rolling stock and equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained. FTA approval of this action is not required.



**TTP SCC3. Does the TTP recipient have an FTA-funded facility? If so, is there a current or planned joint or shared use with any other tribal agency or private company, such as a charter or school bus operator or the public works department?**

**BASIC REQUIREMENT**

Incidental uses of FTA-funded facilities must be compatible with the approved purposes of the award and not interfere with either the intended uses of the facility or the TTP recipient's ability to maintain satisfactory continuing control. Income generated from incidental use may only be used for eligible capital or operating expenses or as part of the non-Federal share of an eligible award.

**APPLICABILITY**

All TTP recipients with FTA-funded facilities.

**Note:** Ownership of Tribal land is limited to the Tribal government or its members. Tribal transit facilities would be built on Tribal land, but the federal government would not have any interest in the land or real property. The Tribal land would not be used as a local match.

**EXPLANATION FOR TTP RECIPIENT**

Incidental use is defined as the authorized use of facilities acquired or improved with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Examples of incidental use include the leasing of space in a station for a newspaper stand or coffee shop or leasing parking spaces in a parking lot or facility improved with FTA funds. Such use must be compatible with the approved purposes of the project, must not interfere with intended public transportation uses of project assets, must not in any way interfere with the recipient's continuing control over the use of the property, and must not compromise safety. FTA encourages recipients to make incidental use of FTA-funded facilities when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenue, non-profit uses are permitted, under certain circumstances. The recipient should consult with FTA before continuing incidental use.

Proceeds should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental uses may be retained by the recipient (without returning the Federal share) if the income is used for eligible transit capital and operating expenses. This income cannot be used as part of the local share of the award from which it was derived. However, it may be used as part of the local share of another FTA award.

**INDICATORS OF COMPLIANCE**

- a. *Does the recipient have incidental uses of any FTA-funded facility? If no, move to the next question.*
- b. *Is the incidental use compatible with the original purpose of the award?*
- c. *Does the recipient maintain continuing control over the property?*
- d. *Are proceeds used for eligible transit capital or operating expenses or as the non-federal share of an eligible award?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

If in TrAMS, review the original award application to determine the proposed uses. Review the listing of facilities used for incidental uses obtained from the recipient to determine that they align with the information provided by the regional office.

Review financial records obtained in the Financial Management area to determine if the recipient recorded income from project property. During the review of Electronic Clearinghouse Operations (ECHO) draws in the Financial Management and Capacity area, select a sample revenue transaction of income obtained from project property and verify that the income was used to offset cost associated with the

FTA-funded service.

During the site visit, tour the FTA-funded facility(ies) to confirm current uses of FTA-funded real property to ensure that they are used for authorized purposes and not unauthorized incidental uses.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if the incidental use affects a property's transit capacity or use.

TECHNICAL ASSISTANCE CODE TTP SCC3-1: Incidental use affects transit capacity or use

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient to cease incidental uses of the facility that interfere with transit purposes.

The recipient needs technical assistance if the incidental use income is not used for eligible transit capital or operating expenses.

TECHNICAL ASSISTANCE CODE TTP SCC3-2: Incidental use income

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to develop a process to ensure that it has applies incidental use income to transit purposes.

### **GOVERNING DIRECTIVES**

2 CFR 200.311 Real property

(b) *Use.* Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or other interests.

FTA Circular 5010.1E Chapter IV, Section 2. Real Property, (i) Property Management (2)-(6)(a)3a-e

1. Non-Transit Uses of FTA Assisted Real Property. FTA's policy is to permit recipients maximum flexibility in determining the best and most cost-effective use of federally-assisted property. To this end, FTA encourages non-transit uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. These non-transit uses are by one of three means: incidental use, joint development, or shared use.
  - (a) Incidental Use. Incidental uses must be compatible with the approved purposes of the Award and may not interfere with either the intended uses of the property or the recipient's ability to maintain satisfactory continuing control. The recipient should consult with FTA before continuing with incidental use. An incidental use may not affect a property's transit capacity or use.

Alterations to accommodate an incidental use should have no negative impact on the transit service or activity. FTA continues to monitor the incidental use after the Award is closed and the recipient is required to keep an inventory of the use. FTA reviews the inventory during the triennial review process.

1. Examples of incidental use include:
  - a. Temporary use of transit property as a staging area for nearby construction;
  - b. Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off-hours;
  - c. Leasing of space in a station for a newspaper stand or coffee shop when the additional use does not interfere with the original purpose authorized in the Award; and
  - d. The lease of air rights over transit facilities or utilities associated with transit facilities (such as spare capacity in general utilities and fiber optics communications utilities) that do not impact the structural configuration of the transit facility.

2. Revocation. An incidental use agreement should permit revocation by the recipient.
3. Limits. The recipient agrees that any incidental use of federally assisted property will not exceed that permitted under applicable federal requirements and federal guidance. The recipient may permit non-transit public entities and private entities to have incidental use of its federally assisted facilities and equipment, including alternative fueling facilities and associated equipment, subject to the following considerations:
  - a. Needed Property. This policy applies only to property that continues to be needed and used for an FTA Award. It is FTA's intention to assist only in the purchase of property that is needed for an FTA Award.
  - b. Purpose & Activity. The use must not compromise the safe conduct of the intended purpose and activity of the initial public transit activity under the Award.
  - c. Continuing Control. The use must not in any way interfere with the recipient's continuing control over the use of the property or the recipient's continued ability to carry out the Award.
  - d. No-Income Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, no-income uses are also permitted under certain circumstances. For example, a no-income use could include a private, for-profit transit operator offered queue space, or loading space, at an intermodal facility for the purpose of generating rides, providing a consolidated transit option for the public, and a seamless transit transfer opportunity at no cost. The no-income use shows that the value of having the private operator: 1) benefits transit, as a whole; 2) expands upon the local transportation alternatives; and 3) allows the public to transfer seamlessly.
  - e. Income. Proceeds from incidental use including licensing and leasing of air rights or leasing of other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental uses including the use of air rights may be retained by the recipients (without returning the federal share) if the income is used for eligible transit capital, or operating expenses. This income cannot be used as part of the non-federal share of the Award from which it was derived. However, it may be used as part of the non-federal share of another FTA Award.

---

---

**TTP SCC4. Does the TTP recipient have flood insurance for any FTA-funded buildings located in areas that have been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?**

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

Section 102 of the Flood Disaster Protection Act of 1973 (FDPA) prohibits the Federal government from providing funds for acquisition or construction of buildings located in a special flood hazard area (100-year flood zone) unless the owner of the property first has obtained flood insurance. Specifically, Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building unless the recipient has first acquired flood insurance under FDPA to cover the buildings constructed or repaired with Federal funds. The Federal Emergency Management Agency (FEMA) has defined "building" in its regulations implementing the National Flood Insurance Program (NFIP) as "a building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site." In addition, where structures are both above and below ground, the flood insurance requirement applies where at least 51 percent of the cash value of the structure, less land value, is above ground.

Section 401a of the FDPA of 1973 states flood insurance shall not be required on any state-owned property that is covered under a state policy of self-insurance satisfactory to the Director of the Federal Emergency Management Agency. The following states have submitted applications and adequate supporting documentation and have been determined by the Federal Insurance Administrator to be exempt from the requirement of flood insurance on state-owned structures and their contents because they have in effect adequate state plans of self-insurance: Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

Self-insurance may not be used to satisfy flood insurance requirements for non-state entities or states that have not been exempted from the requirements by the Federal Insurance Administrator.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient have procedures for identifying which federally assisted buildings are located in a special flood hazard area and determining sufficient levels of insurance?*
- b. *Does the recipient have procedures for identifying and determining sufficient levels of insurance for federally assisted equipment located in non-federally assisted buildings that are located in a special flood hazard area?*
- c. *Does the recipient have any plans to or did it use Federal funds to construct buildings or purchase equipment for a building located in an area that has been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?*
- d. *Has the recipient complied with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C §4012a (a), with respect to any project involving construction, or an acquisition?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

TTP recipients are required to have procedures to determine if federal assisted buildings are located in special flood hazard areas and procedures for determining sufficient levels of insurance and periodically re-evaluate to determine if federally assisted buildings have been moved into a special hazard area by FEMA. The TTP recipient's procedures do not have to be written.

Obtain and review evidence from the recipient that it has procedures to determine which federally assisted buildings are located in a special flood hazard area and procedures for determining sufficient levels of insurance. If the TTP recipient does not have written procedures, discuss the procedures with the TTP recipient and document the process in the working papers under indicators of compliance a and b. Obtain and review evidence (i.e. FEMA Maps Reviewed, Reports prepared by the recipient, Internal Memos) that the TTP recipient has followed the process established to identify and periodically re-evaluate if federally assisted buildings and assets are in a special flood hazard area.

If the TTP recipient has federally assisted property: Obtain and review evidence of flood insurance to verify that the recipient purchased the required insurance for any property it or the region identified as needing such. Obtain information on the value of the property to determine that the coverage is in an amount at least equal to the Federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. If the property is covered under a group plan or a statewide insurance pool, review to verify what property of the recipient is specifically covered. If property is covered by a blanket flood insurance policy that does not identify specific buildings and building contents, obtain flood insurance purchase methodology from the recipient that demonstrates that they have adequate coverage for all buildings and contents located in special flood hazard areas.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if it does not have, or has inadequate, flood insurance for any FTA-funded facility in a special flood hazard area.

TECHNICAL ASSISTANCE CODE TTP SCC7-1: flood insurance

SUGGESTED TECHNICAL ASSISTANCE: Inform Tribe that it must obtain and submit to the FTA regional office documentation of adequate flood insurance protection.

The TTP recipient needs technical assistance if it does not have adequate or has not implemented procedures for identifying which federally assisted buildings are located in a special flood hazard area and for determining sufficient levels of insurance.

TECHNICAL ASSISTANCE CODE TTP SCC7-2: Procedures for identifying federally assisted buildings in special flood hazard area and for determining sufficient levels of insurance.

SUGGESTED TECHNICAL ASSISTANCE: Inform TTP recipient it must develop and submit to the FTA regional office procedures to identify federally-assisted buildings that are located in a special flood hazard area. In addition, TTP recipient must submit to the FTA regional office, a list of those federally-assisted buildings that are located in a special flood hazard area, along with documentation of adequate insurance protection.

## **GOVERNING DIRECTIVE**

*U.S.C. §4012a (a) Amount and term of coverage*

After the expiration of sixty days following December 31, 1973, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Administrator as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968 [42 U.S.C. 4001 et seq.], unless the building or mobile home and any personal property to which such financial assistance relates is covered by flood insurance in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: Provided, That if the financial assistance provided is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan. The requirement of maintaining flood insurance shall apply during the life of the property, regardless of transfer of ownership of such property.

*FTA Circular 5010.1E, Ch IV, Section 4.p. Insurance*

(1) **Flood Insurance.** The Recipient agrees to have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a (a), for any building located in a special flood hazard area (100-year flood zone), before receiving Federal assistance to acquire, construct, reconstruct, repair, or improve that building. Additionally, the building and its contents must be covered by flood insurance in an amount at least equal to the Federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. Current limits are \$500,000 per building and \$500,000 for the contents of each building.

FTA has defined building and contents coverage in its Emergency Relief rule, 49 CFR part 602, as follows:

- (a) **Building.** For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.

- (b) Contents coverage. For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment, and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage.

National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973

- (1) State-owned property. Notwithstanding the other provisions of this section, flood insurance shall not be required on any State-owned property that is covered under an adequate State policy of self-insurance satisfactory to the Director. The Director shall publish and periodically revise the list of States to which this subsection applies.

Flood Disaster Protection Act of 1973, Section 3(a)(4)

Financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein...

49 CFR 75.14, – State exempt under this part

The following States have submitted applications and adequate supporting documentation and have been determined by the Federal Insurance Administrator to be exempt from the requirement of flood insurance on State-owned structures and their contents because they have in effect adequate State plans of self-insurance: Florida, Georgia, Iowa, Kentucky, Maine, New Jersey, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Tennessee, and Vermont.

**REFERENCES**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. FTA Circular 5010.1E, "Award Management Requirements"
4. Flood Disaster Protection Act of 1973
  1. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019.

**USEFUL WEBLINKS**

FTA Circular 5010.1E, Award Management Requirements

FTA Transportation Coordination

FTA Environmental Programs

**RESOURCE SUPPLEMENT**

FTA Real Estate Information

Sample FTA inventory spreadsheet

Information Required to Initiate NEPA\_Checklist\*

NEPA Category Exclusion\_Checklist\*

\*TTP Recipient should check with FTA Region Tribal Liaison for further guidance.

## 6. Maintenance

### PURPOSE OF THIS ASSESSMENT AREA

TTP recipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Recipients must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

### QUESTIONS TO BE DISCUSSED

1. Does the TTP recipient have a written maintenance plan(s) for FTA-funded assets (including vehicles/vessels, facilities, and equipment)?
2. Does the TTP recipient follow its program for preventive maintenance inspections for FTA-funded assets?
3. Does the TTP recipient's vehicle maintenance program address maintenance procedures for wheelchair lifts and other accessibility features?
4. Does the recipient have a system for tracking warranty issues and does the recipient actively pursue warranty claims?

### INFORMATION NEEDED FROM TTP RECIPIENT

#### Recipient Information Request

- Written vehicle (including vessels) and equipment maintenance plans
- Written facility maintenance plan
- Asset management procedures
- Request/approval correspondence between the recipient and FTA
- Management reports used for monitoring preventive maintenance inspections
- Maintenance records for selected vehicles, equipment and facilities

---

---

### TTP M-1. Does the TTP recipient have a written maintenance plan(s) for FTA-funded assets (including vehicles, facilities, and equipment)?

#### BASIC REQUIREMENT

TTP recipients that control FTA-funded assets must have maintenance plans for those assets.

#### APPLICABILITY

All TTP recipients with direct control over FTA-funded assets

#### EXPLANATION FOR TTP RECIPIENT

Public transit requires a considerable investment in buildings, equipment, and machinery. Proper maintenance of assets is key to protecting the FTA investment and prolonging the useful life of the asset.

All TTP recipients with direct control over FTA-funded assets must:

- Have a written maintenance plan(s) for FTA-funded assets; and
- The plan(s) must describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. Note: It is sufficient if the recipient's system is maintained digitally in its maintenance management information system, instead of in the physical maintenance plan(s).

For vehicles under warranty, the TTP recipient typically must perform a series of preventive maintenance



actions if the warranty is to remain valid. If the recipient either does not perform these required maintenance routines or performs them at greater intervals than the manufacturer's maximum intervals, the TTP recipient runs the risk of invalidating vehicle warranty provisions. Some operators have relied on oil analysis to extend the interval between oil changes beyond the engine manufacturer's recommended interval. This is acceptable provided the recipient has a letter from the manufacturer of the vehicles' engines stating that this practice will not void the engine warranty.

A model maintenance program for FTA-funded vehicles/vessels, equipment and facilities would include:

- An organization and assignment of responsibility for maintenance activities of all FTA-funded assets.
- A system of periodic inspections and preventive maintenance to be performed at certain defined intervals (required in regulation). Such a system may be part of a recipient's maintenance management information system. Maintenance intervals might be measured in terms of miles, time (daily, monthly, or annually) or in terms of use (hours), depending on asset.
- A record-keeping system that maintains adequate permanent records of maintenance and inspection activity for all FTA-funded assets.

Maintenance programs should address specific mission critical and safety items, which include, but are not limited to:

- Buildings
- Elevators
- Escalators
- Passenger stations/shelters
- Parking lots
- Right-of-way (guideway, track, ballast, etc.)
- Electric distribution and control equipment
- Plumbing systems
- Overhead doors
- Vehicle maintenance lifts
- Vehicle washers and wash water recycling systems
- Heating and/or air conditioning units
- Power substations, etc.
- Security equipment

#### **INDICATORS OF COMPLIANCE**

a. *Does the recipient have a written maintenance plan(s) for FTA-funded:*

- i. *Vehicles?*
- ii. *Facilities?*
- iii. *Equipment?*

b. *Does the written maintenance plan(s) identify a system of periodic inspections and preventive maintenance for:*

- i. *Vehicles?*
- ii. *Facilities?*
- iii. *Equipment?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Obtain and review the TTP recipient's maintenance plans for FTA-funded vehicles, facilities, and equipment to ascertain how the TTP recipient's procedures provide for maintenance of current

FTA-funded assets. Compare maintenance plans with the asset listing to verify that the plan addresses maintenance of the recipient's current fleet. If any assets are under warranty, obtain the manufacturers' minimum maintenance requirements to confirm that the recipient's maintenance plan follows the manufacturers' minimum recommendations. Review the maintenance plans to ensure they describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not have a written maintenance plan(s) for FTA-funded vehicles/ vessels and equipment.

TECHNICAL ASSISTANCE CODE TTP M1-1: Written vehicle/vessel and equipment maintenance plan

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient by providing a sample written maintenance plan for FTA-funded vehicles/vessel and equipment.

The TTP recipient needs technical assistance if it does not have a written maintenance plan(s) for FTA-funded facilities.

TECHNICAL ASSISTANCE CODE TTP M1-2: Written facility maintenance plan

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient by providing a sample written maintenance plan for FTA-funded facilities.

The TTP recipient needs technical assistance if the vehicle maintenance plan does not describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

TECHNICAL ASSISTANCE CODE TTP M1-3: Periodic inspections and preventive maintenance identified in vehicle/vessel and equipment maintenance plan

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a vehicle/vessel and equipment maintenance plan that identifies a system of periodic inspections and preventive maintenance performed at certain defined intervals.

The TTP recipient needs technical assistance if the facility or equipment maintenance plan(s) does not describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

TECHNICAL ASSISTANCE CODE TTP M1-4: Periodic inspections and preventive maintenance included in facility maintenance plan

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a maintenance a new or revised facility maintenance plan that identifies a system of periodic inspections and preventive maintenance performed at certain defined intervals.

### **GOVERNING DIRECTIVES**

#### **2 CFR 200.313 Equipment**

- (a) (b) *General.* A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.
- (d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, at a minimum, meet the following requirements...(4) Adequate maintenance procedures must be developed to keep the property in good condition.

FTA C. 5010.1E, Ch. IV Management of the Award, Section 4n(4). Equipment and Supplies (Including Rolling Stock)

n. Management of Federally Assisted Property.

(4) Maintenance and Warranty.

- a. Maintenance. Adequate maintenance procedures must be developed and implemented to keep the federally assisted property in good condition. Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing. Recipients must have a written vehicle maintenance plan and a facility/equipment maintenance plan. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

FTA C. 9030.1E, Ch. VI Program Management and Administrative Requirements, Section 1 Certifications Required by 49 U.S.C. 5307

- a 1.(5) Maintenance. According to 49 U.S.C. 5307(d)(1)(C), a recipient must certify that it will maintain its federally assisted facilities and equipment.

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5307 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives.

---

---

**TTP M-2 Does the TTP recipient follow its program for preventive maintenance inspections for FTA-funded assets?**

**BASIC REQUIREMENT**

TTP recipients that use FTA assistance to purchase assets must keep those assets in good condition and good operating order.

**APPLICABILITY**

All TTP recipients with direct control over FTA-funded assets

**EXPLANATION FOR TTP RECIPIENT**

The TTP recipient must follow its maintenance program for FTA-funded assets. If preventive maintenance inspections are not scheduled or performed as planned, it is probable that other aspects of the vehicle, facility and equipment maintenance programs are lacking as well and the recipient is putting FTA's investments and its warranties at risk. Actual maintenance practices should be consistent with the recipient's maintenance program.

Fleet deterioration takes a long time to occur and even longer time to correct (or may even be irreversible) once deterioration has begun. Both the deterioration and the correction take a toll on the recipient's resources and put FTA's investments at risk.

A sound preventive maintenance program will reduce the incidence of unscheduled repairs and extend the vehicles' useful life.

**INDICATORS OF COMPLIANCE**

a. *For vehicles, are the recipient's actual maintenance practices consistent with the plan/program?*

Mode Operated	Fleet Size	# of Vehicle/Vessel Sampled	Plan Identified Maintenance Interval	% on Time
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-

b. *For facilities and equipment, are the recipient's actual maintenance practices consistent with the written plan?*

Facility/Equipment	Maintenance Interval	Date of PM	Actual Interval between PM inspections	PM conducted on time? Y/N
-	-	-	-	-
-	-	-	-	-

**INSTRUCTIONS FOR ASSESSMENT TEAM**

**For vehicles/vessels:** Review the vehicle maintenance plan(s)/program(s) for the interval (miles or operated hours) between preventive maintenance inspections. Check preventive maintenance inspection intervals by reviewing management reports used by the recipient for monitoring preventive maintenance inspections and by reviewing records for a selected sample of FTA-funded vehicles in accordance with the sampling procedures below. Determine the maintenance interval for each mode operated. In some cases, intervals also may vary by sub-fleet. Examine preventive maintenance records (manual or electronic) while on-site to determine whether the recipient is performing inspections according to its maintenance plan.

Most recipients schedule preventive maintenance inspections based on relative miles (e.g., 6,000 miles since the last inspection) or hours of service. Others schedule based on absolute miles or hours. Recipients may choose either method.

FTA allows recipients discretion in determining the appropriate intervals for preventative maintenance inspections to accommodate such things as specific manufacturer recommendations, vehicle/vessel age, unique site and operating conditions, etc. FTA expects recipients to follow their program for preventative maintenance but understands that circumstances may prevent inspections being completed exactly at the interval specified. To account for this, FTA allows a 10 percent deviation from the scheduled interval as being considered on time. Review the sample preventive maintenance history to determine if fewer than 80 percent of the inspections for any mode or operation occurred on time.

For each vehicle/vessel chosen, examine the preventive maintenance history for the preceding 12 months. Using the table above, note the date when each inspection was accomplished and record the vehicle mileage (or hours) at the time of each inspection.

**For facilities and equipment:** Review the recipient’s preventive maintenance inspection intervals by reviewing management reports used by the recipient for monitoring preventive maintenance inspections and by reviewing a sample of facility and equipment maintenance records in accordance with the sampling procedures below. For each item in the sample, examine the facility/equipment maintenance history for the preceding 12 months. Using the table above, note the date when each inspection was accomplished and record the interval from the previous inspection. Compare the interval with the recipient’s definition of an “on-time” inspection to determine if the inspection was in accordance with the recipient’s facility and equipment maintenance plan.

Maintenance record selection procedures for vehicles

For modes that do not include federally funded vehicles, limit the examination to preventive maintenance of ADA accessibility features.

For all modes with FTA-funded vehicles, select one to three vehicles, or more depending on size of fleet, up to a total of twenty percent of the FTA funded fleet for each mode (whichever is greater). Modes are classified per National Transit Database definitions as follows:

<b>Non-Rail Vehicle Modes</b>
Motorbus – DO
Motorbus – PT
Demand Response – DO
Demand Response – PT
Trolleybus
Ferryboat
Vanpool
Jitney
Público

For directly operated service (DO), obtain a sample across all garages/yards. For recipients that use a combination of directly operated (DO) and purchased transportation (PT), treat the DO and PT portions as separate modes. For larger recipients that use multiple contractors, treat each contractor visited as a mode. For recipients with subrecipients, treat the subrecipients visited as a mode. Consult with the regional office in selecting the garages, contractors, and subrecipients to visit. To the extent practical, distribute the sample of vehicles selected by age and sub fleet in each mode.

Maintenance record selection procedures for facilities and equipment

Select a sample of facility and equipment items to examine for each mode. Sample critical items, such as fire suppression systems, hoists, lifts, emergency generators, power substations, rail right of way, and catenary, and ADA accessibility features, such as elevators, escalators, and lifts.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if examination and analysis of vehicle/vessel preventive maintenance records show that the recipient is not performing on time preventive maintenance in accordance with its program at least 80 percent of the time.

TECHNICAL ASSISTANCE CODE TTP M2-1: Vehicle preventive maintenance records

SUGGESTED TECHNICAL ASSISTANCE : Assist the TTP recipient in developing a procedure for completing preventive maintenance inspections on time.

The TTP recipient needs technical assistance if examination and analysis of facility and/or equipment preventive maintenance records show that the recipient is not performing on time preventive maintenance in accordance with its program at least 80 percent of the time.

TECHNICAL ASSISTANCE CODE TTP M2-2: Facility/equipment preventive maintenance records

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing procedures for completing preventive maintenance inspections on time

### **GOVERNING DIRECTIVES**

2 CFR 200.313, Equipment

The state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures.

FTA C. 5010.1E, Ch. IV Management of the Award, Section 4. Equipment and Supplies (Including Rolling Stock)

n. Management of Federally Assisted Property

(4) Maintenance and Warranty

- (a) Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing...
- (b) Recipients must keep satisfactory records pertaining to the use of federally assisted property and submit to FTA upon request such information as may be required to assure compliance with federal requirement.

FTA C. 5010.1E Ch. IV 4(n)(4), Maintenance and Warranty

- (a) Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing.
- (b) Recipients must keep satisfactory records pertaining to the use of federally assisted property and submit to FTA upon request such information as may be required to assure compliance with federal requirement.

---

---

### **TTP M-3 Does the TTP recipient's vehicle maintenance program address maintenance of wheelchair lifts and other accessibility features?**

#### **BASIC REQUIREMENT**

The U.S. Department of Transportation (US DOT) ADA regulations require all vehicle accessibility features be maintained and operational.

## **APPLICABILITY**

All TTP recipients with direct control over FTA-funded assets

## **EXPLANATION FOR TTP RECIPIENT**

The US DOT ADA regulations require all vehicle and facility accessibility features, such as wheelchair lifts and elevators in the recipient's facilities, be maintained and operational. The accessibility features must be promptly repaired if they are damaged or out of order. When the equipment is not working, the recipient must take reasonable steps to accommodate persons with disabilities who would otherwise use it. The ADA maintenance elements may be incorporated into the regular maintenance program or addressed separately with specific checklists. At a minimum, the recipient must show that accessibility features are checked regularly for proper operation and receive periodic maintenance. These requirements apply to both FTA and non-FTA-funded facilities.

## **INDICATORS OF COMPLIANCE**

- a. *Do the recipient's vehicle maintenance records indicate regular and periodic maintenance checks for wheelchair lifts and ramps?*
- b. *Do the recipient's vehicle maintenance records indicate that other accessibility features (e.g., kneelers, public address systems, voice announcement systems, etc.) are maintained in operational condition?*
- c. *Does the recipient have a program to maintain accessibility features for its facilities and facility-related equipment?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

**For vehicles:** Review the recipient's vehicle preventive maintenance procedures and checklists for the entire fleet to determine if maintenance elements for wheelchair lifts, ramps, and other ADA equipment are incorporated or addressed separately with specific checklists.

As part of the record sample selected for preventive maintenance review, review sample maintenance records for the entire fleet to determine if regular and periodic maintenance checks are being performed for wheelchair lifts and ramps, and accessibility features are checked regularly for proper operation and maintained in operational condition.

Note whether the recipient has and is following maintenance procedures for wheelchair lifts, ramps, and other accessibility equipment. Assess the recipient's ability to promptly repair accessibility features if they are damaged or out of order. Differentiate between unrepaired maintenance features and isolated or temporary interruptions in service or access due to maintenance or repairs.

**For facilities:** Review the recipient's maintenance program and the maintenance checklists to determine if maintenance elements for accessibility features for its facilities and facility-related equipment are addressed. As part of the record sample selected for preventive maintenance review, sample facility maintenance records, ensuring that accessibility features are maintained regularly and repaired promptly if out of order.

Note whether the recipient has and is following maintenance procedures for facility-related accessibility features. Review reports on elevator and escalator availability, if available, for evidence of repairs made and the recipient's ability to promptly repair accessibility features if they are damaged or out of order.

Differentiate between unrepaired maintenance features and isolated or temporary interruptions in service or access due to maintenance or repairs.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if its preventive maintenance program does not address

accessibility features.

TECHNICAL ASSISTANCE CODE TTP M3-1: Inclusion of accessible features in preventive maintenance program

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a preventive maintenance program for ADA accessibility equipment.

The recipient needs technical assistance if it does not follow its program for the preventive maintenance of accessibility features.

TECHNICAL ASSISTANCE CODE TTP M3-2: Preventive maintenance program for accessible features

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a procedure to ensure that its preventive maintenance program for ADA accessibility features is being implemented.

The recipient needs technical assistance if the recipient does not maintain accessibility features in operational condition.

TECHNICAL ASSISTANCE CODE TTP M3-3: Accessibility features not maintained

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing procedures for maintaining accessible features promptly and evidence of implementation.

## **GOVERNING DIRECTIVES**

### **49 CFR 37.161, Maintenance of Accessible Features – General**

- (a) Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.
- (b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.
- (c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs.

### **49 CFR 37.163 - Keeping vehicle lifts in operative condition: Public entities**

- (a) This section applies only to public entities with respect to lifts in non-rail vehicles,
- (b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative.

### **FTA C. 5010.1E Ch. IV (4)(n)(4)(b), Maintenance and Warranty**

Recipients must keep satisfactory records pertaining to the use of federally assisted property, and submit to FTA upon request such information as may be required to assure compliance with Federal requirements.



---

---

## **TTP M-4. Does the TTP recipient have a system for tracking warranty issues and does the TTP recipient actively pursue warranty claims?**

### **BASIC REQUIREMENT**

TTP Recipients must establish procedures for adequately recording, tracking, and pursuing warranty claims.

### **APPLICABILITY**

TTP recipients with direct control over FTA-funded assets

### **EXPLANATION FOR TTP RECIPIENT**

FTA requires that the recipient have a system for identifying warranty claims, recording claims, and enforcing claims against manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the recipient and FTA. There should be clear procedures to identify warranty repairs, record the warranty claim, submit the claim to the manufacturer, and follow up on unpaid claims.

### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient have any FTA-funded assets under warranty?*
- b. *What is the recipient's system for identifying and tracking warranty issues, and recovering warranty claims for FTA-funded assets?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's inventory records of FTA-funded equipment under warranty. Obtain the recipient's procedures for identifying, recording, and enforcing warranty claims against manufacturers. Review and/or discuss on-site the recipient's warranty recovery procedures to ensure they are clear on identifying warranty repairs, recording the warranty claim, submitting the warranty claim to the manufacturer, and following-up on unpaid warranty claims. Review the recipient's warranty claim records and files to learn how timely and aggressively the recipient has been in pursuing and collecting warranty claims. Compare the records of claims submitted with claims settled.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it does not have a warranty recovery system.

TECHNICAL ASSISTANCE CODE TTP M4-1: Warranty recovery system

SUGGESTED TECHNICAL ASSISTANCE: Assist the recipient in developing a system for identifying and recording warranty claims.

The recipient needs technical assistance if it does not document that warranty claims are pursued or is not pursuing warranty claims diligently.

TECHNICAL ASSISTANCE CODE TTP M4-2: Warranty claims

SUGGESTED TECHNICAL ASSISTANCE: Assist the recipient in developing a procedure for pursuing and recovering warranty claims

### **GOVERNING DIRECTIVE**

FTA Circular 5010.1E, Ch. IV 4(n)(4)(c), Warranties

Recipients are responsible for:

1. Establishing and maintaining a system for recording warranty claims; this system should provide information needed by the recipient on the extent and provisions of coverage and on claims processing procedures; and
2. Identifying and diligently enforcing the system for recording warranty claims.

#### **REFERENCES**

1. U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements", Cost Principles, and Audit Requirements for Federal Awards"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities (ADA)"
4. FTA Master Agreement
5. FTA Circular 5010.1E, "Award Management Requirements"

#### **USEFUL WEBLINKS**

1. FTA State of Good Repair and Asset Management Website
2. FTA Circular 5300.1 State of Good Repair Program Guidance and Application Instructions

#### **RESOURCE SUPPLEMENT**

National RTAP Resources:A National Training and Certification Program for Transit Vehicle Maintenance Instructors

Capital Vehicle Preventive Maintenance Program Handbook

# 7. CHARTER BUS

## PURPOSE OF THIS ASSESSMENT AREA

Tribal Transit Program (TTP) recipients are prohibited from using federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. TTP recipients are allowed to operate community-based charter services pursuant to certain regulatory exceptions.

## QUESTIONS TO BE DISCUSSED

1. Does the TTP recipient operate charter bus service with FTA-funded equipment under one or more of the allowed exemptions or exceptions?
2. If the TTP recipient operates charter bus service with locally owned vehicles, are the vehicles stored and maintained in an FTA-funded facility?

## INFORMATION NEEDED FROM TTP RECIPIENT

### Recipient Information Request

- Any information made available to the public about charter bus services
- Charter service log for the past three years

---

---

**TTP CB1. Does the TTP recipient operate or maintain charter bus service with FTA-funded equipment? If yes, does the service fall under one or more of the allowed exemptions? Does the charter bus service fall under one or more of the allowed exceptions?**

## BASIC REQUIREMENT

Except under limited exceptions, TTP recipients may not use FTA assistance to operate or maintain charter bus service.

All TTP recipients that operate charter service under an authorized exception are required to maintain notices and records for at least three years and report to the FTA quarterly.

## APPLICABILITY

All TTP recipients

## EXPLANATION FOR TTP RECIPIENT

The regulations define charter service as follows:

- (1) Transportation provided at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristics of charter service:
  - A third party pays a negotiated price for the group.
  - Any fares charged to individual members of the group are collected by a third party.
  - The service is not part of the regularly scheduled service or is offered for a limited period of time.
  - A third party determines the origin and destination of the trip as well as scheduling.
- (2) Transportation provided to the public for events or functions that occur on an irregular basis or for a limited duration and:

- A premium fare is charged that is greater than the usual or customary fixed-route fare, or
- The service is paid for in whole or in part by a third party.

The charter regulations include exemptions and exceptions.

Exemptions, which are not considered charter service, require no notification to registered charter providers, record-keeping, quarterly reporting, or other requirements. The charter service regulation exempts the following services:

<b>CHARTER SERVICE EXEMPTIONS</b>	
1.	Transportation of Employees, Contractors, and Government Officials: Recipients are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.
2.	Private Charter Operators: The prohibitions do not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under the over-the-road bus accessibility program or to non-FTA-funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance.
3.	Emergency Preparedness Planning and Operation: Recipients are allowed to transport their employees, other transit systems' employees, transit management officials, transit contractors and bidders, government officials and their contractors, and official guests for emergency preparedness planning and operations.
4.	Section 5310, 5311, 5316 and 5317 Recipients: The prohibitions do not apply to recipients that use Federal financial assistance from FTA for program purposes, that is, transportation that serves the needs of either human service agencies or targeted populations (elderly, individuals with disabilities) under Section 5310, 5311, 5316, or 5317. "Program purposes" does not include exclusive service for other groups formed for purposes unrelated to the special needs of the identified targeted populations.
5.	Emergency Response: Recipients are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the president, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration.
6.	Recipients in Non-Urbanized Areas: Recipients in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements. The charter regulation treats as exceptions the following community-based charter services included in the below table. The recipient must retain records of each charter service provided for at least three years. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours (time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage).

CHARTER SERVICE EXCEPTIONS				
Exception	Notification to Registered Charter Providers	Trip Record Keeping	Quarterly Reporting	Other Requirements
1. Government officials on official government business	Yes (if the recipient petitions the Administrator for additional charter service hours)	Yes	Yes	If additional charter service hours are needed (beyond the 80 annual service hours allowed), the recipient must petition the Administrator. The petition must include: <ul style="list-style-type: none"> <li>• Date and description of the official government event and the number of charter service hours requested.</li> <li>• Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances).</li> <li>• Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.</li> </ul>
-	-	-	-	
-	-	-	-	
2. Qualified Human Service Organization (QHSO)	No	Yes	Yes	Evidence that QHSO receives funding, directly or indirectly, from the programs listed in Appendix A of the charter regulation or was registered at least 60 days before the date of the first request
3. Leasing FTA funded equipment and drivers	No	Yes	Yes	Evidence that registered charter providers have exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area
4. When no registered charter provider responds to notice from a recipient	Yes	Yes	Yes	None

<b>CHARTER SERVICE EXCEPTIONS</b>				
<b>Exception</b>	<b>Notification to Registered Charter Providers</b>	<b>Trip Record Keeping</b>	<b>Quarterly Reporting</b>	<b>Other Requirements</b>
5. Agreement with registered charter providers	Yes (if a newly registered charter provider joined the UZA after the initial agreement)	No	No	Properly executed agreements with all registered charter providers in recipient's geographic service area
6. Petitions to the Administrator	Yes	No	No	Recipient must demonstrate how it contacted registered charter providers and how the recipient will use the registered charter providers in providing service to the event. Recipient must also certify that it has exhausted available registered charter providers' vehicles in the area

Recipients providing charter service under the following four exceptions must report to FTA on charter activity:

- Government officials (604.6)
- Qualified human service organizations (604.7)
- Leasing (604.8)
- No response from a registered charter provider (604.9)

Recipients must post the required records on the FTA charter website within 30 days of the end of each calendar quarter as follows:

- October 1 to December 31: January 30
- January 1 to March 31: April 30
- April 1 to June 30: July 30
- July 1 to September 30: October 30

The recipient reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA recipients for Section 5307 formula funds. Reports are only required for quarters during which charter service was provided. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading from the FTA website.

When charter service is provided under one or more of the exceptions under this regulation, the recipient, subrecipient, contractor, or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The recipient may maintain

the required records in other formats in addition to the electronic format.

The records shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service. A single document or charter log may include all charter service trips provided during the quarter. The recipient may exclude specific origin-to-destination information for safety and security reasons. If such information is excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

Under Charter Bus Exemption #5 Emergency Response, recipients are allowed to provide service for up to 45 days for actions directly responding to an emergency declared by the president, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If a recipient intends to provide charter bus service beyond the 45-day period, it must seek FTA approval through the Emergency Relief Docket.

#### **INDICATORS OF COMPLIANCE**

- a. *Did the recipient provide unscheduled service to a third party for a negotiated price or to the public for events or functions at a premium fare? If no, move to question TTP CB2.*
- b. *If yes, did any of the six exemptions included in the exemption chart above apply?*
- c. *If no exemptions apply, do any of the six exceptions included in the exception chart above apply?*
- d. *If yes, what records does the TTP recipient maintain of charter bus service provided in the past three years?*
- e. *Has the TTP recipient reported all charter bus service quarterly? Refer to the exceptions table above.*

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

- f. *If the recipient provided charter bus service as a result of the COVID-19 public health emergency:*
  - *Was service provided after the recipient's state's declaration of emergency or January 20, 2020?*
  - *Was service provided for more than 45 days?*
  - *For service lasting longer than 45 days, did the recipient submit and receive approval from FTA through the Emergency Relief Docket?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the TTP recipient's website, printed public information, and local telephone listing to determine if charter service is advertised. Obtain and review the TTP recipient's source of funds provided in the Financial Management and Capacity review area to determine if charter revenue is recorded. Obtain and review the TTP recipient's charter service logs for charter service provided. If the recipient is operating under an exemption further follow-up is not required.

Review the FTA charter registration website to verify which exceptions were relied upon to provide the charter service and if the subrecipient reported service provided. Obtain and review the recipient's electronic charter service records, along with a clear statement identifying which exception the recipient relied upon when it provided the charter service and compare to the information entered on the FTA charter registration website for consistency. Review the FTA charter registration website to verify that the recipient reported timely, 30 days after the end of each calendar quarter (i.e., January 30, April 30, July 30, and October 30).

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

Inquire of the FTA regional office if it is aware that the recipient has been providing service on behalf of a third party at a negotiated price during the COVID-19 public health emergency. Discuss with the recipient if it provided service on behalf of a third party, such as a school district, and received payment for such service. Confirm that the service was not provided for more than 45 days. Review the Emergency Relief Docket to determine if the recipient was granted approval to provide charter service beyond the exemption period (45 days).

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it operates charter service that does not comply with the requirements under a limited exemption or exception.

TECHNICAL ASSISTANCE CODE TTP CB1-1: Charter service operation under exemption or exception

SUGGESTED TECHNICAL ASSISTANCE: Advise the recipient to cease operating charter service that does not meet an exemption or exception. If the TTP recipient wishes to continue to provide charter service, the recipient should receive guidance on how to ensure that services are consistent with an exemption or exception allowed under the charter regulation and evidence.

The TTP recipient needs technical assistance if it does not maintain notices and records for at least three years.

TECHNICAL ASSISTANCE CODE TTP CB1-2: Charter bus records and notices

SUGGESTED TECHNICAL ASSISTANCE: Provide an example of Charter logs and notices and advise the TTP recipient on why it is important to maintain Charter bus records.

The TTP recipient needs technical assistance if it did not report to the FTA quarterly for all applicable exceptions on time.

TECHNICAL ASSISTANCE CODE TTP CB1-3: Charter reports

SUGGESTED TECHNICAL ASSISTANCE: Demonstrate how to submit the missing quarterly reports in the FTA charter reporting website. Provide follow-up assistance prior to the next quarterly reporting deadline.

## **GOVERNING DIRECTIVES**

### **49 CFR Part 604.2 Applicability**

- (b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.
- (c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.
- (d) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders,



government officials and their contractors and official guests, for emergency preparedness planning and operations.

- (e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.
- (f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.
- (g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

#### 49 CFR Part 604.12 Reporting requirements for all exceptions

- (a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.
- (b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.
- (c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration Web site 30 days after the end of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.
- (d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information.

#### FTA Charter Service Quarterly Exceptions Reporting Form and Instructions 49 CFR Part 604.2 Applicability

- (b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.
- (c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.
- (d) The requirements of this part shall not apply to a recipient transporting its employees, other

transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

- (e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.
- (f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.
- (g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

---

---

**TTP CB2. 2. If the TTP recipient operates charter bus service with locally owned vehicles, are the vehicles stored and maintained in an FTA-funded facility?**

**BASIC REQUIREMENT**

TTP recipients may not use FTA assistance or FTA-funded facilities to operate, maintain, or store charter bus service.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR RECIPIENT**

The charter regulations do not apply to equipment that is fully funded with local funds, is stored in a locally funded facility, and is maintained only with local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

**INDICATORS OF COMPLIANCE**

- a. *If no exemptions or exceptions apply, is the service operated and maintained using only locally-funded assets?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's listing of assets used for charter service (i.e., facilities and equipment) and cross reference to the Federal asset listing provided in the Satisfactory and Continuing control review area to verify that Federally funded assets are not used in charter service.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical Assistance if it operates service with locally-funded equipment but stores or maintains it in an FTA-funded facility.

TECHNICAL ASSISTANCE CODE TTP CB2-1: FTA-funded facility(ies) used in charter service

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient it may not operate charter service, with any assets that are Federally funded, unless it follows the regulations described in Question 1.

**GOVERNING DIRECTIVES**

49 CFR Part 604-Appendix C (f) Miscellaneous (65). Frequently Asked Questions

Q: If a recipient operates assets that are locally funded, are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in an FTA- funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations.

#### **REFERENCES**

49 CFR Part 604, "Charter Service"; Final Rule; Federal Register, January 14, 2008

#### **USEFUL WEBLINKS**

1. Charter Home Page (includes dockets, reporting forms and instructions, and other resources)
2. Charter Registration Website
3. Questions and Answers
4. Regulations.gov
5. FTA Charter Reports
6. Coronavirus Aid, Relief, and Economic Security Act
7. F'A's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019

## 8. Procurement

### PURPOSE OF THIS ASSESSMENT AREA

The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR Part 200. State recipients can use the state's overall policies and procedures. When applied to federal procurements, those policies and procedures must still be compliant with all federal requirements as applied to non-state recipients. The flexibility afforded by 2 CFR Part 200 should not be misconstrued as absolving a state from Federal requirements. For example, FTA does not require each State DOT to have policies and procedures separate from the state education department.

Policies and procedures must explain how the recipient will ensure compliance with the standards and requirements identified in 2 CFR 200.318 (General Procurement Standards) through 200.327 (Contract Provisions).

Where Federal Transit Administration (FTA) funds are used in procurements for services or supplies, or where FTA-funded facilities or assets are used in revenue contracts, 2 CFR Part 200 applies. The 2 CFR Part 200 requirements do not apply to wholly locally-funded capital procurements.

***Please note that FTA Circular 4220.1F, which explains the Uniform Administrative Requirements now codified at 2 CFR Part 200, may be used as a resource to the extent it does not conflict with 2 CFR Part 200. Because FTA Circular 4220.1F has not been updated to incorporate 2 CFR Part 200 changes, when there is a conflict between FTA Circular 4220.1F and the Uniform Administrative Requirements, the Uniform Administrative Requirements supersede C.4220.1F.***

Information on procurement thresholds for federally-funded procurements:

- Micro-purchase threshold is \$3,500 or less if awarded prior to June 20, 2018. For contracts awarded after June 20, 2018, micro-purchase threshold is \$10,000 or less, or for contracts awarded after August 13, 2020, up to \$50,000 if established according to the criteria at 2 CFR 200.320(a)(1)(iv), or over \$50,000 if approved by the cognizant agency for indirect costs (2 CFR 200.320(a)(1)(v)).
- Simplified Acquisition (small purchase) threshold is \$150,000 if awarded prior to June 20, 2018, or less, or \$250,000 or less for procurements awarded after June 20, 2018. Procurements funded by awards issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000. (per 49 CFR 18.36(d)).
- State or local law or recipient procurement policies/procedures may set micro-purchase or small purchase thresholds lower than the federal threshold. In such cases, recipients must follow state or local law. However, if the state or local small purchase threshold is higher than the federal simplified acquisition threshold, the recipient is constrained by the federal threshold for FTA- funded contracts.

**NOTE: A procurement funded by a Federal award obligated on or after November 10, 2022, must comply with the Build America, Buy America Act (BABA) requirements in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. G §§ 70901-17.**

**Note on BABA implementation. For many years, FTA's Buy America statute at 49 U.S.C. 5323(j) has, with some exceptions, required all steel, iron, and manufactured products used in a federally funded project to be produced in the United States. A principal effect of BABA is to add construction materials to this list of items. BABA's domestic preference for construction materials applies only to procurements funded by Federal awards obligated on or after November 10, 2022. If a procurement occurs under a Federal award that was obligated before November 10, 2022, BABA does not apply, even if the procurement occurs on or after that date. FTA anticipates receiving implementing rules and additional guidance from the Office of Management and Budget and U.S. DOT in late 2022, which may describe standards or relief for**

**recipients implementing the new requirement. FTA expects to issue an update or addendum to this guide as BABA rules and guidance are published. In the meantime, if a reviewer encounters a procurement that includes construction materials and is funded by a Federal award obligated on or after November 10, 2022, the reviewer should contact FTA for instruction. Note to Assessment Team: For procurements reviewed that conflict with statutory or regulatory requirements that may deem the procurements ineligible for Federal funding, discuss the appropriate technical assistance with the FTA regional office and regional counsel.**

#### **QUESTIONS TO BE DISCUSSED**

1. Does the TTP recipient have written procurement policies and procedures that comply with 2 CFR Part 200 and FTA Circular 4220.1.F ?
2. Does the TTP recipient maintain written standards of conduct for the selection, award, and administration of FTA-funded contracts?
3. Has a bidder ever protested the award of an FTA-funded procurement? How did the TTP recipient handle the protest?
4. Does the TTP recipient check to see that a bidder has the capabilities to provide the goods or services requested and that the bidder is not prohibited from participating in a federally-funded contract?
5. Does the recipient maintain records sufficient to detail the history of each procurement as described in its policies and procedures and in compliance with 2 CFR Part 200?
6. Does the recipient ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders in its policies and procedures and in compliance with 2 CFR Part 200?
7. How does the TTP Recipient ensure full and open competition in all FTA-funded procurements?
8. Did the TTP recipient use each method of procurement, based on the size of the procurement, as described in its policies and procedures and in compliance with 2 CFR Part 200?
9. Does the TTP recipient develop independent cost estimates and conduct cost and/or price analysis as described in its policies and procedures for each procurement action above the Federal Simplified Acquisition Threshold?
10. Did the TTP recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000?
11. Did the TTP recipient include required certifications in solicitations and receive signed certifications from bidders as part of their bid or proposal, as applicable?
12. If the TTP recipient purchased FTA-funded assets through an assignment of options (a/k/a "piggyback"), did the underlying contract comply with applicable federal requirements regarding excessive options, inclusion of Federal requirements, assignability, and price, and no cardinal changes?

#### **INFORMATION NEEDED FROM RECIPIENT**

##### **Recipient Information Request**

- Current procurement policies and procedures
- List of FTA-funded procurements conducted since the last review. Identify the following items for each award:
  1. Date

2. Dollar value
  3. Type (professional service, architectural & engineering, operations management services, rolling stock, construction, materials and supplies)
  4. Method: (invitation for bid, request for proposal, pre-qualified bidders, sole source, single bid, brand name, award-to-other-than-low-bidder, piggyback, joint procurements, options)
  5. New Start or Small Start-related procurement
  6. Awarded by contractors or subrecipients
  7. Change order(s), if applicable
  8. Liquidated damages claimed or recovered
  9. Status of contract (open (percent complete) or completed)
- List of protests received or decided since last review

## **TTP P1. Does the TTP recipient have written procurement policies and procedures that comply with 2 CFR Part 200 and FTA Circular 4220 1.F?**

### **BASIC REQUIREMENT**

All TTP recipients must have written procurement policies and procedures.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

All TTP recipients must have written procurement policies and procedures.

Policies and procedures must explain how the TTP recipient will ensure compliance with the standards and requirements identified in 2 CFR 200.318 (General Procurement Standards) through 200.327 (Contract Provisions) including:

#### *General procurement standards*

- Contract oversight: Recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- Standards of conduct: Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
- Unnecessary or duplicative items: The recipient's procedures must avoid the acquisition of unnecessary or duplicative items.
- Award to responsible contractors: The recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.
- Procurement history: The recipient must maintain records sufficient to detail the history of the procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- Time and Material contracts: The recipient may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Since this contract type generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient awarding such a contract

must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- Contract dispute resolution: The recipient alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

### *Competition*

- Full and open competition: All procurement transactions must be conducted in a manner that provides full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - Placing unreasonable requirements on firms in order for them to qualify to do business;
  - Requiring unnecessary experience and excessive bonding;
  - Noncompetitive pricing practices between firms or between affiliated companies;
  - Noncompetitive contracts to consultants that are on retainer contracts;
  - Organizational conflicts of interest;
  - Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - Any arbitrary action in the procurement process.
- Geographic Preference: The recipient must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in 2 CFR Part 200 preempts state licensing laws. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- Tribal Preference: To the greatest extent feasible, Tribes must give preference in the award of contracts for projects funded by the FTA TTP to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).
- Procedures for procurement transactions: The recipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
  - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and
  - Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- Prequalification: The recipient must ensure that all prequalified lists of persons, firms, or

products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

#### *Methods of procurement*

- Allowed methods of procurement: Recipients must use one of the following methods of procurement: (1) micro-purchases; (2) small purchase procedures; (3) sealed bid; (4) competitive proposals; or (5) non-competitive proposals.

#### *Contract cost and price*

- Cost or price analysis: Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- Profit: Recipients must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- Estimated costs: Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the recipient under 2 CFR Part 200 Subpart E—Cost Principles. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- Cost plus: The cost plus a percentage of cost and percentage of construction cost methods of contracting may not be used.

#### *Bonding requirements*

- Bonding requirements: For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, FTA may accept the bonding policy and requirements of the non-Federal entity provided that FTA has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be applied as follows:
  - A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
  - A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
  - A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

#### *Contract provisions*

- Contract provisions: Recipient's contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards, and any other provisions required under Federal law.



*Other requirements*

- Exclusionary or discriminatory specification: Federal funds may not be used to support a procurement that uses an exclusionary or discriminatory specification.
- Buy America: Recipient’s procurements must comply with Buy America requirements in 49 U.S.C 5323(j) and 49 CFR Parts 661 and 663. For a procurement funded by a Federal award obligated on or after November 10, 2022, the recipient must comply with the Build America, Buy America Act (BABA) requirements in the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. G §§ 70901-17.

**INDICATORS OF COMPLIANCE**

- Does the recipient have written procurement policies and procedures?*
- Does the recipient have procurement policies and procedures that conform, and are not contrary, to 2 CFR 200.318 (General Procurement Standards) through 200.327 (Contract Provisions)?*

**INSTRUCTIONS FOR REVIEWER**

Request and review the TTP recipient’s procurement policies and procedures. Through review of the policies and procedures, interviews with recipient personnel, and examination of procurements selected, evaluate if the recipient can demonstrate compliance with the following requirements of 2 CFR Part 200. Additionally, review procurement procedures to determine if anything in their policies and procedures is contrary to the requirements below.

<b>Requirements</b>	<b>Addressed? (Y/N)</b>	<b>Page Reference</b>	<b>Comments/Notes</b>
Does the recipient have written procedures for procurement transactions that ensure that all procurements <ul style="list-style-type: none"> <li>• incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and</li> <li>• identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals?</li> </ul>	-	-	-
<b>General Procurement Standards</b>			
Maintenance of contract oversight	-	-	-
Maintenance of written standards of conduct	-	-	-
Avoidance of unnecessary or duplicative items	-	-	-
Contracting with responsible contractors	-	-	-
Maintenance of written procurement history	-	-	-
Use of time and material contracts	-	-	-

<b>Requirements</b>	<b>Addressed? (Y/N)</b>	<b>Page Reference</b>	<b>Comments/Notes</b>
Procedures for contract dispute resolution	-	-	-
	-	-	-
<b><i>Competition</i></b>			
Promotion of full and open competition	-	-	-

<b>Requirements</b>	<b>Addressed? (Y/N)</b>	<b>Page Reference</b>	<b>Comments/Notes</b>
Prohibition on geographic preference	-	-	-
Procedures for procurement transactions	-	-	-
Use and maintenance of prequalification lists, if permitted	-	-	-
<b>Methods of procurement (Recipient is not required to use a listed method if such method is prohibited by state or local law)</b>			
Allowed methods of procurement:	-	-	-
(1) micro-purchases;	-	-	-
(2) small purchases;	-	-	-
(3) sealed bid;	-	-	-
(4) competitive proposals; or	-	-	-
(5) non-competitive proposals	-	-	-
<b>Indian preference</b>			
Contracting with Indian-owned businesses in accordance with the Tribe's policies (Tribal Employment Rights Ordinance).	-	-	-
<b>Cost and price</b>			
Cost or price analysis	-	-	-
Negotiation of contractor profit	-	-	-
Use of estimated costs	-	-	-
Prohibition of cost plus contracts	-	-	-
<b>Contract provisions</b>			
Inclusion of required contract provisions	-	-	-
<b>Bonding requirements</b>			
Bonding requirements for construction or facility improvement contracts	-	-	-
<b>Other requirements</b>			
Prohibition of exclusionary or discriminatory specifications	-	-	-
Compliance with Buy America	-	-	-

## POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS

The TTP recipient needs technical assistance if it does not have written procurement policies and procedures.

TECHNICAL ASSISTANCE CODE: TTP P1-1: Procurement policies and procedures not evident

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing procurement policies that include all required provisions. Provide examples, as needed.

TECHNICAL ASSISTANCE CODE TTP P1-2: Procurement policies and procedures not current/complete

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing revised procurement policies that include all required provisions and identify procedures that ensure compliance with 2 CFR 200.318 through 200.327.

## GOVERNING DIRECTIVES

### 2 *CFR 200.318 General procurement standards*

- (a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.
- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c) (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j) (1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
  - a. The actual cost of materials; and
  - b. Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

**2 CFR 200.319 Competition**

- (a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do

business;

- (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;
  - (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.
- (b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and
  - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

2 CFR 200.320 Methods of procurement to be followed.

The non-Federal entity must use one of the following methods of procurement.

- (a) Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (§200.1 Micro-purchase). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

- i. A complete, adequate, and realistic specification or purchase description is available;
- ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
- iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- i. The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;
- ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- iii. All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- v. Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids.

If this method is used, the following requirements apply:

- (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

- (2) Proposals must be solicited from an adequate number of qualified sources;
- (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- (5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

1. Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- (1) The item is available only from a single source;
- (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or
- (4) After solicitation of a number of sources, competition is determined inadequate.

CFR 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;



- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

#### CFR 200.322 Procurement of recovered materials

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### CFR 200.324 Contract cost and price

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred, or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

#### 2 CFR 200.326 Bonding requirements

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor’s obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

2 CFR 200.327 Contract provisions

The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to 2 CFR Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

Additional Guidance:  
*FTA Circular 4220.1F Chapter III*

---

---

**TTP P2. Does the TTP recipient maintain written standards of conduct in the selection, award, and administration of FTA-funded contracts?**

**BASIC REQUIREMENT**

The TTP recipient must have and implement written standards of conduct for those involved in its procurement and contract administration actions.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

TTP recipients are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards must:

- Preclude any employee officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the election, award, or administration of a contract supported with FTA assistance. Such a conflict would arise when any of those previously listed has a financial or other interest in a firm considered for a contract.
- Include information that the recipient’s officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal value.
- Provide for disciplinary action for violation of such standards by the recipient’s officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

**INDICATORS OF COMPLIANCE**

- a. Does the recipient have written standards of conduct?*
- b. Do the recipient’s standards of conduct include all required elements?*

## **INSTRUCTIONS FOR REVIEWER**

Request and review the TTP recipient's standards of conduct for procurement-related actions. These may be contained in the recipient's policies and procedures, in a separate document(s), or different documents for employees and governing board members. Please note that local laws may have requirements that are more restrictive than the Federal requirements below. Recipients must adhere to those local requirements.

Review standards of conduct to ensure that, at a minimum, they:

- Preclude any employee, officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the selection, award, or administration of a contract supported with FTA assistance.
- Include information that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.
- Provide for disciplinary action for conflict of interest violations by the recipient's officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not have written standards of conduct.

TECHNICAL ASSISTANCE CODE TTP P2-1: No written standards of conduct

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing written standards of conduct that include all required provisions.

The recipient needs technical assistance if its written standards of conduct do not contain required elements.

TECHNICAL ASSISTANCE CODE TTP P2-2: Incomplete standards of conduct

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing written standards of conduct that include all missing provisions.

## **GOVERNING DIRECTIVES**

### 2 CFR 200.318 (c)(1) & (2)

- (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

FTA Master Agreement (30), Section 4

Standards of Conduct. At a minimum, the Recipient agrees to, and assures that its Subrecipients will, establish and maintain written Standards of Conduct covering conflicts of interest that:

- (1) Apply to the following individuals who have a present or potential financial interest, or other significant interest, such as a present or potential employment interest in the selection, award, or administration of a third party contract or subcontract:
  - (a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement,
  - (b) The immediate family members or partners of those listed above in section 4.a(1)(a) of this Master Agreement, and
  - (c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4.a(1)(a) and (b) of this Master Agreement;
- (2) Prohibit those individuals listed above in section 4.a(1) from:
  - (a) Engaging in any activities involving the Recipient's or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest, and
  - (b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and
- (3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4.a(1) and the Recipient's or Subrecipient's Third Party Participants.

Additional Guidance:

*FTA Circular. 4220.1F Chapter III*

---

---

**TTP P3. Has a bidder ever protested the award of an FTA-funded procurement? How did the TTP recipient handle the protest?**

**BASIC REQUIREMENT**

The TTP recipient must have and follow written protest procedures in compliance with all applicable Federal, state, and local laws and regulations.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

TTP recipients must have written procedures that allow bidders to protest a procurement action. Notice of protest procedures must be available to all potential bidders, either by inclusion in the solicitation documents or available to the public.

TTP recipients are responsible for resolving all contractual and administrative issues arising out of their

third party procurements, including source evaluation and selection, protests of awards, disputes, and claims using good administrative practices and sound business judgment.

#### **INDICATORS OF COMPLIANCE**

- (a) *Are the recipient procurement protest procedures included in solicitations for bids or proposals and/or publicly available?*
- (b) *Does the recipient have written protest procedures?*
- (c) *Has the recipient received any procurement protests in the past few years? If yes, did it follow its protest procedures?*

#### **INSTRUCTIONS FOR REVIEWER**

Confirm how protest procedures are made available to bidders and the public. Prior to the site visit, request and review the recipient's written protest procedures. Protest procedures may be contained in the recipient's policies and procedures or in a separate document.

Review milestone progress reports in TrAMS for protests noted. Onsite, ask the recipient for any bid protests received, granted, or denied. If there have been any protests during the review period, review related documentation to determine if the recipient followed its written protest procedures.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if its protest procedures are not accessible to potential bidders. The recipient needs technical assistance if it does not have written protest procedures.

TECHNICAL ASSISTANCE CODE TTP P3-1: No written protest procedures

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing written protest procedures.

The recipient needs technical assistance if it has written protest procedures and received protests, but did not follow its procedures.

TECHNICAL ASSISTANCE CODE TTP P3-2: Protest procedures not followed

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient to notify the FTA regional office if it receives a procurement protest and provide documentation that it followed its protest procedures.

#### **GOVERNING DIRECTIVES**

##### 2 CFR 200.318(k)

Section 200.318(k) provides that a recipient "alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the [recipient] of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the [recipient] unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

##### FTA Master Agreement (30), Section 16.w

Bid Protests. The Recipient agrees to provide FTA, as part of the annual or quarterly Milestone Progress Report, with a list of all bid protests and appeals for solicitations or contracts in excess of \$500,000. The Recipient also should be mindful of the requirement in Section 39, Disputes, that the

Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located, of significant current or prospective legal matters that may affect the Federal Government.

Guidance note regarding notifying FTA of Protests and Appeals to FTA

FTA's involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for a direct appeal to FTA of a recipient's final decision on a bid protest. The Uniform Guidance provides that:

The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction." – 2 C.F.R. § 200.318(k)

Thus, the FTA's role is limited to considering matters that are "primarily a Federal concern." Accordingly, Section (1)(b)(2)(a) of Chapter VII of FTA Circular 4220.1F, which provides for direct appeals to FTA, is no longer applicable.

---

---

**TTP P4. Does the TTP recipient check to see that a bidder has the capabilities to provide the goods or services requested and that the bidder is not prohibited from participating in a federally-funded contract?**

**APPLICABILITY**

All TTP recipients

**BASIC REQUIREMENT**

The TTP recipient must only contract with responsible firms.

**EXPLANATION FOR TTP RECIPIENT**

49 U.S.C. Section 5325 (j) requires recipients to make FTA-assisted contract awards only to "responsible" contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement. Before making an award to a contractor, a recipient shall consider the integrity of the contractor; the contractor's compliance with public policy; the contractor's past performance; and the contractor's financial and technical resources. Responsibility is determined by the recipient after receiving bids or proposals and before making contract award.

TTP recipients also are required to ensure, to the best of their knowledge and belief, that none of its principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third party contract expected to equal or exceed \$30,000, recipients must verify that the bidder is not excluded or disqualified by:

- Checking System for Award Management (SAM) Exclusions (at SAM.gov); or
- Collecting a certification; or
- Adding a clause or condition to the covered transaction

FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed

certification, are preferred. A best practice is for the recipient to print the screen with the results of the search to include in the award or procurement file, or to have a checklist noting when the SAM was reviewed.

2 CFR Part 180 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction. The recipient should have a similar review process for its principals as it does for its contractors and subrecipients regarding suspension and debarment.

In the event that a recipient becomes aware, after the award of a contract, that an excluded party is participating in a covered transaction, it must promptly inform the FTA regional office in writing of this information. The recipient may continue any covered transaction in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. The recipient is not required to continue the transaction and may consider termination. However, the recipient may not renew or extend the covered transaction (other than through a fully documented no-cost time extension) with the excluded party.

#### **INDICATORS OF COMPLIANCE**

- (a) Do procurement files contain documentation that the recipient made written responsibility determinations prior to award, considering all required information?*
- (b) Prior to award, does the recipient have documentation that third party contractors are not suspended or debarred?*
- (c) Did the recipient extend a contract with a contractor after it determined that the contractor had been suspended or debarred?*

#### **INSTRUCTIONS FOR REVIEWER**

Review the TTP recipient's policies and procedures for its process of conducting and documenting responsibility determinations and ensuring it does not award contracts to debarred or suspended contractors or individuals.

During the site visit, examine selected procurement files to determine if the recipient makes responsibility determinations prior to awarding contracts.

Examine responsibility determinations to verify that a written responsibility determination was made for each successful bidder prior to award and that consideration was given to matters such as:

- contractor integrity,
- compliance with public policy,
- record of past performance, and
- financial and technical resources

Review contract and subrecipient files to verify if the recipient or subrecipient is determining that bidders were not excluded or disqualified before entering into any third party contracts. Document that the recipient makes this verification by:

- checking SAM Exclusions (at SAM.gov), or
- collecting a certification, or
- adding a clause or condition to the covered transaction

Discuss with the recipient if it has become aware of any situation in which an excluded party is

participating in a covered transaction. For the procurements reviewed, check SAM.gov to determine if the contractors are suspended or debarred. Determine if the recipient received FTA approval to extend (other than a no-cost extension) or renew a contract with a suspended or debarred contractor prior to taking those actions.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it does not make written responsibility determinations that include the required elements prior to award.

TECHNICAL ASSISTANCE CODE TTP P4-1: Responsibility determination lacking

TECHNICAL ASSISTANCE ACTION: Assist the TTP recipient in checking exclusions at sam.gov to verify that contractors selected for FTA contracts were not excluded. Ask the recipient to include a copy of the results of the SAM search in its procurement files.

### **GOVERNING DIRECTIVES**

#### U.S.C 5325(j) AWARDS TO RESPONSIBLE CONTRACTORS

- (1) IN GENERAL. Federal financial assistance under this chapter may be provided for contracts only if a recipient awards such contracts to responsible contractors possessing the ability to successfully perform under the terms and conditions of a proposed procurement.
- (2) CRITERIA. Before making an award to a contractor under paragraph (1), a recipient shall consider:
  - A. the integrity of the contractor;
  - B. the contractor's compliance with public policy;
  - C. the contractor's past performance, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and
  - D. the contractor's financial and technical resources.

#### 2 CFR 180.300

What must I do before I enter into a covered transaction with another person at the next lower tier? When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person.

#### 2 CFR 180.310

What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction? (a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate. (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

Additional Guidance:

FTA Master Agreement (30), Section 4(h)

FTA Circular 4220.1F Chapter III. d. (1) (c)



**P5. Does the TTP recipient maintain records sufficient to detail the history of each procurement as described in its policies and procedures and in compliance with 2 CFR Part 200?**

**BASIC REQUIREMENT**

The TTP recipient must maintain a written history of each procurement.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

Recipients must maintain records sufficient to detail the significant history of a procurement. At a minimum, such records must include:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

The extent of documentation should be reasonable. Documents included in a procurement history should be commensurate with the size and complexity of the procurement itself. FTA recognizes that these written records may vary greatly for different procurements or procurement methods.

**FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

**Eligible Operations or Maintenance Expenses**

Under the authority of the Emergency Relief program to set the necessary terms and conditions of an award (49 USC 5324 (d)(1), FTA permits funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. The procurement of any new contracts would need to follow all Federal requirements.

**INDICATOR OF COMPLIANCE**

a. *Do procurement files reviewed include required historical information?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's policies and/or procedures for documenting procurement files. During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine if procurement records include the minimum information listed below:

- Rationale for the method of procurement (i.e., request for proposals, invitation for bids, sole source)
- Selection of contract type (i.e., fixed price, cost reimbursement)
- Reason for contractor selection or rejection
- Basis for the contract price (i.e., cost/price analysis)

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATION**

The TTP recipient needs technical assistance if procurement records do not contain the minimum documentation required.

TECHNICAL ASSISTANCE CODE TTP P5-1: Written documentation of procurement history

SUGGESTED TECHNICAL ASSISTANCE: Assist TTP recipient with developing procedures for documenting the procurement history. Recommend training of procurement related staff

**GOVERNING DIRECTIVE**

**2 CFR 200.318(i)**

The non-Federal entity must maintain records sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to the following: rationale for the method of

procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

---

---

**P6. Does the TTP recipient ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders in its policies and procedures and in compliance with 2 CFR Part 200?**

**BASIC REQUIREMENT**

TTP recipients must have oversight mechanisms to ensure that contractors perform in accordance with the terms of their contracts.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

Recipients are required to have mechanisms in place to ensure that contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. 2 CFR part 200 assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of its third party procurements, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. Neither FTA nor 2 CFR part 200 relieves the recipient of any contractual responsibility under its contracts.

Many FTA recipients assign contracting duties to technical, financial, or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

**INDICATOR OF COMPLIANCE**

- a. *Does the recipient conduct oversight of third party contractors to ensure performance in accordance with contract terms?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Prior to the site visit, review milestone progress reports in TrAMS and information provided by the recipient to determine if there were any contracts noted as having issues with the contractor not performing in accordance with the terms, conditions, and specifications of their contracts or purchase orders. Review information in TrAMS and those received from the recipient on the resolution of disputes or claims. Ask the regional office if there are any procurements that should be reviewed for contractor performance issues. Prior to the site visit, request and review the recipient's policies and procedures, which should include procedures to ensure contract performance and to resolve third party contracting issues, for any described contract administration processes and responsibilities. During review of selected procurements, determine if contract administration and oversight procedures are being implemented as described in policies and procedures. Determine if the recipient is monitoring the contractor's on-time delivery of products or services as detailed in any contractual milestones. Determine if the recipient is analyzing the cause of cost overruns, scope changes, or slippages in delivery schedules or milestone dates.

For any procurements reviewed for which enforcement of contract administration remedies appeared to be warranted (i.e. liquidated damages, remedies related to milestone or delivery dates or performance standards), determine if appropriate actions were taken. In accordance with 2 CFR §200.318(j)(2), recipients must assert a high degree of oversight for time and materials type contracts

in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if the recipient does not have documentation evidencing contract oversight pursuant to its internal policies and/or procedures. For example, the TTP recipient needs technical assistance if non-performance of contractors is a persistent problem, with contractors either not performing in accordance with the terms and conditions of their contracts, or issues remain unresolved for a substantial length of time, or the recipient cannot demonstrate that it has taken remedial action in accordance with its policies and procedures.

TECHNICAL ASSISTANCE CODE TTP P6-1: Contract administration system

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP with developing procurement procedures that include oversight procedures and remedies for non-performance, along with evidence of implementation.

### **GOVERNING DIRECTIVE**

2 CFR 200.318(b)

Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

---

---

## **TTP P7. How does the TTP Recipient ensure full and open competition in all FTA-funded procurement transactions and does not unduly restrict competition as described in its policies and procedures and in compliance with 2 CFR Part 200?**

### **BASIC REQUIREMENT**

Procurement transactions must be non-restrictive.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

#### Restricting Competition:

Recipients must conduct procurement transactions in a manner providing full and open competition. Recipients are prohibited from restricting competition in federally supported procurement transactions. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and/or excessive bonding;
- Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement;
- Having overly burdensome requirements for approval of an equal product;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest; and
- Any arbitrary action in the procurement process. Geographic Preference:

Recipients are prohibited from specifying in-state or local geographic preferences or evaluating bids or proposals in light of in-state or local geographic preferences, except as permitted by federal law (for example, 66 Section 25019 of the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117- 58), regulation, requirement, or guidance. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-state dealers.

Exceptions expressly mandated or encouraged by law include the following:

- A&E Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use does not restrict competition (i.e., the use of geographic preference leaves only one or two qualified firms to bid on the contract).
- Licensing. A state may enforce its licensing requirements, provided that those requirements do not conflict with Federal law.
- Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in an area affected by a major disaster or emergency.

Section 418 of the fiscal year (FY) 2015 Appropriations Act and Section 415 of the Consolidated Appropriations Act, 2016, Public Law 114-113 (FY 2016 Appropriations Act) prohibit FTA from using FY2015 or FY2016 funds to implement, administer, or enforce the prohibition of geographic preferences under 49 CFR 18.36(c)(2), (now 2 CFR 200.319(b)) for construction hiring purposes. "Construction hiring purposes" means hiring of the construction labor workforce for a construction project. Section 418 applies to all FTA awards, including awards funded under the Hurricane Sandy Emergency Relief and Transportation Investment Generating Economic Recovery (TIGER) programs. Recipients are asked to provide the FTA Regional Office notice of using local hiring preferences on construction projects.

On March 6, 2015, US DOT announced an initiative to permit, on an experimental basis, FTA recipients and subrecipients to utilize various contracting requirements that generally have been disallowed due to concerns about adverse impacts on competition. This initiative, being initially carried out as a pilot program was extended until March 6, 2017. Unless accepted into the pilot program, FTA recipients may not include local hiring or geographic preferences in FTA-funded projects, except for construction hiring purposes and other exceptions described above.

#### Tribal Preference:

In accordance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)), and to the greatest extent feasible, Tribes must give preference in the award of contracts for projects funded by the FTA TTP to Indian organizations and Indian-owned economic enterprises

#### Prequalification Lists:

Except for small and micro purchases, proposals and/or bids must be publicly solicited from an adequate number of sources. Recipients are prohibited from restricting competition in federally supported procurement transactions. Recipients are not required to prequalify potential bidders. However, recipients that place such a requirement on potential bidders must adhere to FTA's requirements. If a recipient requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure full and open competition. Recipients must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.

#### Revenue Contracts:

Revenue contracts are those in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation or creating business opportunities with the use of FTA-assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties

an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the recipient to determine appropriate procedures, as necessary.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient restrict competition by applying unreasonable requirements, requiring unnecessary experience or excessive bonding, or by specifying brand names only?*
- b. *Does the recipient include prohibited geographic preferences in procurements?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Prior to the site visit, request and review the recipient's written procurement policies for discussion of the requirements in the above indicators. Obtain and review the listing of FTA-funded procurements.

##### During the site visit:

- Review procurement files, particularly legal notices and solicitation documents, to determine whether procurements were unreasonably restrictive. If a procurement only received one or two responses, did the specifications include non-essential requirements that only a single manufacturer can meet? Did potential bidders submit pre-submission questions regarding compliance with the specifications or other contract requirements? Examine any bid protests and any questions and answers to solicitations to determine if there are any perceived restrictions from potential bidders.
- Review procurement files for use of geographic preferences outside of the allowable exceptions. Review any bid protests and any questions and answers to solicitations to determine if there are any potential geographic preference issues. These may include bid/evaluation preferences for, or restricting competition to, in-state or local firms. In-state licensing requirements do not constitute geographic preference. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it has conducted a procurement without providing full and open competition. Examples of failure to provide for full and open competition include impermissible or unnecessary restrictive requirements in specifications or on prospective bidders in any of the procurement files reviewed.

TECHNICAL ASSISTANCE CODE TTP P7-1: Full and open competition for one or more methods of procurement

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient by providing guidance to its procurement staff on procedures for ensuring full and open competition in all procurements.

The TTP recipient needs technical assistance if it has improperly included geographic preferences in its procurements.

TECHNICAL ASSISTANCE CODE TTP P7-2: Use of geographic preferences

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient to eliminate geographic preferences in FTA-funded procurements.

The TTP recipient needs technical assistance if its prequalification lists do not include enough qualified sources to ensure maximum full and open competition or it has precluded potential bidders from qualifying during the solicitation process.

## **GOVERNING DIRECTIVES**

### 49 U.S.C. 5325(a). Contract requirements

- (a) Competition. Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary.

### 49 U.S.C. 5325(h). Contract requirements

- (h) Grant prohibition. A grant awarded under this chapter or the Federal Public Transportation Act of 2015 may not be used to support a procurement that uses an exclusionary or discriminatory specification.

### 2 CFR 200.319 (a)

All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process.

### 2 CFR 200.319 (c)(1)

When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offeror must be clearly stated.

### 2 CFR 200.319 (b)

The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographic preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

### 2 CFR 200.319 (d)

The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

**TTP P8. Did the TTP recipient use each method of procurement, based on the size of the procurement, as described in its policies and procedures and in compliance with 2 CFR Part 200?**

**BASIC REQUIREMENT**

The non-Federal entity must appropriately use one of the following methods of procurement: micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

Micro-purchases may be made without obtaining competitive quotations if the recipient determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area and should not be split to avoid the requirements for competition above the micro-purchase threshold.

Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written.

For procurements exceeding the Federal simplified acquisition threshold (currently \$250,000), sealed bids or competitive proposals are generally required.

- Sealed Bids/IFB – Bids are publicly solicited, and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.
- Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the responsive and responsible proposer whose offer is most advantageous to the recipient, with price and other factors considered. Recipients must identify their evaluation factors and indicate the relative importance that each has towards the award.

Non-competitive proposals: When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make a sole-source award. In the case of a sole-source award, the recipient should prepare a written cost analysis and justification. The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted and is available to the recipient only from one source and in the past, has not been available from another source.
- Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs. In the case of a follow-on contract for the continued

development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.

- Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.

While professional services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for professional services and the recipient needs to follow federal requirements when FTA funds are used to pay for these services.

With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and should include a survey of potential sources that chose not to submit a bid or proposal.

#### **INDICATORS OF COMPLIANCE**

- (a) If the recipient used micro-purchase procedures, was it done in accordance with requirements?*
- (b) If the recipient used small purchase procedures, was it done in accordance with requirements?*
- (c) If the recipient used sealed bid procedures, was it done in accordance with requirements?*
- (d) If the recipient used competitive proposal procedures, was it done in accordance with requirements?*
- (e) Did the recipient include written justification of any non-competitive or sole source procurements in the procurement file?*
- (f) If the recipient had awarded a contract to a single bidder, did it appropriately determine that the item was available only from a single source?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's policies and procedures for dollar thresholds and procedures for micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals/sole source procurements, as applicable.

Review the list of FTA-funded procurements to determine which types of procurements were used.

**Micro-purchase:** Review selected procurements to determine if:

- this method was only used for procurements \$3,500 or less awarded prior to June 20, 2018, or \$10,000 or less for contracts awarded after June 20, 2018,
- the procurements were distributed equitably if there was more than one qualified supplier in the local area,
- the recipient documented its determination that the price was reasonable with a description of how that determination was made, and
- there was no evidence that procurements were split to avoid procurement requirements for purchases above the micro-purchase threshold (such as repeated purchases of the same



item(s)).

Note to Assessment Team: State or local law or recipient policies/procedures may set a micro-purchase threshold lower than the federal threshold. In such cases, recipients must follow state or local law. However, if the state or local micro-purchase threshold is higher than the federal threshold, the recipient is constrained by the federal threshold for FTA-funded contracts.

**Small purchase:** Review selected procurements to determine if:

- this method was only used for procurements of \$150,000 awarded prior to June 20, 2018, or less, or \$250,000 or less for procurements awarded after June 20, 2018. Procurements funded by awards issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000. (per 49 CFR 18.36(d)),
- price or rate quotations were obtained from an adequate (at least two) number of qualified sources, and
- there was no evidence that procurements were split to avoid procurement requirements for purchases above the small purchase threshold (such as repeated purchases of the same item(s)).

Note to Assessment Team: State or local law or recipient policies/procedures may set a small purchase threshold lower than the federal threshold. In such cases, recipients must follow state or local law. However, if the state or local small purchase threshold is higher than the federal simplified acquisition threshold, the recipient is constrained by the federal threshold for FTA-funded contracts.

**Sealed bid:** Review selected procurements to determine if:

- bids were solicited from an adequate number of known suppliers,
- bids were publicly advertised in accordance with State and local laws,
- the invitation for bids defined the items or services in order for the bidder to properly respond,
- bids were publicly opened at the time and place prescribed in the invitation for bids,
- a firm fixed price contract (lump sum or unit price) was awarded to the lowest responsive and responsible bidder, and
- any or all bids were rejected only if there was a sound, documented reason.

**Competitive proposal:** Review selected procurements to determine if:

- requests for proposals were publicly advertised in accordance with State and local laws,
- evaluation criteria and their relative importance were identified,
- proposals were solicited from an adequate number of qualified sources,
- there was a written method for conducting technical evaluations of the proposals received and for selecting recipients, and
- contracts were awarded to the responsive and responsible firm whose proposal is most advantageous, with price and other factors considered.

For A&E procurements, price should not be a factor in the selection criteria. These procurements are reviewed in the following question.

**Non-competitive procurement:** Review selected procurements to determine if one of the following conditions was met:

- The recipient appropriately determined that the item was available from only a single source. Property or services are available from one source when one of the conditions described below is present:
  - *Unique or Innovative Concept.* Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and in the past, has not been available from another source.
  - *Patents or Restricted Data Rights.* Patent or data rights restrictions preclude competition.
  - *Substantial Duplication Costs.* In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
  - *Unacceptable Delay.* In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- There was a public exigency or emergency for the requirement which would not permit a delay resulting from competitive solicitation. When relying on this provision, recipients may use a non-competitive procurement method only for its reasonable needs to address the exigency or emergency. For example, a recipient's facility receives an unprecedented 24-inches of snow in 24 hours in October and it does not have a snow removal contract in place. The recipient may enter into a non-competitive snow removal contract to clear the snow. However, the recipient may not use this emergency to justify entering into a non-competitive snow removal contract for the entire winter season.
- FTA expressly authorized noncompetitive proposals in response to a written request from the recipient. Determine if the recipient included a written sole source justification in its procurement file.

**Determine if the recipient included a written sole source justification in its procurement file.**

**Single bidder:** Ask the recipient to provide information on state or local requirements for advertisement/dissemination of solicitation. Review any advertisement/dissemination procedures in the recipient's procurement policies. Review selected procurements to determine if the procurement files include an explanation as to why a single bid was obtained and if the recipient's determination of adequate competition included a review of the specifications for undue restrictiveness, a survey of potential sources that chose not to submit a bid or proposal, and the recipient's policies and procedures for advertising solicitations (i.e., was the solicitation widely disseminated using means beyond those required by State or local law, was the solicitation open for a sufficient period of time given the complexity of the project).

**Time and materials:** Prior to the site visit, examine the procurement listing provided by the recipient to determine if any time-and-materials type contracts were awarded during the review period. If so, during the site visit, examine at least one time-and-materials procurement file to determine if there was information noting that this was the only suitable type of procurement and that a ceiling price was included.

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

Discuss with the recipient if it used Supplemental funds to reimburse expenses for any operations or maintenance contracts. Ascertain whether the contracts met all Federal requirements. If not, advise the recipient that any new contract for operations or maintenance for which it will use Federal funds to reimburse expenses, must meet Federal requirements, including, but not limited to, procuring the services through full and open competition, confirming vendor responsibility, incorporating the required clauses, and obtaining signed certifications.

Discuss with the recipient if it used the non-competitive (sole source) procurement method as a result of the COVID-19 public health emergency. If it did, review the sole source justification to ensure it meets the requirements.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it made procurements using micro-purchase procedures but used this method for procurements over \$3,500 for contracts awarded prior to June 20, 2018, or \$10,000 for contracts awarded after June 20, 2018, and not according to 2 CFR 200.320(a)(1)(iv) or (v) for contracts awarded after August 13, 2022, did not make reasonable price determinations, did not distribute purchases equitably if applicable, and/or if there was evidence of splitting procurements to be within the micro-purchase threshold.

TECHNICAL ASSISTANCE CODE TTP P8-1: Micro-purchase procedures

SUGGESTED TECHNICAL ASSISTANCE: Provide guidance to the TTP recipient on when to correctly implement micro-purchase procedures.

The TTP recipient needs technical assistance if it made procurements using small purchase procedures for procurements over \$150,000 for contracts awarded prior to June 20, 2018, or \$250,000 for contracts awarded after June 20, 2018, price or rate quotations were not obtained from an adequate number of qualified sources, and/or if there is evidence of splitting procurements to be within the small purchase threshold.

TECHNICAL ASSISTANCE CODE TTP P8-2: Small purchase procedures

SUGGESTED TECHNICAL ASSISTANCE: Provide guidance to the TTP recipient in updating its procurement process to correctly implement small purchase procedures.

The TTP recipient needs technical assistance if it made procurements using sealed bid procedures but bids were not publicly advertised and/or a fixed price contract was not awarded to the lowest responsive and responsible bidder.

TECHNICAL ASSISTANCE CODE TTP P8-3: Sealed bid procedures

SUGGESTED TECHNICAL ASSISTANCE: Provide guidance to the TTP recipient in updating its procurement process to correctly implement sealed bid procedures.

The TTP recipient needs technical assistance if it made procurements using competitive proposal procedures but requests for proposals were not publicly advertised, evaluation criteria and their relative importance were not identified in the solicitation documents, and/or price and other factors were not considered in the award.

TECHNICAL ASSISTANCE CODE TTP P8-4: Competitive proposal procedures

SUGGESTED TECHNICAL ASSISTANCE: Provide guidance to the TTP recipient in updating its procurement process to correctly implement competitive proposal procedures. The TTP recipient needs technical assistance if it made sole source procurements but does not have a

sole-source justification in its procurement files, and/or if its justification does not include at least one of the conditions permitting the use of a sole source procurement.

TECHNICAL ASSISTANCE CODE TTP P8-5: Justification(s) and documentation for sole-source award(s)

SUGGESTED TECHNICAL ASSISTANCE: Provide guidance to the TTP recipient in updating its procurement process to properly conduct sole source procurements.

Where contracts are ongoing, confer with the FTA regional office to determine if the recipient should be directed not to exercise any options, or possibly terminate the existing contract for convenience, and rebid for the required goods and services in accordance with Federal requirements.

The TTP recipient needs technical assistance if it does not have the appropriate justification for single-bid awards.

TECHNICAL ASSISTANCE CODE TTP P8-6: Justification(s) and documentation for single-bid award(s)

SUGGESTED TECHNICAL ASSISTANCE: Provide guidance to the TTP recipient in updating its procurement process to ensure that future single bid procurements are properly documented.

## **GOVERNING DIRECTIVES**

### *2 CFR 200.318 (j)*

(j)(1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

### *2 CFR 200.320 Methods of procurement to be followed.*

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

(a) Informal procurement methods. When the value of the procurement for property or services under a Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:

(1) Micro-purchases -

(i) Distribution. The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of micro-purchase in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.

(ii) Micro-purchase awards. Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.

(iii) Micro-purchase thresholds. The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.

(iv) Non-Federal entity increase to the micro-purchase threshold up to \$50,000. Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:

(A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;

(B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,

(C) For public institutions, a higher threshold consistent with State law.

(v) Non-Federal entity increase to the micro-purchase threshold over \$50,000. Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) Small purchases -

(i) Small purchase procedures. The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) Simplified acquisition thresholds. The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) Formal procurement methods. When the value of the procurement for property or services under a

Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) Sealed bids. A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material FY2023 Contractors Manual – Procurement 9-42

terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

(A) A complete, adequate, and realistic specification or purchase description is available;

(B) Two or more responsible bidders are willing and able to compete effectively for the business; and

(C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;

(B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;

(D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(2) Proposals. A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

(i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and

(iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.

(c) Noncompetitive procurement. There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:

(1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The item is available only from a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;

(4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or

(5) After solicitation of a number of sources, competition is determined inadequate.

#### *FTA 4220.1F Chapter VI 3. a. (2) (b) Prohibited Divisions*

The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions.

#### *FTA 4220.1F Chapter VI 3. a. (2) (c) Documentation*

FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

#### *FTA Circular 4220.1F Chapter VI 3. i. (1) (b) 2. Single Bid or Single Proposal*

Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. a. Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award. b. Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate.

#### *Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE2*

Under the authority of the Emergency Relief program to set the necessary terms and conditions of a grant (49 USC 5324 (d)(1), FTA will permit funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. Any new contracts would need to follow all federal requirements.

#### *Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CE9*

FTA has established an Emergency Relief docket (docket number FTA-2021-0001) that allows recipients in states in which the Governor has declared an emergency related to COVID-19 to request temporary relief from federal requirements under 49 U.S.C. Chapter 53 as well as the provisions of any non-statutory FTA requirements. The ER docket should only be used to request a waiver of FTA requirements.

Some federal requirements include specific provisions related to emergencies, and therefore, no FTA waiver is necessary. For example, federal procurement standards established in 2 CFR part 220.317-326 permit the use of a noncompetitive (sole source) procurement when the circumstances of an emergency (or public exigency) would not permit a delay resulting from competitive solicitation.

---

---

### **TTP P9. Does the TTP recipient develop independent cost estimates and conduct cost and/or price analysis as described in its policies and procedures and for each procurement action above the Federal Simplified Acquisition Threshold?**

#### **BASIC REQUIREMENT**

TTP recipients must perform a cost or price analysis in connection with every procurement action in excess of the Federal Simplified Acquisition Threshold. As a starting point, the recipient must make independent estimates before receiving bids or proposals.

#### **APPLICABILITY**

All TTP recipients

#### **EXPLANATION FOR TTP RECIPIENT**

Recipients must perform cost or price analyses in connection with every procurement exceeding the Federal Simplified Acquisition Threshold, including contract modifications, after receiving bids, but before awarding a contract. Note that effective June 20, 2018, the Federal Simplified Acquisition Threshold increased from \$150,000 to \$250,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the recipient must make independent estimates before receiving bids or proposals. Generally, a cost analysis must be performed for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements, unless price reasonableness can be established based on market prices. Price analysis (i.e., using catalog or market prices) may be performed for all other procurements.

The independent cost estimate (ICE) is a tool to assist in determining the reasonableness of the bid or proposal being evaluated; that is, to assist in performing the cost or price analysis. An ICE is the starting point for conducting a cost or price analysis. It is required for all procurements exceeding the Federal simplified acquisition threshold. An ICE is completed prior to receipt of bids or proposals. It can range from a simple budgetary estimate to a complex estimate based on items like drawings, specifications, and information from previous procurements. The word “independent” means that the estimate is prepared without the influence of persons who have a financial interest in or will be considered for the resulting award. It does not imply that it is performed by someone other than the recipient. This could be the case, however, if the recipient does not have the expertise for a large complex procurement.

The ICE is especially critical whenever there is no price competition, or where offerors are submitting price proposals for goods or services that are not exactly comparable (e.g., for procurements of high-



technology items or professional services). It is also useful in competitive procurements to alert the recipient when all competitors are submitting unexpectedly high or low-cost proposals.

#### **INDICATORS OF COMPLIANCE**

- a. *Did the TTP recipient develop an ICE prior to the receipt of bids and proposals for procurements above the Federal Simplified Acquisition Threshold?*
- b. *Did the TTP recipient conduct a cost analysis or price analysis for every procurement action above the Federal Simplified Acquisition Threshold?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's policies and procedures. During the Assessment, review selected procurements to determine if the recipient developed an ICE prior to receipt of bids or proposals for procurements above the Federal Simplified Acquisition Threshold.

Determine if a cost analysis was performed in accordance with the recipient's policies and procedures for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements. Determine if the recipient documented a price analysis when a cost analysis was not required.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it has not conducted independent cost estimates for any procurement reviewed above the Federal Simplified Acquisition Threshold or in accordance with its internal procedures.

TECHNICAL ASSISTANCE CODE TTP P10-1: independent cost estimate

SUGGESTED TECHNICAL ASSISTANCE: Assist recipient with developing procurement procedures to include development of independent cost estimates prior to receipt of bids or proposals as applicable.

The TTP recipient needs technical assistance if it did not conduct a cost analysis or price analysis, as applicable, for any procurement reviewed above the Federal Simplified Acquisition Threshold.

TECHNICAL ASSISTANCE CODE TTP P10-2: Required cost or price analysis

SUGGESTED TECHNICAL ASSISTANCE: Assist TTP recipient developing procurement procedures to include performing applicable cost or price analysis for procurements above the Federal Simplified Acquisition Threshold or in accordance with its internal procedures.

#### **GOVERNING DIRECTIVE**

##### **2 CFR 200.324 Contract cost and price**

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

FTA Circular 4220.1F Chapter VI 6. a. Cost Analysis

The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation.

FTA Circular 4220.1F Chapter VI 6. b. Price Analysis

If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price.

---

---

**TTP P10. Did the TTP recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase limit and construction contracts over \$2,000?**

**APPLICABILITY**

All TTP recipients

**BASIC REQUIREMENT**

TTP recipients must include and implement required clauses in its procurements.

**EXPLANATION FOR TTP RECIPIENTS**

Recipients are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. FTA Master Agreement identifies certain clauses that apply to third party contracts. 2 CFR 200.324 and Appendix II to 2 CFR Part 200 identify contract provisions for non-Federal contracts under a Federal award. FTA C. 4220.1F discusses Federal requirements that affect a recipient's acquisitions. Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website. Through the National Rural Transportation Assistance Program (RTAP), FTA developed ProcurementPRO, an on-line procurement tool that assists recipients in developing procurement packages. Using ProcurementPRO, can assist a recipient in developing a procurement package that includes federally required clauses.

Generally, recipients may not modify an existing contract to include Federal clauses and so make it eligible for reimbursement with Federal funds. A recipient may, however, include Federal clauses in a purchase order made against its state's General Services Administration (GSA)-type contracts. Not all clauses apply to every contract. The applicability of clauses depends on the size and type of contract as is described in the exhibit shown in Instructions for Reviewer below. Contracts must include all applicable FTA clauses. Incorporation of a clause by reference is permitted, however a general reference to FTA guidelines or clauses is not sufficient to incorporate a clause. A checklist of required clauses is provided in the Instructions for Assessment Team. The checklist provides a citation for each required clause.

**INDICATOR OF COMPLIANCE**

- a. *Did the TTP recipient include applicable required clauses in FTA-funded procurements?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's policies and procedures. During the Assessment, review selected procurement files for inclusion of required clauses as detailed in the table shown below. Technical assistance is

needed if the recipient did not include all of the required, applicable clauses in any of the procurement files reviewed.

Clause	Threshold	Citation
<p>Bonding</p> <p>(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.</p> <p>(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.</p> <p>(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.</p>	<p>For construction or facility improvement contracts or subcontracts exceeding the Federal Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.</p>	<p>2 CFR 200.326</p>
<p>Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate</p>	<p>For procurements over the Federal Simplified Acquisition threshold</p>	<p>Appendix II to Part 200</p>
<p>Termination for cause and for convenience including the manner by which it will be effected and the basis for settlement</p>	<p>For procurements over \$10,000</p>	<p>Appendix II to Part 200</p>
<p>Equal Employment Opportunity</p>	<p>All contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3</p>	<p>Appendix II to Part 200</p>
<p>Davis-Bacon Act</p>	<p>All prime construction contracts in excess of \$2,000</p>	<p>Appendix II to Part 200</p>

Clause	Threshold	Citation
Contract Work Hours and Safety Standards Act	All contracts in excess of \$100,000 that involve the employment of mechanics or laborers	Appendix II to Part 200
Rights to Inventions Made Under a Contract or Agreement	Contracts that meet the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,”	Appendix II to Part 200
Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1381)	Contracts in excess of \$150,000	Appendix II to Part 200
6002 of the Solid Waste Disposal Act When procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition Procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines	For non-Federal entity that is a state agency or agency of a political subdivision of a state, contracts with purchase price that exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000	2 CFR 200.323
Notice to FTA and U.S. DOT Inspector General of information related to fraud, waste, abuse, or other legal matters	Applies to all contracts at all tiers expected to equal or exceed \$25,000. The recipient must require a prime contractor to “flow-down” the requirement to subcontractors.	FTA Master Agreement §39(b) <b>Note:</b> This requirement only applies to procurements awarded after October 2018.

Clause	Threshold	Citation
Prohibition on certain telecommunications and video surveillance services or equipment	All contracts made by the non-Federal entity under the Federal award	2 CFR 200.216

### POTENTIAL TECHNICAL ASSISTANCE DETERMINATION

The TTP recipient needs technical assistance if did not include all applicable required clauses in FTA-funded procurements reviewed.

TECHNICAL ASSISTANCE CODE TTP P11-1: FTA clauses

SUGGESTED TECHNICAL ASSISTANCE: Assist TTP recipient with updating its procurement procedures to address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism.

### GOVERNING DIRECTIVE

#### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- B. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- C. Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-

Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- E. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- F. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- G. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- H. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a

member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

- J. See §200.323 Procurement of recovered materials—A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

FTA Master Agreement (30), Section 16.d.

Required Clauses in Third Party Contracts. In addition to other applicable provisions of federal law, regulations, requirements, and guidance, all third party contracts made by the Recipient under the Federal award must contain provisions covering the following, as applicable:

- (1) Simplified Acquisition Threshold. Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, or otherwise set by law, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. (Note that the simplified acquisition threshold determines the procurement procedures that must be employed pursuant to 2 C.F.R. §§ 200.317–200.327. The simplified acquisition threshold does not exempt a procurement from other eligibility or processes requirements that may apply. For example, Buy America’s requirements apply to any purchase in excess of \$150,000. 49 U.S.C. § 5323(j)(13).)
- (2) Termination. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-federal entity including the manner by which it will be effected and the basis for settlement.

- (3) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60-1.4(b), in accordance with Executive Order No. 11246, “Equal Employment Opportunity,” 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935, 3 C.F.R. 1964–1965 Comp., p. 339), as amended by Executive Order No. 11375, “Amending Executive Order No. 11246 Relating to Equal Employment Opportunity,” (32 Fed. Reg. 14,303) and implementing regulations at 41 CFR Part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” (4) Davis-Bacon Act, as amended (40 U.S.C. §§ 3141 – 3148). When required by federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141 – 3144, and 3146 – 3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (4) The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of a public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to the federal awarding agency.
- (5) Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701 – 3708). Where applicable, all contracts awarded by the non-federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer based on a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (6) Rights to Inventions Made Under a Contract or Agreement. If the federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.



- (7) Clean Air Act (42 U.S.C. §§ 7401 – 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 – 1388), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§ 7401 – 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251 – 1388). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (8) Debarment and Suspension (Executive Orders 12549 and 12689). A covered transaction (see 2 C.F.R. §§ 180.220 and 1200.220) must not be entered into with any party listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. 180 that implement Executive Orders 12549 (31 U.S.C. § 6101 note, 51 Fed. Reg. 6370,) and 12689 (31 U.S.C. § 6101 note, 54 Fed. Reg. 34131), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. The Recipient agrees to include, and require each Third Party Participant to include, a similar provision in each lower tier covered transaction, ensuring that each lower tier Third Party Participant:
- a. Complies with federal debarment and suspension requirements; and
  - b. Reviews the SAM at <https://www.sam.gov>, if necessary to comply with U.S. DOT regulations, 2 CFR Part 1200.
- (9) Restrictions on Lobbying (31 U.S.C. § 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the certification required by 49 CFR Part 20. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-federal award.
- (10) Solid Wastes. A Recipient that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain;
- (2) Extend or renew a contract to procure or obtain; or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law](#)

115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under [Public Law 115-232](#), section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

FTA Master Agreement (30) Section 39(b).

Notification to FTA; Flow Down Requirement. If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel and FTA Regional Counsel for the Region in which the Recipient is located. The Recipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.

- (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- (3) Additional Notice to U.S. DOT Inspector General. The Recipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Recipient is located, if the Recipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Recipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Recipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the

possession of the Recipient. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Recipient, including divisions tasked with law enforcement or investigatory functions.

---

---

**TTP P11. Did the TTP recipient include required certifications in solicitations and receive signed certifications from bidders as part of their bid or proposal, as applicable?**

**BASIC REQUIREMENT**

TTP recipients must include required certifications in its procurements and receive signed certifications from bidders.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

Transit Vehicle Manufacturer (TVM) Certification: TTP recipients must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. Only those TVMs listed on FTA’s certified list or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. The recipient is required to include a provision in its bid specifications requiring the TVM certification as a condition of permission to bid. The certification should reference 49 CFR Part 26 (not Part 23).

A list of certified TVMs is available at the FTA website: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-transit-vehicle-manufacturers>. Prior to award, evidence that this website has been checked or evidence of communication with FTA’s Office of Civil Rights to validate TVM certification, must be documented.

The TVM definition is codified at 49 CFR 26.5. Note that producers of vehicles that receive post-production alterations or retro-fitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered to be TVMs. Further, to the extent to which a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which the remanufacturer has provided post-production alterations or retro-fitting, that remanufacturer is considered a TVM. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered TVMs.

Lobbying Certification: Recipients are required to include a lobbying certification in agreements, contracts, and subcontracts exceeding \$100,000. Signed certifications regarding lobbying must be obtained by the recipient from potential contractors with the contractors’ bids. This requirement flows down. The recipient must require its prime contractors to obtain certifications from bidders for subcontracts in excess of \$100,000, and so on for all contracting tiers. Lobbying certifications are retained at the contracting tier to which they are submitted, and are not forwarded to higher contracting tiers.

Buy America Certification: Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America requirements applicable to rolling stock procurements are discussed in more detail in question P20.

The small purchase waiver is now included in 49 U.S.C 5323(j)(13) and provides that the term “small purchase” means a purchase of not more than \$150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. The statutory language is clear that the small purchase waiver applies to purchases of \$150,000 or less, regardless of the size of the project. Therefore, purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the Fixing America’s Surface Transportation (FAST) Act applies to all purchases made after October 1, 2015. The \$150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the \$150,000 threshold. Finally, if a solicitation may result in bids near \$150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than \$150,000, the bidder must certify per the Buy America requirements, but if the bid is \$150,000 or less, no certification will be necessary.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than \$150,000, regardless of whether they involve capital, operating, or planning funds,
- Contractors and subcontractors if the contract or subcontract is more than \$150,000, including labor and options,
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products, and
- Purchases of used items.

For all procurements more than \$150,000, the recipient shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR 661.6 or 661.12 of this part, as appropriate. Recipients should include only the applicable Buy America certification. Inclusion of both certifications for both rolling stock and non-rolling stock procurements is discouraged and may result in confusion on the part of the contractor as to the applicable Buy America requirements.

Recipients may not obtain signed Buy America certifications after contract award for its own contracts or contracts of other recipients to make the contracts eligible for Federal funding. Recipients may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. The recipient should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

If a bidder or offeror cannot certify compliance with Buy America requirements, the recipient must seek a waiver of the Buy America statute before it may award the contract to the bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

### **Eligible Operations or Maintenance Expenses**

Under the authority of the Emergency Relief program to set the necessary terms and conditions of an award (49 USC 5324 (d)(1), FTA permits funds to be used for operations and maintenance expenses incurred after January 20, 2020, even if the original contract did not meet all Federal requirements. The procurement of any new contracts would need to follow all Federal requirements.

## **INDICATORS OF COMPLIANCE**

- a. For FTA-funded vehicle procurements, did the recipient include the required DBE TVM certifications in solicitations and receive and verify signed certifications as part of bid responsiveness?*

- b. *Did the recipient include required lobbying certifications in solicitations and receive signed certifications from contractors as part of bid responsiveness in procurements over \$100,000?*
- c. *Did the recipient include required Buy America provisions and certifications in solicitations and receive signed certifications from contractors as part of bid responsiveness in applicable procurements over \$150,000 that included iron, steel or manufactured products?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the recipient's policies and procedures. During the Assessment, examine procurement files for inclusion of the following required certifications and receipt of signed certifications from bidders at the time of submitting bids or proposals:

- DBE TVM certifications;
- Lobbying certifications; and
- Buy America certifications.

For transit vehicle purchases, determine if, prior to award, the recipient documented that it verified TVM certifications received by either consulting FTA's Office of Civil Rights TVM website or contacting the Office of Civil Rights directly. If the bidder is not listed on the website, confirm that recipient contacted FTA's Office of Civil Rights to verify bidder's or proposer's eligibility to bid at the time the bid or proposal was submitted.

Examine procurement files for inclusion of required Lobbying certifications in solicitations and receipt of signed certifications from bidders in agreements, contracts, and subcontracts exceeding \$100,000. Examine procurement files for inclusion of required Buy America certifications in solicitations and receipt of signed certifications from bidders for all purchases of steel, iron, and manufactured products greater than \$150,000 inclusive of labor and options.

If a bidder or offeror did not certify compliance with Buy America requirements, document if the recipient received a waiver of the Buy America statute before it awarded the contract to the bidder or offeror.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not include, where applicable, a provision in its bid specifications requiring TVM certifications, or if the files do not contain TVM certifications from successful bidders. The TTP recipient needs technical assistance if it cannot provide evidence that it ensured that the manufacturer was an eligible TVM at the time it submitted its bid or proposal.

**TECHNICAL ASSISTANCE CODE TTP P12-1: TVM certification**

**SUGGESTED TECHNICAL ASSISTANCE:** Assist the recipient with developing procedures for obtaining signed TVM certifications and for ensuring that manufacturers are eligible TVMs at the time of bid or proposal submission. Assist TTP recipient with use of an TVM certification template for future transit vehicle procurements.

The TTP recipient needs technical assistance if it has not included the lobbying certification in its procurement solicitations that exceed \$100,000 or if it has not obtained the proper certifications from contractors awarded contracts that exceed \$100,000.

**TECHNICAL ASSISTANCE CODE TTP P12-2: Lobbying certifications in procurement solicitations or signed by bidders**

**SUGGESTED TECHNICAL ASSISTANCE:** Assist the TTP recipient with developing procedures for obtaining signed lobbying certifications.

The TTP recipient requires technical assistance if it did not include applicable Buy America provisions in its solicitation documents.

**TECHNICAL ASSISTANCE CODE P12-3: Buy America provisions in solicitation and/or contract**

**SUGGESTED TECHNICAL ASSISTANCE:** Assist the TTP recipient with developing procurement procedures that require the recipient to include Buy America provisions in

solicitation documents and to obtain signed certifications from vendors when procuring steel, iron, or manufactured products not subject to a waiver.

## GOVERNING DIRECTIVE

### 49 CFR 26.49 (a)

If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section.

### Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards. (I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

### 49 CFR 661.6

Certification requirements for procurement of steel or manufactured products. If steel, iron, or manufactured products (as defined in §§661.3 and 661.5 of this part) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder or offeror in accordance with the requirement contained in §661.13(b) of this part.

### 49 CFR 661.12

Certification requirement for procurement of buses, other rolling stock and associated equipment. If buses or other rolling stock (including train control, communication, and traction power equipment) are being procured, the appropriate certificate as set forth below shall be completed and submitted by each bidder in accordance with the requirement contained in §661.13(b) of this part.

### FTA Circular 9030.1E Chapter V 11.

- a. The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with 49 CFR Part 26.

---

---

**TTP P12. If the recipient purchased FTA-funded assets through an assignment of options (a/k/a “piggyback”), did the underlying contract comply with applicable federal requirements regarding excessive options, inclusion of Federal requirements, assignability, and price, and no cardinal changes?**

#### **BASIC REQUIREMENT**

TTP recipients may use another recipient's contract rights if the original contract was procured in compliance with Federal requirements, contained required Federal provisions, included an assignability provision, does not contain excessive options, the optioned vehicles do not include cardinal changes to the original vehicles, and the contract price is fair and reasonable.

#### **APPLICABILITY**

All TTP recipients

## **EXPLANATION FOR TTP RECIPIENT**

For reasons of economy, FTA permits the assignment of unneeded contract rights or options. This practice is sometimes called “piggybacking.” FTA discourages the assignment of another recipient’s contract rights as a substitute for a stand-alone procurement. Assignments are intended to be used only when a recipient has inadvertently acquired contract rights in excess of its needs due to changed circumstances or honest mistakes.

Intentionally procuring excessive quantities using Federal money is a violation of Federal regulations. Furthermore, to the extent that an improper assignment of contract rights enables an assignee to avoid otherwise required procurement procedures, it also undermines the requirement for full and open competition in federally assisted procurements.

While it has become increasingly popular for recipients to acquire vehicles through this method of procurement, piggybacking can also occur for purchases of services and property. A recipient that obtains contractual rights through assignment may use them after first determining that the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

FTA expects the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient’s contract. Otherwise, the purchase is a “tag-on” and is considered an improper sole source procurement.

Any changes in the vehicle when assigned must be within the original scope (i.e., no major changes in configuration or design). FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar items to be permissible changes.

For purposes of Buy America, the domestic content of the option vehicles is determined based on the delivery date of the first production option vehicle. If the assignment results in a higher domestic content than applicable to the original contract, the options may not be assigned to another recipient. A manufacturer may not agree to amend the contract to provide for a higher domestic content in order to permit a recipient to piggyback on an existing contract. Such an amendment is considered a cardinal change to the original contract.

Vehicles added to the base or option amounts originally specified are called “tag-ons.” Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

If a recipient is using another recipient’s procurement contract for purchasing revenue vehicles (i.e., “piggybacking”), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the recipient must review the audit and prepare its own signed certifications.

## **INDICATORS OF COMPLIANCE**

- (a) *For “piggyback” procurements, did the recipient ensure that the underlying contract was solicited and awarded in accordance with Federal and FTA requirements?*

- (b) For “piggyback” procurements, did the recipient ensure that the original contract contained an assignability clause and that the quantities it used were available?
- (c) For “piggyback” procurements, did the recipient document that the price of assignments acquired was fair and reasonable?
- (d) For “piggyback” procurements, did the recipient make cardinal changes to the vehicle ordered under the option (e.g., ordered a different size vehicle, fuel option, etc.)?
- (e) Did the recipient exercise an assigned option for delivery of vehicles on a contract that was entered into before December 4, 2015? If yes:
  1. If the assigned option is exercised for delivery of vehicles in FY2018 or FY2019, did the original contract include a provision for domestic content of more than 65 percent?
  2. If the assigned option is exercised for delivery of vehicles in FY2020 and beyond, did the original contract include a provision for domestic content of more than 70 percent?

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Prior to the site visit, review the TTP recipient’s policies and procedures to determine how the recipient describes compliance with “piggyback” purchases. Review the recipient’s listing of procurements to identify any piggyback procurements

During the site visit, review selected “piggyback” procurement files to:

- Ensure that the recipient files include sufficient documentation that the underlying contract was solicited and awarded in compliance with Federal and FTA requirements and included required contract provisions.
- Determine if the recipient verified that:
  - the original contract contained an assignability provision, and
  - the quantities acquired, coupled with the quantities already assigned, did not exceed the amounts available under the assigning recipient’s contract
- Ensure that the recipient files include sufficient documentation that the original contract price remained fair and reasonable.
- Ensure that the recipient files include sufficient documentation that the vehicle ordered under the option is substantially the same as the original vehicle in the contract.
- Identify any piggyback procurements entered into after December 4, 2015. Onsite, review the date of the underlying contract on which the recipient is piggybacking and confirm that the exercised option conforms with FTA’s September 1, 2016 policy guidance on the implementation of the phased increase in domestic content for rolling stock.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it cannot document that:

- the original award met Federal requirements,
- the contract contained an assignability clause, and that assigned quantities did not exceed contract allowable amounts,
- the price was determined to be fair and reasonable, and



- the option vehicle did not contain a cardinal change to the original vehicle.

TECHNICAL ASSISTANCE CODE TTP P 13-1: Piggyback purchase

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing procedures for “piggybacking” that comply with FTA requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The TTP recipient may be required by FTA to terminate the agreement for convenience if an improper piggyback procurement is in process.

## GOVERNING DIRECTIVES

### FTA Circular 4220.1F Chapter V (7)(2) Assignment of Contract Rights

...The recipient may assign those contract rights to other recipients if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Some refer to this process as “piggybacking...” “...A recipient that obtains contractual rights through assignment may use them after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

### FTA Circular 4220.1F Chapter V 7. a. (1) (b). Exercise of Options

A recipient may use contract options held by another recipient with the following limitations: The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous.

### FTA Circular 4220.1F Chapter V, Section 7. b. (2) (d)

In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle.

Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes.

### Notice of Policy on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances IV, 81 Federal Register 60278 (September 1, 2016)

The right to exercise an option does not create a contractual obligation until that contract is actually signed. Thus, assigning contract options to a third party will result in a new contract between that third party and the transit vehicle manufacturer, negating commenters' concerns that an increase in domestic content might be viewed as a “cardinal change.” Third parties seeking the assignment of procurement options (a/k/a “piggybacking”) have no contractual or statutory right to that option, and FTA considers that procurement to be a “new” contract and therefore subject to the applicable FAST

Act standard based upon the scheduled delivery date of the first production vehicle under the new contract.

---

---

## **REFERENCES**

### **Procurement**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Part 1201, incorporating 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
4. FTA Circular 4220.1F, "Third Party Contracting Guidance"
5. FTA Circular 5010.1E, "Award Management Requirements"
6. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Grant Application Instructions"
7. FTA Master Agreement

### **Buy America**

1. 49 U.S.C 5323(j)
2. 49 CFR Part 661, "Buy America Requirements"
3. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"
4. FTA September 16, 2016, Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver

### **Federal Motor Vehicle Safety Standards**

1. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"

### **Bus Testing**

1. 49 CFR Part 665, "Bus Testing"

### **Suspension/Debarment**

1. 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"
2. 2 CFR Part 180, "Non-procurement Suspension and Debarment"

### **Lobbying**

1. 49 CFR Part 20, "New Restrictions on Lobbying"

### **USEFUL WEBLINKS**

1. FTA Procurement Frequently Asked Questions
2. FTA Buy America Website
3. Bus Testing Website

4. National RTAP ProcurementPRO
5. System for Award Management

### **RESOURCE SUPPLEMENT**

Matrix of FTA Clauses

FTA Model Clauses

FTA Self-Assessment Tool

FTA Best Practices Manual

NRTAP: **ProcurementPro 2.0**

NRTAP: **ProcurementPro 2.0 Demo Webinar**

NRTAP: **101 Webinar Series: Procurement for Contracted Services**

NRTAP: **How to Buy a Vehicle: A Primer for Rural, Tribal and Small Urban Transit Operators**

NRTAP: **Standard Bus Procurement Guidelines**

NRTAP: **The Process of Transit Procurement**

## **9. AMERICANS WITH DISABILITIES ACT (ADA)**

### **PURPOSE OF THIS ASSESSMENT AREA**

Titles II and III of the Americans with Disabilities Act of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

### **QUESTIONS TO BE DISCUSSED**

1. Have there been any complaints or lawsuits filed alleging discrimination due to disability against the public transit system? Does the TTP recipient track, resolve and respond to ADA-related complaints, and publicize the complaint process?
2. Are all vehicles operated in fixed-route service accessible for persons with disabilities?
3. If vehicles were recently purchased for demand-response service, other than for ADA complementary paratransit service, were the equivalent service requirements met?
4. Are facilities for providing public transportation that were constructed readily accessible to and usable by individuals with disabilities?
5. Does the TTP recipient follow provision of service requirements?
6. If general route-deviation service is provided, is it open to the general public?
7. If the TTP recipient is a public operator of a fixed-route service, does it provide ADA complementary paratransit?
8. Does the recipient's paratransit eligibility determination process meet ADA complementary paratransit service requirements?
9. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?
10. Does the recipient's paratransit service meet the ADA complementary paratransit service requirements?
11. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?

### **INFORMATION NEEDED FROM RECIPIENT**

#### **Recipient Information Request**

- ADA complaint procedures, if written
- ADA complaint form
- Driver handbooks/operating and training manuals/ADA-related service bulletins
- Sample vehicle specifications/information on annunciators

- Rider’s guide, including paratransit rider’s guide
- List of facilities used to support transit services
- Paratransit application form
- Sample notification letter templates for conditional eligibility, temporary eligibility, and denials
- Definitions for denials, missed trips, on-time performance, and excessively long trips, along with the related data for the past year, if available
- Service denials for the past three years by year
- No-show policy

---



---

**TTP ADA-1. Have there been any complaints or lawsuits filed alleging discrimination due to disability against the public transit system? Does the TTP recipient track, resolve and respond to ADA-related complaints, and publicize the complaint process?**

**BASIC REQUIREMENT**

TTP recipients must track, resolve, and respond to ADA-related complaints.

**APPLICABILITY**

All TTP recipients

**EXPLANATION FOR TTP RECIPIENT**

TTP recipients are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide prompt and equitable resolution. TTP recipients must advertise the process for filing an ADA-related complaint through means such as websites and communicate a response promptly to any individual filing a complaint. The TTP recipient is not required to respond to all complaints in writing, but rather must ensure the response can be documented internally.

TTP recipients must retain copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years. If the recipient does not operate the service directly or is a pass-through entity, it must ensure that those entities operating service directly have a procedure for addressing ADA complaints.

A TTP recipient can use the same process for accepting and investigating ADA and other service-related complaints; however, ADA complaints must be categorized distinctly in internal and external communications. An agency may elect to have one “Complaint Form,” for example, that covers both general and ADA-related complaints.

**INDICATORS OF COMPLIANCE**

- Is there a process for addressing ADA complaints?*
- How does the recipient identify ADA complaints?*

- c. *Is the process for filing a complaint advertised to the public, such as on the recipient's website?*
- d. *Are the complaint procedures accessible to and usable by individuals with disabilities?*
- e. *Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?*
- f. *Does the recipient retain ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

Prior to the Assessment, review the TTP recipient's website to determine if the complaint process is posted. Request and review the ADA complaint policy and procedures and copies of public information that provide information on filing ADA complaints, such as notices to the public, rider guides, and ADA or other complaint procedures.

Evaluate whether an individual, after viewing the publicly available materials, would know how to file a complaint. Review the ADA complaint procedures and determine if the procedures are available in accessible formats upon request.

If the recipient uses the general complaint process for ADA complaints, determine through review of procedures and onsite discussion how ADA-related complaints are identified. Ask the recipient to provide an example of how an ADA complaint was identified.

Determine if the complaint procedures specify time requirements for research and response and provide for promptly responding to any individual filing a complaint and documentation of the response.

Onsite, review a sample of complaint records to determine if research and response were timely, the response was documented, and if the reason for the response was provided to the individual filing a complaint. Review the ADA complaint procedures and record retention procedures for ADA complaints. Onsite, review ADA complaint files and logs to ensure that the recipient retains copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not provide information to the public on how to file an ADA complaint, the contact information for the designated employee or office coordinating complaints is not available; the information is not available in accessible formats when requested, or its procedures do not provide prompt response, documentation of the response, and the reason therefore to any individual filing a complaint.

TECHNICAL ASSISTANCE CODE ADA-GEN1-1: ADA complaint process

SUGGESTED TECHNICAL ASSISTANCE 1: Assist the TTP recipient in developing an ADA complaint process.

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient in developing a complaint form, using the sample provided in the ADA Circular.

SUGGESTED TECHNICAL ASSISTANCE 3: Assist the TTP recipient in identifying resources to develop the ADA complaint procedures in accessible formats for use by individuals with

disabilities.

SUGGESTED TECHNICAL ASSISTANCE 4: Assist the TTP recipient in modifying its ADA complaint procedures to require a prompt response to the individual filing the complaint.

SUGGESTED TECHNICAL ASSISTANCE 5: Assist the TTP recipient in modifying its ADA complaint procedures to ensure that the reason for the response is provided to the individual filing the complaint.

SUGGESTED TECHNICAL ASSISTANCE 6: Assist the TTP recipient in modifying its ADA complaint procedures to ensure that the TTP recipient retains documentation of the response to the individual filing the complaint, including the reason for the response.

The TTP recipient needs technical assistance if it does not maintain complaints for at least one year and a summary of all ADA-related complaints for at least five years.

TECHNICAL ASSISTANCE CODE TTP ADA1-2: ADA complaint record retention

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a procedure for retaining copies of ADA complaints for at least one year and summaries of ADA complaints for at least five years

## **GOVERNING DIRECTIVES**

### 49 CFR 27.121(b) Compliance information

- (b) *Compliance reports.* Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years.

### 49 CFR 37.17 Designation of responsible employee and adoption of complaint procedures

- (b) *Adoption of complaint procedures.* An entity shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 27, 38 and 39. The procedures shall meet the following requirements:
- (1) The process for filing a complaint...must be sufficiently advertised to the public, such as on the entity's Web site.
  - (2) The procedures must be accessible to and usable by individuals with disabilities.
  - (3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response.

---

---

**TTP ADA-2. Are all vehicles purchased with FTA funds for use in fixed-route service accessible for persons with disabilities?**

### **BASIC REQUIREMENT**

All new buses purchased or leased for use in fixed-route service by public entities must be accessible. Used bus purchased or leased for use in fixed-route service by public entities must be accessible, with a good faith efforts exception.

**APPLICABILITY**

TTP recipients who purchase or lease buses for use in fixed-route service

**EXPLANATION FOR TTP RECIPIENT**

All new buses purchased or leased by public entities operating fixed-route service must be accessible and must comply with the standards found in 49 CFR part 38 of the US DOT ADA regulations. TTP recipients must comply with the requirements, as must all contractors and subrecipients.

All used buses must be accessible. Inaccessible used buses may only be purchased or leased if, after making demonstrated good faith efforts to obtain an accessible vehicle, the entity is unable to do so. Good faith efforts are defined in 49 CFR 37.73(c) and 37.81(c) as including at least the following steps:

- An initial solicitation or documented communication for used vehicles specifying that all used vehicles are to be lift equipped or otherwise accessible to and usable by individuals with disabilities
- A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers
- Advertising in trade publications and contacting trade associations The entity must keep records documenting good faith efforts for three years.

**INDICATORS OF COMPLIANCE**

- a. *Do all new buses purchased or leased by public entities operating fixed- route service appear to comply with the standards found in 49 CFR part 38 of the US DOT ADA regulations?*
- b. *For used vehicles acquired or leased that do not meet accessibility standards under 49 CFR Part 38, did the recipient's good faith efforts meet the requirements of 49 CFR 37.73(c), 37.81(c), or 37.87(c)?*

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the list of procurements obtained under the Procurement area of the Assessment to determine whether new vehicles were acquired with FTA funds. Onsite, review procurement files to determine if accessible vehicles were specified. During the tour of the facility, check for inaccessible vehicles. Using the following checklists, visually inspect at least one new bus for the following ADA accessibility features:

<b>Bus Accessibility Checklist</b>	<b>Yes, No, or Not Applicable</b>
Lift, ramp, or level-change mechanism	-



<b>Bus Accessibility Checklist</b>	<b>Yes, No, or Not Applicable</b>
Lift platforms have handrails	-
Ramps have 2"-high edge barriers	-
Securement locations and devices:	-
At least two for vehicles >22' (one of which may be rear-facing w/padded barrier)	-
At least one for vehicles ≤22' (may face forward, or rearward with padded barrier)	-
Seat belt and shoulder harness for each securement location	-
Stop request controls within securement area	-
Public address system, if >22' and used in multiple-stop, fixed-route service	-

Review awards to determine whether new or used vehicles were acquired or leased. Onsite, discuss each instance in which an inaccessible used vehicle was acquired.. For any purchase or lease of an inaccessible vehicle, review the supporting documentation, including documentation of good- faith efforts to obtain an accessible vehicle. During the tour of the facility, check for inaccessible vehicles.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it purchased or leased inaccessible new vehicles for use by public entities in fixed-route service.

TECHNICAL ASSISTANCE CODE TTP ADA-2-1: New vehicle accessibility standards

SUGGESTED TECHNICAL ASSISTANCE 1: Advise the TTP recipient that it must take the newly acquired inaccessible vehicles out of fixed-route service. Before placing them back in fixed-route service, the recipient must submit to the RCRO documentation demonstrating that the vehicles have been made accessible.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise the TTP recipient to cancel the lease for inaccessible vehicles.

The recipient needs technical assistance if it purchased or leased inaccessible used vehicles for use by public entities in fixed-route service and cannot demonstrate that good faith efforts were made to obtain accessible vehicles.

TECHNICAL ASSISTANCE CODE TTP ADA-2-2: Used vehicle accessibility standards

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient to show that it has made good faith efforts consistent with 49 CFR 37.73(c), 37.81(c), or 37.87(c), or that it has ceased use of inaccessible used vehicles acquired since for fixed-route service. Before placing the vehicles back in service, the recipient must submit to the RCRO documentation that it has made the vehicles accessible.

## GOVERNING DIRECTIVES

### 49 CFR 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems

- (a) Each public entity operating a fixed route system making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

### 49 CFR 37.73 Purchase or lease of used non-rail vehicle by public entities operating fixed-route systems

- (c) Good faith efforts shall include at least the following steps:
  - (1) The initial solicitation for used vehicles made by the public entity specifying that all used vehicles were to be accessible to and usable by individuals with disabilities, or, if a solicitation is not used, a documented communication so stating;
  - (2) A nationwide search for accessible vehicles, involving specific inquiries to manufacturers and other transit providers; and
  - (3) Advertising in trade publications and contacting trade associations.

### 49 CFR 37.75 Remanufacture of non-rail vehicles and purchase or lease of remanufactured non-rail vehicles by public entities operating fixed route systems

- (a) This section applies to any public entity operating a fixed route system which takes one of the following actions:
  - (1) After August 25, 1990, remanufactures a bus or other vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing; or
  - (2) Purchases or leases a bus or other vehicle which has been remanufactured so as to extend its useful life for five years or more, where the purchase or lease occurs after August 25, 1990, and during the period in which the useful life of the vehicle is extended.
- (b) Vehicles acquired through the actions listed in paragraph (a) of this section shall, to the maximum extent feasible, be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (c) For purposes of this section, it shall be considered feasible to remanufacture a bus or other motor vehicle so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that including accessibility features required by this part would have a significant adverse effect on the structural integrity of the vehicle.
- (d) If a public entity operates a fixed route system, any segment of which is included on the National Register of Historic Places, and if making a vehicle of historic character used solely on such segment readily accessible to and usable by individuals with disabilities would significantly alter the historic character of such vehicle, the public entity has only to make (or purchase or lease a remanufactured vehicle with) those modifications to make the vehicle accessible which do not alter the historic character of such vehicle, in consultation with the National Register of Historic Places.

- (e) A public entity operating a fixed route system as described in paragraph (d) of this section may apply in writing to the FTA Administrator for a determination of the historic character of the vehicle. The FTA Administrator shall refer such requests to the National Register of Historic Places and shall rely on its advice in making determinations of the historic character of the vehicle.

---

---

### **TTP ADA-3. If vehicles were purchased for demand-response service, other than for ADA complementary paratransit service, were the requirements of 49 CFR part 37 met?**

#### **BASIC REQUIREMENT**

Vehicles used in demand-response service must be accessible unless equivalent service is provided.

#### **APPLICABILITY**

TTP recipients (or any entity) who provide demand-response service.

#### **EXPLANATION FOR TTP RECIPIENT**

Public entities operating demand-response service for the general public must purchase or lease accessible vehicles unless they can demonstrate that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. Demand-response service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. The service for the general public for people with and without disabilities must be provided in the most integrated setting feasible and must be equivalent with respect to response time, fares, geographic service area, hours and days of service, any restrictions or priorities based on trip purpose, availability of information and reservation capability, and any constraints on capacity or service availability. TTP recipients must ensure that contractors using non-accessible vehicles in contracted demand-response service provide equivalent service.

Vanpool systems operated by public entities or in which public entities own, purchase, or lease the vehicles are subject to equivalent service requirements. A vehicle that an individual with disabilities can use must be made available to and used by a vanpool in which such an individual chooses to participate.

If the TTP recipient has acquired any inaccessible vehicles, it must monitor its service to ensure that equivalent service exists; that is, there is an equal opportunity for each individual with a disability, including wheelchair users, to use the transportation service and that the service provided to individuals with disabilities, including wheelchair users, and those without disabilities meet the equivalent service characteristics described in 49 CFR 37.77(c). The recipient must document its analysis.

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

##### **Modification of Fixed-Route Service**

Recipients determine the type of service they offer. There are no ADA concerns with a proposal to move from a fixed-route to a demand-responsive service. However, under DOT ADA regulations at 49 CFR 37.77, all vehicles used in demand-responsive service must be accessible to and usable by

persons with disabilities, including wheelchair users, unless equivalent service can be demonstrated according to the specific criteria contained in 49 CFR 37.77(c). In addition, once the recipient completes its move to demand-responsive service, the obligation to provide ADA complementary paratransit service is no longer applicable. For more information on ADA requirements for demand-responsive service, see Chapter 7 of FTA Circular 4710.1.

## **INDICATORS OF COMPLIANCE**

- a. *If the recipient purchased non-accessible equipment for demand-response, can the recipient document that equivalent service is provided to persons with disabilities, including wheelchair users, in accordance with the criteria found in 49 CFR 37.77(c)?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the listing of vehicle procurements to determine whether new vehicles were acquired for demand responsive service in the past three years. Onsite, review procurement files to determine if accessible vehicles were specified. Obtain documentation showing that the recipient monitors its service to ensure that equivalent service is provided. Ask whether an accessible vehicle can be provided on the same basis as an inaccessible vehicle according to the equivalent service standards described in 49 CFR 37.77(c).

In addition to the normal assessment procedures, review the recipient's website or discuss with the FTA regional office to determine if the recipient transitioned from providing fixed-route to demand-responsive service in response to the COVID-19 public health emergency.

Review the recipient's vehicle listing and inquire if any of its vehicles are inaccessible. If any inaccessible vehicles are used in demand-responsive service, request evidence demonstrating that equivalent service according to the regulatory criteria is provided.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it purchased or leased new inaccessible vehicles for use in demand-response service and cannot document that equivalent service is provided to persons with disabilities, including wheelchair users.

TECHNICAL ASSISTANCE CODE TTP ADA-3-1: Demand-response vehicle accessibility standards

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a plan to bring the service into compliance with equivalent service requirements or submit procedures for monitoring the demand-response service to ensure that equivalent service is provided to persons with disabilities, including wheelchair users, according to the criteria described in 49 CFR 37.77(c).

## **GOVERNING DIRECTIVE**

*49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.*

- (a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it

provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

- (1) Response time;
- (2) Fares;
- (3) Geographic area of service;
- (4) Hours and days of service;
- (5) Restrictions or priorities based on trip purpose;
- (6) Availability of information and reservations capability; and
- (7) Any constraints on capacity or service availability.”

---

---

## **TTP ADA-4. Are facilities for providing public transportation readily accessible to and usable by individuals with disabilities?**

### **BASIC REQUIREMENT**

Newly constructed facilities must meet US DOT accessibility requirements.

### **APPLICABILITY**

All TTP recipients

### **EXPLANATION FOR TTP RECIPIENT**

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9, as required by 49 CFR 37.41. Under 49 CFR 37.41(b), full compliance with these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. “Structurally impracticable” is defined in 49 CFR 37.41(b)(1) as “those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features.”

If there are parties other than the recipient responsible for portions of the facility, the recipient must ensure that they also comply with the US DOT ADA requirements.

Note that there are differences between the standards required under US DOT ADA regulations and those issued by other Federal agencies; and state, county, and municipal building codes cannot be relied upon to ensure compliance with US DOT ADA requirements.

### **INDICATORS OF COMPLIANCE**

- a. Can the TTP recipient demonstrate that the newly constructed facilities meet*

*accessibility requirements? Otherwise, can the recipient demonstrate that meeting the accessibility requirements was structurally impracticable?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review awards to determine whether new facilities were constructed. Discuss the list with the regional office to determine if they are aware of any accessibility issues. Onsite, review procurement files to determine if procurements refer to US DOT ADA requirements. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation of structural impracticability, that is the unique characteristics of terrain prevent the incorporation of accessibility features. Tour newly constructed facility(ies) to determine if the building is generally accessible, that is, includes basic accessibility elements such as accessible parking, accessible routes, ramps, and elevators.

#### **POTENTIAL AREA IN NEED OF TECHNICAL ASSISTANCE**

The recipient needs technical assistance if it constructed a new facility for providing public transportation that did not meet US DOT accessibility requirements and cannot document structural impracticability.

TECHNICAL ASSISTANCE CODE TTP -4-1: New facility accessibility standards

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient in developing a schedule for making the necessary modifications to bring the facility into compliance. Follow-up with the TTP recipient in 2 months to check on progress and provide additional guidance, as needed.

SUGGESTED TECHNICAL ASSISTANCE 2: Assist the TTP recipient in developing documentation of structural impracticability, by providing an example or discussing the matter with the contractor who constructed the facility.

#### **GOVERNING DIRECTIVES**

##### 49 CFR 37.9 Standards for accessible transportation facilities

- (a) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in Appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by Appendix A to this part.

##### 49 CFR 37.41 Construction of transportation facilities by public entities

- (a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility or station is “new” if its construction begins (*i.e.*, issuance of notice to proceed) after January 25, 1992, or, in the case of intercity or commuter rail stations, after October 7, 1991.
  - (1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.
  - (2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent

that it is not structurally impracticable.

- (3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section.

---

---

## **TTP ADA-5. Does the TTP recipient follow ADA provision of service requirements?**

### **BASIC REQUIREMENT**

Service must comply with the US DOT ADA regulations regarding provision of service.

### **APPLICABILITY**

TTP recipients who provide service.

### **EXPLANATION FOR TTP RECIPIENT**

The US DOT ADA regulations (49 CFR 37.161-169) detail specific requirements for bus and rail service. The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should be able to demonstrate that it has policies and procedures in place to enable it to meet these requirements. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and explains how the entity enforces their implementation.

- (a) Stop announcements are required for fixed-route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, and any stop upon request.

The US DOT ADA regulations supersede any union agreement that prevents the entity from requiring operators to call stops. Where automated stop annunciators are used, the public or private entity must ensure that drivers announce stops.

- (b) When more than one route serves a stop, the public or private entity must provide an effective means by which an individual with a visual impairment or other disability waiting at a stop can identify the route on which he or she wants to travel. Where automated stop annunciators are used, the entity must ensure an alternative mechanism for an effective means of route identification at stops served by multiple vehicles and multiple routes when annunciators are out of service.
- (c) The entity must permit service animals to accompany individuals with disabilities in vehicles and facilities. Note that the regulations contain no provision for “paperwork,” identifying badges or vests, or for leashes, harnesses, or carriers. The entity may ask whether an animal is a service animal and what functions it performs as such. Note that the US DOT definition of a service

animal includes any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability; it is not limited to dogs as in the US Department of Justice definition, and excludes no breeds of dog or other animal. Emotional support animals or “comfort animals” are not service animals within the context of the US DOT ADA regulations. Entities may refuse to transport service animals that are deemed to pose a direct threat to the health or safety of drivers or other riders, create a seriously disruptive atmosphere, or are otherwise not under the rider’s control.

- (d) When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the public or private entity must ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and persons with disabilities (or other seat as necessary); and (ii) individuals (including other persons with disabilities) sitting in a fold-down or other movable seat in a wheelchair securement location. Drivers are not required to compel the person to move; however, the entity is permitted to adopt a policy requiring individuals to move in response to such requests. At least one set of forward-facing seats must be designated as priority seating.
- (e) Public and private entities are prohibited from setting weight or size limitations on wheelchairs it will transport that understate the weight capacity that the vehicle fleet can actually accommodate (e.g., a policy of not transporting wheelchair users whose combined weight is more than 600 pounds, when the design load of their vehicle lifts is 800 pounds). The term “common wheelchair” was deleted from 49 CFR Part 37 effective October 19, 2011, recognizing that some vehicles used in public transit can accommodate wheelchairs that do not meet the definition of “common wheelchair.” Wheelchairs that exceed the weight or dimensional requirements of a “common wheelchair” can be transported on and be used on such vehicles. In such cases, the recipient must change its operating policies so as not to limit service accessibility by the term “common wheelchair.”
- It may be helpful for a recipient to publicize the capacities of its vehicles, so that passengers using wheelchairs can determine whether their mobility devices will fit aboard the recipient’s vehicles. As long as this information does not understate the actual dimensions and design load of the vehicles in the recipient’s fleet, and as long as these vehicles meet the requirements of 49 CFR part 38, a recipient that does so is not deficient.
- Because the minimum standards for vehicle lifts and ramps have not changed, such a recipient may accurately report that its vehicles can accommodate wheelchairs measuring 30” x 48” and weighing up to 600 lbs. when occupied, if that represents its actual capacities. In those cases, a recipient may restrict service to wheelchairs within those dimensional and weight limitations.
- Note that the definition of “wheelchair” specifically includes mobility scooters, and contains no requirements for brakes, footrests, push handles, or other equipment. The entity may not condition the provision of service upon the presence of such ancillary equipment. The entity also may not condition the provision of service upon information from a wheelchair manufacturer concerning the “transportability” of a wheelchair; all wheelchairs must be accommodated. Policies requiring riders to transfer to a vehicle seat from their wheelchair are expressly prohibited.
- (f) Public and private entities must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.
- (g) Public and private entities may not deny service to individuals using respirators, concentrators, or portable oxygen.
- (h) Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use. Public and private entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.



- (i) Public entities are required under 49 CFR 37.5(i)(3) to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services. The process to be used in considering requests for reasonable modifications is described in 49 CFR 37.169.

There is no specific requirement for a separate process for reasonable modifications; existing local processes may suffice. Whether a recipient relies on existing processes or develops something specific to reasonable modifications, there are some basic process requirements that must be met:

- Information on the reasonable modification process must be readily available to the public, and must be accessible
- Advance notice can be required, but flexibility is also needed to handle requests that are only practicable on the spot
- Individuals requesting modifications are not required to use the term “reasonable modification”

It should be obvious to the reviewer from public information whether and how the recipient accepts requests for reasonable modifications in policies and practices; no separate “reasonable modification policy” is required. The key to ensuring compliance with these policies is ensuring that all employees are aware of them. For employees, this might be done through initial and refresher trainings.

Having policies is not sufficient; the recipient must also monitor compliance with the policies.

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

### **Rear-Door Boarding**

If a recipient has implemented a rear-door-only boarding policy on vehicles, and the lift/ramp is located in the front door of the vehicle, it must have procedures in place to board individuals with disabilities who require the use of the lift/ramp (not all of whom will be wheelchair users).

### **Wheelchair Securement**

The DOT ADA regulations do not explicitly require the use of the securement system; under 49 CFR 37.165(c)(3), an agency may determine for itself whether or not securement will be mandatory for its system. Recipients, therefore, are free to suspend any mandatory securement policy that they may have in place. However, if an agency suspends a mandatory securement policy, 49 CFR 37.165(f) still requires that the operator assist with the use of the securement system should an individual passenger make a request.

## **INDICATORS OF COMPLIANCE**

- a. Are stops announced on fixed-route vehicles? When automated stop annunciators are inoperative or malfunction, do drivers announce stops?*
- b. Has the recipient implemented a means of route identification at stops served by more than one route? When automated annunciators are inoperative or malfunction, does the recipient offer an alternative means of route identification?*
- c. Does the recipient permit service animals meeting the definition in 49 CFR 37.3 to accompany passengers with disabilities aboard all vehicles and in all facilities? Does the*

*recipient require “paperwork” or specific identification in order to accommodate service animals? Does the recipient impose any restrictions on the accommodation of service animals, including leashes, harnesses, or carriers? Does the recipient impose species or breed restrictions on service animals?*

- d. Does the recipient make priority seating available to individuals with disabilities? Is the required signage provided on all vehicles? Is at least one set of forward-facing seating designated as priority seating?*
- e. Does the recipient make securement location(s) available to wheelchair users? Is the required signage provided on all vehicles? Does the recipient request that all persons occupying movable seating in securement locations, including other persons with disabilities, vacate the seating in order to accommodate wheelchair users?*
- f. Does the recipient understate the size and weight of wheelchairs that it will transport?*
- g. Does the recipient deploy the lift or ramp at any stop upon request?*
- h. Does the recipient provide service to persons using respirators, concentrators, and portable oxygen?*
- i. Does the recipient provide information in accessible formats upon request?*
- j. Does the recipient make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices? Does it provide a means, accessible to and usable by individuals with disabilities, to request a modification to the recipient’s policies and practices?*
- k. Does the recipient’s training program address how to operate vehicles and equipment safely, and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*
- l. Does the recipient monitor employees for compliance with the service provisions?*

#### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

- a. Did the recipient implement a rear-door-only boarding policy in response to the COVID-19 public health emergency? If yes, is the lift/ramp deployed from the front door? If yes,*
  - o Were persons with disabilities who require the use of the front-door lift or ramp accommodated aboard the vehicle?*
  - o How was the disability community notified of the changes?*
  - o Were there any changes made to securement locations or priority seating?*
  - o Has the recipient received complaints about its rear-door-only boarding policy?*
  - o Has the recipient ended its rear-door-only boarding policy? If so, when?*
- b. Did the recipient suspend a mandatory securement policy due to the COVID-19 Public Health Emergency? If yes,*

- *What is the recipient's policy for assisting passengers who request assistance with the use of the securement system during a time of social distancing?*
- *How has the recipient communicated its policy to operators?*
- *Has the recipient received complaints about operator's refusal to assist with the securement system?*

### **INSTRUCTIONS FOR TTP ASSESSMENT**

Prior to the Assessment, review the TTP recipient's website for public information on accessibility. Review the website and other public information for directions on how to request information in accessible formats. Review driver handbooks, operating and training manuals, and internal bulletins for information or procedures pertinent to the ADA service provisions. Review vehicle specifications and information on annunciators for how stops are announced and connecting routes identified. Review information on lift/ramp specifications for the fleet. Review ADA complaints addressing service provisions.

During the Assessment discuss ADA service provision implementation.

1. If automated stop annunciators are used, discuss with trainers and transportation managers whether stops are announced and connecting routes identified when stop annunciators are inoperative or malfunction. Check if inoperative announcement systems are addressed during pre-trip inspections.
2. Ask managers and trainers how they accommodate service animals, whether there are requirements for identification or restrictions on species or breed, and whether they require leashes, harnesses, or carriers.
3. Ask managers and trainers how they accommodate needs for priority seating, including for forward-facing seats. Look for priority seating signs on vehicles during the facility tour. If buses have forward-facing seats in the low-floor area of buses, ensure that at least one set of forward-facing seats must be designated as priority seating. Note that the regulation requires a recipient to ask but does not require the recipient to force an individual to move. A recipient may have a mandatory-move policy in place, but this is not required.
4. Ask managers and trainers how they accommodate wheelchair users requiring the use of the securement area(s). Look for signage designating the securement area as such. Note that the regulation requires a recipient to ask all persons occupying movable seating in securement areas, including other persons with disabilities, to move in order to accommodate wheelchair users, but does not require the recipient to force an individual to move. A recipient may have a mandatory-move policy in place, but this is not required.
5. Ask trainers and managers how they handle "difficult to secure" wheelchairs (note specifically that the term "wheelchair" expressly includes mobility scooters), whether they require any passengers to transfer to a vehicle seat under any circumstances, and how potentially "oversize" mobility devices are handled.
6. Ask the recipient if there are any stops at which it does not deploy lifts or ramps and the reasons why.
7. If not addressed in written material, ask whether or not the recipient provides service to persons using respirators, concentrators, and portable oxygen.
8. Discuss any request for information in accessible formats and how the recipient honored

the request. Note that the requirement is to provide material in a format the customer can use; which format (Braille, audio, large-type, etc.) is not specified. Also, be aware that provision of non- English information is separate from provision of accessible-format materials.

9. Review information on requests for reasonable modifications. During the site visit, request the policy for and discuss implementation of the reasonable modification process.
10. Discuss the recipient's training programs for assistance to riders with disabilities and disability sensitivity. Sample the training records for three recently hired drivers to document that the training is provided.
11. Review oversight documentation, including surveys, checklists, and interview forms for monitoring conducted of compliance with service provisions. Review employee disciplinary policies for how the recipient enforces compliance with the service provisions. Review procedures to determine how ADA-related complaints against an employee are researched and addressed.

### **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

In addition to the normal assessment procedures, review the recipient's website and discuss with the recipient and regional office to determine if it suspended front-door boarding. Review the recipient's website and discuss with the recipient and regional office to determine if it suspended its mandatory securement policy. Discuss with the recipient how it made accommodation for passengers requesting assistance. Discuss how the recipient communicated to and trained its operators on its policies to ensure continued compliance with ADA requirements. Inquire of the recipient if it received complaints. During the Assessment discussions, discuss if/how the recipient has suspended, deviated from, or significantly updated or altered the implementation of its procedures during the COVID-19 public health emergency relating to availability of alternative accessible formats, requests for reasonable accommodations, and accommodating individuals who rely on accessible equipment when that equipment is inoperative.

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient needs technical assistance if it does not ensure that stops are announced on fixed-route service, or that a means of route identification on fixed-route stops served by more than one route is provided.

TECHNICAL ASSISTANCE CODE TTP ADA-5-1: Stop announcement/vehicle ID mechanisms

SUGGESTED TECHNICAL ASSISTANCE<sup>1</sup>: Assist the TTP recipient in developing procedures to announce stops on fixed-route service.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise the TTP recipient that it must implement procedures to identify routes at fixed-route stops served by more than one route and that it will monitor implementation of these procedures.

The TTP recipient needs technical assistance if it imposes conditions upon the accommodation of service animals including identification, leashes, harnesses, muzzles, or carriers. The recipient needs technical assistance if it limits service animals to dogs or includes breed-specific provisions.

TECHNICAL ASSISTANCE CODE TTP ADA-5-2: Service animal restrictions

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient must in developing procedures for accommodating service animals that remove the provisions discussed in this report.

The TTP recipient needs technical assistance if it does not make priority seating available to individuals with disabilities. The TTP recipient needs technical assistance if it does not designate at least one set of forward-facing seats as priority seating. The TTP recipient needs technical assistance if it does not ask all persons occupying flip-up seats in the securement area, including other passengers with disabilities, to make the securement area available for wheelchair users.

TECHNICAL ASSISTANCE CODE TTP ADA-5-3: Priority seating

SUGGESTED TECHNICAL ASSISTANCE1: Assist the TTP recipient in developing procedures to make priority seating available to individuals with disabilities.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise the TTP recipient that it must ensure that all vehicles have at least one set of forward-facing seats identified as priority seating in all of its vehicles.

SUGGESTED TECHNICAL ASSISTANCE 3: Advise the TTP recipient that it must make securement areas with flip-up seating available to wheelchair users, including asking other passengers with disabilities to vacate such seats.

The recipient needs technical assistance if it sets weight or size limitations on wheelchairs meeting the definition contained in 49 CFR 37.3 that understate fleet capacity.

TECHNICAL ASSISTANCE CODE TTP ADA-5-4: Weight/size limitations on wheelchairs

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must transport wheelchairs that do not exceed the vehicle or equipment capacity.

The recipient needs technical assistance if it places conditions upon the transport of wheelchairs meeting the definition contained in 49 CFR §37.3.

TECHNICAL ASSISTANCE CODE TTP ADA-5-5: Conditions required for transportation of wheelchairs

SUGGESTED TECHNICAL ASSISTANCE1: Advise the TTP recipient that it must remove conditions requiring wheelchairs to be equipped with ancillary equipment such as footrests, push handles, brakes, or other equipment.

SUGGESTED TECHNICAL ASSISTANCE2: Advise the TTP recipient that it must remove any conditions requiring wheelchairs to be certified as “transportable.”

SUGGESTED TECHNICAL ASSISTANCE3: Advise the TTP recipient that it must remove subjective conditions from its policies for transporting wheelchair users.

SUGGESTED TECHNICAL ASSISTANCE4: Advise the TTP recipient that it may no longer require wheelchair users to transfer to a vehicle seat.

The recipient needs technical assistance if it does not deploy lifts and ramps for riders who request this, at any stop on any route.

TECHNICAL ASSISTANCE CODE TTP ADA-5-6: Lift/ramp deployment

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must implement procedures to deploy lifts and ramps at any stop on any route (when requested).

The recipient needs technical assistance if it does not provide service to persons using respirators, concentrators, and portable oxygen.

TECHNICAL ASSISTANCE CODE TTP ADA-5-7: Portable oxygen and respirators restrictions

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must provide service to passengers using respirators, concentrators, and portable oxygen and evidence that it monitors implementation of these procedures.

The recipient needs technical assistance if it does not provide information in alternative formats upon request.

TECHNICAL ASSISTANCE CODE TTP ADA-5-8: Alternative accessible formats

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must process requests for public information in alternative formats.

The recipient needs technical assistance if it does not make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices or if the information is not accessible to and usable by individuals with disabilities.

TECHNICAL ASSISTANCE CODE TTP ADA-5-9: Reasonable modification lacking

SUGGESTED TECHNICAL ASSISTANCE1: Advise the TTP recipient that it must make information about how to make requests for reasonable modifications readily available to the public.

SUGGESTED TECHNICAL ASSISTANCE2: Advise the TTP recipient that it must provide a means, accessible to and usable by individuals with disabilities, to request a modification.

The recipient needs technical assistance if it does not train personnel to operate vehicles and equipment safely, and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity.

TECHNICAL ASSISTANCE CODE TTP ADA-5-10: ADA training

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must implement a training program to ensure that personnel are trained to proficiency, as appropriate for their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities and evidence of its implementation. Provide guidance to available resources for training, such as those found on the National Rural Technical Assistance Program (RTAP) or Community Transportation Association of America (CTAA) websites.

The recipient needs technical assistance if it does not monitor its operations for compliance with the service provisions.

TECHNICAL ASSISTANCE CODE TTP ADA-5-11: Monitoring of operations for ADA service provisions

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must monitor its operations to assure compliance with ADA service provisions.

## **GOVERNING DIRECTIVES**

### 49 CFR 37.3 Definitions

*Service animal* means any guide dog, signal dog, or other animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

*Wheelchair* means a mobility aid belonging to any class of three- or more-wheeled devices, usable indoors, designed or modified for and used by individuals with mobility impairments, whether operated manually or powered.

### 49 CFR 37.5 Nondiscrimination

(i)(3) *Public entity-public transport.* Public entities that provide designated public transportation shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services, subject to the limitations of §37.169(c)(1)-(3). This requirement applies to the means public entities use to meet their obligations under all provisions of this part.

### 49 CFR 37.165 Lift and securement use

- (a) This section applies to public and private entities.
- (b) Except as provided in this section, individuals using wheelchairs shall be transported in the entity's vehicles or other conveyances.
  - (1) With respect to wheelchair/occupant combinations that are larger or heavier than those to which the design standards for vehicles and equipment of 49 CFR part 38 refer, the entity must carry the wheelchair and occupant if the lift and vehicle can accommodate the wheelchair and occupant. The entity may decline to carry a wheelchair/occupant if the combined weight exceeds that of the lift specifications or if carriage of the wheelchair is demonstrated to be inconsistent with legitimate safety requirements.

### 49 CFR 37.167 Other service requirements

- (a) This section applies to public and private entities.
- (b) On fixed route systems, the entity shall announce stops as follows:
  - (1) The entity shall announce at least at transfer points with other fixed routes, other major intersections and destination points, and intervals along a route sufficient to permit individuals with visual impairments or other disabilities to be oriented to their location.
  - (2) The entity shall announce any stop on request of an individual with a disability.
- (c) Where vehicles or other conveyances for more than one route serve the same stop, the entity shall provide a means by which an individual with a visual impairment or other disability can identify the proper vehicle to enter or be identified to the vehicle operator as a person seeking a ride on a particular route.
- (d) The entity shall permit service animals to accompany individuals with disabilities in vehicles

and facilities...

- (f) The entity shall make available to individuals with disabilities adequate information concerning transportation services. This obligation includes making adequate communications capacity available, through accessible formats and technology, to enable users to obtain information and schedule service.
- (g) The entity shall not refuse to permit a passenger who uses a lift to disembark from a vehicle at any designated stop, unless the lift cannot be deployed, the lift will be damaged if it is deployed, or temporary conditions at the stop, not under the control of the entity, preclude the safe use of the stop by all passengers.
- (h) The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply, consistent with applicable Department of Transportation rules on the transportation of hazardous materials (49 CFR subtitle B, chapter 1, subchapter C).
- (j) (1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:
  - (i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);
  - (ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.
- (2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.
- (3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.
- (4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability.

This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

49 CFR 37.169 Process to be used by public entities providing designated public transportation service in considering requests for reasonable modification.

(a)(2) The public entity shall make information about how to contact the public entity to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices.

49 CFR 37.173 Training requirements

Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a



respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.

49 CFR 38.27 Priority seating signs

- (a) Each vehicle shall contain sign(s) which indicate that seats in the front of the vehicle are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them. At least one set of forward-facing seats shall be so designated.
- (b) Each securement location shall have a sign designating it as such.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR5

Transit systems should have procedures in place such as rear-door entry to ensure that social distancing is being observed by the system and transit riders to protect transit operators and the public. See FTA Safety Advisory 20-01. Some exceptions to rear-door-only boarding policies, however, are necessary for ADA compliance. Under DOT ADA regulations at 49 CFR 37.5(a), no entity may discriminate against an individual with a disability in connection with the provision of transportation service; per 49 CFR 37.165(b), individuals using wheelchairs must be transported in the agency's vehicles.

Wheelchair users are not the only persons with disabilities who may require the use of the front door of the vehicle. Per 49 CFR 37.165(g), ambulatory persons with disabilities also must be permitted to use the lift or ramp on request, and persons who are blind, for example, may require the use of the route identification mechanism required under 49 CFR 37.167(c) to identify the correct bus to board. Not all waiting passengers with disabilities who need to enter at the front will have a visible disability or be using mobility aids such as canes or walkers; per the regulation, the agency must accommodate such individuals at the front door as well.

When implementing a rear-door-only boarding policy, a transit agency should take steps to minimize confusion for riders and personnel. This effort could include conducting outreach to the disability community through local media channels and social media, informing riders of the policy and what to do if they require the use of the ramp or lift, and development of procedures and instructions for personnel.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR6

The DOT ADA regulations do not explicitly require the use of the securement system; under 49 CFR 37.165(c)(3), an agency may determine for itself whether or not securement will be mandatory for its system. Agencies, therefore, are free to suspend any mandatory securement policy that they may have in place. However, even if an agency suspends a mandatory securement policy, 49 CFR 37.165(f) still requires that the operator assist with the use of the securement system should an individual passenger make a request.

---

---

**TTP ADA-6. If general route-deviation service is provided, is it open to the**

**BASIC REQUIREMENT**

Route-deviation service must be open to the general public, advertised as such, and accessible to and usable by persons with disabilities.

## **APPLICABILITY**

TTP Recipients providing route-deviation service to the general public

## **EXPLANATION FOR TTP RECIPIENT**

The US DOT ADA regulations regard a system that permits user-initiated deviations from routes or schedules as demand response, for which ADA complementary paratransit is not required. One key factor to consider in determining whether a transit system is fixed route or demand response is if an individual must request the service in some way, typically by making a phone call in advance. With fixed- route service, no action is needed to access the service--if a person is at the bus stop at the time the bus is scheduled to appear, then the person can use that service. In contrast, with demand- response service, the individual typically must make a phone call in order to ride the bus. A system that permits user-initiated deviations from routes generally fits the definition of demand-response service.

Note that the fact that there may be an interaction between a passenger and transportation service does not necessarily make otherwise fixed-route service demand responsive. Some services may use flag stops, in which a vehicle along the route does not stop unless a passenger flags the vehicle down. This kind of interaction does not make an otherwise fixed-route service demand responsive.

To be considered demand response, the service must deviate for the general public, not just persons with disabilities. If deviations are restricted to a particular group, the service ceases to be a form of demand- response service for the general public. Systems must provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for people without disabilities as specified in 49 CFR 37.77.

In limited circumstances, a recipient may be able to provide both ADA complementary paratransit service and fixed-route service using the same vehicle. In these situations, the fixed-route bus would go off route (or “deviate”) only for people with disabilities who have been determined to be ADA paratransit eligible. In this scenario, service to such persons must be provided according to the same requirements in subpart F of 49 CFR part 37 for complementary paratransit (e.g., service area, response time, fares, hours and days of service, absence of capacity constraints and absence of trip purpose restrictions).

## **INDICATORS OF COMPLIANCE**

*(a) Is the service promoted as open to the general public? Is the public provided information on how to request a deviation?*

*(b) If non-accessible vehicles are used to provide the service, is equivalent service provided to individuals who require an accessible vehicle?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

During the Assessment, review the TTP recipient’s website for how the recipient promotes its service to the public. Review schedules, timetables, system and route maps, rider guide, and other public information to ensure that deviation service is promoted to the general public and information is provided on how to request a deviation. Review internal information, such as customer service staff instructions, dispatch procedures, and driver instructions (handbook, bulletins) to ensure that staff is instructed to deviate for the general public.

Review the accessibility of the fleet used to provide route-deviation service. If the fleet includes vehicles that are not accessible, when onsite obtain information, such as denial policies and records or dispatch procedures, showing that equivalent service is provided.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it does not provide or promote route-deviation service to the general public.

TECHNICAL ASSISTANCE CODE TTP ADA 6-1: Route-deviation service provided/promoted to the general public

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must implement public information and dispatching procedures, documenting that the service deviates for the general public or it must submit implemented ADA complementary paratransit service.

The TTP recipient needs technical assistance if it operates non-accessible equipment in route-deviation service and cannot document that equivalent service is provided.

TECHNICAL ASSISTANCE CODE TTP ADA 6-2: Equivalent route-deviation service provided

SUGGESTED TECHNICAL ASSISTANCE 1: Advise the TTP recipient that it must provide equivalent service.

SUGGESTED TECHNICAL ASSISTANCE 2: Follow-up in 1 month to ask about status of efforts to provide equivalent service, if needed.

### **GOVERNING DIRECTIVES**

#### **49 CFR 37.121 Requirement for comparable complementary paratransit service**

- (a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.
- (b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§37.123-37.133 of this subpart.

#### **49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public**

- (a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.
- (b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.
- (c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:
  - (1) Response time;
  - (2) Fares;
  - (3) Geographic area of service;

- (4) Hours and days of service;
- (5) Restrictions or priorities based on trip purpose;
- (6) Availability of information and reservations capability; and
- (7) Any constraints on capacity or service availability.

---

---

## **TTP ADA-7. If the TTP recipient is a public operator of a fixed-route service, does it provide ADA complementary paratransit?**

### **BASIC REQUIREMENT**

Public operators of a fixed route system must provide paratransit as a complement to the fixed route system

### **APPLICABILITY**

All public operators of a fixed route system (other than commuter bus)

### **EXPLANATION FOR TTP RECIPIENT**

Each public operator of a fixed route system is required to provide complementary paratransit. The requirement to provide complementary paratransit service does not apply to intercity bus, commuter bus, or university service.

Commuter bus service is fixed-route bus service characterized by service predominately in one direction during peak periods, with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, no attempt to comprehensively cover a service area, limited purposes of travel, or a coordinated relationship to another mode of transportation.

49 CFR 37.25 specifies that “university transportation systems” are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating “university service.” In order for routes operated by a transit provider to be covered by this provision, an institution of higher education would be required to have a formal arrangement with the transit operator.

### **INDICATORS OF COMPLIANCE**

- (a) *If the recipient is a public operator of fixed-route service, other than solely commuter bus service, is complementary paratransit service provided? If not, skip this section.*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

During the Assessment, review the TTP recipient’s website to determine whether the recipient operates fixed- route service (other than commuter bus or commuter rail service). Any recipients who indicate that they only operate commuter bus service should be examined more closely to ensure that the service meets the definition of commuter bus found in 49 CFR §37.3 and discussed in Appendix D. Any recipient that operates only route-deviation service, which is regarded as demand-response service, should be examined more closely to determine whether the service provides for route deviation for all passengers on the same terms (see question ADA10).

### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it is a public operator of a fixed-route system (other than commuter bus) and does not provide paratransit as a complement to the fixed route system.

## TECHNICAL ASSISTANCE CODE TTP ADA-7-1: ADA complementary paratransit

**SUGGESTED TECHNICAL ASSISTANCE:** Provide technical assistance to the TTP recipient on the requirement to operate complementary paratransit. Review with the TTP recipient ADA training resources available on FTA's website, including presentation slides and recorded training presentations.

### **GOVERNING DIRECTIVES**

#### 49 CFR 37.3 Definitions

*Commuter bus service* means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

*Commuter rail transportation* means short-haul rail passenger service operating in metropolitan and suburban areas, whether within or across the geographical boundaries of a state, usually characterized by reduced fare, multiple ride, and commutation tickets and by morning and evening peak period operations. This term does not include light or rapid rail transportation.

#### 49 CFR 37.25 University transportation systems

- (a) Transportation services operated by private institutions of higher education are subject to the provisions of this part governing private entities not primarily engaged in the business of transporting people.
- (b) Transportation systems operated by public institutions of higher education are subject to the provisions of this part governing public entities. If a public institution of higher education operates a fixed route system, the requirements of this part governing commuter bus service apply to that system.

#### 49 CFR 37.121 Requirement for comparable complementary paratransit service

- (a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.
- (b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§37.123-37.133 of this subpart. The requirement to comply with §37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.
- (c) Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

#### 49 CFR Part 37 Appendix D Section 37.3 Definitions

The definition of "commuter bus service" is important because the ADA does not require complementary paratransit to be provided with respect to commuter bus service operated by public entities. The rationale that may be inferred for the statutory exemption for this kind of service concerns its typical characteristics (e.g., no attempt to comprehensively cover a service area, limited route structure, limited origins and destinations, interface with another mode of transportation, limited purposes of travel). These characteristics can be found in some transportation systems other than bus

systems oriented toward work trips. For example, bus service that is used as a dedicated connector to commuter or intercity rail service, certain airport shuttles, and university bus systems share many or all of these characteristics. As explained further in the discussion of subpart B, the Department has determined that it is appropriate to cover these services with the requirements applicable to commuter bus systems.

## **TTP ADA-CPT8. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?**

### **BASIC REQUIREMENT**

ADA complementary paratransit service must be provided to out-of-town visitors.

### **APPLICABILITY**

Public providers of fixed-route service (other than commuter rail or commuter bus service)

### **EXPLANATION FOR TTP RECIPIENT**

Paratransit service must be provided to visitors on the same basis as it is provided to local residents. “On the same basis” means under all the same conditions, service criteria, etc., without distinction. For the period of a visit, the visitor is treated exactly like an eligible local user, without any higher priority being given to either. Complementary paratransit service must be provided to visitors if:

1. The visitor can present documentation from his or her “home” jurisdiction's ADA complementary paratransit system that he or she is eligible. The local provider will give “full faith and credit” to the identification card or other documentation issued by the other entity.
2. The visitor can present, if the individual's disability is not apparent, proof of the disability (e.g., a letter from a doctor or rehabilitation professional) and, if required by the local provider, proof of visitor status (i.e., proof of residence somewhere else). Once the documentation is presented, the local provider will make service available on the basis of the individual's statement that he or she is unable to use the fixed-route transit system, that is, the local provider cannot require functional testing.

Determining whether a visitor is entitled to service should be a fairly simple and quick process enabling the visitor to contact the host agency to learn what is required to obtain service and then being able to easily meet the requirements. This also means that upon receipt of any required documentation described above, entities are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. The Federal Transit Administration (FTA) envisions this as a process that can often be completed the same day or no more than one day later.

The entity is required to provide service for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during that 365-day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.

### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient accept documentation of eligibility from the visitor issued to the visitor by the visitor's home jurisdiction?*
- b. *Does the recipient provide service to visitors whose disability is apparent or who provide documentation of disability?*
- c. *Does the recipient provide service to visitors for at least 21 days within a 365-day period?*

- d. *Does the recipient process visitors' service requests within the same day or not more than one day later?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

During the Assessment, review the recipient's website for information on ADA complementary paratransit service for visitors. Review information provided to the public that describes the ADA complementary paratransit services and the process for providing service to visitors to determine whether the recipient:

- Accepts documentation of eligibility provided by the visitor from the visitor's home jurisdiction
- Provides service to persons who provide documentation of disability
- Provides service to visitors who seek service in person and whose disability is apparent without requesting additional information beyond proof of residency
- Processes requests for service from visitors within the same day or not more than one day later

Discuss with the recipient how paratransit service is provided to visitors. Agencies are expected to accept this documentation directly from the individual and not require that the documentation be provided directly from the individual's home transit agency. The recipient may request documentation of residency.

Evaluate whether the recipient provides any combination of 21 days of service during a 365-day period beginning with the visitor's first use of the service, rather than a continuous 21-day period commencing from the first use. The recipient may require the visitor to apply for eligibility to receive additional service beyond the 21 days. Discuss with the recipient how many days of service is provided to visitors.

Discuss with the recipient how long it takes to process requests for service from visitors.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it does not accept documentation of eligibility issued by the visitor's home jurisdiction.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT8-1: Home jurisdiction eligibility documentation accepted directly from the visitor

SUGGESTED TECHNICAL ASSISTANCE: Provide technical assistance to the TTP recipient on requirements for accepting documentation of eligibility issued by the visitor's home jurisdiction from the visitor.

The recipient needs technical assistance if it does not provide service to visitors based on apparent disabilities or documentation of disability.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT8-2: Service provided to visitors with apparent or documented disabilities

SUGGESTED TECHNICAL ASSISTANCE: Provide technical assistance to the TTP recipient on requirements for providing service to visitors whose disability is apparent or who present documentation of disability, provided that if documentation of residency has been requested, it has also been submitted.

The recipient needs technical assistance if it does not provide service to visitors for 21 days within a 365-day period.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT8-3: Service to visitors provided for at least 21 days

SUGGESTED TECHNICAL ASSISTANCE: Provide technical assistance to the TTP recipient on requirements for providing visitors with 21 days of service within a 365-day period.

The recipient needs technical assistance if it does not process visitors' requests for service the same day or not more than one day later.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT8-4: Service to visitors provided under same conditions as eligible riders

SUGGESTED TECHNICAL ASSISTANCE: Provide technical assistance to the TTP recipient on requirements for processing requests for service from visitors on the same day or not more than one day later.

## **GOVERNING DIRECTIVE**

### 49 CFR 37.127 Complementary paratransit service for visitors

- (a) Each public entity required to provide complementary paratransit service under §37.121 of this part shall make the service available to visitors as provided in this section.
- (b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.
- (c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of §37.125 of this part, in the jurisdiction in which they reside.
- (d) With respect to visitors with disabilities who do not present such documentation [documentation of home jurisdiction eligibility], the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.
- (e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section.

### 49 CFR Part 37 Appendix D to 49 CFR 37.127 Complementary paratransit service for visitors

This section requires each entity having a complementary paratransit system to provide service to visitors from out of town on the same basis as it is provided to local residents. By "on the same basis," we mean under all the same conditions, service criteria, etc., without distinction. For the period of a visit, the visitor is treated exactly like an eligible local user, without any higher priority being given to either.



## **TTP ADA-CPT9. Does the TTP recipient’s paratransit service meet the ADA complementary paratransit service requirements?**

### **BASIC REQUIREMENT**

ADA complementary paratransit service must be origin-to-destination service provided according to the service criteria described in 49 CFR 37.131.

### **APPLICABILITY**

Public providers of fixed-route service (other than commuter rail or commuter bus service)

### **EXPLANATION FOR TTP RECIPIENT**

In crafting the ADA, Congress recognized that even when a fixed-route transit system is fully accessible there will be some individuals whose disabilities prevent them from using the system. Congress therefore created a “safety net” to ensure that these individuals have transportation available to them on the same basis as individuals using fixed-route systems.

The following requirements apply to complementary paratransit service.

*Types of service.* ADA complementary paratransit must be “origin-to-destination” service. The basic mode of service can be designated as door-to-door or curb-to-curb. If the entity’s basic mode of service is curb-to-curb, the entity must provide assistance from the vehicle to the first doorway for customers who need additional assistance to complete the trip. The entity cannot charge individuals needing door-to-door service an extra fee as this violates the nondiscrimination provisions of 49 CFR 37.5, the paratransit fare requirements of 49 CFR 37.131(c), and the requirement to provide origin-to-destination service under 49 CFR 37.129(a).

Some small entities may operate comingled fixed-route and complementary paratransit service using the same vehicle operated along a fixed route and deviating from the route only for ADA paratransit eligible riders. If this option is chosen, the agency must be prepared to demonstrate to FTA that it is fulfilling all of the Subpart F requirements. This would include, for example, ensuring complementary paratransit is provided within  $\frac{3}{4}$  mile of the fixed route and is free from capacity constraints.

*Service area.* The paratransit service area for fixed-route bus service consists of corridors  $\frac{3}{4}$ -mile wide on either side of a fixed route, with a  $\frac{3}{4}$ -mile radius around the end points. The  $\frac{3}{4}$ -mile service area requirement is a straight-line distance (“as the crow flies”). This requirement obligates transit agencies to also provide service throughout a “core service area,” which refers to the portion of agencies’ service areas where many bus routes intersect and/or overlap so that their respective  $\frac{3}{4}$ -mile corridors cover virtually all destinations. For smaller agencies, the core service areas are usually downtown districts served by multiple bus routes. For larger agencies, the core service areas may encompass entire downtowns or suburban activity centers. Inside the fixed-route bus core service areas, 49 CFR 37.131(a)(1)(ii) requires the complementary paratransit service to also include any small areas not inside any of the corridors but which are surrounded by corridors.

The minimum rail service area for complementary paratransit—excluding commuter and intercity rail, which are exempt from the requirement—is defined as circles of  $\frac{3}{4}$ -mile radius from the center of each station. The  $\frac{3}{4}$ -mile requirement is a straight-line distance (a radius around rail stations or “air miles”). This requirement obligates transit agencies to provide complementary paratransit trips from any point within one station circle to any point within the station circle of another station, but not between two points within the same station circle.

The service areas encompass all points within the  $\frac{3}{4}$ -mile range; where service areas extend beyond political boundaries of a transit agency’s jurisdiction, this requirement obligates the agency to provide

service to and from such points, except when legal prohibitions prevent service. Per Appendix D to 49 CFR 37.131, there must be a *legal bar* to the entity providing service on the other side of the boundary.

*Response time.* For any day that a transit agency operates complementary paratransit, 49 CFR 37.131(b) requires that eligible riders be able to reserve trips on the day before. For example, individuals can request a Wednesday trip by calling during normal business hours on Tuesday. Agencies may not require customers to reserve trips 24 hours in advance; this is not next-day service, and is described by Appendix D to 49 CFR 37.131 as “inadequate” to meet that standard.

Transit agencies must also ensure that riders can reserve trips on a next-day basis even when the administrative office is closed and fixed routes may not be running (e.g., on holidays). As discussed in Appendix D to § 37.131, “on days prior to a service day on which the administrative offices are not open at all (e.g., a Sunday prior to a Monday service day), the reservation service would also be open 9 to 5.” As explained below and in Appendix D, agencies may use voicemail to accept these reservations. Agencies using voicemail or other automated means of reserving trips must ensure, however, that any eligible rider making a reservation on a non-service day for a trip to be taken at the beginning of the next service day are assured of their reservation. If there is no Sunday service, and service begins at 5:00 a.m. on Monday, but reservation hours do not begin until 8:00 a.m., it would not be appropriate to wait until 8:00 a.m. on Monday to check the Sunday reservations line.

If a transit agency’s normal business hours for its administrative offices are 8:00 a.m. to 5:00 p.m. from Monday to Friday and it operates service Monday through Sunday, 49 CFR 37.131(b) requires the agency—whether with reservation staff or other staff (e.g., dispatch)—to accept trip requests from 8:00 a.m. to 5:00 p.m. Sunday through Saturday. Further, 49 CFR 37.131(b) requires agencies to permit callers who request trips during these hours to be able to reserve trips for any time during the next service day. If an agency operates service past midnight—or operates service 24 hours a day—this also means allowing callers to call during normal business hours (i.e., during administrative office hours) the day before the trip to request a trip at any time the next day, including a trip that would begin just after midnight.

As noted in 49 CFR 37.131(b)(4), while next-day service is the base requirement, agencies may permit advance reservations up to 14 days before a rider’s desired trip.

*Fares.* Under 49 CFR 37.131(c), the fare for a trip charged to an ADA paratransit eligible rider cannot exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard for discounts) for a similar trip on the agency’s fixed-route system.

To calculate the proper paratransit fare, the entity would determine the route(s) that an individual would take to get from his or her origin to his or her destination on the fixed-route system at the same time of day the person was traveling. Applicable charges like transfer fees or premium service charges may be added to the amount, but discounts (e.g., the half-fare discount for off-peak fixed route travel by seniors and persons with disabilities) would not be subtracted. The transit provider could charge up to twice the resulting amount for the paratransit trip. The system operates the same regardless of whether the paratransit trip is being provided in place of a bus or a rail trip the user cannot make on the fixed-route system.

Some entities operate fare-free routes or zones that are established either on their own or by an outside organization such as downtown business districts or convention authorities. In cases where a paratransit rider is traveling between origins and destinations that are both within ¼-mile of a fare-free zone, and the typical fixed-route rider would make use of the fare-free service to make a comparable trip, the comparable paratransit fare would also be zero. Entities with fare-free zones that wish to determine whether a typical fixed-route rider would in fact use the fare-free option over a paid trip should compare the following factors in their analysis:

- Regular fixed-route fare (outside of free-fare zone)

- Frequency of the free service versus alternative service
- Need for transfers on the free versus alternative service
- Walking distances to and from the free service versus the alternative

Such an analysis might demonstrate that fixed-route riders would walk to the nearest boarding point in the fare-free zone instead of boarding the nearest fixed-route vehicle and transferring to the free-fare service. It might also demonstrate that individuals crossing the free-fare zone would use the regular fixed-route system, while individuals traveling between points along the free-fare zone would be more likely to use the fare-free service. This analysis would enable a transit agency to determine whether it may charge a fare for a given complementary paratransit trip between points that are both within  $\frac{3}{4}$  mile of the free-fare zone.

Where other entities such as business organizations or chambers of commerce sponsor fare-free routes or zones, transit agencies are encouraged to consider including a requirement in such arrangements that the entity also assume responsibility for paratransit fares within such areas.

Some entities may operate fare-free promotions for a defined, limited period of time. While the US DOT ADA regulations specify that “discounts” are not required to be calculated when determining the comparable paratransit fare, the US DOT ADA regulations are silent on what constitutes a discount, other than the half-fare provision contained in the Federal Transit Act. It is therefore incumbent on the entity to determine whether a limited-time fare promotion constitutes a discount, and provide support for such a determination.

Companions may be charged the same fare as the eligible individual they are accompanying. Personal care attendants ride free.

One exception to the fare requirement is made for social service agency (or other organization-sponsored) trips. This exception, which allows the transit provider to negotiate a price with the agency that is more than twice the relevant fixed-route fare, applies to “agency trips,” by which we mean trips which are guaranteed to the agency for its use.

*Trip purpose.* There can be no restrictions or priorities based on trip purpose in a comparable complementary paratransit system. When a user reserves a trip, the entity will need to know the origin, destination, time of travel, and how many people are traveling. The entity does not need to know why the person is traveling and should not even ask. Entities may limit subscription service to some trip purposes.

*Hours and days of service.* If riders can take a particular trip between two points on an agency’s fixed-route system at a specific time of day, 49 CFR 37.131(e) requires the same trip to be available on complementary paratransit. A transit agency’s complementary paratransit service area, therefore, may change by time of day and day of week when certain fixed routes are not in service. The service area may also expand, and contract as individual bus routes or rail lines begin and end operation each day. If a transit agency runs fixed-route service on weekends and holidays, it must provide complementary paratransit on those days as well.

*PCAs and companions.* ADA complementary paratransit must be provided to at least one other individual accompanying an eligible individual. If a PCA accompanies an individual, the service must be provided to the PCA and at least one additional individual accompanying the ADA eligible individual, if requested.

Additional companions must be provided service if space is available, unless doing so would displace other ADA paratransit eligible individuals.

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

### **Paratransit Fare**

If a recipient operates fixed-route service that is now fare-free, complementary ADA paratransit service also must be fare-free per 49 CFR 37.131(c).

FTA has regarded promotional, occasional fare-free days on fixed-route service as a form of a discount and has not also required paratransit service to be free during the limited time of the promotion. However, if fixed-route service is fare-free to limit interactions between the passenger and the operator, it would not be a discount and the transit agency must do the same for the paratransit system per 49 CFR 37.131(c).

### **Trip Purpose**

The DOT ADA regulations at 49 CFR 37.131(d) expressly prohibit paratransit providers from imposing restrictions or priorities based on trip purpose. However, an agency may send a request and encouragement to its paratransit customers asking them to cancel all nonessential trips. If a paratransit rider, however, wants to take a trip, the agency cannot deny the request due to the purpose of the trip.

## **INDICATORS OF COMPLIANCE**

- a. *Is the base mode of service door-to-door or curb-to-curb? If curb-to-curb, does the recipient ensure origin-to-destination service is provided when necessary?*
- b. *Does the recipient provide paratransit service within a ¾-mile radius of all fixed bus routes (except commuter)? If the recipient provides rail service (except commuter), does the paratransit service area include areas within a ¾-mile radius of each station? Where fixed routes cross jurisdictional boundaries, does the paratransit service area follow suit? Where the paratransit service area surrounding a fixed route crosses jurisdictional boundaries, is paratransit service provided across such boundaries? If it is not, do legal prohibitions prevent service?*
- c. *Does the recipient provide paratransit service on a next-day (not 24-hour's notice) basis? Does the entity provide a means for riders to reserve trips on the day before a service day, even if the offices are closed? Are reservations accepted during the same business hours on a non-service day as they are when the offices are open? Are trips reserved on non-service days for travel at the beginning of the next service day confirmed prior to the rider's requested trip time?*
- d. *Is the paratransit fare no more than twice the fare for a trip between the same points made using the fixed-route system?*
- e. *Does the recipient impose any trip purpose prioritization for its paratransit service? Does the recipient ask about trip purpose in the application or reservations process? Is there any evidence that trip purpose is used to prioritize trips?*
- f. *Does the recipient's paratransit service operate during all days and times when the fixed-route service operates? Are there fixed routes that operate when the paratransit system does not?*
- g. *Is service provided to at least one other individual accompanying an eligible passenger? If the eligible passenger travels with a PCA, is service provided to at least one other individual in addition to the PCA?*

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

- h. As a result of the COVID-19 public health emergency, did the recipient provide fixed-route service fare-free? If yes, did the recipient also provide ADA complementary paratransit trips fare-free?*
- i. Has the recipient placed any restrictions on paratransit trip purpose in response to the COVID-19 public health emergency?*
- j. Have any communications the recipient had with its paratransit customers concerning nonessential trips been clear in communicating that the recipient was making a request and not imposing a requirement?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

During the Assessment, review the recipient's website for information on the ADA complementary paratransit service criteria (service area, reservation requirements, (response time fares, trip purpose, day, and hours of service). Review the recipient's eligibility form(s) and rider guide(s) concerning complementary paratransit service criteria. Review information provided to the public that describes the ADA complementary paratransit services. Discuss with the recipient the paratransit service factors and how the recipient ensures that they are met.

## **FLEXIBILITIES AND ADMINISTRATIVE RELIEF**

In addition to the normal assessment procedures, during the Assessment, discuss if/how the recipient has suspended, deviated from, or significantly updated or altered the implementation of its ADA service policies during the COVID-19 public health emergency. Verify through discussion with the recipient and regional office that the recipient did not place any restrictions on trip purpose due the COVID-19 public health emergency. Review the recipient's website and discuss with the recipient and regional office if/how it suspended, the following provisions due to the COVID-19 public health emergency:

- Origin-to-destination service
- Service within 3/4-mile radius of fixed routes
- Days and times of service
- Fares and service for PCAs and other accompanying riders

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it does not provide origin-to-destination service when needed.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT9-1: Origin-to-destination service

SUGGESTED TECHNICAL ASSISTANCE: Advise TTP recipient that it must provide origin-to-destination service.

The recipient needs technical assistance if it does not provide service between points within at least 3/4-mile radius of fixed bus routes, or between points within a 3/4-mile radius of one rail station to points within a 3/4-mile radius of another rail station, or within the core service area. The recipient needs technical assistance if its service area would cross jurisdictional boundaries, but it does not provide service beyond jurisdictional boundaries, and cannot demonstrate the existence of a legal bar.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT9-2: ADA complimentary paratransit service area

SUGGESTED TECHNICAL ASSISTANCE 1: Advise TTP recipient that the service area for its

ADA complementary paratransit system must include all areas within a 3/4-mile radius of fixed bus routes.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise TTP recipient that the complementary paratransit service must be provided within the core service area.

SUGGESTED TECHNICAL ASSISTANCE 3: Advise TTP recipient that the complementary paratransit service must have evidence of a legal bar preventing the provision of service across jurisdictional boundaries or must provide service across jurisdictional boundaries.

The recipient needs technical assistance if it does not provide next-day service, accept reservations on all days prior to service days, or accept reservations during regular business hours.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT9-3: Next-day service

SUGGESTED TECHNICAL ASSISTANCE 1: Advise TTP recipient that complementary paratransit service must be provided on a next-day, not 24-hour, basis.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise TTP recipient that reservations must be taken on each day before a service day, including weekends and holidays, during comparable business hours, and confirmed prior to the rider's requested trip time.

SUGGESTED TECHNICAL ASSISTANCE 3: Advise TTP recipient that reservations must be taken during regular business hours.

The recipient needs technical assistance if ADA complementary paratransit fares are more than twice the fare for a comparable trip on fixed routes or if PCAs pay a fare on ADA complementary paratransit service.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT9-4: Paratransit fare

SUGGESTED TECHNICAL ASSISTANCE 1: Advise TTP recipient that paratransit fares should not exceed twice the fare for a comparable trip using fixed routes.

SUGGESTED TECHNICAL ASSISTANCE 2: For fare-free routes, zones or areas, advise TTP recipient that paratransit fares for comparable fixed-route trips made using the fare-free service must also be free.

SUGGESTED TECHNICAL ASSISTANCE 3: For fare-free routes, zones or areas where other entities assume the responsibility for paying the fixed-route fare, advise TTP recipient that they must have a requirement that such entities include paratransit fares in their arrangements with the recipient for comparable fixed-route trips must have fare-free service or provide the trips fare-free without compensation from the third party.

SUGGESTED TECHNICAL ASSISTANCE 4: Advise TTP recipient that it must cease requiring personal care attendants accompanying eligible riders to pay a fare.

The recipient needs technical assistance if it imposes restrictions or priorities based on trip purpose (other than for subscription service).

TECHNICAL ASSISTANCE CODE TTP ADA-CPT9-5: Trip purpose restrictions or prioritization

SUGGESTED TECHNICAL ASSISTANCE: Advise TTP recipient that it must cease the application of trip purpose restrictions or priorities.

The recipient needs technical assistance if paratransit service is not available during the same hours and days as fixed-route service.

TECHNICAL ASSISTANCE CODE ADA-CPT4-6: Paratransit service hours and days

SUGGESTED TECHNICAL ASSISTANCE: Advise TTP recipient that the hours and days during which paratransit service operates must be the same as those for a comparable trip using the fixed-route system.

The recipient needs technical assistance if at least one other individual may not accompany an eligible passenger or may not accompany the eligible passenger in addition to the PCA.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT9-7: Restrictions on companions

SUGGESTED TECHNICAL ASSISTANCE 1: Advise TTP recipient that at least one other individual may accompany an eligible passenger.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise TTP recipient that at least one other individual in addition to the PCA may accompany an eligible passenger.

## **GOVERNING DIRECTIVE**

### 49 CFR 37.123 ADA Paratransit Eligibility: Standards

(a) Individuals accompanying an ADA paratransit eligible individual shall be provided service as follows:

- (1) One other individual accompanying the ADA paratransit eligible individual shall be provided service—
  - (i) If the ADA paratransit eligible individual is traveling with a personal care attendant, the entity shall provide service to one other individual in addition to the attendant who is accompanying the eligible individual;
  - (ii) A family member or friend is regarded as a person accompanying the eligible individual, and not as a personal care attendant, unless the family member or friend registered is acting in the capacity of a personal care attendant;
- (2) Additional individuals accompanying the ADA paratransit eligible individual shall be provided service, provided that space is available for them on the paratransit vehicle carrying the ADA paratransit eligible individual and that transportation of the additional individuals will not result in a denial of service to ADA paratransit eligible individuals;
- (3) In order to be considered as “accompanying” the eligible individual for purposes of this paragraph (f), the other individual(s) shall have the same origin and destination as the eligible individual.

### 49 37.129 Types of service

- (a) Except as provided in this section, complementary paratransit service for ADA paratransit eligible persons shall be origin-to-destination service.
- (b) Complementary paratransit service for ADA paratransit eligible persons described in §37.123(e)(2) of this part may also be provided by on-call bus service or paratransit feeder service to an accessible fixed route, where such service enables the individual to use the fixed route bus system for his or her trip.

- (c) Complementary paratransit service for ADA eligible persons described in §37.123(e)(3) of this part also may be provided by paratransit feeder service to and/or from an accessible fixed route.

49 CFR 37.131 Service criteria for complementary paratransit

The following service criteria apply to complementary paratransit required by §37.121 of this part.

(a) *Service Area*—

(1) *Bus*.

- (i) The entity shall provide complementary paratransit service to origins and destinations within corridors with a width of three-fourths of a mile on each side of each fixed route. The corridor shall include an area with a three-fourths of a mile radius at the ends of each fixed route.
- (ii) Within the core service area, the entity also shall provide service to small areas not inside any of the corridors but which are surrounded by corridors.
- (iii) Outside the core service area, the entity may designate corridors with widths from three-fourths of a mile up to one and one half miles on each side of a fixed route, based on local circumstances.
- (iv) For purposes of this paragraph, the core service area is that area in which corridors with a width of three-fourths of a mile on each side of each fixed route merge together such that, with few and small exceptions, all origins and destinations within the area would be served.

(2) *Rail*.

- (i) For rail systems, the service area shall consist of a circle with a radius of 3/4 of a mile around each station.
- (ii) At end stations and other stations in outlying areas, the entity may designate circles with radii of up to 1 1/2 miles as part of its service area, based on local circumstances.

- (3) *Jurisdictional boundaries*. Notwithstanding any other provision of this paragraph, an entity is not required to provide paratransit service in an area outside the boundaries of the jurisdiction(s) in which it operates, if the entity does not have legal authority to operate in that area. The entity shall take all practicable steps to provide paratransit service to any part of its service area.

- (b) *Response time*. The entity shall schedule and provide paratransit service to any ADA paratransit eligible person at any requested time on a particular day in response to a request for service made the previous day. Reservations may be taken by reservation agents or by mechanical means.

- (1) The entity shall make reservation service available during at least all normal business hours of the entity's administrative offices, as well as during times, comparable to normal business hours, on a day when the entity's offices are not open before a service day.
- (2) The entity may negotiate pickup times with the individual, but the entity shall not require an ADA paratransit eligible individual to schedule a trip to begin more than one hour before or after the individual's desired departure time.
- (3) The entity may use real-time scheduling in providing complementary paratransit service.



- (4) The entity may permit advance reservations to be made up to 14 days in advance of an ADA paratransit eligible individual's desired trips. When an entity proposes to change its reservations system, it shall comply with the public participation requirements equivalent to those of §37.137 (b) and (c).
- (c) *Fares.* The fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare (i.e., without regard to discounts) for a trip of similar length, at a similar time of day, on the entity's fixed route system.
- (1) In calculating the full fare that would be paid by an individual using the fixed route system, the entity may include transfer and premium charges applicable to a trip of similar length, at a similar time of day, on the fixed route system.
- (2) The fares for individuals accompanying ADA paratransit eligible individuals, who are provided service under §37.123 (f) of this part, shall be the same as for the ADA paratransit eligible individuals they are accompanying.
- (3) A personal care attendant shall not be charged for complementary paratransit service.
- (4) The entity may charge a fare higher than otherwise permitted by this paragraph to a social service agency or other organization for agency trips (i.e., trips guaranteed to the organization).
- (d) *Trip purpose restrictions.* The entity shall not impose restrictions or priorities based on trip purpose.
- (e) *Hours and days of service.* The complementary paratransit service shall be available throughout the same hours and days as the entity's fixed route service.

*Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR1*

The DOT ADA regulations at 49 CFR 37.131(d) expressly prohibit paratransit providers from imposing restrictions or priorities based on the trip purpose. Further, medical trips are not the only trips that may be essential to a passenger. An agency may send a request and encouragement to its paratransit customers asking them to cancel all nonessential trips. Transit agencies often use this approach, for example, in impending weather events. If a paratransit rider, however, wants to take a trip, the agency cannot deny the request due to the purpose of the trip.

The establishment of trip purpose restrictions or priorities is permitted under 49 CFR 37.133(c) only for subscription service. Further, because DOT ADA regulations do not require subscription service, it may also be suspended or cancelled.

*Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR4*

Under the DOT ADA regulations at 49 CFR 37.131(c), the fare for an ADA paratransit trip may not exceed more than twice the fare for a similar trip made using the fixed-route system, without regard to discounts. FTA has regarded promotional, occasional fare-free days on fixed-route service as a form of a discount, and has not also required paratransit service to be free during the limited time of the promotion. In this case, however, if the fixed-route system is fare-free to limit interactions between the passenger and the operator, it would not be a discount, and the transit agency must do the same for the paratransit system per 49 CFR 37.131(c).

*Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR7*

Local transit agencies determine the type of service they offer. While there are no Title VI or ADA concerns with a proposal to move from a fixed-route to a demand-responsive service (FTA does not require a service or fare equity analysis for a temporary service or fare change as a result of an emergency), note that under DOT ADA regulations at 49 CFR 37.77, all vehicles used in demand-responsive service must be accessible to and usable by persons with disabilities, including wheelchair users, or equivalent service must be provided according to the specific criteria contained in 49 CFR 37.77(c). In addition, once the system completes its move to demand-responsive service, the obligation to provide ADA complementary paratransit no longer is applicable. For more information on ADA requirements for demand-responsive service, see Chapter 7 of FTA Circular 4710.1.

*Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR8*

So long as the fixed-route system is operating, the DOT ADA regulations at 49 CFR 37.121 obligate the agency to continue operating complementary paratransit according to the service criteria contained in 49 CFR 37.131. If a transit agency makes adjustments to the fixed-route system's routes or schedules to accommodate the COVID-19 public health emergency, or shuts down the fixed-route service entirely, the agency may make similar adjustments to the paratransit system. Where an agency's ADA paratransit contractor is contemplating shutting down service when fixed route service continues, the agency should consult with its contracting office to determine appropriate steps to ensure that ADA paratransit service continues comparable to the fixed-route service being provided.

---

---

**TTP ADA-CPT10. If the TTP recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?**

**BASIC REQUIREMENT**

TTP recipients may establish an administrative process to suspend, for a reasonable amount of time, the provision of ADA complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips. The procedure must provide for due process.

**APPLICABILITY**

Public providers of fixed-route service (other than commuter bus service)

**EXPLANATION FOR TTP RECIPIENT**

Under 49 CFR 37.125(h), an entity may establish an administrative procedure to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.

As explained in Appendix D to this section of the regulation, a "pattern or practice" involves intentional, repeated or regular actions, not isolated, accidental, or singular incidents. An entity's no-show policy must therefore be narrowly tailored to ensure that suspension is only imposed for a true pattern or practice of missing scheduled trips. For example, three no-shows in 30 days would not be a pattern or practice for a frequent or daily rider. Such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Any suspensions must be "for a reasonable period of time." Suspension of service for 30 days for a first "offense," for example, is not "reasonable." A reasonable suspension for a first instance of a pattern or

practice of no-shows might be a few days to a week. Subsequent offenses may justify longer suspensions, but FTA generally considers suspensions longer than 30 days to be excessive.

Entities may not impose a mandatory financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In very limited cases, however, transit operators and riders facing suspension have voluntarily and mutually agreed to make and accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

Only no-shows that are under the rider's control may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g., scheduling problems, late pickups, and operational problems on the part of the entity or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted entities to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. FTA has found it acceptable to consider a late cancellation as one made within an hour or two before the pickup time provided to the rider.

49 CFR 37.125(g)(2) obligates entities to inform riders in writing that they have the right to appeal the proposed suspension (with an option for an in-person appeal), consistent with the appeals process outlined in 49 CFR 37.125(g). This means including instructions on the appeal process, and how to request an appeal. Under 49 CFR 37.125(h)(3), suspensions are stayed pending the outcome of the appeal.

It is important to note that 49 CFR 37.125(h) permits an entity to establish a no-show policy; it does not require one to do so. An entity is therefore not deficient if it does not have a no-show policy and does not suspend riders based on no-shows.

A noncompliant no-show policy is noncompliant even if it is not enforced.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?*
- b. *Does the recipient impose a mandatory financial penalty as part of its no-show policy, including charging for the fare of the no-show trip?*
- c. *Are only no-shows under the rider's control counted towards the suspension?*
- d. *Before suspending service for no-show violations, does the recipient notify the rider and provide an opportunity to respond? Does the recipient allow individuals to appeal no-show policy violations and stay suspensions pending the outcome of the appeal?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

During the Assessment, review the recipient's website and other information provided to the public that describes the ADA complementary paratransit services for information on the ADA complementary paratransit service no-show policy.

Determine:

- If the recipient suspends riders, for how long and under what circumstances

- If there is discussion on imposing mandatory financial penalties
- If there is discussion on not suspending riders for no-shows not under their control
- If there is discussion on the process of suspending riders

Discuss the no-show process with the recipient.

- Verify that any suspensions are a result of a “pattern or practice” of missing scheduled trips. Note whether the recipient relies on a simple percentage, which does not establish a pattern or practice for infrequent riders.
- Verify that any suspensions are “for a reasonable period of time.” Note whether suspensions reset on a “rolling” basis after each “offense”, imposing longer suspensions as a default.
- Verify that the recipient does not impose a financial penalty as part of a no-show policy, including charging the fare for the no-show trip.
- Verify that only no-shows under the rider’s control are counted against the rider.
- Verify that before suspending service, the recipient notifies the individual in writing that it proposes to suspend service, providing the specific basis for the proposed suspension and the proposed sanction.
- Verify that the recipient provides the individual an opportunity to be heard and to present information.
- Verify that the suspension is stayed pending the outcome of the appeal.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it suspends riders for an unreasonable amount of time (consult with the FTA Office of Civil Rights as needed). The recipient needs technical assistance if it suspends riders without establishing that the rider has a pattern or practice of missing scheduled trips (consult with the FTA Office of Civil Rights as needed).

TECHNICAL ASSISTANCE CODE TTP ADA-CPT10-1: No-show suspension

SUGGESTED TECHNICAL ASSISTANCE 1: Advise the TTP recipient on requirements for suspending riders for a reasonable amount of time, and/or suspending a rider only after establishing that the rider has a pattern or practice of missing scheduled trips.

The recipient needs technical assistance if it imposes an involuntary financial penalty for no-shows.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT10-2: Financial penalty imposed for no-shows

SUGGESTED TECHNICAL ASSISTANCE 1: Advise the TTP recipient that it must ceased the assessment of financial penalties for no-shows.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise the TTP recipient it may accept payment for missed trips in lieu of suspension only if voluntarily agreed to by the passenger.

The recipient needs technical assistance if it counts no-shows not under the rider's control toward suspension.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT10-3: Suspension based on no-shows

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient it may only count no-shows under the rider's control toward the suspension.

The recipient needs technical assistance if it does not notify the rider of the pending suspension in writing and provide the specific basis for it, does not offer the opportunity for the rider to appeal or does not stay the suspension pending the outcome of the appeal.

TECHNICAL ASSISTANCE CODE TTP ADA-CPT10-4: No-show suspension procedures

SUGGESTED TECHNICAL ASSISTANCE 1: Advise the TTP recipient on requirements for an appeals process that notifies the rider of the suspension in writing, specifically indicating the basis of the proposed suspension and the proposed sanction.

SUGGESTED TECHNICAL ASSISTANCE 2: Advise the TTP recipient on requirements for an appeals process that offers the opportunity for the rider to appeal.

SUGGESTED TECHNICAL ASSISTANCE 3: Advise the TTP recipient on requirements for an appeals process that provides the rider an opportunity to be heard.

SUGGESTED TECHNICAL ASSISTANCE 4: Advise the TTP recipient on requirements for an appeals process that stays the suspension pending the outcome of the appeal.

## **GOVERNING DIRECTIVE**

### 49 CFR 37.125 ADA paratransit eligibility: Process

- (i) The entity shall establish an administrative appeal process through which individuals who are denied eligibility can obtain review of the denial.
  - (1) The entity may require that an appeal be filed within 60 days of the denial of an individual's application.
  - (2) The process shall include an opportunity to be heard and to present information and arguments, separation of functions (i.e., a decision by a person not involved with the initial decision to deny eligibility), and written notification of the decision, and the reasons for it.
- (ii) The entity may establish an administrative process to suspend, for a reasonable period of time, the provision of complementary paratransit service to ADA eligible individuals who establish a pattern or practice of missing scheduled trips.
  - (1) Trips missed by the individual for reasons beyond his or her control (including, but not limited to, trips which are missed due to operator error) shall not be a basis for determining that such a pattern or practice exists.”
  - (2) Before suspending service, the entity shall take the following steps:
    - (i) Notify the individual in writing that the entity proposes to suspend service, citing with specificity the basis of the proposed suspension and setting forth the proposed sanction.

- (ii) Provide the individual an opportunity to be heard and to present information and arguments.
  - (iii) Provide the individual with written notification of the decision and the reasons for it.
- (3) The appeals process of paragraph (g) of this section is available to an individual on whom sanctions have been imposed under this paragraph. The sanction is stayed pending the outcome of the appeal.

## **REFERENCES**

1. CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
5. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

## **USEFUL WEBLINKS**

1. FTA ADA Website
2. U.S. Department of Transportation (US DOT) Disability Law Guidance
3. ADA Standards for Transportation Facilities
4. Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities
5. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
6. U.S. Department of Justice ADA Homepage

## **RESOURCE SUPPLEMENT**

ADA Circular 4710.1 (link)

FTA – ADA Training webpage

ADA Riders Guide and Policies for Tribal Transit Peer Call, 2017

101 Webinar Series: ADA and Rural Transportation, 2014

2 The Point - ADA and Sensitivity and Transporting Non-Ambulatory Passengers, 2018  
ADA Toolkit, 2021 and ADA Section of Transit Manager's Toolkit, 2020

eLearning Videos on Wheelchair Securement

Oversized Wheeled Mobility Devices Technical Brief, 2015

START Safety Training and Rural Transit, 2018

Website Accessibility Support, 2018

Easter Seals Project ACTION (ESPA) - A.C.C.E.S.S. Matters, Determining Paratransit Eligibility: An Approach, Guidance, and Training Materials, 2013

Service Animal Poster, 2014

Guide Dogs for the Blind's Video on Transit Accessibility, 2021

Sample ADA Eligibility Application (suggestion?)

# 10. DRUG-FREE WORKPLACE ACT AND DRUG AND ALCOHOL PROGRAM

## PURPOSE OF THIS ASSESSMENT AREA

TTP recipients are required to maintain a drug-free workplace for all award-related employees; report any convictions occurring in the workplace timely; and have an ongoing drug free awareness program.

TTP recipients that have safety-sensitive employees must have a drug and alcohol testing program in place for such employees.

## QUESTIONS TO BE EXAMINED

1. Does the TTP recipient have a written Drug-Free Workplace Act (DFWA) policy that is distributed to all award-related employees?
2. Does the TTP recipient or its transit service provider have a drug and alcohol testing program for safety-sensitive employees that's been adopted by the Tribal Council?
3. Does the TTP recipient provide the minimum required training for all covered employees and supervisors?
4. Has the TTP recipient submitted the Drug and Alcohol Management Information System (DAMIS/MIS) reports summarizing drug and alcohol test results to FTA?
5. How does the TTP recipient monitor any drug and alcohol testing vendors, such as collections sites, medical review officer (MRO), etc. to ensure compliance with program requirements?

## INFORMATION NEEDED FROM RECIPIENT

### Recipient Information Request

- Tribal government Drug-Free Workplace Act (DFWA) policy
- Posters or employee notices regarding DFWA
- Current public transit system drug and alcohol policy with date of board adoption
- Training programs for covered employees
- Training programs for supervisors
- Drug and Alcohol Management Information System (DAMIS/MIS) Reports for the past three years
- Contracts with vendors or reports of vendor monitoring

---

### TTP DA 1. Does the TTP recipient have a Drug-Free Workplace Act (DFWA) policy?

#### BASIC REQUIREMENT

TTP recipients are required to have and distribute to award-related employees a written Drug- Free workplace policy as prescribed by the DFWA.

#### APPLICABILITY

All TTP recipients, but not subrecipients, contractors, or lessees



## **EXPLANATION FOR RECIPIENT**

The recipient is required to have and distribute to award-related employees a written policy that states:

1. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
2. Employees must abide by the terms of the policy statement as a condition of employment
3. If convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction

The DFWA requirement applies to employees of a TTP recipient directly engaged in the performance of work under the award, including both direct and indirect charge employees as well as temporary employees on the recipient's payroll. If an indirect charge employee's impact or involvement in the performance of work under the award is insignificant to the performance of the award, then the requirements do not apply to that employee. The requirements do not apply to volunteers, consultants, or independent contractors not on the recipient's payroll, or employees of subrecipients or contractors in covered workplaces.

The DFWA policy can be in the FTA drug and alcohol testing policy as long as it is clearly differentiated and it is extended to all applicable employees, not just safety-sensitive employees. These requirements should not be confused with FTA drug and alcohol testing requirements, which apply only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

## **INDICATORS OF COMPLIANCE**

- a. *Does the recipient have a written DFWA policy?*
- b. *Does the recipient's Drug-Free workplace policy include all of the required elements?*
- c. *Does the recipient have a process to ensure that the recipient's Drug-Free workplace policy has been distributed to all employees?*

## **INSTRUCTIONS FOR REVIEWER**

Obtain and review the recipient's written DFWA policy and/or the recipient's FTA drug and alcohol testing policy.

Review the recipient's written Drug-Free workplace policy or its FTA drug and alcohol testing policy, if the recipient has one combined policy. Determine if the following required elements are included:

- states that the workplace is Drug-Free,
- states that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited,
- states that employees must abide by the terms of the policy statement as a condition of employment,
- requires that if convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction.

Determine if the recipient has a process for distributing a copy to each award-related employee. On site, discuss with the recipient how it implements its policy for distributing a copy to each employee and what actions it takes if employees fail to abide by the policy. On-site, review sample employee files to

ascertain if acknowledgment of receipt of the policy is documented.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient needs technical assistance if it does not have a written Drug-Free Workplace Act policy.

TECHNICAL ASSISTANCE CODE TTP DFWA DA1-1: Written DFWA policy

SUGGESTED TECHNICAL ASSISTANCE: Advise the TTP recipient that it must have a written DFWA policy. Provide a sample policy for the TTP recipient to use.

The recipient needs technical assistance if its written Drug-Free Workplace Act policy does not include all required elements.

TECHNICAL ASSISTANCE CODE TTP DFWA DA1-2: Drug-Free workplace policy required elements

SUGGESTED TECHNICAL ASSISTANCE: Assist the TTP recipient to develop a DFWA policy that includes all required elements. Follow up after 1 month to ask if the revised policy has been distributed to all award-related employees, assist the TTP recipient, as needed.

#### **GOVERNING DIRECTIVES**

##### 41 U.S.C. 702. Drug-Free workplace requirements for Federal grant recipients

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a Drug-Free workplace by:

- (A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
- (B) establishing a Drug-Free awareness program to inform employees about:
  - (i) the dangers of drug abuse in the workplace;
  - (ii) the recipient's policy of maintaining a Drug-Free workplace;
  - (iii) any available drug counseling, rehabilitation, and employee assistance programs; and
  - (iv) the penalties that may be imposed upon employees for drug abuse violations;
- (C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);
- (D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will:
  - (i) abide by the terms of the statement; and
  - (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;
- (E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

- (F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and
- (G) making a good faith effort to continue to maintain a Drug-Free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F).”

49 CFR 32.205 What must I include in my Drug-Free workplace statement?

You must publish a statement that—

- (a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;
- (b) Specifies the actions that you will take against employees for violating that prohibition; and
- (c) Let each employee know that, as a condition of employment under any award, he or she:
  - (1) Will abide by the terms of the statement; and
  - (2) Must notify you in writing if he or she is convicted for a violation of a criminal drug statute occurring in the workplace and must do so no more than five calendar days after the conviction.

---

---

**TTP DA2. Does the TTP recipient or its transit service provider have a drug and alcohol testing program for safety-sensitive employees that’s been adopted by the Tribal Council?**

**BASIC REQUIREMENT**

Recipients of TTP funds must have a Tribal Council-adopted anti-drug and alcohol misuse policy.

**APPLICABILITY**

All TTP recipients and/or contractors with safety-sensitive employees

**EXPLANATION FOR TTP RECIPIENT**

The TTP recipient and its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees as defined by 49 CFR part 655 must have a drug and alcohol testing policy detailing the provisions of their drug and alcohol programs. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments.

Note: Effective January 1, 2019, Federal Transit Administration (FTA) issued a change to its drug and alcohol regulation for random testing, at 49 CFR 655.45, which increased the minimum rate of random drug testing from 25 percent to 50 percent of covered employees for employers subject to FTA’s drug and alcohol regulation. This increased random drug testing rate resulted from an uptick in the proportion of violations identified through random drug testing.

The 50 percent random drug testing rate will apply to entities receiving Federal assistance under 49 USC 5307, 5309, 5311 or 5339, including recipients, subrecipients, and safety-sensitive contractors. The required minimum rate for random alcohol testing is unaffected and will remain at 10 percent for calendar year 2019.

The following checklist identifies the minimum requirements of a drug and alcohol testing policy as defined by 49 CFR 655.15.

**\*Items will be examined during a TTP Assessment**

- (1) \*Proof of policy adoption by the appropriate governing body or other “final authority” with effective date indicated.
- (2) \*Identity of the person, office, or position designated by the employer to answer questions about the anti-drug and alcohol misuse program.
- (3) \*Categories of employees who are subject to testing.
- (4) \*Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs.
- (5) \*Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty (only for employers with a second-chance policy), and follow-up testing (only for employers with a second-chance policy).
- (6) Drug and alcohol testing procedures consistent with 49 CFR part 40, as amended.
- (7) Requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations.
- (8) Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the US Department of Transportation (US DOT) program:
  - a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer after being directed to do so by the employer.
  - b. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test).
  - c. Fail to provide a urine specimen for any drug test or an adequate amount of saliva or breath for any alcohol test required by this part or US DOT agency regulations.
  - d. Fail to provide a sufficient amount of urine or breath specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
  - e. Fail or decline to take an additional drug test the employer or collector has directed to be taken.
  - f. Fail to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) or employer as part of the drug test verification process, or employer as part of the insufficient breath procedures. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.
  - g. Fail to sign the certification at Step 2 of the alcohol testing form.
  - h. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).

- i. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the provision of a specimen.
  - j. For an observed collection, fail to follow the observer’s instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process.
  - k. Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
  - l. Admit to the collector or MRO that the specimen was adulterated or substituted
  - m. Instead of listing all the refusals, the policy may state that refusals to test are listed in 49 CFR part 40, as amended, or 49 CFR 40.191, as amended, for drug tests and 49 CFR 40.261, as amended, for breath tests. The policy should then state that a copy of 49 CFR part 40 is available upon request. However, if the policy lists any refusals to test, the policy must list all of them.
- (9) \*Description of the consequences for a covered employee who has a verified positive drug test result, a confirmed alcohol test with an alcohol concentration of 0.04 or greater, or refuses to submit to a test, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be referred to a substance abuse professional.
- (10) \*Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.
- (11) Policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 that states that if the MRO informs the agency that a negative drug test was dilute, the agency may, but is not required to, direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, the recipient must not retest some employees and not others. The recipient may retest for some types of tests (e.g., pre- employment tests) and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record.

**INDICATORS OF COMPLIANCE**

- a. Does the TTP recipient or its contractor have a drug and alcohol policy?
- b. When was the policy adopted by the Tribal Council or governing board?
- c. Does the policy include all the required elements listed in the chart below?

Drug and Alcohol Policy Required Element	Page No.	Reviewer Comments
1. Proof of policy adoption by governing body or other “final authority”	-	-
2. Identity of contact person, office, or position	-	-

<b>Drug and Alcohol Policy Required Element</b>	<b>Page No.</b>	<b>Reviewer Comments</b>
3. Employee categories subject to testing	-	-
4. Prohibited behavior	-	-
5. Testing circumstances	-	-
6. Consequences for an employee who has refused testing or is found to have a verified positive drug test result or an alcohol concentration of 0.04 or greater	-	-
7. Consequences for an employee found to have an alcohol concentration of 0.02 or greater, but less than 0.04	-	-

- d. *How does the recipient distribute the policy to all employees?*

#### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the TTP recipient's or its contractor's drug and alcohol policy and verify all the required elements in the chart above are included and that it has a process for ensuring that the policy statement is made available to each covered employee. Onsite, discuss with the TTP recipient or its contractor how it distributes a copy to each employee or provides written notice of its availability.

#### **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient is in need of technical assistance if 1) it or its contractor does not have a policy that addresses the required elements or 2) there is no process for making the policy available to all covered employees.

TECHNICAL ASSISTANCE CODE TTP DFWA DA2-1: Drug and alcohol policy required elements.

SUGGESTED TECHNICAL ASSISTANCE 1: Using FTA's drug and alcohol policy builder tool, assist the TTP recipient in developing a drug and alcohol policy.

SUGGESTED TECHNICAL ASSISTANCE ACTION 2: Follow up with TTP recipient after 1 month to ask if the revised policy has been approved by the governing body and distributed to all covered employees, assist the TTP recipient, as needed.

#### **GOVERNING DIRECTIVE**

##### 49 CFR 655.15 Policy statement contents

The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

- (a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.
- (b) The categories of employees who are subject to the provisions of this part.
- (c) Specific information concerning the behavior and conduct prohibited by this part.
- (d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.
- (e) The consequences for a covered employee who has a verified positive drug or a confirmed alcohol test result with an alcohol concentration of 0.04 or greater, or who refuses to submit to a test under this part, including the mandatory requirements that the covered employee be removed immediately from his or her safety-sensitive function and be evaluated by a substance abuse professional, as required by 49 CFR Part 40.
- (f) The consequences, as set forth in §655.35 of subpart D, for a covered employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04.

#### **§40.191 What is a refusal to take a DOT drug test, and what are the consequences?**

- (a) As an employee, you have refused to take a drug test if you:

- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being

directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.61(a));

- (2) Fail to remain at the testing site until the testing process is complete; Provided, That an employee who leaves the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;
- (3) Fail to provide a urine specimen for any drug test required by this part or DOT agency regulations; Provided, That an employee who does not provide a urine specimen because he or she has left the testing site before the testing process commences (see §40.63 (c)) for a pre-employment test is not deemed to have refused to test;
- (4) In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of your provision of a specimen (see §§40.67(l) and 40.69(g));
- (5) Fail to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.193(d)(2));
- (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, §40.197(b));
- (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test; or
- (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).
- (9) For an observed collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
- (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.
- (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
  - (b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
  - (c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

---

---

### **TTP DA3. Does the TTP recipient provide the minimum required training for all covered employees and supervisors?**

#### **BASIC REQUIREMENT**

TTP recipients are required to provide at least 60 minutes of drug training for covered employees and at



least 120 minutes of training for supervisors and other officers authorized by the employer to make reasonable suspicion determinations.

### **APPLICABILITY**

All TTP recipients or contractors with safety-sensitive employees

### **EXPLANATION FOR TTP RECIPIENT**

Employers of covered employees must establish an employee education and training program for both covered employees and supervisors.

Covered employees: Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Supervisors and/or company officials: A recipient's determination whether to conduct reasonable suspicion testing for drug or alcohol shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee. Employers must provide at least 60 minutes of training on each:

- the physical, behavioral, and performance indicators of probable drug use
- the physical, behavioral, speech, and performance indicators of alcohol misuse

NOTE: Records that such training was conducted must be retained by the recipient for a maximum of two years. As a result, recipients are not required to maintain records of training conducted beyond this time period.

### **INDICATORS OF COMPLIANCE**

- a. How does the recipient ensure that all covered employees receive the required 60 minutes of training?*
- b. Describe how the training for covered employees covers the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use?*
- c. Describe how the recipient ensures that all supervisors or other officials responsible for making reasonable suspicion determinations receive the required 60 minutes of training on drug use and 60 minutes of training on alcohol misuse?*
- d. Describe how the training covers the physical, behavioral, and performance indicators of probable drug use and the physical, behavioral, speech, and performance indicators of probable alcohol misuse?*

### **INSTRUCTIONS FOR ASSESSMENT TEAM**

Review the TTP recipient's or contractor's training materials or documentation, to ascertain that the TTP recipient provides the required training. Obtain a list of covered employees and supervisors or company officials who make reasonable suspicion determinations along with dates of when they were first placed in a safety sensitive position.

For those that began safety sensitive duty within two years of the review, select a sample of covered employees and supervisors for record review. Onsite, sample the training records for these employees to determine if they received the required training and the required topics were addressed. If no employees began safety sensitive duties within the review period, determination of compliance can only be made on the training program described by the recipient.

NOTE. Recipients are only required to maintain training records for two years.

	Number of records reviewed	Number of records that indicated required training was received
Employees	-	-
Supervisors/other officials	-	-

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient is in need of technical assistance if it does not have an employee education and training program or covered employees have not received the 60 minutes of training.

TECHNICAL ASSISTANCE CODE TTP DFWA DA3-1: Employee training

SUGGESTED TECHNICAL ASSISTANCE: Review the video on FTA’s drug and alcohol website that the TTP recipient can use to satisfy the requirement for 60 minutes of training for covered employees. Follow up with the TTP recipient in 1 month to ensure that covered employees received the training.

The recipient needs technical assistance if supervisors or other officials who make reasonable suspicion determinations have not received the 120 minutes of training.

TECHNICAL ASSISTANCE CODE TTP DFWA DA3-2: Supervisor training

SUGGESTED TECHNICAL ASSISTANCE: Review material on FTA’s drug and alcohol website and other anti-drug websites that the TTP recipient can use to satisfy the requirement for 120 minutes of training for covered employees. Follow up with the TTP recipient in 1 month to ensure that supervisors and other officials designated within the past two years to make reasonable suspicion determinations have received the required training.

**GOVERNING DIRECTIVE**

49 CFR 655.14 Education and training programs

Each employer shall establish an employee education and training program for all covered employees, including:

(b) *Training*—

- (1) *Covered employees.* Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.
- (2) *Supervisors.* Supervisors and/or other company officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

---

**TTP DA4. Has the TTP recipient submitted the Drug and Alcohol Management Information System (DAMIS/MIS) reports summarizing drug and alcohol test results to FTA?**

## **BASIC REQUIREMENT**

When requested by FTA, each TTP recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

## **APPLICABILITY**

All TTP recipients with safety-sensitive employees.

## **EXPLANATION FOR TTP RECIPIENT**

FTA sends a mailing to recipients in late December. This mailing provides guidance for submitting MIS results via the Internet or using paper forms. It also provides instructions on downloading your contractors/subrecipients passwords, which you are required to distribute. If you did not receive a mailing, or if the list of your contractors/subrecipients was incorrect, please contact the FTA Drug and Alcohol MIS Project Office at (617) 494-6336. The office will issue new user names and passwords as needed and remove any contractors/subrecipients for which you are no longer responsible.

## **INDICATORS OF COMPLIANCE**

- (a) *Has the TTP recipient submitted annual MIS reports in DAMIS?*
- (b) *Has the recipient ensured that contractors with safety-sensitive employees submitted annual MIS reports in DAMIS?*

## **INSTRUCTIONS FOR ASSESSMENT TEAM**

Request and review a list of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. Compare the list to the list provided by FTA of entities that filed MIS reports in the past year.

## **POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The recipient may be in need of technical assistance if it or its contractor did not submit annual MIS reports in DAMIS or ensure that the service agents that support the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees have current qualifications.

TECHNICAL ASSISTANCE CODE TTP DFWA DA4-1: DAMIS reports submitted to FTA by the TTP recipient or its contractor.

SUGGESTED TECHNICAL ASSISTANCE 1: With the TTP recipient, contact the FTA Drug and Alcohol MIS Project Office at (617) 494-6336 to request user name and password, if the TTP recipient did not receive a letter. Review the video on FTA's drug and alcohol website that the TTP recipient can use to learn how to submit its DAMIS report to FTA. Follow up with the TTP recipient in 1 month to ensure that it submitted a DAMIS report for the most recently completed calendar year.

## **GOVERNING DIRECTIVES**

### **49 CFR 655.72 Reporting of results in a management information system**

- (a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.
- (b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.
- (c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report

submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf.

49 CFR 655.81 Grantee oversight responsibility

A recipient shall ensure that a subrecipient or contractor who receives TTP funds directly from the recipient complies with this part.

---

**TTP DA5. How does the TTP recipient monitor drug and alcohol testing vendors, such as consortia, third party administrators, collection sites, medical review officer (MRO) etc. to ensure compliance with program requirements?**

**BASIC REQUIREMENT**

The TTP recipient must ensure that contractors, subcontractors, and vendors administer their drug and alcohol programs in accordance with the requirement in 49 CFR Part 40.

**APPLICABILITY**

All TTP recipients with drug and alcohol testing vendors.

**EXPLANATION FOR TTP RECIPIENT**

TTP recipients are ultimately responsible for the integrity of the drug and alcohol testing program and the quality of testing services provided by vendors. Consequently, the TTP recipient should ensure that it has a written contract that references 49 CFR Part 40 with each vendor and should monitor the quality of testing service vendors, including collection sites, MROs, and SAPs. TTP recipients need only ensure that testing laboratories are HHS certified.

The TTP recipient should not assume that vendors are following the correct procedures or that they are knowledgeable about FTA regulations. Note that the FTA does not prescribe how a TTP recipient must monitor vendors. The TTP recipient simply must show evidence that monitoring is being performed at some level. Examples of monitoring activities include maintaining on file copies of vendor qualifications, conducting periodic mock collections, investigating reports of employees or subrecipients of flawed procedures, requiring detailed explanations for cancelled tests, and documenting error correction training.

As it is the responsibility of the employer to ensure that program records are accurate and current and that they comply fully with FTA regulations, ttp recipients should review copies of Custody and Collection Forms and Alcohol Testing Forms to ensure they are completed accurately and legibly and should follow up with collections when forms are not completed correctly or indicate proper procedures have not been followed.

Note that 49 CFR 40.121, as amended, requires MROs to be re-qualified and tested every five years.

**\*Items will be examined during a TTP Assessment**

- Copies of contracts with drug and alcohol program vendors
- Monitoring reports prepared by the TTP recipient
- Proper forms are used, the forms are completed correctly, the records are stored in a secure location with limited access, and the records are maintained for the required amount of time
- Medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications

**INDICATORS OF COMPLIANCE**

- a) *Does the TTP recipient have contracts with its drug and alcohol vendors that reference 49 CFR Part 40?*
- b) *Does the TTP recipient have documentation that it periodically monitored its vendors for compliance with the regulations?*
- c) *Does the TTP recipient ensure that the qualifications of the medical review officer(s), substance abuse professionals, breath alcohol technicians, and collectors are up to date?*

Title	Certification Date	Requirement	Requirement met? (y/n)
Medical Review Officer	-	Within five years	-
Substance Abuse Professionals	-	Within three years	-
Breath Alcohol Technicians	-	Within five years	-
Collectors	-	Within five years	-

**INSTRUCTIONS FOR ASSESSMENT TEAM**

Request and review a list of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. Compare the list to the list provided by FTA of entities that filed MIS reports in the past year.

- Obtain the certificates of the service agents that support the drug and alcohol programs of the recipient’s subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees to confirm that all the qualifications are up to date:.

**POTENTIAL TECHNICAL ASSISTANCE DETERMINATIONS**

The TTP recipient is in need technical assistance if it does not ensure that its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees submit annual MIS reports in DAMIS or ensure that the service agents that support the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees have current qualifications.

TECHNICAL ASSISTANCE CODE DFWA DA5-1: Oversight of drug and alcohol programs vendors

SUGGESTED TECHNICAL ASSISTANCE 1: Provide guidance to the TTP recipient on which references to 49 CFR Part 40 should be included in vendor contracts. Suggest strategies for adding these terms to existing or future contracts. Also, advise the TTP recipient on ways to periodically monitor vendors, including a periodic review of qualifications for technicians and the Medical Review Officer.

**GOVERNING DIRECTIVES**

49 CFR 40.15. May an employer use a service agent to meet DOT drug and alcohol testing requirements?

- (a) As an employer, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of this part.
- (b) As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part (e.g., [§40.121](#) for MROs). You may require service agents to show you documentation that they meet the requirements of this part (e.g., documentation

- of MRO qualifications required by [§40.121\(e\)](#)).
- (c) You remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require, a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
- (d) As an employer, you must not permit a service agent to act as your DER.
- 
- 

#### **REFERENCES**

1. 41 U.S.C. Sections 8101 et seq., Drug-Free Workplace Act of 1988
2. 49 CFR 32- GOVERNMENTWIDE REQUIREMENTS FOR DRUGFREE WORKPLACE (FINANCIAL ASSISTANCE)
3. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"
4. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"

#### **USEFUL WEBLINKS**

1. FTA Drug and Alcohol Testing Homepage
  - Tools and Resources
  - Drug and Alcohol Policy Builder
2. Newsletters
3. Drug and Alcohol MIS Reporting
4. Drug and Alcohol Training
5. Technical Assistance
6. Drug and Alcohol Publications
7. Implementation Guidelines for Drug and Alcohol Regulations in Mass Transit
8. Office of Drug and Alcohol Policy and Compliance
9. Release of Information Form 49 CFR Part 40 – Drug and Alcohol Testing