FTA

FEDERAL TRANSIT ADMINISTRATION

Contractor Manual
Fiscal Year 2026

U.S. Department of Transportation
Federal Transit Administration

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FOREWORD

OVERVIEW

The Federal Transit Administration's (FTA) Contractor Manual is used by FTA staff and contractors to execute comprehensive oversight reviews of FTA recipients. It provides a format for facilitating a comprehensive look at recipient management practices as well as compliance with program and administrative requirements across a broad spectrum of topic areas. Review areas include financial management and capacity, technical capacity, asset management, procurement, civil rights, and program-specific requirements.

In addition to helping evaluate individual recipients, these reviews give FTA an opportunity to provide technical assistance on requirements and aid FTA in reporting on FTA programs to the Secretary of Transportation, Congress, other oversight agencies, and the transit community.

Historically, FTA's comprehensive oversight reviews have been split across two programs – the Triennial Review and the State Management Review. As the two reviews address the same cross-cutting requirements, in Federal fiscal year (FY) 2018 FTA combined the separate programs into one Comprehensive Review.

The Triennial Review was mandated by Congress in 1982 for each recipient of Section 5307 funds and is codified in 49 U.S.C. §5307(f)(2), which states:

> *At least once every 3 years, the Secretary shall review and evaluate completely the performance of a recipient in carrying out the recipient's program, specifically referring to compliance with statutory and administrative requirements and the extent to which actual program activities are consistent with the activities proposed…*

The State Management Review has typically focused on states receiving Sections 5310 and 5311 program funds. These reviews also occur every three years and use a format and process similar to the Triennial Review.

49 U.S.C. §5338 provides the statutory basis for FTA's oversight responsibilities and the funding available to undertake oversight activities. In addition, 49 U.S.C. § 5338 authorizes FTA to provide technical assistance to correct deficiencies found during oversight reviews and to promote overall recipient compliance.

Each year, the specific content of the Contractor Manual is updated to reflect any changes in the statutory requirements of funding programs and to FTA policy made over the preceding year. This document incorporates those changes for FY2026.,

The FY2026 Contractor Manual identifies the minimum compliance requirements that recipients are expected to meet and the optimal methods for assessing compliance with those requirements. Key to that effort is ensuring that all requirements are (1) directly related to specific, citable, written requirements while also maintaining the overall intent of the reviews, and (2) clearly articulating what is expected of recipients and exactly how FTA will go about determining compliance.

The changes in the FY2026 manual are based on a thorough review of the FY2025 manual, the FY2025 review cycle experience, and feedback received from our recipients, review contractors, and colleagues. Unless specifically noted otherwise, this document reflects statutory and regulatory requirements and FTA guidance documents applicable as of September 30, 2025. This includes, inter alia:

- Chapter 53 of title 49, United States Code, as amended by the Infrastructure Investment and Jobs Act of 2021, Pub. L. 117-58;

- FTA regulations, 49 CFR chapter VI;
- USDOT's implementation of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFRs 200 and 1201;
- USDOT regulation Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, 49 CFR part 26;
- FTA Circular 5010.1F Award Management Requirements;
- FTA Circular 9050.1A Urbanized Areas Formula Grants Program Guidance
- FTA Circular 4220.1G Third Party Contracting Guidance.

In addition, notwithstanding requirements that were in effect during the Comprehensive Review lookback period, this document's oversight priorities are in accordance with Presidential Executive Orders issued as of March 11, 2025, specifically:

- EO 14168, Defending Women From Gender Ideology Extremism and Restoring Biological Truth to the Federal Government;
- EO 14173, Ending Illegal Discrimination and Restoring Merit-Based Opportunity; and
- EO 14224, Designating English as the Official Language of the United States.

This is part of FTA's ongoing commitment to improve consistency and transparency in its oversight reviews. We anticipate that these changes will result in an even more efficient review process that provides a clearer understanding of what is expected during a Comprehensive Review, how FTA determines compliance, and why a finding of deficiency is made.

SUPPLEMENTAL FUNDING

The FY2020 review cycle was suspended in March of 2020 after the President of the United States declared a public health emergency due to the Coronavirus Disease 2019 (COVID-19) outbreak. At that time, FTA contractors had completed the initial stages of the review process, including desk reviews, recipient training, and regional scoping meetings. A handful of site visits had also been conducted.

Prior to suspending the program, the FTA Acting Administrator issued a Notice of Concurrence with States that declared an emergency, thereby, making recipients' FY2020 apportionments of Section 5307 and Section 5311 funds available for expenses incurred in response to the public health emergency under Section 5324. On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The CARES Act granted $25 billion to recipients receiving urbanized and rural area formula funds to support capital, operating, and other expenses generally eligible under those programs to prevent, prepare for, and respond to the public health emergency. Recipients were allowed to use both the emergency relief and CARES Act funds for eligible expenses incurred on or after January 20, 2020. FTA generally considered all expenses eligible under urbanized or rural area programs that were incurred on or after January 20, 2020 to be in response to economic or other conditions caused by the public health emergency and thus eligible under CARES.

On December 27, 2020, a second stimulus bill was enacted in response to the public health emergency. The Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) provided $14 billion to support the transit industry. Subsequently, on March 11, 2021, the President of the United States signed into law the American Rescue Plan Act (ARPA). ARPA included $30.5 billion in federal funding to support the nation's public transportation systems as they continued to respond to the COVID-19 public health emergency.

Each of the three stimulus packages includes its own specific rules and flexibilities which are called out in each review area of the Contractor Manual under the heading "Flexibilities and Administrative Relief."

Of the 21 areas identified in the FY2026 Contractor Manual, FTA granted flexibilities and implemented additional requirements and possible modifications for topics addressed during the Comprehensive Review for 7 of those areas. The areas are as follows:

2. Financial Management and Capacity

4. Technical Capacity – Program Management and Subrecipient Oversight

12. Americans with Disabilities Act - General

16. Charter Bus

19. Section 5307 Program Requirements

20. Section 5310 Program Requirements

21. Section 5311 Program Requirements

REVIEW AREAS

The FY2026 Comprehensive Review addresses 21 review areas:

1. Legal
2. Financial Management and Capacity
3. Technical Capacity – Award Management
4. Technical Capacity – Program Management and Subrecipient Oversight
5. Technical Capacity – Project Management
6. Transit Asset Management
7. Satisfactory and Continuing Control
8. Maintenance
9. Procurement
10. Reserved
11. Title VI
12. Americans with Disabilities Act (ADA) – General
13. ADA – Complementary Paratransit
14. Reserved
15. School Bus
16. Charter Bus

17. Drug Free Workplace Act
18. Drug and Alcohol Program
19. Section 5307 Program Requirements
20. Section 5310 Program Requirements
21. Section 5311 Program Requirements
22. PTASP
23. Cybersecurity

REVIEW AREA AND QUESTION FORMAT

Each review area consists of the following sections:

- Introductory page that lists the purpose of the review area, questions to be examined, and information needed from the recipient
- Review questions (see the table below for the overarching structure in determining compliance for each question)
- Issues/areas of concern for FTA awareness
- References and useful weblinks

The questions in each review area consist of the following nine items:

FY2025 Contractor Manual Question Format	
1. Review Area Question	The overarching question to be examined in relation to the basic requirement to determine whether a recipient is not deficient or deficient.
2. Basic Requirement	The minimum requirement that all eligible recipients must adhere to expressed in plain language and directly linked to a law, regulation, circular, master agreement, or other authoritative guidance.
3. Applicability	Identifies the specific recipients to which the requirement applies. These recipients are determined based on the specified characteristics for the relevant review area, and this determination can vary depending on factors such as the funding program, type of recipient, number of transit employees, fleet size, modes operated, arrangement with other entities (subrecipients) or other pertinent characteristics.

FY2025 Contractor Manual Question Format	
4. Detailed Explanation for Reviewers	Provides FTA's definition and/or guidance to reviewers, in plain language, to clarify how the fundamental requirement can be relevant and applicable to a recipient's organization.
5. Flexibilities and Administrative Relief	In response to the COVID-19 Public Health Emergency, FTA granted recipients certain flexibilities in complying with traditional federal requirements. This section has been added to outline these flexibilities and to provide direction to reviewers in assessing potential impacts to a recipient's procedures and their ability to comply with these requirements. In addition, FTA issued *Frequently Asked Questions for FTA Grantees* which encompass flexibilities or requirements outlined in governing directives to specific questions.
6. Indicators of Compliance	Contain the question(s) FTA reviewers will address to determine a recipient's compliance with the basic requirement. These questions pinpoint specific issues that need additional scrutiny and may result in determinations of either deficient or not deficient and identifying the required corrective action.
7. Instructions for Reviewer	Specific instructions to FTA reviewers outlining the steps and criteria for assessing each indicator of compliance. These instructions offer a structured approach to evaluating recipient compliance and ensure consistency in the review process.
8. Potential Deficiency Determinations	Condition(s) under which a recipient could be deficient along with the deficiency code and suggested corrective action. Any deficiencies identified as a result of a recipient not meeting the requirements related to any of the supplemental funding must be specifically identified as: • Related to the Public Health Emergency funds • Detailed separately in the description, explaining the issue, requirements, and rationale for the deficiency • Confirmed along with corrective action with the FTA regional office prior to inclusion in report

FY2025 Contractor Manual Question Format	
9. Governing Directive(s)	Refers to citation from law, regulation, circular, master agreement or other binding guidance that establish the foundation for the requirement and highlight any identified deficiencies. In addition, *FTA's Frequently Asked Questions from FTA Grantees* that captures flexibilities or required implementation requirements during the COVID-19 Public Health Emergency, have been included in this section where applicable.

Questions may also include a "Note from FTA." This information is intended to provide further clarification and/or information for use by reviewers.

Questions concerning a recipient's oversight of subrecipient, contractor, and lessee compliance are included toward the end of each applicable review area.

SUMMARY OF CHANGES

NOTE TO REVIEWER:

- The FY2026 Contractor Manual update reflects the revisions and/or new requirements promulgated by the Infrastructure Investment and Jobs Act (IIJA), Code of Federal Regulations Title 2, Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the Federal Transit Administration Master Agreement FTA MA(34). The updates are reflected in each applicable area in which requirements were either revised or added. Notwithstanding requirements that were in effect during the Comprehensive Review lookback period, the FY2025 Contractor Manual's oversight priorities are in accordance with the latest presidential executive orders.
- For all applicable review areas, the governing directives and useful web links were updated/added to address the current requirements.
- Outdated Flexibilities and Administrative Relief information has been removed.

LEGAL

FY2023 1. LEGAL	FY2024 1. LEGAL	FY2025 1. LEGAL	FY2026 1. LEGAL
Added a new Recipient Information Request item: List of lobbying activities conducted since the last comprehensive review.	Revised the Recipient Information Request item: List of major disputes, breaches, defaults, litigation, or instances where the Federal government was named as a party to litigation or a legal disagreement since the last comprehensive review.	No significant changes.	No significant changes.
For question L3 regarding lobbying activities, revised the basic requirement to include FTA recommendations regarding recipients and subrecipients filing the OMB Standard Form LLL in the Transit Award Management System (TrAMS).	Question L1 - revised the Detailed Explanation for Reviewer and Indicators of Compliance.		All governing directives have been reviewed and updated to reflect current guidance.
	Question L2 - revised the Detailed Explanation for Reviewer.		
	For question L3 regarding lobbying activities, revised the Detailed Explanation for Reviewer to include the definition of a Covered Federal action.		

FINANCIAL MANAGEMENT AND CAPACITY*

FY2023 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2024 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2025 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2026 2. FINANCIAL MANAGEMENT AND CAPACITY
Remove a duplicate request in the Recipient Follow-Up, Approved CAP or ICRP.	For question F1 regarding policies and procedures, revised the governing directive.	For question F1 regarding policies and procedures, revised the Indicators of Compliance c and d, merged the tables.	All governing directives have been reviewed and updated to reflect current guidance. Removed out of date Flexibilities and Administrative Relief citations for Questions F5 and F6.
For question F7 regarding financial resources, included an additional sentence in Detailed Explanation for Reviewer "It should be noted that once matching funds are associated with a specific award, these funds cannot be applied to another award. Supporting documentation and recipient financial information may need to be reviewed to ensure there is no "double dipping" or overlapping of funds."	For question F5 regarding the indirect cost: • Revised the Basic Requirement to include the underlined languages: for the applicable fiscal year(s) and if qualified. • Revised the Flexibilities and Administrative Relief to include the language: These changes are based on information contained in OMB Memos M-20-17 and M-20-26 in response to COVID-19. When FTA was the cognizant agency for indirect costs, recipients could request an extension of a current indirect cost rate for one additional year by submitting documentation with a revised date for the indirect cost rate to their FTA Regional Office for approval. The one-year extension was only	For question F4 regarding tracking of federal funds, revised the indicators of compliance.	Question F2 • Revised Indicator of Compliance b. • Added Deficiency Code F2-5 ECHO Draw Process not Properly Segregated.

FY2023 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2024 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2025 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2026 2. FINANCIAL MANAGEMENT AND CAPACITY
	available for recipients whose indirect cost rate proposals were due by June 16, 2020.		
	• Revised indicator "a" to include the underlined language: Does the recipient charge indirect costs to financial assistance awards? Are indirect costs included in FTA awards? • Revised the Instructions for Reviewer to include the underlined language: This indirect cost documentation should be uploaded in the "Recipient Profile" in TrAMS for every fiscal year under review. • Replaced due to with because of the in the Suggested Corrective Action for Deficiency Code F5-1	For question F5 revised the question regarding indirect cost.	Question F4 added Deficiency Code F4-4 Federal Funds drawn down for ineligible expenses.
	For question F6 regarding single Audits, updated the FAC website address: https://facdissem.census.gov/	For question F6 revised the question regarding single audit, and indicators of compliance.	Question F5, updated the deminimus rate to 15% effective October 1, 2024 and requirements for agencies to submit a CAP or ICRP. Question F5, revised indicator of compliance d.
		For question F8 regarding operating assistance, revised the Potential Deficiency Determination.	For Questions F6 and F9, updated the Single Audit threshold to $1,000,000 effective October 1, 2024.
		For the Electronic Clearinghouse Operation (ECHO) transaction sampling	Sampling Procedures – increased the review of underlying ECHO transactions

FY2023 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2024 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2025 2. FINANCIAL MANAGEMENT AND CAPACITY	FY2026 2. FINANCIAL MANAGEMENT AND CAPACITY
		procedures, revised the requirements, the additional sampling procedures for ECHO draws, supplemental funds requirement, and the assessment procedures for ECHO draws with Coronavirus Aid, Relief, and Economic Security (CARES) ACT, Coronavirus Response and the Relief Supplemental Appropriations Act of 2021 (CRSSAA), American Rescue Plan (ARP) ACT or Emergency (ER) funds.	from one transaction to 10% of the transactions.
		Revised Governing Directive to include the updated regulations for questions F1, F2, F3, F4, F6 and F9.	

TECHNICAL CAPACITY – AWARD MANAGEMENT*

FY2023 3. TECHNICAL CAPACITY – AWARD MANAGEMENT	FY2024 3. TECHNICAL CAPACITY – AWARD MANAGEMENT	FY2025 3. TECHNICAL CAPACITY – AWARD MANAGEMENT	FY2026 3. TECHNICAL CAPACITY – AWARD MANAGEMENT
For question TC-AM2 regarding Federal Financial Reports, included an additional sentence in Detailed Explanation for Reviewer "Multiple rates are included in the report, additional documentation is uploaded as an attachment to the report."	For question TC-AM1 regarding the MPRs and FFRs report submittal: • Revised the Flexibilities and Administrative relief to include the underlined language: Per OMB Memorandum M-20-17 as part of the government's flexibilities in response to the Public Health Emergency, a recipient could delay submission of financial, performance, and other reports up to three (3) months beyond the normal due date. • Revised the governing directive to include the underlined language: Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB-approved government wide data elements for collection of financial information (at time of publication the Federal Financial Report or such future, OMB-approved, governmentwide data elements, available from the OMB-designated standards lead).	No significant changes. Revised Governing Directive to include the updated regulations for questionsTC-AM1, TC-AM2, TC-AM3 and TC-AM5.	All governing directives have been reviewed and updated to reflect current guidance. Removed outdated Flexibilities and Administrative Relief citations from questions TC-AM1 and TC-AM4.
For question TC-AM5 regarding close out of awards, included an additional sentence in Detailed Explanation for Reviewer "However, noting delays or proposing date changes in the MPR is not sufficient the change the period of performance. The period of performance may only be changed in	For question TC-AM2 regarding the completion and accuracy of the FFRs, revised the governing directive to include the underlined language: Unless otherwise approved by OMB, the Federal awarding agency must solicit only the OMB approved government wide data elements for collection of		Question TC-AM1 added table to separate by reporting requirement for Indicator of Compliance b.

FY2023 3. TECHNICAL CAPACITY – AWARD MANAGEMENT	FY2024 3. TECHNICAL CAPACITY – AWARD MANAGEMENT	FY2025 3. TECHNICAL CAPACITY – AWARD MANAGEMENT	FY2026 3. TECHNICAL CAPACITY – AWARD MANAGEMENT
TrAMS via an amendment or budget revision." 	financial information (at time of publication the Federal Financial Report or such future OMB-approved, governmentwide data elements available from the OMB-designated standards lead. 		
	For question TC-AM5 regarding the timely expenditure of funds and close-out of awards: • Revised Detailed Explanation for Reviewer to include the underlined language: FTA expects projects to be completed within the award's period of performance and potential delays updated in progress reports. • Funds deobligated within the period of availability could be available for re-obligation to a new award. The following table shows the period of availability of funds for selected programs. The recipient must initiate award closeout with subrecipients no later than 90 or 120 days after the end of the period of performance or when the award's scope of work is completed. • Eliminated the underlined language in the Detailed Explanation for Reviewer: 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.		Question TC-AM4,added table to separate by reporting requirement for Indicator of Compliance a. Question TC-AM5, removed Indicator of Compliance g. Question TC-AM5, removed "reassigning older projects to newer awards" from Deficiency Code TC-AM5-1 Suggested Corrective Action 2.

TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT*

FY2023 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT	FY2024 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT	FY2025 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT	FY2026 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT
No significant changes.	Revised Purpose of this review area to include the underlined language: States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Section 5310 funds and States receiving funds from Section 5310, Section 5311 and the Section 5339(a) National Distribution allocation must develop and submit a Program Management/State Management Plan to the FTA for approval.	For TC-PrgM2 regarding the approval of the state or program management plan, revised the Basic Requirement.	All governing directives have been reviewed and updated to reflect current guidance. Revised references to FSRS to SAM.gov.
	For question TC-PrgM1 regarding State transit providers, revised the Potential Deficiency Determination and governing directives. Revised Suggested Deficiency Codes TC-PgM1-1, TC-PgM1-2, TC PgM1-3	Revised Governing Directive to include the updated regulations for questions TC-PrgM3 and TC-PrgM7.	Question TC-PrgM6, revised the subaward amount to $30,000.
	For question TC-PrgM2 regarding approved state or program management plan: • Revised question to include the underlined language: Does the recipient have an FTA-approved state or program management plan(s) that documents the		

FY2023 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT	FY2024 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT	FY2025 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT	FY2026 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT
	recipient's policies for administering the Sections 5310, 5311, and/or 5339(a) programs? • Revised the applicability to include the underlined language: States with subrecipients for the Section 5339(a) National Distribution allocation. • Revised the Detailed Explanation for Reviewer to include the underlined language: States for their Section 5339(a) National Distribution allocation funds if the State has subrecipients of those funds. Added a new governing directive FTA Circular 5100.1, Chapter VI, State and Program Management Plans.		

TECHNICAL CAPACITY – PROJECT MANAGEMENT

FY2023 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT	FY2024 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT	FY2025 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT	FY2026 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT
For question TC-PjM1 management of awards, revised the definition of a major project in the Detailed Explanation for Reviewer to include "and receives Federal funds of $100 million or more (and is not exclusively for the acquisition, maintenance, or rehabilitation of vehicles or other rolling stock)."	Revised the Recipient Information Request to eliminate the underlined language: If written and include the underlined language: Project management plans, if you have major capital projects.	No significant changes.	All governing directives have been reviewed and updated to reflect current guidance.
	Question TC-PjM1 regarding the projects during the review areas: • Revised the question to include the underlined language: For projects completed since the last Comprehensive Review, did the recipient ensure project schedules, budgets, and performance objectives were 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? • Revised the Instructions for Reviewer to include the underlined language: Review project management plans (required for all major capital projects) and quality control procedures, if written, to determine how the recipient		Question TC-PjM2 revised the Suggested Corrective Actions regarding Force Account Plans. Question TC-PjM3, added Governing Directive Question 4 Suggested Corrective Action, TC-PjM4-2 revised the Suggested Corrective Actions regarding Force Account Plans.

FY2023 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT	FY2024 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT	FY2025 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT	FY2026 5. TECHNICAL CAPACITY – PROJECT MANAGEMENT
	provides directly or by contract, administrative support, technical inspection and supervision of work in progress, and ensures compliance with FTA and Federal requirements.		
	Question TC-PjM4 regarding the oversight for subrecipients: • Revised the Instruction to Reviewer to include the underlined language: Review copies of project management plans, <u>if written</u> quality control procedures, state/program management plan(s) and the subrecipient agreement(s) for procedures for administering and monitoring subrecipient projects. • Revised the governing directive to include the underlined language: (3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by 2 CFR §200.521.		

TRANSIT ASSET MANAGEMENT*

FY2023 6. TRANSIT ASSET MANAGEMENT	FY2024 6. TRANSIT ASSET MANAGEMENT	FY2025 6. TRANSIT ASSET MANAGEMENT	FY2025 6. TRANSIT ASSET MANAGEMENT
No significant changes.	For question TAM5 regarding group plan participants implementing the group TAM plan, revised indicator a to eliminate the question: Did the accountable executive approve annual performance targets?	For question TAM1 regarding TAM plan, revised the Basic Requirement, Detailed Explanation to Reviewers, Indicators of Compliance and Potential Deficiency Determinations.	No Significant Changes All governing directives have been reviewed and updated to reflect current guidance.
		For question TAM2 revised the Detailed Explanation for Reviewer.	
		For question TAM6 regarding set performance targets, revised the Detailed Explanation for Reviewer.	
		Revised Governing Directive to include the updated regulations for question TAM8.	

SATISFACTORY AND CONTINUING CONTROL*

FY2023 7. SATISFACTORY AND CONTINUING CONTROL	FY2024 7. SATISFACTORY AND CONTINUING CONTROL	FY2025 7. SATISFACTORY AND CONTINUING CONTROL	FY2026 7. SATISFACTORY AND CONTINUING CONTROL
Added a new Recipient Information Request item: Documentation of proceeds returned to FTA via pay.gov.	Added new Recipient Information Request items: Real property inventory List of FTA funded equipment disposed of within past three years For question SCC1 regarding the purchase of FTA-funded real property, revised Detailed Explanation for Reviewer to include the underlined language: the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period: or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years)	For question SCC9 regarding the withdrawal and disposition of FTA-funded equipment, revised the Detailed Explanation for Reviewer and Indicators of Compliance. Revised the Governing Directive to include the updated regulations for questions SCC1, SCC2, SCC3, SCC4, SCC5, SCC6, SCC8, SCC9, SCC10 and SSC12.	Please note significant changes were made to this section. All governing directives have been reviewed and updated to reflect current guidance.
For question SCC9 regarding equipment use and disposal: • Revised the Detailed Explanation for Reviewer to include "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	For question SCC9 regarding equipment use and disposal: • Added a note to the detailed explanation for reviewer: NOTE: The IIJA provisions do not apply to how insurance proceeds were treated by state and non-state recipients prior to the provisions taking effect. Therefore, state recipients continue to follow their own equipment management		Question 1 Question has been revised to reflect the requirements of the Real Property Status Report. Deficiency Code SCC1-3 has been removed. Deficiency Code SCC1-4 added "Real property inventory out-of-date regarding excess properties"

FY2023 7. SATISFACTORY AND CONTINUING CONTROL	FY2024 7. SATISFACTORY AND CONTINUING CONTROL	FY2025 7. SATISFACTORY AND CONTINUING CONTROL	FY2026 7. SATISFACTORY AND CONTINUING CONTROL
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. **State recipients:** Prior to November 15, 2021, states must dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. **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." • Revised indicator c updated to include the additional underlined language: *Prior to November 15, 2021, did the recipient dispose of*	procedures for insurance proceeds and non-state recipients continue to adhere to the requirements of FTA Circular 5010. • Revised the indicator of compliance to include the underlined language: d: Did the recipient receive insurance proceeds? ○ If yes, were the proceeds applied to the cost of replacing the damaged or destroyed project equipment or rolling stock? ○ If the recipient did not apply proceeds to the cost of replacing the damaged or destroyed project equipment or rolling stock, was FTA reimbursed its interest in the asset? Revised the Instructions to Reviewer to include the underlined languages: If the recipient received insurance proceeds and did not apply it to the cost of replacing the damaged or destroyed project equipment or rolling stock, request documentation showing the depreciated (book) value of the asset at the time of disposition (i.e., financial records). Compare the depreciated value of the disposed asset to the insurance adjustment		Question 2 has been removed in its entirety. Question 3 Indicators of Compliance have been updated. Question 4 has been removed in its entirety. Question 5 Indicators of Compliance have been updated. DEFICIENCY CODE SCC5-2: "Failure to dispose of idle facilities without FTA authorization" has been added. DEFICIENCY CODE SCC5-3: "Idle facility cost unreasonably charged to an award without authorization" has been added. Question 8, Indicators of Compliance have been revised. Question 10, Note to Reviewer added regarding the loan of vehicles related to the Dear Colleague Letter Dated June 10, 2024 and FTA Major Event Playbook. Question 12, Indicators of Compliance have been updated.

FY2023 7. SATISFACTORY AND CONTINUING CONTROL	FY2024 7. SATISFACTORY AND CONTINUING CONTROL	FY2025 7. SATISFACTORY AND CONTINUING CONTROL	FY2026 7. SATISFACTORY AND CONTINUING CONTROL
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? • Added indicator 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? • Revised the indicator of compliance to include "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." • Added a new corrective action "The recipient must submit to the FTA regional office procedures for reimbursing FTA for	valuation to determine that FTA was reimbursed the total Federal interest.		

FY2023 7. SATISFACTORY AND CONTINUING CONTROL	FY2024 7. SATISFACTORY AND CONTINUING CONTROL	FY2025 7. SATISFACTORY AND CONTINUING CONTROL	FY2026 7. SATISFACTORY AND CONTINUING CONTROL
disposition proceeds or applying the proceeds to another capital project. The recipient must submit to the FTA regional office procedures for reimbursing FTA for disposition proceeds." • Added a new governing directive "IIJA, Sec. 30013. Administrative Provisions (b)(ii)(II) Reimbursement Required."			

MAINTENANCE

FY2023 8. MAINTENANCE	FY2024 8. MAINTENANCE	FY2025 8. MAINTENANCE	FY2026 8. MAINTENANCE
• No significant changes.	For question M2 regarding the preventive maintenance, revised the governing directive to include the underlined language, (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.	For question M5 regarding oversight, revised the Basic Requirement and Detailed Explanation for Reviewer.	No significant changes All governing directives have been reviewed and updated to reflect current guidance.
	For question M5 regarding oversight: • Revised the governing directive to include the underlined language: (3) Issuing a management decision for applicable audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521. • Eliminated the underlined language Audit services in the sentence (3) Arranging for agreed-upon-procedures engagements as described in §200.425	Revised Governing Directives to include the updated regulations for questions M1, M2 and M5.	

PROCUREMENT*

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
Included a note to reviewer, regarding the Build America, Buy America Act (BABA) requirements in the Infrastructure Investment and Jobs Act.	For Procurement: • Revised the entire Purpose of the Review Area. • Revised the Note to Reviewer and included the applicability regarding BABA.	Purpose of the Review Area was revised.	All governing directives have been reviewed and updated to reflect current guidance. Removed references to TVMs.
Revised Deficiency code P1-3, to include the additional underlined language: "Procurement policies and procedures <u>contrary to [specific section]</u>"	For question P1 regarding written procurement and policies: • Revised the applicability to include the underlined language: <u>Non-state recipients.</u> • Revised the Detailed Explanation for Reviewer to include the underlined language: <u>unless there are specific circumstances in which noncompetitive procurement can be used.</u>	For question P1 regarding written policies and procedures, revised the following: • Detailed Explanation for Reviewer • Indicators of compliance • Instructions for Reviewer.	Removed the Note to Reviewer regarding BABA from the Purpose of the Review Section. This information remains on page 9- Removed all references to Geographic Preference. Removed outdated items from Recipient Information request
	• Revised the headed <u>Note to Reviewer</u> to include the underlined language: <u>Note to reviewer on application of BABA</u>. • Revised the note to reviewer on application of BABA.	For question P3 regarding written procurement protest procedures, the entire question was removed from the FY25 Contractor Manual.	Question P1, incorporated third element required by 2 CFR 200.319(d).

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	• Revised indicator of compliance B to include the underlined language: Do the recipient's written procurement policies and procedures include the two elements required by 2 CFR 200.319(d)? • For Indicator of Compliance C, revised the elements in the chart.	For question P8 regarding method of procurement, revised the Instructions for Reviewer and Potential Deficiency Determination.	
	• Revised the Instructions to Reviewer to include the underlined language: Note: In accordance with 2 CFR 200.320(a)(1)(iv) of or (v) (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.	For question P11 regarding the applicable federal clauses, revised the question, Instructions for Reviewer to update the threshold and citation for Davis-Bacon Act and Governing Directive.	Question 8 revised micro purchase and simplified acquisition thresholds.

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	(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. • Eliminated the language, to the FTA regional office in the Potential Deficiency Determinations throughout the section. • Revised the entire governing directive.	For question P12 regarding certifications in solicitations and bidder, revised the Detailed Explanation for Reviewer.	

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question P2 regarding written standards of conduct: • Revised the applicability to Non-state recipients. • Revised the Instructions for Reviewers to include the underlined language: If the recipient has state and/or local laws with requirements that are more restrictive than the Federal requirements below, then those procedures are to be followed. • For the governing directive, revised the underlined language, FTA Master Agreement (34), Section 4. • Revised the Potential Deficiency determinations	For question P17 regarding piggyback, revised the indicators of compliance and Potential Deficiency Determinations.	
	For question P3 regarding written procurement protest procedures, • Eliminated the underlined language written in the Detailed Explanation for reviewers, Indicators of Compliance, and Instructions for Reviewer. • Included the underlined language in the Instructions for Reviewer: Note to Reviewers: The recipient should explain and describe its protest procedures and document in the workpapers.	Updated Exhibit 9-1.	

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	• Revised the Potential Deficiency Determinations to include the following languages: SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation of actions taken to make protest procedures available to potential bidders. This deficiency code is retired. • Eliminated the underlined clauses from the Potential deficiency Determination: The recipient is deficient if it has written protest procedures and received protests but did not follow its procedures. • Included the underlined languages in the governing directive: Uniform Administrative Requirements		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question P4 regarding contractors awards: • Revised the Detailed Explanation for Reviewer to include the underlined sentence, The form and formality of the recipient's responsibility determination will be appropriate to the size, complexity, and risk of each particular procurement. It is a recommended practice to make a written responsibility determination for procurements above the simplified acquisition threshold. • Included the underlined clause at the end of the Detailed Explanation for Reviewer, without FTA's approval. • Revised the Indicators of Compliance A to include the underlined language: Do procurement files reflect that the recipient made responsibility determinations prior to award, considering all required information?		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	• Revised the Instructions to Reviewer to include the underlined clause, the recipient made and sentence, Review procurements of $25,000 or more for the suspension and debarment requirements. • Revised the governing directive to include the 2 CFR 200.318 General procurement standard and the 2 CFR 200.214 Suspension and debarment guidelines.		
	For question P8 regarding method of procurement: • Revised the Detailed Explanation for Reviewer. • Revised and included the underlined clause in the Instructions for Reviewer and Potential Deficiency Determinations.: (or such other threshold permitted for the recipient under 2 CFR 200.320(a)(1)(iv) or (v)). • Revised and updated the language sole source to non-competitive.		
	For question P9 regarding the Architectural Engineering services procurement, revised the Detailed Explanation for Reviewer.		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question P10 regarding the independent cost estimate and cost and/or price analysis policies and procedures, • Revised the Basic Requirement to include the underlined language: Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Federal Simplified Acquisition Threshold including modifications. • Revised the applicability and updated to All Recipients.		
	• Updated the language sole source to noncompetitive. • Revised the Indicators of Compliance B to include the underlined clause: Did the recipient conduct a cost analysis or price analysis for every procurement action, including the decision to exercise any option, above the Federal Simplified Acquisition Threshold?		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question P11 regarding applicable FTA clauses, • Revised the Detailed Explanation for Reviewer and Instructions to Reviewer to included clauses regarding Byrd Anti-Lobbying Amendment, 6002 of the solid Waste Disposal Act, Notice to FTA and U.S.DOT Inspector General of Information related to fraud, waste, abuse, or other legal matters, Prohibition on certain telecommunications and video surveillance services or equipment, Seat Belt Use, Distracted Driving including their threshold and citation.		
	• Revised the Suggested Corrective Action in Deficiency Code P11-1 to include the underlined clause: <u>ensure review of the FTA Master Agreement and/or 2 CFR 200 annually to confirm</u>. • Revised the governing directive to include the policies regarding the included clause in the Instructions for Reviewer. • Eliminated the language, to the FTA regional office in the Potential Deficiency Determinations throughout the section		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question P12 regarding solicitations and certifications for bids or proposals, • Revised the Detailed Explanation for Reviewer. • Revised the indicator to include the underlined clauses: Did the recipient include required Buy America provisions and certifications in solicitations <u>for iron, steel, manufactured products, or construction materials</u>, and receive signed certifications from contractors as part of bid responsiveness, <u>unless the procurement was subject to a waiver?</u>		
	• Revised to Instructions to Reviewer to include the underlined language: 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, manufactured products, <u>or construction materials unless a waiver applies.</u> • Revised the governing directive to include FTA Master Agreement (34), Section 15(b) regarding BABA construction materials.		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question P13 regarding liquidated damages, revised the Detailed Explanation for Reviewer to include the underlined language: Any liquidated damages recovered may be credited to the project account provided that the recipient receives FTA's prior written concurrence.		
	For question P14: • Revised the Detailed Explanation for Reviewer to include the underlined languages: Recipients use their own procurement procedures that reflect applicable recipient regulations, provided that the process ensures competitive procurement, and the procedures conform to applicable Federal law, including 2 CFR 200, and FTA guidance Circular 4220.1F, "Third Party Contracting Guidance." • Revised the Instructions to Reviewer to eliminate the clause, is a new non-competitive or sole source award that and. Replaced the phrase cost Justification with cost or price analysis.		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	For question 15 regarding foreseeable need and evaluation of contracts, • Revised the Detailed Explanation for Reviewer, to replace the word bid with solicitation and a sole-source procurement, with must be justified under the provisions for non-competitive procurements. • Revised Instructions for Reviewers to include the underlined sentence: Determine if the recipient documented its evaluation of the option prices prior to contract award if it intended to exercise the option(s) at a later date.		
	For question P16 regarding the bus and rail rolling stock procurement, revised the Basic Requirement and Detailed Explanation for Reviewer		

FY2023 9. PROCUREMENT	FY2024 9. PROCUREMENT	FY2025 9. PROCUREMENT	FY2026 9. PROCUREMENT
	contracts for revenue rolling stock and replacement parts with an ordering window exceeding five years for bus procurements inclusive of options, extensions, or renewals, and seven years for rail procurements. The five- and seven-year rules do not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. The recipient may not order buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract. The maximum quantity specified in such multi-year contracts must represent the recipient's reasonably foreseeable need.		
	For question P17 regarding piggyback, revised Instructions for Reviewer to eliminate the underlined languages, before October 1, 2015, after December 4, 2015 and September 1, 2016.		
	For question P20 regarding pre-award and post-delivery Buy America requirements, • Revised the Detailed Explanation for Reviewer and Instructions for Reviewer to eliminate the underlined languages, before October 1, 2015 and September 1, 2016. • Revised the entire governing directive.		

10. RESERVED

TITLE VI*

FY2023 11. TITLE VI	FY2024 11. TITLE VI	FY2025 11. TITLE VI	FY2026 11. TITLE VI
Revised the Recipient Information Request to specifically indicate which items are applicable to which types of recipients.	No significant changes.	Added a new Recipient Information Request item; Any procedures or documentation for monitoring Title VI compliance of contracted service, partnerships, or other service arrangements, including any contracts, agreements, oversight materials, or records of monitoring activities. Removed Language Access Plan from set of documents under Recipient Follow-Up	No significant updates All governing directives have been reviewed and updated to reflect current guidance.
Revised the Recipient Follow-Up items to include the underlined language: Documentation of Language Assistance Plan (LAP) implementation and confirmation that a qualified language professional was used to either translate vital documents or verify accuracy of documents that were translated by software (e.g., Google Translate).		For TVI1 regarding the Title VI program, revised the Potential Deficiency Determinations and removed outdated Flexibilities and Administrative Relief.	
For question TVI2 regarding Limited English Proficient (LEP), the Instructions for Reviewers added a sentence “For vital documents and material translated with software assistance (e.g., Google Translate), verify that a qualified language professional has reviewed the material.”		Question TVI2 revised to focus on “safe harbor” provision.	

FY2023 11. TITLE VI	FY2024 11. TITLE VI	FY2025 11. TITLE VI	FY2026 11. TITLE VI
		Question TVI3 is amended to remove references to Language Access Plan requirements	
		Question TVI4 is amended to remove references to Language Access Plan requirements.	
		Question TVI5 is amended to strike Limited English Proficiency (LEP) as a protected characteristic distinct from other Title VI protections.	
For question TVI7 regarding equity analysis the Detailed Explanation for Reviewers added a sentence “Title VI covers all of the operations of covered entities regardless of whether specific portions of the covered program or activity are Federally funded. Therefore, this requirement also applies to facilities that are not FTA-funded.”		For TVI7 revised the Detailed Explanation to Reviewer.	
		For TVI8 revised the Detailed Explanation to Reviewer, the Table in Instructions to Reviewer and removed the outdated Flexibilities and Administrative Relief information..	
		New added question TVI10.	

AMERICANS WITH DISABILITIES ACT – GENERAL*

FY2023	FY2024	FY2025	FY2026
12. AMERICANS WITH DISABILITIES ACT – GENERAL	**12. AMERICANS WITH DISABILITIES ACT – GENERAL**	**12. AMERICANS WITH DISABILITIES ACT – GENERAL**	**12. AMERICANS WITH DISABILITIES ACT – GENERAL**
All questions basic requirements were revised to mirror the U.S. Department of Transportation (US DOT) Disability Law Guidance	For question ADA-GEN1 regarding ADA-related complaints, updated the following: Eliminated indicator of Compliance "d " Revised the Instruction for Reviewer to include the following languages • To be sufficiently advertised, the complaint-filing instructions should clearly apply to all types of services, including fixed route, and therefore not be solely posted on a paratransit webpage or in other paratransit material. • Ensure that the system or form mentions ADA and/or disability specifically so that a complainant will understand that the process includes ADA issues. • Revised the governing directive to include the language: <u>Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the</u>	Purpose of this Review Area was revised.	All governing directives have been reviewed and updated to reflect current guidance. Updated questions ADA-GEN4, ADA-GEN5, ADA-GEN6, ADA-GEN7 and ADA-GEN9. FOR ADA-GEN4 incorporated Subpart F of 49 CFR Part 37. For question ADA-GEN6 Added Suggested Corrective Action #3 to Deficiency Code 6-1. Incorporated the Public Rights of Way Access requirement – " On January 17, 2025, new DOT ADA requirements for transit stops within the public right of way became effective. These incorporate the Public Rights Of Way Accessibility Guidelines (PROWAG) as enforceable regulatory standards. Any transit stop within the public right of way that has been altered as of that date is required to comply."

FY2023 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2024 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2025 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2026 12. AMERICANS WITH DISABILITIES ACT – GENERAL
	case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.		
For question ADA-GEN3, added corrective action regarding advance notice for accessible vehicles.	For ADA-GEN8 regarding ADA service requirements, Revised Detailed Explanation for Reviewer and included the language: The entity may require that a service animal be harnessed, leashed, or tethered while in public places, unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In such cases, the entity may require that the person maintain control of the animal via voice, signal, or other effective means. • Revised the indicator of Compliance "c" to eliminate the language: Does the recipient impose any restrictions on the accommodation of service animals, including leashes, harnesses, or carriers? • Eliminated the language: and whether they require leaches, harnesses, or carriers in the Instructions for Reviewer.	Revised and added new Recipient Information Request items: • Procedures for receiving and processing ADA complaint procedures, including complaints for services provided by another entity • Copies of any contracts, agreements, or other terms of service with private entities such as TNCs or taxi operators for the provision of demand responsive service of any kind • Current certification of equivalent service and supporting operational analysis, if private entities such as TNCs or taxi services have been employed in demand-responsive service of any kind. The Operational analysis must examine trip data and qualitative summaries for all service criteria outlined in 49 CFR 37.77(c) • Procedures and tools for oversight of ADA provision of service requirements outlined in 49 CFR 37.161-137.69, including required reports, questionnaires, and checklists.	For question ADA-GEN7, added Suggested Corrective Action #5 to Deficiency Code 7-1.

FY2023 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2024 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2025 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2026 12. AMERICANS WITH DISABILITIES ACT – GENERAL
		• Samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified in operational analysis (if applicable) • Driver training requirements, materials, and procedures to ensure that service is provided in compliance with DOT ADA regulations governing accommodation of service animals, boarding assistance, and other general nondiscrimination requirements outlined in 49 CFR 37.161-137.69 • Analysis of complaints received over the last three years related to DOT ADA regulations governing accommodation of service animals, boarding assistance, and other general nondiscrimination requirements outlined in 49 CFR 37.161-137.69	
	For question ADA-GEN10 regarding route-deviation service, revised the governing directive to include the underlined: The requirement to comply with § 37.131 may be modified in accordance with the provisions of this subpart relating to undue financial burden.	For question ADA-GEN1 regarding ADA-related complaints, revised the Potential Deficiency Determination.	For question ADA-GEN9, revised the Indicators of Compliance.
For question ADA-GEN2 regarding accessibility requirements, added a new element to the rail car accessibility		For question ADA-GEN3 regarding vehicle used in fixed route service provided under contract, revised the	

FY2023 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2024 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2025 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2026 12. AMERICANS WITH DISABILITIES ACT – GENERAL
checklist under indicator a “For light rail vehicles operating on city streets or other areas where level boarding is not practicable, lifts or ramps compliant with 49 CFR Part 38 must be provided to enable persons with disabilities, including those who use wheelchairs, to board from such locations"		Applicability and Detailed Explanation for Reviewer.	
		For question ADA-GEN4 regarding the acquisition of vehicles for demand-response service; revised the Applicability and Detailed Explanation for Reviewer.	
		For question ADA-GEN5 regarding engagement with private entity, revised the following: • Applicability • Detailed Explanation for Reviewer • Instructions for Reviewer • Potential Deficiency Determination.	
		For question ADA-GEN9 regarding accessibility accommodation, revised the Potential Deficiency Determination.	
		For question ADA-GEN10 revised the question and the Potential Deficiency Determinations.	

FY2023 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2024 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2025 12. AMERICANS WITH DISABILITIES ACT – GENERAL	FY2026 12. AMERICANS WITH DISABILITIES ACT – GENERAL
		For question ADA-GEN13 revised the entire question regarding oversight of contracted service.	
		For question ADA-GEN14 regarding oversight of subrecipients, revised the entire question.	

AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT

FY2023	FY2024	FY2025	FY2026
13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	**13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT**	**13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT**	**13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT**
All references to the Flexibilities and Administrative Relief were removed.	For question ADA-CPT2 regarding paratransit eligibility determination, revised the Detailed Explanation for Reviewer to include the underlined language: <u>The entity may request basic personal identifying information on its application forms, such as name, date of birth, home address, and possibly gender. Collection of other information, such as income or personal vehicle ownership, must be clearly optional</u>.	Added new Recipient Information Recipient item: • <u>For contracts or other arrangements, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis</u> • <u>For subrecipients, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis</u> • No-show policy <u>(if any)</u>	All governing directives have been reviewed and updated to reflect current guidance.
Added three new Recipient Follow-Up items: • <u>Travel times for the past three years by year</u> • <u>Missed trips for the past three years by year</u> <u>Telephone hold time performance for reservations lines for the past three years by year</u>		For ADA-CPT2 regarding paratransit eligibility determination, revised the following: • Indicators of compliance • Instructions to Reviewer • Potential Deficiency Determinations.	For Question ADA-CPT6, added Indicator of Compliance “c”. “Does the recipient appropriately categorize untimely pickups, missed trips and excessive trip length”
Question ADA-CPT1 regarding paratransit service, the question was		For ADA-CPT4 regarding the requirements of paratransit service being	

FY2023 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	FY2024 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	FY2025 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	FY2026 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT
revised to include the following underlined words "If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?"		met, revised the Detailed Explanation for Reviewer.	
Question ADA-CPT1 regarding paratransit service, the Detailed Explanation for Reviewer added a sentence "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."		For question ADA-CPT6 regarding the availability of service to ADA eligible individuals, revised the Potential Deficiency Determinations.	
Question ADA-CPT5 regarding no-show/late cancellation policy, the Basic Requirement was revised to include the following underlined words "Recipients may – but are not required to – 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."		For question ADA-CPT7 revised the entire question regarding the monitoring of service provided under contract.	
Question ADA-CPT5 regarding no-show/late cancellation policy, the Indicator of Compliance a was revised to include the following underlined words "If		For question ADA-CPT8 regarding the oversight of service provided by	

FY2023 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	FY2024 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	FY2025 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT	FY2026 13. AMERICANS WITH DISABILITIES ACT – COMPLEMENTARY PARATRANSIT
the recipient has adopted a no-show policy, does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?"		subrecipients, revised the entire question.	

14. RESERVED

SCHOOL BUS

FY2023 15. SCHOOL BUS	FY2024 15. SCHOOL BUS	FY2025 15. SCHOOL BUS	FY2026 15. SCHOOL BUS
No significant changes.	For question SB3 revised the governing directive.	No significant changes. Revised the Governing Directive to include the updated regulations for questions SB3 and SB4.	No Significant Changes All governing directives have been reviewed and updated to reflect current guidance.
	For question SB4 revised the governing directive.		

CHARTER BUS*

FY2023 16. CHARTER BUS	FY2024 16. CHARTER BUS	FY2025 16. CHARTER BUS	FY2026 16. CHARTER BUS
No significant changes.	No significant changes.	No significant changes.	No Significant Changes All governing directives have been reviewed and updated to reflect current guidance.
		Revised the Governing Directive to include the updated regulations for questions CB3.	

DRUG FREE WORKPLACE ACT

FY2023 17. DRUG FREE WORKPLACE ACT	FY2024 17. DRUG FREE WORKPLACE ACT	FY2025 17. DRUG FREE WORKPLACE ACT	FY2026 17. DRUG FREE WORKPLACE ACT
No significant changes.	No significant changes.	No significant changes.	No Significant Changes All governing directives have been reviewed and updated to reflect current guidance.

DRUG AND ALCOHOL PROGRAM

FY2023	FY2024	FY2025	FY2026
18. DRUG AND ALCOHOL PROGRAM	**18. DRUG AND ALCOHOL PROGRAM**	**18. DRUG AND ALCOHOL PROGRAM**	**18. DRUG AND ALCOHOL PROGRAM**
No significant changes.	No significant changes.	Revised the Recipient Information Recipient items to specifically indicate which items are applicable to recipients.	No Significant Changes All governing directives have been reviewed and updated to reflect current guidance.
		For question DA1 addressing board adopted drug and alcohol misuse policy, revised the Basic requirement, Detailed Explanation for Reviewer and Indicators of compliance.	
		For question DA2 addressing required training for covered employees and supervisors/officers, revised the Detailed Explanation for Reviewer and Instructions for Reviewer.	
		For question DA3 revised the question addressing the drug and alcohol testing information, and Basis requirement.	
		For question DA4 addressing the required qualification, revised the following: • Detailed Explanation for Reviewer, • Indicators of compliance, • Instructions to reviewer. • Governing Directive	

SECTION 5307 PROGRAM REQUIREMENTS*

FY2023 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2024 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2025 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2026 19. SECTION 5307 PROGRAM REQUIREMENTS
No significant changes.	Revised the Recipient Information Request to include the following language below. • For recipients in small urbanized areas (50,000 to 200,000 in population): o signed metropolitan transportation planning agreement (or agreements) between the recipient, MPO, state(s), and public providers of public transportation. There can be one or more than one written agreement(s) among the MPO, the State(s), and the providers of public transportation serving the UZA. See governing directive below. o written provisions for developing and sharing performance data and the selection of performance targets, as well as the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO, if not addressed in metropolitan transportation planning agreement. • For recipients in large urbanized areas (over 200,000 in population): o The FHWA and the FTA jointly review and evaluate the	For question 5307:1 regarding written agreement with the MPO and state and any local or regional providers, revised the Potential Deficiency Determination.	All governing directives have been reviewed and updated to reflect current guidance. Suggested Corrective Action for Deficiency Code 5307:4-1 has been revised.

FY2023 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2024 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2025 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2026 19. SECTION 5307 PROGRAM REQUIREMENTS
	transportation planning process for each TMA no less than once every four years to determine if the process meets the requirements of applicable provisions of Federal law. Section 5307 recipients shall participate in this quadrennial Certification Review, along with the MPO, the State(s), and the other providers of public transportation. Large urbanized area recipients therefore are at lower risk for non-compliance (due to the redundant planning oversight functions), thus a full survey/scan is not necessary under the Triennial Review.		
	For question 5307:1 regarding written agreements: • Revised the Question, Basic Requirement, and Indicators of Compliance “a” and “b” to include the underlined language, (<u>or agreements)</u> • Revised the Applicability to include the underlined language: Section 5307 recipients who <u>did not participate in the most recent quadrennial Certification Review of the MPO planning process or typically operate in UZAs under 200,000 in population.</u>		

FY2023 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2024 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2025 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2026 19. SECTION 5307 PROGRAM REQUIREMENTS
	• Replaced Performance Information Provision with Element in the Indicators of Compliance "c". • Revised the Instructions for Reviewers, Potential Deficiency Determination, and governing directive.		
	For question 5307:2 regarding the Program of Projects: • Revised the Detailed Explanation for Reviewer to include the underlined language Separate public-review and (but does not require) • Revised Indicators of Compliance "a" to include the language below o Does the MPO have an adopted public participation plan meeting the requirements detailed in 23 CFR 450.316? For recipients in small urbanized areas (under 200,000 in population), does the public participation plan describes the minimum required elements of the MPO's its public participation process? For recipients in large urbanized areas (over 200,000 in population), do the results of the MPO's most recent planning Certification Review demonstrate that the MPO's public participation plan describes the minimum required	In question 5307:2, removed cross-reference to limited English proficiency (LEP) requirements in chapter on Title VI.	

FY2023 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2024 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2025 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2026 19. SECTION 5307 PROGRAM REQUIREMENTS
	elements of the MPO's public participation process? The FHWA and the FTA jointly review and evaluate the transportation planning process for each TMA no less than once every 4 years to determine if the process meets the requirements of applicable provisions of Federal law. Section 5307 Recipients shall participate in this quadrennial Certification Review, along with the MPO, the State(s), and the other providers of public transportation. Large urbanized area recipients therefore are at lower risk for non-compliance (due to the redundant planning oversight functions), thus a full survey/scan is not necessary under the Triennial Review. o Do the TIP document(s) state public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP public review requirements of the Section 5307 Program? • Revised the Potential Deficiency Determinations, Deficiency Code 5307:2-1 description to include the word Adopted. • Revised the governing directive to Included 23 CFR 450.326 (b) requirement.		
	For question 5307:3 regarding the written policy for public comment, revised Potential Deficiency Determination,		

FY2023 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2024 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2025 19. SECTION 5307 PROGRAM REQUIREMENTS	FY2026 19. SECTION 5307 PROGRAM REQUIREMENTS
	Deficiency Code 5307:3-3 Suggested corrective Action(s) to include the underlined language: 1) If the recipient has reverted back to its previous condition that pre-existed the fare increase or major service reduction, for the next fare increase or major service reduction, the recipient must submit documentation that it followed its policy for soliciting public comment and considering the results of public meetings or hearings in the implementation of the final plan, or 2) If the recipient has not reverted back to its previous condition, the recipient must submit documentation that it has followed its policy for soliciting public comment and considering the results of the public meetings or hearings in the implementation of the final plan for the sustained fare increase or major service reduction.		
	For question 5307:4 regarding fare charge, revised the governing directive to 49 U.S.C 5307(c) Grant Recipient Requirements (1)(D)		
	For question 5307:5 regarding oversight for subrecipients and contractors, revised the governing directive to include the underlined language: written confirmation from the subrecipient, highlighting the status of actions planned or taken to address Single Audit findings related to the particular subaward.		

SECTION 5310 PROGRAM REQUIREMENTS*

FY2023 20. SECTION 5310 PROGRAM REQUIREMENTS	FY2024 20. SECTION 5310 PROGRAM REQUIREMENTS	FY2025 20. SECTION 5310 PROGRAM REQUIREMENTS	FY2026 20. SECTION 5310 PROGRAM REQUIREMENTS
No significant changes.	No significant changes.	Revised the Recipient Information Request items: Evidence of consultation with responsible local officials, publicly owned operators of public transportation, private transportation providers, and nonprofit transportation providers, human service providers, seniors, individuals with disabilities, and other members of the public.	All governing directives have been reviewed and updated to reflect current guidance.
		For question 5310:2 regarding apportionment applied to eligible projects, revised the entire question.	
		For question 5310:3 regarding projects included in in a locally developed, coordinated public transit-human service transportation plan, revised the Detailed Explanation for Reviewer.	
		For question 5310:4 regarding funds for specific needs of seniors and individuals with disabilities, revised the Detailed Explanation for Reviewer.	

SECTION 5311 PROGRAM REQUIREMENTS*

FY2023	FY2024	FY2025	FY2026
21. SECTION 5311 PROGRAM REQUIREMENTS	**21. SECTION 5311 PROGRAM REQUIREMENTS**	**21. SECTION 5311 PROGRAM REQUIREMENTS**	**21. SECTION 5311 PROGRAM REQUIREMENTS**
No significant changes.	No significant changes.	Newly added question 5311:4.	All governing directives have been reviewed and updated to reflect current guidance.

PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP)

FY2023	FY2024	FY2025	FY2026
22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN	**22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN**	**22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN**	**22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN**
The entire section was revised to streamline the Public Transportation Agency Safety Plan (PTASP) regulation (49 CFR Part 673).	For PTASP1 regarding recipient that has an ASP, revised the Detailed Explanation for Reviewer. • Revised the Indicator "e" ang "g" to eliminate the underlined language, by December 31, 2022. • Revised Indicator g" eliminated Indicator of Compliance "g1": If any updates occurred after December 31, 2022, was the ASP approved by the recipient's Safety Committee? • Revised Instructions for Reviewer to include the underlined languages annually and annual update and eliminated the underlined languages by December 31, 2022, and on or before December 31, 2022. • Replaced the language on or before December 31, 2022, with annually in the Potential Deficiency Information.	Revised the Purpose for the Review Area and Recipient Information Request.	All governing directives have been reviewed and updated to reflect current guidance. For question PTASP1. • Updated Indicator of Compliance "g" to add item 3. • Added Deficiency Coder PTASP1-7: ASP not approved in correct order as required.
	For question PTASP3 regarding ASP required elements, • Revised the Basic Requirement to include the underlined language: A recipient subject to the PTASP regulation must have an ASP plan that meets the requirements of 49 CFR Part 673.	For question PTASP1 regarding ASP, revised the entire question.	For question PTASP3. • Updated Table 22-1 under Indicator of Compliance "a" to include the Safety Performance Targets and Safety Performance Targets in the Safety Risk Reduction Program. • Added Deficiency Code

FY2023	FY2024	FY2025	FY2026
22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN	**22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN**	**22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN**	**22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN**
	• Revised the Detailed Explanation for Reviewer to include the language: Approval of Safety Committee: Covered in question PTASP1. • Revised the chart in Indicator of Compliance "a" to include the underlined language Approval of Safety Committee (covered in question PTASP1) in the required elements.		PTASP3-2: ASP missing required safety performance target(s) • Added Deficiency Code PTASP3-3: ASP missing required safety performance targets in the risk reduction program
		For question PTASP2 regarding roles and responsibilities, revised the entire question.	Updated Issues/Areas of Concern for FTA's Awareness
		For question PTASP3 regarding the ASP required elements, revised the Detailed Explanation and governing directive.	
		For question PTASP4 revised the suggested corrective action.	
		For question PTASP5 regarding subrecipient oversight, revised the indicators of compliance.	
		For question PTASP6 regarding ASPs for small public transportation, revised the Detailed Explanation.	
		Revised the Issues/Areas of concern for FTA's awareness.	

CYBERSECURITY

FY2023	FY2024	FY2025	FY2026
23. CYBERSECURITY	**23. CYBERSECURITY**	**23. CYBERSECURITY**	**23. CYBERSECURITY**
No significant changes.	For question C1 the cybersecurity risks revised the detailed explanation to Reviewer.	Revised the Purpose of the Review Area.	No significant changes.

1. LEGAL

PURPOSE OF THIS REVIEW AREA
The recipient must promptly notify the FTA of legal matters and additionally notify the U.S. Department of Transportation (US DOT) Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

QUESTIONS TO BE EXAMINED
1. Since the last Comprehensive Review, did the recipient promptly notify the FTA of any legal matters that may affect the FTA?

2. Since the last Comprehensive Review, did the recipient promptly notify the FTA and US DOT OIG of any instances relating to false claims under the False Claims Act or fraud, waste or abuse?

3. Since the last Comprehensive Review, did the recipient and any subrecipients use only non-appropriated (non-federal) funds for any lobbying activities and did each file the required disclosure form?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request

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

Recipient Follow-up

- Office of Management and Budget (OMB) Standard Form LLL
- Documentation of lobbying activities conducted by subrecipients, contractors, and subcontractors

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L1. Since the last Comprehensive Review, did the recipient promptly notify the FTA of any legal matters that may affect the FTA?

BASIC REQUIREMENT
A recipient must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
The recipient is required to promptly notify the FTA Chief Counsel and 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'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. 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, or instances 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 recipient promptly notify the FTA Chief Counsel and its Regional Counsel?*

INSTRUCTIONS FOR REVIEWER
Review information from the recipient and regional office. Conduct an internet search 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 Comprehensive Review.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it did not notify the FTA Chief Counsel and 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.

DEFICIENCY CODE L1-1: Failure to notify FTA of potential or pending litigation

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has submitted the applicable information to the FTA Chief Counsel and Regional Counsel along with a process to ensure timely notification in the future.

GOVERNING DIRECTIVE
FTA Master Agreement(34), Section 39(b).(1) and 39(b).(2).

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.

L2. Since the last Comprehensive Review, did the recipient promptly notify the FTA and US DOT OIG of any instances relating to false claims under the False Claims Act or fraud, waste or abuse?

BASIC REQUIREMENT
A recipient must promptly notify the FTA and the US DOT OIG of any instances relating to false claims under the False Claims Act or fraud, waste or abuse.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients must promptly notify the US DOT Inspector General and the FTA Chief Counsel or Regional Counsel for the region in which the recipient is located if the recipient has knowledge that a principal, officer, employee, agent, or third party participant of the recipient (including subcontractors at any tier), or other person potentially may have submitted a false claim under the False Claims Act, 31 U.S.C. §3729 et seq., or has committed a criminal or civil violation of law pertaining to fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving Federal assistance.

INDICATORS OF COMPLIANCE

a. *Since the last Comprehensive Review, did the recipient have evidence that one of its principals, officers, employees, agents, or third-party participants submitted a false claim or committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving Federal assistance? If yes, briefly describe the claim or matter. If no, move to the next question.*

b. *If yes, did the recipient notify the FTA Chief Counsel or its Regional Counsel and the US DOT OIG?*

INSTRUCTIONS FOR REVIEWER
Review information from the recipient and regional office. Conduct an internet search of the recipient for documentation/evidence of false claims or criminal violations related to Federal assistance since the last Comprehensive Review.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it did not notify the FTA Chief Counsel or FTA Regional Counsel and the US DOT OIG about an applicable false claim, civil or criminal crime, fraud, conflict of interest, bribery, gratuity, or similar misconduct related to its Federal assistance.

DEFICIENCY CODE L2-1: False claim, fraud, waste, abuse, or other civil or criminal infraction not reported

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has submitted applicable information to the FTA Chief Counsel or Regional Counsel and the US DOT OIG and a process to ensure timely notification in the future.

GOVERNING DIRECTIVE
FTA Master Agreement(34), Section 39(b)(3)

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.

L3. Since the last Comprehensive Review, did the recipient and any subrecipients use only non-appropriated (non-federal) funds for any lobbying activities and did each file the required disclosure form?

BASIC REQUIREMENT
Recipients, and subrecipients are prohibited from using appropriated Federal funds to lobby for Federal funds. If the recipient or subrecipient uses non-Federal funds to lobby for transit purposes, recipients and subrecipients must file the OMB Standard Form LLL with the FTA in in the Transit Award Management System (TrAMS).

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
The use of Federal funds for lobbying is prohibited. If lobbying services for transit purposes are procured with non-Federal funds, the recipient is required to submit the disclosure form, OMB Standard Form LLL (Rev.7-97).

Activities that are required to be disclosed include the hiring of any third party (i.e., lobbyist) for the purpose of attempting to influence a covered Federal action. Disclosure is not required for activities performed by the recipient's own regularly employed officers and employees. Covered Federal action means the awarding of any federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any federal cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Each person must file a certification and disclosure form (as required) with each submission that initiates agency consideration of such person for, or upon receipt by such person of:

- An award of any Federal contract, grant, or cooperative agreement exceeding $100,000;
- An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000; or
- An amendment to such an award requiring FTA's and the recipient's execution in TrAMS.

Updates to OMB Standard Form LLL disclosures are required for each calendar quarter in which any event occurs that requires disclosure, or that materially affects the accuracy of the information contained in any disclosure form previously filed by the entity. Those events may include:

- A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a "covered Federal action"
- A change in the person(s) or individual(s) attempting to influence a covered Federal action
- A change in the officer(s), employee(s), or member(s) contacted to attempt to influence a covered Federal action

Any subrecipient, contractor, and subcontractor in receipt of an award or contract exceeding $100,000 is subject to the same disclosure and updating requirements as the recipient. The recipient must obtain an OMB Standard Form LLL, or a quarterly report update from a subrecipient, contractor, or subcontractor for an event that should be reported.

INDICATORS OF COMPLIANCE

a. *Did the recipient pay for lobbying activities since the last Comprehensive Review? If no, move to indicator c.*

b. *What types of funds were used to pay for lobbying activities? If local funds were used, were the proper disclosures made?*

c. *How does the recipient ensure that its subrecipients, contractors, and subcontractors comply with the lobbying requirements?*

d. *If any subrecipient, contractor, or subcontractor confirms lobbying activities, did the recipient obtain the OMB Standard Form LLL and provide it to the FTA?*

INSTRUCTIONS FOR REVIEWER

Recipient lobbying: Confirm with the recipient if the recipient conducts lobbying activities. Using the list of lobbying activities provided in the Recipient Information Request, select and review a sample of OMB Standard Form LLL to determine if disclosures were made when required. In preparing the ECHO sample, review payments made for professional services not clearly described in financial reports. Prior to, or during the site visit, discuss the nature of these professional services and any lobbying activities the recipient may have conducted. Determine if Federal funds may have been used for lobbying or if required disclosures were not submitted for local funds used in such lobbying activities it conducted.

Oversight of subrecipient, contractor*, or subcontractor lobbying: On-site, discuss with the recipient its process for obtaining information on lobbying activities conducted by subrecipients, contractors, or subcontractors. For subrecipients and contractors selected for a site visit, review the applicable agreements and contracts to verify required lobbying disclosures and certifications were obtained. During the subrecipient, contractor, and lessee site visits, discuss any lobbying activities the entity may have conducted, whether or not Federal funds were used, and if the required disclosures were made.

*NOTE TO REVIEWERS: For the scope of the Comprehensive Review, reviewers are to verify implementation of the recipient's oversight program for transit management contractors that will be visited during the site visit.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it used Federal funds to compensate any person to influence or attempt to influence a covered Federal action.

DEFICIENCY CODE L3-1: Federal funds used for lobbying

SUGGESTED CORRECTIVE ACTION: Work with the FTA Regional Counsel to determine the appropriate corrective action steps to be taken.

The recipient is deficient if it used non-Federal funds to compensate any person to influence or attempt to influence a covered Federal action for transit purposes and did not file an initial OMB Standard Form LLL or a quarterly update for an event that should have been reported and submitted to the FTA in TrAMS.

DEFICIENCY CODE L3-2: Recipient did not submit OMB Standard Form LLL/quarterly update

SUGGESTED CORRECTIVE ACTION: Submit a process for reporting lobbying activities on OMB Standard Form LLL and any quarterly updates. Submit in TrAMS an initial OMB Standard Form LLL and/or a report for any quarter in which there was a material change.

The recipient is deficient if it did not obtain an initial OMB Standard Form LLL or a quarterly update from a subrecipient, contractor, subcontractor, or lessee for an event that should have been reported and submitted in TrAMS for the periods in which any related lobbying activities were conducted.

DEFICIENCY CODE L3-3: Subrecipient, contractor, subcontractor, or lessee did not submit OMB Standard Form LLL/quarterly update

SUGGESTED CORRECTIVE ACTION: Submit a process for obtaining the required lobbying information, including reporting lobbying activities on OMB Standard Form LLL and any quarterly updates, for its subrecipients, contractors, subcontractors, or lessees.

GOVERNING DIRECTIVE

49 CFR 20.100 Conditions on Use of Funds

(a) No appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(c) Each person who requests or receives from an agency a Federal contract, grant, loan, or a cooperative agreement shall file with that agency a disclosure form, set forth in appendix B, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under paragraph (a) of this section if paid for with appropriated funds.

49 CFR 20.110 Certification and Disclosure

(a) Each person shall file a certification, and a disclosure form, if required, with each submission that initiates agency consideration of such person for: (1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000; or (2) An award of a Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000.

(b) Each person shall file a certification, and a disclosure form, if required, upon receipt by such person of: (1) A Federal contract, grant, or cooperative agreement exceeding $100,000; or (2) A Federal loan or a commitment providing for the United States to insure or guarantee a loan exceeding $150,000, unless such person previously filed a certification, and a disclosure form, if required, under paragraph (a) of this section.

(c) Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under paragraphs (a) or (b) of this section. An event that materially affects the accuracy of the information reported includes: (1) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or (2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or, (3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(d) Any person who requests or receives from a person referred to in paragraphs (a) or (b) of this section: (1) A subcontract exceeding $100,000 at any tier under a Federal contract; (2) A subgrant, contract, or

subcontract exceeding $100,000 at any tier under a Federal grant; (3) A contract or subcontract exceeding $100,000 at any tier under a Federal loan exceeding $150,000; or, (4) A contract or subcontract exceeding $100,000 at any tier under a Federal cooperative agreement, shall file a certification, and a disclosure form, if required, to the next tier above.

(e) All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in paragraphs (a) or (b) of this section. That person shall forward all disclosure forms to the agency.

2 CFR 200.332 Requirement for pass-through entities

A pass-through entities must: (e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal Statutes, regulations, and the terms an conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Any potential legal issues or concerns not covered above?

REFERENCES
1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. 49 CFR Part 20, “New Restrictions on Lobbying”
4. FTA Master Agreement

USEFUL WEBLINKS
1. “Disclosure of Lobbying Activities” form (SF LLL)

2. FINANCIAL MANAGEMENT AND CAPACITY

PURPOSE OF THIS REVIEW AREA
The recipient must have financial policies and procedures; an organizational structure that defines, assigns, and delegates fiduciary authority; and financial management systems in place to manage, match, and charge only allowable costs to the award. The recipient must conduct required Single Audits, as required by 2 CFR 200, and provide financial oversight of subrecipients.

QUESTIONS TO BE EXAMINED
1. Does the 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 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 exist?

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

5. If applicable, has the recipient complied with requirements for charging indirect costs to Federal Transit Administration (FTA) awards, including developing annual cost allocation plans, submitting approval documentation, and recording indirect costs in awards and reports?

6. Has the recipient conducted the required Single Audits, submitted the required documentation to the Federal Audit Clearinghouse (FAC), and resolved any identified issues?

7. Does the recipient have financial resources to provide the required local share for active awards and to maintain and operate FTA-funded assets?

8. For recipients receiving operating assistance, is the amount eligible for operating assistance calculated in compliance with FTA guidance?

9. Does the recipient adequately ensure financial management systems oversight of its subrecipients?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- 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
- List of funds to support transit programs for the last three years and next three years. Identify the following items for each year:
    1. sources of funding (i.e., farebox revenue, toll tax, local share, etc.)
    2. amounts
    3. status (elected, discretionary, by law, etc.)
    4. significant changes that may affect the sources of funding
- Financial management policies and procedures that include determining the allowability of costs and timely distribution of funds
- Cash Management Improvement Act of 1990 (CMIA) agreements (states only)

- Organizational chart for organization as a whole and the financial office(s)
- Position and job descriptions for award-related senior financial and accounting staff with financial duties for managing FTA funds
- Sample resumes of award-related senior financial and accounting staff with financial duties
- Sample record from financial system identifying the following required elements: FTA awards with the Assistance Listing title and number, FAIN (Federal Award Identification Number) and year, name of the awarding Federal agency, and name of the pass-through entity, if any
- Sample financial record including Federal award information, amounts awarded, authorized, encumbered and expended; including income earned
- Most recent variance report(s) demonstrating that budget/actual comparisons are completed for FTA awards
- Sample worksheets used to calculate operating expenses
- 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 with comparison to actual results
- Listing of local or state legislation, with sunset provisions, impacting transit funding
- State/Transportation Improvement Program (S/TIP)
- Annual budget to actual reconciliation reports for the entire transit program for the review period
- List of subrecipients that charge indirect cost to the recipient

Recipient Follow-up

- Total Federal (non-FTA) funds expended for the past three years by year
- Documentation of progress towards closing open Single Audit findings
- Approval notification of the Cost Allocation Plan (CAP) or Indirect Cost Rate Proposal (ICRP)
- Approval notification of the central services plan
- Board meeting minutes for the review period

F1. Does the 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
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 recipients

DETAILED EXPLANATION FOR REVIEWER
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 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:

(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 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also §§200.300 Statutory and national policy requirements through 200.309 Period of performance of this part.

(h) Cost must be incurred during the approved budget period.

2 CFR 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 states with major Federal programs, payments are governed by Treasury-State Cash Management Improvement Act of 1990 (CMIA) agreements and default procedures codified at 31 CFR Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers" and the Treasury Financial Manual, Part 4A, Chapter 2000 (TFM 4A-2000) Overall Disbursing Rules for All Federal Agencies.

    i. The CMIA provides the general rules and procedures for the efficient transfer of funds for Federal financial assistance programs between the Federal government and the states. The CMIA requires an annual Treasury-State Agreement (TSA) between the U.S. Department of the Treasury, Financial Management Service and each of the 50 states, the District of Columbia, and the Territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands. The objectives of the agreement are (1) To minimize the time between the transfer of funds to the states and the payout for program purposes; (2) To ensure that Federal funds are available when requested; and (3) To assess an interest liability to the Federal government and/or the states to compensate for the lost value of funds. *TSA covers Federal programs that meet the funding threshold established each year and establishes the procedures and requirements for the transfer of funds*. These procedures require the state to calculate Federal and state interest liabilities at the Treasury bill rate for covered programs and to annually report the liabilities to the Federal government. Any interest owed by the state for the preceding fiscal year is due to the Federal government no later than March 31 of the following fiscal year.

    For a State entity without a TSA, it is sufficient for the State to refer to the default procedures in 31 CFR 305(a). This is one instance where written procedures are not required, because the default procedures in 31 CFR 305(a) are very prescriptive. It is not necessary for the State to cut and paste the default procedures into their written

materials. Note: This guidance is relevant only to state agencies whose transit program is not covered by the states' TSA and does not apply to non-state recipients.

ii. TFM 4A-2000 provides guidance to Federal agencies on the overall disbursing rules with the principal objectives of control of disbursements are to ensure that all disbursements are legal, proper, and correct and that all disbursements are accurately recorded, reported, and reconciled in a timely, efficient manner.

- 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 200?*

Required Written Financial Management Policies and Procedures			
Policy/Procedure	**CFR Reference**	**Recipient Written Policy/Procedure and Page Number**	**Comment/Description of process, if not written**
Allowable costs	*2 CFR 200.302* *2 CFR 200-Subpart E*	-	-
Cash Management and Payment (CMIA for states)	*2 CFR 200.302* *2 CFR 200.305*	-	-

c. *How do the recipient's financial management policies and procedures address internal control practices to prevent waste, loss, and misuse of Federal funds. Complete the chart below: (if written, cite location; otherwise discuss and document the recipient's process for each)*

Required Financial Management Policies and Procedures Information						
Policy/Procedure	**CFR Reference**	**Recipient Policy and Procedure (Page Number)**	**Implementing question (See Instructions for Reviewer)**	**Implemented**		**Comment/ Description of Process, if not written**
				Yes	**No**	
Safeguarding of funds	*2 CFR 200.302*	-	*Question F4*	-	-	-
Recording and identification of assets; including the use of such	*2 CFR 200.302*	-	*Question F3*	-	-	-
An audit, testing or review program for internal control systems	*2 CFR 200.303*	-	*Question F6*	-	-	-
Financial oversight of subrecipients, if applicable	*2 CFR 200.303* *2 CFR 200.329* *2 CFR 200.332*	-	*Question F9*	-	-	-
Required financial reporting, review, and approval	*2 CFR 200.328*	-	*Questions F3 & F4*	-	-	-
Record retention	*2 CFR 200.334*	-	*Question F3*	-	-	-
Accounting software being used	*2 CFR 200.336*	-	*Question F3*	-	-	-
Organizational structure, levels and delegation of authority, access, and segregation of duties	*FTA Circular 5010.1F Award Management Requirements Chapter VI Section (2)(g)*	-	*Question F2*	-	-	-

Required Financial Management Policies and Procedures Information						
Policy/Procedure	**CFR Reference**	**Recipient Policy and Procedure (Page Number)**	**Implementing question (See Instructions for Reviewer)**	**Implemented**		**Comment/ Description of Process, if not written**
				Yes	**No**	
Financial planning	*FTA Circular 5010.1F, Chapter VI, Section 5 Financial Plan*	-	*Question F7*	-	-	-
Prevention of Duplicate Billing	*2 CFR 200.1*		*Question F4*	-	-	-

d. Is the recipient implementing its financial management policies and procedures as written and/or described?

INSTRUCTIONS FOR REVIEWER

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.

For state agencies, access the Treasury-State Cash agreement from the United States Bureau of Fiscal Service. If the agreement has expired, follow up with the recipient to obtain the current agreement. Confirm that the FTA program is one of the programs that is covered by the agreement. If not, follow up with the recipient to obtain its written procedures for cash management and confirm that the procedures reference 2 CFR Section 200.305 (a). As these procedures are prescriptive, referencing the section of the CFR is sufficient to meet this requirement.

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, scope of work, 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.

(g) Received prior FTA approval, as needed.

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 and oversight reviews conducted since the last Comprehensive Review 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 table at indicator c, 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, as referenced in the table at indicator d.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient 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.

> DEFICIENCY CODE F1-1: Lacking/missing required written financial management policies and procedures
>
> SUGGESTED CORRECTIVE ACTION: Develop and submit 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. This must include procedures for determining allowability of cost and timely distribution of funds. Submit documentation that it has trained appropriate staff on the new policies and procedures.

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

> DEFICIENCY CODE F1-2: Lacking internal financial controls
>
> SUGGESTED CORRECTIVE ACTION: Submit 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. Submit documentation that it has trained appropriate staff on the new policies and procedures.
>
> NOTE: This deficiency should be made only if there are multiple and systematic issues identified in the review of this section. Prior to making this deficiency, consult with the regional office.

GOVERNING DIRECTIVE

2 CFR 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. All recipient and subrecipient 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 the terms and conditions; and tracking expenditures to establish that funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award. See § 200.450.

(b) The recipient's and subrecipient's financial management system must provide for the following (see also §§ 200.334, 200.335, 200.336, and 200.337):

(4) Effective control over, and accountability for, all funds, property, and other assets. The recipient or subrecipient must safeguard all assets and ensure they are used solely for authorized purposes. See § 200.303.

(6) Written procedures to implement the requirements of § 200.305.

(7) 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 200.303 Internal controls

The recipient and subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should align 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 recipient's or subrecipient's compliance with statutes, regulations, and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality.

2 CFR 200.305 Federal Payment

(a) *Payments for States.* For states, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 CFR part 205 and Treasury Financial Manual (TFM) 4A-2000, "Overall Disbursing Rules for All Federal Agencies"

(b) *For recipients and subrecipients other than States.* For recipients and subrecipients other than States, payment methods must minimize the time elapsing between the transfer of funds from the Federal agency or the pass-through entity and the disbursement of funds by the recipient or subrecipient regardless of whether the payment is made by electronic funds transfer or by other means. See § 200.302(b)(6). Except as noted in this part, the Federal agency must require recipients to use only OMB-approved, government-wide information collections to request payment.

2 CFR 200.403 Factors affecting allowability of costs

Except where otherwise authorized by statute, costs must meet the following 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 recipient or subrecipient.

(d) Be accorded consistent treatment. For example, 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) Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency. All other costs must be incurred during the approved budget period. At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods. See §200.308(g)(3).

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

(g) 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 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 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 exist?

BASIC REQUIREMENT
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 recipients

DETAILED EXPLANATION FOR REVIEWER
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 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.

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? Do the requirements align with staff resumes?*

c. *Are financial functions and responsibilities segregated?*

d. *Describe the recipient's process for financial supervision?*

INSTRUCTIONS FOR REVIEWER

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

Review recipient's job descriptions for its senior financial and accounting staff as listed on the organizational chart. Review sample resumes of senior financial and accounting staff by comparing them to the respective job descriptions to verify that staff experience align with their position.

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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not segregate financial duties and functions.

DEFICIENCY CODE F2-1: No segregation of financial duties and functions

SUGGESTED CORRECTIVE ACTION: Develop and submit a revised organizational structure demonstrating a segregation of financial duties and functions, including roles and responsibilities, to create an internal system of financial checks.

The recipient is deficient if its minimum required qualifications for senior financial and accounting staff do not align with its staff resumes.

DEFICIENCY CODE F2-2: Minimum financial required qualifications not properly aligned

SUGGESTED CORRECTIVE ACTION: Develop and submit minimum financial/accounting qualifications for senior financial/accounting personnel and/or a training program demonstrating how senior personnel will acquire the necessary qualifications.

The recipient is deficient if its listed individual who is the registered ECHO approving official, or a person to whom this person has delegated the authority in writing, does not approve each ECHO request.

DEFICIENCY CODE F2-3: ECHO draws not properly approved

SUGGESTED CORRECTIVE ACTION: Develop a process to ensure someone other than the approving official requests ECHO funds. Submit a process documenting that an authorized official approves each ECHO request. Update the authorizing official in ECHO or have the authorizing official delegate authority in writing to the person approving the requests. Implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

The recipient is deficient if it does not have a process for supervising financial personnel or the recipient is not following that process.

DEFICIENCY CODE F2-4: Lacking supervision for financial personnel

SUGGESTED CORRECTIVE ACTION: Develop and submit updated financial policies and procedures that define a process for supervising financial personnel and evidence that such a process has been implemented.

The recipient is deficient if its approving/authorizing office draws down the funds.

DEFICIENCY CODE F2-5: ECHO draw process not properly segregated

SUGGESTED CORRECTIVE ACTION: Develop a process to ensure someone other than the approving official requests ECHO funds. Implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

GOVERNING DIRECTIVE

2 CFR 200.303 Internal Controls

The recipient and subrecipient must:

(a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient 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 recipient or subrecipient's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified.

(e) Take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality..

FTA Circular 5010.1F 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 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.

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

BASIC REQUIREMENT
Recipients must have financial management systems in place to accurately account for and report on Federal funds.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 as addressed in the Technical Capacity-Award Management questions TC-AM2 and TC-AM3.

(3) Records that 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. If indirect costs are included in an award, the budgeted amounts should be reviewed for comparison with those costs claimed in the FFR.

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 Assistance Listing title and number, Federal Award Identification Number (FAIN) 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, financial obligations, unobligated balances, assets, expenditures, income, and interest? Are these supported by source documentation?*

d. *Are required reports accurate and current and disclose complete financial results?*

e. *Are there comparisons of expenditures to budget by Federal award?*

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

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

In TrAMS, obtain the most recent FFR 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 DEFICIENCY DETERMINATION
The recipient is deficient if its financial management systems do not permit the preparation of reports required by general and program-specific terms and conditions, or 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. The Program Office may consider payment review or payment suspension to address risk surrounding safeguarding Federal funds until the corrective actions are sufficiently addressed.

DEFICIENCY CODE F3-1: Financial management systems deficiencies

SUGGESTED CORRECTIVE ACTION 1: 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.

SUGGESTED CORRECTIVE ACTION 2: Develop and submit policies and procedures that allow for the preparation of required reports, tracking of award funds, and addressing required elements and provide evidence of implementing financial management systems to accurately account for and report on federal funds.

GOVERNING DIRECTIVE
2 CFR 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 funds. All recipient and subrecipient 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 the 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. See also §200.450.

b. The recipient's and subrecipient's financial management system must provide for the following (see also §§200.334, 200.335, 200.336, and 200.337):

   1) Identification 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 Assistance Listings title and number, Federal award identification number, year the Federal award was issued, and name of the Federal agency or pass-through entity.

   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 §§200.328 and 200.329. When a federal agency or pass-through entity requires reporting on an accrual basis from a recipient or subrecipient that maintains its records on other than an accrual basis, the recipient or subrecipient must not be required to establish an accrual accounting system. This recipient or subrecipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand.

   3) Maintaining records that sufficiently identify the amount, source, and expenditure of Federal funds for Federal awards. These records must contain information necessary to identify Federal awards, authorizations, financial obligations, unobligated balances, as well as assets, expenditures, income, and interest. All records must be supported by source documentation.

   4) Effective control over, and accountability for, all funds, property, and other assets. The recipient or subrecipient must safeguard all assets and assure that they are used solely for authorized purposes. See §200.303.

   5) Comparison of expenditures with budget amounts for each Federal award.

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

BASIC REQUIREMENT
Recipients may only request necessary and eligible Federal funds through FTA's ECHO system. Drawdowns must be tracked by activity line item (ALI), fully supported by backup documentation, and for advanced payment, funds must be disbursed within three business days.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients request Federal funds through FTA's ECHO system. The recipient's records must support ECHO requests. The information is based on the approved award budgets and the underlying transactions must 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, as well as allocated to specific awards, if purchased with federal or pass through funding or used as federal match. 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 award costs in the award budget.

Recipients may initiate drawdowns 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.

Prior to each drawdown the recipient makes in excess of $50 million, the recipient must notify the FTA regional office. For drawdowns of more than $50 million but less than $500 million, the recipient must notify the FTA regional office two business days prior to initiating the drawdown. For drawdowns of more than $500 million, the recipient must notify the FTA regional office five business days prior to initiating the drawdown. The notification must include the approximate amount(s) and the approximate deposit date(s).

For funds received from 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, recipients are required to return to the Federal Government any excess Federal payments.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

The impact of the supplemental funds on the Comprehensive Review process is addressed at Question F8 and in the ECHO Transaction Sampling Procedures at the end of this review area.

INDICATORS OF COMPLIANCE

a. *Does backup documentation support the amount of the ECHO draw? If the recipient's expenses are supported by multiple fund sources (i.e. federal, state, local) or multiple agencies, does the recipient documentation show the allocation of the expenses? If the recipient uses volunteered services or in-kind contributions, does it fully document these services?*

b. *How are drawdowns tied to the award budget? Were any award budget line items overcharged? Are all expenses charged to the award eligible under the award's terms and conditions and scope of work?*

c. *Did the recipient notify FTA two business days in advance of any drawdowns in excess of $50 million or five business days in advance of any drawdowns in excess of $500 million?*

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 REVIEWER

Review award budgets to determine type of funds and matching requirements and sources. Review progress reports to verify changes in allocated amounts and/or changes in sources of funds used for local match. 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 drawdowns in accordance with the Records Selection Procedures at the end of this section 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 are tracked back to the approved award budget, and the recipient has made the appropriate requests for budget amendments or revisions including any necessary prior approvals.
- 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 and for drawdowns exceeding $500 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 Table F4 at the end of this section.

POTENTIAL DEFICIENCY DETERMINATIONS

NOTE: The regional office should be alerted to payment-related deficiencies to consider if suggested corrective actions should also include payment review or suspension is required to address the findings and remediate the recipient's non-compliance with federal financial requirements. If included the requirements to lift these restrictions should be noted in the report or in separate documentation from the regional office.

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

DEFICIENCY CODE F4-1: ECHO documentation deficient

SUGGESTED CORRECTIVE ACTION: Submit 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. Document and work with the FTA regional office to reimburse FTA for ineligible expenses charged to awards, plus applicable interest*. Implement and submit documentation of training conducted of the appropriate staff on new policies and procedures.

*NOTE TO REVIEWER: FTA determines when it will charge interest. These typically included when:

1. The recipient charged ineligible expenses and FTA determines interest is due;

2. When FTA's Office of Budget and Policy (TBP) declares an official debt and issues a repayment demand letter. At that point, the recipient has a grace period (approximately 30 days) to repay funds. At the end of the 30-day grace period, interest begins to accrue; or

3. The recipient did not disburse funds within three business days of receipt (unless drawing down funds on a reimbursement basis.) In this case, the reviewer is to work with the regional office to determine next steps for this corrective action.

The recipient is deficient if it held FTA funds on the fourth day after FTA funds were received or if the recipient drew more funds than were allowed.

DEFICIENCY CODE F4-2: Funds not disbursed timely

SUGGESTED CORRECTIVE ACTION: Submit procedures for disbursing FTA funds within three business days along with documentation to support that funds were disbursed in accordance with FTA requirements until further notice. Implement and submit documentation of training conducted of the appropriate staff on new policies and procedures.

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

The recipient is deficient 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.

DEFICIENCY CODE F4-3: Federal funds not returned

SUGGESTED CORRECTIVE ACTION: Submit documentation related to the Federal funds owed and adhere to the direction provided by the FTA regional office. Discuss with the FTA regional office if it wants to require the recipient to submit ECHO requests for prior approval.

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

The recipient is deficient if it drew down ineligible expenses.

DEFICIENCY CODE F4-4: Federal funds drawn down for ineligible expenses

SUGGESTED CORRECTIVE ACTION: Submit documentation related to the Federal funds owed and adhere to the direction provided by the FTA regional office. Discuss with the FTA regional office if it wants to require the recipient to submit ECHO requests for prior approval.

GOVERNING DIRECTIVE

2 CFR 200.302 (b)(4) Financial Management

(b) The financial management system of each recipient or subrecipient must provide for the following… (4) Effective control over, and accountability for, all funds, property, and other assets. The recipient or subrecipient must safeguard all assets and assure that they are used solely for authorized purposes. See §200.303.

2 CFR 200.303 Internal Controls

The recipient and subrecipient must (a) Establish, document, and maintain effective internal control over the Federal award that provides reasonable assurance that the recipient or subrecipient 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.

2 CFR 200.306 Cost sharing

(b) For all Federal awards, the Federal agency or pass-through entity must accept any cost sharing funds (including cash and third-party in-kind contributions, and also including funds committed by the recipient, subrecipient, or third parties) as part of the recipient's or subrecipient's contributions to a program when the funds:

(1) Are verifiable from the recipient's or subrecipient's records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for achieving the objectives of the Federal award;

(4) Are allowable under subpart E of this part;

(5) Are not paid by the Federal Government under another Federal award, except where program's Federal authorizing statute specifically provides that Federal funds made available for the program can be applied to cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other applicable provisions of this part.

2 CFR 200.407 Prior written approval (prior approval)

The reasonableness and allocability of certain costs under Federal awards may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the Federal agency (or, for indirect costs, cognizant agency for indirect costs) before incurring the costs. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

(a) § 200.306 Cost sharing
(b) § 200.307 Program income;
(c) § 200.308 Revision of budget and program plans;
(d) § 200.333 Fixed amount subawards;
(e) § 200.430 Compensation—personal services, paragraph (h);
(f) § 200.431 Compensation—fringe benefits;
(g) § 200.439 Equipment and other capital expenditures;
(h) § 200.440 Exchange rates;
(i) § 200.441 Fines, penalties, damages and other settlements;
(j) § 200.442 Fund raising and investment management costs;
(k) § 200.445 Goods or services for personal use;
(l) § 200.447 Insurance and indemnification;
(m) § 200.455 Organization costs;
(n) § 200.458 Pre-award costs;
(o) § 200.462 Rearrangement and reconversion costs;
(p) § 200.475 Travel costs.

FTA Circular 5010.1F Chapter VI (2) (g) (3) (b) (vii) Cash Management

…Payment received from FTA generally must be disbursed within three business days…

FTA Circular 5010.1F Chapter VI (10) Payment Procedures (g) 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(34) 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.

F5. If applicable, has the recipient complied with requirements for charging indirect costs to Federal Transit Administration (FTA) awards, including developing annual cost allocation plans, and submitting approval documentation recording indirect costs in awards and reports?

BASIC REQUIREMENT
To charge indirect costs to an award, a recipient 1) must have an approved CAP or indirect cost rate proposal (ICRP) for the applicable fiscal year(s) or 2) may elect to charge a de minimis rate of 15 percent effective October 1, 2024 of modified total direct costs (MTDC), if qualified.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Under federally funded award programs, recipients may incur both direct and indirect costs. A federally approved CAP or ICRP is required to support the distribution of indirect costs to the award program. An organization must seek approval from its Federal cognizant agency as designated in the Uniform Guidance.

A central service CAP is used by a state-wide, local government-wide, or Indian Tribe-wide agency to distribute executive and central level support functions to operating units which benefit from them. An ICRP may be for an entire organization or developed at the operating agency level to distribute administrative support and/or overhead costs of that agency to the programs (and the awards and contracts) that benefit from them.

Effective December 26, 2014, recipients and subrecipients that have never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to 2 CFR 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. Effective November 13, 2020, the OMB expanded the ability for recipients that are recipients and subrecipients (except those described in Appendix VII to 2 CFR 200, "States and Local Government and Indian Tribe Indirect Cost Proposals," paragraph D.1.b) and who's previously negotiated indirect cost rate has expired, to elect to charge a de minimis rate of 10 percent of modified total direct costs to the Federal award. FTA requests recipients complete a de minimis rate certification indicating they understand the requirements surrounding indirect cost rates and eligibility. Any currently approved agreements must expire before the recipient can apply the de minims rate.

Effective October 1, 2024, the de minimis rate was increased to 15% of total modified direct costs for new federal awards issued on or after that date.

In situations where the cognizant agency has determined that annual review of the plan or rate is not required, recipient organizations must continue to develop annual plans regarding indirect costs and maintain the proposal and related supporting documentation for audit. Unless required by the cognizant agency or FTA, these governmental units are not required to submit their proposals for review and approval. These organizations should maintain documentation to reflect this decision or policy to support the inclusion of indirect costs in the award.

When FTA is the cognizant agency for indirect costs, recipients must submit a CAP under the following circumstances:

- For an initial plan;
- Annually for major local governments;
- For a change in organizational structure and accounting system that may significantly impact the CAP, including adding new central service activities.
- For a change in CAP methodology; or
- Upon request for all other entities.

When FTA is the cognizant agency, the ICRP must be submitted under the following circumstances:

- An initial plan;
- A change in organizational structure and account system that may impact the ICRP;
- The recipient's proposed ICRP exceeds the rate(s) last approved by FTA by more than 20%. For example, if FTA approved a 20 percent rate in 2013, and the rate increased to 23 percent in 2014, and again to 25 percent in 2015, the 2015 rate would be required to be submitted to FTA for approval as it increased by more than 20 percent;
- The recipient is either a local governmental unit that receives more that $35 million in direct Federal funding or a nonprofit entity. In accordance with 2 CFR 200, these entities must submit their plan annually to their cognizant agency;
- For a change in ICRP methodology; or
- Upon request for all other entities.

The below table shows the respective cognizant agency for the entities listed.

State & Local Airport, Transit Authority or Port Authority	Appendix V – (CAP) Appendix VII – (ICRP)	Department of Transportation (DOT)
State Government	Appendix V – (CAP) Appendix VII – (ICRP)	Department of Health and Human Services (HHS)
State, Local Housing, or Development Districts	Appendix V – (CAP) Appendix VII – (ICRP)	Department of Housing and Urban Development (HUD)

Local Government	Appendix V – (CAP) Appendix VII – (ICRP)	Cognizant Agency of Indirect Costs: Determined by the agency providing the most direct federal funding or special arrangement between the concerned federal agencies.
Tribal Governments	Appendix V	Department of the Interior
University (Institute of Higher Education)	Appendix III	HHS or Department of Defense Office of Naval Research (DOD Navy) based on amount of funding
Non-Profit	Appendix IV	Cognizant Agency for Indirect Costs: Determined by the agency providing the largest funding amount or special arrangement
Public Assistance Agency	Appendix VI	Department of Health and Human Services

INDICATORS OF COMPLIANCE

a. *Does the recipient charge indirect costs to financial assistance awards? Are indirect costs included in FTA awards?*

b. *Does the recipient charge indirect costs using the de minimis rate? If no, move to next indicator. If yes, obtain the recipient's de minimis rate certification.*

c. *Does the recipient have an approved CAP and/or ICRP?*

d. *Was the annual CAP and/or ICRP proposal 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. *If the recipient's central services costs are included in the indirect cost rate, is there an approved central services plan and are the rates in the plan consistent with the rates charged to the operating agency and included in the operating agency's indirect cost rate proposal?*

f. *Are indirect costs properly documented in the award and applied in accordance to the agreement with the cognizant agency, including applicable base(s) and reporting?*

INSTRUCTIONS FOR REVIEWER

Review approved award budget(s) and FFRs in TrAMS to determine if the recipient charges indirect costs. Verify the supporting indirect cost documentation for the period(s) under review. This documentation provides information on allowable time periods, bases, exempted items of cost, and other limitations and requirements. This indirect cost documentation should be uploaded in the "Recipient Profile" in TrAMS for every fiscal year under review. If the documentation is not uploaded, contact the Regional Office for a copy. Documentation typically is an indirect cost rate agreement from the federal cognizant agency or FTA's de minimis rate certification. If the recipient charges the de minimis rate under awards made prior to August 13, 2020, verify that the recipient has not had a prior approved rate and is not a state or local governmental unit that receives more than $35 million in direct Federal funding. If the recipient charges the de minimis rate under awards made after August 13, 2020, verify that if the recipient had a previously approved rate, it has expired, and the recipient is not a state or local governmental unit that receives more than $35 million in direct Federal funding. If the recipient is charging other than the de minimis rate, verify if the rate is consistent with the recipient's approved CAP and/or ICRP. Review award applications in TrAMS if different rates are used. In some cases, recipients will have different approved rates for different projects. Discuss unique situations with the regional office staff and to verify if this is the case.

Review the recipient's responses to its prior Comprehensive Review by accessing the review package from OTrak to ascertain if the recipient indicates that it has charged indirect cost in the past. Obtain a copy of the submitted CAP/ICRP from TrAMS. Note whether there was a previously approved CAP and/or ICRP. Compare the amounts in the CAP and/or ICRP to the amounts listed in the FFRs in TrAMS to confirm that the amount charged to the award is the amount approved. Review the financial management section of the OAT to identify if FTA requires/requested a CAP/ICRP. Discuss with the regional office the approval status of the CAP and/or ICRP. If necessary, ask follow-up questions in the review package or interview recipient staff on-site to perform this assessment.

Review the recipient's response to the prior Comprehensive Review by accessing the review package from OTrak. Note if there is a previously approved central services plan. Compare the rate in the central services plan to the rate listed in FFRs in TrAMS to confirm that the rate charged to the award is the amount approved.

Obtain formal approvals from the recipient's cognizant Federal agency for the CAP and/or ICRP. If a formal approval is not available, verify whether the recipient complied with the submission requirements of its cognizant agency.

Review the financial management section of the OAT to identify if FTA expressed concerns about the central services plan or rate. If necessary, ask follow-up questions and interview recipient staff on-site to perform this assessment.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it charges indirect costs to FTA awards but does not have an approved CAP or ICRP or incorrectly applies indirect costs to the award and items of cost sought for federal reimbursement.

DEFICIENCY CODE F5-1: Ineligible indirect costs charged to awards

SUGGESTED CORRECTIVE ACTION: Discuss appropriate corrective action with the FTA regional office and regional counsel and take appropriate action based on FTA's written direction. Please note if funds could potentially due FTA because of the incorrect application of indirect costs.

GOVERNING DIRECTIVE

Appendix III to 2 CFR 200, C. 11 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), C. Determination and Application of Indirect (F&A) Cost Rate or Rates 11. Negotiation and Approval of Indirect (F&A) Rate

Cost negotiation cognizance is assigned to the Department of Health and Human Services (HHS) or the Department of Defense's Office of Naval Research (DOD), normally depending on which of the two agencies (HHS or DOD) provides more funds to the educational institution for the most recent three years…In cases where neither HHS nor DOD provides Federal funding directly to an educational institution, the cognizant agency for indirect costs assignment must default to HHS.

Appendix IV to 2 CFR 200, C. 2.a - c and g, Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations, Negotiation and Approval of Rates

a. Unless different arrangements are agreed to by the Federal agencies concerned, the Federal agency with the largest dollar value of Federal awards directly funded to an organization will be designated as the cognizant agency for indirect costs for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards directly funded to the organization for at least three years…. b. Except as otherwise provided in §200.414(f), a nonprofit organization which has not previously established an indirect cost rate with a Federal agency must submit its initial indirect cost proposal immediately after the organization is advised that a Federal award will be made and, in no event, later than three months after the effective date of the Federal award. c. Unless approved by the cognizant agency for indirect costs in accordance with §200.414(g), organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency for indirect costs within six months after the close of each fiscal year. g. 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 V to 2 CFR 200, D State/Local Government-wide Central Service Cost Allocation Plans, Submission Requirements

1. Each state will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards…2. Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually. 3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Part and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency for indirect costs. Where a local government only receives funds as a subrecipient, the pass-through entity will be responsible for monitoring the subrecipient's plan. 4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs.

Appendix V to 2 CFR 200, F.1 and 3 State/Local Government-wide Central Service Cost Allocation Plans, Negotiation and Approval of Central Service Plans, Negotiation and Approval of Central Service Plans

1. In general, unless different arrangements are agreed to by the concerned Federal agencies, for central service cost allocation plans, the cognizant agency responsible for review and approval is the Federal agency with the largest dollar value of total Federal awards with a governmental unit. For indirect cost rates and departmental indirect cost allocation plans, the cognizant agency is the Federal agency with the largest dollar value of direct Federal awards with a governmental unit or component, as appropriate. Once designated as the cognizant agency for indirect costs, the Federal agency must remain so for a period of five years. 3. The results of each negotiation must be formalized in a written agreement between the cognizant agency for indirect costs and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation must be made available to all Federal agencies for their use.

Appendix VII to 2 CFR 200, D.1. b., c. and d. States and Local Government and Indian Tribe Indirect Cost Proposals, Submission and Documentation of Proposals

b. A governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) that receives more than $35 million in direct Federal funding during its fiscal year must submit its indirect cost rate proposal to its cognizant agency for indirect costs.

c. If a governmental department or agency (such as a state or local Department of Health, Department of Transportation, or Department of Housing) receives $35 million or less in direct Federal funding during its fiscal year, it 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 an awarding Federal agency…. 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…

d. 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. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2 CFR 200.414 (f) De minimis rate

Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies and pass-through entities may not require recipients and subrecipients to use a de minimis rate lower than the negotiated indirect cost rate or the rate elected pursuant to this subsection unless required by Federal statute or regulation. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate. When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate.

2 CFR 200.414 (g) One-time extension of indirect rates

A recipient or subrecipient with a current Federal negotiated indirect cost rate may apply for a one-time extension of the agreement for up to four years. This extension will be subject to the review and approval by the cognizant agency for indirect costs. If this extension is granted, the recipient or subrecipient may not request a rate review until the extension period ends. The recipient or subrecipient must re-apply to negotiate a new rate when the extension ends. After a new rate has been negotiated, the recipient or subrecipient may again apply for a one-time extension of the new rate in accordance with this paragraph.

FTA Circular 5010.1F, Appendix H, Cost Allocation Plans, 5.FTA-Specific Submission Requirements

When FTA is the cognizant agency for indirect costs, recipients must submit a CAP under the following circumstances: a. For an initial plan; b. Annually for major local governments; c. For a change in organizational structure and accounting system that may significantly impact the CAP, including adding new central service activities; d. For a change in CAP methodology; and/or e. Upon request for all other entities.

FTA Circular 5010.1F, Appendix I, Indirect Cost Rate Proposals, 3. Submission Requirements

When FTA is the cognizant agency, the ICRP must be submitted under the following circumstances: a. An initial plan; b. A change in organizational structure and accounting system that may significantly impact the ICRP; c. The recipient's proposed ICRP exceeds the rate(s) last approved by FTA by more than 20 percent. (1) For example, if FTA approved a 20 percent rate in 2013, and the rate increased to 23 percent in 2014, and again to 25 percent in 2015, the 2015 rate would be required to be submitted to FTA for approval as it increased by more than 20 percent. d. The recipient is either a local governmental unit that receives more than $35 million in direct Federal funding or a nonprofit entity. In accordance with 2 CFR 200, these entities must submit their plan annually to their cognizant agency. . For a change in ICRP methodology; and/or f. Upon request for all other entities.

F6. Has the recipient conducted the required Single Audits, submitted the required documentation to the Federal Audit Clearinghouse (FAC), and resolved any identified issues?

BASIC REQUIREMENT
Effective October 1, 2024, Non-Federal entities that expend $1,000,000 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 recipients that expended $750,000 or more in Federal assistance awards in a fiscal year end prior to September 30, 2025. All recipients that expend $1,000,000 or more in Federal assistance awards in their fiscal year ending September 30, 2025 or later.

DETAILED EXPLANATION FOR REVIEWER
2 CFR 200 Subpart F requires all non-Federal entities that expend $750,000 or more in Federal assistance awards in a fiscal year end prior to September 30, 2025 and $1,000,000 or more in Federal awards in their fiscal year ending September 30, 2025 or later 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 corrective action 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.

Note: The Office of Management and Budget (OMB) revised the Uniform Guidance and released the final updated version in April 2024. In accordance with the revised 2 CFR § 200.512(a)(1), the Federal cognizant or oversight agency may authorize individual audit submission extensions when the standard nine-month timeframe places an undue burden on the auditee.

If the US Department of Transportation (USDOT) is the recipient's Federal cognizant agency, USDOT will consider granting extensions for late submissions.

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
-	-	-
-	-	-
-	-	-

- *If the recipient delayed submitting its Single Audit reporting package, is there documentation of the reason for the delay?*

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.*

- *Does the Single Audit demonstrate that the recipient implemented recommendations related to audit findings made under an FTA or other DOT program?*

- *If there are open findings, how is the recipient working to address and/or resolve Single Audit findings?*

INSTRUCTIONS FOR REVIEWER

Review financial and audit information to determine if the recipient expended over $750,000 or more in Federal assistance awards in a fiscal year end prior to September 30, 2025 and $1,000,000 or more in Federal awards in their fiscal year ending September 30, 2025 or later in any of the years covered by the Comprehensive Review to obtain an idea of the amount of Federal funds the recipient expends in one year. Obtain from the recipient a schedule of Federal expenditures during the review period, by fiscal year, to determine if the Single Audit 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 missing Single Audits. Obtain the audit report to determine the end of the recipient's fiscal year and to review the date the auditor issued the report. Confirm dates the Single Audits were submitted to the FAC on the FAC website and assess if it was submitted within the earliest 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. 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 corrective action(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 and discuss with FTA regional staff to determine if the recipient has been reporting on its progress in 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://www.fac.gov

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it meets the threshold for conducting a Single Audit but has not done so.

> DEFICIENCY CODE F6-1: Annual audit not conducted
>
> SUGGESTED CORRECTIVE ACTION: Conduct outstanding annual Single Audit(s) in accordance with 2 CFR 200, subpart F; and submit documentation that it has completed annual Single Audits for all missing years.

NOTE TO REVIEWER: The reviewer is to discuss with the FTA regional office to determine the appropriate course of action for this deficiency, if the audit was not performed due to cybersecurity incidents, inclement weather (e.g., hurricanes, natural disasters), or other qualifying circumstances.

The recipient is deficient if it did not resolve annual audit deficiencies by the time the subsequent Single Audit report is submitted.

DEFICIENCY CODE F6-2: Outstanding annual audit deficiencies

SUGGESTED CORRECTIVE ACTION: Submit procedures and a schedule for resolving Single Audit findings. Report on the status of addressing audit findings in its progress reports.

The recipient is deficient if it did not submit its Single Audit report, data collection form, and reporting package as required.

DEFICIENCY CODE F6-3: Single Audit submission deficient, including late submission

SUGGESTED CORRECTIVE ACTION: Submit procedures to ensure that the Single Audit report, data collection form, and reporting package are submitted on time.

NOTE TO REVIEWER: The reviewer is to discuss with the FTA regional office to determine the appropriate course of action for this deficiency, if the late submission was due to cybersecurity incidents, inclement weather (e.g., hurricanes, natural disasters), or other qualifying circumstances.

GOVERNING DIRECTIVE

2 CFR200.501 Audit Requirements. (a) Audit required

A non-Federal entity that expends $1,000,000 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 CFR200.512 Report submission (a) General

(1) The audit, the data collection form, and the reporting package must be submitted within 30 calendar days after the auditee receives the auditor's report(s) or nine months after the end of the audit period (whichever is earlier). The cognizant agency for audit or oversight agency for audit (in the absence of a cognizant agency for audit) may authorize an extension when the nine-month timeframe would place an undue burden on the auditee. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

CFR200.512 Report submission (b) Data Collection

The FAC is the repository of record for subpart F reporting packages and the data collection form. All Federal agencies, pass-through entities and others interested in a reporting package and data collection form must obtain it by accessing the FAC.

(1) The auditee must submit the required data collection form described in Appendix X of this part. This form provides information about the auditee, its Federal programs, the results of the audit, and whether the audit was completed in accordance with this part. The form must include all information required by this part that is necessary for Federal agencies to use the audit to ensure the integrity of Federal programs. The form includes data elements and a format that OMB must approve, is available from the FAC, and include collections of information from the reporting package described in paragraph (c).

(2) A senior-level representative of the auditee (for example, a 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 form stating that the auditee complied with the requirements of this part including that: (i) The data collection form was prepared in accordance with this part (and the instructions accompanying the form); (ii) The reporting package does not include protected personally identifiable information; (iii) The information included in its entirety is accurate and complete; and (iv) The FAC is authorized to make the reporting package and the form publicly available on a website.

2 CFR200.513 Responsibilities (a)(4) Cognizant agency for audit responsibilities

(viii) Coordinate a management decision for cross-cutting audit findings that affect the Federal programs of more than one agency when requested by any Federal agency whose awards are included in the audit finding of the auditee. Cross-cutting audit finding means an audit finding where the same underlying condition or issue affects all Federal awards (including Federal awards of more than one Federal agency or pass-through entity); for example, a cross-cutting audit finding may include an issue related to the recipient's accounting system.

FTA Circular 5010.1F, Chapter VI, Section 9. Single Audit (d) Resolution of Audit Findings (3)

Recipients and subrecipients are responsible for prompt follow-up and corrective action on all audit findings and recommendations. Specific direction is provided in 2 CFR 200, subpart F. Among these responsibilities, the auditee must develop a schedule of prior audit findings and a corrective action plan that includes findings relating to the financial statements reported in accordance with Generally Accepted Government Auditing Standards (GAGAS). These responsibilities require that the recipient or subrecipient: (1) Promptly evaluate the Audit Report; (2) Determine the appropriate follow-up actions and establish a date for their completion; and (3) Complete all required actions within the established period of time.

F7. Does the recipient have financial resources to provide the required local share for active awards and to maintain and operate FTA-funded assets?

BASIC REQUIREMENT
Recipients must have the financial capacity to carry out their proposed program of projects.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 its proposed program of projects (POP), including safety and security aspects of the program.

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).

All local share used to match FTA awards must come from non-US DOT sources, except for Federal Lands Highway Program funds, including Federal Highway Administration (FHWA) Tribal Transportation 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. Federal loan programs such as Transportation Infrastructure Finance and Innovation Act (TIFIA) or Railroad Rehabilitation & Improvement Financing (RRIF) count as

Federal sources even though they are often repaid with local or state funds. 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 are 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.

It should be noted that once matching funds are associated with a specific award, these funds cannot be applied to another award. Supporting documentation and recipient financial information may need to be reviewed to ensure there is no "double dipping" or overlapping of funds.

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?*

Year	***Source***	***Amount***	***Status (elected, discretionary, by law, etc.)***	***Eligible?***	***In jeopardy?***
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-

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

Year	***Source***	***Amount***	***Status (elected, discretionary, by law, etc.)***	***Eligible***
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-

c. *How are expenses, and local and Federal sources of funds budgeted/projected and how are adjustments made to projections, when necessary?*

d. *What impacts to local funding have occurred since the last Comprehensive Review? Has the organization identified any changes that could impact local funding in the near future? What are the plans for addressing any changes?*

e. *In the short-term financial plan (next three years) what are the underlying assumptions that could affect the financial condition of the recipient?*

f. *Has the recipient had deficits, layoffs, service cuts, or deferred or late maintenance since the last Comprehensive Review? If no, does the recipient project any such changes in its operations?*

g. *Have the recipient's capital funds been used to cover deficits in the operating budget since the last Comprehensive Review? If no, does the recipient project using capital funds for such purpose?*

INSTRUCTIONS FOR REVIEWER

Obtain and review the recipient's financial plan projecting revenues and expenses for the next three years (or longer), and the following documents for the review period: annual audit reports, local or state legislation, the budget and/or financial statements, comprehensive annual financial reports (CAFRs) or S/TIP.

- 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.

- Compare operating and capital budgets over the six year period (past three years, and projected next three years.) by reviewing 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 ongoing 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 or S/TIP 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 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 the finding search results from audits or prior reviews, to determine if there were preventive maintenance findings related to FTA or US DOT programs due to deferred maintenance.

Review the maintenance section of the OAT from OTrak, to verify whether FTA has concerns regarding asset impairment.

Request a sampling of annual budget/actual variance reports and review expenditures between operating and capital budgets over the review period and within a review year to ensure there are no indicators that the recipient's capital funds have been used to cover deficits in the operating budget.

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

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient 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, and/or 3) lack of funding is impacting the ability to maintain and operate existing systems or to complete programs of projects.

DEFICIENCY CODE F7-1: Recipient lacks financial capacity to carry out program

SUGGESTED CORRECTIVE ACTION 1: Submit a plan for reducing expenditures, increasing revenues, or a combination of both; to compensate for a budget shortfall.

SUGGESTED CORRECTIVE ACTION 2: Submit a plan for responding to a change in financial circumstances caused by a “sunset” provision in current local funding legislation or pending legislation that will affect local funding negatively.

SUGGESTED CORRECTIVE ACTION 3: Submit a new or revised multi-year financial plan if the recipient fails to demonstrate financial capacity.

The recipient is deficient if it cannot document that the funds used for local match are eligible.

DEFICIENCY CODE F7-2: Ineligible local match

SUGGESTED CORRECTIVE ACTION: Submit documentation 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 corrective action.

GOVERNING DIRECTIVE

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

A 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 5010.1F, Chapter VI, Section 5 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 (three to five 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).

2 CFR 200.306 Cost sharing

(b) For all Federal awards, the Federal agency or pass-through entity must accept any cost sharing funds (including cash and third-party in-kind contributions, and also including funds committed by the recipient, subrecipient, or third parties) as part of the recipient's or subrecipient's contributions to a program when the funds:

(1) Are verifiable from the recipient's or subrecipients records;

(2) Are not included as contributions for any other Federal award;

(3) Are necessary and reasonable for achieving the objectives of the Federal award;

(4) Are allowable under subpart E;

(5) Are not paid by the Federal Government under another Federal award, except where the program's Federal authorizing statute specifically provides that Federal funds made available for the program can be applied to cost sharing requirements of other Federal programs;

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other applicable provisions of this part.

F8. For recipients receiving operating assistance, is the amount eligible for operating assistance calculated in compliance with FTA guidance?

BASIC REQUIREMENT
Operating assistance may not cover more than half the recipient's eligible operating expenses net of farebox revenues.

APPLICABILITY
Recipients of FTA operating assistance that provide service

DETAILED EXPLANATION FOR REVIEWER
It is the responsibility of the recipient to calculate net eligible operating costs properly. The amount of funds requested for operating assistance must be no more than half the operating expenses, after fare revenues are credited and ineligible costs (such as costs for charter bus, school bus, sightseeing service and lobbying activities) are deducted to arrive at the net project cost. Interest and other financial costs associated with borrowing to provide working capital for the payment of current operating expenses are eligible operating costs. FTA Circular 9050.1A, Appendix A provides a worksheet for calculating eligible operating expenses.

Recipients may also use FTA funding at the 80/20 match level for ADA paratransit, preventive maintenance, and capital cost of contracting. These funds could increase the total amount of FTA funds the recipient could be eligible to request but would reduce the net project cost eligible for 50/50 operating assistance.

The FTA share of any operating assistance project shall not exceed the lesser of: a) the local match, b) the currently available apportionment to the urbanized area plus any carryover funds available from past

years, or c) 50 percent of the net project cost incurred on an accrual basis in the provision of transit services during the period. The remainder must be paid with the recipient's local share.

INDICATORS OF COMPLIANCE

a. *How does the recipient calculate net operating/project costs?*

b. *Do amounts for which reimbursement is sought exclude ineligible costs?*

INSTRUCTIONS FOR REVIEWER
Review the recipient's operating expenses included in their operating budget for the past three years as depicted in the budget, Single Audit reports, and other available financial documents. Review ECHO requests to re-calculate the requested amounts using FTA Circular 9050.1A, Appendix A, Operating Expense Worksheet. Ensure ineligible costs, such as ADA complementary paratransit operating costs, are correctly omitted from the reimbursable amounts if the recipient uses capital funds for ADA complementary paratransit service operations or if the recipient is ineligible for operating assistance. Discuss onsite, the recipient's process for calculating net operating costs.

See ECHO Transaction Sampling Procedures at the end of this review area for additional instructions for the reviewer in regard to substantiating the calculation of eligible operating costs.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it's requested funds for operating assistance if the funding source is not public health emergency related are more than half the operating expenses after fare revenues are credited and ineligible costs are deducted to arrive at the net project cost.

DEFICIENCY CODE F8-1: Ineligible operating expense calculation

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for properly calculating net eligible project costs for operating assistance.

SUGGESTED CORRECTIVE ACTION 2: If the recipient has received operating funds in excess of allowable amounts, work with the FTA regional office and regional counsel to determine the appropriate corrective action.

DEFICIENCY CODE F8-2: Lack of furlough certification

SUGGESTED CORRECTIVE ACTION: Submit evidence that it did not furlough any employees while using supplemental funding for non-operating expenses.

GOVERNING DIRECTIVE
FTA Circular 9050.1A, Ch. IV, Section 4(b) Operating Assistance

FTA provides funding to eligible recipients for costs incurred in the operation of public transportation service. In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year.

FTA Circular 5010.1F, Ch. III, Section 8c. Use of Program Income as Local Share

…In a grant application requesting operating assistance, the applicant must deduct farebox revenues from operating costs to arrive at the net project cost of an operating assistance project. See Appendix C, "Operating Assistance Projects," of this circular for assistance in calculating the net project cost of a grant requesting operating assistance…

FTA Circular 9050.1A, Ch. III, Section 4; FTA C. 9070.1H, Ch. III, Section 10 Local Share of Project Costs

The Federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity.

FTA Circular 9070.1H, Ch. III, Section 9 Recipient Administrative Expenses;

Up to 10 percent of the recipient's total fiscal year apportionment may be used to fund program administration costs including administration, planning, and technical assistance for projects funded under this program. Recipients may pass any portion of funds available for administrative expenses, up to the allowable 10 percent, on to subrecipients for the same purpose. Program administration costs may be funded at 100 percent Federal share.

F9. Does the recipient adequately ensure financial management systems oversight of its subrecipients?

BASIC REQUIREMENT
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; comply with requirements regarding the use of indirect cost when reimbursement is sought from a Federal award program; and complete annual independent Single Audits if the subrecipients expended over $750,000 in Federal assistance awards in a fiscal year end prior to September 30, 2025 and $1,000,000 or more in Federal awards in their fiscal year ending September 30, 2025 or later.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
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 recipients provide financial assistance to support public transit services of its subrecipients. This financial assistance may provide some or all of the non-Federal match. The sources of funding may differ for capital and operating assistance programs. FTA does not require a dedicated funding source. See discussion under *Detailed Explanation For Reviewer* at question F7 for eligible local match.

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 procures vehicles). Some recipients require applicants, especially first-time applicants, to describe their accounting systems 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 subrecipients match funds are eligible?*

c. *How does the recipient ensure that its subrecipients have sufficient financial controls in place?*

d. *How does the recipient ensure that subrecipients comply with Federal indirect cost rate requirements?*

e. *How does the recipient ensure that Single Audits of subrecipients are conducted and FTA program related findings resolved?*

f. *How does the recipient ensure that subrecipients seek reimbursement for eligible expenditures, including, but not limited to, calculating the amount eligible for operating assistance in compliance with FTA guidance?*

INSTRUCTIONS FOR REVIEWER
Review award applications and their Program of Projects 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.

Review the financial capacity, financial management, and awards management subsections of the OAT in OTrak 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, state/program management plans and/or 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 assistance and/or project administration 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 Single Audit threshold. Documents may include annual financial statements and/or annual budgets.
        - If subrecipient expenditures exceeded the 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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that subrecipients have the financial capacity to carry out its proposed program of projects.

DEFICIENCY CODE F9-1: Insufficient oversight of subrecipient financial capacity

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients have the financial capacity to carry out its proposed program of projects.

The recipient is deficient if it does not ensure that subrecipients use only eligible funds for match.

DEFICIENCY CODE F9-2: Insufficient oversight of subrecipient match funds

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients only use eligible funds for match.

The recipient is deficient 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.

DEFICIENCY CODE F9-3: Insufficient oversight of subrecipient financial management systems

SUGGESTED CORRECTIVE ACTION: Submit 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 is deficient if it does not review/verify its subrecipients' application of indirect costs to FTA awards for compliance with related requirements.

DEFICIENCY CODE F9-4: Insufficient oversight of subrecipient indirect cost

SUGGESTED CORRECTIVE ACTION: Submit procedures, along with evidence of its implementation, for ensuring that subrecipients that claim indirect costs have and comply with the requirements of their cost allocation plans.

The recipient is deficient if it does not ensure that 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.

DEFICIENCY CODE F9-5: Insufficient oversight of subrecipient audits

SUGGESTED CORRECTIVE ACTION: Submit procedures for obtaining and reviewing subrecipients' Single Audits and monitoring the resolution of audit findings.

The recipient is deficient if it does not ensure that recipients seek reimbursement for eligible expenditures in compliance with FTA guidance.

DEFICIENCY CODE F9-6: Insufficient oversight of subrecipient request for reimbursement

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients seek reimbursement for eligible expenditures in compliance with FTA guidance.

GOVERNING DIRECTIVE

2 CFR 200.332(e) Requirements for pass-through entities

A pass-through entity must…(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must: (1) Reviewing financial and performance reports. (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation. (3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521. (4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

2 CFR200.332(f) Requirements for pass-through entities

A pass-through entity must…(f) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals: (1) Providing subrecipients with training and technical assistance on program-related matters; (2) Performing site visits of the subrecipient's program operations; and (3) Arranging for agreed-upon-procedures engagements as described in §200.425.

2 CFR 200.332(b)(4)(i) Requirements of pass-through entities

A pass-through entity must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information…An approved indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either: (A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient, in

which case the pass-through entity is not required to collect information justifying the rate but may elect to do so; or (B) The de minimis indirect cost rate.

2 CFR 200.332(g) Requirements for pass-through entities

A pass-through entity must…Verify that every subrecipient is audited as required by Subpart F of this part when it is expected that the subrecipient's Federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- What financial management or capacity concerns are identified in the OAT? How does background research and onsite investigation support the OAT assessment?
- What was the nature of any Single Audit report findings not reported to FTA that should have been? Is the recipient designated as a "low risk auditee" in the Single Audit report?
- Were there financial management or capacity deficiencies in the last Comprehensive Review? What is the status of those findings? Were any repeat findings? Did the recipient experience any difficulty closing findings? Can the recipient demonstrate full understanding and implementation of corrective actions?
- What other financial-related oversight reviews, audits, or investigations has the DOT, OIG, or FTA conducted of the recipient since the last Comprehensive Review (including Financial Management Oversight Reviews, Financial Capacity Assessments, OIG audits, or investigations)? What is the status of those findings? Were any repeat findings? Did the recipient experience any difficulty closing findings? Can the recipient demonstrate full understanding and implementation of corrective actions?
- If the recipient has had any audit/review findings or significant changes to its organization or software being used, have policies and procedures been updated as necessary?
- Do the recipient officials routinely review financial reports? Is there coordination between the financial and programmatic offices in preparing financial and milestone progress reports?
- Has the recipient had numerous ECHO rejections or made numerous credits/refunds in the ECHO system?
- Has FTA implemented drawdown restrictions due to non-compliance with any award requirements?
- Has there been any turnover of financial management staff? Are there any openings not filled? What is the impact on the recipient?
- If new transit service or an expansion of existing service is planned, have those plans been reflected in financial plans?
- Are there any concerns related to assumptions or projections the recipient has made to demonstrate it has the required financial capacity to execute the FTA program? Are projects delayed due to difficulties with securing local share?

- Any potential financial management or capacity issues or concerns not already covered in this section?

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. FTA Circular 5010.1F, “Award Management Requirements”
4. FTA Circular 9050.1A, “Urbanized Areas Formula Grant Programs Guidance“"
5. FTA Circular 9040.1H, “Rural Areas Formula Grants Program Guidance”
6. FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions”
7. FTA Circular 9070.1H, “Enhanced Mobility of Senior and Individuals with Disabilities Program Guidance”

USEFUL WEBLINKS

1. United States Bureau of Fiscal Service
2. Flexible Funds: FHWA and FTA Programs
3. Revenue Bonds
4. Debt Service Reserve Financing
5. Electronic Clearing House Operation (ECHO) Web User Manual for FTA and FAA
6. Federal Audit Clearinghouse (FAC)
7. 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
8. Coronavirus Aid, Relief, and Economic Security Act
9. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
10. Notice of Concurrence
11. Emergency Relief rule
12. OMB Memorandum M-20-17, Appendix A
13. OMB Memorandum M-20-26

ECHO TRANSACTION SAMPLING PROCEDURES

Select a sample (minimum of nine) ECHO transactions. To develop this sample:

1. Download TrAMS Data – Prior to the site visit, prepare a list of ECHO transactions for the period from the date of the last site visit to the date of the current site visit

2. Select ECHO Transactions – Select at least three ECHO transactions from each year of the review period. Use the following characteristics as guide for selecting these transactions:

    a. Select from different award programs (i.e., 5307, 5309, 5316, 5317, 5324)

    b. Select from different financial purpose codes. Common financial purpose codes are:

        - 00 - Capital
        - 01 - Research & Training
        - 02 - Planning
        - 03 - Elderly and Disabled
        - 04 - Operating Assistance
        - 05 - Project Administration
        - 06 - State Administration
        - 07 – Rural Technical Assistance Program
        - 08 - ADA Paratransit
        - 09 - Multiple Types

    c. Select large capital draws

    d. Select preventive maintenance

    e. Select at least one draw for private operator subrecipient reimbursement (if none exist, note in the workpapers that there were no private operator reimbursements)

    f. Select flat dollar amounts such as $80,000

    g. Select any unusual credits that appear to be systematic

    h. If the recipient uses in-kind costs as match, request ECHO drawdown where such costs were used

3. Prior to the site visit, request that the recipient have available the entire ECHO drawdown that contains the ECHO transactions selected, along with supporting documentation.

4. 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.

5. The following attributes should be tested:

    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 printout 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 10% of the underlying transactions 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 tested 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.

ADDITIONAL SAMPLING PROCEDURES FOR ECHO DRAWS SUPPLEMENTAL FUNDS

In addition to the nine ECHO draws selected for review in accordance with the "ECHO Transaction Sampling Procedures," use the following procedures for selecting CARES Act, CRSSA, ARP Act, and ER funds drawdowns.

1. The minimum sample size for supplemental funding awards is nine. If there are less than nine drawdowns, please note in the workpapers.

2. Select from more than one award, if available

    I. Drawdowns for these funds are identifiable by the following Limitation (LIM) Codes relating to the different funding programs, which are included in the Account Class Code section of the disbursement report:

        a. Cares Act – Appropriation Code 29
            - CV – Urbanized Area and Rural Area
            - AV – Appalachian Development
            - TV- Tribal
        b. CRRSAA – Appropriation Code 28
            - CR – Urbanized Area and Rural Area
            - TR – Tribal Transit
            - Mobility of Seniors and Individuals with Disabilities:
                - LR – Population of 200K+
                - MR – Population of 50K to 200K
                - SR – States
        c. ARP – Appropriation Code 32
            - PV – Urbanized Area
            - Mobility of Seniors and Individuals with Disabilities:
                - PL – Population of 200K+

        - PM – Population of 50K to 200K
        - PS – States
    - Rural Area:
        - PR – Rural Area
        - P6 – Rural Transit Assistance Program (RTAP)
        - PI – Intercity Bus
        - PF – Tribal Transit

3. Select different award programs that have overlapping periods of performance

4. Select from different financial purpose codes (00, 02, or 04), if available

5. Select at least one draw for operating expenses

6. Select at least one draw for private operator subrecipient reimbursement (if none exist, note in the workpapers that there were no private operator reimbursements)

7. Select large draws

8. Select flat dollar amounts such as $1,000,000

9. Select any credits that appear to be systemic

ASSESSMENT PROCEDURES FOR ECHO DRAWS WITH CARES ACT, CRSSAA, ARP ACT OR ER FUNDS

Follow normal assessment procedures for ECHO draws with modifications noted below for ECHO draws involving CARES Act, CRSSAA, ARP Act, or ER funds.

Eligible Costs

Select a minimum of 10% if the underlying transactions to ensure that costs were incurred the earlier of (a) January 20, 2020 and after, or (b) after the recipient's state declared a State of Emergency or major disaster. For ER funds, ensure costs are related to responding to the public health emergency.

1. For each drawdown selected for review, determine whether the recipient calculated operating expenses accurately:

    a. **Eligible Operating Expense** accumulated for periods (a) after January 20, 2020 or (b) after the recipient's state declared a State of Emergency or major disaster. For ER funds, ensure costs are related to responding to the public health emergency, such as:

        i. Direct labor, including:

            1. Bonuses and incentive compensation. If any bonuses or incentive compensation included in the payroll expenses, determine whether they appear reasonable and whether supporting documentation indicates that an agreement for these expenses were entered into before the services were rendered.

            2. Administrative leave for operations and maintenance employees.

        ii. Materials

        iii. Contracted services

iv. Preventive Maintenance (if preventive maintenance is included in operating expenses for the public health emergency relief, review documentation for ongoing urban and rural programs to ensure they are not being charged as capital expenses).

v. Operating portion of capital cost of contracting.

vi. Indirect costs

vii. If applicable, any expenses charged to another federal (e.g., FEMA, HUD, DOJ, etc.), state or local award

b. If any **indirect costs** are being drawn down, verify:
   i. There is an approved ICRP and/or CAP

   ii. Indirect costs are charged at the approved rate (or at the de minimis rate, if allowed)

c. **Eliminations**:

   i. Farebox Revenues

   ii. Earned interest

   iii. Proceeds from the sale of equipment in excess of the depreciated value (gains)

   iv. Cash discounts and refunds

   v. Insurance claims

   vi. Reimbursements that directly offset accrued liabilities

   vii. If applicable, any expenses charged to another federal, (e.g., FEMA, HUD, DOJ, etc.). state or local award.

d. Determine whether the types of **unallowable items** listed below were excluded from the draw if incurred during the period:

   i. School bus operations

   ii. Charter bus operations

   iii. Entertainment expenses

   iv. Fines, penalties or charitable donations

   v. Contingencies

   vi. Depreciation

   vii. Interest expense on long-term borrowing and debt retirements

   viii. Claims for reimbursement of lost revenue

e. For any awards that include funding for activities other than payroll and other operating expenses, did recipient certify that it had not furloughed any employees since March 27, 2020? Is there any indication to contradict such a certification? If there is an indication to contradict the certification, the recipient must submit evidence that it did not furlough any employees while using supplemental funding for non-operating expenses. Discuss with Regional Office.

Duplicate Costs

If the recipient disbursed funds from an ER award, obtain from FTA (Office of Program Management) the listing of recipients that have received/requested FEMA funds. If the recipient is on the list, obtain a copy of the FEMA award document to identify what the funds were to be used for. Compare the FEMA and FTA award documents to identify any duplication of cost. Include a drawdown from any ER award that seems duplicative in nature with the FEMA funds in your sample of ECHO draws. Request and review a reimbursement request submitted to FEMA for the same period of activity as covered by the ECHO draw. Compare the costs included in both requests to determine if they appear to be the same. Discuss any similarities with the recipient and with the regional office, as necessary.

For any expenses that were reimbursed by more than one Federal program, a state or local award, discuss with the regional office how to address the issue.

Indirect Costs

If the recipient is charging indirect costs, but the approved rate has expired (and the recipient has not made the required annual updates, and/or submissions), contact the FTA regional office to determine if a one-year extension of the use of the currently approved indirect cost rate was granted. Contact the FTA regional office to determine if extensions were provided to the annual Cost Allocation Plan (CAP) and/or Indirect Cost Rate Proposal (ICRP) annual submission. If the CAP and/or ICRP is expired, obtain from the recipient its approved extension request from FTA to continue to use its current plan.

Table F4 EXAMINATION OF ECHO DRAWDOWNS

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

Project Number (Award Number) (min 18)	Financial Purpose Code	ECHO Transaction Date	ECHO Transaction Amount	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)*
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
-	-	-	-	-	-	-	-	-	-
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-	-	-	-	-	-	-	-	-	-

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

3. TECHNICAL CAPACITY – AWARD MANAGEMENT

PURPOSE OF THIS REVIEW AREA
The recipient must report progress of projects in awards to the Federal Transit Administration (FTA) and close awards timely.

QUESTIONS TO BE EXAMINED
1. Are Milestone Progress Reports (MPRs) and Federal Financial Reports (FFRs) submitted to FTA on time?

2. Are FFRs complete and accurate?

3. Are MPRs complete and accurate?

4. Are Program of Projects (POP) Status Reports complete and submitted on time?

5. Does the recipient ensure timely expenditure of funds and close out of awards?

INFORMATION NEEDED FROM 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

Recipient Follow-up

- Correspondence from FTA regional office regarding reporting issues

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TC-AM1. Are Milestone Progress Reports (MPRs) and Federal Financial Reports (FFRs) submitted to FTA on time?

BASIC REQUIREMENT
Recipients must report progress to FTA via submittal of timely MPRs and FFRs at the required intervals.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients must submit MPRs and FFRs in the Transit Award Management System (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.

Recipients are required to submit MPRs and FFRs based on the reporting frequency established by FTA. The reporting frequency depends on award program, award amount, recipient location, project type, and risk. FTA C. 5010.1F *Award Management Requirements* sets the reporting schedule and also permits FTA to adopt a risk-based approach to change the frequency of reporting. Since October 1, 2017, awards of $2 million or less awarded to recipients located in urbanized areas over 200,000 in population may be

reported annually instead of quarterly unless FTA has identified a specific risk. FTA's risk-based approach reduced the frequency of reporting for some recipients.

The following table shows the current reporting frequency for MPRs and FFRs by program. FTA, at its discretion, can require more frequent reporting.

Because submitting late reports is a risk factor, patterns of late or unsubmitted reports may prompt FTA to take remedial action and increase reporting frequency requirements.

MPR and FFR Reporting Frequency		
Recipient/Program	**Project**	**Reporting Frequency**
Recipients in large UZAs (>200,000)	Awards >$2 million	Quarterly
	Awards <$2 million	Annually
Recipients in small UZAs (<200,000) State-administered programs	Section 5309-funded facility construction projects Section 5329	Quarterly
	All other projects	Annually

If FTA grants an extension to the report or if corrections can only be added outside the 30-day timeframe, the recipient should provide documentation relating to FTA's approval or instruction and note the change in their comments. Submissions outside the 30-day timeframe may only be submitted via a hard copy of the SF-425. These may be found under 'Application Documents' or 'Recipient Documents' in TrAMS.

INDICATORS OF COMPLIANCE

a. *How often is the recipient required to submit MPRs and FFRs? Has FTA specified a different reporting frequency from the chart above? If yes, what is that frequency?*

b. *Did the recipient submit all MPRs and FFRs on time? If not, how many reports were missing/late during any reporting period?*

Awards reviewed reporting Quarterly -

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

Awards reviewed reporting Annually

Late or missing MPRs or FFRs by reporting period due dates		
Year	Annual (Oct 1 – Oct 30)	
	MPR	FFR
FY20XX	-	-

INSTRUCTIONS FOR REVIEWER
Confirm reporting frequency and discuss with the FTA regional office any changes in the required reporting frequencies based on a risk analysis. For each program, sample at least three awards for the most recent reporting period. If there is a pattern of late or missing reports, discuss the situation with the regional office and recipient. It may be necessary to review additional reports to identify a pattern of late or missing reports.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not submit MPRs and FFRs for each open award, does not submit them at the required intervals or submits them late. **Note: Guidance should be obtained from the regional office to determine applicability of deficiency.**

DEFICIENCY CODE TC-AM1-1: Late or unsubmitted MPRs/FFRs

SUGGESTED CORRECTIVE ACTION: Submit the delinquent report(s) for the most recent reporting period and submit procedures for submitting future reports on time. 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 FTA regional office when the delinquent reports are submitted.

GOVERNING DIRECTIVE
2 CFR 200.328 Financial reporting

(a) The Federal agency must require only OMB-approved government-wide data elements on recipient financial reports. At the time of publication, this consists of the Federal Financial Report (SF-425); however, this also applies to any future OMB-approved government-wide data elements available from the OMB-designated standards lead.

(b) The Federal agency or pass-through entity must collect financial reports no less than annually. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period.

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

2 CFR 200.329 Monitoring and reporting program performance

(c) Submitting performance reports.

(1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As appropriate in accordance with above mentioned performance reporting, these reports will contain, for each Federal award, brief information on the following unless other data elements are approved by OMB in the agency information collection request:

(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.

(d) Construction performance reports. Federal agencies or pass-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress under Federal awards for construction. Therefore, the Federal agency or pass-through entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

FTA Circular 5010.1F, Chapter. III, Section 6. Post-Award Administration

a. Reporting Requirements. When the Award is active, the recipient must comply with post-award reporting requirements. FTA's reporting requirements are based on risk factors including the recipient's size, past performance, and experience with the Award's scope of work and the type or amount of Federal assistance. These are typically identified by program and may be included in Federal Register notices, apportionment notices, and program circulars. Outlined below are general post-award reporting

requirements. There may be specific programs or additional reporting requirements announced through the Federal Register. Individual awards may include special reporting requirements.

Please contact the FTA point of contact with questions regarding the applicability of the following reporting requirements.

f. FFR and MPR Due Dates. FTA utilizes a risk-based approach to change the frequency of reporting requirements for a particular award or recipient. This will be noted in the grant or cooperative agreement. Unless altered by a risk-based change, the following reporting dates apply to FFRs and MPRs:

(1) Recipients located in UZAs of 200,000 or more in population. For awards of more than $2 million in funds from FTA, recipients located in UZAs with populations of 200,000 or more must submit FFRs and MPRs 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 additional reports if circumstances warrant additional reporting. For awards of $2 million or less in funds from FTA, recipients located in UZAs with populations of 200,000 or more must submit FFRs and MPRs to FTA annually on October 30, one month after the Federal fiscal year ends. The FTA Regional or Metropolitan Office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

(2) Recipients located in UZAs of less than 200,000 in population. FFRs and MPRs must be submitted and are due October 30, one month after the Federal fiscal year ends. The FTA Regional or Metropolitan Office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

(a) Exceptions:

i. 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 24.f.(1) above when grants include construction of facility.

ii. 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.

iii. Section 5329: SSO funding requires quarterly reporting.

iv. If the provisions of this FTA Circular 5010.1F differ from the provisions of the applicable FTA program 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.

TrAMS automatically issues tasks to complete FFRs and MPRs based on the reporting cycle FTA established. These FFR and MPR tasks are only available in TrAMS until the next reporting cycle begins.

TC-AM2. Are FFRs complete and accurate?

BASIC REQUIREMENT
Recipients are required to provide a current, complete, and accurate financial picture of each award through the submission of FFRs**.**

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
The FFR reports on the use of award funds. Reports are submitted electronically using TrAMS. 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, i.e., 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 retention 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. If multiple rates are included in the report, additional documentation is uploaded as an attachment to the report.

- The recipient must address any **FTA comments** either in a revised submission or in the subsequent report. Addressing inconsistencies may prevent returned reports, complies with FTA's instructions, and may eliminate confusion with FTA's Program Office and oversight reviews.

FFRs must be accurate. Many 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 recipient has awarded a construction contract but the FFR does not report unliquidated obligations.

INDICATOR OF COMPLIANCE

a. Are FFRs complete and correct?

Awards reviewed	-

Indicator	Comment
1. Are Federal cash receipts and disbursements reported on a cash basis?	-
2. Is cash on hand reported in any FFR examined? If yes, has the recipient provided an explanation? Did the FTA regional office determine the explanation was adequate?	-
3. Does the information in the FFR match the last award budget? Are any identified cost overruns or identified savings explained?	-
4. Does the recipient report outlays and unliquidated obligations on an accrual basis of accounting? Are elements E-U reported correctly?	-

Indicator	Comment
5. 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?	-
6. If the recipient charges indirect costs to awards, have the correct rates and amounts been entered in the FFR?	-
7. Are there any discrepancies in information or data reported on MPRs and FFRs? If yes, obtain an explanation from the recipient.	-
8. Has the recipient responded to any FTA comments on FFRs?	-

INSTRUCTIONS FOR REVIEWER

For each program, sample at least 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.

- Review financial management procedures for discussion on how the recipient captures and reports information in the progress reports.
- Determine if Federal cash receipts and disbursements are reported on a cash basis and expenses are recorded when earned (received) instead of when paid.
- 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.
- If a recipient has amended an award(s) to add or delete funds, follow up with the recipient to ensure that it is reporting on the new amount. If it does not, ascertain the reason for the difference.
- 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. Review financial management and award management procedures for information on how unliquidated obligations are calculated. 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 reporting the approved rate or the de minimis rate, if allowed, by comparing the information in the sample reports to the cost allocation plan or direct cost rate proposal.

- 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.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient 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

DEFICIENCY CODE TC-AM2-1: Incorrect FFR reporting

SUGGESTED CORRECTIVE ACTION: Submit revised reports that include the missing/corrected information and/or address FTA comments and submit to the FTA regional office procedures for including all required information in future reports. 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.

The recipient is deficient if data in the FFR do not reflect the data in the MPR.

DEFICIENCY CODE TC-AM2-2: MPR/FFR do not agree

SUGGESTED CORRECTIVE ACTION: Submit revised reports that address review comments and submit procedures for reconciling FFRs and MPRs and notify the regional office when the next reports are submitted.

GOVERNING DIRECTIVE
2 CFR 200.328 Financial reporting

(a) The Federal agency must require only OMB-approved government-wide data elements on recipient financial reports. At the time of publication, this consists of the Federal Financial Report (SF-425); however, this also applies to any future OMB-approved government-wide data elements available from the OMB-designated standards lead.

(b) The Federal agency or pass-through entity must collect financial reports no less than annually. The Federal agency or pass-through entity may not collect financial reports more frequently than quarterly unless a specific condition has been implemented in accordance with § 200.208. To the extent practicable, the Federal agency or pass-through entity should collect financial reports in coordination with performance reports.

(c) The recipient or subrecipient must submit financial reports as required by the Federal award. Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period

(d) The final financial report submitted by the recipient must be due no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit a final financial report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any financial report with justification from the recipient or subrecipient.

FTA Circular 5010.1F, Chapter. III, Section 6.d, Post-Award Administration

Federal Financial Report (FFR). FTA's electronic FFR is consistent with and includes information identified in OMB's Standard Form 425 (SF-425). A recipient must submit an FFR for each active award based on the reporting schedule established in TrAMS. 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. The first four items (A–D) are prepared using cash accounting. The remaining report items (E–U) 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. These items, (E–U) of the FFR, may not be prepared on the cash basis of accounting, even though a recipient may keep its books on the cash basis.

Recipients must provide a narrative detailing the financial state of the award and clearly explain any anticipated cost overruns or savings identified under the award. If no financial activity occurred during the reporting period, the recipient must still file a financial report. The explanation must include a narrative to explain "no activity." For example, if no action has occurred over subsequent reports, and milestones originally indicated progress that should have occurred, then an explanation is needed. Or, if the MPR indicates contract awards or work completed, the FFR should reflect that activity, or otherwise explain how the MPR differs from the financial activity during the reporting period. The reserved narrative or remarks sections of the reports are available to explain differences or unique issues, such as a significant unliquidated balance if there has been demonstrated progress to complete the scope of work of the award.

The following requirements pertain to each FFR:

(1) All financial facts (e.g., expenditures and obligations) relating to the award (scope of work and supporting activities) must be included; the purpose of each financial report and applicable reporting period should be completely and clearly displayed in the reports.

(2) Reported financial data must be accurate to the last approved 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 these adjustments must be explained in the explanation/remarks section of the report.

(3) Financial reports must be based on the required supporting documentation. Documentation should be maintained in the recipient's official financial management system, which produces information that objectively discloses financial aspects of events or transactions.

(4) Financial data reported must be derived from the recipient's accounting system and should be consistent with financial management requirements, such as those under 2 CFR 200.302. It should be maintained on a consistent, periodic basis with material changes in accounting policies or methods and their effect clearly explained.

(5) Reporting terminology used in financial reports to FTA must be consistent with receipt and expense classifications included in the latest award.

(6) The recipient must provide financial information related to the FFR, Federal Cash Reporting, Federal Expenditures and Recipient Share, Unliquidated Obligations, and program income. When indirect costs are charged, the recipient must include the status of expenditures when completing its FFR. If the recipient is charging indirect costs, the recipient is responsible for having an approved ICRP or CAP approved by the cognizant agency on file and uploading the documentation into their TrAMS "Recipient Profile" at the time of application and post-award if the agreement is changed. The information listed below must be provided in reports as expenses incurred on a cumulative basis.

(a) The type of plan and rate must be consistent with the approved CAP on file, as approved by the cognizant agency, or as otherwise approved by FTA when it permits reimbursement of these expenses. The recipient should report expenses that are consistent with the rate indicated at the time of application and reflected in the FFR. See Appendix H for more detailed information on CAPs and Appendix I for more detailed information on ICRPs).

(b) The information to be reported is:

i. Type – Enter indirect rate type (e.g., provisional or fixed);

ii. Rate – The rate approved by the cognizant agency (e.g., 14.9 percent);

iii. Base – The total monetary base amount from which the indirect cost rate is determined (note: typically, indirect cost rate agreements identify the types of direct costs that are included in the base, such as salaries or modified total direct cots, but the reported base should be the accumulated amount of these items of cost to date);

iv. Period from / Period to – The time period covered by the approved indirect cost rate agreement;

v. Amount Charged – The total calculated (rate x base) amount of indirect expenses charged to the Award on a cumulative basis; and

vi. Federal Share – The Federal share of the indirect expenses charged.

(7) The recipient must also provide remarks to help explain the FFR, particularly any reconciliation (e.g., refunds) identified in the FFR.

(8) The recipient must also certify or attest that the information provided in the FFR is accurate.

TC-AM3. Are MPRs complete and accurate?

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

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
MPRs are the primary written communication between recipients and FTA on the progress of the projects in an award. 2 CFR 200 subpart D and FTA C. 5010.1F 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.

INDICATOR OF COMPLIANCE

a. Do MPRs address the required topics?

Awards reviewed	-

Topic	Comment
(1) 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	-
(2) Narrative of activity status and any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, or third-party contract awards	-
(3) Detailed discussion of budget or schedule changes	-
(4) Explanation of why scheduled milestones or completion dates were not met	-
(5) Identification of problem areas and a narrative on how the problems will be solved	-
(6) Discussion of the expected impacts and the efforts to recover from the delays	-
(7) Analysis of each significant project cost variance: completion and acceptance of equipment and construction or other work, 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.	-
(8) List of outstanding claims exceeding $100,000 and all claims settled during the reporting period, accompanied by a brief description, estimated costs, and the reasons for the claims	-
(9) A list with a brief description of all potential and executed change orders, and amounts exceeding $100,000, pending, or settled	-

Topic	Comment
(10) A list of claims or litigation involving third party contracts and potential third-party contacts 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 real property acquisition actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel reported	-
(12) Contract award milestone for all rolling stock activity line items (ALIs)	-

Note: Topic numbers correspond to the paragraph numbers in FTA C. 5010.1F.

INSTRUCTIONS FOR REVIEWER

For each program, sample at least three 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 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 contacts, 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 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 DEFICIENCY DETERMINATION

The recipient is deficient if progress reports are not complete, fail to highlight progress towards meeting project objectives, or fail to discuss potential problem areas.

DEFICIENCY CODE TC-AM3-1: MPRs lack required information.

SUGGESTED CORRECTIVE ACTION: Submit revised reports that include the missing information and submit procedures for ensuring all required information is included in future reports. 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 DIRECTIVE

2 CFR 200.329 Monitoring and reporting program performance

(a) Monitoring by the recipient and subrecipient. The recipient and subrecipient are responsible for oversight of the Federal award. The recipient and subrecipient must monitor their activities under Federal awards to ensure they are compliant with all requirements and meeting performance expectations. Monitoring by the recipient and subrecipient must cover each program, function, or activity. See also § 200.332.

(c) Submitting performance reports.

(1) The recipient or subrecipient must submit performance reports as required by the Federal award. Intervals must be no less frequent than annually nor more frequent than quarterly except if specific conditions are applied (See § 200.208). Reports submitted annually by the recipient or subrecipient must be due no later than 90 calendar days after the reporting period. Reports submitted quarterly or semiannually must be due no later than 30 calendar days after the reporting period. Alternatively, the Federal agency or pass-through entity may require annual reports before the anniversary dates of multiple-year Federal awards. The final performance report submitted by the recipient must be due no later than 120 calendar days after the period of performance. A subrecipient must submit a final performance report to a pass-through entity no later than 90 calendar days after the conclusion of the period of performance. See also § 200.344. The Federal agency or pass-through entity may extend the due date for any performance report with justification from the recipient or subrecipient.

(2) As applicable, performance reports should contain information on the following:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. (for example, comparing costs to units of accomplishment). Where performance trend data and analysis would be informative to the Federal agency program, the Federal agency should include this as a performance reporting requirement.

(ii) Explanations on why established goals or objectives were not met; and

(iii) Additional information, analysis and explanation of cost overruns or higher-than-expected unit costs.

(d) Construction performance reports. Federal agencies or pass-through entities rely on on-site technical inspections and certified percentage of completion data to monitor progress under Federal awards for construction. Therefore, the Federal agency or pass-through entity may require additional performance reports when necessary to ensure the goals and objectives of Federal awards are met.

(e) Significant developments. When a significant development that could impact the Federal award occurs between performance reporting due dates, the recipient or subrecipient must notify the Federal agency or pass-through entity. Significant developments include events that enable meeting milestones and objectives sooner or at less cost than anticipated or that produce different beneficial results than originally planned. Significant developments also include problems, delays,

or adverse conditions which will impact the recipient's or subrecipient's ability to meet milestones or the objectives of the Federal award. When significant developments occur that negatively impact the Federal Award, the recipient or subrecipient must include information on their plan for corrective action and any assistance needed to resolve the situation.

(f) Site Visits. The Federal agency or pass-through entity may make in-person or virtual site visits as warranted.

(g) Performance report requirement waiver. The Federal agency may waive any performance report that is not necessary to ensure the goals and objectives of the Federal award are being achieved.

FTA Circular 5010.1F, Chapter. III, Section 6.e. Post-Award Administration

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 regarding award progress. This report must be submitted electronically via TrAMS based on the established reporting schedule. 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 MPRs must 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) At a minimum, the current status 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 must identify:

(a) The actual completion dates for any milestones completed during the reporting period,

(b) Any revised dates when any original (or last revised) completion dates were not met.

(c) If the milestone date exceeds the Award end date, the recipient must consult the FTA Regional Office to determine if an award modification is required to change the Award end date through a budget revision or an amendment.

(2) A narrative of the activity status, any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, and third-party contract Awards.

(3) A detailed discussion of all Award Budget or schedule changes.

(4) An explanation of why scheduled milestones or completion dates were not met.

(5) Identification of problem areas and a narrative on how the problems will be resolved.

(6) A discussion of the expected impacts and the efforts to recover from the delays.

(7) 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.

(8) 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.

(9) A list of all potential and executed change orders, as defined in Circular 4220.1G, 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:

a) Have a value exceeding $100,000;

b) Involve a controversial matter, irrespective of amount; or

c) 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.

TC-AM4. Are Program of Projects (POP) Status Reports complete and submitted on time?

BASIC REQUIREMENT
Designated recipients of Sections 5310 and 5311 funds must submit POP Status Reports to FTA on the status of subrecipients' projects.

APPLICABILITY
Designated 5310 and 5311 recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
Designated recipients of Sections 5310 and 5311 funds with subrecipients must submit POP status reports for each open award annually (prior to October 31), except designated 5310 recipients in large urbanized areas with awards exceeding $2 million which must report quarterly. If the required information is not included in the award budget and the MPRs, these reports should be attached to the recipient's corresponding MPR in TrAMS. The purpose of the report is to ensure that award budgets are updated at least at the required reporting intervals and to ensure that recipients report key information on subrecipient projects. Limiting the reporting to required intervals saves recipients from updating budgets in TrAMS every time subrecipient project budgets change. Some recipients submit updated POPs and budget revisions more frequently. FTA has accepted these POPs in lieu of annual or quarterly submissions.

Reports must include:

1. Updated POP for each approved award that contains active projects reflecting revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. Appendix A in FTA C. 9070.1H presents a sample POP.

2. Budget revisions for changes in line item budgets, if required by the regional office.

3. Significant civil rights compliance issues, such as legal action or litigation against the recipient or subrecipients under the Americans with Disabilities Act, Title VI of the Civil Rights Act of 1964, or Equal Employment Opportunity, or Disadvantaged Business Enterprise (DBE) requirements. This requirement is limited to statutory and regulatory authorities only.

4. Notable accomplishments or problems involving subrecipients.

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INDICATORS OF COMPLIANCE

a. Did the recipient submit all status reports on time? If not, how many reports were missing/late during any reporting period?

Awards reviewed	-

Late or missing POP Status Reports by due date					
Year	Quarter 1 (Jan 1 – Jan 30)	Quarter 2 (Apr 1 – Apr 30)	Quarter 3 (July 1 – July 30)	Quarter 4/ (Oct 1 – Oct 31)	
	5310	**5310**	**5310**	**5310**	**5311**
FY 20XX	-	-	-	-	-

Late or missing POP Status Reports by due date					
Year	Annual (Oct 1 – Oct 31)	Annual (Oct 1 – Oct 31)	Annual (Oct 1 – Oct 31)	Annual (Oct 1 – Oct 31)	
	5310	**5310**	**5310**	**5310**	**5311**
FY 20XX	-	-	-	-	-

b. Do status reports include an updated POP for each approved award that contains active projects?

c. Does the updated POP reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories?

d. Were any changes to line-item budgets for the award submitted as budget revisions?

e. Were any significant civil rights compliance issues addressed?

INSTRUCTIONS FOR REVIEWER

Sample at least three awards for the most recent reporting period to determine if the recipient submitted reports on time and included the required information for the POP Status Reports as detailed in indicators above. If there is a pattern of late reporting, discuss with the regional office. Ask the regional office if it requires annual budget revisions. Ask the regional office if it only requires recipients to submit POPs only when POPs in TrAMS are outdated.

If changes were made to line item budgets, verify these were submitted as budget revisions.

Discuss with the FTA Regional Civil Rights Officer whether or not the recipient had any significant civil rights compliance issues. If so, verify they were included in the status reports.

During the site visit, discuss any concerns noted.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not submit POP Status Reports or the reports do not include all the required information.

> DEFICIENCY CODE TC-AM4-1: POP Status Reports missing or lacking required information
>
> SUGGESTED CORRECTIVE ACTION: Submit in TrAMS the Annual POP Status Reports for the past year and submit procedures for submitting the reports with the required information at the required interval.

GOVERNING DIRECTIVE

FTA Circular 9040.1H, Chapter. VI, Section 5. Reporting Requirements

a. Annual Program of Projects Status Reports. By October 31 each year, the State shall submit to FTA a Program Status Report for each active grant, covering the twelve-month period ending September 30. Status reports are intended to meet minimal program information needs at the regional and national levels. Reports should include an updated POP for each approved grant that contains active projects. The updated POP should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. The updated POP can be attached in the electronic status report. If revisions to the POP result in changes to the line-item budget for the grant, these changes should be submitted as budget revisions. Significant civil rights compliance issues occurring during the year (such as Title VI, Equal Employment Opportunity (EEO), or Disadvantaged Business Enterprises (DBE) complaints against the State or subrecipients) should be addressed in the annual status report. In addition, the State may report notable accomplishments or problems involving Section 5311 and 5339 subrecipients.

FTA Circular 9070.1H, Chapter. VI, Section 7. Reporting Requirements

a. Annual Program of Projects Status Reports. The status reports should be submitted electronically and are intended to meet minimal program information needs at the regional and national levels. Reports should include an updated POP for each approved Award that contains active projects. The updated POP should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories, if applicable. The updated POP can be imported as text into the project summary section of the Electronic Status Report.

   If revisions to the POP result in changes to the line-item budget for the Award, appropriate prior approvals and post-award modifications, including amendments and budget revisions, may be required and documented in TrAMS. Significant civil rights compliance issues (such as Title VI,

Equal Employment Opportunity [EEO], or Disadvantaged Business Enterprise [DBE] complaints against the recipient or subrecipients) occurring during the year should be addressed in the Annual Status report. In addition, the recipient may report notable accomplishments or problems involving Section 5310 subrecipients.

TC-AM5. Does the recipient ensure timely expenditure of funds and close out of awards?

BASIC REQUIREMENT
The recipient must expend awards timely and close out projects and awards at the end of the period of performance or when award's scope of work is completed.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
FTA expects projects to be completed within the award's period of performance and potential delays updated in progress reports. However, noting delays or proposing date changes in the MPR is not sufficient to the change the period of performance. The period of performance may only be changed in TrAMS via an amendment or budget revision.

For Sections 5305, 5307, 5309, and 5339 projects, a good "rule of thumb" is to complete the project within the period of availability of funds. Once award funds are past the period of availability, the ability to amend the award to change the scope is limited, thus restricting the use of remaining funds to the original scope. For large, complicated construction or technology projects, completing the project and closing the award within the period of availability may not be feasible.

Sections 5310 and 5311 programs of projects should be implemented within two to three years of award approval. Recipients should take into account the status of current awards before awarding a subrecipient an award for a new project.

Funds deobligated within the period of availability could be available for re-obligation to a new award. The following table shows the period of availability of funds for selected programs.

Period of Availability of Funds	
Program	**MAP-21/FAST Act**
5305	Year of apportionment plus 3
5307	Year of apportionment plus 5
5309 discretionary	Year of apportionment plus 4
5310	Year of apportionment plus 2
5311	Year of apportionment plus 2
5329	Year of apportionment plus 2

Period of Availability of Funds	
Program	**MAP-21/FAST Act**
5337	Year of apportionment plus 3
5339	Year of apportionment plus 3

The recipient must initiate award closeout with subrecipients no later than 90 or 120 days after the end of the period of performance or when the award's scope of work is completed. Recipients may not excessively prolong the life of the award merely for the purpose of expending all award funds, even if there is additional time remaining in the period of performance. Awards should be closed when the scope of work is completed; if funds remain these should be deobligated as part of the award closeout. Frequently, recipients allow small balances in completed projects to delay closeout. The recipient 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, MPR, reconciled budget, and, for Sections 5310 and 5311 awards, POP, 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. 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.

INDICATORS OF COMPLIANCE

a. *As part of the development of award applications, does the recipient look to available funds in existing awards before applying for new funds?*

b. *Does the recipient take into account the status of current awards before awarding a subrecipient a subaward for a new project?*

c. *Does the recipient have any delayed or inactive awards that should be closed? If the recipient has any inactive awards that should not be closed, review the recipient's explanation why.*

d. *Do the recipient's procedures for initiating closeout with subrecipients ensure that the closeout occurs within 90 days after the award end date or when funds are expended/reassigned and all work activities for the project are completed before the end date?*

e. *Do the recipient's procedures for initiating closeout with subrecipients ensure that the closeout occurs by the time the award is closed with FTA?*

f. *Does the recipient initiate award closeout with FTA within 90 days of completion of all activity in the POP and/or after the applicable Federal assistance has been expended for all eligible costs?*

INSTRUCTIONS FOR REVIEWER

Review procedures for documentation of award management and closeout processes. Review the projected closeout 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.

Review state/program management plans and subrecipient agreements for time limits on subawards. Obtain and review a schedule for closing all open awards. During the site visit, discuss award management procedures and the status of any delayed or inactive awards that should be closed.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not initiate award closeout timely, has open awards that should be closed or implements procedures that delay award closeout.

DEFICIENCY CODE TC-AM5-1: Inactive award/untimely closeouts

SUGGESTED CORRECTIVE ACTION 1: Submit an award closeout plan.

SUGGESTED CORRECTIVE ACTION 2: Submit more effective procedures for award management (spending older funds first, tracking project progress, identifying project balances, reprogramming unused project funds to other projects, or closing out projects) to enable it to close awards more timely.

SUGGESTED CORRECTIVE ACTION 3: Work with the FTA regional office to revise award budgets to ensure funds can be spent and drawn down in active awards.

SUGGESTED CORRECTIVE ACTION 4: 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 DIRECTIVE

2 CFR 200.344 Closeout

The Federal agency or pass-through entity must close out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed. When the recipient or subrecipient fails to complete the necessary administrative actions or the required work for an award, the Federal agency or pass-through entity must proceed with close out based on the information available. This section specifies the administrative actions required at the end of the period of performance.

(b) The recipient must submit all reports (financial, performance, and other reports required by the Federal award), no later than 120 calendar days after the conclusion of the period of performance A subrecipient must submit all reports (financial, performance, and other reports required by a subaward) to the pass-through entity no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient. When the recipient does not have a final indirect cost covering the period of performance, an final financial report must still be submitted to fulfill the requirements of this section. The recipient must submit revised final financial reports when all applicable indirect cost rates have been finalized.

(c) The recipient must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must liquidate all financial obligations incurred under a subaward no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, the Federal agency or pass-through entity may approve extensions for the recipient or subrecipient.

(d) The Federal agency or pass-through entity must not delay payments to the recipient or subrecipient for costs meeting the requirements of subpart E of this part.

(e) The recipient or subrecipient must promptly refund any unobligated funds that the Federal agency or pass-through entity paid and that are not authorized to be retained. See OMB Circular A-129 and §200.346.

(f) The Federal agency or pass-through entity must make all necessary adjustments to the Federal share of costs after closeout reports are received (for example, to reflect the disallowance of any costs or the deobligation of an unliquidated balance).

(g) The recipient or subrecipient must account for any property acquired with Federal funds or received from the Federal Government in accordance with §§ 200.310 through 200.316 and 200.330.

(h) The Federal agency must make every effort to complete closeout actions no later than one year after the end of the period of performance. If the indirect cost rate has not been finalized and would delay closeout, the Federal agency is authorized to mutually agree with the recipient to close an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

(i) If the recipient does not comply with the requirements of this section, including submitting all final reports, the Federal agency must report the recipient's material failure to comply with the terms and conditions of the Federal award in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*. Federal agencies may also pursue other enforcement actions as appropriate. See § 200.339

FTA Circular 5010.1F, Chapter III: Award Development and Administration

8. AWARD CLOSEOUT. A recipient must submit all reports (financial, performance, and other reports required by the Federal award) no later than 120 calendar days after the conclusion of the period of performance. A subrecipient must submit all reports (financial, performance, and other reports required by a subaward) to the pass-through entity no later than 90 calendar days after the conclusion of the period of performance of the subaward (or an earlier date as agreed upon by the pass-through entity and subrecipient). When justified, FTA or the pass-through entity may approve extensions for the recipient or subrecipient.
When the recipient does not have a final indirect cost rate covering the period of performance, a final financial report must still be submitted to fulfill the requirements of this section. The recipient must submit a revised final financial report when all applicable indirect cost rates have been finalized. Unless FTA authorizes an extension, recipients must liquidate all financial obligations incurred under the Federal award no later than 120 calendar days after the end date of the period of performance, as specified in the terms and conditions of the Federal award. Any deviation from the approved Award must be documented in the closeout amendment.
The closeout process requires the submission of the final budget reconciliation, final FFR, final MPR, and any other required reports outlined in the Award. Recipients are also required to request disposition instructions for equipment and real property no longer in public transportation use. While the closeout can capture changes, no new scope of work should be added during closeout. 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.

If the recipient does not submit all reports in compliance with the award requirements within one year of the period of performance end date, FTA must report the recipient's material failure to comply with the terms and conditions of the Award with the Federal Awardee Performance and Integrity Information System (FAPIIS). Federal awarding agencies may also pursue other enforcement actions for noncompliance.

States should initiate project closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed. The States should similarly initiate POP closeout with

FTA within 90 days after all work activities for the POP are completed. A final FFR, final budget, and final POP must be submitted electronically via TrAMS at the time of closeout.
FTA expects grants awarded for a specific POP 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 reobligate 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. a. Closeout by Recipient. The recipient must initiate the closeout electronically, by submitting the following information in TrAMS, as part of the closeout process, within the 90- or 120-day time frame established by when the Award was made. Closeout includes the following:
(1) Confirmation that activities are complete and if closeout amendment will deobligate any unexpended balance of Federal assistance;
(2) A list of property acquired or improved in support of the Award that will continue to be within the purview of the grant or cooperative agreement as otherwise required in this circular, including disposition instructions;
(3) A final, reconciled award budget reflecting actual project costs by Scope Code and ALI, reflecting adjustments to the Federal and non-Federal amounts, including the return of any funds provided in advance or that the recipient is not authorized to retain;
(4) A final FFR, consistent with the reconciled award budget (e.g., deobligation);
(5) A final narrative MPR indicating the actual completion date of each ALI and a discussion of each ALI contained in the final award budget; and
(6) Any other documentation or reports required as part of the terms and conditions of the grant or cooperative agreement.

In order to provide sufficient time for financial and award management systems to capture relevant data and post, recipients should wait at least three to five business days after requesting final payments before initiating award closeout.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Were any concerns identified in the recipient’s award management procedures in the FTA's Oversight Assessment Tool (OAT)?

- Are there concerns about the organizational structure, staffing resources and/or turnover, experience, or training to ensure sufficient technical capacity for the administration of FTA award program?

- Any other potential issues or concerns about the recipient’s technical capacity to manage FTA awards not covered previously in this section

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws

2. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

3. FTA Circular 5010.1F, “Award Management Requirements”
4. FTA Circular 9040.1H, “Rural Areas Formula Grants Program Guidance”
5. FTA Circular 9070.1H, “Enhanced Mobility of Senior and Individuals with Disabilities Program Guidance”
6. Coronavirus Aid, Relief, and Economic Security Act
7. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
8. Notice of Concurrence
9. Emergency Relief rule
10. OMB Memorandum M-20-17, Appendix A
11. OMB Memorandum M-20-26

USEFUL WEBLINKS

1. The Federal Financial Report (FFR) and Instructions
2. State Transit Program Manager’s Guide on Administration and Oversight of FTA Grant Programs
3. Coronavirus Aid, Relief, and Economic Security Act
4. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
5. Notice of Concurrence
6. Emergency Relief rule
7. OMB Memorandum M-20-17, Appendix A
8. OMB Memorandum M-20-26

4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT

PURPOSE OF THIS REVIEW AREA

Designated recipients and States must document and follow a public involvement process for the development of the long-range statewide transportation plan and State Transportation Improvement Program (STIP). Designated recipients of Section 5310 funds and States receiving funds from Section 5310, Section 5311 and the Section 5339(a) National Distribution allocation must develop and submit a Program Management/State Management Plan to the FTA for approval. Recipients must enter into an agreement with each subrecipient, obtain required certifications from subrecipients, report in SAM.gov on subawards, and ensure subrecipients comply with the terms of the award.

QUESTIONS TO BE EXAMINED

1. Does the state involve providers of public transportation and nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP?

2. Does the recipient have an FTA-approved state or program management plan(s) that documents the recipient's policies and procedures for administering the Sections 5310, 5311, and/or 5339(a) programs?

3. Has the recipient entered into agreements with each subrecipient that includes all the information required by 2 CFR 200 and FTA?

4. Did the recipient obtain signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000?

5. Did the recipient confirm that its subrecipients were not suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements before entering into agreements exceeding $25,000?

6. Has the recipient reported subaward information to SAM.gov (formerly FSRS) for all subawards over $30,000 timely?

7. Does the recipient's oversight program ensure subrecipient compliance with Federal requirements and performance goals, and provide for evaluation of subrecipient risk of noncompliance with those requirements?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Public involvement process for development of the long-range statewide transportation plan and STIP
- Process for cooperating with nonmetropolitan local officials and interested parties in the development of the long-range statewide transportation plan and STIP
- Documentation of public involvement activities (sample meeting minutes, publications of activities)
- State/program management plan(s)
- Standard subrecipient application and award document for each program
- List of all subrecipients within the past three years
- Subrecipient oversight schedule for the past three and the next three years

- Oversight procedures including sample reports, oversight checklists/monitoring materials, and training materials/manuals for subrecipients

Recipient Follow-up

- Executed subrecipient award document(s) for subrecipient(s) visited
- Signed lobby certification for subrecipient(s) visited
- Excluded party determination for the subrecipient(s) visited
- SAM.gov reporting procedures, if written
- Documentation of oversight conducted of subrecipient(s) visited

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TC-PrgM1. Does the state involve providers of public transportation and nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP?

BASIC REQUIREMENT
The state, as a recipient of Federal funds, must document and follow a public involvement process that provides opportunities for public review and comment during the development of the long-range statewide transportation plan and the STIP. The state must also have a separate and discrete process for cooperating with nonmetropolitan local government officials and other interested parties in the development of these plans.

APPLICABILITY
States

DETAILED EXPLANATION FOR REVIEWER
The planning regulations require cooperation or coordination by the state with transit operators, nonmetropolitan local officials, and other interested parties who are stakeholders in the transportation planning process, including development of the long-range statewide transportation plan and the STIP.

INDICATORS OF COMPLIANCE

a. *Does the state have a documented process for involving the public in development of the long-range statewide transportation plan and the STIP? How does the process involve providers of public transportation?*

b. *Does the state have a separate and discrete process for cooperating with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP? How does the process provide an opportunity for the participation of nonmetropolitan local officials in the development of these plans?*

INSTRUCTIONS FOR REVIEWER
Review the state's documented public involvement process for developing the long-range statewide transportation plan and the STIP to determine how it involves providers of public transportation. Review the state's website for and/or obtain a sample of documentation of public involvement activities, including meeting minutes, for the development of the long-range statewide transportation plan and the STIP.

Review the state's documented process for cooperating with nonmetropolitan local officials in the development of the long-range statewide transportation plan and the STIP. Review the state's website for documentation and/or a sample of documentation of cooperative efforts with local officials, including meeting minutes, for the development of the long-range statewide transportation plan and the STIP.

POTENTIAL DEFICIENCY DETERMINATION

The state is deficient if it does not involve providers of public transportation and/or nonmetropolitan local officials in the development of the long-range statewide transportation plan or the STIP.

SUGGESTED DEFICIENCY CODE TC-PgM1-1: State planning process lacking involvement by representatives of public transportation employees, representatives of users of public transportation, and representatives of the disabled toward developing and updating the long-range statewide transportation plan,

SUGGESTED DEFICIENCY CODE TC-PgM1-2: Participation lacking with nonmetropolitan areas in the development of the statewide long-range transportation plan and the STIP.

SUGGESTED DEFICIENCY CODE TC-PgM1-3 State lacking public notice of engagement activities for public review on the proposed long-range statewide transportation plan and STIP, as well as a process for seeking out and considering the needs of those underserved by existing transportation systems in accordance with current statutory and regulatory authorities.

SUGGESTED CORRECTIVE ACTION: Submit a process for involving public transit users and transit employees and cooperating with nonmetropolitan local officials in the development of the long-range statewide transportation program and the STIP, as well as demonstrating public involvement activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed long-range statewide transportation plan and STIP. The State shall allow a minimum public comment period of 45 calendar days.

GOVERNING DIRECTIVE

23 CFR 450.208 Coordination of planning process activities

(a) In carrying out the statewide transportation planning process, each state shall, at a minimum:…

(4) Cooperate with affected local elected and appointed officials with responsibilities for transportation, or, if applicable, through Regional Transportation Planning Organizations (RTPOs) described in section 450.210(d) in nonmetropolitan areas;…

(7) Coordinate data collection and analyses with MPOs and public transportation operators to support statewide transportation planning and programming priorities and decisions.

23 CFR 450.210 Interested parties, public involvement, and consultation

(a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points.

(b) The State shall provide for nonmetropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for cooperating with nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP. Although the FHWA and the FTA shall not review or approve this cooperative process(es), the State shall provide copies of the process document(s) to the FHWA and the FTA for informational purposes.

23 CFR 450.216 Development and content of the long-range statewide transportation plan

(l) In developing and updating the long-range statewide transportation plan, the State shall provide:…

(2) To individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, private providers of transportation (including intercity bus operators, employer-based cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, providers of freight transportation services, and other interested parties with a reasonable opportunity to comment on the proposed long-range statewide transportation plan. In carrying out these requirements, the State shall use the public involvement process described under § 450.210(a).

TC-PrgM2. Does the recipient have an FTA-approved state or program management plan(s) that documents the recipient's policies for administering the Sections 5310, 5311, and/or 5339(a) programs?

BASIC REQUIREMENT
Recipients must develop and submit to FTA for approval a state/program management plan(s) that documents their policies and procedures for administering the Section 5311 program, the Sections 5310 program and under certain circumstances, the 5339 programs. Recipients must update plans regularly to incorporate any changes in program management or new requirements.

APPLICABILITY
States for the Sections 5310 and 5311 programs

Designated recipients of Section 5310 funds with subrecipients

States with subrecipients for the Section 5339(a) National Distribution allocation

Insular areas with subrecipients

DETAILED EXPLANATION FOR REVIEWER
State or program management plans are required of the following:

- States for the Sections 5310 and 5311 programs, even when the state does not have subrecipients
- Designated recipients of Section 5310 funds if the entity has subrecipients
- States for their Section 5339(a) National Distribution allocation funds if the State has subrecipients of those funds
- Insular areas with subrecipients

Recipients must submit the state/program management plan(s) for the program(s) to the FTA regional office and to update it regularly to incorporate any changes in program management or new requirements.

State/program management plans document the recipient's policies and procedures for the program(s). FTA gives the recipient the maximum discretion permitted by law in designing and managing the programs to meet the passengers' needs under those programs. The recipient develops program standards, criteria, procedures and policies. States that provide service directly and have no subrecipients under Sections 5310 or 5311 should develop a state management plan(s) that states that it

provides the service directly and addresses how the program is managed and funding decisions are made.

The state/program management plan is intended to facilitate program management and FTA oversight. The plan provides public information on the recipient's administration of the programs and may be used as a program guide for local applicants. The plan should contain sufficient detail to meet these objectives. While FTA does not prescribe a format for the plan, it does require that specific areas be covered for each program.

The state/designated recipient may develop separate plans or a combined plan for the programs. Parallels in the programs make it desirable to consider all resources and plan for their use in a complementary way. Many of the policies and procedures implemented by the state/designated recipient may apply to all programs.

FTA strongly encourages recipients to issue timely revisions to state/program management plans, particularly when information helpful to applicants, subrecipients, and third party contractors is involved. The recipient should seek public comment in making significant revisions to a plan. A significant revision is a change in recipient policy, such as a change in how projects and subrecipients are selected for funding. Updates to state/program management plans to reflect changes in FTA policy that do not trigger a change in recipient policy do not require public comment. Opportunity for comment should be given, at a minimum, to potential subrecipients, potential service providers, representatives of other funding sources, and any relevant state association or professional organization. Posting the revised plan(s) on the recipient's website seeking comments on revisions meets the requirement.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF
State Management Plan

States and designated recipients have flexibility to allocate CARES Act, CRRSAA, and ARP (Supplemental funding) through a different process than the one described in a previously approved State Management Plan, without prior FTA approval. States should document any deviations in an attachment to the Supplemental funding application. Requirements for fair and equitable distribution and intercity bus consultation under 49 U.S.C. § 5311(f) apply to CARES Act funds. The intercity bus consultation requirement does not apply to CRRSAA funds.

INDICATORS OF COMPLIANCE

a. *Does the recipient have an approved plan on file with the FTA regional office?*

b. *If the recipient has an approved plan, what changes has the recipient adopted to the program(s) since FTA approval that would require revisions to the plan(s)? If revisions were made, was the revised plan(s) submitted to FTA?*

c. *If the recipient does not have an approved plan(s), has the recipient submitted the plan(s) to the FTA regional office for review and approval?*

d. *If the plan(s) has been submitted to the FTA regional office since the last Comprehensive Review, did the recipient seek public comment for significant changes to the plan(s)?*

e. *For the plan(s) submitted to the FTA regional office that has not yet received FTA approval, does the state or program management plan(s) address the required topics?*

Topics	Page Number			Comments
	5311	5310	5339	
Program Goals and Objectives	-	-	-	-
Roles and Responsibilities	-	-	-	-
Coordination	-	-	-	-
Eligible Subrecipients	-	-	-	-
Eligible Services and Service Areas	-			-
Eligible Assistance Categories	-			-
Local Share and Local Funding Requirements	-	-	-	-
Project Selection Criteria and Method of Distributing Funds	-	-	-	-
Intercity Bus Transportation	-			-
Annual Program of Projects Development and Approval Process	-	-	-	-
State Administration, Planning, and Technical Assistance	-	-		-
Transfer of Funds	-	-	-	-
State Rural Transportation Assistance Program (RTAP)	-			-
Private Sector Participation	-	-		-
Civil Rights	-	-	-	-
Maintenance (listed in “other provisions” for Sections 5310 and 5339)	-	-		-
Charter Rule	-			-
Section 504 and ADA Reporting	-	-	-	-
National Transit Database (NTD) reporting	-	-	-	-

Topics	Page Number			Comments
	5311	5310	5339	
Program Measures		-		-
Program Management	-	-	-	-
Other Provisions	-	-	-	-

f. Does the plan(s) reflect current policy/process? Does the recipient follow its plan(s)?

g. Did the state's process for allocating Supplemental funding differ from the process described in the approved State Management Plan?

- *If yes, did the state document any deviations in an attachment to its CARES Act award application?*
- *If no, explain:*

INSTRUCTIONS FOR REVIEWER

Obtain the current state/program management plan(s) from the recipient. Verify with the FTA regional office that the current plan(s) matches the plan(s) submitted to and/or approved by FTA. If the plan(s) submitted by the recipient matches the plan(s) approved by FTA and no changes have occurred in the program implementation, do not complete the table above.

For plans received by FTA but not yet approved, determine if the FTA regional office has any concerns or issues with the plans. If directed by the FTA regional office, review plans not yet approved by FTA using the table to ensure that they address the required topics. Discuss any required topics that are missing from the plans with the FTA regional office.

During the site visit, determine if the plans reflect current policy and procedures as the related area is addressed. Discuss with the recipient if any significant changes were made to the plan(s) since the last Comprehensive Review and, if so, whether the recipient obtained public comment. Review the recipient's website, agendas and/or minutes of board meetings, training sessions, and award application sessions for indication that the significant changes were discussed and provided for discussion to the public.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Review the recipient's Supplemental funding award applications to determine if the recipient included an attachment documenting any deviations from its process for allocating funds in the approved state management plan. Discuss with the recipient the process used to allocate Supplemental funding. Obtain a copy of the Supplemental funding programs of projects and discuss with the recipient how they were developed. Confirm that the process is consistent with that documented in the most recent state management plan.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not submitted the state/program management plan(s) to the FTA regional office or has not updated the plan to reflect current policy.

DEFICIENCY CODE TC-PgM2-1: SMP/PMP missing or out of date

SUGGESTED CORRECTIVE ACTION: Submit an updated state/program management plan(s) that reflects current practice. Seek public comment on the revised state/program management plan(s) if significant revisions are required and submit documentation that public comment was sought with the updated plan.

The recipient is deficient if its state/program management plan(s) does not address all required topics.

DEFICIENCY CODE TC-PgM2-2: SMP/PMP incomplete

SUGGESTED CORRECTIVE ACTION: Submit a revised state/program management plan(s) that addresses all required topics. If the updated plan includes significant revisions, the recipient must seek public comment on the state/program management plan(s) and submit documentation that public comment was sought with the updated plan(s).

The recipient is deficient if it did not seek public comment for significant revisions to the plan.

DEFICIENCY CODE TC-PgM2-3: No evidence of solicitation of public comment for significant SMP/PMP revisions

SUGGESTED CORRECTIVE ACTION: Submit procedures for seeking public comment when significant revisions are made to a state/program management plan. Seek public comment on the state/program management plan(s) and submit documentation that public comment was sought with the updated plan(s).

The recipient is deficient if, when allocating Supplemental funds, it deviated from its documented process for allocating funding, but it did not include documentation of those deviations.

DEFICIENCY CODE TC-PgM2-4: No documentation of deviations included in its Supplemental funding awards

SUGGESTED CORRECTIVE ACTION: Coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE

FTA Circular 9040.1H, Chapter VII, State Management Plans

GENERAL. The SMP is a document that describes the State's policies and procedures for administering the State-managed portions of FTA's Section 5311, 5310, and 5339 programs. Each State is required to have an approved SMP on file with the appropriate FTA Regional Office or Metropolitan Office and to update it regularly to incorporate any changes in program management or new requirements. The State shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan. The State may include the required SMP for Section 5311, 5310, and 5339 programs in a single document or separate documents. States that have expended all their Section 5316 (Job Access Reverse Commute) and Section 5317 (New Freedom) funds awarded prior to 2013 may remove those programs from their SMPs. Certain contents of the SMP, such as the project selection criteria, should be coordinated with the long-range statewide transportation plan required by 49 U.S.C. 5304(f).

FTA Circular 9070.1H, Chapter VII, State and Program Management Plans

GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5310, 5311, and 5339(a) programs. The program management plan (PMP) is a document that describes the Designated Recipient's policies and procedures for administering FTA's Section 5310 program in a large urbanized area. The requirements for the PMP are the same as those for the SMP with exception that the PMP is developed by Designated Recipients in large urbanized areas, whereas the SMP is developed by the State.

Each recipient, whether a State or a Designated Recipient in a large urbanized area, is required to have an approved SMP/PMP on file with the appropriate FTA Regional Office and to update it regularly to incorporate any changes in program management or new requirements. The recipient shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan.

FTA Circular 9050.1A, Chapter V, Urbanized Areas Formula Grant Programs Guidance

MAJOR CAPITAL PROJECTS. Projects funded under 49 U.S.C. Chapter 53…may be subject to FTA's Project Management Oversight requirements, 49 U.S.C. 5327, applicable to major capital projects. FTA's definition of a major capital project is set by regulation (49 CFR Part 633) …

If a project is identified as a major capital project, the applicant must carry out a Project Management Plan (PMP) and must apply value engineering techniques to the project. The elements of a PMP appear in 49 U.S.C. 5327(a). FTA's related regulations, including the requirements of a PMP, are set forth at 49 CFR Part 633. The applicant must submit the PMP in time for FTA to review the applicant's plan in conjunction with its applicable grant application. Within 60 days of receiving the PMP, FTA will determine whether to approve or disapprove the plan, or FTA will notify the grant applicant that it was unable to complete the review. If FTA disapproves a PMP, FTA will provide its reasons for disapproval to the applicant.

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

CA7: Are States and Designated Recipients required to adhere to existing FTA-approved State Management Plans for allocation of CARES Act and CRRSAA funding within the State or service area?

No. States and Designated Recipients have flexibility to allocate CARES Act and CRRSAA funding through a different process than the one described in a previously approved State Management Plan, without prior FTA approval. States should document any deviations in an attachment to the CARES Act or CRRSAA funding application. Requirements for fair and equitable distribution and intercity bus consultation under 49 U.S.C. § 5311(f) apply to CARES Act funds. The intercity bus consultation requirement does not apply to CRRSAA funds.

CA8: Is a State required to use its existing State Management Plan to develop a program of projects for CARES Act or CRRSAA funds administered under the Formula Grants for Enhanced Mobility of Seniors and Individuals with Disabilities Program (Section 5310) the Formula Grants for Rural Areas Program (Section 5311)?

No. A State may develop a program of projects consistent with its documented State Management Plan that has been updated to accommodate CARES Act and CRRSAA funds.

CA48: How do the program administration requirements for formula funding administered under Sections…5310 and 5311 made available through the American Rescue Plan Act (ARP) differ from CARES and CRRSAA?

Funding requirements under ARP are the same as those for the CARES Act and CRRSAA, with the following exceptions:

1. All ARP funding administered under Sections…5310 and 5311 must be obligated in a grant by September 30, 2024 and must be disbursed by September 30, 2029.

2. All ARP funding administered under Sections…5310 and 5311 should be directed to payroll and operations of public transportation (including payroll and expenses of private providers of public transportation), unless the recipient certifies to the Administrator of the Federal Transit Administration that the recipient has not furloughed any employees since March 27, 2020 (the enactment date of the CARES Act). Please also see…FAQs CA49-CA57.

3. States are required to set aside 15 percent of their Section 5311 ARP apportionment for intercity bus activities unless they certify, after consultation, that intercity bus needs in the state have been met. The $100 million in ARP funding specifically designated for intercity bus must be used for intercity bus projects unless the State does not have any eligible recipients for intercity bus funds. In addition, the Rural Transit Assistance Program (RTAP) set-aside of 2 percent of Section 5311 funds applies.

4. Private providers of public transportation are eligible to become subrecipients of CARES Act and CRRSAA funds, but not ARP funding.

Except for the items described above, all FAQs explaining funding and program requirements for CARES Act and CRRSAA funds also apply to ARP funds.

TC-PrgM3. Has the recipient entered into agreements with each subrecipient that includes all the information required by 2 CFR 200 and FTA?

BASIC REQUIREMENT
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 200 and FTA.

APPLICABILITY
States

Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
The 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.

Recipients must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information required by 2 CFR 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.

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 recipient have written agreement with each subrecipient?*

b. *Does the subrecipient award documentation include the information required by 2 CFR 200?*

Required Agreement Information	
Information	**Comment**
Federal award identification	
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 *Federal award date* 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	-
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	-

Required Agreement Information	
Information	**Comment**
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)	-
Pass-through Requirements:	
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	-

Required Agreement Information	
Information	**Comment**
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 (PTE) must determine the appropriate rate in collaboration with the subrecipient, which is either • The negotiated indirect cost rate between the PTE 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; • The de minimis indirect cost rate. • The PTE 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)	-
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	-
Appropriate terms and conditions concerning closeout of the subaward.	-

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

c. *Did the recipient pass Supplemental Funding (CARES Act, CRRSAA, ARP Act, and/or ER funds) to subrecipients?*

   - *If yes, has the recipient amended/updated or entered into an agreement with subrecipients awarded the Supplemental funds?*
   - *If no, explain:*

INSTRUCTIONS FOR REVIEWER

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

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not have an award document with each subrecipient.

DEFICIENCY CODE TC-PgM3-1: Missing written agreements

SUGGESTED CORRECTIVE ACTION: Submit procedures for entering into award document with each subrecipient prior to the expenditure of Federal funds on a local project and documentation that it has executed award document with each subrecipient.

The recipient is deficient if the subrecipient award document does not include the required elements.

DEFICIENCY CODE TC-PgM3-2: Written agreements missing required elements

SUGGESTED CORRECTIVE ACTION: Submit an amended subrecipient award document template that includes missing FTA requirements. Submit documentation that the amended award document has been used in the next project application cycle.

GOVERNING DIRECTIVE
2 CFR 200.332 Requirements for pass-through entities

A pass-through entity must:

(b) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the information provided below. A pass-through entity must provide the best available information when some of the information below is unavailable. A pass-through entity must provide the unavailable information when it is obtained. 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);

(v) Subaward Period of Performance Start and End Date;

(vi) Subaward Budget Period Start and End Date;

(vii) Amount of Federal Funds Obligated in the subaward;

(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 agency, pass-through entity, and contact information for awarding official of the Pass-through entity;

(xii) Assistance Listings title and number; 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 for research and development; and

(xiv) Indirect cost rate for the Federal award (including if the de minimis rate is used in accordance with §200.414).

(2) All requirements of the subaward, including requirements imposed by 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 for the pass-through entity to meet its responsibilities under the Federal award. This includes information and certifications (see § 200.415) required for submitting financial and performance reports that the pass-through entity must provide to the Federal agency;

(4)(i) An approved indirect cost rate negotiated between the subrecipient and the Federal Government. If no approved rate exists, a pass-through entity must determine the appropriate rate in collaboration with the subrecipient. The indirect cost rate may be either:

(A) An indirect cost rate negotiated between the pass-through entity and the subrecipient. These rates may be based on a prior negotiated rate between a different pass-through entity and the subrecipient, in which case the pass-through entity is not required to collect information justifying the rate but may elect to do so; or

(B) The de minimis indirect cost rate.

(ii) The pass-through entity must not require the use of the de minimis indirect cost rate if the subrecipient has an approved indirect cost rate negotiated with the Federal Government. Subrecipients may 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 access the subrecipient's records and financial statements as necessary for the pass-through entity to fulfil its monitoring requirements; and

(6) Appropriate terms and conditions concerning the closeout of the subaward.

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

ER11: Does a State DOT need to amend all active operating grants in TrAMS and grant agreements with sub-recipients?

A: Yes, for grants in which the State DOT and/or its subrecipients will use the expanded flexibilities. Active grant award recipients, under programs Section 5307 and 5311, that would like the increased flexibility offered will need to complete an award amendment or submit a new application. Award recipients will need to realign funds provided to sub-recipients specifically for COVID-19 Response Activities to the “ER” Account Classification Code (ACC), which was set up by the recipient for the increased flexibility.

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

Please see Procurement review area for the required clauses.

TC-PrgM4. Did the recipient obtain signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000?

BASIC REQUIREMENT
Recipients must obtain signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
Any subrecipient in receipt of an award or contract exceeding $100,000 is subject to the same disclosure requirements as the recipient (See Legal review area for explanation of lobbying certification requirements). The recipient must obtain an OMB Standard Form LLL or a quarterly report update from a subrecipient for an event that should be reported. Obtaining the certification with annual certifications and assurances from subrecipients with one signature for all the certifications and assurances meets the requirement.

INDICATOR OF COMPLIANCE

a. *Does the recipient obtain signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000?*

Subaward	Comments
-	-
-	-
-	-
-	-
-	-

INSTRUCTIONS FOR REVIEWER
Review the recipient's standard subrecipient application(s) and agreement(s) templates to see if either contains the lobbying certification. For each subrecipient selected for a site visit, review executed subrecipient agreement to determine if the recipient obtained signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000. Document the review in the table above.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it has not obtained signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000.

DEFICIENCY CODE TC-PgM4-1: Lobbying certifications not signed by subrecipients

SUGGESTED CORRECTIVE ACTION: Submit a process for obtaining signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000.

GOVERNING DIRECTIVE
49 CFR 20.110 Certifications and Disclosures

Each person shall file a certification, and a disclosure form if required, with each submission that initiates agency consideration of such person for: (1) Award of a Federal contract, grant, or cooperative agreement exceeding $100,000

TC-PrgM5. Did the recipient confirm that its subrecipients were not suspended, debarred, ineligible or voluntarily excluded from participation in federally assisted transactions or procurements before entering into agreements exceeding $25,000?

BASIC REQUIREMENT
Recipients must ensure that potential subrecipients are not suspended or debarred when entering into agreements exceeding $25,000.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
Each recipient is required to confirm that none of its subrecipients or principles thereof are suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each subrecipient agreement expected to equal or exceed $25,000, recipients must verify that the direct subrecipient is not excluded or disqualified by:

- Checking SAM exclusions (at SAM.gov); or
- Collecting a certification; or
- Adding a clause or condition to the covered transaction.

Obtaining the certification with annual certifications and assurances from subrecipients meets the requirement.

FTA advises that checking SAM.gov is the preferred method for ensuring that the recipient is not ineligible to participate in covered transactions. To record compliance with this provision, 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.gov was reviewed.

If a recipient becomes aware after the subrecipient award 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. *Does the recipient determine and verify that subrecipients are not suspended or debarred?*

Subaward	Comments
-	-
-	-
-	-
-	-
-	-

b. *How is the determination made?*

c. *Did the recipient extend or renew an award if it determined the subrecipient became suspended or debarred after the initial award? If yes, did FTA provide an exception?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's policies and procedures including the standard subrecipient application(s) and subrecipient agreement(s) for information on how the recipient determines ineligibility of suspended or debarred subrecipients. For each subrecipient selected for a site visit, review the subrecipient's application, and/or other files to verify how and whether the recipient is determining participant responsibility before entering into any subrecipient agreements. Document the review in the table above.

During the site visit, examine selected subrecipient agreements and files, in accordance with records sampling procedures, to determine if the recipient makes responsibility determinations prior to selecting subrecipients. 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

Verify with the FTA regional office if any suspension or debarment exceptions have been provided to the recipient.

Review a sample of subrecipients' subaward agreements of $25,000 or more for the suspension and debarment requirements, including the inclusion of a clause requiring that subrecipients verify that their principals and next lower-tier subrecipients are not excluded from Federal grant participation and flow down the same requirements to lower-tier participants.

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 subrecipient agreements, check SAM.gov to determine if

the subrecipients are suspended or debarred. Determine if the recipient received FTA approval to extend (other than a no-cost extension) or renew a subrecipient agreement with a suspended or debarred contractor prior to taking those actions.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not verify that subrecipients are not suspended or debarred.

DEFICIENCY CODE TC-PgM5-1: No verification that the recipient confirmed that the subrecipient was not excluded from participating in Federal awards prior to execution of the subaward or does not require subrecipients to flow down exclusion requirements to lower tiers.

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for making excluded party determinations before entering into an agreement. For the next application cycle, submit documentation that the required process was implemented.

SUGGESTED CORRECTIVE ACTION 2: For any subawards where the recipient was found to have failed to verify that the subrecipient was in compliance with suspension/debarment requirements, either amend the subaward with the appropriate clause, obtain the applicable certification from the subrecipient, or verify that the subrecipient is not suspended or debarred based on a review of SAM.gov. Submit procedures for making excluded party determinations before entering into applicable transactions. For the next FTA-funded subaward, submit documentation that the required process was implemented.

SUGGESTED CORRECTIVE ACTION 3: In cases where the recipient has not required its subrecipient to flow down exclusion requirements, submit procedures for so requiring. For the next FTA-funded subaward, submit documentation that the required process was implemented.

The recipient is deficient if it extended or renewed an award to a subrecipient after learning the subrecipient was suspended or debarred (other than no-cost time extensions).

DEFICIENCY CODE TC-PgM5-2: Excluded parties participating in covered transactions

SUGGESTED CORRECTIVE ACTION: Work with the FTA regional office and FTA Regional Counsel to determine the appropriate corrective action. Submit procedures for making excluded party determinations before entering into applicable transactions. GOVERNING DIRECTIVE

2 CFR 180.155 How do I know if a person is excluded?

Check the System for Award Management (SAM.gov) Exclusions to determine whether a person is excluded. The General Services Administration (GSA) maintains SAM.gov Exclusions and makes it available, as detailed in subpart E. When a Federal agency takes action to exclude a person under the nonprocurement or procurement debarment and suspension system, the agency enters the information about the excluded person into SAM.gov Exclusions.

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) As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should decide 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.

2 CFR § 180.320 Must I verify that principals of my covered transactions are eligible to participate?

(a) Yes. As a participant, you are responsible for determining whether your principals of your covered transactions are excluded or disqualified from participating in the transaction.

(b) You may decide the method and frequency by which you do so. You may, but are not required to check SAM.gov Exclusions.

2 CFR § 180.330 What requirements must I pass down to persons at lower tiers with whom I intend to do business?

Before entering into a covered transaction with a participant at the next lower tier, you must require that participant to:

(a) Comply with this subpart as a condition of participating in the transaction. You may do so using any method(s) unless the regulation of the Federal agency responsible for the transaction requires you to use specific methods.

(b) Pass the requirement to comply with this subpart to each person the participant enters into a covered transaction at the next lower tier.

TC-PrgM6. Has the recipient reported subaward information to SAM.GOV (formerly FSRS) for all subawards over $30,000 timely?

BASIC REQUIREMENT
The Federal Funding Accountability and Transparency Act (FFATA) requires recipients to report subaward information to SAM.GOV (formally FSRS) by the end of the month following the month in which the subaward was made.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER

Prior to November 12, 2020, all direct recipients of FTA awards, award amendments, and cooperative agreements over $25,000 were subject to the requirements of FFATA, that recipients report subaward information at www.SAM.gov by the end of the month after the month in which they make any subaward under the award. The reporting requirement does not include third party contract data at this time.

Effective November 12, 2020. OMB revised 2 CFR 170 to require agencies to report Federal awards that equal or exceed the micro-purchase threshold as set by the FAR at 48 CFR part 2, subpart 2.1. Consistent with the FAR threshold for subcontract reporting, OMB raised the reporting threshold for subawards that equal or exceed $30,000.

Recipients must report the information about each first tier subaward over $30,000 (funds passed through to other public agencies, private nonprofit organizations or, where eligible as subrecipients, private providers of transportation) by the end of the month following the month they make any subaward or obligation (not the month after FTA awarded funds to the recipient). For example, if FTA awarded the fund to the recipient in November and the recipient signed subrecipient agreements in February, the recipient has until March 31 to report the subaward into SAM.GOV. Once the recipient submits an initial report, it can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.

INDICATORS OF COMPLIANCE

a. *Has the recipient reported subaward information to SAM.gov for all subawards greater than or equal to $30,000 including subaward amendments making the total award greater than or equal to $30,000?*

b. *Were the reports submitted by the end of the month after the month in which the subaward was made?*

(1) FTA Award Number	(2) Subaward Entity	(3) Amount	(4) Award Date	(5) Date Reported to SAM.gov	(6) Comments
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-
-	-	-	-	-	-

INSTRUCTIONS FOR REVIEWER

In TrAMS, access the program of projects for an award in each FTA program for which the subrecipients selected for site visits receive funding and complete columns (1), (2), and (3) in the above table. During the site visit, ask the recipient to provide the information needed to complete columns (4) and (5).

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not report subaward information to SAM.gov or does not do so timely.

DEFICIENCY CODE TC-PgM6-1: FFATA reporting deficiencies

SUGGESTED CORRECTIVE ACTION: Report all missing information to SAM.gov and notify the FTA regional office when complete. Submit procedures for reporting future subawards to SAM.gov timely.

GOVERNING DIRECTIVE
FTA Circular 5010.1F, Chapter III, Section 3.g Federal Funding Accountability and Transparency Act (FFATA) Subaward and Executive Compensation Reporting.

Recipients awarded a new Federal assistance award greater than or equal to $30,000 are subject to FFATA subaward reporting requirements, as outlined in 2 CFR 170. Appendix A to that Part requires recipients to file an FFATA subaward report by the end of the month following the month in which the recipient awards any subaward greater than or equal to $30,000. In addition, recipients must report the names and compensation of their five most highly compensated officers if in the preceding fiscal year the recipient (1) received 80 percent or more of their annual gross revenues in Federal awards, (2) received $25,000,000 or more in annual gross revenues from Federal awards, and (3) the public does not have access to this information about the compensation of the executives through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(a) or 78o(d), or Section 6104 of the Internal Revenue Code of 1986. Similarly, for each first-tier non-Federal entity subrecipient under the award, recipients shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year if the subrecipient meets the same criteria. For filing subaward reports and more information, recipients may access the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at http://www.sam.gov/.

Further instructions and Subaward Reporting System (FSRS) can be found on the SAM.gov website.

2 CFR 170 Appendix A to Part 170 - Award Term

I. Reporting Subawards and Executive Compensation

(a) *Reporting of first-tier subawards.*

(1) Applicability. Unless the recipient is exempt as provided in paragraph (d) of this award term, the recipient must report each subaward that equals or exceeds $30,000 in Federal funds for a subaward to an entity or Federal agency. The recipient must also report a subaward if a modification increases the Federal funding to an amount that equals or exceeds $30,000. All reported subawards should reflect the total amount of the subaward.

(2) ***Reporting Requirements.***

(i) The recipient must report each subaward described in paragraph (a)(1) of this award term to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at http://www.sam.gov.

(ii) For subaward information, report no later than the end of the month following the month in which the subaward was issued. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(b) ***Reporting total compensation of recipient executives for entities*** —

(1) ***Applicability.*** The recipient must report the total compensation for each of the recipient's five most highly compensated executives for the preceding completed fiscal year if:

(i) The total Federal funding authorized to date under this Federal award equals or exceeds $30,000;

(ii) in the preceding fiscal year, the recipient received:

(A) 80 percent or more of the recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(2) ***Reporting Requirements.*** The recipient must report executive total compensation described in paragraph (b)(1) of this appendix:

(i) As part of the recipient's registration profile at *https://www.sam.gov.*

(ii) No later than the month following the month in which this Federal award is made, and annually after that. (For example, if this Federal award was made on November 7, 2025, the executive total compensation must be reported by no later than December 31, 2025.)

(c) ***Reporting of total compensation of subrecipient executives*** —

(1) ***Applicability.*** Unless a first-tier subrecipient is exempt as provided in paragraph (d) of this appendix, the recipient must report the executive total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

(i) The total Federal funding authorized to date under the subaward equals or exceeds $30,000;

(ii) In the subrecipient's preceding fiscal year, the subrecipient received:

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal awards (and subawards) subject to the Transparency Act; and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal awards (and subawards) subject to the Transparency Act; and

(iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986 after receiving

this subaward. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

(2) ***Reporting Requirements.*** Subrecipients must report to the recipient their executive total compensation described in paragraph (c)(1) of this appendix. The recipient is required to submit this information to the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) at *http://www.fsrs.gov* no later than the end of the month following the month in which the subaward was made. (For example, if the subaward was made on November 7, 2025, the subaward must be reported by no later than December 31, 2025).

(d) ***Exemptions.***

(1) A recipient with gross income under $300,000 in the previous tax year is exempt from the requirements to report:

(i) Subawards, and

(ii) The total compensation of the five most highly compensated executives of any subrecipient.

(e)Definitions.

For purposes of this award term:

Entity includes:

(1) Whether for profit or nonprofit:

(i) A corporation;

(ii) An association;

(iii) A partnership;

(iv) A limited liability company;

(v) A limited liability partnership;

(vi) A sole proprietorship;

(vii) Any other legal business entity;

(viii) Another grantee or contractor that is not excluded by subparagraph (2); and

(ix) Any State or locality;

(2) Does not include:

(i) An individual recipient of Federal financial assistance; or

(ii) A Federal employee.

Executive means an officer, managing partner, or any other employee holding a management position.

Subaward has the meaning given in 2 CFR 200.1.

Subrecipient has the meaning given in 2 CFR 200.1.

Total Compensation means the cash and noncash dollar value an executive earns during an entity's preceding fiscal year. This includes all items of compensation as prescribed in 17 CFR 229.402(c)(2).

TC-PrgM7. Does the recipient's oversight program ensure subrecipient compliance with Federal requirements and performance goals, and provide for evaluation of subrecipient risk of noncompliance with those requirements?

BASIC REQUIREMENT
Recipients must 1) evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, and 2) 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.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
Many FTA requirements flow through the recipient to subrecipients. The recipient is responsible for ensuring that these entities are aware of and comply with the requirements. Before expending any FTA funds on projects, the 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 recipient must have an ongoing oversight system to ensure that subrecipients 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 recipient to develop and implement effective systems for monitoring and ensuring compliance with requirements. A recipient's oversight of its subrecipient should reflect the size and complexity of its program. FTA expects recipients with a significant number of subrecipients to have formal oversight mechanisms.

The issue of monitoring compliance with Federal requirements is a continuing, critical theme throughout the Comprehensive Review. In each review area, the Comprehensive Review examines the specific mechanisms for monitoring compliance with the Federal requirements. The examination under Technical Capacity takes an overall look at the procedures in place for monitoring compliance with a range of Federal requirements. Appropriate mechanisms may include:

- Applications
- Monthly, quarterly or annual reports
- Meetings

- Site visits, assessments, and performance evaluations
- Vehicle/facility inspections

Once an issue is discovered, FTA expects the recipient to follow up with the subrecipient 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.

FTA provides Rural Transportation Assistance Program (RTAP) funds to assist states in providing technical assistance to transit operators in rural areas. In addition, state/program administrative expenses for the Sections 5310 and 5311 programs can be used for technical assistance. Technical assistance may be provided through orientations, informal conversations, formal correspondence, guides, onsite performance reviews, conferences, etc. Recipients sometimes provide detailed guidance for specific activities, such as vehicle procurement or maintenance. Many recipients sponsor annual conferences, frequently in conjunction with the state transit association, at which training in Federal requirements is provided.

INDICATORS OF COMPLIANCE

a. *What is the recipient's process for monitoring subrecipients?*

b. *How does the recipient evaluate subaward and/or subrecipient risk?*

c. *How are the outcomes of risk assessments incorporated into the oversight process?*

d. *How does the recipient evaluate subaward performance?*

e. *What actions has the recipient taken to address identified compliance issues or risk with subrecipients?*

INSTRUCTIONS FOR REVIEWER

Review the state/program management plan(s) for a description of the subrecipient monitoring program, including how the recipient evaluates risk, addresses identified compliance issues, ensures performance goals are met, and addresses issues of subrecipient non-compliance.

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. Review the schedule of oversight activities conducted since the last Comprehensive Review to determine if the recipient is implementing its procedures. For example, if the oversight program calls for triennial site visits, review the schedule to ensure that the site visits were conducted. If not, discuss the reasons why with the recipient.

Review the recipient website or if not available, obtain documentation of technical assistance, training, or actions offered and conducted for subrecipients in program requirements to address areas of noncompliance.

Onsite, discuss the oversight program with the recipient to ensure that oversight of the FTA program is clearly understood. Discuss any initiatives taken to mitigate risk and reduce the number of potential deficiencies, such as training and technical assistance initiatives. Review the oversight file(s) for the subrecipient(s) to be visited to ensure that the recipient has implemented its oversight program and followed up on identified compliance or risk issues.

Note: The recipient could be found deficient in its monitoring of a specific area but not deficient under Technical Capacity—Program Management. Similarly, it could be found deficient under Technical

Capacity—Program Management, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements or if it does not monitor at all. For example, the recipient's overall oversight program might be sound but oversight in a review area may be lacking or insufficient. In that instance, FTA would find the recipient deficient in the review area but not Technical Capacity—Program Management. Conversely, if the recipient's oversight procedures in each review area are adequate but the procedures are not implemented, the recipient can be found deficient in Technical Capacity—Program Management and not in each review area. Consult with the FTA regional office on how deficiencies should be addressed.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it has not evaluated subrecipient's risk of noncompliance, developed a comprehensive oversight program, implemented its oversight program, or does not take actions to address identified compliance issues.

DEFICIENCY CODE TC-PgM7-1: Inadequate oversight of subrecipients

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for evaluating subrecipient risk and a comprehensive program for monitoring subrecipients for compliance with Federal requirements and performance goals, along with documentation of implementation.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for taking action to correct issues of subrecipient non-compliance.

GOVERNING DIRECTIVE

2 CFR 200.332 Requirement for pass-through entities

A pass-through entity must:

(c) Evaluate each subrecipient's fraud risk and risk of noncompliance with a subaward to determine the appropriate subrecipient monitoring described in paragraph (f) of this section. When evaluating a subrecipient's risk, a pass-through entity should consider the following:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits. This includes considering whether or not the subrecipient receives a Single Audit in accordance with subpart F and the extent to which the same or similar subawards have been audited as a major program;

(3) Whether the subrecipient has new personnel or new or substantially changed systems; and

(4) The extent and results of Federal awarding agency monitoring (*for example.,* if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(d) If appropriate, consider implementing specific conditions in a subaward as described in §200.208 and notify the Federal agency of the specific conditions.

(e) Monitor the activities of the subrecipient as necessary to ensure that the subaward complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in §200.425.

(g) Verify that every subrecipient is audited as required by Subpart F of this part.

(h) Consider whether the results of the subrecipient's audits, site visits, or other monitoring necessitate adjustments to the pass-through entity's records.

(i) Consider taking enforcement action against noncompliant subrecipients as described in §200.339 of this part and in program regulations.

FTA Circular 5010.1F, Chapter 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. FTA monitors awards and the federally assisted projects thereunder to

confirm that recipients establish and follow procedures that comply with Federal requirements and the terms and conditions outlined.

Recipients are required to apply for and manage FTA awards in the Transit Award Management System (TrAMS). In addition to FTA's responsibility to monitor FTA awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities, including those conducted by subrecipients, to ensure compliance with applicable Federal requirements. This includes the administration and management of the award and any funds "passed through" by the recipient to a subrecipient in compliance with Federal regulations, the grant or cooperative agreement, and applicable FTA circulars . Annual, independent, organization-wide audits, 2 CFR 200, subpart F, "Audits," audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's compliance with Federal requirements. (See Chapter V, "FTA Oversight," of this circular.)

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Is this the first Comprehensive Review for the recipient?
- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of technical capacity, program management, or subrecipient oversight?
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies or findings currently open?
- Are any issues related to technical capacity, program management, or subrecipient oversight indicated in the FTA's Oversight Assessment Tool (OAT)?
- Any other potential issues or concerns about the recipient's technical capacity to manage FTA programs not covered previously in this section?

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
3. Office of Management and Budget (OMB) Open Government Directive - Federal Spending Transparency
4. 2 CFR 180 - Subpart C - Responsibilities of Participants Regarding Transactions Doing Business With Other Persons
5. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
6. 23 CFR 450.210 Interested parties, participation, and consultation
7. 49 CFR Part 20, "New Restrictions on Lobbying"

8. FTA Circular 5010.1F, “Award Management Requirements”

9. FTA Circular 9050.1A, “Urbanized Areas Formula Grant Programs Guidance””

10. FTA Circular 9040.1H, “Formula Grants for Rural Areas: Program Guidance and Application Instructions

11. FTA Circular 9070.1H “Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions”

USEFUL WEBLINKS

1. *Federal Funding Accountability and Transparency Act Subaward Reporting System*

2. *Office of Management and Budget Open Government Directive - Federal Spending Transparency*

3. *State Transit Program Manager’s Guide on Administration and Oversight of FTA Grant Programs*

4. *National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools*

5. 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

6. Coronavirus Aid, Relief, and Economic Security Act

7. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019

8. Notice of Concurrence

9. Emergency Relief rule

10. Emergency Relief docket

5. TECHNICAL CAPACITY – PROJECT MANAGEMENT

PURPOSE OF THIS REVIEW AREA

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

QUESTIONS TO BE EXAMINED

1. For projects completed since the last Comprehensive Review, did the recipient ensure project schedules, budgets, and performance objectives were 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?

2. Since the last Comprehensive Review, if the recipient used force account labor for an FTA-funded capital project, did it comply with FTA requirements?

3. Do the recipient procedures for managing and overseeing transit management or service contractors and lessees ensure performance objectives are achieved and compliance with FTA requirements?

4. Since the last Comprehensive Review, if a subrecipient(s) implemented a capital or planning project, did the recipient provide technical inspection and supervision of the project(s)?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- List of FTA-funded capital projects undertaken during the past three years. Please include the type of project and total project cost
- Project management plans if you have major capital projects
- Quality control procedures
- Identify FTA-funded capital projects with significant (33%) delays and/or cost increases
- List of subrecipient projects with significant (33%) delays and/or cost increases
- Procedures for administering and monitoring construction projects, bus procurements, and other capital projects, if written
- List of FTA-funded projects for which the recipient and/or subrecipient used force account labor
- List of transit service contractors and lessees
- Standard transit management or service operator contract and/or lease agreement
- Oversight procedures including sample oversight checklists/monitoring materials for transit management or service contractors/lessees

Recipient Follow-up

- Project management files, including change orders
- Force account work plan(s), for sample project(s)
- Force account work charges
- Documentation of oversight conducted of transit service contractors and/or lessees
- Subrecipient agreement and project management oversight files for a subrecipient undertaking a construction project

TC-PjM1. For projects completed since the last Comprehensive Review, did the recipient ensure project schedules, budgets, and performance objectives were 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?

BASIC REQUIREMENT
The 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 recipients

DETAILED EXPLANATION FOR REVIEWER
The recipient must ensure continuous management of projects under an award. Recipients are required to have a formal project management plan for all major capital projects. A major capital project is a project that: involves the construction, extension, rehabilitation, or modernization of a fixed guideway; a New Starts project with a total project cost in excess of $300 million and receives Federal funds of $100 million or more (and is not exclusively for the acquisition, maintenance, or rehabilitation of vehicles or other rolling stock); or a project that has been determined to be a major capital project by the Administrator based on criteria in 49 CFR part 633, as amended September 23, 2020.

Recipients with smaller capital projects, such as construction projects, rolling stock procurements, technology projects, and planning projects, should provide technical oversight of these projects. Even though not required, some recipients may have project management plans, especially for construction projects, and hold regular meetings between the project manager and contractor(s) to review project status.

Many recipients that do not have the technical expertise or internal resources to manage non-routine or large projects hire an architectural and engineering (A&E) firm or other consultant to serve as project manager or provide technical oversight. Some state departments of transportation rely on district offices to oversee construction projects. A county or city may rely on the county or city engineer to manage a construction project. The transit system's own maintenance and operations directors typically oversee the inspection and acceptance of rolling stock, sometimes with consultant support. A recipient information technology (IT) department may oversee technology projects, sometimes with consultant support.

When projects are implemented by an entity on behalf of a recipient, such as by a management contractor, the recipient is ultimately responsible for, and must ensure technical oversight of, the project. Monitoring mechanisms may include:

- 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

If project delays are the result of inadequate actions by the recipient or of failure in performance by a contractor, there may be deficiencies in the recipient's technical oversight of projects. The recipient organizational structure and actions may contribute to continuing problems with project delays. Note that delays are not unusual in major construction and technology projects. For construction projects, land acquisition, zoning changes, environmental studies, weather, and other factors not under the complete control of the recipient may cause the delay.

INDICATORS OF COMPLIANCE

a. *How does the recipient provide administrative and management support of project implementation?*

Type of Project	Project Management Procedures
Construction/A&E	-
Revenue rolling stock Bus Rail	-
Technology	-
Planning	-
Design/build/operate/ maintain (DBOM)	-

b. *Do the above procedures provide technical inspection and supervision by qualified professionals of all work in progress?*

c. *Do the above procedures ensure conformity to applicable statutes, codes, ordinances, and safety standards? Has the recipient received any fines, cease and desist orders, legal actions, or judgments for permit, zoning, safety, or other violations related to FTA-funded projects?*

d. *Has the recipient maintained project work schedules agreed to by FTA and the recipient? If projects are not on schedule, what are the reasons? What are the recovery plans for the schedules?*

Delayed Project(s)	Award Number(s)	Comment(s)
-	-	-
-	-	-
-	-	-

e. *Has the recipient kept expenditures within the latest approved award budget? If projects are not on budget, what are the reasons? What are the recovery plans for the budgets?*

Project(s) Over Budget	Award Number(s)	Reason(s)/Recovery Plan(s)
-	-	-
-	-	-
-	-	-

f. For all FTA-funded projects, including those carried out by contractors and/or lessees, has the recipient determined the applicability of, and ensured compliance with, Federal requirements?

g. Did the recipient obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions?

INSTRUCTIONS FOR REVIEWER

Review project management plans (required for all major capital projects) and quality control procedures, if written, to determine how the recipient provides directly or by contract, administrative support, technical inspection and supervision of work in progress, and ensures compliance with FTA and Federal requirements. Onsite, review a sample of contracts for delivery and acceptance clauses and determine how the recipient verified that all parties have complied with performance measures. Discuss administrative and technical resources dedicated to overseeing projects. If the recipient contracts for project management services, review the scope of work of these contracts along with progress reports from the contractors to ascertain the recipient's process for overseeing projects. Review project management oversight files for documentation that the recipient has implemented its process and is actively participating in the oversight of projects.

Discuss with the FTA regional office if any projects required prior approval and, if so, whether the approval was granted before the recipient incurred costs. Discuss with the regional office any requested or required waivers. Onsite, determine if the approvals or waivers were received before the recipient incurred costs. Confirm by reviewing backup documentation for initial project ECHO requests. (Use the Exhibit 2. Financial Management and Capacity.)

Discuss with the FTA regional office whether it is aware of any violations of statutes, codes, ordinances, or safety standards and if there are any legal actions or judgments against the recipient for permit, zoning, safety, or other violations. Perform a website search of the recipient for news reports on violations and legal actions or judgments. Discuss with the recipient onsite.

Review Milestone Progress Reports (MPRs) in the Transit Award Management System (TrAMS) for discussions of project status and delays and efforts to recover from the delays, analyses of significant project cost variances, and discussions of costs incurred and required to complete the project(s). Review project management plans and quality control procedures to determine the procedures for maintaining project work schedules and monitoring project budgets, and the process implemented to mitigate the effect of unforeseen delays. Discuss project delays and budget revisions with the FTA regional office.

Onsite, discuss the efforts to maintain project work schedules and to manage the project budgets. Review progress reports from contractors to determine if delays are due to poor performance by contractors and how the recipient has secured the Federal interest. Review change orders and the reason(s) for the change orders to ascertain if they were due to project delays within the recipient's control and if the FTA bore the cost of such. Examine how the recipient managed the delay and tried to improve performance by the contractor.

Project delays that are the result of inadequate actions by the recipient or failure in performance by a contractor may indicate deficiencies in the recipient technical inspection and supervision of projects or inadequate resources or other actions that contribute to continuing problems with project delays. Determine if any of the delays were beyond the recipient's control, e.g., land acquisition, zoning changes, environmental studies, weather, or other factors, and what steps, if any, the recipient took to bring the project back on schedule.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has project delays or budget overruns due to lack of administrative and management support of project implementation, or technical inspection or supervision of a project(s).

DEFICIENCY CODE TC-PjM1-1: Delay/cost overrun due to project implementation

SUGGESTED CORRECTIVE ACTION 1: Submit a recovery schedule for the delayed projects or a revised budget and cost containment plan and a process for reporting on progress against the schedule or budget in the quarterly MPRs for [list the award numbers].

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for providing administrative and management support of project implementation and/or technical inspection and supervision by qualified professionals of work in progress.

The recipient is deficient if it did not obtain all necessary permits, approvals and waivers for projects or does not ensure projects conform to Federal, state, and local statutes, codes, ordinances, or safety standards.

DEFICIENCY CODE TC-PjM1-2: Statute, code, ordinance, or safety standard violation

SUGGESTED CORRECTIVE ACTION: Submit procedures for obtaining all necessary permits, approvals and waivers; and ensuring projects conform to Federal, state, and local statutes, codes, ordinances, and safety standards. Submit documentation that such procedures have been implemented on all existing projects, including copies of missing permits, waivers, and/or approvals.

If the recipient has received any fines, cease and desist orders, legal actions, or judgments for permit, zoning, safety, or other violations related to FTA-funded projects, discuss appropriate corrective actions with the FTA regional office and Regional Counsel.

GOVERNING DIRECTIVE

FTA Circular 5010.1F, Chapter 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. FTA monitors awards and the federally assisted projects thereunder to confirm that recipients establish and follow procedures that comply with Federal requirements and the terms and conditions outlined.

Recipient Role. Recipients are required to apply for and manage FTA awards in the Transit Award Management System (TrAMS). In addition to FTA's responsibility to monitor FTA awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities, including those conducted by subrecipients, to ensure compliance with applicable Federal requirements. This includes the administration and management of the award and any funds "passed through" by the recipient to a subrecipient in compliance with Federal regulations, the grant or cooperative agreement, and applicable FTA circulars . Annual, independent, organization-wide audits, 2 CFR 200, subpart F, "Audits," audits of

recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's compliance with Federal requirements. (See Chapter V, "FTA Oversight," of this circular.)

The recipient's responsibilities include but are not limited to the following actions:

(1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(2) Submit Annual Certification and Assurances;

(3) Use TrAMS to apply for and administer Federal assistance awards;

(4) Provide administrative and management support for project implementation;

(5) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(6) Ensure conformity to grant agreements and cooperative agreements, applicable statutes, codes, ordinances, and safety standards;

(7) 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;

(8) Keep expenditures within the latest approved award budget;

(9) Ensure compliance with FTA and Federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;

(10) Request and withdraw Federal assistance for eligible activities only in amounts and at times such as to minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the recipient (the FTA Master Agreement requires payment with within three days of receipt of Federal funds), and retain receipts to substantiate withdrawals;

(11) Account for project property and maintain property inventory records that contain all the elements required;

(12) Demonstrate and retain satisfactory continuing control over the use of project property;

(13) Demonstrate procedures for asset management and adequate maintenance of equipment and facilities;

(14) Ensure that an annual independent organization-wide audit is conducted in accordance with OMB guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR 200, which is incorporated by reference in 2 CFR 1201, Prepare Force Account Plan and Cost Allocation Plans (CAPs) or Indirect Cost Proposals, and submit and obtain approval if applicable, before incurring costs;

(15) Prepare required reports (see Chapter III, Section 6.a, "Reporting Requirements") for submission to FTA;

(16) Update and retain FTA required reports and records for availability during audits or oversight reviews;

(17) Ensure effective control and accountability are maintained for all grants, cooperative agreements, subagreements, cash, real and personal property, and other assets. Recipients and subrecipients must ensure that resources are properly used and safeguarded and used solely for authorized purposes;

(18) Obtain all necessary prior approvals or waivers before incurring costs or taking any requested actions; and

(19) Manage roles and responsibilities of the organization's users in TrAMS.

TC-PjM2. Since the last Comprehensive Review, if the recipient used force account labor for an FTA-funded capital project, did it comply with FTA requirements?

BASIC REQUIREMENT
A recipient using their own labor force on capital improvement projects is required to develop and maintain on file a force account plan and submit to FTA a force account justification prior to incurring costs when the project is greater than $1,000,000 but less than $10,000,000. For projects greater than $10,000,000, the recipient must submit a force account plan and justification to FTA and obtain FTA approval of the force account plan before incurring costs.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Work performed by the recipient labor force on capital projects, other than award administration, that is included in an approved award is "force account" work. Force account work may consist of design, construction, refurbishment, inspection, and construction management activities, if eligible for reimbursement under the award. Incremental labor costs from flagging protection, service diversions, or other activities directly related to a capital award may also be defined as force account work. Force account work does not include preventive maintenance, or award or project administration activities which are otherwise direct project costs. Force account includes major capital project work on rolling stock. One of four conditions may warrant the use of recipient labor forces: (1) cost savings, (2) exclusive expertise, (3) safety and efficiency of operations, and (4) union agreement.

When the cost of force account work for a project is greater than $1,000,000 but less than $10,000,000, the recipient is required to develop and maintain on file a force account plan. A force account justification must be submitted to FTA prior to incurring costs. Prior FTA approval of the plan or justification is not required.

When the cost of force account work to be performed equals $10,000,000 or more, a justification and plan must be submitted to FTA and prior FTA approval of the plan is required before incurring costs.

Force account plans are prepared at the project level. If a recipient is using multiple awards for the same project, then the recipient should have only one force account plan for the project and distribute the costs among the different awards in a reasonable allocation method documented in the force account plan.

INDICATOR OF COMPLIANCE

a. *Pertaining to force account work initiated since the last Comprehensive Review:*

    i. *If force account work exceeded $1 million but was less than $10 million, did the recipient develop a force account plan and submit a force account justification to FTA prior to incurring costs?*

Cost	Date Incurred
-	-
-	-

ii. If force account work of $10 million or more, did FTA approve the plan and the justification prior to the recipient incurring costs?

Cost	Date Incurred
-	-
-	-

INSTRUCTIONS FOR REVIEWER
Review awards in TrAMS for indications of force account work. Confer with the FTA regional office to ensure that the recipient submitted a force account justification for force account work that exceeds $1 million. For force account work exceeding $10 million, determine if the FTA regional office has approved a force account plan and received a justification. Determine if costs were incurred prior to the submittal of the justification or approval of the plan. Onsite, sample a total of five charges across a sample of force account plans to determine if they were incurred after the justification was submitted to or plan approved by FTA.

POTENTIAL DEFICIENCY DETERMINATIONS
For force account work, greater than $1 million but less than $10 million, the recipient is deficient if it did not develop a force account plan and submit a justification.

DEFICIENCY CODE TC-PjM2-1: Force account plan not prepared/justification not submitted

SUGGESTED CORRECTIVE ACTION: Provide a force account plan and justification to FTA as soon as practicable.

For force account work of $10 million or more, the recipient is deficient if it did not submit the justification for the force account work and receive FTA approval of the force account plan prior to incurring costs.

DEFICIENCY CODE TC-PjM2-2: No approval of force account plan and justification not submitted

SUGGESTED CORRECTIVE ACTION: Provide a force account plan and justification to FTA as soon as practicable. The recipient proceeds with force account work at its own risk until FTA approves the force account plan and justification.

GOVERNING DIRECTIVE
FTA Circular 5010.1F, Chapter III, Section 2, Pre-Award Planning and Development

i. Force account is the use of a recipient labor force as a capital expense to carry out a capital project. Force account work may consist of design, construction, overhaul, inspection, and construction management activities, if eligible for reimbursement as a capital expense under the Award. Note that a Force Account plan is prepared at the recipient or local project level and does not necessarily correspond to only one specific award or project in TrAMS. Therefore, a Force

Account plan may cover multiple awards. Because of the potential crossover into additional financial assistance awards, recipients may need to receive approval for a Force Account plan prior to incurring costs or reference a plan that is already approved and in place before incurring costs under a different award.

Force account work does not include award or project administration activities that are otherwise direct project costs. Force account also does not include preventive maintenance or other items under the expanded definition of capital (e.g., security drills, mobility management) that are traditionally not a capital expense. Incremental labor costs for flagging protection, service diversions, or other activities under FTA's expanded definition of capital also do not need to be included. Based on the amount of force account work, a recipient may be required to submit a justification to use force account and/or the Force Account Plan for FTA approval. The following are the thresholds for plans:

(1) Force account work less than $1,000,000 can be performed without justification or a force account plan.
(2) Force account work $1,000,000 or greater but less than $10,000,000 requires submission of a force account justification prior to award. A recipient must maintain a force account plan in its files prior to incurring costs.
(3) Force account work at $10,000,000 or greater requires submission of a force account justification, as well as prior FTA approval of the force account plan.

j. Justification of Force Account work. A justification to undertake force account work is required to use the recipient's own labor force greater than $1,000,000 on a project. One of four conditions may warrant the use of force account work. These are: (1) cost savings; (2) exclusive expertise; (3) safety and efficiency of operations; or (4) union agreement. The justification must address at least one of the four criteria.

(1) Cost Savings. The justification documentation must include the following information to be justified based on cost savings:
(a) A comparison of the present value of the estimated cash drawdown for both the force account and private sector contract options;
(b) The current interest rate paid on one-year Treasury Bills as the discount rate;
(c) The following costs: preparing documents, administration, inspection, labor, materials, specialized equipment, and overhead;
(d) Profit for private contract;
(e) Unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract;
(f) Certification that costs presented are fair and reasonable; and
(g) The present value calculation based on the midpoint of construction, and if the time for completion of the work differs for force account and a private sector contract, include an estimate of the cost of not using the completed improvement in the present worth calculation. For example, if the work is to replace leased facilities, the cost of continuing the lease until the work is complete should be taken into account in the cost estimate for each option considered.

(2) Exclusive Expertise. The justification documentation must be based on exclusive expertise and must include documentation equivalent to a sole source justification stating the basis for a determination that no private-sector contractor has the expertise to perform the work.

(3) Safety and Efficiency of Operations. The justification documentation must include the following information to be justified based on safety and efficiency of operations:

(a) Safety considerations, which may be addressed by a statement of the transit operator's safety officer that performing the work with private-sector contractors would have an adverse effect on employee or public safety;
(b) Efficiency concerns, which may be addressed by a present value calculation, including an estimate of the value of lost transit operation efficiency; and
(c) In emergency situations where the recipient uses its own workforce, the recipient may submit a waiver to the Emergency Relief docket.

(4) Union Agreement. The justification documentation must include the information justified on the basis of a union agreement and must include relevant citations from labor union agreements and an analysis of how the agreements pertain to the work in question.

k. Force Account Plans. Prior to incurring costs, a recipient must develop a Force Account plan if it intends to use its own labor force in amounts greater than $1,000,000 on a project and retain the plan in its files. If the amount is $10,000,000 or greater, the Force Account plan must be submitted to FTA for approval, including the following information and must be approved by FTA prior to incurring force account costs:

(1) A description of the scope of work;
(2) A copy of the construction plans and specifications, which includes a detailed estimate of costs and a detailed schedule and budget; and
(3) A copy of the proposed agreement when another public agency is involved.

Special care must be taken to ensure that requirements of 2 CFR 200 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity codes.

Most general-purpose equipment and tools can be used in force account work and thereby benefit more than one project. Therefore, the cost of these items normally should not be treated as a direct charge to the project. However, an appropriate use or depreciation charge is an allowable direct cost if otherwise provided for in the award budget. Unusual circumstances may call for the purchase of specialized equipment that is unique to the force account work that is being performed. If such equipment is required, prior FTA approval must be obtained. The usual FTA equipment disposition requirements apply.

The progress and status of force account activities should be separately discussed in milestone/project reports, with emphasis on schedule and budget.

TC-PjM3. Do the recipient procedures for managing and overseeing transit management or service contractors and lessees ensure performance objectives are achieved and compliant with FTA requirements?

BASIC REQUIREMENT
The recipient must provide technical inspection and supervision of management/service contractors and lessees to ensure performance objectives are achieved and compliance with FTA requirements.

APPLICABILITY
All recipients with management or operations contractors and lessees

DETAILED EXPLANATION FOR REVIEWER
The recipient must ensure continuous management of projects under an award and ensure conformity to the FTA Master Agreement. Many FTA requirements flow through the recipient to transit management or service contractors and lessees. The recipient is responsible for ensuring that these entities are aware of and comply with the requirements. Before expending any FTA funds on projects, the 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 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 recipient to develop and implement effective systems for monitoring and ensuring compliance.

The issue of monitoring compliance with Federal requirements is a continuing, critical theme throughout the Comprehensive Review. In each review area, the recipient is asked to provide information on the specific mechanisms in place for monitoring compliance with the Federal requirements in that area. The examination under Project Management takes an overall look at the systems in place for monitoring compliance with a range of Federal requirements. Appropriate 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 recipient to follow up with the transit management or service contractor and 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.

Recipient oversight of its projects should reflect the size and complexity of its program. FTA expects a recipient with a significant number of transit management or service contractors and/or lessees to have formal oversight mechanisms.

INDICATORS OF COMPLIANCE

a. *How does the recipient administer and manage transit management or service contractors and lessees?*

b. *Has the recipient determined the applicability of FTA requirements?*

c. *How does the recipient monitor transit management or service contractors and lessees for compliance with FTA requirements?*

INSTRUCTIONS FOR REVIEWER
Review procedures for oversight of transit management or service contractors and lessees, if written, for the recipient procedures for overseeing such projects. Review site visit checklist(s)/reports, and vehicle and facility checklists to ascertain what FTA requirements each address.

Onsite, discuss the resources the recipient dedicates to managing and overseeing management and transit management or service contractors and lessees. Examine documented follow-up of corrective actions on any deficiencies discovered during the monitoring of a transit management or service

contractor and 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.

Note: For management of transit management or service contracts and leases, the recipient could be found deficient in its monitoring of a specific area but not deficient under Technical Capacity—Project Management. Similarly, it could be found deficient under Technical Capacity—Project Management, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements or if it does not monitor at all.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that transit management contractors and/or lessees comply with Federal requirements.

> DEFICIENCY CODE TC-PjM3-1: Inadequate oversight of transit management contractor(s)/ lessee(s)
>
> SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that transit management contractors and/or lessees comply with Federal requirements, along with evidence of implementation.

GOVERNING DIRECTIVE

FTA Master Agreement (34), Section 1 Terms of this Master Agreement and Compliance

(b) To assure compliance with federal laws, regulations, and requirements, the Recipient must take measures to assure that other participants in its Underlying Agreements (e.g., Third Party Participants) comply with applicable federal laws, regulations, and requirements, and follow applicable federal guidance, except as FTA determines otherwise in writing.

FTA Circular 5010.1F Chapter IV Property Administration and Award Management Section 3. o. (3) The Recipient as lessor

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: (a) 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: 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;

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

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

TC-PjM4. Since the last Comprehensive Review, if a subrecipient(s) implemented a capital or planning project, did the recipient provide technical inspection and supervision of the project(s)?

BASIC REQUIREMENT
The recipient must provide technical inspection and supervision of projects undertaken by subrecipients.

APPLICABILITY
All recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
A recipient is responsible for Federal assistance that "passes through" to a subrecipient. The recipient responsibilities include, but are not limited to, providing, directly or by contract, adequate technical inspection and supervision of all subrecipient projects. Monitoring mechanisms may include:

- Contracting with a consultant to provide project management oversight
- Reviewing requests for proposals and 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

A recipient must ensure that subrecipients comply with force account requirements.

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure technical inspection and supervision of construction projects, bus and revenue rolling stock procurements, technology projects, and planning projects undertaken by subrecipients?*

b. *Do any subrecipients using force account labor meet the threshold for submission to FTA of a force account justification and, if required, force account plan? If yes, has the recipient submitted the justification to FTA and, if required, received FTA approval for the plan prior to allowing the subrecipient to incur costs?*

INSTRUCTIONS FOR REVIEWER
Review copies of project management plans, if written quality control procedures, state/program management plan(s) and the subrecipient agreement(s) for procedures for administering and monitoring subrecipient projects.

During the site visit, discuss the recipient quality control procedures for subrecipient projects. Discuss monitoring activities and the resources the recipient dedicates or plans to dedicate to subrecipient project management and how it mitigates/plans to mitigate any projected shortfalls in subrecipient oversight. If the recipient contracts for such services, review the scope of work of these contracts along with progress reports from the contractors to ascertain the recipient process for overseeing subrecipient projects.

For a subrecipient undertaking a construction project:

- Review the subrecipient agreement for the contractual obligations placed upon the subrecipient for compliance with FTA requirements.
- Review project management oversight files for documentation that the recipient has implemented its process and is actively participating in the oversight of projects.

Review awards in TrAMS for indications of force account work by subrecipients. Discuss with the recipient to ensure that the subrecipient submitted a force account justification for work that exceeds $1 million to the recipient. For force account work exceeding $10 million, determine if the recipient has approved the subrecipient force account plan and received a justification for the force account work. Onsite, follow up with the recipient to determine if costs were incurred prior to the submittal of the justification or approval of the plan.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not ensure technical inspection and supervision of projects undertaken by subrecipients.

DEFICIENCY CODE TC-PjM4-1: Oversight of subrecipient projects lacking

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for providing adequate technical oversight of projects undertaken by subrecipients along with evidence of implementation.

The recipient is deficient if it does not ensure the subrecipient submittal of a force account justification and, if required, force account plan for force account labor meeting the threshold for FTA.

DEFICIENCY CODE TC-PjM4-2: Lack of subrecipient force account plan

SUGGESTED CORRECTIVE ACTION 1: Require the subrecipient to submit a force account plan and justification as soon as practicable.

GOVERNING DIRECTIVE

49 CFR 200.332 Requirements for pass-through entities

All pass-through entities must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit

or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

FTA Circular 5010.1F, Chapter 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. FTA monitors awards and the federally assisted projects thereunder to confirm that recipients establish and follow procedures that comply with Federal requirements and the terms and conditions outlined.

Recipient Role. Recipients are required to apply for and manage FTA awards in the Transit Award Management System (TrAMS). In addition to FTA's responsibility to monitor FTA awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities, including those conducted by subrecipients, to ensure compliance with applicable Federal requirements. This includes the administration and management of the award and any funds "passed through" by the recipient to a subrecipient in compliance with Federal regulations, the grant or cooperative agreement, and applicable FTA circulars . Annual, independent, organization-wide audits, 2 CFR 200, subpart F, "Audits," audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's compliance with Federal requirements. (See Chapter V, "FTA Oversight," of this circular.)

The recipient's responsibilities include but are not limited to the following actions:

(1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(2) Submit Annual Certification and Assurances;

(3) Use TrAMS to apply for and administer Federal assistance awards;

(4) Provide administrative and management support for project implementation;

(5) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(6) Ensure conformity to grant agreements and cooperative agreements, applicable statutes, codes, ordinances, and safety standards;

(7) 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;

(8) Keep expenditures within the latest approved award budget;

(9) Ensure compliance with FTA and Federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;

(10) Request and withdraw Federal assistance for eligible activities only in amounts and at times such as to minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-

through entity and the disbursement by the recipient (the FTA Master Agreement requires payment with within three days of receipt of Federal funds), and retain receipts to substantiate withdrawals;

(11) Account for project property and maintain property inventory records that contain all the elements required;

(12) Demonstrate and retain satisfactory continuing control over the use of project property;

(13) Demonstrate procedures for asset management and adequate maintenance of equipment and facilities;

(14) Ensure that an annual independent organization-wide audit is conducted in accordance with OMB guidance, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR 200, which is incorporated by reference in 2 CFR 1201, Prepare Force Account Plan and Cost Allocation Plans (CAPs) or Indirect Cost Proposals, and submit and obtain approval if applicable, before incurring costs;

(15) Prepare required reports (see Chapter III, Section 6.a, "Reporting Requirements") for submission to FTA;

(16) Update and retain FTA required reports and records for availability during audits or oversight reviews;

(17) Ensure effective control and accountability are maintained for all grants, cooperative agreements, subagreements, cash, real and personal property, and other assets. Recipients and subrecipients must ensure that resources are properly used and safeguarded and used solely for authorized purposes;

(18) Obtain all necessary prior approvals or waivers before incurring costs or taking any requested actions; and

(19) Manage roles and responsibilities of the organization's users in TrAMS.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Are there indications of weakness within the organization, such as patterns of ignoring FTA requests, lack of resources, general poor organization, and lack of documentation?
- Are there indications in the MPRs (such as a high number of milestone revisions) or from the FTA regional office that FTA-funded projects are not on time or within budget?
- Do MPRs contain reasonable explanations and/or recovery plans for budget and/or schedule variances?
- Has the recipient charged expenses to a force account that is not allowed by the force account plan?
- Has the recipient contracted out project management responsibilities to a third party?
- Any concerns about the recipient's oversight of contracted operations or lessees?
- Any other potential issues or concerns about the recipient's technical capacity to manage projects or oversee subrecipient projects not covered previously in this section?

References

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. FTA Circular 5010.1F, “Award Management Requirements”

USEFUL WEBLINKS

1. Construction Project Management Handbook
2. Project and Construction Management Guidelines
3. Quality Management System Guidelines
4. State Transit Program Manager’s Guide on Administration and Oversight of FTA Grant Programs
5. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools
6. Coronavirus Aid, Relief, and Economic Security Act
7. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
8. Notice of Concurrence
9. Emergency Relief rule

6. TRANSIT ASSET MANAGEMENT

PURPOSE OF THIS REVIEW AREA

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

QUESTIONS TO BE EXAMINED

1. Has the recipient developed a TAM plan?

2. Did the recipient develop the appropriate tier plan and does the plan have the required elements?

3. Have TAM responsibilities been assigned to an accountable executive?

4. Has the group plan sponsor fulfilled its obligations in the development of the group TAM plan?

5. Have group plan participants fulfilled their obligations in the development and implementation of the group TAM plan?

6. Has the recipient set performance targets annually?

7. Does the 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?

8. Does the recipient monitor subrecipients for compliance with TAM requirements?

INFORMATION NEEDED FROM 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
- Documentation of targets set annually, along with the Accountable Executive approval
- 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

Recipients with Tier I subrecipients or Tier II subrecipients who opted out of the group plan and are not direct recipients of FTA funds

- Oversight tools (checklists, site visit questionnaires) relating to TAM plans

Recipient Follow-up

- File documenting the recipient's review of a subrecipient's TAM plan and correspondence with the subrecipient

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TAM1. Has the recipient developed a TAM plan?

BASIC REQUIREMENT
Recipients (and subrecipients) that own, operate, or manage capital assets used for providing public transit service are required to develop a TAM plan. If the recipient is a Tier II provider, it may participate in a group plan.

APPLICABILITY
Recipients that own, operate, or manage capital assets used for providing public transportation

Group plan sponsors

DETAILED EXPLANATION FOR REVIEWER
Recipients (and subrecipients) that own, operate, or manage capital assets used for providing 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 (provide funds for) FTA grant programs but do not operate service.

INDICATORS OF COMPLIANCE

a. Does the recipient have a written TAM plan?

i. If yes, move to indicator "b".

ii. If no, is the recipient a participant in a group plan? If yes, move to question TAM5.

b. If the recipient has subrecipients that are Tier II providers, has it developed a group TAM plan?

INSTRUCTIONS FOR REVIEWER
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 DEFICIENCY DETERMINATIONS
The recipient is deficient if it is required to develop a TAM plan and has not developed a plan within the previous four (4) years or is not participating in a group TAM plan.

DEFICIENCY CODE TAM1-1: TAM plan not prepared

SUGGESTED CORRECTIVE ACTION: Provide the TAM plan.

The recipient is deficient if it has subrecipients that are Tier II providers and has not created a group plan.

DEFICIENCY CODE TAM1-2: Group plan not prepared

SUGGESTED CORRECTIVE ACTION: Provide the group 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 manages either (1) 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 manages (1) 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.

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

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

APPLICABILITY
Recipients that own, operate, or manage capital assets used for providing public transportation and are not a group plan participant

Group plan sponsors

DETAILED EXPLANATION FOR REVIEWER

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.

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. A Tier II provider may participate in a group plan even if it is not a subrecipient of the group plan sponsor. For example, a Tier II urban provider that is not a direct recipient may participate in a state's TAM plan. Although a Tier II urban provider that is a direct recipient may participate in a group plan, a sponsor is not required to develop a group plan for its Tier II subrecipients that are direct recipients under the Urbanized Area Formula Grant Program, 49 U.S.C. 5307.
- Recipients with subrecipients must develop a group plan for Tier II subrecipients that do not opt out of the group plan.

All TAM plans must include the following four 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.** 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 provider's 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.

Tier 1 TAM plans must include five additional elements:

1) The provider's TAM and SGR policy

2) The provider's TAM plan implementation strategy

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

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

5) 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

Group plans must include a list of plan participants.

INDICATORS OF COMPLIANCE

a. *What modes does the recipient operate?*

b. *How many revenue vehicles does the recipient operate in peak revenue service?*

c. *Which type of plan did the recipient develop?*

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

Required Elements	Addressed? (Y/N)	Page Reference	Comments/Notes
All TAM Plans			
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:			
• Ranks projects to improve or manage the state of good repair over the horizon period	-	-	-
• Includes all capital assets for which the recipient has direct capital responsibility, not just federally funded assets.	-	-	-
• Is ranked at the asset class level	-	-	-

Required Elements	Addressed? (Y/N)	Page Reference	Comments/Notes
Group Plans			
A list of participants in the group plan	-	-	-

Required Elements	Addressed? (Y/N)	Page Reference	Comments/Notes
Tier I Plans			
Documentation of a TAM and SGR policy	-	-	-
An implementation strategy that outlines a plan to achieve its asset management goals	-	-	-
A written description of the key TAM activities that the recipient intends to engage in over the TAM plan horizon period	-	-	-
A summary or list of the resources, including personnel, that the recipient needs to develop and carry out the TAM plan	-	-	-
An outline of how the recipient will monitor, update, and evaluate, as needed, its TAM plan and related business practices, to ensure the continuous improvement of its TAM practices	-	-	-

INSTRUCTIONS FOR REVIEWER

Review the NTD report and Section A: Recipient Profile of the RIR to obtain information (1) on the number of vehicles operated in revenue service during peak regular service across all fixed-route modes (except ferry service) or any non-fixed route mode, (2) to determine if the recipient operates rail service or (3) to determine if the recipient has subrecipients. Using this information, determine if the recipient developed the appropriate plan. Using the table above, review the recipient's TAM plan for the required elements to verify the categories are addressed. This does not include an evaluation for sufficiency.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not develop the appropriate TAM plan.

DEFICIENCY CODE TAM2-1: Inappropriate TAM plan developed

SUGGESTED CORRECTIVE ACTION: Submit a revised TAM plan that contains all the required elements for its appropriate designation.

The recipient is deficient if its TAM plan does not address all the required elements.

DEFICIENCY CODE TAM2-2: TAM plan elements missing

SUGGESTED CORRECTIVE ACTION: Submit a revised TAM plan that addresses all the required elements.

GOVERNING DIRECTIVE
49 CFR 625.5 Definitions

Tier I provider means a recipient that owns, operates, or manages either (1) 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 manages (1) 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.

(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 paragraph (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 § 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.

TAM3. Have TAM responsibilities been assigned to an accountable executive?

BASIC REQUIREMENT
The recipient 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
Recipients that own, operate, or manage capital assets used for providing public transportation

This requirement does not apply to group plan sponsors.

DETAILED EXPLANATION FOR REVIEWER
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/or implemented in accordance with the required elements?*

c. *Is the accountable executive exercising their responsibilities?*

INSTRUCTIONS FOR REVIEWER
Obtain information from the recipient that identifies the accountable executive. Verify this designation by review of the 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 that 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 and 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 DEFICIENCY DETERMINATIONS
The recipient is deficient if it has not identified an accountable executive who is responsible for implementation of the TAM plan.

DEFICIENCY CODE TAM3-1: No designation of accountable executive

SUGGESTED CORRECTIVE ACTION: Submit evidence that the recipient has designated an accountable executive that is responsible for the implementation of the TAM plan.

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

DEFICIENCY CODE TAM3-2: Accountable executive responsibilities not implemented

SUGGESTED CORRECTIVE ACTION: Submit evidence that the responsibilities of the accountable executive have been implemented.

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.

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.

TAM4. Has the group plan sponsor fulfilled its obligations in the development of the group TAM plan?

BASIC REQUIREMENT
Recipients must develop a group TAM plan that, at a minimum, includes all Tier II subrecipients that do not opt out of the group plan.

APPLICABILITY
Group plan sponsors

DETAILED EXPLANATION FOR REVIEWER

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.

The recipient 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 REVIEWER

Review Section A-Recipient Profile in the RIR to obtain a list of subrecipients. Compare the list of subrecipients against a list of subrecipients that have opted out of a group plan and copies of opt-out letters. If not listed in the plan, obtain a list of the group plan participants' accountable executives. 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 DEFICIENCY DETERMINATIONS

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

DEFICIENCY CODE TAM4-1: Group plan missing Tier II subrecipients/No opt-out letter

SUGGESTED CORRECTIVE ACTION 1: Submit a revised group TAM plan that includes all Tier II subrecipients that have not opted out of the plan.

SUGGESTED CORRECTIVE ACTION 2: Obtain and submit opt-out letters from those Tier II subrecipients that have opted out of the plan.

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

DEFICIENCY CODE TAM4-2: No designation of accountable executive by group plan participants

SUGGESTED CORRECTIVE ACTION: Submit evidence that each group plan participant has designated an accountable executive.

The recipient is deficient if it did not coordinate with group plan participants in the development of the plan.

DEFICIENCY CODE TAM4-3: Group plan development lacked coordination with participants

SUGGESTED CORRECTIVE ACTION: Submit evidence that the recipient has coordinated with plan participants to review the plan or to obtain additional information required for the plan.

The recipient is deficient if it has not made the group plan available to plan participants.

DEFICIENCY CODE TAM4-4: Group plan not available to plan participants

SUGGESTED CORRECTIVE ACTION: Submit evidence that the recipient has made the 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 manages (1) 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.

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 REVIEWER
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?*

    i. *Do the accountable executive's responsibilities include ensuring that the TAM plan is developed and/or implemented in accordance with the required elements?*

    ii. *Is the accountable executive exercising its responsibilities?*

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 REVIEWER
Review the 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 that the accountable executive position and job description align with responsibilities of the accountable executive as described in the regulations. Discuss with the recipient any differences between the job description and the organizational chart 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, etc.

Obtain a copy of the group plan in which the 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, description of analytical processes or decision-support tools, financial estimates for the horizon years, etc.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it is participating in more than one TAM plan.

DEFICIENCY CODE TAM5-1: Participating in more than one group TAM plan

SUGGESTED CORRECTIVE ACTION: Submit the group plan that the recipient is participating in and the group plan from which it was removed.

The recipient is deficient if it did not provide the necessary and relevant information for the development of the group TAM plan.

DEFICIENCY CODE TAM5-2: Information not provided by group plan participant

SUGGESTED CORRECTIVE ACTION: Submit evidence that the recipient has submitted required information to the group TAM plan sponsor.

The recipient is deficient if it is participating in a group plan and has not identified an accountable executive who is responsible for implementation of the TAM plan; and/or was unable to demonstrate that the accountable executive is exercising its responsibilities.

DEFICIENCY CODE TAM5-3: Participant accountable executive not designated/responsibilities not implemented

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that the recipient has designated an accountable executive that is responsible for the implementation of the TAM plan.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the responsibilities of the accountable executive have been implemented.

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.

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.

TAM6. Has the recipient set performance targets annually?

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

APPLICABILITY
Recipients that own, operate, or manage capital assets used for providing public transportation and are not a group TAM plan participant (Note: This requirement applies even if the recipient is a limited or reduced reporter to the National Transit Database (NTD).)

DETAILED EXPLANATION FOR REVIEWER
A recipient must set one or more performance targets to define the state of good repair goals in the following asset categories: equipment, rolling stock, infrastructure, 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. Recipients must set performance targets at least once every fiscal year for the following fiscal year. A recipient's accountable executive must approve each annual performance target.

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).

The NTD collects current year performance data as well as any 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 NTD annually.

- 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.
- Infrastructure: The NTD lists nine types of rail modes and collects data by mode for track and other infrastructure assets. The infrastructure performance measures are based on performance of the current assets (i.e., a percentage of track segments with performance restrictions). Bus rapid transit (BRT) and ferry are NTD fixed guideway modes but are not included in TAM targets.

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.*
    - *Infrastructure (rail fixed-guideway, track, signals, and systems): the percentage of track segments with performance restrictions 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, infrastructure, and facilities?*

c. *Did the accountable executive approve annual performance targets?*

INSTRUCTIONS FOR REVIEWER

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 recipient that demonstrates that the accountable executive approved each annual performance target set during the review period. The regulations do not prescribe a format for this approval.

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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its TAM plan does not include targets for all applicable performance measures.

DEFICIENCY CODE TAM6-1: No calculations for performance targets

SUGGESTED CORRECTIVE ACTION: Submit the methodology and calculation for performance targets.

The recipient is deficient if its TAM plan does not demonstrate that performance targets are set annually.

DEFICIENCY CODE TAM6-2: Performance targets not set annually

SUGGESTED CORRECTIVE ACTION: Submit a revised TAM plan that includes performance targets for the following fiscal year.

The recipient is deficient if its accountable executive did not approve the annual performance targets.

DEFICIENCY CODE TAM6-3: Performance targets not approved by the accountable executive

SUGGESTED CORRECTIVE ACTION: Submit evidence that the accountable executive approved the current year's 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.

Infrastructure means the underlying framework or structures that support a public transportation system.

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 paragraphs (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.

TAM7. Does the 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?

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

APPLICABILITY
Recipients that own, operate, or manage capital assets used for providing public transportation and are not a group TAM plan participant

Group plan sponsors

DETAILED EXPLANATION FOR REVIEWER
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 REVIEWER
Obtain documentation of the recipient's communication with the state and MPO regarding the recipient's TAM planning activities.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient 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.

DEFICIENCY CODE TAM7-1: Information was not shared with state and MPO

SUGGESTED CORRECTIVE ACTION: Submit 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.

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.

TAM8. Does the recipient monitor subrecipients for compliance with TAM requirements?

BASIC REQUIREMENT
Recipients must ensure that subrecipients' TAM plans comply with FTA requirements.

APPLICABILITY
Recipients with subrecipients that have opted out of the group plan

DETAILED EXPLANATION FOR REVIEWER
Recipients with subrecipients that are not direct recipients of FTA and have developed their own TAM plan must ensure that the subrecipients comply with FTA TAM plan requirements. At a minimum, the recipient must review the plans to ensure that they address the required elements, and an accountable executive has been designated. It must also obtain the TAM plans, any supporting records or documents pertaining to performance targets, investment strategies, and the annual condition assessment report to aid in the planning process.

INDICATORS OF COMPLIANCE

a. *How does the recipient monitor subrecipients that are:*

   i. *Not direct recipients of FTA funds and are Tier II providers who have opted out of the group plan, or*

   ii. *Tier I providers who have to comply with FTA TAM requirements?*

b. *Has the recipient reviewed the TAM plans for the required elements?*

c. *Has the recipient ensured that the subrecipients have designated an accountable executive who is ultimately responsible for ensuring that a TAM plan is developed and carried out?*

d. *Does the recipient obtain from the subrecipients the TAM plans, any supporting records or documents, performance targets, investment strategies, and the annual condition assessment report to aid in its planning process?*

INSTRUCTIONS FOR REVIEWER

Review oversight materials, including checklists and other evidence that the recipient is monitoring subrecipients who have opted out of the group plan or are Tier I providers. During the site visit, review the file for one such subrecipient to ensure that the recipient has reviewed the plan for the required elements and the designation of an accountable executive. For the same subrecipient, review evidence that the recipient has obtained any supporting records or documents, performance targets, investment strategies, and the annual condition assessment report.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure subrecipients that are not direct recipients of FTA funds and are Tier II providers that have opted out of the group plan or are Tier I providers comply with TAM requirements.

DEFICIENCY CODE TAM8-1: Insufficient oversight of subrecipients for TAM requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients comply with TAM requirements and evidence of implementation.

GOVERNING DIRECTIVE

2 CFR 200.332 Requirements for pass-through entities

A pass-through entity must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Is the accountable executive someone other than the general manager or chief executive officer?
- Did site/visual observations alert you of any concerns of the recipient TAM plan implementation to share with FTA?

REFERENCES

1. 49 CFR 625, Transit Asset Management

2. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

USEFUL WEBLINKS

1. FTA Transit Asset Management Plans

7. SATISFACTORY CONTINUING CONTROL

PURPOSE OF THIS REVIEW AREA
The recipient 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 EXAMINED

1. Does the recipient maintain adequate records on the status of real property? Is the recipient's property status report up to date? Did the recipient prepare and update an excess property status report and utilization plan?

2. **Question Removed from FY2026 Manual.**

3. Did the recipient follow FTA requirements for incidental use of real property?

4. **Question Removed from FY2026 Manual.**

5. Is FTA-funded real property used for its originally authorized purpose?

6. If the recipient disposed of FTA-funded real property since the last Comprehensive Review, were FTA requirements followed?

7. Does the 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?

8. Does the recipient maintain control over FTA-funded equipment?

9. Was equipment withdrawn from use and disposed of in accordance with 49 USC § 5334(h), 2 CFR 200 and FTA requirements?

10. Are bus fleets managed in accordance with FTA requirements for spare ratios and contingency fleets?

11. Does the rail fleet management plan meet FTA requirements?

12. Does the recipient maintain control over FTA-funded property and ensure that subrecipients use FTA-funded property for project purposes?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request

- Property management procedures, if written
- Real Property Status Report, which must include the following elements, at a minimum, to the extent applicable, for each real property:

    1. Report Date
    2. Parcel Number
    3. Property Address / Location
    4. Recipient Unique Identification Number (UEI)
    5. Date of Property Acquisition
    6. Type of Insurance Coverage

7. Description of Real Property and Improvements
8. Minimum Useful Life of the Improvements and Years Installed
9. Real Property Ownership Type
10. Size: Acreage, Square, or Linear Units
11. Real Property Cost (acquisition, relocation, renovation, railroad easement cost / period of the easement)
12. FTA Funding Type and Share Percentage of Property and Improvement Costs
13. FTA Award Numbers that funded the acquisition or improvement of the property
14. Has a significant change occurred with the real property or is there an anticipated change in the next reporting period? If yes, describe the change.

In addition, the following apply for real property disposed of within the last three years:

- Appraised Fair Market Value
- Appraisal Date
- Federal Interest
- Disposition Status
- Identification of Reasons for Excess Property (if applicable)
- Anticipated Disposition or Action Proposed (if applicable)
- Date of Property Disposition (if applicable)
- Sale Price and Net Proceeds (if applicable)

- Excess FTA-funded real property plan
- Sample real property incidental use agreements
- List of FTA-funded facilities planned to be constructed or renovated. For each facility, include:
  1. Projected and actual start date
  2. Projected and actual completion date
  3. FTA portion and total project cost
- Procedures to determine which federally assisted buildings and/or building content are located in a special flood hazard area
- Procedures for determining sufficient levels of flood insurance
- Evidence of flood insurance
- Equipment management procedures addressing (if separate from state management plan):
  1. Inventory control
  2. Loss prevention
  3. Insurance requirements
  4. Disposition requirements
- 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. Depreciated value (Book value) at disposition
  3. How proceeds were utilized, prior to November 15, 2021
  4. Documentation of proceeds returned to FTA via pay.gov
- Documentation of peak fixed-route bus service requirements, such as rolling stock roster, documentation from scheduling software or other dispatch records documenting the peak
- Deviation request or special dispensation for spare ratio

- Contingency fleet plan
- Rail fleet management plan
- Sample lease agreement with private operator, if applicable

Recipient Follow-up
- Notification to FTA for the real property removed from the service originally intended at the time of award approval or put to additional or substitute use
- Communications with FTA related to incidental use of FTA funded real property and equipment.
- Correspondence to FTA regarding disposition notices and requests for approval
- Proof of funds reimbursed to FTA (sale records or financial reports), if required
- Request/approval correspondence between the recipient and FTA
- Sample pull-out logs or fueling logs

SCC1. Does the recipient maintain adequate records on the status of real property? Is the recipient property status report up to date? Did the recipient prepare and update an excess property status report and utilization plan?

BASIC REQUIREMENT
Recipients must maintain satisfactory continuing control over the transit use of real property donated or purchased for an FTA-funded project. For all awards, recipients must maintain adequate property records on the status of real property in which the Federal Government retains an interest. For property owned but no longer used for an eligible transit use, recipients are required to prepare and maintain a real property status report and utilization plan.

APPLICABILITY
Recipients with FTA-funded real property and with subrecipients with FTA-funded real property

DETAILED EXPLANATION FOR REVIEWER
FTA has an interest in real property when FTA funds were used to purchase, construct, improve, or repair the property. Furthermore, FTA has an interest in real property used as in-kind match for FTA-funded projects. To protect that interest, 49 USC 5309 and 49 USC 5307 require that all recipients of formula funds and capital investment grant funds certify that they maintain satisfactory continuing control over property funded under 49 U.S.C. Chapter 53. Satisfactory Continuing Control inherently requires both legal and physical control over the transit use of the property. Legal control over the property requires that the recipient hold title or other written legal right sufficient to ensure transit use of property. Typically, recipients should hold legal title as required by 2 CFR 200.311(a). Physical control requires appropriate exclusionary practices such as building and maintaining fences to prevent trespassers. Physical control also requires that recipients maintain a real property status report of the properties in which the Federal government retains an interest. Real property includes land, affixed land improvements, structures, and appurtenances. However, some fixtures may be treated as equipment for purposes of record-keeping such as bus shelters. The reports must address the FTA-funded real property of the recipient and subrecipients.

A real property status report must include:

1. **For all property**: Report Date; Parcel Number; Property Address/Location; Recipient Unique Identification Number (UEI); Date of Property Acquisition; Type of Insurance Coverage; Description of Real Property and Improvements; Minimum Useful Life of Improvements and Year Installed; Real Property Ownership Type; Size (acreage, square, or linear units); Real Property Cost (acquisition, relocation, renovation, railroad easement cost and easement period); FTA Funding Type and Share Percentage of Property and Improvement Costs; FTA Award Number(s) that funded the acquisition or improvement of the property (FAIN); Has a significant change

occurred with the real property, or is one anticipated in the next reporting period? If yes, describe the change.

2. **For real property disposed of since the last Comprehensive Review:** Appraised Fair Market Value; Appraisal Date; Federal Interest; Disposition Status; Identification of Reasons for Excess Property (if applicable); Anticipated Disposition or Proposed Action (if applicable); Date of Property Disposition (if applicable); Sale Price and Net Proceeds (if applicable).

3. **For property retained but no longer used for a transit purpose (Idle Facilities):** In addition to the data required above, provide a summary of any conditions on title, the appraised value and date, a brief description of improvements, the current use of the property, the anticipated disposition or proposed action, and any other relevant information. The real property status report must also identify and explain the reason the property is excess, in addition to any notice to and instructions from FTA regarding excess property.

The recipient must possess, or have immediate access to, legal documentation evidencing satisfactory continuing control of property use (e.g., deed, easement, lease, restrictive covenant). The recipient shall maintain a parcel-level inventory of all third-party interests affecting each parcel (e.g., easements, leases, incidental uses) to permit accurate asset accounting and determination of the Federal interest retained. For recipients subject to triennial review, the inventory must be kept up to date and reviewed through the triennial review process.

INDICATORS OF COMPLIANCE

a. Does the recipient maintain a current real property status report?

Real Property Status Report Required Elements	Comment
Property location/physical address	-
Use and condition of the property	-
Summary of conditions on the title	-
Brief description of improvements, expansions, and retrofits	-
Corresponding useful life for the assets	-
Date placed in service	-
Original acquisition cost	-
Sources of funding	-
Federal and non-Federal participation ratios	-
Federal Award Information Number (FAIN)	-

Appraised value and date	-
Anticipated disposition or action proposed	-
Date of disposal	-
Sale price	-
Reason for excess property	-

b. *Does the real property status report include real property owned by third parties or subrecipients?*

c. *Is the real property status report current regarding excess real property and Idle Facilities?*

d. *In addition to the required information of real property inventories, does the excess real property inventory address the following elements for property no longer used for its originally authorized purpose, including Idle Facilities?*

Excess Real Property Status Report Elements	Comments
Property location	-
Summary of any conditions on the title	-
Original acquisition cost	-
Federal participation ratio	-
FAIN number	-
Appraised value and date	-
Brief description of improvements	-
Current use	-
Anticipated disposition or action proposed	-
Record of notice to, and instructions from, FTA regarding the property	-
Reason for the excess property or Idle Facility	-
Other relevant information (i.e. how need or use of the property has changed over time)	-

INSTRUCTIONS FOR REVIEWER

Obtain and review the recipient's real property inventory and confirm that it contains the required elements. Discuss with the recipient whether the plan is current and the recipient's typical process for updating these records.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the real property inventory does not contain all of the required information including reasons for having excess real property.

DEFICIENCY CODE SCC1-1: Property records missing information

SUGGESTED CORRECTIVE ACTION: Prepare and submit updated real property reports with all missing information.

The recipient is deficient if real property inventory does not include real property owned by subrecipients or other third parties.

DEFICIENCY CODE SCC 1-2: Property records missing subrecipient and other third-party information.

SUGGESTED CORRECTIVE ACTION: Prepare and submit updated real property reports with all missing information.

DEFICIENCY CODE SCC 1-3: Removed from FY2026 Manual

The Recipient is deficient if it fails to maintain records documenting anticipated future uses of property that is no longer used for its authorized purpose, such as Idle Facilities.

DEFICIENCY CODE SCC 1-4: Real property inventory out-of-date regarding excess properties.

SUGGESTED CORRECTIVE ACTION: Submit a current property inventory with all elements relating to excess property.

GOVERNING DIRECTIVE

49 USC 5309(c)(1)(B)(ii)

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

49 USC 5307(c)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the use of equipment and facilities.

2 CFR 200.311 Real property

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal awarding agency, real property must be used for the originally authorized purpose as long as it is needed for that purpose. While the property is being used for the originally authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

FTA Circular 5010.1F Ch. IV, Section 2. Real Property, (h) Property Management (2)-(3)

(2) Use. While the property is being used for the originally authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

(3) Maintenance. Real property must be appropriately maintained. A description of the improvements, expansions, retrofits, and maintenance of real property must be properly documented in the facility inventory along with parcel address or location, date placed in service, and Federal percentage of cost in order to accurately determine an equitable valuation of Federal interest at the time of early disposition of the asset. Please see FTA's TAM site and the NTD Reporting Policy Manual for more information on the facility inventory.

2 CFR 200.330 Reporting on real property

The Federal agency or pass-through entity must require the recipient or subrecipient to submit reports on the status of real property in which the Federal Government retains an interest. Such reports must be submitted at least annually. In instances where the Federal Government's interest in the real property extends for 15 years or more, the Federal agency or pass-through entity may require the recipient or subrecipient to report at various multi-year frequencies. Reports submitted at multi-year frequencies may not exceed a five-year reporting period. The Federal agency must only require OMB-approved government-wide data elements on recipient real property reports.

FTA Circular 5010.1F Ch. IV, Section 2. Real Property, (i) Reporting on Real Property

Recipients must maintain adequate records on the status of real property in which the Federal Government retains an interest.

(1) Real Property Status Report. As the Federal interest in real property is indefinite until disposition, FTA requires that any recipient with FTA-assisted real property submit a Real Property Status Report to FTA every three years. These are required to be submitted with information for the Triennial or State Management Reviews. The Real Property reporting requirements apply to all FTA-assisted real property held by the recipient, regardless of the date real property was acquired or improved. Any recipient not subject to a Triennial or State Management Review should discuss the timing of the reports with the FTA Regional Office. Recipients must report on land, land improvements, and anything permanently affixed to land, such as buildings or building improvements acquired with FTA funds. Building improvements include those things attached to the buildings that, if removed, would deface the structure or integrity of the building, such as plumbing, heating fixtures, etc. A Federal interest will arise when real property is contributed in-kind to meet local match requirements and the Federal interest should be reported. FTA Federal interest may arise even if the land or original building was not acquired with FTA funding. Federal interest may also arise if improvements or renovations are made to the land or the buildings with FTA funding, in which case the recipient would only report on the items improved or renovated. Structures that may be disassembled and moved, such as bus shelters, may be considered personal property that falls under the definition of equipment and would be included in the equipment inventory rather than the Real Property Status Report. The Real Property Status Report must include the following elements, at a minimum, to the extent applicable, for each real property:

(a) Report Date
(b) Parcel Number
(c) Property Address / Location
(d) Recipient Unique Identification Number (UEI)
(e) Date of Property Acquisition
(f) Type of Insurance Coverage
(g) Description of Real Property and Improvements

(h) Minimum Useful Life of the Improvements and Years Installed
(i) Real Property Ownership Type
(j) Size: Acreage, Square, or Linear Units
(k) Real Property Cost (acquisition, relocation, renovation, railroad easement cost / period of the easement)
(l) FTA Funding Type and Share Percentage of Property and Improvement Costs
(m) FTA Award Numbers that funded the acquisition or improvement of the property
(n) Has a significant change occurred with the real property or is there an anticipated change in the next reporting period? If yes, describe the change.

The following apply for Real Property dispositions:

(a) Appraised Fair Market Value
(b) Appraisal Date
(c) Federal Interest
(d) Disposition Status
(e) Identification of Reasons for Excess Property (if applicable)
(f) Anticipated Disposition or Action Proposed (if applicable)
(g) Date of Property Disposition (if applicable)
(h) Sale Price and Net Proceeds (if applicable)

This inventory is necessary in order to accurately account for assets and determine an equitable valuation of Federal interest retained in the property. Real property that is disposed of during the three-year reporting cycle should be included in the next Real Property Status report and have the applicable disposition information updated in the report accordingly. The real property that has been disposed of can then be removed from the report during the next reporting period.

(2) Requirements for Real Property No Longer Needed for the Authorized Transit Purpose. Regarding properties not used for their authorized purpose, the property inventory list must include the property location, a summary of any conditions on the title, the original acquisition cost, the Federal participation ratio, the FAIN, the appraised value and date, a brief description of improvements, the current use of the property, the anticipated disposition or action proposed, and other relevant information. Furthermore, in addition to notice to and instruction from FTA regarding excess property, the recipient's property inventory must identify and explain the reason for the excess property, such as:

(a) The parcel, when purchased, exceeded the recipient's need (uneconomic remnant, purchased to logical boundary, part of administrative settlement, etc.);
(b) The property was purchased for construction staging purposes, such as access, storage, or underpinning, and construction is completed;
(c) The intended use of the parcel is no longer possible because of system changes, such as alignment, or amendments to the grant or cooperative agreement for the Award;
(d) Improvements to real property were damaged or destroyed, and therefore the property is not being used for purposes of the Award, but it is still needed for the Award. If so, the improvements may be renovated or replaced. In this case, applicable cost principles must be observed; or
(e) A portion of the parcel remains unused, will not be used for purposes of the Award in the foreseeable future, and can be sold or otherwise disposed of.

49 USC 5309(c)(1)(B)(ii).

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

49 USC 5307(c)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the use of equipment and facilities.

SCC2. Question Removed from FY2026 Manual

SCC3. Did the recipient follow FTA requirements for incidental use of real property?

BASIC REQUIREMENT
Uses of FTA-funded real property outside the authorized use of the property must be an incidental use. Incidental uses are compatible with the approved purposes of the award, do not interfere with the transit uses of the property. Recipients must retain satisfactory continuing control over the use of the property regardless of any third-party or non-transit use of project property. Real property includes land, affixed land improvements, structures, and appurtenances, although some real property may be treated as equipment for purposes of asset management (i.e. bus shelters). Income generated from incidental use may only be used for eligible expenses.

APPLICABILITY
Recipients with FTA-funded real property

DETAILED EXPLANATION FOR REVIEWER
Incidental use is defined as “the limited non-transit use of project property that does not conflict with the original authorized purpose of the project property or the recipient’s ability to maintain satisfactory continuing control.” FTA C 5010. For purposes of FTA oversight, real property is land, improvements affixed to land, structures, and related appurtenances. Notwithstanding, certain items ordinarily considered real property may be treated as equipment in specific circumstances (e.g., bus shelters). Examples of incidental use include the leasing of space in a station for a newspaper stand or coffee shop and the lease of air rights over transit facilities. Such use must be compatible with the approved purposes of the project, must not interfere with the public transportation uses of project assets, including safety of the transit system, and must not interfere with the recipient’s legal control to enforce its right to use the property for the transit use. FTA encourages recipients to make incidental use of FTA- funded real property when it can raise additional revenues for the transit system or 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 limited circumstances.

Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site other than eligible incidental uses as explained in FTA’s circulars. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance. Except in cases of utility, ingress, and egress use, recipients shall provide 30-day notice to the FTA Regional Office in advance of the execution of third-party agreements for the incidental use of real property that will (1) encumber title to the project property, (2) exceed a term of one year, or (3) allow for the installation of real property fixtures onto project property by third parties. Such notice must include the entirety of the draft third-party agreement, including exhibits and attachments, setting forth the scope of the proposed property use. The recipient need not receive FTA’s concurrence in an incidental use before proceeding. FTA’s failure to protest an incidental use does not serve as concurrence that the use qualifies as an incidental use as defined in this circular. FTA continues to monitor the incidental use after the Award is closed and the recipient is required to keep an inventory of the use.

Unless the incidental use is an eligible no- or low-income use, the use should generate income, taking into account the costs of the use, at competitive market rates, based on the recipient's independent analysis of competitive market rents and rates of return. Income received from the incidental uses may be entirely retained by the recipient 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 real property? If no, move to the next question.*

b. *Does the recipient maintain records that document incidental uses of real property?*

c. *Are the incidental uses of the recipient's FTA-funded property compatible with the transit uses of the property?*

d. *Does the recipient maintain documentation providing legal right to ensure continuing control over the property?*

e. *Is the recipient receiving compensation for incidental use at a rate the recipient reasonably established, or has it established an eligible low- or no-income incidental use per the elements in FTA C 5010?*

f. *Are proceeds used for eligible transit capital or operating expenses or as the non-Federal share of an eligible award?*

INSTRUCTIONS FOR REVIEWER

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

Obtain any property management procedures used by the recipient to understand how it maintains control over project property. If no such procedures are available, discuss with the recipient during the site visit.

Review financial records obtained in the Financial Management and Capacity area to determine if the recipient recorded income from project property. Review income statements to ensure that income obtained from project property is used to offset cost associated with the FTA-funded service.

During the site visit, tour the FTA-funded facility (or facilities) to confirm current uses of FTA-funded real property to ensure that they are used for eligible incidental uses.

* Note for incidental uses commencing after November 1, 2024: confirm that, except in cases of utility, ingress, and egress use, recipients provided 30-day advance notice to FTA for incidental uses that (1)

encumber title to the project property, (2) exceed a term of one year, or (3) allow for the installation of real property fixtures onto project property by third parties. Such notice must include the entirety of the draft third-party agreement, including exhibits and attachments, setting forth the scope of the proposed property use.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the incidental use interferes with a property's transit capacity or use and the recipient has failed to take reasonable measures to enforce its rights to the transit use of the project property, or if it does not implement reasonable steps to physically protect the property from interference with service.

> DEFICIENCY CODE SCC3-1: Incidental use interferes with transit capacity or use.
>
> SUGGESTED CORRECTIVE ACTION: Submit documentation that it has ceased incidental uses of real property that interfere with transit purposes. Submit procedures for maintaining satisfactory continuing control over the transit use of real property from interfering incidental uses.

The recipient is deficient if the recipient fails to have written documentation of their legal control over the transit use of project property. The Recipient is deficient if: (a) there are no written agreements governing a third-party's use of project property, or (b) the applicable legal documentation does not contain provisions regarding transit uses of the property (Note: For purposes of the triennial review, FTA does not make determinations as to whether the clauses are legally sufficient to protect the interest because the matter depends on an interpretation of state law. The scope of review is limited to whether the subject matter is addressed within their agreements.)

> DEFICIENCY CODE SCC3-2: Incidental use interferes with recipient's legal control over the transit use of project property.
>
> SUGGESTED CORRECTIVE ACTION: Submit documentation of legal right to determine and use project property for the transit use.

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

> DEFICIENCY CODE SCC3-3: Incidental use income not used for eligible expenses
>
> SUGGESTED CORRECTIVE ACTION: Submit documentation that it has applied incidental use income to eligible transit purposes.

GOVERNING DIRECTIVE

49 USC 5309(c)(1)(B)(ii).

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

49 USC 5307(c)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the use of equipment and facilities.

2 CFR 200.311 Real property

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally authorized purpose as long as needed for that purpose. While the property is being used for the originally authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

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

j. 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. Additionally, a recipient of assistance may not deny reasonable access for a private intercity or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes.

(1) Incidental Use. Recipients may use project property for uses other than its originally authorized purpose when the use qualifies as an incidental use as defined in this circular. Real property must be used for the authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities except as provided by FTA in this circular. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance. Except in cases of utility, ingress, and egress use, recipients shall provide 30-day notice to the FTA Regional Office in advance of the execution of third-party agreements for the incidental use of real property that will (1) encumber title to the project property, (2) exceed a term of one year, or (3) allow for the installation of real property fixtures onto project property by third parties. Such notice must include the entirety of the draft third-party agreement, including exhibits and attachments, setting forth the scope of the proposed property use. The recipient need not receive FTA's concurrence in an incidental use before proceeding. FTA's failure to protest an incidental use does not serve as concurrence that the use qualifies as an incidental use as defined in this circular. FTA continues to monitor the incidental use after the Award is closed and the recipient is required to keep an inventory of the use. (a) Examples of incidental use include: Temporary use of transit property as a staging area for nearby construction;

Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off-hours;

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

The lease of rights over or under 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 integrity of the transit facility.

(b) Revocation. An incidental use agreement should permit revocation by the recipient.

(c) 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 incidentally use its federally assisted facilities and
equipment, including alternative fueling facilities and associated equipment, subject to considerations in the text that follows.

(d) No- or Low-Income Use. Generally, FTA encourages incidental use as a means of supplementing transit revenues. However, no-or low-income uses are also appropriate under certain circumstances. For example, a no-or low-income use could include other transportation or non-transportation amenities to transit riders such as a transportation 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.

A recipient may appropriately consider no-or low-income uses where, for example, the use: Benefits transit, as a whole;

Expands upon the local transportation alternatives; and

Allows the public to transfer seamlessly.

(e) Alternative Fueling Facilities. A recipient of assistance under 49 U.S.C. Chapter 53 may allow the incidental use of federally funded alternative fueling facilities and equipment by non-transit public entities and private entities if: The incidental use does not interfere with the recipient's public transportation operations;

All costs related to the incidental use are fully recaptured by the recipient from the non-transit public entity or private entity;

The recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

Private entities pay all applicable excise taxes on fuel.

(f) Income. Recipients should determine and justify the amount of income from incidental use, including licensing and leasing of real property interests (i.e. air rights, underground rights, partial use leases), through their independent analysis of competitive market rents and rates of return. Income received from incidental uses, including the use of air or ground rights, may be retained by the recipients (without payment to FTA) 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.

(g) Recapture. The recipient should recapture all the 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.

SCC4. Question Removed from FY2026 Manual.

SCC5. Is FTA funded real property used for its originally authorized purpose?

BASIC REQUIREMENT
Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property.

APPLICABILITY
Recipients with FTA-funded real property

DETAILED EXPLANATION FOR REVIEWER

All FTA-funded real property, including facilities, is expected to be used for the originally authorized purpose throughout the useful life of the property as long as needed for that purpose. Recipients are required to notify FTA when property is removed from the service originally intended at award approval or if property is put to additional or substitute uses. Excess property, or Idle facilities, are those facilities that are completely unused and excess to the recipient's current needs. This is different from idle capacity which is the unused capacity of partially used facilities. Cost of idle facilities such as maintenance, repair, housing, rent, and other related costs including insurance and depreciation are unallowable, except to the extent that:

The costs are necessary to meet workload requirements, which may fluctuate, and they are allocated appropriately to all programs; or

The recipient documents that the costs were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination or other causes which could not have been reasonably foreseen. Under this exception, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of the facilities and the justification provided by the recipient for FTA review and approval.

INDICATORS OF COMPLIANCE

a. *Has any real property been removed from the service originally intended at the time of award approval or put to additional or substitute uses since the last Comprehensive Review? If yes, was FTA notified?*

b. *Does the recipient have any FTA-funded facilities that have been idle? If no, move to the next question.*

c. *What efforts have been made to use, lease, or dispose of idle facilities?*

d. *If the recipient charged costs incurred for idle facilities for more than one year to an FTA award, did it provide a justification to FTA **prior** review and approval?*

Reasons for Idle Facilities	Comments
The costs for the idle facility is necessary to meet workload requirements and are allocated appropriately to all programs.	-
OR	
Costs were incurred due to causes which could not have been reasonably foreseen, including changes in program requirements and implementation of more economical operations, reorganization, or terminations.	-

INSTRUCTIONS FOR REVIEWER
Obtain and review the recipient's real property inventory to (1) ascertain if any property is no longer used for a purpose other than originally approved, removed from service, or put to additional or substitute use and (2) determine if FTA was appropriately notified. Obtain any property management procedures used by the recipient to understand how it maintains control over real property. If no such procedures are available, discuss with the recipient during the site visit. During the site visit, tour the FTA-funded facility (or facilities) to confirm current uses of FTA-funded real property to ensure that they are only used for authorized purposes or authorized incidental uses.

For facilities no longer used for its originally authorized purpose (Idle Facilities), discuss steps planned or taken to use, lease, or dispose of the facilities, or any FTA instructions to delay disposition. Confer with the regional office on whether it is aware of any idle facilities. Onsite discuss with the recipient why facilities are idle. Obtain and review costs charged for the idle facility during the review period to determine that charges were not assessed against an FTA award for more than one year.

POTENTIAL DEFICIENCY DETERMINATION
For properties no longer used for an authorized transit use, the recipient is deficient if it did not follow and receive disposition instructions from FTA or otherwise seek FTA approval to suspend or substitute a property for an eligible transit use.

DEFICIENCY CODE SCC5-1: Real property not used for authorized purposes.

SUGGESTED CORRECTIVE ACTION: Inform the FTA regional office of each FTA-funded real property that is no longer used for an authorized purpose and (1) seek approval to substitute the transit use for each property; or (2) seek disposition instructions for each property. Additionally, the submit to the FTA regional office procedures for notifying FTA when FTA-funded real property has been removed from service or put to additional or substitute uses.

Unless it has received FTA instructions otherwise, the recipient is deficient if it has an idle facility and is not actively taking steps to dispose of the facility.

DEFICIENCY CODE SCC5-2: Failure to dispose of idle facilities without FTA authorization.

SUGGESTED CORRECTIVE ACTION: Submit a plan for the imminent using, leasing, or disposing of an idle facility, unless otherwise authorized by FTA. Submit procedures for periodically reviewing property records, identifying idle facility usage, timely disposition of property no longer needed for a transit use, and seeking FTA approval for any lapse in usage of idle facility.

The recipient is deficient if it unreasonably charged costs incurred for idle facilities for a reasonable period of time, ordinarily not to exceed one year, to an FTA award and did not receive prior FTA review and approval for the incursion of those costs.

DEFICIENCY CODE SCC5-3: Idle facility cost unreasonably charged to an award without authorization.

SUGGESTED CORRECTIVE ACTION: Submit a justification for charging the costs for an idle facility for FTA review and approval and plans for disposing of the facility if such approval is not given. Submit procedures for periodically reviewing property records, identifying idle facility cost, limiting FTA reimbursement of such cost to appropriate circumstances, and seeking FTA approval for usage and cost of idle facility prior to the suspension of use for the property's transit use.

GOVERNING DIRECTIVE

Section 5309(c)(1)(B)(ii)

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

Section 5307(c)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the use of equipment and facilities.

2 CFR 200.311 Real property

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally authorized purpose as long as it is needed for that purpose. While the property is being used for the originally authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

FTA Circular 5010.1F, Ch. IV, Section 2. Real Property, (h) Property Management

(2) Use. Real property must be used for the authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities except as provided in this circular. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

(4) Idle Facilities. Recipients are required to use federally assisted property continuously and appropriately while there is a Federal interest throughout the useful life of the property. Recipients may be required to return the entire amount of Federal assistance spent on the Award of federally assisted property thereunder if, during the useful life, the recipient has unreasonably delayed or failed to use the federally assisted property for its originally authorized purpose. Recipients are also required to notify FTA before property is removed from its originally authorized purpose. Recipients must seek concurrence from FTA regarding property not used or needed for its originally authorized purpose, including potential disposition instructions outlined later in this section.

(5) Costs of Idle Facilities or Idle Capacity. Costs of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, including insurance and depreciation. The costs of idle facilities are generally unallowable except to the extent that they are necessary to meet workload requirements that may fluctuate and are allocated appropriately to all programs. Exceptions also include when it can be shown that the costs were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Costs of idle facilities may be allowable after FTA review and approval of the justification provided by the recipient for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of the facilities.

SCC6. If the recipient disposed of FTA-funded real property since the last Comprehensive Review, were FTA requirements followed?

BASIC REQUIREMENT
Recipients must follow FTA requirements for disposition of real property.

APPLICABILITY
Recipients with FTA-funded real property

DETAILED EXPLANATION FOR REVIEWER

When real property is no longer needed for any transit purpose, the recipient must request and follow disposition instructions from FTA. Real property includes land, affixed land improvements, structures, and appurtenances. The instructions must provide for one of the following alternatives:

1. Retain title after compensating FTA

2. Sell the property and compensate FTA

3. Transfer title to the Federal awarding agency or to a third party designated/approved by the FTA

INDICATORS OF COMPLIANCE

a. Was prior approval obtained from FTA with the method of disposition for real property?

b. If required, was FTA reimbursed for its share of disposition proceeds?

INSTRUCTIONS FOR REVIEWER
Review the recipient's real property dispositions and obtain the related disposal requests for FTA's disposition instructions. Review FTA's approvals to verify the recipient followed FTA's instructions. Review records documenting how fair market value was arrived at for any real property not sold competitively. Obtain documentation of proceeds received and verify that it was used as approved by FTA. Confirm with FTA, receipt of funds, as applicable.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it did not obtain prior FTA approval for the method of disposition of FTA-funded real property.

DEFICIENCY CODE SCC6-1: Failure to obtain FTA approval for real property disposal

SUGGESTED CORRECTIVE ACTION: Submit any necessary updated information for the dispositions of real property along with adequate procedures for obtaining FTA approval and instruction for any future disposition of FTA-funded real property.

The recipient is deficient if it did not reimburse FTA for its share of disposition proceeds.

DEFICIENCY CODE SCC6-2: Failure to reimburse FTA after disposal of real property

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE
49 USC § 5334(h)

When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of [49 USC § 5334(h)].

2 CFR 200.311 Real property

(d) *Disposition.* When real property is no longer needed for the originally authorized purpose, the recipient or subrecipient must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must specify one of the following disposition methods:

(1) ***Retain title after compensating the Federal agency.*** When the recipient or subrecipient retains title to the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and costs of any improvements) by the current fair market value of the property. However, in situations where the recipient or subrecipient is disposing of real property acquired or improved with the Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) ***Sell the property and compensate the Federal agency.*** When a recipient or subrecipient sells the property, it must pay the Federal agency an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase (and cost of any improvements) by the proceeds of the sale after deducting any actual and reasonable expenses paid to sell or fix up the property for sale. When the Federal award has not been closed out, the net proceeds from the sale may be offset against the original cost of the property. When directed to sell the property, the recipient or subrecipient must sell the property utilizing procedures that provide for competition to the extent practicable and that result in the highest possible return.

(3) ***Transfer title to the Federal agency or a third party designated/approved by the Federal agency.*** When a recipient or subrecipient transfers title to the property to a Federal agency or third party designated or approved by the Federal agency, the recipient or subrecipient is entitled to be paid an amount calculated by multiplying the percentage of the recipient's or subrecipient's contribution towards the original purchase of the real property (and cost of any improvements) by the current fair market value of the property.

FTA Circular 5010.1F, Ch. IV, Section 2. Real Property, (k) Real Estate Disposition, (2) Disposition Methods

(2) Disposition Methods. When real property is no longer needed for any transit purpose, the recipient will request disposition instructions from FTA. Dispositions must be completed in a manner consistent with the requirements set forth in 2 CFR 200.311. If the property has never been used for the purposes of the Award, FTA may require the recipient to repay FTA the greater of FTA’s share of the fair market value or the entire amount of Federal assistance spent on that property. The allowable disposition methods are outlined below.

When real property is no longer needed for any transit purpose, the recipient will request disposition instructions from FTA. Dispositions must be completed in a manner consistent with the requirements set forth in 2 CFR 200.311. If the property has never been used for the purposes of the Award, FTA may require the recipient to repay FTA the greater of FTA’s share of the fair market value or the entire amount of Federal assistance spent on that property. The allowable disposition methods are outlined below.

(a) Sell and Reimburse FTA. FTA does not require the recipient to engage in specific sales procedures. However, the recipient shall follow established sales procedures that provide for competition to the extent practicable and result in the highest possible return. The amount due to FTA will be calculated by applying FTA's percentage of participation in the original purchase and cost of any improvements to the proceeds of the sale after deduction of any actual and reasonable selling and repair expenses.

(b) Offset. Sell the property and apply the net proceeds from the sale to the cost of replacement property under the same program. FTA's interest in the sale proceeds will carry through to the replacement property. Return any excess proceeds to FTA in accordance with the procedures above.

(c) Sell and Use Proceeds for Other Capital Projects Under an Award. Sell the property and use the proceeds to reduce the gross cost of another FTA eligible capital transit project under an award (see 49 U.S.C. 5334(h)(4)). 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 subsequent capital project, and reduce the amount of those restricted funds as those proceeds are applied to one or more FTA-approved capital projects under awards. FTA must approve the application of the proceeds to a subsequent capital award, which should clearly show that the gross cost of the Award has been reduced with proceeds from the earlier transaction.

(d) Sell and Keep Proceeds in an Open Award. If the Award is still open, the recipient may sell the excess property and apply the proceeds to the original cost of the total real property purchased for that award. This may reduce the Federal share of the Award.

(e) Transfer to Local Governmental Authority for Non-transit Use. A recipient may transfer assets to a local governmental authority to be used for a public purpose with no further obligation to FTA if, upon the written approval of FTA, FTA determines that the transfer complies with 49 U.S.C. 5334(h)(1)(A) as follows:

i. The asset will remain in public use for at least five years after the date the asset is transferred;

ii. There is no purpose eligible for assistance under 49 U.S.C. Chapter 53 for which the asset should be used;

iii. The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

iv. Through an appropriate screening or survey process (usually by following procedures for publication in the Federal Register), that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

(f) Transfer to Another Award. Transfer the property to another FTA-eligible award. The Federal interest continues.

(g) Retain Title with Buyout. Compensate FTA by computing the percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The recipient must document the basis for value determination; typically, this documentation is an appraisal. Alternatively, the recipient may pay FTA the straight-line depreciated value of improvements plus land value if this is greater than FTA's share of the fair market value.

(h) Disposition of Real Property Acquired for Construction. The end of the period of performance can trigger occasions when real property acquired under an FTA award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency. As part of the closeout process, it is necessary to document the property acquired or improved in support of the Award as noted above. In this documentation, the recipient must account for property rights used exclusively for construction that the recipients propose to use perpetually for

additional or substitute transit activities, such as joint development. Recipients should seek disposition instructions from FTA when property is no longer needed to carry out any transit purpose.

(i) Transfer for Affordable Housing as part of Transit Oriented Development. Under 49 U.S.C. 5334(h)(1)(B), the recipient may transfer assets to local governmental authorities, nonprofit organizations, or other third-party entities for the use of TOD that includes affordable housing with no obligation to reimburse FTA for the Federal interest if, upon FTA's written approval, FTA determines:

i. The asset is a necessary component of a proposed TOD project;

ii. The TOD project will increase transit ridership;

iii. At least 40 percent of the housing units offered in the TOD, including housing units owned by nongovernmental entities, are legally binding affordability restricted to tenants with incomes at or below 60 percent of the area median income and owners with incomes at or below 60 percent the area median income, which shall include at least 20 percent of such housing units offered restricted to tenants with incomes at or below 30 percent of the area median income and owners with incomes at or below 30 percent of the area median income;

iv. The assets will remain in use as described in this section for at least 30 years after the date the asset is transferred; and

v. With respect to a transfer to a third-party entity:

a. A local government authority or nonprofit organization is unable to receive the property;

b. The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

c. The third party has demonstrated a satisfactory history of construction or operating an affordable housing development.

SCC7. Does the 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?

BASIC REQUIREMENT
Recipients must have flood insurance under the National Flood Insurance Act of 1968 for federally funded buildings located in areas that have been identified as having special flood hazards.

APPLICABILITY
All Recipients

DETAILED EXPLANATION FOR REVIEWER
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 REVIEWER

All 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 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 recipient does not have written procedures, discuss the procedures with the 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 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 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 DEFICIENCY DETERMINATION
The recipient is deficient if it does not have, or has inadequate, flood insurance for any FTA-funded facility in a special flood hazard area.

DEFICIENCY CODE SCC7-1: Insufficient flood insurance

SUGGESTED CORRECTIVE ACTION: Submit documentation of adequate flood insurance protection.

The recipient is deficient 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.

DEFICIENCY CODE SCC7-2: Inadequate procedures for identifying federally assisted buildings in special flood hazard area and for determining sufficient levels of insurance.

SUGGESTED CORRECTIVE ACTION: Develop and submit procedures to identify federally assisted buildings that are located in a special flood hazard area. In addition, submit, 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
44 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 5010.1F, Ch IV, Section 1.c. 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, as defined in 44 CFR Part 59, before receiving Federal assistance to acquire, construct, reconstruct, repair, or improve that building. In addition, the building and its contents must be covered by flood insurance in an amount at least equal to its development or project cost (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, whichever is less. 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:

(1) Building. For insurance purposes, a structure that is affixed to a permanent site with two or more outside rigid walls and a fully secured roof. 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. Trailers are considered “residential rental property” and follow real property guidelines.

(2) 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.

SCC8. Does the recipient maintain control over FTA-funded equipment?

BASIC REQUIREMENT
Recipients must maintain control over FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

APPLICABILITY
Recipients that operate or lease FTA-funded equipment

DETAILED EXPLANATION FOR REVIEWER
Equipment means tangible personal property (including Information Technology (IT) 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 for financial statement purposes or as defined in 2 CFR 200.1 (currently $10,000). Equipment includes rolling stock, IT systems, and all other such property used in the provision of public transit service. Structures that may be disassembled and moved, such as bus shelters, may be considered personal property that falls under the definition of equipment for purposes of asset management and may be accounted for either in an equipment inventory or a real property records.

Under 49 USC Chapter 53, all recipients subject to a triennial review must maintain satisfactory continuing control over the use FTA-funded property. FTA assumes that State laws and procedures for the use, management, and disposal of equipment sufficiently provide adequate control unless there is a reason to believe otherwise. 2 CFR 200.313(b). 2 CFR 1201.313 requires that subrecipients of States shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award. Other recipients may follow applicable State laws and procedures in the use, management and disposition of equipment acquired under a Federal award or other established procedures complying with 2 CFR 200.313, 49 U.S.C. Chapter 53, and other applicable laws and regulations. FTA has provided additional direction as to what is generally considered satisfactory continuing control in FTA C 5010.

Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

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.

INDICATORS OF COMPLIANCE
For state recipients, answer indicators (a), (e), (f) and (g). For all other recipients, answer indicators (b)-(g).

a. *How does the State recipient maintain control over FTA-funded equipment for services it operates or leases?*

b. *Does the state recipient or subrecipient of a state follow established equipment management laws and procedures for the use, management, and disposition of equipment?*

c. *Does the non-state recipient equipment records provide the required information?*

Equipment Inventory Required Data Elements	Comment
Description	-
Identification number or serial number	-
Title holder	-
Federal Award Information Number (FAIN)	-

Equipment Inventory Required Data Elements	Comment
Acquisition date	-
Date placed in revenue service	-
Date removed from revenue service	-
Acquisition cost	-
Federal participation percentage	-
Location	-
Use and condition, including miles and age for rolling stock	-
Useful life, including miles and age for rolling stock	-
Disposition data, including date of disposal and sale price, or method used to determine fair market value	-

d. When did the non-state recipient conduct physical inventories?

i. Were the inventories performed at least every two years?

ii. Was there a reconciliation of the results?

e. What procedures and systems does the non-state recipient have in place to prevent loss, damage, or theft of FTA-funded equipment?

f. Does the recipient have incidental use of any FTA-funded equipment? If yes,

i. Did the recipient provide FTA with prior notice of the incidental use?

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?*

g. *Did the recipient provide prior provide notice to FTA for leases of FTA-funded assets to private operators? (Does not include transit operating contractors.)*

h. *Does the leases to private operators contain provisions that ensure satisfactory continuing control over the use of the equipment, including but not limited to the required provisions? (Does not include transit operating contractors.)*

Required Lease Provisions	Comments
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.	-
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 REVIEWER
For states: Review the state's procedures for maintaining control over FTA-funded equipment to understand how it manages, uses, and disposes of it. Potential procedures include: equipment inventories, physical inventories, insurance, disposition procedures, and security measures. Note data

elements tracked in an equipment inventory, if maintained. Note frequency of physical inventories, if conducted. Review insurance or self-insurance on FTA-funded equipment to confirm that the Federal interest is protected. Review security procedures to ascertain how the state stores, tracks, and secures the FTA-funded assets to deter against the loss and/or damage of such assets. Review applicable procedures for equipment disposition to ensure that equipment is not disposed of before the end of useful life, the Federal interest is protected, and the maximum return is sought. Obtain and review the recipient's records to determine that the state is following its procedures in using, managing, and disposing of the FTA-funded assets.

For recipients that are not states: Obtain from the recipient equipment records that provide the required data elements. Review the records to verify that the required data elements listed in the table in indicator "b" 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.

Consult with the FTA regional office regarding any notice or approvals for incidental use of FTA-funded equipment. Review single audits for evidence of revenue resulting from incidental use. During the site visit, confirm with the recipient any incidental uses of FTA-funded equipment. If incidental use occurs, confirm with the recipient how it ensures that the incidental use does not interfere with public transportation services (including the purpose for which the equipment was purchased), costs associated with incidental uses are fully accounted for, and that revenues are used for public transportation. Review a sample of three incidences of incidental use, including any equipment leases, if any, to determine (1) the time and date of the uses (2) whether the uses potentially interfered with public transportation services, (3) whether the recipient provided prior notice to FTA of the incidental use, (4) the accounting records document costs associated with incidental uses and (5) the revenues received from the use are used for public transportation.

For all recipients: Obtain a listing of private operators that lease federally funded equipment. Compare the list of private operators who lease federally funded equipment with the approvals obtained from the regional office. For any discrepancies between the FTA record of approval and the recipient's records, follow up with the recipient for documentation of approval. For any lease not approved by FTA, review to ensure that it includes the required provisions.

POTENTIAL DEFICIENCY DETERMINATIONS

The **state recipient** is deficient if it does not have procedures for using, managing, and disposing of FTA-funded equipment.

DEFICIENCY CODE SCC8-1: No state procedures for FTA-funded equipment

SUGGESTED CORRECTIVE ACTION: Submit evidence that state procedures for maintaining control over FTA-funded equipment.

The **state recipient** is deficient if it does not follow its procedures for using, managing, and disposing of FTA-funded equipment.

DEFICIENCY CODE SCC8-2: State equipment procedures not followed

SUGGESTED CORRECTIVE ACTION: Submit evidence that it is implementing its procedures for maintaining control over FTA-funded equipment.

The **non-state recipient** is deficient if its FTA-funded equipment records are missing required data elements.

DEFICIENCY CODE SCC8-3: Inadequate equipment records

SUGGESTED CORRECTIVE ACTION: The recipient must submit updated equipment records which include all of the required information.

The **non-state recipient** is deficient if it does not inventory equipment biennially or reconcile the results.

DEFICIENCY CODE SCC8-4: No evidence of physical inventory or reconciliation

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence that it has performed the physical inventory of FTA-funded equipment and has reconciled them to records, along with procedures for doing so.

The **non-state recipient** is deficient if it has not investigated and documented any loss, damage, or theft of FTA-funded equipment.

DEFICIENCY CODE SCC8-5: Inadequate property control system

SUGGESTED CORRECTIVE ACTION: The recipient must submit an adequate control system to prevent future loss, damage, or theft of FTA-funded equipment.

The recipient is deficient if it does not have FTA concurrence for leasing FTA-funded assets to private operators.

DEFICIENCY CODE SCC8-6: No FTA concurrence for leases

SUGGESTED CORRECTIVE ACTION: The recipient must obtain approval for leases of FTA-funded assets to private operators and submit procedures for obtaining FTA approval before leasing FTA-funded assets to private operators.

The recipient is deficient if the lease for FTA-funded assets to private operators does not include the required provisions.

DEFICIENCY CODE SCC8-7: Lease missing required provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit amended leases of FTA-funded assets to private operators that include the required terms and conditions, along with procedures for including the terms and conditions in future leases.

The recipient is deficient if has incidental use of FTA-funded equipment but did provide prior notice to FTA of the incidental use; 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.

DEFICIENCY CODE SCC8-8: Incidental use of FTA-funded equipment deficiencies

SUGGESTED CORRECTIVE ACTION 1: Provide notice to FTA regional office for the incidental use of the FTA-funded equipment.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for ensuring that the incidental use of the FTA-funded equipment does not interfere with public transportation services.

SUGGESTED CORRECTIVE ACTION 3: Submit procedures for fully accounting for costs associated with the incidental use of FTA-funded equipment.

SUGGESTED CORRECTIVE ACTION 4: Submit procedures for using revenues gained from incidental use of FTA-funded equipment for public transportation.

GOVERNING DIRECTIVE

Section 5309(c)(1)(B)(ii).

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

Section 5307(d)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the use of equipment and facilities.

2 CFR 200.313 Equipment

(b) *General.* A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, cost of the property, the percentage of Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property. The recipient and subrecipient are responsible for maintaining and updating property records when there is a change in the status of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated. The recipient or subrecipient must notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.

(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be in place to ensure the highest possible return

FTA Circular 5010.1F, Ch. IV, Section j(1). Incidental Use

(1) Incidental Use. Recipients may use project property for uses other than its originally authorized purpose when the use qualifies as an incidental use as defined in this circular. Real property must be used for the authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities except as provided by FTA in this circular. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance. Except in cases of utility, ingress, and egress use, recipients shall provide 30-day notice to the FTA Regional Office in advance of the execution of third-party agreements for the incidental use of real property that will (1) encumber title to the project property, (2) exceed a term of one year, or (3) allow for the installation of real property fixtures onto project property by third parties. Such notice must include the entirety of the draft third-party agreement, including exhibits and attachments, setting forth the scope of the proposed property use. The recipient need not receive FTA's concurrence in an incidental use before proceeding. FTA's failure to protest an incidental use does not serve as concurrence that the use qualifies as an incidental use as defined in this circular. FTA continues to monitor the incidental use after the Award is closed and the recipient is required to keep an inventory of the use. (a) Examples of incidental use include: Temporary use of transit property as a staging area for nearby construction;

Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off-hours;

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

The lease of rights over or under 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 integrity of the transit facility.

(b) Revocation. An incidental use agreement should permit revocation by the recipient.
(c) 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 incidentally use its federally assisted facilities and equipment, including alternative fueling facilities and associated equipment, subject to considerations in the text that follows.

(d) No- or Low-Income Use. Generally, FTA encourages incidental use as a means of supplementing transit revenues. However, no-or low-income uses are also appropriate under certain circumstances. For example, a no-or low-income use could include other transportation or non-transportation amenities to transit riders such as a transportation 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.

A recipient may appropriately consider no-or low-income uses where, for example, the use:
Benefits transit, as a whole;

Expands upon the local transportation alternatives; and

Allows the public to transfer seamlessly.

(e) Alternative Fueling Facilities. A recipient of assistance under 49 U.S.C. Chapter 53 may allow the incidental use of federally funded alternative fueling facilities and equipment by non-transit public entities and private entities if: The incidental use does not interfere with the recipient's public transportation operations;

All costs related to the incidental use are fully recaptured by the recipient from the non-transit public entity or private entity;

The recipient uses revenues received from the incidental use in excess of costs for planning, capital, and operating expenses that are incurred in providing public transportation; and

Private entities pay all applicable excise taxes on fuel.

(f) Income. Recipients should determine and justify the amount of income from incidental use, including licensing and leasing of real property interests (i.e. air rights, underground rights, partial use leases), through their independent analysis of competitive market rents and rates of return. Income received from incidental uses, including the use of air or ground rights, may be retained by the recipients (without payment to FTA) 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.

(g) Recapture. The recipient should recapture all the 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.

FTA Circular 5010.1F, Ch. IV, Section 4l(3). Leases

(3) 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:

(a) 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:

i. 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;

ii. 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

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

SCC9. Was equipment withdrawn from use and disposed of in accordance with 49 U.S.C. 5334(h), 2 CFR 200 and FTA requirements?

BASIC REQUIREMENT
Recipients must use and dispose of FTA-funded equipment in accordance with 49 U.S.C 5334(h), 2 CFR 200 and FTA requirements.

APPLICABILITY
Recipients that disposed of FTA-funded equipment

DETAILED EXPLANATION FOR REVIEWER
All recipients: Recipients must request disposition instructions from FTA when equipment is no longer needed for the original project or program or for other activities currently or previously supported. Per 2 CFR 200.313 and 200.314, if an item of equipment or an inventory of unused supplies purchased with Federal assistance is no longer needed for a public transportation purpose and is sold for $10,000 or less, the recipient may retain the full proceeds from the disposition. If the proceeds are greater than $10,000, then per 49 U.S.C. 5334(h)(4)(B), the recipient may retain $5,000 and the percentage of the local share in the original award of the remaining proceeds, with the remaining Federal share returned to FTA. In either case, recipients may not deduct selling and handling expenses from the reimbursement for the Federal share of sales proceeds. 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.

Disposition of equipment before the end of its useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C. 5010.1F Appendix F, 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. 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.

The net income from asset sales, uses, or leases (including lease renewals) under 49 USC § 5334(h) shall be used by the recipient to reduce the gross project cost of other FTA funded capital projects. 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.

NOTE: The IIJA changed the provisions for transit asset disposition 49 USC § 5334(h)(4)(B) on November 15, 2021. On October 1, 2024, OPM amended 2 CFR 200.313 to raise the de minimis rate for the Federal share from $5,000 to $10,000. Therefore, 49 USC § 5334(h) does not apply to insurance proceeds or state and non-state recipients addressed these equipment dispositions prior to November 15, 2021. , Recipients should follow the requirements set forth in 2 CFR 200.313 existing at that time, which allowed for the retention of $5,000 of the proceeds, the details of which are set forth in FTA Circular 5010.1E, the circular that was in effect at that time. For dispositions of FTA-funded rolling stock, equipment and aggregate supplies occurring between November 15, 2021, and October 1, 2024, the

recipient may retain a portion of the funds, $5,000 plus the percentage of its local share in the original award as explained in 29 USC 5334(h)(4)(B).

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.

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 its useful life?*

c. *For properties sold prior to October 1, 2024, did the recipient dispose of rolling stock or equipment with a unit fair market value of more than $5,000 per unit, or unused supplies with a total aggregate fair market value of more than $5,000, purchased using Federal financial assistance? For properties sold after October 1, 2024, did the recipient dispose of rolling stock or equipment with a unit fair market value of more than $10,000 per unit, or unused supplies with a total aggregate fair market value of more than $10,000, purchased using Federal financial assistance? If no, skip to Indicator d*

    - *If yes, was FTA reimbursed for its share of proceeds via pay.gov?*

d. *Did the recipient receive insurance proceeds?*

    - *If yes, were the proceeds applied to the cost of replacing the damaged or destroyed project equipment or rolling stock?*

    - *If the recipient did not apply proceeds to the cost of replacing the damaged or destroyed project equipment or rolling stock, was FTA reimbursed its interest in the asset?*

INSTRUCTIONS FOR REVIEWER

Confer with the regional office about any requests for equipment disposition, returned proceeds, or like-kind exchanges since the last Comprehensive Review, and obtain notifications to FTA for equipment withdrawn from project use or repurposed. Obtain the recipient's disposition requests, approvals, and supporting records and confirm that disposition instructions were sought and the approved method was followed. Verify sale documentation and financial records demonstrating that proceeds were remitted to

FTA (e.g., pay.gov) and that sale proceeds are restricted for use in subsequent capital awards; check TrAMS to confirm any later grant applications/awards reflect a reduction in gross project cost by the amount of the proceeds. If the recipient received insurance proceeds but did not apply them to replacement of the damaged or destroyed project asset, obtain the asset's depreciated (book) value at disposition and compare it to the insurance valuation to ensure FTA was reimbursed for the Federal interest.

Confirm that the recipient either has established sales procedures, or complies with established state procedures, in accordance with 2 CFR 200.313 and 49 USC 5334(h). For equipment not sold by competitive sale or state sales procedures, review the records supporting the fair market value determination (for example, appraisal or insurance adjustment documentation). The following table defines the useful life of several typical FTA-funded items based on FTA Circular 5010.1F. 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.

Property Type	Minimum Useful Life
Buses	
Large, heavy-duty transit buses including over-the-road buses (approximately 35' to 40' or larger including articulated buses)	At least 12 years of service or an accumulation of at least 500,000 miles
Small size, heavy-duty transit buses	At least 10 years or an accumulation of at least 350,000 miles
Medium-size, medium-duty transit buses	At least 7 years or an accumulation of at least 200,000 miles
Medium-size, light-duty transit buses	At least 5 years or an accumulation of at least 150,000 miles
Light-Duty Vehicles	
Light-duty vehicles used as equipment, employed in administrative and maintenance purposes (service vehicles) and to transport passengers (revenue service), such as regular and specialized vans, sedans, and light-duty buses, including all bus models exempt from testing in the current 49 CFR Part 665	At least 4 years or an accumulation of at least 100,000 miles
Trolleys	
The term "trolley" is often applied to a wide variety of vehicles. Thus, the useful life depends on the type of trolley. FTA classifies trolleys and the suggested useful life as described below. For disposition actions, FTA will use the following minimum useful life determinations:	
A fixed guideway steel-wheeled "trolley" (streetcar or other light rail vehicle)	At least 25 years

A fixed guideway electric trolleybus with rubber tires obtaining power from overhead catenary	At Least 15 years
Simulated trolleys, with rubber tires and internal combustion engine (often termed “trolley-replica buses”)	Please refer to bus useful life criteria above
Rail Vehicles	
At time of application, the recipient may propose an alternative useful life to be reviewed by FTA. A recipient that regularly measures life span by hours of operations, or by any other measure, may develop an appropriate methodology for converting its system to years of service. The reasonableness of such methodologies will be subject to examination, particularly if the recipient proposes to retire a rail vehicle before reaching FTA’s useful life.	At least 25 years
Ferries	
The useful life of a ferry depends on several factors, including the type and use of the ferry. FTA recommends using one of the methods outlined in Chapter IV or offers the following suggested minimum service lives:	
Passenger Ferries	At least 25 years
Other Ferries (without overhaul)	At least 30 years
Other Ferries (with overhaul)	At least 60 years
Facilities	
Determining the useful life of a facility must take into consideration such factors as the type of construction, nature of the equipment used, historical usage patterns, and technological developments.	
Based on any of the methods identified above in Chapter IV, a railroad or highway structure	At least 50 years
Most other buildings and facilities (concrete, steel, and frame construction)	At least 40 years

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not request disposition instructions from the FTA of equipment prematurely removed from service.

DEFICIENCY CODE SCC9-1: Failure to request disposition instructions from FTA of equipment removed from service

SUGGESTED CORRECTIVE ACTION: Submit a list of equipment prematurely removed from service and procedures for notifying FTA of any premature removal of equipment from service.

The recipient is deficient if it did not reimburse FTA for proceeds from dispositions.

DEFICIENCY CODE SCC9-2: Non-permitted use of equipment disposal proceeds

SUGGESTED CORRECTIVE ACTION 1: Submit documentation of the reimbursement calculation of FTA's share of proceeds from disposed property, along with the receipt from pay.gov. Submit procedures for reimbursing FTA for disposition proceeds.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit procedures for reimbursing FTA for disposition proceeds or applying the proceeds to another capital project.

The recipient is deficient if it did not obtain FTA approval for applying insurance proceeds to replacement property or did not return to FTA an amount equivalent to the remaining Federal interest in lost, damaged, or destroyed project property.

DEFICIENCY CODE SCC9-3: Non-permitted use of insurance proceeds

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures for addressing insurance proceeds.

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE
49 USC § 5334(h)

When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of [49 USC § 5334(h)].

2 CFR 200.313 Equipment

(b) *General.* A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(c) *Use.*

(1) The recipient or subrecipient must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the Federal award. The recipient or subrecipient must not encumber the equipment without prior approval of the Federal agency or pass-through entity. The Federal agency may require the submission of the applicable common forms for reporting on equipment. When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

(i) Activities under other Federal awards from the Federal agency that funded the original program or project; then

(ii) Activities under Federal awards from other Federal agencies. These activities include 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 recipient or subrecipient must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-federally-funded projects is also permissible, provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.

(3) Notwithstanding the encouragement in § 200.307 to earn program income, the recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services unless specifically authorized by Federal statute. This restriction is effective as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment

(e) ***Disposition.*** When equipment acquired under a Federal award is no longer needed for the original project, program, or for other activities currently or previously supported by a Federal agency, the recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:

(1) Equipment with a current fair market value of $10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.

(2) Except as provided in § 200.312(b), or if the Federal agency or pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of $10,000 (per-unit) may be retained or sold by the recipient or subrecipient. However, the Federal agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain, from the Federal share, $1,000 of the proceeds to cover expenses associated with the selling and handling of the equipment.

(3) The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the Federal agency or pass-through entity may direct the recipient or subrecipient to take disposition actions.

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

(r). Disposition Of Equipment And Supplies. In accordance with 2 CFR 200.313(e) and 2 CFR 200.314, disposition requirements apply to equipment and unused supplies regardless of age or specific use, including premature withdrawal from service. FTA retains a financial interest in all equipment or unused supplies acquired with Federal funds regardless of the specific value; however, recipients may not need to reimburse FTA for equipment with a disposition value of less than $10,000 or unused supplies the aggregate value of which is less than $10,000. Used supplies are not subject to disposition rules. State recipients must dispose of federally assisted equipment acquired under an award by the State in accordance with State laws and procedures as applicable. Indian Tribes must use, manage, and dispose

of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in under 2 CFR 200. Subrecipients of States and Indian Tribes must follow the general guidance outlined in 2 CFR 200.313(c) through (e) in respect to disposition of equipment acquired under an FTA award.

Per 2 CFR 200.313 and 200.314, if an item of equipment or an inventory of unused supplies purchased with Federal assistance is no longer needed for a public transportation purpose and is sold for $10,000 or less, the recipient may retain the full proceeds from the disposition. If the proceeds are greater than $10,000, then per 49 U.S.C. 5334(h)(4)(B), the recipient may retain $5,000 and the percentage of the local share in the original award of the remaining proceeds, with the remaining Federal share returned to FTA. In either case, recipients may not deduct selling and handling expenses from the reimbursement for the Federal share of sales proceeds.

(4) Disposition or Inappropriate Use Before the End of the Asset's Useful Life:
Any disposition of federally assisted property before the end of its useful life requires prior FTA written approval. FTA is entitled to its share of the remaining Federal interest. Additional information and scenarios surrounding disposition and related adjustments of Federal interest are included in Appendix G: Equipment Disposition Scenarios.

(a) Calculating the Federal Interest. The value of Federal interest is determined by calculating the fair market value of the federally assisted property immediately before the occurrence prompting the withdrawal of that property from appropriate use (e.g., sale, loss, etc.). The amount of Federal interest that the recipient is required to return to FTA is the greater of FTA's share of the unamortized value of the remaining useful life per unit, based on straight line depreciation of the original purchase price or the Federal share of the sales price or fair market value. The straight-line depreciation schedules do not impact or directly relate to the fair-market value of federally assisted property, or a property's remaining useful life. Property may have fair market value beyond the useful life. The following example is provided to determine the straight-line depreciation of a vehicle: for a vehicle with a 12year, 500,000-mile minimum useful life, the vehicle's value decreases each year by one-twelfth of its original purchase price. Alternatively, the value decreases for each mile driven 1/500,000 of its original purchase price. The unamortized value of the remaining useful life per unit is the value obtained by calculating the straight-line depreciation based on either miles or years— whichever is more advantageous to the recipient.

(b) Transfer to Public Agency for Non-transit Use. For an asset that has not met its useful life and with prior FTA approval, the recipient may follow procedures for 49 U.S.C. 5334(h)(1) – (3) to transfer federally assisted property (real property, including land, or equipment) to a public agency for non-public transportation use, provided the recipient can demonstrate that:

i. The asset will remain in public use for at least five years after the date the asset is transferred;

ii. The is no purpose eligible for assistance for which the asset should be used;

iii. The overall benefit of allowing the transfer is greater than the FTA interest in liquidation and return of FTA's remaining Federal interest in the asset, after considering fair market value and other factors; and

iv. Through an appropriate screening or survey process (usually by following procedures for publication in the Federal Register), there is no interest in acquiring the asset for the Federal use if the asset is a facility or land. Note that this criterion does not apply when the asset is equipment or rolling stock.

Additional information regarding this type of disposition is available from your FTA Regional or Metropolitan Office.

(6) Insurance Proceeds.
If the recipient receives insurance proceeds when federally assisted property has been lost or damaged by fire, casualty, or natural disaster, the recipient agrees to: (a) Apply those proceeds to the cost of replacing the federally assisted property that is damaged, destroyed, or taken out of service, whereas FTA will retain a Federal interest in the replacement property at the same percentage of Federal interest as the original property; or

(b) Return to FTA an amount equal to the remaining Federal interest in the federally assisted property that is lost, damaged, or destroyed. For purposes of calculating the federally assisted property, assume the property is in a state of good repair. This is done using the pay.gov system.

The amount of the remaining Federal interest is independent of the extent of insurance coverage or the amount of insurance proceeds received. Example scenarios are included in Appendix G.

(c) 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 the acquisition of new replacement equipment of like kind. For example, “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 equipment disposition are not returned to FTA; instead, all proceeds are reinvested in acquisition of the like-kind replacement equipment. If the disposition proceeds are less than the amount of the Federal interest in the equipment 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 equipment. If sales proceeds are greater than the amount of the Federal interest in the equipment traded in or sold, the investment of all proceeds in acquisition of the like-kind replacement equipment results in a reduction of the gross project cost. Example scenarios can be found in Appendix G.

(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; however, once the property is no longer needed for public transportation purposes, it must follow the requirements below.

(b) Disposition of Property with a Fair Market Value of More Than $10,000. With respect to rolling stock and equipment with a unit fair market value of more than $10,000 per unit and unused supplies with a total aggregate fair market value of more than $10,000 that are no longer needed for a public transportation purpose and were: (1) purchased with FTA assistance, (2) with a fair market value of more than $10,000, and (3) sold after November 15, 2021, all recipients retain an amount equal to the sum of: $5,000; and, of the remaining proceeds, a percentage of the amount equal to the non-Federal share expended by the recipient in making the original purchase; recipients may not deduct selling and handling expenses from the reimbursement for the Federal share of sales proceeds; and any amounts remaining after application of Paragraph 1 shall be returned to FTA via pay.gov.

(c) Disposition of Property with a Fair Market Value of $10,000 or Less Value. With respect to rolling stock and equipment with a unit fair market value of $10,000 or less per unit and unused supplies with a total aggregate fair market value of $10,000 or less that were purchased using FTA financial assistance, the rolling stock, equipment, or supplies may be retained, sold, or otherwise disposed of when no longer needed for a public transportation purpose without any obligation to reimburse FTA. In determining the fair market value, recipients may not first deduct selling and handling expenses. Records of this action must be retained. FTA approval of this action is not required.

SCC10. Are bus fleets managed in accordance with FTA requirements for spare ratios and contingency fleets?

BASIC REQUIREMENT
Recipients must manage bus fleets in accordance with FTA requirements.

APPLICABILITY
Recipients providing urban fixed-route bus service

DETAILED EXPLANATION FOR REVIEWER
FTA's spare ratio policy helps to ensure that buses are not acquired until they are needed. Notably, the policy does not require recipients to dispose of vehicles prior to the end of the useful life in order to keep the spare ratio at or below 20 percent. Rather, the policy provides that recipients with a spare ratio higher than 20 percent justify the reason for acquisition of new vehicles at the time they submit an award application as specified in FTA Circular 5010.

If applying for a new award, recipients may seek a short-term deviation from the spare ratio requirements for small deviations by preparing a brief justification explaining the reason for the deviation, a date by which the fleet spare ratio will come into compliance with the general requirements, and the recipient's plans to come into compliance. The deviation will generally be granted for no more than two years and must be approved by the regional administrator either in writing or by approval of the award. Recipients must promptly inform the regional office of any significant changes related to spare ratios, including plans for disposition or acquisition of vehicles and changes in vehicle needs.

INDICATORS OF COMPLIANCE

a. *If the recipient operates 50 or more revenue vehicles in fixed-route urbanized area service, does the spare ratio exceed 20 percent? (For fixed-route fleets of less than 50 vehicles operated in urban service, note if the spare ratio seems reasonable in Issues/Areas of Concern for FTA awareness question 3.)*

Spare Ratio Calculation (Complete for all recipients providing urban fixed-route bus service.)	
a. Total number of revenue vehicles	-
b. Number of vehicles required for maximum service	-
c. Number of spare vehicles (a minus b)	-
d. Spare ratio (c divided by b)	-

i. *If yes, did the recipient submit an award application or receive an award to replace, rebuild, or acquire new vehicles after going above the 20-percent spare ratio threshold?*

1. *If yes, did the recipient request a short-term deviation and receive FTA approval for it?*

b. *Is there a bus contingency fleet? If yes, is the contingency plan up-to-date and does it include the required elements?*

Contingency Fleet Required Elements	Comment
List of buses showing year placed into service, year and mileage removed from service, and useful life in years and mileage	-
Where buses are stored and how protected	-
Maintenance activity	-

INSTRUCTIONS FOR REVIEWER
Check TrAMS to see if fleet status is available to calculate the spare ratio submitted with the most recent award application. Determine if the recipient's spare ratio exceeds the guideline or appears excessive and note the date of the award submission and/or execution. Discuss the results of the analysis with the FTA regional office to determine if any deviation requests were submitted and approvals granted for exceeding the 20-percent spare ratio requirement or there is special dispensation for the recipient, i.e., operates in rough terrain, etc.

Obtain a list of revenue vehicles and compare the number of vehicles to what is reported in TrAMS. Make updates to the spare ratio calculation. Obtain documentation from the recipient of peak requirements, such as rolling stock roster, documentation from the scheduling software or other dispatch records documenting the peak of the peak (Note the date of the records provided). Onsite obtain and check sample pull-out logs or fueling logs to verify peak hour requirements and buses in service at the time of the site visit. Confirm when the maximum number of vehicles is required and how often. Update the spare ratio calculation. If the spare ratio is more than 20 percent, review TrAMS to determine if the recipient submitted/received award applications for projects to replace, rebuild or acquire new vehicles since the date the spare ratio surpassed the 20 percent threshold. Discuss with the recipient if it submitted any deviation requests or obtained approval through an award or received written approval from FTA for the excess.

If no application award was submitted/received in TrAMS since the recipient exceeded the 20 percent spare ratio requirement, ask the recipient to explain the reasons for the excess rolling stock, such as overall age of the fleet, different types of technologies, unique weather operating conditions, etc. Determine if buses in the fleet exceed the useful life benchmark. Determine whether and how often the recipient is able to meet pullout.

For recipients with contingency fleets review the contingency fleet plan to determine if the plan addresses the required elements. Review the recipient's equipment records to confirm the vehicles listed in the contingency fleet have met their useful lives. Ensure that the plan addresses the current contingency fleet.

Note to Reviewer: In accordance with the Dear Colleague Letter issued on June 10, 2024 and the FTA Major Event Playbook, please note the following when reviewing Spare Ratio and Contingency Fleet. Questions or concerns should be discussed with the Regional Office. FTA oversight reviews will not make findings related to excessive spare ratio if a planned major event is cited as the reason for extra spare

vehicles, and the recipient has a plan for returning their spare ratio to 20 percent or less within two years of the event.

The borrowing, leasing or otherwise temporarily obtaining of vehicles to put into service for major events such as the 2026 World Cup and the 2028 Olympic and Paralympic Games will NOT affect an agency's spare ratio calculation or their ability to procure new vehicles for everyday service. In addition, an agency lending vehicles does not require a waiver of spare ratio requirements, as there is no requirement to maintain a minimum number of spares. However, they must ensure their ability to provide public transportation services is not impacted.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its spare ratio for fleets of 50 or more buses is higher than 20 percent, it submitted/received an award application in TrAMS for projects to replace, rebuild, or acquire new vehicles, and it did not request nor receive a deviation approval, or special dispensation from FTA.

DEFICIENCY CODE SCC10-1: Excessive fixed-route bus spare ratio

SUGGESTED CORRECTIVE ACTION: The recipient must submit a plan for reducing the spare ratio to 20 percent for fleets of 50 or more buses. The plan should include a spreadsheet listing for each bus type, the number of buses, and, for each year until the spare ratio reaches 20 percent, the number of buses to be disposed of, the number of buses to be added, the projected peak requirement, and the projected spare ratio. The plan should include detailed justifications for years in which spare ratios exceed 20 percent. If the plan cannot be completed within 90 days, the recipient must report progress in quarterly/annual reports.

NOTE: Consult with the FTA regional office if the recipient's spare ratio exceeds 20 percent and it did not submit nor receive an award for projects to replace, rebuild, or acquire new vehicles.

The recipient is deficient if it does not have a contingency fleet plan for vehicles designated as contingency or if the contingency plan does not address all required topics.

DEFICIENCY CODE SCC10-2: Lacking contingency plan/plan out of date

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit a contingency fleet plan for its contingency fleet.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit a revised contingency fleet plan that addresses all the required topics.

GOVERNING DIRECTIVES

Section 5309(c)(1)(B)(ii)

The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

Section 5307(d)(1)(B)

A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the use of equipment and facilities.

FTA Circular 5010.1F, Ch. IV, Section 3. Equipment and Supplies (Including Rolling Stock)

n. Rolling Stock Spare Ratio Policies.
The Uniform Guidance requires equipment to be used for its intended purpose or to follow appropriate disposition requirements (2 CFR 300.313). The regulation also requires recipients and subrecipients to avoid acquisition of unnecessary or duplicative items (2 CFR 200.318). FTA recognizes that public transportation operations require both spare and, in some cases, contingency fleets and has established spare ratio and contingency fleet policies that permit public transportation vehicles in those categories to be considered in public transportation use. Spare ratios will be taken into account in the review of an award proposed to replace, rebuild, or acquire additional vehicles. Spare ratio is defined as the total number of spare vehicles available for fixed-route service (regardless of type) divided by the total number of fixed-route vehicles required for annual maximum service (regardless of type). Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required for maximum fixed-route service and 20 spare vehicles (for a total of 120 vehicles) is a 20 percent spare ratio. Spare ratios are calculated for the transit system as a whole, not by vehicle type. For purposes of the spare ratio calculation, “vehicles operated in maximum fixed-route service” is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak week, day, and hours that maximum service is provided. It excludes atypical days and special events. (1) Bus Fleet. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for transit providers operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed-route service. For recipients that manage awards for subrecipients, this maximum spare ratio is based on the fleet size of each unique operator. FTA does not set a specific spare ratio for operators with fewer than 50 vehicles operated in maximum fixed-route service but expects the number of spare buses to be reasonable, taking into account the number of vehicles and variety of vehicle types and sizes.

> Buses delivered for future expansion and buses that have been replaced, but are in the process of being disposed of, are not included in the calculation of spare ratio.
>
> For each application identified to acquire vehicles, the applicant should address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced, including information on age and mileage, and the applicant’s conformance with FTA’s spare ratio guideline. An applicant is required to notify FTA if the spare ratio computation on which the application is based is significantly altered before the Award is made.

(2) Rail Fleet. Because rail transit operations tend to be highly specialized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the recipient’s rail vehicle spare ratio and the rationale underlying that spare ratio will be examined during the Triennial Review whenever FTA assistance is used to purchase or rebuild rail vehicles.

The following guidance should be used to support an operator’s proposed rail vehicle spare ratio when the spare ratio is under review by FTA: (a) An operator of a rail system should have in its file available upon request by FTA a Rail Fleet Management Plan that addresses operating policies (level of service requirements; train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul programs (scheduled, unscheduled, and overhaul); system and service expansions; railcar procurements and related schedules; and spare ratio justifications.

(b) The spare ratio justification should consider the average number of railcars out of service for scheduled maintenance, the unscheduled maintenance and overhaul program, the allowance for ridership variation (historical data), ridership changes that affect railcar needs caused by expansion

of the system or services, the contingency for destroyed railcars, and railcar procurements for replacements and system expansions.

(c) Railcars delivered for future expansion and railcars that have been replaced, but are in the process of being disposed of, should not be included in the calculation of spare ratio.

(d) Peak Vehicle Requirements include “standby” trains that are scheduled, ready for service, and have a designated crew.

(e) Factors that may influence spare ratios are the type of equipment (locomotive hauled trains; married pair units or single railcars, equipment design, reliability, and age), environmental conditions (weather, above ground or underground operation, loading and track layout), operational policies (standby trains, load factors, headways), maintenance policies (conditions for removing railcars from service, maintenance during nights and weekends, and labor agreement conditions), maintenance facilities, and staff capabilities.

(3) Spare Ratio Deviation. Recipients or subrecipients of buses recently procured may temporarily exceed their spare ratio thresholds. In those cases, recipients may seek a short-term deviation from the spare ratio requirements. Recipients should prepare a brief justification explaining the reason for the deviation, a date by which the fleet spare ratio will come into compliance with the general requirements, and the recipient’s plans to come into compliance. The deviation will generally be granted for no more than two years and must be approved by the Regional Administrator, either in writing or by approval of the Award. Recipients must promptly inform the FTA Regional Office of any significant changes related to spare ratios, including plans for disposition or acquisition of vehicles and changes in vehicle needs.

FTA Circular 5010.1F, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock), n. Rolling Stock Spare Ratio Policies

(4) Contingency Fleet.

FTA recognizes two types of vehicles: active and contingency. Revenue rolling stock stockpiled in a contingency fleet in preparation for emergencies must have met their minimum useful life requirements and must be properly stored, maintained, and documented in a contingency plan. FTA will also permit agencies to include vehicles that have met their minimum useful life in their contingency fleet if an agency is introducing zero emission vehicles into its fleet. These vehicles are not included in the calculation of spare ratio. Contingency plans are subject to review during Triennial Reviews and other FTA oversight reviews. Any rolling stock not supported by a contingency plan will be considered part of the active fleet. Contingency fleet means inactive rolling stock reserved or retained for emergencies or other unforeseen and justified activities. These activities could include the evacuation of people during an emergency, use as crowd control or traffic barriers, loaners to other transit agencies during a justified need, temporary replacements for buses in the active fleet during major active fleet overhauls, or bus maintenance activities and other activities that take a portion of the active fleet temporarily out of service.

The recipient should keep a record of information that demonstrates the need for the contingency fleet activation, the justification for activation, and the period of time of activation. The Contingency Fleet Plan should demonstrate that the bus has met its useful life by identifying the year the bus was placed in service, the year and mileage when removed from service, and the useful life of the bus in years and miles. The plan should identify where the buses will be stored and how they will be protected. It should list the maintenance activities performed on the bus to ensure they maintain their contingency bus fleet status.

A contingency fleet is separate from the spare fleet and is not included in the spare ratio.

SCC11. Does the rail fleet management plan meet FTA requirements?

BASIC REQUIREMENT
Recipients must manage rail fleets in accordance with FTA requirements.

APPLICABILITY
Recipients providing rail service

DETAILED EXPLANATION FOR REVIEWER
Because rail transit operations tend to be distinct from recipient to recipient, FTA requires rail operators to develop rail fleet management plans. The plans must discuss:

- Operating policies
- Peak requirements
- Maintenance/overhaul program
- System and service expansions
- Railcar procurements/schedules
- Spare ratio justification

The spare ratio justification should consider the average number of cars out of service for scheduled maintenance, unscheduled maintenance, and overhaul programs. It should account for historical variations in ridership and ridership changes that affect car needs due to system or service expansions. The justification should account for contingency needs due to destroyed cars and procurement schedules for fleet replacement and expansion. Cars delivered for future expansion and cars that have been replaced but are in the process of being disposed of should be identified and separated from other spares so as not to inflate the spare ratio. FTA has defined peak vehicle requirement to include “standby” trains that are scheduled, ready for service, and have a designated crew.

INDICATORS OF COMPLIANCE

a. Does the rail fleet management plan include the required elements?

Rail Fleet Management Plan Required Elements	Comment
Operating policies	-
Peak requirements	-
Maintenance/overhaul program	-
System and service expansions	-
Railcar procurements/vehicles	-
Spare ratio justification	-

b. Does the rail fleet management plan reflect the current operating environment?

INSTRUCTIONS FOR REVIEWER

Review the recipient documents in TrAMS for the rail fleet management plan. If not in TrAMS, confer with the FTA regional office to determine if the rail fleet management plan was requested and is on file. If it is not on file, request the plan from the recipient. Review the plan to ensure that it contains the required elements detailed in the table above. Follow up with the recipient to ensure that the plan is current and reflects the current operating environment, i.e., addresses the current fleet, operating policies, etc.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it has not prepared a rail fleet management plan, or the plan is missing required elements or is out-of-date, or the plan does not reflect current operations.

DEFICIENCY CODE SCC11-1: Lacking rail fleet management plan/plan out of date

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit a rail fleet management plan.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit an updated rail fleet management plan that includes all required elements or reflects current operations.

GOVERNING DIRECTIVE
FTA Circular 5010.1E, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock), k. Rolling Stock Spare Ratio Policies

(2) Rail Fleet. Because rail transit operations tend to be highly specialized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the recipient's rail vehicle spare ratio and the rationale underlying that spare ratio will be examined during the Triennial Review whenever FTA assistance is used to purchase or rebuild rail vehicles.

The following guidance should be used to support an operator's proposed rail vehicle spare ratio when the spare ratio is under review by FTA:

(a) An operator of a rail system should have in its file available upon request by FTA a Rail Fleet Management Plan that addresses operating policies (level of service requirements; train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul programs (scheduled, unscheduled, and overhaul); system and service expansions; railcar procurements and related schedules; and spare ratio justifications.

(b) The spare ratio justification should consider the average number of railcars out of service for scheduled maintenance, the unscheduled maintenance and overhaul program, the allowance for ridership variation (historical data), ridership changes that affect railcar needs caused by expansion of the system or services, the contingency for destroyed railcars, and railcar procurements for replacements and system expansions.

(c) Railcars delivered for future expansion and railcars that have been replaced, but are in the process of being disposed of, should not be included in the calculation of spare ratio.

(d) Peak Vehicle Requirements include "standby" trains that are scheduled, ready for service, and have a designated crew.

(e) Factors that may influence spare ratios are the type of equipment (locomotive hauled trains; married pair units or single railcars, equipment design, reliability, and age), environmental conditions (weather, above ground or underground operation, loading and track layout), operational policies (standby trains, load factors, headways), maintenance policies (conditions for removing railcars from service, maintenance during nights and weekends, and labor agreement conditions), maintenance facilities, and staff capabilities.

SCC12. Does the recipient maintain control over FTA-funded property and ensure that subrecipients use FTA-funded property for project purposes?

BASIC REQUIREMENT
The recipient is responsible for ensuring that subrecipients use FTA-funded property for project purposes.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWERS
FTA requires recipients to exercise control over FTA-funded property provided to subrecipients, and to ensure that it is used for project purposes. For indicators of compliance a though f, see preceding questions for a more detailed explanation of each requirement.

State recipients may use, manage, and dispose of equipment acquired under an FTA award according to state law and procedures. States are free to adopt the procedures established in 2 CFR part 200 or use them as a guide in developing state procedures for equipment use, management, and disposition. However, State laws and policy may be insufficient to maintain continuing control over FTA-funded equipment if it does not address subrecipient equipment management. Under 2 CFR 1201, subrecipients of States shall follow such policies and procedures allowed by the State with respect to the use, management and disposal of equipment acquired under a Federal award.

At a minimum, except in cases where a State recipient or its subrecipients follows State-established standards that states to the contrary, for any equipment provided to subrecipients, the recipient must:

- Include the FTA-funded equipment in its records
- Conduct (or cause to be conducted) a biennial physical inventory of FTA-funded equipment
- Reconcile (or ensure reconciliation of) the results of the physical inventory of FTA-funded equipment to the equipment records
- Ensure that a system is in place to prevent loss, damage, or theft of FTA-funded equipment
- Ensure that FTA-funded equipment is used for project purposes
- Follow FTA requirements for return or use of disposition proceeds

Other potential control measures include vehicle use certifications, vehicle use reports, retention of or liens on titles, insurance requirements, disposition requirements, and site visits.

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure that subrecipients prepare and update excess property inventory and utilization plans that address the required elements?*

b. *How does the recipient ensure that subrecipients follow FTA incidental use requirements for FTA-funded real property?*

c. *How does the recipient ensure that subrecipients properly use, lease, or dispose of idle FTA-funded facilities?*

d. *How does the recipient ensure that subrecipients properly use FTA-funded real property for project purposes?*

e. *If a subrecipient disposed of FTA-funded real property, did the recipient either provide notice to or obtain prior approval from FTA and reimburse FTA for its share of disposition proceeds?*

f. *Does the recipient ensure their subrecipients have a process to identify FTA-funded buildings located in areas that have been identified as having special flood hazards and that they purchase adequate flood insurance made available under the National Flood Insurance Act of 1968?*

g. *How does the **state** recipient maintain control over and monitor use of FTA-funded equipment awarded to subrecipients according to state-wide-established laws, policy, or procedure? Are the state laws sufficient to provide satisfactory continuing control over the subrecipient's transit use of the property?*

h. *Do the procedures for the **non-state recipient,** or state recipient following non-state procedures, sufficient to maintain control over and monitor use of FTA-funded equipment awarded to subrecipients, including but not limited to the following requirements set forth in 2 CFR 200, 1201?*

Non-state Equipment Oversight Requirements	Comment
Include the FTA-funded equipment in its records	-
Conduct (or cause to be conducted) a biennial physical inventory of FTA-funded equipment	-
Reconcile (or ensure reconciliation of) the results of the physical inventory of FTA-funded equipment to the equipment records	-
Ensure that a system is in place to prevent loss, damage, or theft of FTA-funded equipment	-
Ensure that FTA-funded equipment is used for project purposes	-
Follow FTA requirements for return or use of disposition proceeds	-

INSTRUCTIONS FOR REVIEWER
Review a listing of subrecipients that have FTA-funded real property (land and improvements thereon).

For states following state laws and procedures: Review the state management plan and the state's oversight procedures and related oversight materials.

For recipients that are not states or states instituting other procedures: Review the program management plan(s) and the recipient's oversight procedures and related sample oversight materials.

For all recipients: Obtain subrecipient excess real property inventory and utilization plans and evidence that the recipient has reviewed the plans to ensure that they are up-to-date and address the required elements. Review the recipient's procedures for ensuring that subrecipients comply with requirements related to incidental use of real property and idle facilities.

If a subrecipient selected for a site visit has FTA-funded real property, review the subrecipient agreement for the requirements imposed on the use of FTA-funded real property. During the subrecipient site visit, discuss and confirm whether the subrecipients comply with the FTA-funded real property requirements. If the oversight files for the subrecipients to be visited identified non-compliance issues, follow up with the recipient to determine how the issues were resolved.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not maintain and execute procedures that ensure that subrecipients prepare and maintain an excess real property inventory and utilization plan that addresses the required elements.

DEFICIENCY CODE SCC12-1: Inadequate oversight of subrecipient excess real property

SUGGESTED CORRECTIVE ACTION: Submit a written excess real property utilization plan for its subrecipients that includes all required elements, or an update to the existing plan and procedures for ensuring that subrecipients comply with excess real property requirements.

The recipient is deficient if it does not maintain and execute procedures that ensure that subrecipients follow FTA incidental use requirements for FTA-funded real property.

DEFICIENCY CODE SCC12-2: Inadequate oversight of subrecipient incidental use of real property

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients comply with real property incidental use requirements.

The recipient is deficient if it does not maintain and execute procedures that ensure that subrecipients use FTA-funded real property for project purposes.

DEFICIENCY CODE SCC12-3: Inadequate control of subrecipient real property

SUGGESTED CORRECTIVE ACTION: Submit procedures for monitoring the use of FTA-funded real property by subrecipients, contractors, or lessees.

The recipient is deficient if it did not obtain FTA prior approval and disposition instructions for FTA-funded real property disposed of by a subrecipient or reimburse FTA for its share of disposition proceeds.

DEFICIENCY CODE SCC12-4: Inadequate oversight of subrecipient incidental use

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients comply with real property incidental use requirements. If applicable, remit all proceeds due to FTA under the law.

The recipient is deficient if it is unable to maintain or execute procedures to maintain continuing control over FTA-funded subrecipient equipment, along with ensuring the equipment is used for project purposes.

DEFICIENCY CODE SCC12-5: Inadequate control of subrecipient equipment

SUGGESTED CORRECTIVE ACTION: Submit revised procedures for control of equipment operated by subrecipients.

GOVERNING DIRECTIVE

2 CFR 200.311 Real property

(b) *Use.* Except as otherwise provided by Federal statutes or the Federal agency, real property must be used for the originally authorized purpose as long as it is needed for that purpose. While the property is being used for the originally authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests except as provided by the Federal agency. Easements for utility, cable, and similar services that benefit the real property and are consistent with the authorized use are not considered an encumbrance.

2 CFR 200.332 Requirement for pass-through entities

A pass-through entity must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-

through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

49 USC 5307(c) Grant Recipient Requirements.

A recipient may receive a grant in a fiscal year only if (1)the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (b) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a Governor under this section)

(A)has or will have the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(B)has or will have satisfactory continuing control over the use of equipment and facilities;

49 USC 5334(h)(4)Proceeds from the sale of transit assets.—

(A)In general.— When real property, equipment, or supplies acquired with assistance under this chapter are no longer needed for public transportation purposes as determined under the applicable assistance agreement, the Secretary may authorize the sale, transfer, or lease of the assets under conditions determined by the Secretary and subject to the requirements of this subsection.

FTA Circular 5010.1F, Ch. II, Section 3.a.(2)-(4), (7) 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. FTA monitors awards and the federally assisted projects thereunder to confirm that recipients establish and follow procedures that comply with Federal requirements and the terms and conditions outlined. a. Recipient Role. Recipients are required to apply for and manage FTA awards in the Transit Award Management System (TrAMS). In addition to FTA's responsibility to monitor FTA awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities, including those conducted by subrecipients, to ensure compliance with applicable Federal requirements. This includes the administration and management of the award and any funds "passed through" by the recipient to a subrecipient in compliance with Federal regulations, the grant or cooperative agreement, and applicable FTA circulars . 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 compliance with Federal requirements. (See Chapter V, "FTA Oversight," of this circular.) The recipient's responsibilities include but are not limited to the following actions:

(1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(2) Submit Annual Certification and Assurances;

(3) Use TrAMS to apply for and administer Federal assistance awards;

(4) Provide administrative and management support for project implementation;

(5) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(6) Ensure conformity to grant agreements and cooperative agreements, applicable statutes, codes, ordinances, and safety standards;

(7) 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;

(8) Keep expenditures within the latest approved award budget;

(9) Ensure compliance with FTA and Federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;

(10) Request and withdraw Federal assistance for eligible activities only in amounts and at times such as to minimize the time elapsing between the transfer of funds from the United States Treasury or the pass-through entity and the disbursement by the recipient (the FTA Master Agreement requires payment with within three days of receipt of Federal funds), and retain receipts to substantiate withdrawals;

(11) Account for project property and maintain property inventory records that contain all the elements required;

(12) Demonstrate and retain satisfactory continuing control over the use of project property;

(13) Demonstrate procedures for asset management and adequate maintenance of equipment and facilities;

(14) Ensure that an annual independent organization-wide audit is conducted in accordance with OMB guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” 2 CFR Part 200, which is incorporated by reference in 2 CFR Part 1201, Prepare Force Account Plan and Cost Allocation Plans (CAPs) or Indirect Cost Proposals, and submit and obtain approval if applicable, before incurring costs;

(15) Prepare required reports (see Chapter III, Section 6.a, “Reporting Requirements”) for submission to FTA;

(16) Update and retain FTA required reports and records for availability during audits or oversight reviews;

(17) Ensure effective control and accountability are maintained for all grants, cooperative agreements, subagreements, cash, real and personal property, and other assets. Recipients and subrecipients must ensure that resources are properly used and safeguarded and used solely for authorized purposes;

(18) Obtain all necessary prior approvals or waivers before incurring costs or taking any requested actions; and

(19) Manage roles and responsibilities of the organization’s users in TrAMS.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Any potential satisfactory continuing control issues or concerns not covered above?

- Did the recipient consult with FTA about the incidental use of FTA-funded real property in appropriate situations? Did the recipient provide notice to FTA regarding property use when required?

- For fixed-route bus fleets of fewer than 50 buses operated in urban service, does the spare ratio appear reasonable? Why not?

- Does the rail fleet management plan adequately address the required topics?

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 5010.1F, “Award Management Requirements”

4. Flood Disaster Protection Act of 1973

8. MAINTENANCE

PURPOSE OF THIS REVIEW AREA

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 EXAMINED

1. Does the recipient have a written maintenance plan(s) for Federal Transit Administration (FTA) funded assets (including vehicles/vessels, facilities, and equipment)?

2. Is the recipient following its program for preventive maintenance inspections for FTA-funded assets?

3. Does the 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?

5. Does the recipient have an effective mechanism for monitoring subrecipients', contractors', and lessees' maintenance activities?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request

- Written vehicle (including vessels) and equipment maintenance plans
- Written facility maintenance plan

Recipient Follow-up

- Management reports used for monitoring preventive maintenance inspections
- Maintenance records for vehicles, equipment, and facilities

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M1. Does the recipient have a written maintenance plan(s) for Federal Transit Administration (FTA) funded assets (including vehicles/vessels, facilities, and equipment)?

BASIC REQUIREMENT
Recipients that control FTA-funded assets must have maintenance plans for those assets.

APPLICABILITY
Recipients with direct control over (does not include oversight of) FTA-funded assets

(For recipients with oversight responsibilities, see question M5)

DETAILED EXPLANATION FOR REVIEWER
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 assets.

All 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 Section 5307-funded assets, the written maintenance plans 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 and establish how the recipient will meet such goals and objectives. Plans should be updated with the purchase of new rolling stock to account for new technology and/or new manufacturer's recommended maintenance intervals and programs, and incorporate actions to maintain each vehicle type and model on a specific cycle. These actions will help ensure proper care and maximize vehicle longevity.

For vehicles under warranty, the 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 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.

FTA requires that rail operators purchasing vehicles with FTA funds have a rail fleet management plan that has been reviewed by FTA. FTA has extended this requirement to "new start" bus operations. These plans make brief mention of maintenance procedures. Normally, rail operators rely on more extensive written maintenance policies and procedures than those included in its rail fleet management plan.

The maintenance plan(s) should also 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

In the case of rail systems, FTA's investment often involves the construction of passenger stations, rights-of-way, signals, and other related facilities and equipment. While Federal Railroad Administration (FRA) regulates commuter rail systems and has detailed maintenance requirements for rolling stock, signals, and right-of-way that it enforces with a frequent inspection program, proper maintenance is needed by recipients for those components of the rail system not subject to FRA maintenance requirements, such as passenger stations, maintenance facilities, buildings, and 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), or maintenance management information system, identify a system of periodic inspections and preventive maintenance for:*

   i. *Vehicles?*

   ii. *Facilities?*

   iii. *Equipment?*

INSTRUCTIONS FOR REVIEWER

For recipients with subrecipients, first verify which entity has responsibility for (this is different from oversight of) maintaining the FTA-funded assets, the recipient or its subrecipient(s). Where the subrecipient has responsibility for maintaining the FTA-funded assets, move to Question 5.

Obtain and review the recipient's maintenance plans for FTA-funded vehicles, facilities, and equipment to ascertain how the recipient's procedures provide for maintenance of current FTA-funded assets. If the recipient is a rail operator with FTA-funded vehicles, the recipient must have a rail fleet management plan that addresses rail fleet maintenance as reviewed in the Satisfactory Continuing Control area. Compare maintenance plans with the asset listing obtained in the Satisfactory Continuing Control area 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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have a written maintenance plan(s) for FTA-funded vehicles/vessels.

DEFICIENCY CODE M1-1: No written vehicle/vessel maintenance plan

SUGGESTED CORRECTIVE ACTION: Submit a written maintenance plan for FTA-funded vehicles.

For rail operations, this deficiency should be recorded in the Satisfactory Continuing Control area under deficiency code SCC11-1: Lacking rail fleet management plan/plan out of date.

The recipient is deficient if it does not have a written maintenance plan(s) for FTA-funded facilities or equipment.

DEFICIENCY CODE M1-2: No written facility/equipment maintenance plan

SUGGESTED CORRECTIVE ACTION: Submit a written maintenance plan for FTA-funded facilities and/or equipment.

The recipient is deficient if the vehicle/vessel maintenance plan, or maintenance management information system, does not describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

DEFICIENCY CODE M1-3: No system of periodic inspections and preventive maintenance identified in vehicle/vessel maintenance plan

SUGGESTED CORRECTIVE ACTION: Submit a new or revised vehicle/vessel maintenance plan that identifies a system of periodic inspections and preventive maintenance performed at certain defined intervals.

The recipient is deficient if the facility or equipment maintenance plan(s), or maintenance management information system, does not describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals.

DEFICIENCY CODE M1-4: No system of periodic inspections and preventive maintenance identified in facility or equipment maintenance plan

SUGGESTED CORRECTIVE ACTION: Submit a new or revised facility and/or equipment maintenance plan that identifies a system of periodic inspections and preventive maintenance performed at certain defined intervals.

GOVERNING DIRECTIVE

Section 5309(c)(1)(B)(ii)

For CIG grant recipients: The Secretary may make a grant under this section for new fixed guideway capital projects, small start projects, or core capacity improvement projects, if the Secretary determines that… the applicant has, or will have… satisfactory continuing control over the use of the equipment or facilities.

Section 5307(d)(1)(B)

For 5307 recipients: A recipient may receive a grant in a fiscal year only if the recipient… submits… certification for that fiscal year that the recipient… has or will have satisfactory continuing control over the

use of equipment and facilities [and] will maintain equipment and facilities in accordance with the recipient's transit asset management plan[.]

2 CFR 200.313 Equipment

(b) *General.* A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement equipment) utilizing procedures that meet the following requirements...(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

FTA Circular 5010.1F, Ch. IV Property Administration and Award Management, Section 3. Equipment and Supplies (Including Rolling Stock)

q. Maintenance and Warranty

(1) Maintenance. Recipients must develop adequate maintenance procedures regarding all FTA-funded property in vehicle maintenance plans and facility/equipment maintenance plans. These plans must address how the recipients will maintain federally assisted property in good operating order and in compliance with any issued applicable federal regulations and guidance, except that FTA determines otherwise in writing. These plans must describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. See FTA's TAM website for additional information on condition reporting.

(2) Records and Oversight. 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. Recipients must have appropriate procedures in place to ensure that management and oversight of federally assisted property is properly administered for assets controlled by subrecipients.

(3) Warranties. Warranties, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These warranties should specify coverage and duration and meet currently available industry standards. A general warranty incorporating industry standards and an extended warranty are eligible capital costs. FTA's Best Practices Procurement & Lessons Learned Manual encourages recipients to evaluate the cost of an extended warranty in an analysis separate from the equipment's acquisition cost in order to make a good business decision. Recipients are responsible for: (a) 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 (b) Identifying and diligently enforcing the system for recording warranty claims.

FTA Master Agreement (34), Section 19 Use of Real Property, Equipment, and Supplies

(d) *Maintenance*. As provided in federal laws, regulations, requirements, and guidance, the Recipient agrees to maintain its Project property in good operating order, and comply with FTA regulations, "Transit Asset Management" and "National Transit Database," 49 CFR Parts 625 and 630.

M2. Is the recipient following its program for preventive maintenance inspections for FTA-funded assets?

BASIC REQUIREMENT
Recipients that use FTA assistance to purchase assets must keep those assets in good condition and good operating order.

APPLICABILITY
Recipients with direct control over (does not include oversight of) FTA-funded assets

(For recipients with oversight responsibilities, see question M5)

DETAILED EXPLANATION FOR REVIEWER
The 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 vehicles' useful life.

INDICATORS OF COMPLIANCE

a. *For vehicles/vessels, are the recipient's actual maintenance practices consistent with the plan/program? (Complete the information below for each vehicle/vessel sampled for a 12-month period.)*

Vehicle/Vessel Identification Number	Mode Operated	Plan Identified Maintenance Interval	Actual Interval between PM Inspections	PM conducted on time? Y/N
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	--	-	-	-

PERCENT (%) ON-TIME INSPECTIONS PERFORMED? _____%

b. *For facilities and equipment, are the recipient's actual maintenance practices consistent with the written plan? (Complete the information below for each facility/equipment item sampled for a 12-month period.)*

Facility/Equipment Description and Identification Number	Maintenance Interval	Date of PM	Actual Interval between PM Inspections	PM conducted on time? Y/N
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-
-	-	-	-	-

PERCENT (%) ON-TIME INSPECTIONS PERFORMED? _____%

INSTRUCTIONS FOR REVIEWER

For vehicles/vessels: Review the vehicle/vessel 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, or a combination of the two, if warranted (e.g., recipients whose fleets operate very few miles annually, or recipients that operate seasonal fleets).

FTA allows recipients discretion in determining the appropriate intervals for preventive 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 preventive 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 commuter rail locomotives and cars, in lieu of selecting a sample of preventive maintenance records, examine Federal Railroad Administration (FRA) inspection records to determine if FRA compliance letters indicate that the recipient does not meet the FRA scheduled maintenance intervals. If the recipient is unable to provide a compliance letter from FRA, sample the commuter rail fleet.

In addition, if during the facility tour an FTA-funded asset is observed that does not appear to be sufficiently maintained, request and review the preventive maintenance records for that item.

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 a minimum of three vehicles up to a total of one percent of the FTA-funded fleet for each mode (whichever is greater). Modes are classified per National Transit Database definitions as follows:

Non-Rail Modes	Rail Modes
Motorbus – DO	Light Rail
Motorbus – PT	Heavy Rail
Demand Response – DO	Commuter Rail
Demand Response – PT	Cable Car
Trolleybus	Automated Guideway
Ferryboat	Monorail
Vanpool	Inclined Plane
Jitney	Aerial Tramway
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 subfleet in each mode.

The following example illustrates this process for a recipient that operates the following:

Mode	Fleet Size	Sample Size
Motorbus-DO	400	4 vehicles
Motorbus-PT	250	3 vehicles
Paratransit-PT	120	3 vehicles
Light Rail	55	3 vehicles

Maintenance record selection procedures for facilities and equipment

If the recipient operates a commuter railroad, ask the recipient to identify those FTA-funded items that are not regulated by the FRA. Select a sample of three facility and three 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. In addition, if during the facility tour an FTA-funded asset is observed that does not appear to be sufficiently maintained, request and review the preventive maintenance records for that item.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient 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.

DEFICIENCY CODE M2-1: Late vehicle/vessel preventive maintenance

SUGGESTED CORRECTIVE ACTION 1: Submit:

- procedures for completing preventive maintenance inspections on time.
- a monthly report signed by the chief executive officer or other senior management designee on preventive maintenance results until the data demonstrate the recipient has conducted 80 percent of its preventive maintenance on time for three consecutive months. For each vehicle/vessel that received a preventive maintenance inspection during the month, the recipient must include with the submittal:
    - a report that lists the vehicle/vessel number, date of the inspection, mileage of the current inspection, mileage of the previous inspection, and the mileage interval between the two inspections for each vehicle/vessel that received a preventive maintenance inspection during the month. List the percentage of the inspections performed on time.
    - back-up documentation for each vehicle/vessel (e.g., copy of work order, printout from the maintenance management system) documenting the date and mileage of the inspection.

NOTE: If a repeat deficiency from the prior review, the recipient must submit the above information monthly until the data demonstrates the recipient has conducted 80 percent of its preventive maintenance on time for 12 consecutive months.

The recipient is deficient 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.

DEFICIENCY CODE M2-2: Late facility/equipment preventive maintenance

SUGGESTED CORRECTIVE ACTION: Submit:

- procedures for completing preventive maintenance inspections on time
- a monthly report signed by the chief executive officer or other senior management designee on the preventive maintenance results of the item(s) examined during the review until the data demonstrates the recipient has conducted 80 percent of its preventive maintenance on time for three consecutive months. For each asset that received a preventive maintenance inspection during the month, the recipient must include with the submittal:
    - a report listing the items, the dates the inspections are due, and the dates of the actual inspections. List the percentage of the inspections performed on time.
    - back-up documentation for each item (e.g., copy of work order, printout from the maintenance management system) documenting the date of the inspection.

NOTE: If a repeat deficiency from the prior review, the recipient must submit the above information monthly until the data demonstrates the recipient has conducted 80 percent of its preventive maintenance on time for 12 consecutive months.

GOVERNING DIRECTIVE
2 CFR 200.313, Equipment

(b) *General* A state must use, manage and dispose of equipment acquired under a Federal award in accordance with state laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

FTA Circular 5010.1F, Ch. IV Property Administration and Award Management, Section 3. Equipment and Supplies (Including Rolling Stock)

p. Maintenance and Warranty

(1) Maintenance. Recipients must develop adequate maintenance procedures regarding all FTA-funded property in vehicle maintenance plans and facility/equipment maintenance plans. These plans must address how the recipients will maintain federally assisted property in good operating order and in compliance with any issued applicable Federal regulations and guidance, except to the extent that FTA determines otherwise in writing. These plans must describe a system of periodic inspections and preventive maintenance intervals. See FTA's TAM website for additional information on condition reporting.

(2) Records and Oversight. 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. Recipients must have appropriate procedures in place to

ensure that management and oversight of federally assisted property is properly administered for assets controlled by subrecipients.

(3) Warranties. Warranties, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These warranties should specify coverage and duration and meet currently available industry standards. A general warranty incorporating industry standards and an extended warranty are eligible capital costs. FTA's Best Practices Procurement & Lessons Learned Manual encourages recipients to evaluate the cost of an extended warranty in an analysis separate from the equipment's acquisition cost in order to make a good business decision. Recipients are responsible for: (a) 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 (b) Identifying and diligently enforcing the system for recording warranty claims.

M3. Does the recipient's vehicle maintenance program address maintenance procedures for 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
Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER
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 annunciation 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 REVIEWER

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.

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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its preventive maintenance program does not address accessibility features.

> DEFICIENCY CODE M3-1: Accessible features not addressed in preventive maintenance program
>
> SUGGESTED CORRECTIVE ACTION: Submit a preventive maintenance program for ADA accessibility equipment.

The recipient is deficient if it does not follow its program for the preventive maintenance of accessibility features.

> DEFICIENCY CODE M3-2: Preventive maintenance program for accessible features not followed
>
> SUGGESTED CORRECTIVE ACTION: Submit evidence that its preventive maintenance program for ADA accessibility features is being implemented.

The recipient is deficient if it does not maintain accessibility features in operational condition.

> DEFICIENCY CODE M3-3: Accessibility features not maintained
>
> SUGGESTED CORRECTIVE ACTION: Submit procedures for maintaining accessible features promptly and evidence of implementation.

GOVERNING DIRECTIVE

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.

(c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.

(e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

FTA Circular 5010.1F, Ch. IV (3)(q)(2), Maintenance and Warranty

Records and Oversight. 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. Recipients must have appropriate procedures in place to ensure that management and oversight of federally assisted property is properly administered for assets controlled by subrecipients.

M4. Does the recipient have a system for tracking warranty issues and does the recipient actively pursue warranty claims?

BASIC REQUIREMENT
Recipients must establish procedures for adequately recording, tracking, and pursuing warranty claims.

APPLICABILITY
Non-state recipients with direct control over FTA-funded assets

DETAILED EXPLANATION FOR REVIEWER
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? If no, move to Question 5.*

b. *What is the recipient's system for identifying and tracking warranty issues and recovering warranty claims for FTA-funded assets?*

c. *Are warranty claims for FTA-funded assets pursued?*

INSTRUCTIONS FOR REVIEWER
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 DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not have a warranty recovery system.

DEFICIENCY CODE M4-1: No warranty recovery system

SUGGESTED CORRECTIVE ACTION: Submit a written system for identifying and recording warranty claims with a plan for implementation.

The recipient is deficient if it does not document that warranty claims are pursued or is not pursuing warranty claims diligently.

DEFICIENCY CODE M4-2: Warranty claims not pursued

SUGGESTED CORRECTIVE ACTION: Submit a plan for documenting resolution of warranty claims. The recipient must report monthly to the FTA regional office on the pursuit of warranty claims for three months to demonstrate it is diligently pursuing claims.

GOVERNING DIRECTIVE
FTA Circular 5010.1F, Ch. IV Property Administration and Award Management, Section 3. Equipment and Supplies (Including Rolling Stock)

Recipients are responsible for: (a) 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 (b) Identifying and diligently enforcing the system for recording warranty claims.

M5. Does the recipient have an effective mechanism for monitoring subrecipients', contractors', and lessees' maintenance activities?

BASIC REQUIREMENT
State recipients must develop maintenance requirements for subrecipients, contractors, and lessees for FTA-funded vehicles/vessels. Other recipients must require that subrecipients, contractors, and lessees meet FTA maintenance requirements.

APPLICABILITY
Recipients with subrecipients, contractors, and lessees with FTA-funded assets

DETAILED EXPLANATION FOR REVIEWER
State *recipients* must develop maintenance requirements for subrecipients, contractors, and lessees for FTA-funded vehicles/vessels and equipment that are adequate to protect the Federal interest and to ensure that the equipment is maintained in good operating order. States must require subrecipients, contractors, and lessees to meet FTA requirements and follow acceptable maintenance standards and have written maintenance plans for FTA-funded facilities. For the Sections 5310, 5311, and 5339 programs, these requirements are normally included in the State Management Plan and/or referenced in the subrecipient agreements.

Other recipients must require that subrecipients, contractors, and lessees meet FTA requirements and follow acceptable maintenance standards for FTA-funded assets and require or have a written maintenance plan. For the Sections 5310 and 5339 programs, these requirements are normally included in the recipient's program management plan and/or referenced in the subrecipient agreements, contracts, or lease.

Additionally, if assets are under warranty, FTA requires that there be a system for identifying warranty claims, recording claims, and enforcing claims against the manufacturers. An aggressive warranty recovery program ensures that the cost of defects is borne properly by the equipment manufacturer and not the subrecipient, contractor, lessee, 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. It is the FTA recipient's responsibility to ensure subrecipients, contractors, and lessees comply with this requirement.

All recipients must have an effective mechanism for monitoring subrecipients', contractors', and lessees' maintenance of FTA-funded assets. An acceptable program would consist of periodic written reports on maintenance activities submitted to the recipient, review of maintenance records, or periodic inspections of the FTA-funded assets.

INDICATORS OF COMPLIANCE

a. *For recipients that are states, what are the requirements for subrecipients, contractors, or lessees for the maintenance of FTA-funded vehicles and equipment?*

b. *For non-states, does the recipient have or require that its subrecipients, contractors, or lessees have a written maintenance plan that meets FTA requirements for FTA-funded vehicles and equipment?*

c. *Does the recipient have or require that its subrecipients, contractors, or lessees have a written maintenance plan that meets the FTA requirements for FTA-funded facilities?*

d. *How does the recipient ensure that subrecipients, contractors, and lessees maintain FTA-funded vehicles, facilities, and equipment?*

e. *For non-states, how does the recipient ensure that subrecipients, contractors, and lessees pursue warranty claims for FTA-funded vehicles?*

f. *How does the recipient ensure that subrecipients, contractors, and lessees pursue warranty claims for FTA-funded facilities?*

INSTRUCTIONS FOR REVIEWER

Review all of the following as applicable for the maintenance and warranty recovery requirements the recipient places on subrecipients, contractors, or lessees for FTA-funded assets:

- State/program management plans
- Technical assistance manuals
- Recipient oversight procedures
- Subrecipient application packages and agreements
- Third-party contracts/leases. Obtain and review the maintenance plans for the subrecipient/contractor/lessee to be visited to ensure they address FTA requirements.

For each subrecipient, contractor, and lessee selected for a site visit, review the recipient's oversight records and reports to determine how the recipient is actively monitoring the activities of subrecipients, contractors, and lessees. If the recipient's files cannot document maintenance oversight activities, during the site visit to the subrecipients, contractors, and lessee review maintenance plans and maintenance files.

POTENTIAL DEFICIENCY DETERMINATION
The state recipient is deficient if it:

- Has not established maintenance requirements for FTA-funded vehicles for subrecipients, contractors, or lessees;
- Does not have or has not ensured that subrecipients, contractors or lessees have written maintenance plans for FTA-funded facilities; or
- Does not ensure that subrecipients, contractors, or lessees maintain FTA-funded vehicles, facilities, or equipment.

The non-state recipient is deficient if it:

- Does not have or require a written maintenance plan for its subrecipients, contractors or lessees for FTA-funded vehicles, facilities and equipment;
- Does not ensure vehicles, facilities or equipment are maintained in good operating order;
- Does not ensure that subrecipients, contractors, or lessees establish and maintain a warranty program.

DEFICIENCY CODE M5-1: Inadequate oversight of subrecipient, contractor or lessee maintenance activities

SUGGESTED CORRECTIVE ACTION 1: Submit an updated state/program management plan(s) or subrecipient/contractor/lessee agreements with maintenance requirements for third parties, along with evidence of its overseeing the implementation.

SUGGESTED CORRECTIVE ACTION 2: Submit oversight procedures, along with evidence of its implementation such as, an amended subrecipient agreement, contract, or lease incorporating the requirement for a written maintenance plan that includes maintenance standards compatible with FTA requirements, performance measures for timely maintenance and/or procedures for pursuing warranty claims.

GOVERNING DIRECTIVE
2 CFR 200.313, Equipment

(b) *General* A state must use, manage and dispose of equipment acquired under a Federal award in accordance with state laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement

equipment) utilizing procedures that meet the following requirements...(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

2 CFR 200.318 General procurement standards (b) Oversight of contractors.

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

2 CFR 200.332 Requirement for pass-through entities

A pass-through entity must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

(1) Providing subrecipients with training and technical assistance on program-related matters;

(2) Performing site visits to review the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in § 200.425.

FTA Circular 5010.1F, Ch. IV (3)(q) Equipment and Supplies (Including Rolling Stock)

(1) Maintenance. Recipients must develop adequate maintenance procedures regarding all FTA-funded property in vehicle maintenance plans and facility/equipment maintenance plans. These plans must address how the recipients will maintain federally assisted property in good operating order and in compliance with any issued applicable Federal regulations and guidance, except to the extent that FTA determines otherwise in writing. These plans must describe a system of periodic inspections and preventive maintenance intervals. See FTA's TAM website for additional information on condition reporting.

(2) Records and Oversight. 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. Recipients must have appropriate procedures in place to ensure that management and oversight of federally assisted property is properly administered for assets controlled by subrecipients.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Reivew (including Financial Management Oversight Reviews (FMOs) and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of maintenance? Are any such reviews scheduled during this Federal fiscal year?
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings related to maintenance? Are any deficiencies or findings currently open?
- Are any issues related to maintenance indicated in the recipient Oversight Assessment Tool (OAT)? Does background research and/or site investigation support these concerns?
- For Section 5307-funded assets, does the maintenance plan(s) address goals and objectives?
- Are there patterns of service interruptions due to inadequate maintenance?
- Have there been safety incidents related to maintenance?
- Have there been early retirements and/or mid-life overhauls of FTA-funded assets due to maintenance?
- Does the recipient appear to have adequate resources (organizational structure, staffing levels, training, experience, etc.) assigned to maintenance of FTA-funded assets?
- Do employees assigned to assess subrecipient, contractor, or lessee maintenance performance have a maintenance background?
- Do preventive maintenance records appear to be accurate?
- Do facility and equipment maintenance plans address mission critical items and security equipment?

- Does the recipient have a maintenance management reporting system in place to track vehicle, equipment, and facility preventive maintenance? Does the system include evaluative performance criteria?

- What performance reports inform senior management about maintenance activities?

- How long are the records for FTA-funded facilities and equipment kept?

- Any potential issues or concerns about the recipient's maintenance program or its implementation not covered previously in this section?

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws

2. 2 CFRs 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 5010.1F, "Award Management Requirements"

USEFUL WEBLINKS

FTA State of Good Repair and Asset Management Website

9. PROCUREMENT

PURPOSE OF THIS REVIEW AREA

The recipient and subrecipient 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 200. With regard to the procurement standards in 2 CFR 200, state recipients can use the state's overall policies and procedures, except that the state must comply with 200.322 (domestic preferences), 200.323 (procurement of recovered materials), and 200.327 (contract provisions). States also must comply with any requirement applicable to FTA recipients by reason other than a 2 CFR 200 procurement standard; for example, 49 U.S.C. 5325(a) requires recipients to conduct all procurement transactions in a manner that provides full and open competition, regardless of 2 CFR 200's allowance for states to use state procedures.

Circular 4220.1G is guidance, and therefore non-binding. If there is a conflict between guidance contained in Circular 4220.1G and the Uniform Administrative Requirements, the Uniform Administrative Requirements supersede FTA C. 4220.1G.

QUESTIONS TO BE EXAMINED

1. Does the recipient have written procurement policies and procedures that include required state, local, and Federal provisions?

2. Does the recipient maintain written standards of conduct for its representatives engaged in the selection, award, and administration of FTA-funded contracts?

3. Question removed from the FY25 Contractor Manual.

4. Does the recipient make awards only to responsible contractors as described in its policies and procedures and in compliance with the requirements of 49 U.S.C. 5325(j) and 2 CFR 200.318(h)?

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 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 200?

7. Does the recipient ensure that it conducts all procurement transactions in a manner that provides full and open competition and does not unduly restrict competition in its procurement process and as described in its policies and procedures and in compliance with 49 U.S.C. 5325(a) and 2 CFR 200.319(a)?

8. Did the recipient appropriately use each method of procurement as described in its policies and procedures and in compliance with 2 CFR 200.320?

9. Does the recipient procure Architectural Engineering (A&E) Services in accordance with 49 U.S.C. 5325(b)?

10. Does the recipient develop independent cost estimates and conduct cost and/or price analysis as described in its policies and procedures for each procurement action including contract modifications above the Federal Simplified Acquisition Threshold?

11. Did the recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase limit and in construction contracts?

12. Did the recipient include required certifications in solicitations and receive signed certifications from bidders as part of their bid or proposal, as applicable?

13. If the recipient included liquidated damages in its procurements, did it do so appropriately?

14. Did the recipient approve, evaluate, and document change orders to procurements as described in its policies and procedures?

15. If the recipient included options in an FTA-funded procurement, did it base the number of options on its reasonably foreseeable need and evaluate the option price prior to awarding the contract?

16. If the recipient procured bus or rail rolling stock or replacement parts with FTA funds, did it adhere to the time limitations on placing orders against the contracts?

17. 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, price, and no cardinal changes?

18. Question removed from the FY22 Contractor Manual.

19. If the recipient procured buses with FTA funds, did it comply with requirements for bus testing reports?

20. If the recipient procured rolling stock with FTA funds, did it comply with the requirements of 49 CFR 663, including pre-award and post-delivery Buy America audit requirements, resident inspector requirements, and purchaser's certifications?

21. Does the recipient perform oversight of its subrecipients' FTA-funded procurement activities as described in its policies and procedures?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Current procurement policies and procedures
- State statute regarding A&E (qualifications-based) procurements (States only)
- Procurement standards of conduct
- List of FTA-funded procurements awarded since the last review. Identify the following items for each award:
  - Date
  - Dollar value
  - Type (professional service, architectural & engineering, operations management services, rolling stock, construction, materials and supplies)
  - 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)
  - New Start or Small Start-related procurement
  - Awarded by contractors or subrecipients
  - Change order(s), if applicable
  - Liquidated damages claimed or recovered
  - Status of contract (open (percent complete) or completed)
- List of change orders executed over $250,000 since last review
- List of capital leases awarded since the last review

- List of claims

Recipient Follow-Up

- Procurement files selected for review
- FAIN for procurement files selected

P1. Does the recipient have written procurement policies and procedures that include required state, local, and Federal provisions?

BASIC REQUIREMENT
All recipients must have written procurement policies and procedures.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
All recipients must have written procurement policies and procedures.

The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including for acquisition of property or services. These documented procurement procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.

General procurement standards

- Contract oversight: Recipients and subrecipients 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 representatives engaged in the selection, award and administration of contracts. No employee, officer, agent or board member 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. An employee, officer, agent, and board member of the recipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, agents or board members of the non-Federal entity. If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

- 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 records: The recipient must maintain records sufficient to detail the history of the procurement. These records must include at a minimum: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- Time-and-Material type 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, unless there are specific circumstances in which noncompetitive procurement can be used. 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.

- Procedures for procurement transactions: The recipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
    - Are made in accordance with § 200.319(b);
    - 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 recipient or subrecipient 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) simplified acquisition procedures; (3) sealed bid; (4) competitive proposals; or (5) non-competitive.

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 recipient or subrecipient 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 a 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 200 Subpart E—Cost Principles. The recipient or subrecipient may reference its own cost principles that comply with the Federal cost principles.

- Cost plus percentage of cost: The "cost plus a percentage of cost" and "percentage of construction cost" methods of contracting must 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 any required contractual documents within the time specified.

- A performance bond on the part of the contractor for 100 percent of the contract price. A performance bond is a bond 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 or subrecipients 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.

***NOTE TO REVIEWER ON APPLICATION OF BABA*:**

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. 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.

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 does not change FTA's Buy America standards for steel, iron, or manufactured products including rolling stock (e.g., FTA *does not apply* the 55% cost-of-components standard to procurements).

When BABA Applies:

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. Additionally, On January 30, 2023, DOT announced a limited Waiver of Buy America Requirement for Construction Materials for Certain Contracts and Solicitations. Contracts and solicitations meeting the terms of the linked waiver are also exempt from the BABA construction materials requirement.

What BABA Standard Applies:

In the course of implementing BABA's new requirements, the U.S. Office of Management and Budget has published more than one set of interpretations for applying BABA.

On April 18, 2022, OMB issued memorandum M-22-11, "Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure," to guide federal agencies' initial implementation of BABA. OMB subsequently codified final guidance, with an effective date of October 23, 2023, at 2 CFR Part 184. Awards may be subject to either the Initial or Final BABA guidance based on the date of award execution:

- Federal awards obligated on or after October 23, 2023, will apply 2 CFR Part 184.
- Federal awards obligated on or after May 14, 2022 (the date BABA became effective by statute), and before October 23, 2023, will continue to apply OMB's Initial Implementation Guidance.

- If a project that previously received a Federal award obligated on or after May 14, 2022, and before October 23, 2023, receives an additional Federal award obligated before October 23, 2024, the additional Federal award also will apply OMB's Initial Implementation Guidance.
- Any Federal award obligated on or after October 23, 2024, will apply 2 CFR Part 184, regardless of whether 2 CFR Part 184 applied to previous awards for the project.

For procurements reviewed that contain deficiencies related to statutory or regulatory requirements that may deem the procurements ineligible for Federal funding, discuss the appropriate corrective action with the FTA regional office and regional counsel.

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.

INDICATORS OF COMPLIANCE

a. *Does the recipient have written procurement policies and procedures?*

b. *Does the recipient's written procurement policies and procedures include the three elements required by 2 CFR Part 200.319(d)?*

Required Written Procurement Policies and Procedures			
Policy/Procedure	**CFR Reference**	**Recipient Written Policy/Procedure and Page or Section Number**	**Comment**
Are made in accordance with § 200.319(b) *To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.*	*2 CFR Part 200.319(d)(1)*		

Required Written Procurement Policies and Procedures			
Policy/Procedure	**CFR Reference**	**Recipient Written Policy/Procedure and Page or Section Number**	**Comment**
Incorporate a clear and accurate description of the technical requirements for the property, equipment,, or service to be procured.	*2 CFR Part 200.319(d)(2)*	-	-
Identify any additional requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.	*2 CFR Part 200.319(d)(3)*	-	-

c. *Does the recipient have procurement procedures that include the elements in the chart below? If written, cite location; otherwise discuss and document the recipient's process for each.*

Requirements	Recipient Policy and Procedure (Page or Section Number)	Description of Process
Maintenance of contract oversight (Contract Administration System) *200.318(b)*	-	-
Maintenance of written standards of conduct *200.318(c)*	-	-
Avoidance of unnecessary or duplicative items *200.318(d)*	-	-
Contracting with responsible contractors *200.318(h)*	-	-
Maintenance of written procurement history *200.318(i)*	-	-
Use of time and material contracts *200.318(j)(1)*	-	-
Procedures for contract dispute resolution *200.318(k)*	-	-

Requirements	Recipient Policy and Procedure (Page or Section Number)	Description of Process
Compliance with full and open competition *200.319(a)*	-	-
Use and maintenance of prequalification lists, if permitted *200.319(e)*	-	-
Allowed methods of Procurement		
Informal Procurement Methods		
(1) micro-purchases; *(if this method is used, include in this table the threshold used) 200.320(a)(1)*	-	-
((2) Simplified acquisitions; *(if this method is used, include in this table the threshold used) 200.320(a)(2)*	-	-
Formal Procurement Methods		
(1) sealed bid; *200.320(b)(1)*	-	-
(2) competitive proposals; or *200.320(b)(2)*	-	-
(3) non-competitive proposals *200.320(c)*	-	-
(4) Authorization of rolling stock acquisition and related equipment FAST Act §3019		
Ensure consideration of small and minority businesses, women's business enterprises, veteran-owned and labor surplus area firms 200.*321*	-	-
Procurement of recovered materials 200.*323*	-	-
Contract Cost and Price		
Cost or price analysis *200.324(a)*	-	-
Use of independent cost estimates	-	-

Requirements	Recipient Policy and Procedure (Page or Section Number)	Description of Process
200.324(a)		
Use of estimated costs *200.324(b)*	-	-
Prohibition of cost plus percentage of cost contracts *200.324(c)*	-	-
Bonding requirements for construction or facility improvement contracts *200.326*	-	-
Inclusion of required Contract provisions *200.327*	-	-
Prohibition of exclusionary or discriminatory specifications *49 USC 5325(h)*	--	-
Compliance with Buy America and Build America, Buy America Act requirements	-	-

d. Does the recipient have procurement policies and procedures that are contrary to 2 CFR 200.318 (General Procurement Standards) through 200.327 (Contract Provisions)?

e. If, in the recipient's policies and procedures, micro- and simplified acquisition *thresholds are more restrictive because of a state or local law/regulation, does a review of these types of procurements demonstrate that the recipient is following its policies and procedures?*

INSTRUCTIONS FOR REVIEWER

Request and review the recipient's procurement policies and procedures. Through review of the policies and procedures, interviews with recipient personnel, and examination of procurements selected, determine if:

- The recipient has written policies and procedures that include the three written elements required by 2 CFR Part 200.319(d).
- The recipient has policies and procedures in place and/or it can demonstrate how it ensures compliance with the standards and requirements identified in 2 CFR Parts 200.318 through 200.327. If written, cite the location of the policy in the chart above; otherwise discuss and document the recipient's process for each.

- Based on a review of elements in the chart above, the recipient has policies and/or procedures that are contrary to the requirements identified in 2 CFR Parts 200.318 through 200.327. For example, if the recipient is using micro-purchase procedures for procurements over $10,000 without having obtained a higher threshold level per 2 CFR Part 200.320(a)(1)(iv) or (v), this is contrary to 2 CFR 200.320(a). Recipients can be more, but not less, restrictive than the Federal requirements.

  Note: In accordance with 2 CFR 200.320(a)(1)(iv) or (v)

  (iv) ***Non-Federal entity increase to the micro-purchase threshold up to $50,000.*** The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient 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.

  (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 recipient or subrecipient entity must submit a request that includes the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

  Note that the determination for this element is made after a review of procurement files. If the recipient has a state or local law or regulation regarding procurement methods to be followed in its procurement policies and procedures for certain monetary thresholds that are more restrictive than Federal requirements, those procedures are to be followed.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have written procurement policies and procedures.

DEFICIENCY CODE P1-1: Procurement policies and procedures not evident

SUGGESTED CORRECTIVE ACTION: Develop and submit procurement policies that include all required provisions.

The recipient is deficient if it does not have written procedures for procurement transactions to ensure that all procurements 1) are made in accordance with § 200.319(b), 2) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured, and 3) identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

DEFICIENCY CODE P1-2: Procurement transaction procedures missing or incomplete

SUGGESTED CORRECTIVE ACTION: Develop and submit procurement transaction procedures that include all required provisions.

The recipient is deficient if procurement policies and procedures contain provisions that are contrary to the provisions outlined above.

DEFICIENCY CODE P1-3: Procurement policies and procedures contrary to [reviewer to specify section(s)]

SUGGESTED CORRECTIVE ACTION: Develop and submit revised procurement policies that are not contrary to 2 CFR 200.318 through 200.327.

The recipient is deficient if it does not follow its procurement policies and procedures regarding procurement methods for distinct monetary purchase thresholds if their policies are more stringent than Federal thresholds.

DEFICIENCY CODE P1-4: Procurement policies and procedures not followed

SUGGESTED CORRECTIVE ACTION: Provide evidence that it is implementing its procurement policies and procedures.

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE

2 CFR 184.2 Applicability, effective date, and severability.

(a) **Non-applicability of this part to existing Buy America Preferences.** This part does not apply to a Buy America Preference meeting or exceeding the requirements of section 70914 of the Build America, Buy America Act applied by a Federal agency to Federal awards for infrastructure projects before November 15, 2021.

(b) **Effective date of this part.** The effective date of this part is October 23, 2023. Except as provided in paragraph (c) of this section, this part applies to Federal awards obligated on or after its effective date. Awards obligated on or after May 14, 2022, the effective date of the Build America, Buy America Act, and before the effective date of this part, are instead subject to OMB Memorandum M–22–11.

(c) **Modified effective date of this part for certain infrastructure projects.** If an infrastructure project that has previously received a Federal award obligated on or after May 14, 2022, but before the effective date of this part receives an additional Federal award obligated within one year of the effective date of this part, the additional Federal award is subject to OMB Memorandum M–22–11. However, if significant design or planning changes are made to the infrastructure project, the Federal awarding agency may apply this part to the additional Federal award. Federal awards for an infrastructure project obligated after one year from the effective date of this part are subject to this part, regardless of whether this part applied to previous awards for the project.

(d) **Severability**. The provisions of this part are separate and severable from one another. OMB intends that if a provision of this part is held to be invalid or unenforceable as applied to a particular person or circumstance, the provision should be construed so as to continue to give the maximum effect permitted by law as applied to other persons not similarly situated or to dissimilar circumstances. If any provision is determined to be wholly invalid and unenforceable, it should be severed from the remaining provisions of this part, which should remain in effect.

2 CFR 200.317 Procurements by States and Indian Tribes

When conducting procurement transactions under a Federal award, a State or Indian Tribe must follow the same policies and procedures it uses for procurements with non-Federal funds. If such policies and procedures do not exist, States and Indian Tribes must follow the procurement standards in §§ 200.318 through 200.327. In addition to its own policies and procedures, a State or Indian Tribe must also comply with the following procurement standards: §§ 200.321, 200.322, 200.323, and 200.327. All other

recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow the procurement standards in §§ 200.318 through 200.327.

2 CFR 200.318 General procurement standards

(a) *Documented procurement procedures.* The recipient or subrecipient must maintain and use documented procedures for procurement transactions under a Federal award or subaward, including acquisition of property or services. These documented procedures must be consistent with State, local, and tribal laws and regulations and the standards identified in §§ 200.317 through 200.327.

(b) *Oversight of contractors.* Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

(c) *Conflicts of Interest.*(1) The recipient or subrecipient 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, agent or board member with real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by a Federal award. A conflict of includes when the employee, officer, or agent, or board member, any member of their immediate family, their partner, or an organization that 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 an entity considered for a contract. An employee, officer, agents or board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, recipient or subrecipient may set standards for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must also provide for disciplinary actions to be applied for violations by its employees, officers, agents or board members.

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

(d) *Avoidance of unnecessary or duplicative items.* The recipient's or subrecipient'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 should be made leasing and purchasing property or equipment to determine the most economical approach.

(e) Procurement arrangements using strategic sourcing. When appropriate for the procurement or use of shared goods and services, recipients and subrecipients are encouraged to enter into state and local intergovernmental agreements or inter-entity agreements for procurement transactions. Documented procurement actions of this type (using strategic sourcing, shared services, and other similar procurement arrangements) will meet the competition requirements of this part.

(f) *Use of excess and surplus Federal Property.* The recipient or subrecipient is encouraged to use excess and surplus Federal property instead of purchasing new equipment and property when it is feasible and reduces project costs.

(g) *Use of value engineering clauses.* When practical, the recipient or subrecipient is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable

opportunities for cost reductions. Value engineering means analyzing each contract item or task to ensure its essential function is provided at the overall lower cost.

(h) *Responsible Contractors.* The recipient or subrecipient must award contracts only to responsible contractors that possess the ability to perform successfully under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

(i) *Procurement records.* The recipient or subrecipient must maintain records sufficient to detail the history of each procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

(j) *Time-and-materials type contracts.*

(1) The recipient or subrecipient 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 recipient or subrecipient 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) Because 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 recipient or subrecipient 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) *Settlement of contractual and administrative issues.* The recipient or subrecipient is responsible for the settlement of all contractual and administrative issues arising out of procurement transactions. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the recipient or subrecipient of any contractual responsibilities under its contracts. The Federal agency will not substitute its judgment for that of the recipient or subrecipient unless the matter is primarily a Federal concern. The recipient or subrecipient must report violations of law the Federal, State or local authority with proper jurisdiction.

2 CFR 200.319 Competition

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition is consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing on those procurements.

(c) Examples of situations that may restrict competition, include but are not limited to:

(1) Placing unreasonable requirements on firms 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.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment, or service being procured. The description may include a statement of the qualitative nature of the property, equipment or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a “brand name or equivalent” description of features may be used to provide the procurement requirements. The specific features of the named brand must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient or subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

2 CFR 200.320 Procurement methods.

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or

proposals); and noncompetitive procurement methods. For any of these methods, the recipient or subrecipient must maintain and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319.

(a) Informal procurement methods for small purchases. These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction the Federal award does not exceed the simplified acquisition threshold (SAT), as defined in § 200.1. Recipients or subrecipients may also establish a lower threshold. Informal procurement methods include:

(1) Micro-purchases -

(i) Distribution. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in § 200.1. To the extent practicable, the recipient or subrecipient 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 recipient or subrecipient considers the price reasonable based on research, experience, purchase history or other information; and maintains documents to support its conclusion. Purchase cards may be used as a payment method for micro-purchases.

(iii) Micro-purchase thresholds. The recipient or subrecipient 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 recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient 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) *Recipient or subrecipient increase to the micro-purchase threshold up to $50,000.* The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient 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 or pass through entity 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) *Recipient or subrecipient 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 recipient or subrecipient must submit a request that includes the requirements in paragraph (a)(1)(iv) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) **Simplified acquisitions**-

(i) **Simplified acquisition procedures.** The aggregate dollar amount of the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgement in determining what number is adequate.

(ii) *Simplified acquisition thresholds.* The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which may be lower than, but must not exceed the threshold established in the FAR.

(b) ***Formal procurement methods.*** Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold of the recipient or subrecipient. Formal procurement methods are competitive and require notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii) of this section:

(1) Sealed bids. This is a procurement method in which bids are publicly solicited through an invitation and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids procurement method is preferred for procuring construction services.

(i) 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 have been identified as 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. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgement in determining what number is adequate. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services with specific information, including any required specifications, for the bidder to properly respond.

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local governments, the bids must be opened publicly.

(D) A firm fixed price contract is awarded in writing to the lowest responsive bid and responsible bidder. When specified in the invitation for bids, 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 recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient or subrecipient must document and provide a justification for all bids it rejects.

(2) Proposals. This is a procurement method used when conditions are not appropriate for the using sealed bids. This procurement method may result in either a fixed price or cost-reimbursement type contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the maximum extent practicable, any proposal submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have written procedures for conducting technical evaluations and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(iv) The recipient or subrecipient may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby the 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. This method may not be used to purchase other types of services though A/E firms that are a potential source to perform the proposed effort.

(c) Noncompetitive procurement. There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive may only be used if one or more of the following circumstances apply:

(1) The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal awarding agency or pass-through entity provides a written approval; or

(5) After solicitating several sources, competition is determined inadequate.

2 CFR 200.321 Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms.

(a) When possible, the recipient and subrecipient should ensure that small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms (See U.S. Department of Labor’s list) are considered as set forth below.

(b) Such consideration means:

(1) These business types are included on solicitation lists;

(2) These business types are solicited whenever they are deemed eligible as potential sources;

(3) Dividing procurement transactions into separate procurements to permit maximum participation by these business types;

(4) Establishing delivery schedules (for example, the percentage of an order to be delivered by a given date of each month) that encourage participation by these types of businesses;

(5) Using organizations such as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring a contractor under a Federal award to apply this section to subcontracts.

2 CFR Part 200.323 Procurement of recovered materials

(b) A recipient or subrecipient 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 of 1976 as amended, 42 U.S.C. 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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.

(b) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, purchase, acquire, or use products and services that can be reused, refurbished, or recycled; contain recycled content, are biobased, or are energy and water efficient; and are sustainable. This may include purchasing compostable items and other products and services that reduce the use of single-use plastic products. See Executive Order 14057, section 101, Policy.

2 CFR 200.324 Contract cost and price

(a) The recipient or subrecipient must perform a cost or price analysis for every procurement transaction, including contract modifications, in excess of the Simplified Acquisition Threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.

(b) 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 or subrecipient under subpart E of this part. The recipient or subrecipient may reference its own cost principles that comply with subpart E of this part.

(c) The recipient or subrecipient must not use the “cost plus a percentage of cost” and “percentage of construction cost” methods for contracting.

2 CFR 200.325 Federal agency or pass-through entity review

(a) The Federal agency or pass-through entity may review the technical specifications of proposed procurements under the Federal award if the Federal agency or pass-through entity believes the review is needed to ensure that the item or service specified is the one being proposed for acquisition. The recipient or subrecipient must submit the technical specifications of proposed procurement when

requested by the Federal agency or pass-through entity. This review should take place prior to the time the specification is incorporated into a solicitation document. When the recipient or subrecipient desires to accomplish the review after a solicitation has been developed, the Federal agency or pass-through entity may still review the specifications. In those cases, the review should be limited to the technical aspects of the proposed purchase.

(b) When requested, the recipient or subrecipient must provide procurement documents (such as requests for proposals or invitations for bids, or independent cost estimates) to the Federal agency or pass-through entity for pre-procurement review, when:

(1) The recipient's or subrecipient's procurement procedures or operation fails to comply with the procurement standards in this part;

(2) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the simplified acquisition threshold and specifies a "brand name" product;

(4) The procurement is expected to exceed the simplified acquisition threshold, and a sealed bid procurement that is to be awarded to an entity other than the apparent low bidder under; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(c) The recipient or subrecipient is exempt from the pre-procurement review in paragraph (b) of this section if the Federal agency or pass-through entity determines that its procurement systems comply with the standards of this part.

(1) The recipient or subrecipient may request that the Federal agency or pass-through entity review its procurement system to determine whether its these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded regularly.

(2) The recipient or subrecipient may self-certify its procurement system. However, self-certification does not limit the Federal agency's or pass-through entity's right to survey the system. Under a self-certification procedure, the Federal agency or pass-through entity may rely on written assurances from the recipient or subrecipient that it is complying with the standards of this part. The recipient or subrecipient must cite specific policies, procedures, regulations, or standards as complying with these requirements and have its system available for review.

2 CFR 200.326 Bonding requirements

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisitional threshold. Before doing so, the Federal agency or pass-through entity must determine 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 any required contractual documents 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 a bond executed in connection with a contract to secure fulfillment of all the contractor's requirements under a contract.

(c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.

2 CFR 200.327 Contract provisions

The recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II of this part.

P2. Does the recipient maintain written standards of conduct for its representatives engaged in the selection, award, and administration of FTA-funded contracts?

BASIC REQUIREMENT
The recipient must have and implement written standards of conduct for those involved in its procurement and contract administration actions.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing has a financial or other interest or a tangible personal benefit from a firm considered for a contract.

- Include a restriction that the recipient's officers, employees, agents or board members 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, agents or board members.

If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the recipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

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 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. If the recipient has state and/or local laws with requirements that are more restrictive than the Federal requirements below, then those procedures are to be followed.

Review standards of conduct to ensure that, at a minimum, they:

- Preclude any employee, officer, agent or board member from participating in the selection, award, or administration of a contract supported with FTA assistance if he or she has any real or apparent conflict of interest.
- Include a restriction that the recipient's officers, employees, agents or board members 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, agents or board members.
- If the recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, verify the written standards of conduct cover organizational conflicts of interest.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have written standards of conduct.

DEFICIENCY CODE P2-1: No written standards of conduct

SUGGESTED CORRECTIVE ACTION: Develop and submit written standards of conduct that include all required provisions.

The recipient is deficient if its written standards of conduct do not contain all required elements.

DEFICIENCY CODE P2-2: Incomplete standards of conduct

SUGGESTED CORRECTIVE ACTION: Develop and submit written standards of conduct that include all missing provisions.

GOVERNING DIRECTIVE

2 CFR 200.318 (c)(1) - (2) Conflicts of interest

(1) The recipient and subrecipient 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, agent or board member with a real or apparent conflict of interest may participate in the selection, award, or administration of a contract supported by the Federal award. A conflict of interest includes when the employee, officer, agent or board member, any member of their immediate family, their 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 an entity considered for a contract. An employee, officer, agent and board member of the recipient or subrecipient may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors. However, the recipient or subrecipient may set standards for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value. The recipient's or subrecipient's standards of conduct must provide for disciplinary actions to be applied for violations by its employees, officers, agents or board members.

(2) If the recipient or subrecipient has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the recipient or subrecipient must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest mean that because of relationships with a parent company, affiliate, or subsidiary organization, the recipient or subrecipient is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.

FTA Master Agreement (34), Section 4

(a) 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:

(i) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement;

(ii) The immediate family members or partners of those listed above in section 4(a)(1)(i) of this Master Agreement; and

(iii) 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)(i) and (ii) of this Master Agreement;

(2) Prohibit those individuals listed above in section 4(a)(1) from:

(i) 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

(ii) 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

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P3. Question removed from the FY25 Contractor Manual.

P4. Does the recipient make awards only to responsible contractors as described in its policies and procedures and in compliance with the requirements of 49 U.S.C. 5325(j) and 2 CFR 200.318(h)?

BASIC REQUIREMENT
The recipient must only contract with responsible firms.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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. The form and formality of the recipient's responsibility determination will be appropriate to the size, complexity, and risk of each particular procurement. It is a recommended practice to make a written responsibility determination for procurements above the simplified acquisition threshold. Responsibility is determined by the recipient after receiving bids or proposals and before making contract award.

Recipients also are required to ensure before entering into a covered contract that the potential contractor and its principals are not suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. This applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation. For each third party contract expected to equal or exceed $25,000, 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 180.995 defines a principal, in part, as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction; or a consultant or other person, whether or not employed by the contractor or paid with Federal funds, who is in a position to handle federal funds, influence or control the use of those funds, or who occupies a

technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

In the event that a recipient becomes aware 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 becomes 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 without FTA's approval.

INDICATORS OF COMPLIANCE

a. *Do procurement files reflect that the recipient made 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. *How does the recipient ensure that prime contractors flow the suspension/debarment requirement down to their lower tier subcontractors?*

d. *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 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, in accordance with records sampling procedures, to determine if the recipient makes responsibility determinations prior to awarding contracts.

Examine responsibility determinations to verify that the recipient made responsibility determinations 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 procurements of $25,000 or more for the suspension and debarment requirements. 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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not make responsibility determinations that include the required elements prior to award.

DEFICIENCY CODE P4-1: Responsibility determination deficiencies

SUGGESTED CORRECTIVE ACTION: For any contracts where the recipient was found to have failed to verify that the contractor was responsible, verify the responsibility of contractors. Submit documentation of an implemented process to make adequate responsibility determinations prior to award of a contract. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if it has not verified that excluded parties are not participating prior to applicable awards or actions or does not require prime contractors to flow down exclusion requirements to lower tiers.

DEFICIENCY CODE P4-2: No verification that excluded parties are not participating/ no requirement for prime contractor to flow down exclusion requirements to lower tiers

SUGGESTED CORRECTIVE ACTION 1: For any contracts where the recipient was found to have failed to verify that the contractor was in compliance with suspension/debarment requirements, either amend the contract with the appropriate clause, obtain the applicable certification from the third-party contractor(s), or verify that the contractor is not suspended or debarred based on a review of SAM.gov. Submit procedures for making excluded party determinations before entering into applicable transactions. For the next procurement, submit documentation that the required process was implemented.

SUGGESTED CORRECTIVE ACTION 2: In cases where the recipient has not required its prime contractor to flow down exclusion requirements, submit procedures for so requiring. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if it extended (other than a no-cost time extension) or renewed a contract with a contractor subsequent to it becoming suspended or debarred, unless approved by FTA.

DEFICIENCY CODE P4-3: Excluded parties participating in covered transactions

SUGGESTED CORRECTIVE ACTION: Confer with the FTA regional office for any contract that was extended or renewed with a suspended or debarred contractor. Submit procedures for making excluded party determinations before entering into applicable transactions.

GOVERNING DIRECTIVE

49 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, 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.gov 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) As a participant, you may continue covered transactions with an excluded person if the transactions were in existence when the Federal agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should decide 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.

2 CFR 1200.220 What contracts and subcontracts, in addition to those listed in 2 CFR 180.220, are covered transactions?

In addition to the contracts covered under 2 CFR 180.220(b) of the OMB guidance, this part applies to any contract, regardless of tier, that is awarded by a contractor, subcontractor, supplier, consultant, or its agent or representative in any transaction, if the contract is to be funded or provided by the Department of Transportation under a covered nonprocurement transaction and the amount of the contract is expected to equal or exceed $25,000. This extends the coverage of the Department of Transportation nonprocurement suspension and debarment requirements to all lower tiers of subcontracts under covered nonprocurement transactions, as permitted under the OMB guidance at 2 CFR 180.220(c) (see optional lower-tier coverage in the figure in the appendix to 2 CFR part 180).

2 CFR 200.318(h) General procurement standards

(h) The recipient and subrecipient must award contracts only to responsible contractors that possess the ability to perform under the terms and conditions of a proposed contract. The recipient or subrecipient must consider contractor integrity, public policy compliance, proper classification of employees (see the

Fair Labor Standards Act, 29 U.S.C 201m Chapter 8), past performance record, and financial and technical resources when conducting a procurement transaction. See also § 200.214.

2 CFR 200.214 Suspension and debarment

Recipients and subrecipients are subject to the nonprocurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, as well as 2 CFR part 180. The regulations in 2 CFR part 180 restrict making Federal awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from receiving or participating in Federal awards.

P5. 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 200?

BASIC REQUIREMENT
The recipient must maintain a written history of each procurement.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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.

INDICATOR OF COMPLIANCE

a. *Do procurement files reviewed include required historical information?*

INSTRUCTIONS FOR REVIEWER
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 DEFICIENCY DETERMINATION
The recipient is deficient if, for any procurement examined, procurement records do not contain the minimum documentation required.

DEFICIENCY CODE P5-1: Incomplete written documentation of procurement history

SUGGESTED CORRECTIVE ACTION: Submit evidence that the deficiencies identified in its record-keeping process have been corrected and that procurement staff have been trained on documenting procurement history.

GOVERNING DIRECTIVE
2 CFR 200.318(i)

The recipient or subrecipient must maintain records sufficient to detail the history of the procurement transaction. These records must include the rationale for the procurement method, contract type selection, contractor selection or rejection, and the basis for the contract price.

P6. 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 200?

BASIC REQUIREMENT
Recipients must have oversight mechanisms to ensure that contractors perform in accordance with the terms of their contracts.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 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 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 REVIEWER

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.

Onsite, 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 examined 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 DEFICIENCY DETERMINATIONS

The recipient is deficient if the recipient does not have documentation evidencing contract oversight pursuant to its internal policies and/or procedures. For example, the recipient is deficient 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.

> DEFICIENCY CODE P6-1: Contract administration system lacking
>
> SUGGESTED CORRECTIVE ACTION: Develop and submit revised procurement procedures that include oversight procedures and remedies for non-performance, along with evidence of implementation.

GOVERNING DIRECTIVE

2 CFR 200.318(b) Oversight of contractors

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

P7. Does the recipient ensure that it conducts all procurement transactions in a manner that provides full and open competition and does not unduly restrict competition in its procurement process and as described in its policies and procedures and in compliance with 49 USC 5325(a) and 2 CFR 200.319(a)?

BASIC REQUIREMENT
Procurement transactions must be non-restrictive.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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.

Exceptions expressly authorized 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.

- The Department of Transportation Appropriations Act, 2019, Pub. L. 116-6, §191, allows geographic, economic, and other hiring preferences if the recipient makes certain certifications regarding available unemployed workforce, displacement of workers, and added costs of using preferences.

Section 25019 of the Infrastructure Investment and Jobs Act, Pub. L. 117-58, authorizes all recipients to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project, including prehire agreements, subject to any applicable State and local laws, policies, and procedures.

Prequalification Lists:

Except for purchases below the simplified acquisition threshold, proposals 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 federal 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 qualified sources to ensure maximum open and free 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.

INDICATORS OF COMPLIANCE

a. *Does the recipient restrict competition by applying unreasonable requirements, requiring unnecessary experience or excessive bonding, by specifying brand names only, or by not reviewing planned procurements for organization conflicts of interest?*

b. *Does the recipient include prohibited geographic preferences in procurements?*

c. *If the recipient uses prequalification lists for any of its procurements, does it do so properly?*

INSTRUCTIONS FOR REVIEWER

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.

- 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. Through review of procurement procedures and interviews with the recipient, determine if there is a process to mitigate organizational conflicts of interest. Review selected procurement files to determine if there were any potential organizational conflicts of interest and how the recipient mitigated the conflict.

- Review procurement files, particularly legal notices and solicitation documents, to determine whether responses to procurements are limited to pre-qualified firms. If a recipient requires prospective bidders to prequalify, determine if it has documented that it has ensured that all prequalification lists include enough sources to ensure full and open competition. Determine if the recipient permitted potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date).

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has conducted a procurement without providing for 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, or unmitigated organizational conflicts of interest.

DEFICIENCY CODE P7-1: Lacking full and open competition for one or more methods of procurement

SUGGESTED CORRECTIVE ACTION: Submit procurement procedures that ensure full and open competition in all procurement transactions. Provide training to its procurement staff on its procedures for ensuring full and open competition in all procurements.

The recipient is deficient if it has improperly included geographic preferences in its procurements.

DEFICIENCY CODE P7-2: Improper use of geographic preferences

SUGGESTED CORRECTIVE ACTION: Cease using inappropriate geographic preferences in FTA-funded procurements and submit documentation of a revised procurement process that prohibits the improper use of geographic preferences. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient 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.

DEFICIENCY CODE P7-3: Inadequate prequalification criteria

SUGGESTED CORRECTIVE ACTION: Provide documentation demonstrating that deficiencies identified in its prequalification process have been corrected. For the next procurement, submit documentation that the required process was implemented.

GOVERNING DIRECTIVE

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.

Infrastructure Investment and Jobs Act, Pub. L. 117-58, § 25019. Local Hiring Preferences for Construction Jobs.

"(a) AUTHORIZATION.—(1) IN GENERAL.—A recipient or subrecipient of a grant provided by the Secretary under title 23 or 49, United States Code, may implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant, including prehire agreements, subject to any applicable State and local laws, policies, and procedures.

(2) TREATMENT.—The use of a local or other geographical or economic hiring preference pursuant to paragraph (1) in any bid for a contract for the construction of a project funded by a grant described in paragraph (1) shall not be considered to unduly limit competition."

2 CFR 200.319 Competition

(a) All procurement transactions under the Federal award must be conducted in a manner that provides full and open competition and its consistent with the standards of this section and § 200.320.

(b) To ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids must be excluded from competing for such procurements.

(c) Some examples of situations that may restrict competition include but are not limited to:

(1) Placing unreasonable requirements on firms 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.

(d) The recipient or subrecipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Are made in accordance with § 200.319(b);

(2) Incorporate a clear and accurate description of the technical requirements for the property, equipment or service being procured. The description may include a statement of the qualitative nature of the property, equipment or service to be procured. When necessary, the description must provide minimum essential characteristics and standards to which the property, equipment or service must conform. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to clearly and accurately describe the technical requirements, a "brand name or equivalent" description of features may be used to provide procurement requirements.. The specific features of the named brand which must be met by offers must be clearly stated; and

(3) Identify any additional requirements which the offerors must fulfill and all other factors that will be used in evaluating bids or proposals.

(e) The recipient or subrecipient must ensure that all prequalified lists of persons, firms, or products used in procurement transactions are current and include enough qualified sources to ensure maximum open and free competition. When establishing or amending prequalified lists, the recipient or subrecipient must consider objective factors that evaluate price and cost to maximize competition. The recipient and subrecipient must not preclude potential bidders from qualifying during the solicitation period.

(f) To the extent consistent with established practices and legal requirements applicable to the recipient or subrecipient, this subpart does not prohibit recipients or subrecipients from developing written procedures for procurement transactions that incorporate a scoring mechanism that rewards bidders that commit to specific numbers and types of U.S. jobs, minimum compensation, benefits, on-the-job-training for employees making work products or providing services on a contract, and other worker protections. This subpart also does not prohibit recipients and subrecipients from making inquiries of bidders about these subjects and assessing the responses. Any scoring mechanism must be consistent with the U.S. Constitution, applicable Federal statutes and regulations, and the terms and conditions of the Federal award.

(g) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

P8. Did the recipient appropriately use each method of procurement as described in its policies and procedures and in compliance with 2 CFR 200.320?

BASIC REQUIREMENT
The recipient or subrecipient must appropriately use one of the following methods of procurement: micro-purchase, simplified acquisition, sealed bid, competitive proposals or non-competitive proposals**.**

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 must be distributed equitably among qualified suppliers to the extent practicable, and must not be split to avoid the requirements for competition above the micro-purchase threshold.

Simplified acquisition 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, but must be evidenced in the recipient's records.

For procurements exceeding the Federal simplified acquisition threshold ($250,000 prior to October 1, 2025 and $350,000 on October 1, 2025 or later), sealed bids or competitive proposals are generally required.

- Sealed Bids/IFB – Bids are publicly solicited and the award is made to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

- 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. Requests for proposals must be publicized and identify all evaluation factors and their relative importance.

Non-competitive procurements: 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:

- Micropurchase: The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see above).

- Sole source. The item is available only from a single source. This may occur, for example, when only one offeror owns certain patent or restricted data rights necessary to the recipient; or the award is a follow-on contract for the continued development or production of a major system or highly specialized equipment, including major components thereof, when it is likely that award to any other source would result in substantial duplication of cost to the recipient that is not expected to be recovered through competition, or unacceptable delays in fulfilling the agency's requirements.

- Exigent circumstances. The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation. Generally, this exception to competition will allow a recipient to procure only the goods or services needed to deal with the exigency or emergency. (For example, in the case of a leaking roof, a contract for temporary repairs may be sufficient to "get past" the exigency, as compared to a procurement for an entire roof replacement.)

- Federal authorization. The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the recipient.

- Inadequate competition. After solicitation of a number of sources, competition is determined inadequate.

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 provide for competition 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 only a single bid was received. Upon receiving a single bid or proposal in response to a competitive solicitation, the recipient should determine if its solicitation was unduly restrictive. This could include actions such as a review of the specifications for undue restrictiveness, a survey of potential sources that chose not to submit a bid or proposal, or other actions.

Time-and-materials contracts are a restricted type. They are contracts in which the contractor charges a single rate that includes overhead and profit for labor, and materials are billed at cost. Generally, the total value of a time and materials type contract is an indeterminate amount. As such, recipients are not

permitted to use FTA funds for time-and-materials type contracts unless it determines that no other type of contract is suitable for the procurement. If time-and-materials type contracts are used, recipients must specify a ceiling price that the contractor shall not exceed, except at its own risk.

INDICATORS OF COMPLIANCE

a. *If the recipient used micro-purchase procedures, was it done in accordance with requirements?*

b. *If the recipient used* simplified acquisition *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?*

g. *If the recipient awarded any time-and-materials type contracts during the review period, did it determine that it was the only method suitable and was a ceiling price set?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's policies and procedures for dollar thresholds and procedures for micro-purchase, simplified acquisition, 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 $10,000 or less for contracts awarded prior to October 1, 2025 or $15,000 or less for contracts awarded after October 1, 2025 (or such other threshold permitted up to the self-certified limit of $50,000 for the recipient as indicated under 2 CFR 200.320(a)(1)(iv) and (v)),

- the procurements were distributed equitably if there was more than one qualified supplier,

- the recipient documented its determination that the price was reasonable with a description of how that determination was made, and

- there is 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 REVIEWER: 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.

Simplified acquisition**:** Review selected procurements to determine if:

- this method was only used for procurements of $250,000 or less for procurements awarded prior to October 1, 2025 or $350,000 or less for procurements awarded after October 1, 2025

- 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 simplified acquisition threshold (such as repeated purchases of the same item(s)).

NOTE TO REVIEWER: State or local law or recipient policies/procedures may set a simplified acquisition threshold lower than the Federal threshold. In such cases, recipients must follow state or local law. However, if the state or local simplified acquisition 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,

- if the recipient is a local or tribal government, the invitation for bids was publicly advertised,

- the invitation for bids defined the items or services in order for the bidder to properly respond,

- bids were opened at the time and place prescribed in the invitation for bids, and, if the recipient is a local or tribal government, the bids were opened publicly,

- 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, the recipient must use qualifications-based procurement methods under 49 USC 5325(b). These procurements are reviewed in the following question.

Non-competitive procurement: Review selected procurements to determine if one or more of the following conditions was met:

- 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);
- The item is available only from a single source;
- The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
- 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
- After solicitation of a number of sources, competition is determined inadequate.

Determine if the recipient included a written noncompetitive procurement justification in its procurement file.

Single bidder: Ask the recipient to provide information on recipient's 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. Reviewing a solicitation for undue restrictiveness may include a survey of potential sources that chose not to submit a bid or proposal, and a review of whether the solicitation was adequately advertised and 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 contract and that a ceiling price was included.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it made any procurements reviewed using micro-purchase procedures but used this method for procurements over $10,000 for contracts awarded prior to October 1, 2025 or $15,000 or less for contracts awarded after October 1, 2025, or up to the $50,000 self-certified amount authorized pursuant to 2 CFR 200.320(a)(1)(iv) and (v), 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.

DEFICIENCY CODE P8-1: Improper micro-purchase procedures used

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has updated its procurement process to correctly implement micro-purchase procedures. For the next micro-purchase, submit documentation that the required process was implemented.

The recipient is deficient if it made any procurements reviewed using simplified acquisition procedures for contracts awarded $250,000 or less, for contracts awarded prior to October 1, 2025 or $350,000 for contracts awarded after October 1, 2025, 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 simplified acquisition threshold.

DEFICIENCY CODE P8-2: Improper simplified acquisition procedures used

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has updated its procurement process to correctly implement simplified acquisition procedures. For the next simplified acquisition, submit documentation that the required process was implemented.

The recipient is deficient if it made any procurements reviewed using sealed bid procedures but bids were not adequately solicited or publicly advertised, items or services were not defined, bids were not publicly opened, a fixed price contract was not awarded to the lowest responsive and responsible bidder, and/or sound reasons were not documented for rejected bids.

DEFICIENCY CODE P8-3: Improper sealed bid procedures used

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has updated its procurement process to correctly implement sealed bid procedures. For the next sealed bid, submit documentation that the required procedures were followed.

The recipient is deficient if it made any procurements using competitive proposal procedures but requests for proposals were not publicly advertised and solicited, evaluation criteria and their relative importance were not identified in the solicitation documents, there was no written method for conducting technical evaluations, and/or price and other factors were not considered in the award.

DEFICIENCY CODE P8-4: Improper competitive proposal procedures used

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has updated its procurement process to correctly implement competitive proposal procedures. For the next competitive proposal, submit documentation that the required procedures were followed.

The recipient is deficient if, for any procurements reviewed, it made noncompetitive procurements but does not have a justification in its procurement files, and/or if its justification does not include at least one of the conditions permitting the use of a noncompetitive procurement.

DEFICIENCY CODE P8-5*:* Lacking required justification(s) and documentation for noncompetitive award(s)

SUGGESTED CORRECTIVE ACTION: Submit evidence of an implemented policy to ensure that future noncompetitive procurements are properly conducted and documented. Where contracts are ongoing, confer with the FTA regional office to determine if the recipient should be directed not to exercise any options. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if it does not have the appropriate justification for any single-bid awards reviewed.

DEFICIENCY CODE P8-6*:* Lacking required justification(s) and documentation for single-bid award(s)

SUGGESTED CORRECTIVE ACTION: Submit evidence of an implemented policy to ensure that future single bid procurements are properly documented. For the next applicable procurement, submit documentation that the required process was implemented.

The recipient is deficient if FTA funds were used for any time-and-materials contract reviewed and the files do not support the recipient's decision or the contract does not specify a ceiling price.

DEFICIENCY CODE P8-7: Improper time-and-materials contract

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has updated its procurement process to include procedures for the proper use of FTA-assisted time-and-materials contracts. The recipient must obtain prior FTA regional office approval before entering into the next time-and-materials contract.

GOVERNING DIRECTIVE

2 CFR 200.318(j) Time-and-materials type contracts

(1) The recipient or subrecipient 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 recipient or subrecipient 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) Because 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 recipient or subrecipient 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 Procurement methods.

There are three types of procurement methods described in this section: informal procurement methods (for micro-purchases and simplified acquisitions); formal procurement methods (through sealed bids or proposals); and noncompetitive procurement methods. For any of these methods, the recipient or subrecipient must maintain and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319.

(a) ***Informal procurement methods for small purchases***. These procurement methods expedite the completion of transactions, minimize administrative burdens, and reduce costs. Informal procurement methods may be used when the value of the procurement transaction under the Federal award does not exceed the simplified acquisition threshold as defined in § 200.1. Recipients and subrecipients may also establish a lower threshold. Informal procurement methods include:

(1) Micro-purchases -

(i) Distribution. The aggregate amount of the procurement transaction does not exceed the micro-purchase threshold defined in § 200.1. To the extent practicable, the recipient or subrecipient 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 recipient or subrecipient considers the price to be reasonable based on research, experience, purchase history or other information and maintains documents to support its conclusion. Purchase cards may be used as method of payment for micro-purchases.

(iii) ***Micro-purchase thresholds***. The recipient or subrecipient 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 recipient or subrecipient must be authorized or not prohibited under State, local, or tribal laws or regulations. The recipient or subrecipient 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) ***Recipient or subrecipient increase to the micro-purchase threshold up to $50,000***. The recipient or subrecipient may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The recipient or subrecipient may self-certify a threshold up to $50,000 on an annual basis and must maintain documentation to be made available to the Federal agency or pass-through entity 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) ***Recipient or subrecipient 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 recipient or subrecipient must submit a request that includes the requirements in paragraph (a)(1)(iv) of this section. The increased threshold is valid until any factor that was relied on in the establishment and rationale of the threshold changes.

(2) Simplified acquisitions-

(i) ***Simplified acquisition procedures***. The aggregate dollar amount the procurement transaction is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If simplified acquisition procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgement in determining what number is adequate.

(ii) ***Simplified acquisition thresholds***. The recipient or subrecipient is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an

evaluation of risk and its documented procurement procedures which may be lower than, but must not exceed the threshold established in the FAR.

(c) ***Formal procurement methods***. Formal procurement methods are required when the value of the procurement transaction under a Federal award exceeds the simplified acquisition threshold or the recipient or subrecipient. Formal procurement methods are competitive and require public notice. The following formal methods of procurement are used for procurement transactions above the simplified acquisition threshold determined by the recipient or subrecipient in accordance with paragraph (a)(2)(ii) of this section or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) ***Sealed bids***. This is a procurement method in which bids are publicly solicited through an invitation to bid and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid conforms with all the material terms and conditions of the invitation and is the lowest in price. The sealed bids method is the preferred method for procuring construction services.

(i) 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 have been identified as 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 with sufficient response time prior to the date set for opening the bids. Unless specified by the Federal agency, the recipient or subrecipient may exercise judgment in determining what number is adequate. For local governments, the invitation for bids must be publicly advertised.

(B) The invitation for bids must define the items or services, including any required specifications, for the bidder to properly respond;

(C) All bids will be opened at the time and place prescribed in the invitation for bids. For local and tribal governments, the bids must be opened publicly;

(D) A firm-fixed-price contract is awarded in writing to the lowest responsive bid and responsible bidder. Where specified in invitation for bids, factors such as discounts, transportation cost, and life cycle costs must be used to determine the low bid when the recipient or subrecipient determines they are a valid factor based on prior experience.

(E) The recipient tor subrecipient must document and provide a justification for all bids it rejects.

(2) Proposals. This is a procurement method used when conditions are not appropriate for using sealed bids. This procurement method may result in either a fixed-price or cost-reimbursement contract. They are awarded in accordance with the following requirements:

(i) Requests for proposals require public notice, and all evaluation factors and their relative importance must be identified. Proposals must be solicited from multiple qualified entities. To the extent practical, any proposals submitted in response to the public notice must be considered.

(ii) The recipient or subrecipient must have a written procedures for conducting technical evaluations and making selections;

(iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the recipient or subrecipient considering price and other factors; and

(c) Noncompetitive procurement. There are specific circumstances in which the recipient or subrecipient may use a noncompetitive procurement method. The noncompetitive procurement method may only be used if one or more of the following circumstances apply:

(1) The amount of the procurement transaction does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);

(2) The procurement transaction can only be fulfilled by a single source;

(3) The public exigency or emergency for the requirement will not permit a delay resulting from providing public notice of a competitive solicitation;

(4) The recipient or subrecipient requests in writing to use a noncompetitive procurement method, and the Federal agency or pass-through entity provides written approval; or

(5) After soliciting several sources, competition is determined inadequate.

FTA 4220.1G Chapter VI 3.a.(3)(b)*Prohibited Divisions*

The recipient may not divide or reduce the size of its procurement merely to come within the micro-purchase limit.

FTA 4220.1G Chapter VI 3.b.(2)(c) 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 4220.1G Chapter VI 3. a. (3) (c) Documentation

The recipient must maintain documents to support its consideration that the micro-purchase price is reasonable based on research, experience, purchase history, or other information, as required under 2 CFR 200.320(a)(1)(ii). The recipient need not justify the procurement method used, selection of contract type, or reasons for contractor selection or rejection.

FTA 4220.1G Chapter VI 3. b. (2) (c) Documentation

The recipient must maintain records to support its decision to use the simplified acquisition procedure, the selection of contract type, the sources solicited, and the reasons for contractor selection or rejection.

P9. Does the recipient procure Architectural Engineering (A&E) Services in accordance with 49 U.S.C. 5325(b)?

BASIC REQUIREMENT

If the recipient procures services for program management, architectural, engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services (collectively referred to as “A&E services”) for an FTA-funded project, it must use a qualifications-based method. This method is not to be used for procuring services other than A&E.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
A&E services include program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services. FTA guidance suggests that 49 U.S.C. Section 5325(b) mandates the use of qualifications-based procurement procedures only for services that directly relate or lead to construction, alteration, or repair of real property. A recipient may not use qualifications-based procurement procedures to acquire non-A&E services, even if those non-A&E services will be or could be provided by an A&E firm. For design/build and similar procurements, FTA expects the recipient to use the procurement method appropriate for the services having the greater cost, even though the other necessary services would not typically be procured by that method.

When using FTA assistance to contract for A&E services, recipients, including states, are required to use competitive proposal procedures based on chapter 11 of title 40 (the Brooks Act) or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.

For qualifications-based procurements under the Brooks Act, price must not be considered during the selection phase of the most qualified offeror. Offerors’ qualifications are evaluated to determine the most qualified offeror. Price is then negotiated with the most qualified firm. If an agreement cannot be reached, then the recipient may negotiate with the next most qualified firm and so on until an agreement is reached on a price that the recipient determines is fair and reasonable.

Recipients may make multiple awards to cover needs for various disciplines under an “on-call” type of contract. Under this type of contract, the recipient selects the most qualified firm for each discipline (e.g., architect, seismic engineer). When the recipient has a project that needs an A&E firm, the recipient negotiates price with the most qualified firm only. On-call contracts may be suited for smaller jobs that would be too expensive (administratively) to compete individually. An on-call A&E contract means that the recipient has identified the most qualified firm and has entered into a contract with that firm for future A&E work, as needed.

A recipient is not precluded from making multiple awards for A&E services, however the selection of contractors and placement of orders must be consistent with Brooks Act qualification based selection procedures. Solicitations that will result in multiple awards should describe how orders will be assigned to the successful firms, and not leave the process undefined.

INDICATORS OF COMPLIANCE

a. *Does the recipient have and follow a State statute prescribing a formal procedure for the procurement of A&E services, adopted prior to August 10, 2005, that it is an equivalent-qualifications-based requirement- to the Brooks Act?*

b. *If the recipient does not have an applicable State statute, does it use competitive proposals based on the Brooks Act when procuring A&E services?*

INSTRUCTIONS FOR REVIEWER
Prior to the site visit, review State statutes, the state management plan, and other documentation of procurement procedures for contracting A&E services through qualifications-based requirements. Review the list of procurements provided in advance of the review to identify procurements that would likely require Brooks method procurement procedures.

On site, discuss with the recipient, and evaluate procurement files to determine if A&E services were procured using a qualifications-based process in accordance with the Brooks Act, where firms are ranked based only on their qualifications and price is then negotiated with the most qualified firm. Review all "on-call" contracts for A&E services to determine if they comply with the Brooks Act.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient, including states, is deficient if it is in a State with a policy for A&E procurements adopted prior to August 10, 2005 but it is not following it or it is not following the Brooks Act, when procuring applicable services. The recipient also is deficient if it is using a qualifications-based method for procuring non-A&E services.

> DEFICIENCY CODE P9-1: Recipient has A&E procurement deficiencies
>
> SUGGESTED CORRECTIVE ACTION: Submit a list of all active A&E contracts procured with a method other than the qualifications-based method. The FTA regional office will advise the recipient as to whether those contracts must be disallowed. The recipient must provide procedures for implementing qualifications-based procurement when using FTA assistance to contract for A&E services. For the next procurement, the recipient must submit documentation that the required process was implemented.

GOVERNING DIRECTIVE
49 U.S.C. 5325 (b) Architectural, Engineering, and Design Contracts

(1) Procedures for Awarding Contract. A contract or requirement for program management, architectural engineering, construction management, a feasibility study, and preliminary engineering, design, architectural, engineering, surveying, mapping, or related services for a project for which Federal assistance is provided under this chapter shall be awarded in the same way as a contract for architectural and engineering services is negotiated under chapter 11 of title 40 [aka "Brooks Act"] or an equivalent qualifications-based requirement of a State adopted before August 10, 2005.

40 U.S.C. 1101-1104 ("Brooks Act")

§1101: The policy of the Federal Government is to publicly announce all requirements for architectural and engineering services and to negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices.

40 U.S.C § 1103 Selection procedure:

(a)In General.— These procedures apply to the procurement of architectural and engineering services by an agency head.

(b)Annual Statements.— The agency head shall encourage firms to submit annually a statement of qualifications and performance data.

(c)Evaluation.— For each proposed project, the agency head shall evaluate current statements of qualifications and performance data on file with the agency, together with statements submitted by other firms regarding the proposed project. The agency head shall conduct discussions with at least 3 firms to consider anticipated concepts and compare alternative methods for furnishing services.

(d)Selection.— From the firms with which discussions have been conducted, the agency head shall select, in order of preference, at least 3 firms that the agency head considers most highly qualified to provide the services required. Selection shall be based on criteria established and published by the agency head.

§1104(b): Order of Negotiation. The agency head shall attempt to negotiate a contract, as provided in subsection (a), with the most highly qualified firm selected under section 1103 of this title. If the agency head is unable to negotiate a satisfactory contract with the firm, the agency head shall formally terminate negotiations and then undertake negotiations with the next most qualified of the selected firms, continuing the process until an agreement is reached. If the agency head is unable to negotiate a satisfactory contract with any of the selected firms, the agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this section until an agreement is reached.

FTA Circular 4220.1G, Chapter IV 2, h(1) Qualifications-Based Selection

For projects related to or leading to construction, an FTA recipient must use the qualifications-based procurement procedures of 40 U.S.C. Chapter 11 (“Brooks Act” procedures) when contracting for A&E services and other services described in 49 U.S.C. 5325(b), which include program management, architectural engineering, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, or related services.

P10. Does the 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
Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including modifications. As a starting point, the recipient must make independent estimates before receiving bids or proposals.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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. 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; or (3) noncompetitive 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 recipient develop an ICE prior to the receipt of bids and proposals for procurements above the Federal Simplified Acquisition Threshold?*

b. *Did the recipient conduct a cost analysis or price analysis for every procurement action, including the decision to exercise any option, above the Federal Simplified Acquisition Threshold?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient’s policies and procedures. Onsite, 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) noncompetitive procurements.

Determine if the recipient documented a price analysis when a cost analysis was not required.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not conducted independent cost estimates for any procurement reviewed above the Federal Simplified Acquisition Threshold.

DEFICIENCY CODE P10-1: Lacking independent cost estimate

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has updated its procurement procedures to include development of independent cost estimates prior to receipt of bids or proposals. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if it did not conduct a cost analysis or price analysis, as applicable, for any procurement reviewed above the Federal Simplified Acquisition Threshold.

DEFICIENCY CODE P10-2: Lacking required cost or price analysis

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has updated its procurement procedures to include performing applicable cost or price analysis for procurements above the Federal Simplified Acquisition Threshold. For the next applicable procurement, submit documentation that the required analysis was implemented.

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 4220.1G Chapter VI 4. a. Cost Analysis

The recipient should perform a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract price. The recipient should perform a cost analysis when the offeror submits elements (e.g., labor hours, overhead, materials,) in its proposal. The recipient should also perform a cost analysis when price competition is inadequate, e.g., when only a sole source is available, or when performing a contract modification. The recipient may not need to perform a cost analysis if it can analyze the 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 4220.1G Chapter VI 4. b. Price Analysis

If the recipient determines that competition was adequate, it may perform a price analysis instead of a cost analysis. One method to record this price analysis is through the use of a preprinted form on which a contracting officer (or other responsible person) can annotate a finding of fair and reasonable pricing and check off the most common reasons why this would be so, such as catalog or market prices offered in

substantial quantities to the general public, regulated prices (for example, for many utilities purchases), or a comparison with recent prices for similar goods and services.

P11. Did the recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase threshold and all construction contracts?

BASIC REQUIREMENT
Recipients must include and implement required clauses in its procurements.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to include specific required clauses in FTA-funded procurements. FTA Master Agreement identifies certain clauses that apply to third party contracts. 2 CFR 200.327 and Appendix II to 2 CFR 200 identify contract provisions for non-Federal contracts under a Federal award. FTA C. 4220.1G discusses Federal requirements that affect a recipient's acquisitions.

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 Reviewer. The checklist provides a citation for each required clause.

INDICATOR OF COMPLIANCE

a. *Did the recipient include applicable required clauses in FTA-funded procurements?*

INSTRUCTIONS FOR REVIEWER
Prior to the site visit, examine the recipient's policies and procedures. During the site visit, examine procurement files for inclusion of required clauses as detailed in the table shown below. A deficiency determination should be made if the recipient did not include all of the required, applicable clauses in any of the procurement files reviewed. A complete list of required third party procurement clauses can be found at *https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-contract-provisions-matrix.*

Clause	Threshold	Citation
Bonding requirements (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	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	2 CFR 200.326

Clause	Threshold	Citation
accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the specified timeframe. (b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under a contract. (c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.	Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected.	
Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate	For procurements over the Federal Simplified Acquisition threshold	2 CFR 200 Appendix II
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	For procurements over $10,000	2 CFR 200 Appendix II
Davis-Bacon Act	All prime construction contracts	49 USC 5333(a); 29 CFR Part 5; 2 CFR 200 Appendix II (D)
Contract Work Hours and Safety Standards Act	All contracts in excess of $100,000 that involve the employment of mechanics or laborers	2 CFR 200 Appendix II (E)

Clause	Threshold	Citation
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 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,”	37 CFR 401.14 and 2 CFR 200 Appendix II (F)
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	2 CFR 200 Appendix II
Byrd Anti-Lobbying Amendment	Contractors that apply or bid for an award exceeding $100,000.	31 U.S.C 1352 and 2 CFR Appendix II
6002 of the Solid Waste Disposal Act When procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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 and 2 CFR Appendix II

Clause	Threshold	Citation
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 34 §39(b)
Prohibition on certain telecommunications and video surveillance services or equipment	All contracts made by the non-Federal entity under the Federal award For full details of this requirement refer to the Governing Directive below.	2 CFR 200.216 and 2 CFR 200 Appendix II (K)
Seat Belt Use	Each third party contract	62 Fed. Regulation. 19217, 23 U.S.C § 402 note, Executive Order 1304, and FTA Master Agreement Section 34 § 34 (a)
Distracted Driving	Each third party agreement	74 Fed. Regulation. 51225, 23 U.S.C § 402 note, Executive Order 13513, U.S. DOT Order 3902.10 and FTA Master Agreement Section 34 § 34 (b)

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if did not include all applicable required clauses in FTA-funded procurements reviewed.

DEFICIENCY CODE P11-1: Missing FTA clauses

SUGGESTED CORRECTIVE ACTION: Submit revised procurement procedures that ensure review of the FTA Master Agreement and 2 CFR 200 annually to confirm the inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism. For the next procurement, submit documentation that the required process was implemented.

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, 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.

(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 recipient or sub-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 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.*]

(K) See § 200.216. [*§ 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 covered telecommunications equipment or services*
>
> *(2) Extend or renew a contract to procure or obtain covered telecommunications equipment or services; or*
>
> *(3) Enter into a contract (or extend or renew a contract) to procure or obtain covered telecommunications equipment or services.*

(b) As described in Public Law 115–232, "covered telecommunications equipment or services" means any of the following:

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(2) 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).

(3) Telecommunications or video surveillance services provided by such entities or using such equipment.

(4) 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.

(c) For the purposes of this section, "covered telecommunications equipment or services" also include systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(d) In implementing the prohibition under section 889 of Public Law 115–232, 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.

(e) When the recipient or subrecipient accepts a loan or grant, it is certifying that it will comply with the prohibition on covered telecommunications equipment and services in this section. The recipient or subrecipient is not required to certify that funds will not be expended on covered telecommunications equipment or services beyond the certification provided upon accepting the loan or grant and those provided upon submitting payment requests and financial reports.

For additional information see section 889 of Public Law 115–232 and § 200.471.

(L) *200.322 Domestic preferences for procurements.*

(a) The recipient or subrecipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, contracts, and purchase orders under Federal awards.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(c) Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 CFR 184.

FTA Master Agreement (34), 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 eligibility and process requirements apply to any procurement 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) 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 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.

(4) 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.

(5) 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 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.

(6) 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).

(7) 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:

(1) Complies with federal debarment and suspension requirements; and

(2) Reviews the SAM at https://www.sam.gov, if necessary to comply with U.S. DOT regulations, 2 CFR 1200.

(9) 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 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.

2 CFR 200.326 Bonding Requirements

The Federal agency or pass-through entity may accept the recipient's or subrecipient's bonding policy and requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold. Before doing so, the Federal agency or pass-through entity must determine 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 requirements 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 recipient's or subrecipient's contracts must contain the applicable provisions described in Appendix II of 2 CFR 200.*FTA Master Agreement (34) Section 34. Safe Operation of Motor Vehicles.*

(a) Seat Belt Use. The Recipient agrees to implement Executive Order No. 13043, “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. § 402 note, (62 Fed. Reg. 19217), by:

(1) Adopting and promoting on-the-job seat belt use policies and programs for its employees and other personnel that operate company-owned vehicles, company-rented vehicles, or personally operated vehicles; and

(2) Including a “Seat Belt Use” provision in each third party agreement related to the Award.

(b) *Distracted Driving, Including Text Messaging While Driving*. The Recipient agrees to comply with:

(1) Executive Order No. 13513, “Federal Leadership on Reducing Text Messaging While Driving,” October 1, 2009, 23 U.S.C. § 402 note, (74 Fed. Reg. 51225);

(2) U.S. DOT Order 3902.10, “Text Messaging While Driving,” December 30, 2009; and

(3) The following U.S. DOT Special Provision pertaining to Distracted Driving:

(i) Safety. The Recipient agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies to ban text messaging while using an electronic device supplied by an employer, and driving a vehicle the driver owns or rents, a vehicle Recipient owns, leases, or rents, or a privately-owned vehicle when on official

business in connection with the Award, or when performing any work for or on behalf of the Award;

(ii) Recipient Size. The Recipient agrees to conduct workplace safety initiatives in a manner commensurate with its size, such as establishing new rules and programs to prohibit text messaging while driving, re-evaluating the existing programs to prohibit text messaging while driving, and providing education, awareness, and other outreach to employees about the safety risks associated with texting while driving; and

(iii) Extension of Provision. The Recipient agrees to include the preceding Special Provision of section 34(b)(3)(i) – (ii) of this Master Agreement in its third party agreements, and encourage its Third Party Participants to comply with this Special Provision, and include this Special Provision in each third party subagreement at each tier supported with federal assistance.

FTA Master Agreement (34) Section 39(b) Disputes, Breaches, Defaults and Litigation.

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.

P12. Did the recipient include required certifications in solicitations and receive signed certifications from bidders as part of their bid or proposal, as applicable?

BASIC REQUIREMENT
Recipients must include required certifications in its procurements and receive signed certifications from bidders.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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. The lobbying certification is a separate requirement from lobbying disclosures a contractor may have to submit.

Buy America Certification: Buy America regulations require that all steel, iron, manufactured products, and construction materials 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 waiver. **As of December 2023, FTA's Buy America regulation does not require a certification for construction materials, but FTA strongly recommends recipients choose to add construction materials to their certifications.** 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.

Certain procurements may be exempted from the Buy America requirements in instances where a general waiver from the Buy America requirements applies. However, where the recipient has included a Buy America certification in the solicitation documents, bidders should nevertheless certify to Buy America compliance, because waived materials are treated as domestic. General waivers which may exempt a procurement from the Buy America requirements include the waivers for small purchases, small grants, and for the Pacific Island Territories and Freely Associated States.

The 2015 FAST Act codified a small-purchase waiver for iron, steel, and manufactured products at 49 U.S.C. 5323(j)(13). The term "small purchase" means a purchase of not more than $150,000. This value is set in statute and does not change with inflation. According to a September 16, 2016, Dear Colleague letter, FTA interprets the small-purchase waiver to apply to *purchases* of iron, steel, or manufactured products of $150,000 or less, regardless of the size of the project. The value of a purchase is not just the value of the goods subject to Buy America, but is the total purchase price inclusive of non-BA goods, labor, warranties, options, and so forth. The waiver applies to purchases made directly by recipients or subrecipients and to purchases made by contractors on behalf of the recipient or subrecipient. A recipient may not break up procurements into smaller purchases in order to come under the $150,000 threshold. If a solicitation may result in bids near $150,000, the recipient 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.

The small-purchase waiver applies only to domestic preferences established by 49 U.S.C. 5323(j). In other words, the small-purchase waiver applies only to steel, iron, and manufactured products. It does not apply to construction materials, the domestic preference for which is established under a separate authority, the Build America, Buy America Act.

In August 2023, the U.S. Department of Transportation published a Department-wide *Waiver of Buy America Requirements for De Minimis Costs and Small Grants*, 88 Fed. Reg. 55817 (Aug. 16, 2023). This waiver is separate from the small purchase waiver. It applies to FTA awards obligated on or after August 16, 2023. The waiver waives Buy America requirements for steel, iron, manufactured products, and construction materials under a single financial assistance award for which:

- Costs of non-compliant products are de minimis (meaning, the total value of the non-compliant products is no more than the lesser of $1,000,000 or 5% of total applicable costs for the project); or

- The total amount of Federal financial assistance applied to the project, through awards or subawards, is less than $500,000.

The De Minimis Costs waiver does not apply to products for which FTA or DOT has issued a product-specific waiver. This includes, for example, vehicles addressed by FTA's *Partial Buy America Waiver for Vans and Minivans*, 87 Fed. Reg. 64534 (Oct. 25, 2022).

DOT's *Waiver of Buy America Requirements for the Pacific Island Territories and the Freely Associated States (April 29, 2024)* (available on DOT's website) waives the domestic preferences for iron, steel, manufactured products, and construction materials used in projects in the Pacific Island Territories (Commonwealth of the Northern Mariana Islands, Guam, and American Samoa) and the Freely Associated States (the Republic of Palau, the Republic of the Marshall Islands, and the Federated States of Micronesia). The waiver applies to all FTA awards obligated from April 29, 2024 until January 9, 2030.

Additionally, to ease the transition to applying Buy America to construction materials, DOT has issued multiple waivers of the construction materials requirement that may apply based on the date FTA obligated funding for a project or the date a recipient solicited or awarded a contract for construction materials:

- Under DOT's *Temporary Waiver of Buy America Requirements for Construction Materials*, 87 Fed. Reg. 31931 (May 25, 2022), the construction materials requirement begins applying only with FTA financial assistance obligated on or after November 10, 2022.

- DOT's *Waiver of Buy America Requirements for Construction Materials for Certain Contracts and Solicitations* (Jan. 30, 2023) (available on DOT's website) waives the construction materials requirement for certain contracts a recipient entered into between May 14, 2022, and March 10, 2023, depending on when FTA awarded assistance for the project and when the recipient solicited the contract. In all cases, waived construction materials must be delivered before October 1, 2024.

Buy America applies to:

- All purchases of steel, iron, manufactured products, and construction materials, unless a waiver applies;

- Contractors and subcontractors,

- Purchases made using an intergovernmental agreement and jointly purchased manufactured products, and

- Purchases of used items.

For all procurements not covered by the Small Purchase waiver, Small Grant waiver, or Pacific Island Territories waiver, 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, as appropriate. Recipients should include only the applicable Buy America certification. Inclusion of 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.

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 goods 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.

INDICATORS OF COMPLIANCE

a. Removed from FY2026 Manual.

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 for iron, steel, manufactured products, or construction materials, and receive signed certifications from contractors as part of bid responsiveness, unless the procurement was subject to a waiver?

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures. During the site visit, 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:

- 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, manufactured products, or construction materials unless a waiver applies.

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 DEFICIENCY DETERMINATIONS

DEFICIENCY CODE P12-1: Removed from FY2026 Manual

The recipient is deficient 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.

DEFICIENCY CODE P12-2: Lobbying certifications not included in procurement solicitations or signed by bidders

SUGGESTED CORRECTIVE ACTION: Submit procedures for obtaining signed lobbying certifications. The recipient must submit a copy of the signed lobbying certification with the next applicable procurement.

The recipient is deficient if it did not include applicable Buy America provisions in its solicitation documents.

DEFICIENCY CODE P12-3: Buy America provisions not in solicitation and/or contract

SUGGESTED CORRECTIVE ACTION: Submit revised 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, manufactured products, or construction materials not subject to a general waiver. For the next procurement, submit documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, provide information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, submit documentation that it included, via an addendum, Buy America requirements in the solicitation.

Submit a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

The recipient is deficient if it did not obtain signed Buy America certifications from vendors as part of the vendor’s bid or proposal.

DEFICIENCY CODE P12-4: Contract files lacking signed Buy America certifications

SUGGESTED CORRECTIVE ACTION: Submit revised procurement procedures that require the recipient to obtain signed certifications from vendors when procuring steel, iron, manufactured

products, or construction materials not subject to a waiver. For the next procurement, submit documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, submit information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, submit documentation that it included, via an addendum, Buy America requirements in the solicitation.

Submit a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

The recipient is deficient if it awarded the contract to a contractor who certified non-compliance with Buy America and did not obtain a waiver from FTA or it awarded the contract to a contractor who certified both compliance and non-compliance.

DEFICIENCY CODE P12-5: Contract awarded without Buy America waiver

SUGGESTED CORRECTIVE ACTION: Submit revised procurement procedures that require obtained signed certifications from vendors when procuring steel, iron, manufactured products, or construction materials not subject to a waiver. For the next procurement, submit documentation that the required process was implemented.

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

Submit a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

GOVERNING DIRECTIVE

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 Master Agreement (34), Section 15(b)

Build America, Buy America Act. Construction materials used in the Project are subject to the domestic preference requirement of the Build America, Buy America Act, Pub. L. 117-58, div. G, tit. IX, §§ 70911 – 70927 (2021), as implemented by the U.S. Office of Management and Budget's "Buy America Preferences for Infrastructure Projects," 2 CFR 184. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b). In accordance with 2 CFR § 184.2(a), the Recipient shall apply the standards of 49 CFR Part 661 to iron, steel, and manufactured products.

P13. If the recipient included liquidated damages in its procurements, did it do so appropriately?

BASIC REQUIREMENT
If recipients include liquidated damages in procurements, any recovered damages should be credited back to the project account.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients are allowed to use liquidated damage clauses when there is a reasonable expectation of damages (increased costs on the project involved) from late completion or if requirements are exceeded and the extent or amount of such damages would be difficult or impossible to determine. Liquidated damage clauses may not be punitive. They may not be used to impose a penalty or limit or restrict competition, or used in situations where delayed performance will not affect the recipient adversely. The rate and measurement of liquidated damages must be specified in the solicitation and contract. Any liquidated damages recovered may be credited to the project account provided that the recipient receives FTA's prior written concurrence.

Liquidated damages should not be utilized as a substitute for other contract performance requirements. Recipients are required to maintain a contract administration system to ensure that they and their contractors comply with the terms, conditions, and specifications of their contracts or purchase orders.

INDICATORS OF COMPLIANCE

a. *If the recipient included liquidated damages in its procurements, did it specify the rate in the contract?*

b. *If the recipient recovered liquidated damages in its FTA-funded procurements, did it appropriately account for those damages with FTA?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient determines if it will use liquidated damages in contracts.

During the site visit, examine selected contract files, in accordance with records sampling procedures, for liquidated damage clause(s). Determine if the dollar value of liquidated damages was documented in the procurement file and presented in the solicitation documents as a specific rate. Examine selected contract files and correspondence in TrAMS to determine if any liquidated damages recovered were credited to the project account involved or if FTA allowed the recipient to handle the recovered damages in a different manner.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it assessed liquidated damages, but did not credit these funds back to the project account or account for them as directed by FTA.

DEFICIENCY CODE P13-1: Improper accounting for recovered liquidated damages

SUGGESTED CORRECTIVE ACTION: Submit procedures for appropriately accounting for recovered liquidated damages. For liquidated damages collected, submit an accounting of those funds retained/collected so that FTA can provide appropriate instructions.

GOVERNING DIRECTIVE
Master Agreement (34), Section 39(c)
Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Underlying Agreement. Notwithstanding the preceding sentence, the Recipient may return all liquidated damages it receives to its Award Budget for its Underlying Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Recipient receives FTA's prior written concurrence.

P14. Did the recipient approve, evaluate, and document change orders to procurements as described in its policies and procedures?

BASIC REQUIREMENT
The recipient is responsible for issuing, evaluating, and making necessary decisions involving any change to its third party contracts, and any change orders, or modifications it may issue.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients use their own procurement procedures that reflect applicable recipient regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR 200, and FTA guidance Circular 4220.1G, "Third Party Contracting Guidance."

A change order is an order authorized by the recipient directing the contractor to make changes, pursuant to contract provisions for such changes, with or without the consent of the contractor. Because change orders may require competition if they go beyond the original scope of a contract, or cause a contract to exceed dollar thresholds at which different Federal requirements are triggered, FTA recommends that change orders be approved only by authorized recipient officials. If project managers can approve change orders with minimal or no oversight, outside of normal procurement channels, potential problems may arise.

Recipients must develop an ICE and perform a cost or price analysis in connection with every contract modification or change order over the Simplified Acquisitions Threshold. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

INDICATORS OF COMPLIANCE

a. *Did the recipient ensure that executed change orders were within the scope of the original contract?*

b. *Did the recipient evaluate and document change orders?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, receive and review the recipient's policies and procedures to determine how the recipient describes:

1. Management of change orders;
2. Evaluations of change orders; and
3. Thresholds and responsibilities for change order approvals.

During the site visit, examine selected contract files, in accordance with records sampling procedures, for contracts that had significant change orders issued.

Determine if selected change orders were within the scope of the recipient's original award and reasonable for the completion of the project scope. A change to a contract that is beyond the scope of that contract, must be justified under the provisions for non-competitive procurements.

Determine if documentation for selected change orders included a cost or price analysis, if above the Federal Simplified Acquisition Threshold.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it executed change orders to contracts that were not within the scope of the original contract, or did not evaluate the cost of the change, if required.

DEFICIENCY CODE P14-1: Insufficient documentation to support change orders

SUGGESTED CORRECTIVE ACTION: The recipient must submit compliant change order procedures. For the next change order, submit documentation that the required process was implemented.

GOVERNING DIRECTIVE

2 CFR 200.319 Competition

(a) All procurement transactions under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.

(b) 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 on those procurements.

2 CFR 200.324(a) Contract Cost and Price

The recipient or subrecipient must perform a cost or price analysis for every procurement transaction in excess of the simplified acquisition threshold. The method and degree of analysis conducted depend on the facts surrounding the particular procurement transaction. For example, the recipient or subrecipient should consider potential workforce impacts in their analysis if the procurement transaction will displace public sector employees. However, as a starting point, the recipient or subrecipient must make independent estimates before receiving bids or proposals.

FTA Circular 4220.1G Chapter VI 3. i. (1) Cardinal Changes

Cardinal Changes Restricted. A cardinal change that is beyond the scope of the competition conducted to achieve the original contract is, effectively, a new contract. Accordingly, a recipient must not allow a cardinal change to a contract without a justification for making a noncompetitive award.

P15. If the recipient included options in an FTA-funded procurement, did it base the number of options on its reasonably foreseeable need and evaluate the option price prior to awarding the contract?

BASIC REQUIREMENT
Recipients that include options in FTA-funded contracts must ensure that options reflect their reasonably foreseeable need and are evaluated prior to contract award.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients may include options in contracts that reflect reasonably foreseeable needs. If a recipient chooses to use options, the option quantities or periods in the solicitation must be evaluated in order to determine contract award. The price associated with exercising the option needs to be defined at the outset, either as a specific price, or as a percentage increase of the base price, or some other calculable method. If the options were not evaluated as part of the award, the exercise of the options is considered must be justified under the provisions for non-competitive procurements.

If the option quantities on a rolling stock or replacement parts purchase exceed the recipient's reasonably foreseeable needs, the recipient may not assign those options to other recipients.

INDICATORS OF COMPLIANCE

a. *Did the recipient base the quantity or amount of options on its reasonably foreseeable need?*

b. *Did the recipient evaluate option prices included in solicitations prior to contract award?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine if the recipient described the use of options. During the site visit, examine selected contract files, in accordance with records sampling procedures, for contracts that included options. Determine if the recipient documented that the inclusion of options in the solicitation represented its foreseeable need. Determine if the recipient documented its evaluation of the option prices prior to contract award if it intended to exercise the option(s) at a later date. If the documentation does not appear to be sufficient, provide this information to the FTA regional office for their further review and action.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the contract quantities were not based on the recipient's foreseeable needs.

DEFICIENCY CODE P15-1: Contract quantities not based on need

SUGGESTED CORRECTIVE ACTION: Develop and submit procedures for complying with FTA requirements when including options in solicitations.

The recipient is deficient if it exercised options that were not evaluated with the initial bid.

DEFICIENCY CODE P15-2: Options exercised not evaluated

SUGGESTED CORRECTIVE ACTION: Develop and submit procedures for complying with FTA requirements when evaluating contracts which included options and for exercising options. For the next applicable procurement, the recipient must submit documentation that the required process was implemented.

The recipient must submit a written assurance that it will not exercise the options unless FTA approval is granted for instances where the options that may violate the requirements have not been exercised. The recipient may not assign the options to any other FTA recipients.

GOVERNING DIRECTIVE

2 CFR 200.318(d) Avoidance of unnecessary or duplicative items.

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.

FTA Circular 4220.1G Chapter IV. 1.b. Necessity

Recipients must establish procedures that avoid the acquisition of unnecessary or duplicative items under 2 CFR 200.318(d). FTA will review the recipient's procedures and determinations based on reasonable expectations at the time of the contract, with an emphasis on achieving the broad outcomes targeted by Federal investments.

FTA Circular 4220.1G Chapter VI 5. b. Evaluations

Options. When the recipient determines there is a reasonable likelihood that it will exercise options included in a bid or proposal, the recipient should evaluate the total price of exercising the options together with the price of the basic contract requirement.

The recipient may not need to evaluate bids or offers for options when the recipient determines that evaluation would not be in its best interests. An example of a circumstance that may support a recipient's determination not to evaluate bids or offers for options is when the recipient is reasonably certain that funds will not be available to permit it to exercise the option.

P16. If the recipient procured bus or rail rolling stock or replacement parts with FTA funds, did it adhere to the time limitations on placing orders against the contracts?

BASIC REQUIREMENT
Contracts, inclusive of options, for the procurement of buses or replacement parts must not extend for more than five years after the date of the original contract or seven years for rail rolling stock. For cooperative procurement contracts, the contract duration can be for no more than a two-year initial term, with no more than three optional extensions of not more than one year each.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients must not enter into contracts for revenue rolling stock and replacement parts with an ordering window exceeding five years for bus procurements inclusive of options, extensions, or renewals, and seven years for rail procurements. The five- and seven-year rules do not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. The recipient may not order buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract. The maximum quantity specified in such multi-year contracts must represent the recipient's reasonably foreseeable need.

For cooperative procurement contracts, the contract duration can be for no more than a two-year initial term, with no more than three optional extensions of not more than one year each. A cooperative procurement contract means a contract between a state or an eligible nonprofit entity and one or more vendors under which the vendors agree to provide an option to purchase rolling stock and related equipment to multiple recipient participants.

INDICATOR OF COMPLIANCE

a. *If the recipient procured bus or rail rolling stock or replacement parts did it ensure that the contracts met the contract term restriction?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine if the recipient describes management of options in light of contract terms for rolling stock purchases. During the site visit, examine selected rolling stock and replacement part contracts to ensure that these met the contract

term restriction. Confirm that the recipient has not exercised the option to acquire buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it exercised rolling stock options outside of the five- or seven-year period.

> DEFICIENCY CODE P16-1: Contract(s) period of performance exceeds limitation
>
> SUGGESTED CORRECTIVE ACTION: Submit revised procurement procedures that include appropriate contract term restrictions on the period of performance for rolling stock and replacement part contracts supported with FTA funds. Submit an assurance that unexecuted options will not be executed on an existing contract that exceeds contract term restrictions. For the next procurement, submit documentation that the required process was implemented.
>
> NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE

49 USC 5325(e) Multiyear rolling stock

(1) Contracts. A recipient procuring rolling stock with Government financial assistance under this chapter may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for:

(A) not more than 5 years after the date of the original contract for bus procurements; and

(B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock.

FTA Circular 4220.1G Chapter IV 2. e. (9) Time Limits for Options on Rolling Stock Contracts

Under 49 U.S.C. 5325(e), a recipient procuring rolling stock may make a multiyear contract to buy the rolling stock and replacement parts under which the recipient has an option to buy additional rolling stock or replacement parts for (A) not more than 5 years after the date of the original contract for bus procurements; and (B) not more than 7 years after the date of the original contract for rail procurements, provided that such option does not allow for significant changes or alterations to the rolling stock. FTA interprets these five- and seven-year periods as covering the recipient's material requirements for rolling stock and replacement parts from the first day when the contract becomes effective to the end of the fifth or seventh year, as applicable. In the case of rolling stock, which frequently requires significant lead time, a recipient's material requirements for rolling stock will necessarily precede its actual need to put that rolling stock to use in public transportation service. The contract may not have options for more rolling stock and replacement parts than a recipient's anticipated material requirements for the applicable five- or seven-year period. The five- or seven-year limit means a recipient may not place orders for rolling stock or replacement parts after the maximum time limit. The recipient need not obtain delivery, acceptance, or fabrication during the five- or seven-year contract period.

FAST Act, Section 3019 (b)(1)(B) General Rules

(i) PROCUREMENT NOT LIMITED TO INTRASTATE PARTICIPANTS. A grantee may participate in a cooperative procurement contract without regard to whether the grantee is located in the same State as the parties to the contract.

(ii) VOLUNTARY PARTICIPATION. Participation by recipient in a cooperative procurement contract shall be voluntary.

(iii) CONTRACT TERMS. The lead procurement agency or lead nonprofit entity for a cooperative procurement contract shall develop the terms of the contract.

(iv) DURATION.—A cooperative procurement contract— (I) subject to subclauses (II) and (III), may be for an initial term of not more than 2 years; (II) may include not more than 3 optional extensions for terms of not more than 1 year each; and (III) may be in effect for a total period of not more than 5 years, including each extension authorized under subclause (II).

P17. 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, price, and no cardinal changes?

BASIC REQUIREMENT
Recipients may use another recipient's contract rights if the original contract was procured in compliance with Federal requirements, contained required Federal provisions, 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. The underlying contract must include an assignability clause clearly describing the assignor-recipient's right to assign contract rights to the assignee-recipient; or, that the vendor be made a party to the assignment.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 is 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" (as defined below) 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 domestic content percentage is lower than the domestic content percentage requirement the assignee-recipient would be subject to if it conducted a competition in the open market, the options exercised by the assignee-recipient will be ineligible for Federal reimbursement. 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 or 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 certifications to verify compliance with Buy America.

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 in FY2020 and beyond and did the original contract include a provision for domestic content of more than 70 percent?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient describes compliance with "piggyback" purchases. Examine the recipient's listing of procurements to identify any piggyback procurements.

During the site visit, examine 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.

The FAST Act amendments regarding increasing domestic content do not apply to contracts entered into, even if the contract provides for the delivery of the first production vehicle after FY2017. For contracts entered into, all vehicles delivered under the original contract base order and any properly exercised options by recipients who are direct parties to the contract may contain a domestic content of more than 60 percent, per the pre-FAST Act requirements. Recipients who are not direct parties to a contract executed, however, may not exercise assigned options (a/k/a ''piggybacking'') on such contracts (e.g. contracts with domestic content of 60 percent). Identify any piggyback procurements entered into. Onsite, review the date of the underlying contract on which the recipient is piggybacking and confirm that the exercised option conforms with FTA's policy guidance on the implementation of the phased increase in domestic content for rolling stock.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it cannot document that:

- the original award met Federal requirements,
- the original award contained an assignability clause,
- 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.

DEFICIENCY CODE P17-1: Improper piggyback purchase

SUGGESTED CORRECTIVE ACTION: Submit piggyback procedures that comply with FTA requirements. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if, it acquired options through piggybacking and the base contract did not have the correct FY2020 and beyond domestic content requirement of 70 percent

DEFICIENCY CODE P17-2: Domestic content requirements not met in piggyback purchase

SUGGESTED CORRECTIVE ACTION: Submit piggybacking procedures that comply with FTA requirements. For the next procurement, submit documentation that the required process was implemented.

GOVERNING DIRECTIVE

FTA Circular 4220.1G Chapter V (8)Existing Contracts (Assignments)

EXISTING CONTRACTS (ASSIGNMENTS). A recipient may receive an assignment of contract rights from another recipient if the assignor-recipient unintentionally acquired more than was needed for its own needs.

a. Excessive Acquisitions Prohibited. Under 2 CFR 200.318(d) a recipient must limit its procurements to the amount of property and services required to meet its reasonably expected needs. Because a recipient should be able to justify the quantities it procures, having written statements of its anticipated material requirements in the recipient's contract files may prove helpful. If the supplies or services were solicited, competed, and awarded through the use of an indefinite-quantity contract, the solicitation and also the contract award should contain both a minimum and maximum quantity that represent the recipient's reasonably foreseeable needs. When a contract is structured with a base order and options for some additional quantity (common in rolling stock acquisitions), the number of options acquired must not exceed the recipient's reasonably foreseeable needs during the period options may be exercised. A recipient intentionally acquiring more contract rights than its own reasonably foreseeable needs, with the intention of assigning those rights to another recipient later, is inconsistent with the procurement standards of Part 200 and undermines competition in the Federal transit program. If FTA determines a recipient has intentionally acquired excessive quantities, FTA may disallow the excessive quantities for the original recipient and any assignees who may have acquired the excessive quantities from the original recipient.

b. Assignment Permitted. When a recipient finds it has unintentionally acquired contract rights, including unexercised options, in excess of its needs, other recipients may make use of the unneeded contract rights via assignment. This practice is sometimes referred to as the assignee-recipient "piggybacking" on the assignor-recipient's contract. See FTA's "Best Practices Procurement & Lessons Learned Manual" for further information about procurements through assignment of another's contract rights.

c. Assignee-Recipient's Responsibilities. The assignee-recipient should assure itself that the assignment is permitted under its local rules and the terms of the underlying contract and will not be resisted by the contractor. The assignee-recipient should look for terms in the underlying contract explicitly permitting for assignment. The assignee-recipient may reduce its risk in this regard by obtaining the contractor's consent on the assignment. (1) Reasonableness. The assignee-recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, the assignee-recipient should determine whether the contract prices originally established are still fair and reasonable before using those rights. See FTA's "Best Practices Procurement & Lessons Learned Manual" for further information about procurements through assignment of another's contract rights.

The assignee-recipient should not exercise an option unless it has determined that the option price is better than prices available in the market or is otherwise more advantageous.

(2) Federal Requirements Apply. The assignee-recipient is responsible for determining the underlying contract complies with all Federal requirements. In particular, before accepting or exercising assigned contract rights for steel, iron, manufactured products, or construction materials, the assignee-recipient should assure itself of the contractor's compliance with Buy America, and the appropriate Buy America certifications were completed and submitted to the assignor-recipient. If the contract is for rolling stock, the assignee-recipient should review the preaward and all post-delivery reviews to confirm the contractor's Buy America compliance. Additional information is included in FTA's guide to Conducting Pre-Award and Post-Delivery Audits for Rolling Stock Procurements.
FTA Circular 4220.1G Chapter VI, Section 3.(i)(5)

In the case of rolling stock, a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. For example, a change from a high-floor to a low-floor vehicle or a change from a single-deck to a double-deck vehicle, could be cardinal changes. Changing an engine or fuel type might result in a cardinal change depending on the circumstances surrounding the project and the terms of the solicitation. Changes to seating, fabrics, colors, exterior paint schemes, signage, and floor covering, and other similar changes usually will not be cardinal 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 binding obligation until the option is exercised and a new contract is executed. When an option is assigned to another entity, the resulting agreement constitutes a new third-party contract. For rolling stock, the minimum domestic content is based on the date of delivery of the first production vehicle under the new contract. 49 U.S.C. § 5323(j)(2)(C). Only parties to the original contract may exercise unassigned options; entities that were not signatories have no contractual or statutory right to do so.

P18. Question removed from the FY22 Contractor Manual.

P19. If the recipient procured buses with FTA funds, did it comply with requirements for bus testing reports?

BASIC REQUIREMENT
For bus procurements, the recipient must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
The recipient must have in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle. Testing applies to buses and modified vans used in transit service,

including, but not limited to, new bus and van models using alternative fuels such as methanol, ethanol, compressed natural gas (CNG), hydrogen, and electricity (if stored and/or generated on-board the vehicle).

FTA does not require a vehicle manufacturer to test its model before bidding. However, recipients of FTA funds acquiring any bus model must certify that an example of that model will have been tested and the recipient will have received a copy of the resulting test report prepared on the bus model before the final acceptance of the first vehicle. Effective October 31, 2016, the effective date of the revision to 49 CFR 665, recipients must certify that the bus models submitted to Altoona following the effective date received a passing score before FTA funds can be spent on that vehicle.

Bus testing is not required for unmodified mass-produced vans (provided they are only offered to FTA recipients in the 4-year/100,000-mile service life category). Unmodified mass-produced vans are vehicles manufactured as complete, fully assembled vehicles as provided by the original equipment manufacturer (OEM). This category includes vans with raised roofs or wheelchair lifts or ramps that are installed by the OEM or by someone other than the OEM, provided that the installation of these components is completed in strict conformance with the OEM modification guidelines.

INDICATORS OF COMPLIANCE

a. *Were the bus models that the recipient purchased during the review period tested?*

b. *Did the recipient obtain the bus testing report showing the bus model met FTA's bus testing requirements prior to acceptance of the first vehicle?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, examine the make and models of all buses procured since the last Comprehensive Review. Review the Altoona Bus Research and Testing Center Database at http://altoonabustest.psu.edu/ to determine if a bus report has been issued for that model. For bus models tested subsequent to October 31, 2016, determine if the bus model received a passing score.

During the site visit, examine selected bus procurement files to ensure that the recipient had in its possession a copy of the Altoona Bus Testing Report before final acceptance of the first vehicle and that, subsequent to October 31, 2016, any new bus model tested received a passing score.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the bus model purchased with FTA funds was not tested, or for new bus models tested after October 31, 2016, the bus model did not receive a passing score.

DEFICIENCY CODE P19-1: Deficiency with bus model testing requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for only accepting vehicles that were tested and received a passing score. For the next procurement, submit documentation that the required process was implemented.

NOTE TO REVIEWER: The reviewer is to coordinate with the FTA regional office to determine the appropriate corrective action for this deficiency.

The recipient is deficient if a copy of the Altoona Bus Test Report is not in the recipient's procurement files.

DEFICIENCY CODE P19-2: Missing documentation of bus model testing

SUGGESTED CORRECTIVE ACTION: Obtain the Altoona Bus Test Report for the specific make/model purchased and submit a copy of it and procedures for obtaining the report for future bus purchases.

GOVERNING DIRECTIVE

49 CFR 665.7 Certification of compliance

(a) In each application to FTA for the purchase or lease of any new bus model, or any bus model with a major change in configuration or components to be acquired or leased with funds obligated by the FTA, the recipient shall certify that the bus was tested at the Bus Testing Facility and that the bus received a passing test score as required in this part. The recipient shall receive the appropriate full Bus Testing Report and any applicable partial testing report(s) before final acceptance of the first vehicle.

P20. If the recipient procured rolling stock with FTA funds, did it comply with the requirements of 49 CFR 663, including pre-award and post-delivery Buy America audit requirements, resident inspector requirements, and purchaser's certifications?

BASIC REQUIREMENT

A recipient purchasing revenue service rolling stock with Federal funds must conduct pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's requirements, resident inspector requirements, and Federal Motor Vehicle Safety Standards (FMVSS).

APPLICABILITY

All recipients

DETAILED EXPLANATION FOR REVIEWER

A recipient purchasing revenue service rolling stock with Federal funds must conduct pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's requirements, resident inspector requirements, and FMVSS. The recipient is required to keep records, including pre-award and post-delivery certifications, which show that the regulations have been followed. The audits require the recipient to complete two certifications (Buy America and Purchaser's Requirements) at the pre-award stage and three certifications (Buy America, Purchaser's Requirements, and FMVSS) at the post-delivery stage. The regulations do not require that these five certifications have a human signature to be effective, however the certifications must convey that requirements have been reviewed and met.

Although procurements of rolling stock of $150,000 or less are not subject to Buy America requirements, these contracts still must comply with the pre-award and post-delivery purchaser's requirements and FMVSS audits required by 49 CFR 663.

Pre-Award Audits and Certifications

Recipients may purchase vehicles in several groups over several years using either vehicle procurement contracts with options or multi-year vehicle procurement contracts. FTA requires that each group of vehicles purchased, i.e., each "order" of vehicles, have a pre-award audit before the order is placed. One pre-award audit may suffice, provided that there is no change in vehicle configuration, i.e., no change that

is expected to have a significant impact on vehicle handling and stability or structural integrity, between successive deliveries of vehicles.

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 certification. (Note: This requirement also applies to purchases off a State or GSA-type contract.).

Compliance with purchaser's specifications: The recipient must complete a pre-award purchaser's requirements certification verifying that the manufacturers bid specifications comply with the recipient's solicitation requirements and that the proposed manufacturer is responsible and capable of building the bus to the solicitation specifications. The pre-award certification may be based on the recipient's determination that the vendor is responsive and responsible. The requirement to conduct an audit for compliance with purchaser's requirements and complete a certification applies to all purchases of revenue rolling stock, even those below the Federal Simplified Acquisition Threshold. The pre-award audit is required before a recipient enters into a formal contract with a supplier.

Compliance with Buy America: If the procurement is more than $150,000, at the pre-award stage, the recipient must complete:

- A compliance certification verifying that the rolling stock will contain the required minimum percent domestic components, by cost, and that final assembly will take place in the United States; or

- An exemption certification indicating that the recipient has a letter from FTA granting a waiver from the Buy America requirement.

The recipient or an independent third party must conduct the Buy America audit. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

For rolling stock contracts entered into, the domestic content must exceed 60 percent. For rolling stock contracts entered into, the applicable domestic content percentage under 49 U.S.C. § 5323(j)(2)(C) will be based on the scheduled delivery date of the first production vehicle (i.e., the first vehicle intended to carry passengers in revenue service), final acceptance notwithstanding. Thus, if a recipient or group of recipients as part of a joint procurement enter into a contract for rolling stock, then the new FAST Act provisions applicable for the date of delivery of the first production vehicle shall apply. If the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent. If the scheduled delivery date is delayed such that the domestic content requirement is increased, recipients must comply with FTA's policy guidance on the implementation of the phased increase in domestic content.

Compliance with FMVSS: The recipient must receive a certification from the vehicle manufacturer at the pre-award stage that the vehicles being procured comply with FMVSS issued by the National Highway Traffic Safety Administration (49 CFR 571).

Post Delivery Audits and Certifications

Compliance with purchaser's specifications: The recipient must complete a post-delivery purchaser's requirements certification verifying that the buses delivered meet the contract specifications. This must be completed before a bus title is transferred to the recipient or before a bus is placed into revenue service, whichever is first. The post-delivery certification is based on the recipient's visual inspections and road tests and, if required, the resident inspector's monitoring of the final assembly process and final report of manufacturing activities. The requirement to conduct an audit for compliance with purchaser's

requirements and complete a certification applies to all purchases of revenue rolling stock, even those below the Federal Simplified Acquisition Threshold.

Recipients are required to have a resident inspector during final assembly process if they meet the following criteria:

- Recipient is purchasing any number of rail vehicles.
- Recipient is in an urbanized area with a population of more than 200,000 and is purchasing more than 10 buses.
- Recipient is in an area with a population of 200,000 or less and is purchasing more than 20 buses.

FTA does not require in-plant inspectors for unmodified vans manufactured by the automobile companies. FTA requires only a visual inspection and road test after delivery for such procurements.

In the case of consolidated procurements on behalf of multiple subrecipients, the in-plant inspection requirement is triggered only if any single subrecipient will receive more than 10 or more than 20 vehicles, depending on area size. One in-plant inspector can meet the requirement for multiple recipients. The inspector may not be an agent or employee of the manufacturer. The inspector must prepare a report providing accurate records of all vehicle construction activities and summarize how the construction and operational characteristics of the vehicles met (or did not meet) the contract specifications.

Compliance with Buy America: Required post-delivery certification includes disclosure by the manufacturer of the final assembly location; a listing of the component and subcomponent parts, the cost (actual or percent of total) of such components and subcomponents and the country of origin; a description of final assembly activities; and the cost of final assembly. Final assembly costs are not to be included when calculating the percent of domestic content of the vehicle.

The recipient or an independent third party must conduct the Buy America audits. The audit may be based on information provided by the manufacturer; however, certification by the manufacturer is not adequate.

Compliance with FMVSS: The recipient must complete, at the post-delivery stage, a certification that the recipient has received from the vehicle manufacturer at both the pre-award and post-delivery stages a copy of the manufacturer's self-certification information that the vehicle complies with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR 571). The requirement to conduct an audit for compliance with FMVSS and complete a certification applies to all purchases of revenue rolling stock, even those below the Federal Simplified Acquisition Threshold.

INDICATORS OF COMPLIANCE

a. *For rolling stock procurements, did the recipient include the appropriate Buy America domestic content requirements in its solicitation?*

b. *For rolling stock purchases, did the recipient conduct pre-award and post-delivery audits to ensure the manufacturer(s) complied with contract specifications and Buy America?*

c. *Did the recipient document its pre-award and post-delivery audits by completing and maintaining written certifications?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's list of rolling stock procurements to determine which Buy America domestic content percentage is required. Onsite, review contract documents to ensure that the appropriate domestic content requirements are met.

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient describes compliance with pre-award and post-delivery audits and audit certifications for rolling stock purchases. During the site visit, examine selected rolling stock procurement files to ensure that, for each group of vehicles purchased, the recipient conducted the following audits and included in their files the following certifications:

- Pre-award Buy America
- Pre-award Purchaser's Requirements (required even if procurement is below $150,000)
- Post-delivery Buy America
- Post-delivery Purchaser's Requirements (required even if procurement is below $150,000)
- Post-delivery FMVSS (required even if procurement is below $150,000)

Pre-award and post-delivery certifications do not need to be signed to be considered valid certifications. However, a blank certification that does not indicate requirements have been met would not be "complete" and could still result in a deficiency. A blank form without language, a checkbox, a signature, or other indication that requirements are met, could still result in a deficiency (e.g., a form with unchecked boxes for compliance and noncompliance). This differs from the Buy America certification noted in Question 12 of this section, which is to be signed.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not include the appropriate Buy America domestic content requirements in its rolling stock procurements.

DEFICIENCY CODE P20-1: Buy America domestic content deficiencies

SUGGESTED CORRECTIVE ACTION: Stop work on the contract until FTA determines the appropriate corrective action for non-compliant vehicles already delivered and paid for under the contract and for future orders of non-compliant vehicles.

The recipient is deficient if it did not conduct all of the required audits for revenue rolling stock procurements. The recipient is deficient if it ordered a group of vehicles from a multi-year procurement before the pre-award audit was conducted.

DEFICIENCY CODE P20-2: Pre-award and/or post-delivery audits not performed

SUGGESTED CORRECTIVE ACTION: If no vehicles have been delivered under the contract, conduct within 30 days the equivalent of a Buy America pre-award audit. If the vehicles are in the process of being delivered or have been delivered, conduct a Buy America post-delivery audit

within 30 days. Submit procedures for pre-award and post-delivery review and inspection. For the next procurement, submit documentation that the required process was implemented.

Submit procedures for conducting pre-award audits for options and/or multi-year contracts so that future procurements will comply with this requirement. For the next procurement, submit documentation that the required process was implemented.

The recipient is deficient if its pre-award and/or post-delivery certifications for applicable rolling stock procurements are not complete or in compliance with 49 CFR 663.

DEFICIENCY CODE P20-3: Pre-award and/or post-delivery certifications lacking

SUGGESTED CORRECTIVE ACTION: If no vehicles have been delivered under the contract, submit a completed pre-award audit within 30 days. If the vehicles are in the process of being delivered or have been delivered, submit a completed pre-award audit and/or post-delivery audit within 30 days. Submit the certifications for the procurement reviewed and procedures for completing the applicable pre-award and post-delivery audits certifications for future revenue rolling stock procurements. If the recipient cannot certify compliance, it must confer with the FTA regional office for the appropriate corrective action. For the next procurement, submit documentation that the required process was implemented.

For the next revenue rolling stock procurement, submit pre-award audit information and certifications before awarding the contract and the post-delivery audit information and certifications before drawing FTA funds.

GOVERNING DIRECTIVE

49 U.S.C. 5323(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; and (D) the contractor’s financial and technical resources.

49 CFR 663 Pre-award and Post-delivery Audits of Rolling Stock Purchases “Subpart B—Pre-Award Audits

49 CFR 663.21 Pre-award audit requirements

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a pre-award audit under this part is complete before the recipient enters into a formal contract for the purchase of such rolling stock.

49 CFR 663.23 Description of pre-award audit

A pre-award audit under this part includes—(a) A Buy America certification as described in §663.25 of this part; (b) A purchaser's requirements certification as described in §663.27 of this part; and (c) Where appropriate, a manufacturer's Federal Motor Vehicle Safety Standards certification information as described in §663.41 or §663.43 of this part.

49 CFR 663.25 Pre-award Buy America certification

For purposes of this part, a pre-award Buy America certification is a certification that the recipient keeps on file that—(a) There is a letter from FTA which grants a waiver to the rolling stock to be purchased from the Buy America requirements under section 165(b)(1), (b)(2), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or (b) The recipient is satisfied that the rolling stock to be purchased meets the requirements of section 165(a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or through an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—(1) Component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) The location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

49 CFR 663.27 Pre-award purchaser's requirements certification

For purposes of this part, a pre-award purchaser's requirements certification is a certification a recipient keeps on file that— (a) The rolling stock the recipient is contracting for is the same product described in the purchaser's solicitation specification; and (b) The proposed manufacturer is a responsible manufacturer with the capability to produce a vehicle that meets the recipient's specification set forth in the recipient's solicitation.

49 CFR 663.31 Post-delivery audit requirements

A recipient purchasing revenue service rolling stock with FTA funds must ensure that a post-delivery audit under this part is complete before title to the rolling stock is transferred to the recipient.

49 CFR 663.33 Description of post-delivery audit

A post-delivery audit under this part includes—(a) A post-delivery Buy America certification as described in §663.35 of this part; (b) A post-delivery purchaser's requirements certification as described in §663.37 of this part; and (c) When appropriate, a manufacturer's Federal Motor Vehicle Safety Standard self-certification information as described in §663.41 or §663.43 of this part.

49 CFR 663.35 Post-delivery Buy America certification

For purposes of this part, a post-delivery Buy America certification is a certification that the recipient keeps on file that—(a) There is a letter from FTA which grants a waiver to the rolling stock received from the Buy America requirements under sections 165 (b)(1), or (b)(4) of the Surface Transportation Assistance Act of 1982, as amended; or (b) The recipient is satisfied that the rolling stock received meets the requirements of section 165 (a) or (b)(3) of the Surface Transportation Assistance Act of 1982, as amended, after having reviewed itself or by means of an audit prepared by someone other than the manufacturer or its agent documentation provided by the manufacturer which lists—(1) Components and subcomponent parts of the rolling stock identified by manufacturer of the parts, their country of origin and costs; and (2) The actual location of the final assembly point for the rolling stock including a description of the activities which took place at the final assembly point and the cost of the final assembly.

49 CFR 663.37 Post-delivery purchaser's requirements certification

For purposes of this part, a post-delivery purchaser's requirements certification is a certification that the recipient keeps on file that—(a) Except for procurements covered under paragraph (c) in this section, a

resident inspector (other than an agent or employee of the manufacturer) was at the manufacturing site throughout the period of manufacture of the rolling stock to be purchased and monitored and completed a report on the manufacture of such rolling stock. Such a report, at a minimum, shall—(1) Provide accurate records of all vehicle construction activities; and (2) Address how the construction and operation of the vehicles fulfills the contract specifications. (b) After reviewing the report required under paragraph (a) of this section, and visually inspecting and road testing the delivered vehicles, the vehicles meet the contract specifications. (c) For procurements of: (1) Ten or fewer buses; or (2) Procurements of twenty vehicles or fewer serving rural (other than urbanized) areas, or urbanized areas of 200,000 people or fewer; or (3) Any number of primary manufacturer standard production and unmodified vans, after visually inspecting and road testing the vehicles, the vehicles meet the contract specifications.

49 CFR 663.39 Post-delivery audit review

(a) If a recipient cannot complete a post-delivery audit because the recipient or its agent cannot certify Buy America compliance or that the rolling stock meets the purchaser's requirements specified in the contract, the rolling stock may be rejected and final acceptance by the recipient will not be required. The recipient may exercise any legal rights it has under the contract or at law.

(b) This provision does not preclude the recipient and manufacturer from agreeing to a conditional acceptance of rolling stock pending manufacturer's correction of deviations within a reasonable period of time.

49 CFR 663.41 Certification of compliance with Federal motor vehicle safety standards

If a vehicle purchased under this part is subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, a recipient shall keep on file its certification that it received, both at the pre-award and post-delivery stage, a copy of the manufacturer's self-certification information that the vehicle complies with relevant Federal Motor Vehicle Safety Standards.

49 CFR 663.43 Certification that Federal motor vehicle standards do not apply

(a) Except for rolling stock subject to paragraph (b) of this section, if a vehicle purchased under this part is not subject to the Federal Motor Vehicle Safety Standards issued by the National Highway Traffic Safety Administration in part 571 of this title, the recipient shall keep on file its certification that it received a statement to that effect from the manufacturer. (b) This subpart shall not apply to rolling stock that is not a motor vehicle.

P21. Does the recipient perform oversight of its subrecipients' FTA-funded procurement activities as described in its policies and procedures?

BASIC REQUIREMENT
The recipient is responsible for ensuring that subrecipients administer FTA-funded procurements in accordance with the requirements in 2 CFR 200 and FTA Circular 4220.1G.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
When a recipient passes through funding to a subrecipient, procurement requirements apply to the subrecipient. In such circumstances, the procurement process of the subrecipient must meet Federal requirements contained in the Uniform Administrative Requirements and the FTA Master Agreement, including Buy America, debarment and suspension, and lobbying requirements. The recipient needs to have a mechanism to ensure subrecipient compliance.

Some recipients provide written guidelines or standard terms and conditions to subrecipients for direct procurements. Some recipients review subrecipients' direct procurements, particularly for vehicles, equipment, and construction. Such reviews, which generally focus on bid/offer evaluation and selection, may be used to ensure that FTA (and state) requirements are met.

Monitoring of compliance with FTA third party contracting requirements will require a review of procurement procedures, either through site visits or a periodic review of written procurement manuals and transactions. The recipient is not required to review each subrecipient's procurement to ensure compliance with Federal requirements. The recipient may review selected procurements on a periodic basis in conjunction with a site visit or other general review of compliance with Federal requirements.

INDICATORS OF COMPLIANCE

a. *Does the recipient implement oversight procedures of its subrecipients for FTA-funded procurements?*

b. *Do subrecipient procurement files reviewed demonstrate adequate oversight by the recipient?*

INSTRUCTIONS FOR REVIEWER
Request and review the recipient's oversight procedures, State Management Plans, and any procurement requirements that have been included in subrecipient agreements. Discuss with the recipient onsite and determine who monitors the subrecipients' procurement processes. Examine written reports or audit reports of the process to determine if the recipient is monitoring in accordance with its documented procedures. Ensure that the recipient's oversight procedures address the following, either through review of the recipient's procedures or oversight files, or during the subrecipient site visit.

- Confirm that the subrecipient has written procurement policies and procedures that comply with 2 CFR 200.

- Confirm the subrecipient has written standards of conduct for those involved in its procurement and contract administration actions.

- Select one procurement that has been reviewed by the recipient. If multiple procurements are identified, select the one which presents the most risk (considering factors such as complexity, size, etc.) to FTA.

    - Verify that a written responsibility determination was made for the successful bidder prior to award and that consideration was given to matters such as:
        - Contractor integrity

        - Compliance with public policy

        - Record of past performance
        - Financial and technical resources
    - Verify that the subrecipient is determining that bidders were not excluded or disqualified before entering into any third-party contracts. Document that the subrecipient makes this verification 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.
    - Confirm that the subrecipient maintains records sufficient to detail the history of procurement actions.
    - Confirm that contract administration and oversight procedures are being implemented as described in the subrecipient's procurement policies and procedures.
    - Confirm that the subrecipient is not using geographic preferences or misusing prequalification lists.
    - Verify that the subrecipient used the appropriate method of procurement as described in its policies and procedures and in compliance with 2 CFR 200.
    - If reviewing an A&E procurement, determine that A&E services were procured using a qualifications-based process in accordance with the Brooks Act, where firms are ranked based only on their qualifications and price is then negotiated with the most qualified firm.
    - Confirm the subrecipient developed an independent estimate prior to receipt of bids or proposals for procurements above the Federal Simplified Acquisition Threshold.
    - Confirm that 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 non-competitive procurements. If a cost analysis was not required, confirm the subrecipient documented a price analysis.
    - Verify that the subrecipient included the applicable FTA clauses in its bid solicitation documents.
    - Confirm the subrecipient included all applicable certifications in its bid solicitation documents and received signed certifications from the bidders/proposers. These certifications may include:
        - Transit Vehicle Manufacturer (TVM) certification
        - Lobby certification
        - Buy America certification
    - Determine that liquidated damages in contracts were administered correctly, if assessed.
    - If the reviewed procurement included options, confirm that the subrecipient based the number of options on its reasonably foreseeable need and evaluated the option price prior to awarding the contract.

- If the subrecipient procured bus or rail rolling stock or replacement parts with FTA funds, verify that it adhered to the time limitations on placing orders against the contracts.

- If the subrecipient purchased FTA-funded assets through an assignment of options (a/k/a "piggyback"), confirm the underlying contract complied with applicable Federal requirements regarding excessive options, inclusion of Federal requirements, assignability, and price; and no cardinal changes.

- For bus procurements, ensure the subrecipient complied with bus testing report requirements.

- For rolling stock procurements, determine that the subrecipient complied with pre-award and post-delivery audits verifying compliance with Buy America provisions, purchaser's requirements, resident inspector requirements, and Federal Motor Vehicle Safety Standards (FMVSS).

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if 1) it is not providing oversight of its subrecipients' procurement processes as described in its written documents, 2) it does not monitor subrecipients making direct procurements with FTA assistance for compliance with the requirements, and/or 3) during a review of subrecipient procurements, deficiencies are found.

DEFICIENCY CODE P21-1: Insufficient oversight of subrecipient procurements

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented a procurement monitoring program.

NOTE TO REVIEWER: Reviewers should refer to questions P1 – P20 for additional corrective action language, if needed for specific procurements with identified deficiencies.

GOVERNING DIRECTIVE

2 CFR 200.332 Requirement for pass-through entities

All pass-through entities must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Reviewing financial and performance reports

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Have any oversight reviews/audits, or investigations of the recipient conducted since the last Comprehensive Review (including Procurement System Reviews (PSRs), Buy America audits, Financial Management Oversight Reviews (FMOs), and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses and/or repeat deficiencies in the area of procurement?

- Are any oversight reviews/audits, or investigations scheduled during this Federal fiscal year?

- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?

- Are any oversight review, investigation, or audit findings currently open?

- If a PSR has been requested for the upcoming year, what triggered the review request (e.g., new recipient, known procurement)? (Information on scheduled PSRs can be found in OTrak under the “Review Oversight Activities” quick link.)

- Are any issues related to procurement indicated in the Oversight Assessment Tool (OAT)?

- Does the recipient appear to have an appropriate organizational structure, including sufficient staff levels, for procurement? Does the recipient provide technical training to procurement employees?

- How does the recipient organize and structure procurement functions and personnel to support FTA-funded procurements (e.g., separate department within organization; split responsibility between transit staff and procurement office; etc.)?

- If the procurement function is decentralized, how does the recipient ensure that FTA-funded procurements are in compliance with FTA requirements?

- How do procurement personnel collaborate with users in the development of specifications and concur choosing the method for procurement?

- Any potential issues or concerns about the management or implementation of the procurement process not covered previously in this section?

References

Procurement

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR 1201, incorporating 2 CFR 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 4220.1G, “Third Party Contracting Guidance”
5. FTA Circular 5010.1F, “Award Management Requirements”
6. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Grant Application Instructions”
7. FTA Master Agreement
8. Third Party Contract Provisions Matrix

Buy America

9. 49 U.S.C 5323(j)
10. 49 CFR Part 661, “Buy America Requirements”
11. 49 CFR Part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases”
12. FTA September 16, 2016, Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver

Federal Motor Vehicle Safety Standards

13. 49 CFR Part 571, “Federal Motor Vehicle Safety Standards”

Bus Testing

14. 49 CFR Part 665, “Bus Testing”

Suspension/Debarment

15. 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension”
16. 2 CFR Part 180, “Non-procurement Suspension and Debarment”

Lobbying

17. 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. System for Award Management
5. Coronavirus Aid, Relief, and Economic Security Act

6. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
7. Notice of Concurrence
8. Emergency Relief rule
9. OMB Memorandum M-20-17, Appendix A
10. OMB Memorandum M-20-26

Exhibit 9.1

Clause Checklist

(duplicate for additional procurements)

Clause	Threshold/Applicability	1	2	3
Bonding requirements (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 specified timeframe. (b) A performance bond on the contractor's part for 100 percent of the contract price. A performance bond is a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under a contract. (c) A payment bond on the contractor's part for 100 percent of the contract price. A payment bond is a bond executed in connection with a contract to assure payment as required by the law of all persons supplying labor and material in the execution of the work provided for under a contract.	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.	-	-	-
Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate	For procurements over the Federal Simplified Acquisition Threshold	-	-	-
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	For procurements over $10,000	-	-	-
Davis-Bacon Act	All prime construction contracts	-	-	-
Contract Work Hours and Safety Standards Act	All contracts in excess of $100,000 that involve the employment of mechanics or laborers	-	-	-

Clause	Threshold/Applicability	1	2	3
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,"	-	-	-
Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)	Contracts in excess of $150,000	-	-	-
Debarment and Suspension	All contracts expected to equal or exceed $25,000			
Anti-Lobbying	All contracts exceeding $100,000			
6002 of the Solid Waste Disposal Act When procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR 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	-	-	-
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.	-	-	-
Prohibition on certain telecommunications and video surveillance services or equipment	All contracts made by the non-Federal entity under the Federal award	-	-	-

Clause	Threshold/Applicability	1	2	3
Seat Belt Use	Each third-party contract	-	-	-
Distracted Driving	Each third-party contract	-	-	-

A complete list of required third party procurement clauses can be found at *https://www.transit.dot.gov/funding/procurement/third-party-procurement/third-party-contract-provisions-matrix*.

Exhibit 9.2
CERTIFICATIONS and REPORTS CHECKLIST
(duplicate for additional procurements)

REQUIREMENT	Threshold/Applicability	1	2	3
Lobbying Certification	Procurements > $100,000	-	-	-
Buy America Certification	Projects >$150,000 that contain steel, iron or manufactured	-	-	-
Bus Testing Report	Procurements of buses and modified mass produced vans	-	-	-
Pre-Award Buy America Audit	Rolling stock procurements>$150,000	-	-	-
Pre-Award Buy America Certification	Rolling stock procurements>$150,000	-	-	-
Pre-Award Purchaser's Requirement Certification	Rolling stock procurements	-	-	-
Post-Delivery Audit	Rolling stock procurements>$150,000	-	-	-
Post-Delivery Buy America Certification	Rolling stock procurements >$150,000	-	-	-
Post-Delivery Purchaser's Requirement Certification	Rolling stock procurements	-	-	-
On-Site Inspector's Report	Rolling stock procurements for any number of rail vehicles; more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population	-	-	-
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	Non-rail rolling stock procurements	-	-	-

10. Reserved

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11. TITLE VI

This section has not been updated for FY2026. FTA is awaiting guidance and will issue an updated section once guidance is received.

PURPOSE OF THIS REVIEW AREA

The recipient must ensure that no person shall, on the grounds of race, color, or national origin, be excluded from participating in, or be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance without regard to whether specific projects or services are federally funded. The recipient must ensure that all transit services and related benefits are distributed in an equitable manner.

QUESTIONS TO BE EXAMINED

1. Did the recipient prepare and submit a Title VI Program?
2. Does the recipient provide meaningful access to Limited English Proficient (LEP) persons?
3. Does the recipient notify the public of its rights under Title VI?
4. Does the recipient implement complaint procedures as described in its Title VI Program?
5. Has the recipient implemented the public participation plan from its Title VI Program in its public participation activities?
6. Does the recipient monitor its subrecipients for compliance with Title VI requirements?
7. Has the recipient conducted the required equity analysis for any new transit facilities sited since the last Comprehensive Review?
8. Has the recipient evaluated fare and major service changes and monitored transit service?
9. Does the recipient identify the needs of minority populations in planning activities; document that it passes Federal Transit Administration (FTA) funds through to subrecipients without regard to race, color, or national origin; and assure that minority populations are not being denied the benefits of or excluded from participation in FTA-funded programs?
10. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another entity on the recipient's behalf, for compliance with Title VI requirements?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Most recent Title VI Program, if not uploaded to the FTA's Transit Award Management System (TrAMS)
- Listing of Title VI investigations, complaints, and lawsuits that have occurred since the last Title VI Program submission
- List of language assistance training for staff

- Examples of public participation activities performed since the last Comprehensive Review that align with the Title VI Program
- List of transit facilities sited since the last Comprehensive Review and copies of corresponding equity analyses
- List of transit facilities to be constructed/leased in the upcoming three Federal fiscal years and copies of equity analysis completed or schedule for equity analysis completion
- Transit Providers that operate 50 or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population
    - List of any fare increases or major service changes since the last Title VI Program submission; date of change; and a brief description of the change
    - Any service equity or fare equity analyses conducted since submission of the last Title VI program for major service changes or any fare changes
    - Any service equity or fare equity analyses conducted since submission of the last Title VI Program for new fixed guideway service, New Starts or Small Starts projects
- States and non-state direct recipients of Section 5310 or Section 5311 funds with subrecipients:
    - Competitive selection or annual program of projects process
    - List of all subrecipient applications received during the review period and identify those:
        1. accepted or rejected
        2. applicants that are minority organizations or that serve minority communities
        3. amount of funds allocated
- Any procedures or documentation for monitoring Title VI compliance of contracted service, partnerships, or other service arrangements, including any contracts, agreements, oversight materials, or records of monitoring activities

Recipient Follow-up

- Title VI equity analysis for any new transit facilities planned for the next three fiscal years
- Process for monitoring subrecipients and reviewing subrecipients' Title VI Programs, if not included in the Title VI Program
- Title VI Programs of subrecipients to be visited during onsite portion of the review
- For Large Urban Fixed Route Recipients:
    - Results of monitoring activities that have occurred since the latest Title VI Program submission
    - Approval from the recipient's policy-making officials of monitoring results that has occurred since the last Title VI Program submission
- For State DOTs/MPOs:
    - Efforts within the review period to engage in outreach to diverse stakeholders regarding the availability of funds, and ensuring the competitive process is not itself a barrier to selection of minority applicants.
    - Documentation of how the MPO has included minority communities in the planning process that has occurred since the last Title VI Program submission

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TVI1. Did the recipient prepare and submit a Title VI Program?

BASIC REQUIREMENT
A recipient is required to prepare and submit a Title VI Program based on the recipient's transit-related characteristics.

APPLICABILITY
All recipients. Note: Recipients may fall under multiple threshold categories (i.e., transit provider and State) and must comply with the requirements within the respective category(ies).

DETAILED EXPLANATION FOR REVIEWER
Every three years, all direct recipients must submit a Title VI program that documents their compliance with Title VI requirements. Under FTA Circular 4702.1B, certain requirements apply to all fixed-route transit providers. FTA requires that all civil rights programs be uploaded in TrAMS at least 60 days prior to the expiration date of the program. FTA will review plan submissions and recipients must make any revisions required by the FTA's Office of Civil Rights.

INDICATORS OF COMPLIANCE

a. *Did the recipient develop and submit a Title VI Program in FTA's TrAMS?*

b. *If the recipient submitted a Title VI Program and FTA has issued correspondence indicating required revisions, has the recipient made those revisions?*

INSTRUCTIONS FOR REVIEWER
Review the Civil Rights Status screen in TrAMS to determine if the recipient has submitted a Title VI Program. Review the date of the latest plan submission to determine if it was uploaded in TrAMS 60 days prior to the previous program's expiration date. If the program has expired or was not uploaded to TrAMS 60 days prior to the previous program's expiration, request documentation from the recipient and/or FTA on requested and/or approved extensions.

Request and review any correspondence from FTA to the recipient on its submission. This includes revision requests and concurrence letters. Even if the program's status in TrAMS is "Concur," the concurrence letter could indicate issues within the plan that require revision and that reviewers will follow up on during the Comprehensive Review. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that it made the noted revisions or additions.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it has not submitted a Title VI Program or program update. The recipient is deficient if the current Title VI Program has expired and it has not properly submitted a program update or requested and received an extension for its program submission.

NOTE TO REVIEWER: If the recipient's Title VI Program was late (i.e., they failed to submit an updated program 60 days prior to the previous program's expiration date), and/or if they transmitted it to FTA in a manner other than uploading it to TrAMS, do not make a deficiency, but record this information in the appropriate question in the Issues/Concerns for FTA Awareness section. If it does not appear that the recipient developed a complete plan because it could be categorized as more than one type of recipient per the Title VI Circular, do not make a deficiency, but record this information in the appropriate question in the Issues/Concerns for FTA Awareness section.

DEFICIENCY CODE TVI1-1: Title VI program not submitted

SUGGESTED CORRECTIVE ACTION: First, submit a request for extension email to FTACivilRightsSupport@dot.gov, using the preapproved template. Then, develop and submit a Title VI Program in TrAMS and OTRAK.

The recipient is deficient if it received comments from FTA on its Title VI program submission but has not made revisions. (If the recipient revised its program, but it does not appear that those revisions met the intent of FTA's comments, do not make a deficiency, but make FTA aware of this for FTA's follow-up).

DEFICIENCY CODE TVI1-2: Revisions to Title VI program not made

SUGGESTED CORRECTIVE ACTION: Revise and submit its Title VI program in TrAMS and OTRAK.

GOVERNING DIRECTIVE
FTA Circular 4702.1B Chapter II 5. Reporting Requirements

Title 49 CFR Section 21.9(b) requires recipients to 'keep such records and submit to the Secretary timely, complete, and accurate compliance reports at such times, and in such form and containing such information, as the Secretary may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with [49 CFR part 21].' FTA requires that all direct and primary recipients document their compliance by submitting a Title VI Program to their FTA regional civil rights officer once every three years. The Title VI Program must be approved by the direct or primary recipient's board of directors or appropriate governing entity or official(s) responsible for policy decisions prior to submission to FTA.

FTA Circular 4702.1B Chapter III 4.b. Upload Title VI Program to TEAM [currently TrAMS]

Direct and primary recipients must upload their Title VI Program into FTA's Transportation Electronic Award Management (TEAM) system, or other tracking system as directed by FTA. The Title VI Program shall be attached via the paper clip function on the Civil Rights screen, and not attached to a particular award. Recipients must also notify their FTA Regional Civil Rights Officer via email that they have uploaded their Title VI Program to TEAM. The Title VI Program must be uploaded to TEAM no fewer than sixty calendar days prior to the date of expiration of the Title VI Program.

TVI2. Does the recipient provide meaningful access to Limited English Proficient (LEP) persons?

BASIC REQUIREMENT
A recipient must not discriminate on the basis of national origin. A recipient serving a population with a significant number or proportion of LEP persons must take reasonable steps to provide information in appropriate languages**.**

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to ensure meaningful access to LEP persons. FTA recipients may meet this requirement by complying with the Department of Justice (DOJ) LEP regulation at 28 CFR 42.405(d)(1) and applicable DOJ guidance, as described in FTA Circular 4702.1B, Title VI Requirements and Guidelines for FTA Recipients.

Circular 4702.1B Chapter III.9.c provides that recipients which "provide[] written translations of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered" have likely met their written translation obligations.

INDICATOR OF COMPLIANCE

a. *Has the recipient assessed whether the population of its service area includes a significant number or proportion of LEP persons?*

b. *Has the recipient defined its vital documents in its Title VI plan? Has the recipient translated vital documents for all LEP language groups consisting of over 1000 persons or over 5% of the population served, whichever is less?*

INSTRUCTIONS FOR REVIEWER

Request evidence that the recipient has assessed whether the population of its service area includes a significant number or proportion of LEP persons. Request and review examples of language assistance measures that have been implemented, such as the translation of vital documents, in conjunction with language demographics of the population served by the recipient. Verify that the recipient has translated vital documents into languages spoken by LEP language groups of 5% or 1000 persons (whichever is less) of the population served.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it has not implemented its LAP as indicated in its Title VI Program.

DEFICIENCY CODE TVI2-1: Removed in FY2025

SUGGESTED CORRECTIVE ACTION: Removed in FY2025

DEFICIENCY CODE TVI2-2: Limited English Proficiency meaningful access deficiencies

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has made available translations of vital documents for LEP language groups of over 1000 persons or over 5% of the population, whichever is less.

GOVERNING DIRECTIVE

FTA Circular 4702.1B Chapter III.9.c Safe Harbor Provision

DOT has adopted DOJ's Safe Harbor Provision, which outlines circumstances that can provide a "safe harbor" for recipients regarding translation of written materials for LEP populations. The Safe Harbor Provision stipulates that, if a recipient provides written translation of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the recipient's written translation obligations. Translation of non-vital documents, if needed, can be provided orally. If there are fewer than 50 persons in a language group that reaches the five percent (5%) trigger, the recipient is not required to translate vital written materials but should provide written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

TVI3. Does the recipient notify the public of its rights under Title VI?

BASIC REQUIREMENT
A recipient must provide information regarding its Title VI obligations to the public and notify members of the public of the protections against discrimination afforded to them by Title VI.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients and subrecipients shall provide information to the public regarding their Title VI obligations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients and subrecipients shall at a minimum, disseminate information by posting a Title VI notice on the agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc. Recipients should also post Title VI notices at stations or stops, and/or on transit vehicles.

FTA Circular 4702.1B, Chapter III, Section 5b(1) also includes additional effective practices for notice dissemination for recipients to consider.

The notice shall include the following three elements:

- A statement that the agency operates programs without regard to race, color, or national origin,
- A description of the procedures that members of the public should follow in order to request additional information on the recipient's Title VI obligations, and
- A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the recipient.

INDICATORS OF COMPLIANCE

a. *Does the recipient disseminate the required Title VI Notice to the public as described in its Title VI Program?*

b. *Does the published and posted Title VI Notice include all three of the required elements?*

INSTRUCTIONS FOR REVIEWER
Prior to the site visit, review the recipient's Title VI Program in TrAMS to identify the notice provided in the plan and how the recipient describes providing the required notification to the public. Review the recipient's website to verify the contents of the notice and that the Title VI Notice has been posted. Onsite, confirm the Title VI Notice is posted in public areas as described in the recipient's Title VI Program.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it has not disseminated a Title VI Notice on its website, in public areas of the agency's office, and in other areas as described in its Title VI Program.

DEFICIENCY CODE TVI3-1: Title VI public notification not disseminated

SUGGESTED CORRECTIVE ACTION: Prepare and submit documentation of having notified the public of its rights under Title VI as described in its Title VI Program.

The recipient is deficient if it does not provide translation of the Title VI Notice consistent with its Language Assistance Plan.

DEFICIENCY CODE TVI3-2: Title VI public notification translation not provided

SUGGESTED CORRECTIVE ACTION: prepare and submit translated Title VI notification(s) along with verification that the translated document has been disseminated.

The recipient is deficient if its Title VI public notification does not include all three of the required elements.

DEFICIENCY CODE TVI3-3: Title VI public notification lacking required elements

SUGGESTED CORRECTIVE ACTION: Prepare and submit a revised Title VI notification(s) that include all three of the required elements.

GOVERNING DIRECTIVE

FTA Circular 4702.1B Chapter III.5. Requirement to Notify Beneficiaries of Protection Under Title VI

Title 49 CFR Section 21.9(d) requires recipients to provide information to the public regarding the recipient's obligations under DOT's Title VI regulations and apprise members of the public of the protections against discrimination afforded to them by Title VI. Recipients shall at a minimum, disseminate information by posting a Title VI notice on the agency's website and in public areas of the agency's office(s), including the reception desk, meeting rooms, etc. Recipients should also post Title VI notices at stations or stops, and/or on transit vehicles.

b. Contents. The Title VI notice shall include: (1) A statement that the agency operates programs without regard to race, color, or national origin. (2) A description of the procedures that members of the public should follow in order to request additional information on the recipient's Title VI obligations. (3) A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the recipient.

TVI4. Does the recipient implement complaint procedures as described in its Title VI Program?

BASIC REQUIREMENT
A recipient must make its procedures for filing a complaint available to the public, and investigate, and track Title VI complaints filed against it.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their complaint procedures available to the public. Recipients must also develop a Title VI complaint form, and the form and procedures for filing a complaint shall be available on the recipient's website. FTA requires direct and primary recipients to report complaints and complaint procedures in their

Title VI Programs in order to comply with DOT's Title VI regulations. A recipient can use a common process and forms for accepting and investigating civil rights, nondiscrimination, and other complaints; however, Title VI complaints must be categorized distinctly in this process and within internal and external communications.

INDICATORS OF COMPLIANCE

a. *Does the recipient use the complaint form(s) and instructions for filing complaints identified in its Title VI Program?*

b. *Are the complaint form and instructions available on the recipient's website and at other locations described in its Title VI Program?*

c. *Is the recipient processing complaints as described in its Title VI Program and its complaint instruction forms?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's complaint process in its Title VI Program and the complaint form and instructions for use by the public that were included as part of that process.

Request and review the complaint form and instructions the recipient is currently using. Review the recipient's website and verify that Title VI complaint forms and instructions are on the website and currently being used as provided in its Title VI Program.

Review the recipient's complaint process in its Title VI Program for a description of dissemination of the complaint form and instructions for use by the public. Onsite, verify that the recipient has additionally disseminated the complaint form as described in its Title VI Program.

Prior to the site visit, review the recipient's complaint process in its Title VI Program. Review the recipient's website and verify that Title VI complaint form and instructions are on the website and currently being used as provided in its Title VI Program. Onsite verify that the complaint form and instructions are publicly available in the locations described in the Title VI Program

Review Title VI complaints received since the last Comprehensive Review to determine if procedures described in its Title VI Program were implemented for these complaints.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it is not implementing its complaint process in accordance with its Title VI Program.

> DEFICIENCY CODE TVI4-1: Title VI complaint process not implemented in accordance with Title VI Program
>
> SUGGESTED CORRECTIVE ACTION: Prepare and submit evidence that it is using a complaint form, disseminates complaint information, provides translation of the complaint form and instructions, and/or processes complaints as detailed in its Title VI Program. If applicable, provide

evidence of staff training to ensure that the process continues to be implemented in accordance with the Title VI Program.

GOVERNING DIRECTIVE

FTA Circular 4702.1B Chapter III 6. Requirement to Develop Title VI Complaint Procedures and Complaint Form

In order to comply with the reporting requirements established in 49 CFR Section 21.9(b), all recipients shall develop procedures for investigating and tracking Title VI complaints filed against them and make their procedures for filing a complaint available to members of the public. Recipients must also develop a Title VI complaint form, and the form and procedures for filing a complaint shall be available on the recipient's website. FTA requires direct and primary recipients to report information regarding their complaint procedures in their Title VI Programs in order for FTA to determine compliance with DOT's Title VI regulations.

TVI5. Has the recipient implemented the public participation plan from its Title VI Program in its public participation activities?

BASIC REQUIREMENT
A recipient's public participation plan shall offer early and continuous opportunities for the public, including minority populations, to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to incorporate Title VI considerations into the recipient's established public participation plan or process. The plan shall explicitly describe the proactive strategies, procedures, and desired outcomes that underpin the recipient's public participation activities. Efforts to involve minority populations in effective participation in the recipient's decision-making process shall be included in the plan. While not a requirement FTA Circular 4702.1B provides effective practices that recipients may have incorporated into their Title VI Program, such as:

- Scheduling meetings at times and locations that are convenient and accessible for affected members of the public
- Employing different meeting sizes and formats
- Coordinating with community- and faith-based organizations, educational institutions, and other organizations to implement public engagement strategies that reach out to all segments of the affected community
- Providing opportunities for public participation through means other than written communication, such as personal interviews or use of audio or video recording devices to capture oral comments

Recipients engaged in planning and other decision-making activities at the local level should consider the principles embodied in the planning regulations and develop and use a documented public participation

plan or process that provides adequate notice of public participation activities, as well as early and continuous opportunities for public review and comment at key decision points.

INDICATOR OF COMPLIANCE

a. *Have Title VI considerations identified in the Title VI Program's Public Participation Plan been integrated into the recipient's public participation or outreach activities?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's Public Participation Plan submitted as part of its Title VI Program. Request and review the list of public involvement activities conducted since the last Comprehensive Review and a description of the methods used to seek out and consider the viewpoints of minority populations in the course of conducting these public outreach and involvement activities. Review any public participation documents provided in response to the Section Technical Capacity-Program Management and 5307 Program Requirements areas of the review. Onsite, discuss with the recipient any other public participation and outreach plans and processes the agency has documented. Request and review records of activities such as public hearings, planning meetings, and program of projects meetings.

Determine if the recipient incorporated the measures it detailed in its Title VI Program into public involvement events reviewed. Review any actions the recipient described in its Language Assistance Plan relating to public participation and outreach for implementation.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it has conducted public outreach activities since the last review but cannot demonstrate that it implemented the public involvement strategies described in its Title VI Program Public Participation Plan.

DEFICIENCY CODE TVI5-1: Title VI Public Participation Plan not implemented

SUGGESTED CORRECTIVE ACTION: Submit a list of public engagement activities anticipated within the next year. Submit a process for implementing inclusive public participation for upcoming activities in accordance with the Public Participation Plan in its Title VI Program.

NOTE TO REVIEWER: Reviewers should consult with FTA to determine if the documentation of implementation should be either a number of public engagement activities or all activities within a defined timeframe.

GOVERNING DIRECTIVE

FTA Circular 4702.1B Chapter III. 8. Promoting Inclusive Public Participation

The content and considerations of Title VI shall be integrated into each recipient's established public participation plan or process (i.e., the document that explicitly describes the proactive strategies, procedures, and desired outcomes that underpin the recipient's public participation activities) … Recipients engaged in planning and other decision-making activities at the local level should consider the principles embodied in the planning regulations, and develop and use a documented public participation plan or process that provides adequate notice of public participation activities, as well as early and continuous opportunities for public review and comment at key decision points.

TVI6. Does the recipient monitor its subrecipients for compliance with Title VI requirements?

BASIC REQUIREMENT
A recipient is responsible for ensuring that its subrecipients comply with Title VI requirements.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
The recipient is responsible for ensuring that all subrecipients comply with the Title VI requirements. If the subrecipients are not in compliance with all Title VI requirements, then the primary recipient is not in compliance with Title VI. In order to ensure the primary recipient and subrecipient are in compliance with the Title VI requirements, the primary recipient shall undertake the following activities:

- Document its process for ensuring that all subrecipients are complying with the general reporting requirements, as well as other requirements that apply to the subrecipient, based on the type of entity and the number of fixed-route vehicles it operates in peak service.

- Establish a timeframe to collect Title VI programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI programs may be electronic, at the option of the primary recipient.

- Compile and provide, upon request, a list of all subrecipients.

When a subrecipient is also a direct recipient of FTA funds, the entity reports directly to FTA and the primary recipient is not responsible for monitoring compliance of that subrecipient. The supplemental agreement signed by both entities in their roles as designated recipient and direct recipient relieves the primary recipient/designated recipient of this oversight responsibility, with a special caveat for MPOs receiving planning funds through State DOTs.

INDICATORS OF COMPLIANCE

a. *Has the recipient collected and reviewed subrecipient Title VI Programs?*

b. *How does the recipient monitor subrecipients to ensure that they are complying with Title VI requirements?*

INSTRUCTIONS FOR REVIEWER

Determine if a recipient has subrecipients by reviewing past Comprehensive Review reports (Description of the Recipient section), information provided in the RIR, and inquiring of the FTA regional office. Request and review a list of subrecipients and contractors and evaluate to ensure that both have been properly designated as such.

Review the recipient's Title VI Program in TrAMS for subrecipient monitoring procedures and tools. Request and review documentation of monitoring activities that the recipient has conducted since the last Comprehensive Review. Determine if the recipient is following its described processes (frequency and

type of monitoring) to ensure that subrecipients are complying with the general reporting requirements of FTA's Title VI Circular, as well as other requirements that apply to the subrecipient, based on the type of entity and the number of fixed-route vehicles it operates in peak service, if a transit provider.

For each subrecipient selected for a site visit, review the recipient's records of past plan reviews to determine if the review addressed the required elements. Review the oversight files to ensure that the recipient monitors the subrecipient for implementation of its Title VI Program.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have documentation that it reviewed the Title VI Programs of subrecipients that are not also direct recipients of FTA funds.

> DEFICIENCY CODE TVI6-1: Subrecipient Title VI Programs not reviewed or not reviewed for required elements
>
> SUGGESTED CORRECTIVE ACTION: Prepare and submit a schedule for reviewing subrecipients' Title VI Programs along with evidence of its implementation.

The recipient is deficient if it is not conducting oversight of subrecipients' Title VI program requirements (for subrecipients that are not also direct recipients of FTA funds) as described in its Title VI Program.

> DEFICIENCY CODE TVI6-2: Insufficient oversight of subrecipients' Title VI programs
>
> SUGGESTED CORRECTIVE ACTION: Prepare and submit a schedule for, and description of, oversight monitoring for subrecipients' implementation of Title VI requirements along with evidence of its implementation.

GOVERNING DIRECTIVE

FTA Circular 4702.1B Chapter III 12. Monitoring Subrecipients

In accordance with 49 CFR 21.9(b), and to ensure that subrecipients are complying with the DOT Title VI regulations, primary recipients must monitor their subrecipients for compliance with the regulations. Importantly, if a subrecipient is not in compliance with Title VI requirements, then the primary recipient is also not in compliance. a. In order to ensure the primary and subrecipient are in compliance with Title VI requirements, the primary recipient shall undertake the following activities: (1) Document its process for ensuring that all subrecipients are complying with the general reporting requirements of this circular, as well as other requirements that apply to the subrecipient based on the type of entity and the number of fixed route vehicles it operates in peak service if a transit provider. (2) Collect Title VI Programs from subrecipients and review programs for compliance. Collection and storage of subrecipient Title VI Programs may be electronic at the option of the primary recipient. b. When a subrecipient is also a direct recipient of FTA funds, the entity reports directly to FTA and the primary recipient is not responsible for monitoring compliance of that subrecipient. The supplemental agreement signed by both entities in their roles as designated recipient and direct recipient relieves the primary recipient/designated recipient of this oversight responsibility [with a special caveat for MPOs receiving planning funds through State DOTs as discussed in Chapter VI.3].

TVI7. Has the recipient conducted the required equity analysis for any new transit facilities sited since the last Comprehensive Review?

BASIC REQUIREMENT
In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the grounds of race, color, or national origin.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER

FTA Circular 4702.1B describes the requirements for complying with the regulation in 49 CFR Section 21.9(b)(3), which states, "In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part." Locating a facility includes construction or leasing activities. The requirement for an equity analysis applies to projects requiring land acquisition and the displacement of persons from their residences and businesses. Title VI covers all of the operations of covered entities regardless of whether specific portions of the covered program or activity are Federally funded. Therefore, this requirement also applies to facilities that are not FTA-funded.

For purposes of this requirement, "facilities" do not include bus shelters, as these are transit amenities and are covered in FTA Circular 4702.1B Chapter IV, nor do they include transit stations, power substations, etc., as those are evaluated during project development and the National Environmental Policy Act (NEPA) process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. The recipient is required to complete a Title VI equity analysis during the planning stages with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients must engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

If a recipient conducted an analysis during the NEPA process, then this can be utilized towards the Title VI equity analysis requirement, as long as the NEPA analysis encompasses the necessary information required in a Title VI equity analysis. However, if a facility exempted from the Title VI equity analysis, due to the assumption it will be analyzed during the NEPA process, does not in fact trigger NEPA (for example, because there are no federal funds in the facility), then said facility will require a Title VI equity analysis.

When evaluating locations of facilities:

- Analysis should be done at the Census tract or block group, where appropriate, to ensure that proper perspective is given to localized impacts.

- If the recipient determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the recipient may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The recipient must show how both elements are met. In order to make this showing, the recipient must consider and analyze alternatives to determine whether those alternatives would have less of a disparate impact on the basis of race, color, or national origin, and then implement the least discriminatory alternative.

INDICATORS OF COMPLIANCE

a. *Has the recipient sited any new transit facilities since the last review? If no, move to the next question.*

b. *Was the Title VI equity analysis for the site determination or location of facilities completed prior to selection of the preferred site?*

c. *If an equity analysis was completed, did the recipient include required elements?*

Required Element	Comment
Whether the location of a project would result in a disparate impact on the basis of race, color, or national origin	-
Outreach consistent with the Public Participation Plan (PPP) to persons potentially impacted by the siting of facilities was conducted	-
Upon determination of a disparate impact, the Title VI equity analysis compared the equity impacts of various siting alternatives, implementing the least discriminatory alternative	-

INSTRUCTIONS FOR REVIEWER

Review projects in TrAMS to determine if the recipient has added any new transit facilities. Review responses to real property questions in the Satisfactory Continuing Control review area. Determine if these facilities meet the requirement to conduct a Title VI equity analysis. Request and review documentation on Title VI equity analysis for siting or location of applicable facilities to determine if the analysis took place prior to the preferred site selection.

Request and review any Title VI analysis completed for facility siting completed since the last review to determine if the required elements were included:

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it is within six months of finalizing the siting of a facility(ies) for which an equity analysis is required, but has not defined a process to do so.

DEFICIENCY CODE TVI7-1: Title VI equity analysis not conducted for facility site or location

SUGGESTED CORRECTIVE ACTION: For a facility still in the process of siting, prepare and submit documentation of an equity analysis conducted during the planning stages.

NOTE TO REVIEWER: If this deficiency is made for a facility for which the location has already been determined, the reviewer is to consult with FTA and the Regional Counsel to determine the appropriate corrective action(s).

The recipient is deficient if an equity analysis was completed but not in accordance with FTA Circular 4702.1B Chapter III 13 for the siting or location of facilities.

DEFICIENCY CODE TVI7-2: Incomplete equity analysis for facility site or location determination

NOTE TO REVIEWER: If this deficiency is made, the reviewer is to consult with FTA and the Regional Counsel to determine the appropriate corrective action(s).

GOVERNING DIRECTIVE
FTA Circular 4702.1B Chapter III 13. Determination of Site or Location of Facilities

Title 49 CFR Section 21.9(b)(3) states, "In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding persons from, denying them the benefits of, or subjecting them to discrimination under any program to which this regulation applies, on the grounds of race, color, or national origin; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act or this part." Title 49 CFR part 21, Appendix C, Section (3)(iv) provides, "The location of projects requiring land acquisition and the displacement of persons from their residences and businesses may not be determined on the basis of race, color, or national origin." For purposes of this requirement, "facilities" does not include bus shelters, as these are transit amenities and are covered in Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development and the NEPA process. Facilities included in this provision include, but are not limited to, storage facilities, maintenance facilities, operations centers, etc. In order to comply with the regulations:

a. The recipient shall complete a Title VI equity analysis during the planning stage with regard to where a project is located or sited to ensure the location is selected without regard to race, color, or national origin. Recipients shall engage in outreach to persons potentially impacted by the siting of facilities. The Title VI equity analysis must compare the equity impacts of various siting alternatives, and the analysis must occur before the selection of the preferred site.

TVI8. Has the recipient evaluated fare and major service changes and monitored transit service?

BASIC REQUIREMENT
If the recipient is a transit provider that operates 50 or more fixed-route vehicles in peak service and is located in an Urbanized Area (UZA) of 200,000 or more in population, it must evaluate fare and major service changes and monitor transit service.

APPLICABILITY
Transit Providers that operate 50 or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population

DETAILED EXPLANATION FOR REVIEWER
Fare and major service changes: Under FTA Circular 4702.1B, transit providers that operate 50 or more fixed- route vehicles in peak service and are located in a UZA of 200,000 or more in population shall evaluate major service and any fare and fare media changes (including transfers) and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on riders on the basis of race, color, or national origin. This requirement does not apply to recipients with fewer than 50 peak period vehicles, although all recipients are still required to

comply with Title VI regulations that prohibit disparate impact discrimination and should review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color, or national origin.

FTA requires recipients subject to this requirement to develop a definition of a major service change and to conduct a service equity analysis for all major service changes. Fare change equity analyses are required for all fare or fare media changes. FTA Circular 4702.1B requires written procedures for the conduct of service and fare equity analyses and a disparate impact policy to be part of the Title VI Program. The policies and procedures developed to address the service and fare equity requirement must also discuss when and how a transit agency will assess the compounding effects from prior service and fare changes. (Note: The inclusion of prior service and/or fare changes depends on the nature of the agency, the proximity of the changes, and other specific factors. An agency must determine what will be a reasonable timeframe and analyze for compounding effects.) These policies and procedures require public participation during the development stages and are to be formally adopted once the governing board approves them.

A fare and service change equity analysis must be adequate to evaluate if there will be any disparate effects on riders on the basis of race, color, or national origin. The circular provides extensive guidance on how to conduct fare and service equity analyses. FTA Circular 4702.1B requires recipients to use tables similar to those found in Appendix K of the circular for service or fare actions that were implemented after April 1, 2013. Any fare or equity analysis conducted needs to be included in the next submission of the recipient's Title VI Program.

Transit providers may use decennial Census data to develop maps and charts until the next decennial Census or they may use American Community Survey (ACS) data between decennial censuses. These maps and charts will help the transit provider determine whether, and to what extent, transit service is available to minority populations within the transit provider's service area. These maps may be prepared using Geographic Information System (GIS) technology, although transit providers without access to GIS technology may prepare the maps in alternative formats.

Upon completion of a service or fare equity analysis, the recipient shall brief its board of directors, top executive, or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s). The transit provider shall submit documentation such as a board resolution, copy of meeting minutes, or similar documentation as evidence of the board or governing entity or official's consideration, awareness, and approval of the analysis.

This requirement is different from the Section 5307 requirement for public comment for fare increases and major service reductions (see Section 5307 Program Requirements section). Section 5307 requires a public comment process before raising a fare or carrying out a major reduction of transportation service. For purposes of Title VI, recipients to which this requirement applies must perform an equity evaluation for "major service changes" (both increases and reductions), as locally defined, and fare changes (both increases and reductions).

Note: Though the circular delineates the procedures large fixed-route transit providers must undertake when planning a service and/or fare change, all fixed-route transit providers are required by Title VI to ensure that all service and fare changes are equitably undertaken, regardless of the provider's size. Agencies not meeting the higher threshold are still required to have some means to ensure that its service and/or fare changes comply with the protections afforded by Title VI.

New Starts, Small Starts, other new fixed guideway: Transit providers that have implemented or will implement a New Start, Small Start or other new fixed guideway capital project shall conduct a service

and fare equity analysis. The service and fare equity analysis will be conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of "major service change." All proposed changes to parallel or connecting service will be examined. If the entity that builds the project is different from the transit provider that will operate the project, the transit provider operating the project shall conduct the analysis.

The service equity analysis shall include a comparative analysis of service levels pre- and post- the New Start, Small Start or other new fixed guideway capital project. The analysis shall be depicted in tabular format and shall determine whether the service changes proposed (including both reductions and increases) due to the capital project will result in a disparate impact on minority populations. The transit provider shall also conduct a fare equity analysis for any and all fares that will change as a result of the capital project. Public outreach held regarding the project will also be included.

Monitoring: All recipients that operate fixed-route services must set system-wide service standards and policies necessary to avoid discriminatory service design or operational decisions. Policies must be set for each mode. These standards and policies must address how service is distributed across the transit system and must ensure that the manner of the distribution affords users access to these assets. The standards must be comprehensive and apply agency-wide. Service policies are developed to ensure service design and operational practices do not result in discrimination on the basis of race, color, or national origin. Service policies differ from service standards in that they are not necessarily based on a quantitative threshold.

SUPPLEMENTAL FUNDING IMPACT

Evaluation of Fare and Major Service Changes

Temporary service and fare changes in response to an emergency (including COVID-19) do not rise to the level of a major change, so a service and fare equity analysis is not required. If a transit agency operating 50 or more fixed-route vehicles in peak service and located in an urbanized area (UZA) with a population of 200,000 or more chooses to make permanent any fare media changes that are instituted during an emergency, or if such changes last longer than six months, then the transit agency must perform a fare equity analysis as described in Chapter IV of FTA's Title VI Circular 4702.1B. Similarly if a transit agency chooses to make any service changes permanent any service changes that are instituted during an emergency, or changes in service last longer than 12 months, then the transit agency must perform a service equity analysis.

FTA expects that all transit agencies take reasonable measures to implement temporary service or fare changes equitably to prevent unintentional discrimination. FTA does not require a transit agency to document this process, get board approval prior to implementing changes, or share documentation on the changes with FTA, but FTA recommends that transit agencies document the rationale for specific service reductions, as well as steps taken to ensure equitable reductions in service, in the event someone files a complaint.

FTA cautions that changes in fare media policies (such as temporarily not accepting cash fares, e.g., only pre-purchased media (often referred to as a cashless or cash-free fare policy)) may discriminate against minority transit riders. Minority transit riders may be disproportionately unbanked, lack credit cards, or lack access to locations for purchasing fare media in advance of a trip. FTA expects all transit agencies to consider mitigating measures in this circumstance to ensure their fare media changes do not result in disparate impacts on the basis of race, color, or national origin, which are protected categories under Title VI of the Civil Rights Act of 1964.

INDICATORS OF COMPLIANCE

a. *Does the recipient operate 50 or more fixed route vehicles in peak service and is it located in a UZA of 200,000 or more people? If no, move to the next question.*

b. *If the recipient implemented a fare or major service change since its last Title VI submission, did it conduct an equity analysis in accordance with its Title VI Program?*

c. *If the recipient initiated, or plans to initiate, new fixed guideway service or service under the New Starts or Small Starts programs, did it conduct a service and fare equity analysis as required or when is such an analysis anticipated to be completed?*

d. *Is the recipient monitoring the service and amenities it provides in accordance with its Title VI Program?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review a description of the methodology used to determine the impact of the fare and major service changes in the recipient's Title VI Program and the description of what the recipient considers to be a major service change. Prior to the site visit, review OTrak for the recipient's prior Comprehensive Review report describing service and fares, and compare this with current fare and service information received from the recipient. Conduct an internet search of the recipient for fare or service changes. Review recipient responses regarding fare or service changes implemented since last the Title VI Program submission. Ask the FTA regional office if there have been any fare or major service changes since the last Comprehensive Review. Review documentation related to any service and fare technical assistance provided by FTA. If fare or major service changes have occurred but equity analyses have not been conducted at the planning stage, discuss onsite the reason(s) for this with the recipient.

Fare and Major Service Changes: For the latest fare or major service change that was not included in the latest Title VI submission, determine if the required elements were addressed:

Fare and Service Change Elements	***Addressed***	***Not Addressed***	***Reviewer Comments***
The recipient completed an equity analysis during the planning stages for any fare, fare media, or major service change that occurred.	-	-	-
The recipient implemented its approved Title VI Program major service change and disparate impact policy as appropriate for the type of equity analysis required.	-	-	-

Fare and Service Change Elements	*Addressed*	*Not Addressed*	*Reviewer Comments*
If the equity analysis revealed an adverse effect or a disparate impact, the recipient analyzed alternatives and, if necessary, took steps to avoid, minimize or mitigate impacts where practicable.	-	-	-
The recipient briefed the governing body on the results of any equity analysis prior to the approval of any fare, fare media, or major service changes, and received approval for the service and fare equity analysis.	-	-	-

New Fixed Guideway, New Starts or Small Starts: Prior to the site visit, determine if the recipient is initiating new fixed guideway service or service under New Starts or Small Starts programs through a review of award applications in TrAMS. Determine the projected start of revenue operations, as this equity analysis is to be conducted six months prior to revenue operations. Discuss with FTA if any fare or service equity analysis has been submitted or request the information from the recipient. If not previously reviewed by FTA's Office of Civil Rights, review the Title VI equity analysis to determine if the requirements were addressed.

Equity Analysis Elements	*Addressed*	*Not Addressed*	*Reviewer Comments*
The analysis was conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of a "major service change" as defined by the transit provider.	-	-	-
All proposed changes to parallel or connecting service were examined.	-	-	-
The analysis included a comparative analysis of service levels pre-and post- the New Starts/Small Starts/new fixed guideway capital project.	-	-	-
The analysis was depicted in tabular format and determined whether the service changes proposed (including both reductions and increases) due to the capital project would result in a disparate impact on minority populations.	-	-	-
A fare equity analysis was conducted for any and all fares that would change as a result of the capital project.	-	-	-

Service And Amenities Monitoring: Prior to the site visit, review the recipient's Title VI Program in TrAMS for monitoring procedures and results of previous monitoring. Request and review documentation of monitoring that has been conducted since the last Comprehensive Review. Verify that the requirements were addressed.

Monitoring Element	*Addressed*	*Not Addressed*	*Reviewer Comments*
Conducted the monitoring at least every three years.	-	-	-
Selected a sample of minority and non-minority routes from all modes of service provided. The sample shall include routes that provide service to predominantly minority areas and non-minority areas.	-	-	-
Assessed the performance of each minority and non-minority route in the sample for each of the transit provider's service standards and service policies.	-	-	-
Compared the transit service observed in the assessment to the transit provider's established service policies and standards.	-	-	-
Analyzed any route that exceeded or failed to meet the standard or policy, depending on the metric measured to determine why the discrepancies exist, and take steps to reduce the potential effects.	-	-	-
Evaluated transit amenities policy to ensure amenities are being distributed throughout the transit system in an equitable manner.	-	-	-
Developed a policy or procedure to determine whether disparate impacts exist on the basis of race, color, or national origin, and apply that policy or procedure to the results of the monitoring activities.	-	-	-
Briefed and obtained approval from the transit providers' policy-making officials regarding the results of the monitoring program.	-	-	-
Documented corrective actions to remedy any disparities.	-	-	-

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not conduct an equity analysis for an applicable fare change or major service change unless it can be demonstrated that the fare change lasted less than six months, the service change lasted less than 12 months or none of the service changes constituted "major service changes" for the purpose of Title VI. The recipient is deficient if its procedures are not conducted in accordance with its approved Title VI Program, including its PPP.

DEFICIENCY CODE TVI8-1: Impact of fare and/or service changes not adequately examined

SUGGESTED CORRECTIVE ACTION: Submit an equity analysis for any fare or major service change that occurred since submission of the last Title VI Program. Submit revised procedures implemented to ensure that future equity analyses will be conducted as required.

The recipient is deficient if there is no documentation of approval by the board of directors, top executive(s), or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s).

DEFICIENCY CODE TVI8-2: Impact of fare and/or service changes not approved by governing body

SUGGESTED CORRECTIVE ACTION: For completed equity analysis, submit documentation that the analysis was approved by the appropriate governing entity or official(s) responsible for policy decisions regarding service and/or fare change(s) and the equity impacts of the service and/or fare change. Submit revised procedures implemented to ensure that future equity analyses will be approved by the governing body in advance of implementation or any service and/or fare change.

The recipient is deficient if it has not completed an equity analysis for new fixed guideway or service under New Starts or Small Starts program or the analysis is incomplete. For projects still in the planning process, or not within six months of starting revenue service, the recipient must provide documentation to FTA on how it will meet Title VI requirements.

DEFICIENCY CODE TVI8-3: New Starts or new fixed guideway service and equity analyses not completed

SUGGESTED CORRECTIVE ACTION: Submit an equity analysis for New Starts or new fixed guideway service that occurred since submission of the last Title VI Program. Submit revised procedures implemented to ensure that future equity analyses will be conducted as required.

NOTE TO REVIEWER: For projects completed without complete analyses, consult FTA to discuss the corrective action.

The recipient is deficient if it cannot document that it has monitored service and amenities at least every three years. The recipient is deficient if the monitoring and analysis does not include required elements.

DEFICIENCY CODE TVI8-4: Not implementing Title VI monitoring of service or amenities

SUGGESTED CORRECTIVE ACTION: Prepare and submit an updated monitoring program, consistent with the procedures in FTA Circular 4702.1B, along with evidence of implementation.

The recipient is deficient if there is no documentation of the briefing and approval of its policy-making officials regarding the results of the monitoring program.

DEFICIENCY CODE TVI8-5: Policy-making officials' review of Title VI monitoring not evident

SUGGESTED CORRECTIVE ACTION: Prepare and submit evidence that it has briefed its policy-making officials on Title VI monitoring conducted, along with a plan to ensure that this briefing occurs for future monitoring efforts.

GOVERNING DIRECTIVE

FTA Circular 4702.1B Chapter IV 7. Requirement to Evaluate Service and Fare Changes

This requirement applies only to transit providers that operate 50 or more fixed route vehicles in peak service and are located in a UZA of 200,000 or more in population or that otherwise meet the threshold in the Introduction section of this chapter. These transit providers are required to prepare and submit service and fare equity analyses as described below. Transit providers not subject to this requirement are responsible for complying with the DOT Title VI regulations which prohibit disparate impact discrimination, and therefore should review their policies and practices to ensure their service and fare changes do not result in disparate impacts on the basis of race, color, or national origin. To further ensure compliance with 49 CFR Section 21.5(b)(2), 49 CFR Section 21.5(b)(7), and Appendix C to 49 CFR part 21, all providers of public transportation to which this Section applies shall develop written procedures consistent with this Section to evaluate, prior to implementation, any and all service changes that exceed the transit provider's major service change threshold, as well as all fare changes, to determine whether those changes will have a discriminatory impact based on race, color, or national origin. The written procedures and results of service and/or fare equity analyses shall be included in the transit provider's Title VI Program.

Exceptions to conducting fare analysis: "(i) "Spare the air days" or other instances when a local municipality or transit agency has declared that all passengers ride free. (ii) Temporary fare reductions that are mitigating measures for other actions. For example, construction activities may close a segment of a rail system for a period of time and require passengers to alter their travel patterns. A reduced fare for these impacted passengers is a mitigating measure and does not require a fare equity analysis. (iii) Promotional fare reductions. If a promotional or temporary fare reduction lasts longer than six months, then FTA considers the fare reduction permanent and the transit provider must conduct a fare equity analysis.

Detailed descriptions of what the analyses are to cover is included in the Circular's Chapter IV, Section 7. Transit providers shall use tables similar to those provided in Appendix K to depict the results of the service and/or fare equity analysis. Transit providers should refer to the checklist and examples in the Appendix for additional technical assistance with service and fare equity analyses. Upon completion of a service or fare equity analysis, the transit provider shall brief its board of directors, top executive, or appropriate governing entity or official(s) responsible for policy decisions regarding the service and/or fare change(s) and the equity impacts of the service and/or fare change(s). The transit provider shall submit documentation such as a board resolution, copy of meeting minutes, or similar documentation with the Title VI Program as evidence of the board or governing entity or official's consideration, awareness, and approval of the analysis." "Transit providers that have implemented or will implement a New Start, Small Start, or other new fixed guideway capital project shall conduct a service and fare equity analysis. The service and fare equity analysis will be conducted six months prior to the beginning of revenue operations, whether or not the proposed changes to existing service rise to the level of "major service change" as defined by the transit provider. All proposed changes to parallel or connecting service will be examined. If the entity that builds the project is different from the transit provider that will operate the project, the transit provider operating the project shall conduct the analysis. The service equity analysis shall include a comparative analysis of service levels pre-and post- the New Starts/Small Starts/new fixed guideway capital project. The analysis shall be depicted in tabular format and shall determine whether the service changes proposed (including both reductions and increases) due to the capital project will result in a disparate impact on minority populations. The transit provider shall also conduct a fare equity analysis for any and all fares that will change as a result of the capital project.

FTA Circular 4702.1B Chapter IV 6. Requirement to Monitor Transit Service

FTA requires these transit providers to monitor the performance of their transit system relative to their system-wide service standards and service policies (i.e., vehicle load, vehicle assignment, transit amenities, etc.) not less than every three years. (Additional details follow in this section of the Circular.)

If a transit provider determines, based on its monitoring activities, that prior decisions have resulted in a disparate impact on the basis of race, color, or national origin, the transit provider shall take corrective action to remedy the disparities to the greatest extent possible, and shall discuss in the Title VI Program these disparate impacts and actions taken to remedy the disparities.

Transit providers shall brief and obtain approval from the transit providers' policymaking officials, generally the board of directors or appropriate governing entity responsible for policy decisions regarding the results of the monitoring program.

TVI9. Does the recipient identify the needs of minority populations in planning activities; document that it passes Federal Transit Administration (FTA) funds through to subrecipients without regard to race, color, or national origin; and assure that minority populations are not being denied the benefits of or excluded from participation in FTA-funded programs?

BASIC REQUIREMENT
Recipients are required to distribute funding and conduct planning activities in a nondiscriminatory manner.

APPLICABILITY
States and non-state direct recipients of Section 5310 or Section 5311 funds with subrecipients

DETAILED EXPLANATION FOR REVIEWER
State DOTs and MPOs shall conduct a non-discriminatory planning process and distribute funding in a non-discriminatory manner. States and MPOs are required to encourage and engage minority communities in the statewide or metropolitan transportation planning processes and to consider the needs and mobility of minority communities in the planning process. To ensure that members of minority communities are provided with full opportunities to participate in the planning process, actions shall be taken to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

States and MPOs shall provide documentation that FTA funds are passed through to subrecipients without regard to race, color, or national origin, and to ensure that minority populations are not being denied the benefits of or excluded from participation in these programs. States and MPOs are required to provide and document assistance provided to potential subrecipients and the procedures used to ensure the equitable distribution of funds to subrecipients that serve predominately minority populations.

INDICATORS OF COMPLIANCE

a. *Did the recipient ensure that members of minority communities are provided with full opportunities to engage in the statewide or metropolitan transportation planning process?*

b. *Did the recipient ensure that the needs of minority communities are identified in the Statewide or Metropolitan Transportation Planning process?*

c. *Did the recipient pass through FTA funds to subrecipients as indicated in its Title VI Program?*

d. *Did the recipient provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations, as described in its Title VI Program?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's most recent Title VI Program submission in TrAMS for discussion of the statewide or metropolitan transportation planning process and the procedures it will use to:

(1) identify the transportation needs of minority populations,

(2) include minority communities in the statewide or metropolitan transportation planning process,

(3) pass through FTA financial assistance to subrecipients in a non-discriminatory manner, and

(4) provide assistance to potential subrecipients.

Review documentation of statewide or metropolitan planning activities to determine if procedures documented in the Title VI Program for identifying transportation needs of minority communities and including them in the planning process were implemented. This could include actions to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

Review documentation of activities such as the competitive selection or annual program of projects processes, the latest allocation of funds to subrecipients, and assistance offered for efforts to receive applications from agencies serving predominantly minority populations, along with the record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority communities.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it is not identifying the needs of minority communities in planning as described in its Title VI Program.

DEFICIENCY CODE TVI9-1: Needs of minority communities not identified in statewide or metropolitan planning process

SUGGESTED CORRECTIVE ACTION: Prepare and submit evidence that the needs of minority communities are being included in the statewide or metropolitan transportation planning process in accordance with FTA Circular 4702.1B and its Title VI Program.

The recipient is deficient if it is not implementing procedures for including minority communities in statewide or metropolitan transportation planning process as described in its Title VI Program.

DEFICIENCY CODE TVI9-2: Minority communities not included in the statewide or metropolitan transportation planning process

SUGGESTED CORRECTIVE ACTION: Prepare and submit evidence that it has implemented procedures for including minority communities in planning processes in accordance with FTA Circular 4702.1B and its Title VI Program.

The recipient is deficient if it is not passing through funds to subrecipients in a non-discriminatory manner as described in its Title VI Program.

DEFICIENCY CODE TVI9-3: No basis for determining equitable distribution of funds

SUGGESTED CORRECTIVE ACTION: Prepare and submit an assessment of the adequacy of its procedures and, if necessary, an updated plan to ensure funds are used and distributed equitably, consistent with the procedures in FTA Circular 4702.1B and its Title VI Program.

The recipient is deficient if it is not providing assistance to potential subrecipients as described in its Title VI Program.

DEFICIENCY CODE TVI9-4: Assistance not provided to potential subrecipients

SUGGESTED CORRECTIVE ACTION: Prepare and submit documentation that it is providing assistance to potential subrecipients, consistent with the procedures in FTA Circular 4702.1B and its Title VI Program.

GOVERNING DIRECTIVE

FTA Circular 4702.1B, Chapter V 2. Requirement to Prepare and Submit a Title VI Program

States shall include the following information in their Title VI Program: (f) A description of the statewide transportation planning process that identifies the transportation needs of minority populations; (g) A description of the procedures the State uses to pass through FTA financial assistance to subrecipients in a non-discriminatory manner; (h) A description of the procedures the State uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations.

FTA Circular 4702.1B, Chapter VI 2. Requirement to Prepare and Submit a Title VI Program

MPOs shall include the following information in their Title VI Program: (a) (3) A description of the procedures by which the mobility needs of minority populations are identified and considered within the planning process… (c) (2) A description of the procedures the MPO uses to pass through FTA financial assistance to subrecipients in a non-discriminatory manner; (3) A description of the procedures the MPO uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations.

FTA Circular 4702.1B, Chapter V 3. Planning

As part of the planning certification review, FTA/FHWA review State-developed documentation to determine whether States have: c. Ensured that members of minority communities are provided with full opportunities to engage in the Statewide Transportation Planning process. This includes actions to

eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

FTA Circular 4702.1B, Chapter VI 3. Planning

As part of the planning certification review, FTA/FHWA review MPO developed documentation to determine whether MPOs have: c. Ensured that members of minority communities are provided with full opportunities to engage in the transportation planning process. This includes actions to eliminate language, mobility, temporal, and other obstacles to allow these populations to participate fully in the process.

FTA Circular 4702.1B, Chapter V 4. Requirements for Program Administration

In order to comply with 49 CFR Section 21.5, the general nondiscrimination provision, States shall document that they pass through FTA funds under the Enhanced Mobility for Seniors and Individuals with Disabilities (Section 5310) program, the Formula Grants for Rural Areas (Section 5311) program, and any other FTA funds, to subrecipients without regard to race, color, or national origin, and assure that minority populations are not being denied the benefits of or excluded from participation in these programs.

FTA Circular 4702.1B, Chapter VI 6. Requirements for Program Administration

In order to comply with 49 CFR Section 21.5, the general nondiscrimination provision, MPOs shall document that they pass through FTA funds under any FTA programs (e.g., 49 U.S.C. 5310, Enhanced Mobility for Seniors and Individuals with Disabilities), to subrecipients without regard to race, color, or national origin, and assure that minority populations are not being denied the benefits of or excluded from participation in these programs.

TVI10-1 Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another entity on the recipient's behalf, for compliance with Title VI requirements?

BASIC REQUIREMENT
Service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) must meet the Title VI requirements that apply to the recipient.

APPLICABILITY
Recipients who enter into contracts or other arrangements or relationships with other entities, lease vehicles, or otherwise rely on another public entity to provide service. This includes pilot programs, demonstration projects, and written contracts or informal arrangements that reflect an ongoing relationship between the parties.

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to ensure that service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) adheres to the same Title VI requirements that apply to the recipient.

INDICATOR OF COMPLIANCE

a. *How does the recipient monitor contractor compliance to ensure that they are complying with Title VI requirements?*

b. *Does the recipient have procedures for addressing contractor non-compliance?*

INSTRUCTIONS FOR REVIEWER
Review sample transportation service contracts and other arrangements or relationships, agreements to provide supplemental transportation, and leases for Title VI requirements. Onsite, discuss Title VI policies and procedures with the recipient and review recipient's oversight files.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with Tile VI requirements.

DEFICIENCY CODE TVI-10-1: Insufficient oversight of contracted service for Title VI requirements

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the Title VI service provisions.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence of implementation of procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the relevant Title VI requirements.

GOVERNING DIRECTIVE
FTA Circular 4702.1B Chapter III 2. Program Overview, 6. Applicability to Contractors

Contractors and subcontractors are responsible for complying with the Title VI Program of the recipient with whom they are contracting. Contractors are not required to prepare or submit Title VI Programs. Recipients are responsible for ensuring that contractors are following the Title VI Program and complying with Title VI.

FTA Master Agreement(34), Section 12

Recipients agree to comply, and assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with U.S. DOT regulations, 'Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act,' 49 CFR part 21.

49 CFR 21.5(b)(1)(vi) Discrimination Prohibited

A recipient...may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including Title VI Reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in Title VI?
- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies related to Title VI?
- Are any Title VI deficiencies currently open?
- If a Title VI compliance review is scheduled for the current Federal fiscal year, what information prompted the review?
- Are any issues related to Title VI indicated in the Oversight Assessment Tool (OAT)?
- Did the recipient make revisions to its Title VI program submission as noted by FTA, but those revisions do not appear to meet the intent of the issues communicated to it by FTA?
- Did the recipient submit its Title VI program update late?
- Did the recipient transmit its Title VI Program or Program Update through a means that differed from uploading it to the Recipient Documents or Civil Rights Information section of TrAMS?
- Does it appear that the recipient developed an incomplete plan because it could be categorized as more than one type of recipient per the Title VI Circular?
- Have Title VI complaints been filed with FTA against the recipient?
- If the recipient is located in a UZA under 200,000 in population and operates 50 or more fixed-route vehicles in peak demand, does it provide any service into an area of 200,000 or more?
- For service reductions, does the recipient define its threshold for triggering service change equity analysis differently from that which triggers public comment under the Section 5307 Program Requirements for major service reduction?
- Is the current Title VI Program that the recipient is implementing the one that was approved by FTA?
- Does the recipient appear to have sufficient resources for effective implementation of its Title VI Program?
- Do the recipient's system-wide service standards for each fixed-route mode of service appear to be sufficient to avoid discriminatory service design or operational decisions?
- Any potential issues or concerns about the recipient's Title VI Program or its implementation not covered previously in this section?

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REFERENCES

1. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 21, “Nondiscrimination in Federally assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act of 1964”
3. FTA Circular 4702.1B “Title VI Requirements and Guidelines for Federal Transit Administration Recipients”
4. Civil Rights Restoration Act of 1987

USEFUL WEBLINKS

1. FTA Title VI Page
2. FTA Civil Rights Training Materials
3. FTA Civil Rights Video Training Series
4. Title VI Frequently Asked Questions
5. US Census American FactFinder “Percent of Specific Language Speakers in the Region” (S1601)
6. Coronavirus Aid, Relief, and Economic Security Act
7. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
8. Notice of Concurrence
9. Emergency Relief rule
10. Emergency Relief docket

Exhibit 11.1

Requirement	Transit Providers that operate fixed-route service	Transit Providers that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population	States	Metropolitan Planning Organizations
General Requirements in Chapter III	Required	Required	Required	Required
Set system-wide standards and policies	Required	Required	Required if fixed route service provided	Required if MPO is a *direct recipient* and provides fixed route service
Collect and report data	Not required	Required: • Demographic and service profile maps and charts • Survey data regarding customer demographic and travel patterns	Required of all States: • Demographic profile and maps of the State showing minority populations • Analysis charts of distribution impact of State and Federal transportation funds • Analysis of disparate impacts of funding distribution Required if fixed route service provided and meets the peak vehicle and UZA threshold: • Service profile maps and charts • Survey data regarding customer demographic and travel patterns	

Requirement	Transit Providers that operate fixed-route service	Transit Providers that operate 50 or more fixed-route vehicles in peak service and are located in a UZA of 200,000 or more in population	States	Metropolitan Planning Organizations
Evaluate service and fare equity changes	Not required	Required	Required if fixed route service provided and meets the peak vehicle and UZA threshold	Required if fixed route service provided and meets the peak vehicle and UZA threshold
Monitor transit service	Not required	Required	Required if fixed route service provided and meets the peak vehicle and UZA threshold	Required if fixed route service provided and meets the peak vehicle and UZA threshold
Planning	Not required	Not required	Required	Required
Subrecipients	Monitoring required, unless subrecipient is also a direct recipient	Monitoring required, unless subrecipient is also a direct recipient	Required: • Procedures to pass through funding in non-discriminatory manner • Procedures to provide assistance to potential subrecipients Monitoring required, unless subrecipient is also a direct recipient	Monitoring required, unless subrecipient is also a direct recipient Required if MPO is a *primary recipient*: • Procedures to pass through funding in non-discriminatory manner • Procedures to provide assistance to potential subrecipients
Program Administration	Not required	Not required	Required	Required

Exhibit 11.2

The chart below summarizes the required elements for contents of a Title VI Program based on recipient category.

Type of Transit Provider	Title VI Program Contents
Demand Responsive Transit Provider	• A copy of the recipient's Title VI notice to the public • A copy of the recipient's instructions to the public regarding how to file a Title VI discrimination complaint, including a copy of the complaint form • A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission • A public participation plan (PPP) that includes an outreach plan to engage minority populations, as well as a summary of outreach efforts made since the last Title VI Program submission • For recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the recipient, the recipient must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees or councils • Narrative or description of efforts the primary recipient uses to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI program submissions • If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility
Fixed Route Transit Provider	• All elements listed above for Demand Responsive Transit Providers • System-wide service standards, including vehicle load, vehicle headway, on time performance, and service availability for each mode • System-wide service policies, including transit amenities and vehicle assignment for each mode

Type of Transit Provider	Title VI Program Contents
Fixed Route Transit Provider that operates 50 or more fixed route vehicles in peak service and is located in an Urbanized Area (UZA) of 200,000 or more in population; or has been placed in this category at the discretion of the Director of Civil Rights in consultation with the FTA Administrator	• All elements listed above for Fixed Route Transit Providers and Demand Responsive Transit Providers • A demographic analysis of the transit provider's service area. This shall include demographic maps and charts completed since submission of the last Title VI Program that contains demographic information and service profiles • Data regarding customer ridership demographics and travel patterns, collected from passenger surveys • Results of the monitoring program of service standards and policies and any action taken, including documentation (e.g., a resolution, copy of meeting minutes, or similar documentation) to verify the board's or governing entity or official(s)'s consideration, awareness, and approval of the monitoring results • A description of the public engagement process for setting the "major service change policy" and disparate impact policy • A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official(s)'s consideration, awareness, and approval of the major service change policy and disparate impact policy • Results of equity analyses for any major service changes and/or fare changes implemented since the last Title VI Program submission • A copy of board meeting minutes or a resolution demonstrating the board's or governing entity or official(s)'s consideration, awareness, and approval of the equity analysis for any service or fare changes required by the circular

Type of Transit Provider	Title VI Program Contents
States	• A copy of the recipient's Title VI notice to the public • A copy of the recipient's instructions to the public regarding how to file a Title VI discrimination complaint, including a copy of the complaint form • A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission • A public participation plan that includes an outreach plan to engage minority populations, as well as a summary of outreach efforts made since the last Title VI Program submission • For recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the recipient, the recipient must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees or councils • Narrative or description of efforts the recipient uses to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI Program submissions • If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility • A demographic profile of the state that includes identification of the locations of minority populations in the aggregate • Demographic maps that overlay the percent minority and non-minority populations as identified by Census or American Community Survey data at Census tract or block group level, and charts that analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes, including Federal funds managed by the State as a designated recipient • An analysis of impacts identified in the demographic maps that identifies any disparate impacts on the basis of race, color, or national origin, and, if so, determines whether there is a substantial legitimate justification for the policy that resulted in the disparate impacts, and if there are alternatives that could be employed that would have a less discriminatory impact • A description of the statewide transportation planning process that identifies the transportation needs of minority populations • A description of the procedures the State uses to pass through FTA financial assistance to subrecipients in a nondiscriminatory manner • A description of the procedures the State uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations

Type of Transit Provider	Title VI Program Contents
MPO	• A copy of the recipient's Title VI notice to the public • A copy of the recipient's instructions to the public regarding how to file a Title VI discrimination complaint, including a copy of the complaint form • A list of any public transportation-related Title VI investigations, complaints, or lawsuits filed with the recipient since the time of the last submission • A public participation plan that includes an outreach plan to engage minority populations, as well as a summary of outreach efforts made since the last Title VI Program submission • For recipients that have transit-related, non-elected planning boards, advisory councils or committees, or similar bodies, the membership of which is selected by the recipient, the recipient must provide a table depicting the racial breakdown of the membership of those committees, and a description of efforts made to encourage the participation of minorities on such committees or councils • Narrative or description of efforts the primary recipient uses to ensure subrecipients are complying with Title VI, as well as a schedule of subrecipient Title VI Program submissions • If the recipient has constructed a facility, such as a vehicle storage facility, maintenance facility, operation center, etc., a copy of the Title VI equity analysis conducted during the planning stage with regard to the location of the facility • A demographic profile of the metropolitan area that includes identification of the locations of minority populations in the aggregate • A description of the procedures by which the mobility needs of minority populations are identified and considered within the planning process • Demographic maps that overlay the percent minority and non-minority populations as identified by Census or ACS data, at Census tract or block group level, and charts that analyze the impacts of the distribution of State and Federal funds in the aggregate for public transportation purposes, including Federal funds managed by the MPO as a designated recipient • An analysis of impacts that identified any disparate impacts on the basis of race, color, or national origin, and, if so, determines whether there is a substantial legitimate justification for the policy that resulted in the disparate impacts, and if there are alternatives that could be employed that would have a less discriminatory impact • A description of the procedures the MPO uses to pass through FTA financial assistance to subrecipients in a nondiscriminatory manner • A description of the procedures the MPO uses to provide assistance to potential subrecipients applying for funding, including its efforts to assist applicants that would serve predominantly minority populations

12. AMERICANS WITH DISABILITIES ACT (ADA) - GENERAL

PURPOSE OF THIS REVIEW 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.

As part of the Master Agreement, the Recipient must comply with the following federal prohibitions against discrimination based on disability:

(1) Federal laws, including:

(i) Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;

(ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., which requires that accessible facilities and services be made available to individuals with disabilities:

(A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but

(B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer."

QUESTIONS TO BE EXAMINED
1. Does the recipient track, resolve, and respond to ADA-related complaints, and publicize the complaint process?

2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the accessibility requirements of 49 CFR Part 38?

3. Do all vehicles used in fixed-route service provided under contract or other arrangement or relationship, including microtransit and commuter bus service, meet the requirements under 49 CFR Part 38?

4. Since the last Comprehensive Review, if vehicles were acquired for demand-response service to the general public (or a segment of the general public defined by characteristics such as age, disability or income), other than for complementary paratransit service meeting requirements of Subpart F of 49 CFR Part 37, were the requirements of 49 CFR Part 37.77 met?

5. If the recipient has engaged the services of a taxi company, transportation network company, or other private entity to operate demand-response service, on its behalf or in conjunction with its services, including microtransit, mobility on demand, or services provided using autonomous vehicles, are all vehicles accessible, or can equivalent service be documented per 49 CFR §37.77(c)(1)-(7)?

6. Are facilities for providing public transportation that were constructed since the last Comprehensive Review, or transit stops within the public right of way established since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

7. Are facilities that were altered since the last Comprehensive Review, or transit stops within the public right of way established since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

8. Does the recipient follow ADA provision of service requirements?

9. Does the recipient ensure that accessibility equipment is maintained in operative condition, and that individuals who rely on accessible equipment are accommodated when that equipment is inoperative?

10. Is route-deviation service open to the general public?

11. Is rail service accessible to and usable by persons with disabilities?

12. Is ferry service accessible to and usable by persons with disabilities?

13. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another public entity on the recipient's behalf, for compliance with the U.S. Department of Transportation (US DOT) ADA regulations?

14. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Procedures for receiving and processing ADA complaints, including complaints for services provided by another entity
- ADA complaint form
- ADA complaint record retention procedures, if written
- Driver handbooks/operating and training manuals/ADA-related service bulletins
- Sample internal service provision monitoring materials, such as surveys, checklists, interview forms, etc.
- ADA reasonable modification procedures, if written
- Riders' guides, including paratransit guides. (Often information for general compliance issues, such as service animal accommodation or wheelchairs, is only found in paratransit information even though it is not specific to paratransit.)
- List of new facilities constructed or facilities altered since the last review
- Recipient's signage standards, if any
- Current certification of equivalent service and supporting analysis, if inaccessible vehicles have been employed in demand-responsive service of any kind; the Operational analysis must examine trip data and qualitative summaries for all service criteria outlined in 49 CFR 37.77(c)
- Copies of any contracts, agreements, or other terms of service with private entities such as TNCs or taxi operators for the provision of demand responsive service of any kind
- Current certification of equivalent service and supporting operational analysis, if private entities such as TNCs or taxi services have been employed in demand-responsive service of any kind. The Operational analysis must examine trip data and qualitative summaries for all service criteria outlined in 49 CFR 37.77(c)
- Procedures and tools for oversight of ADA provision of service requirements outlined in 49 CFR 37.161-37.173, including required reports, questionnaires, and checklists.
- Samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified in operational analysis (if applicable)
- Driver training requirements, materials, and procedures to ensure that service is provided in compliance with DOT ADA regulations governing accommodation of service animals, boarding assistance, and other general nondiscrimination requirements outlined in 49 CFR 37.161-37.173

- Analysis of complaints received over the last three years related to DOT ADA regulations governing accommodation of service animals, boarding assistance, and other general nondiscrimination requirements outlined in 49 CFR 37.161-37.173
- Procedures and tools pertaining to regular and frequent checks of accessibility equipment for vehicles and facilities to ensure operability

Recipient Follow-up

- Sample vehicle specifications/information on annunciators
- Documentation of structural impracticality
- Documentation of disproportionality regarding alterations to the path of travel to a facility if alterations were made to a primary function area
- Internal bulletins
- Lift/ramp specifications for the fleet
- Sample requests for reasonable modification of policies and procedures
- Sample ADA-related complaint records
- Sample contract or other agreement, or terms of other relationships (including, but not limited to, awards, subawards, or cooperative agreements) with private entity to be visited that operates fixed-route or demand-response service, including microtransit and commuter bus

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ADA-GEN1. Does the recipient track, resolve, and respond to ADA-related complaints, and publicize the complaint process?

BASIC REQUIREMENT
Recipients must track, resolve, and respond to ADA-related complaints.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. 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 recipient is not required to respond to all complaints in writing, but rather must ensure the response can be documented internally. 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. A recipient may retain complaints or copies of complaints for five years in lieu of a summary. A recipient can use the same process for accepting and investigating ADA and Title VI complaints; however, ADA complaints must be categorized distinctly in internal and external communications. An agency may elect to have one “Discrimination Complaint Form,” for example, that covers both Title VI and ADA, but the form must clearly distinguish the two statutes and identify whether a complaint involves a Title VI or ADA issue.

INDICATORS OF COMPLIANCE

a. Is there a process for addressing ADA complaints?

b. How does the recipient identify ADA complaints?

c. *Is the process for filing a disability-related 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 REVIEWER

Prior to the site visit, review the recipient's website to determine if the ADA complaint process is posted. Request and review the ADA complaint procedures and review the website rider guide and pamphlets for information on filing an ADA complaint.

Evaluate whether an individual, after viewing the publicly available materials, would know how to file a disability-related complaint. To be sufficiently advertised, the complaint-filing instructions should clearly apply to all types of services, including fixed route, and therefore not be solely posted on a paratransit webpage or in other paratransit material. Review the ADA complaint procedures and determine if the procedures are available in accessible formats upon request.

Determine if the ADA complaint procedures specify time requirements for research and response, provide for promptly responding to any individual filing an ADA complaint, retaining and documentation of the response.

If the recipient combines its collection or tracking of different types of complaints (e.g. ADA, Title VI, etc.) within one system or with a common form, determine if it can clearly distinguish and appropriately resolve ADA complaints from other types of complaints. Ensure that the system or form mentions ADA and/or disability specifically so that a complainant will understand that the process includes ADA issues.

Onsite, review a sample of ADA 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. 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 or complaints themselves for at least five years.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have an ADA complaint process; it does not provide information to the public on how to file an ADA complaint; the information is not available in accessible formats when requested; it cannot distinguish ADA complaints from other types of complaints; or its procedures do not provide prompt response or documentation of the response to any individual filing a complaint, including the reason for the response.

DEFICIENCY CODE ADA-GEN1-1: Insufficient ADA complaint process

SUGGESTED CORRECTIVE ACTION 1: Submit an ADA complaint process.

SUGGESTED CORRECTIVE ACTION 2: Submit information for the public on filing an ADA complaint and documentation that the information has been made available to the public.

SUGGESTED CORRECTIVE ACTION 3: Submit the accessible formats provided to the public in making the ADA complaint procedures accessible to and usable by individuals with disabilities.

SUGGESTED CORRECTIVE ACTION 4: Submit ADA complaint procedures that require a prompt response to the individual filing the complaint.

SUGGESTED CORRECTIVE ACTION 5: Submit ADA complaint procedures that provide for documentation of the response to the individual filing the complaint, including the reason for the response.

The recipient is deficient if it does not maintain complaints for at least one year and a summary of all ADA-related complaints or the complaints themselves for at least five years.

DEFICIENCY CODE ADA-GEN1-2: Insufficient ADA complaint record retention

SUGGESTED CORRECTIVE ACTION: Submit a procedure for retaining copies of ADA complaints for at least one year and summaries of ADA complaints or the complaints themselves for at least five years.

GOVERNING DIRECTIVE

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. Each recipient shall keep such other records and submit to the responsible Departmental official or his/her designee timely, complete, and accurate compliance reports at such times, and in such form, and containing such information as the responsible Department official may prescribe. In the case in which a primary recipient extends Federal financial assistance to any other recipient, the other recipient shall also submit compliance reports to the primary recipient so as to enable the primary recipient to prepare its report.

49 CFR 37.17 Designation of responsible employee and adoption of complaint procedures.

(a) *Designation of responsible employee.* Each public or private entity subject to this part shall designate at least one person to coordinate its efforts to comply with this part.

(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.

ADA-GEN2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the accessibility requirements of 49 CFR Part 38?

BASIC REQUIREMENT
All new bus or rail vehicles purchased or leased for use in fixed-route service by public entities must be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs. Used bus or rail vehicles purchased or leased for use in fixed-route service by public entities must be accessible, with a good faith efforts exception. Remanufactured vehicles must be accessible to the maximum extent feasible, with an engineering exception.

APPLICABILITY
Recipients that provide fixed-route service

DETAILED EXPLANATION FOR REVIEWER
All new bus and rail vehicles 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. Recipients must comply with the requirements, as must all contractors and subrecipients.

All used bus and rail vehicles must be accessible. Inaccessible used bus and rail vehicles 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.

Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible, unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicles are established by 49 CFR Part-38.

INDICATOR OF COMPLIANCE
a. *Do all new bus and rail vehicles purchased or leased over the past three years 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 based on review of the elements below?*

Bus Accessibility Checklist	Yes, No, or Not Applicable
Priority seating designated	-
Wheelchair location signage	-
Lift, ramp or level-change mechanism	-
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	-

Rail Car Accessibility Checklist	Yes, No, or Not Applicable
Priority seating designated	-
Minimum clear space of 30”x 48” for each of two wheelchair locations (do not have to be specifically designated as wheelchair locations and may overlap space for standees)	-
Public address system (for commuter rail, alternative systems or devices which provide equivalent access are also permitted)	-
Lift, ramp or bridge plate if platform to railcar gap exceeds 3” horizontal and/or +/- 5/8” vertical (not required on vehicle if wayside devices provided)	-
2” high edge barriers on ramps and bridge plates (unless recipient possesses certification of equivalent facilitation issued to that recipient by the FTA Administrator)	-
For light rail vehicles operating on city streets or other areas where level boarding is not practicable, lifts or ramps compliant with 49 CFR Part 38 must be provided to enable persons with disabilities, including those who use wheelchairs, to board from such locations	-

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)?*

c. *For remanufactured vehicles that do not meet accessibility standards under 49 CFR Part 38, does the recipient possess the results of an engineering analysis demonstrating that meeting a specific standard would have a significant adverse effect on the structural integrity of the vehicle? Were all other standards met?*

INSTRUCTIONS FOR REVIEWER

Review the list of procurements obtained under the Procurement area of the review to determine whether new vehicles were purchased or leased since the last Comprehensive Review. Onsite, review procurement files to determine if accessible vehicles were specified. During the tour of the facility, check for inaccessible vehicles. Using the vehicle accessibility checklists, visually observe at least one new bus and rail car for ADA accessibility features.

Review awards in TrAMS to determine whether used or remanufactured vehicles were acquired or leased or if any existing vehicles were remanufactured since the last Comprehensive Review. Onsite, discuss each instance in which an inaccessible used vehicle was acquired or remanufactured. For any purchase or lease of an inaccessible vehicle, review the supporting documentation, including documentation of good-faith efforts consistent with 49 CFR 37.73(c), 37.81(c) or 37.87(c) to obtain an accessible vehicle. For remanufactured vehicles, review the engineering analysis supporting significant adverse effects on the structural integrity of the vehicle. During the tour of the facility, check for inaccessible vehicles.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it purchased or leased inaccessible new vehicles for use by public entities in fixed-route service.

DEFICIENCY CODE ADA-GEN2-1: New vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation showing that the newly acquired noncompliant vehicles were taken out of fixed-route service. Before placing them back in fixed-route service, submit documentation demonstrating that the vehicles have been made complaint with the standards contained in 49 CFR Part 38.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has canceled the lease for inaccessible vehicles.

The recipient is deficient if it purchased or leased inaccessible used vehicles for use by public entities in fixed-route service and cannot demonstrate that good faith efforts consistent with 49 CFR 37.73(c), 37.81(c) or 37.87(c) were made to obtain accessible vehicles.

DEFICIENCY CODE ADA-GEN2-2: Used vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence of good faith efforts consistent with 49 CFR 37.73(c), 37.81(c) or 37.87(c), or evidence that it has ceased use of inaccessible used vehicles acquired since the last Comprehensive Review for fixed-route service. Before placing the vehicles back in service, the recipient must submit documentation that it has made the vehicles accessible.

The recipient is deficient if it has remanufactured vehicles, or purchased or leased remanufactured vehicles that were not made readily accessible to persons with disabilities, including those who use wheelchairs, according to the standards contained in 49 CFR Part 38, and did not document an engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle.

DEFICIENCY CODE ADA-GEN2-3: Remanufactured vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit the engineering analysis showing that making the vehicles accessible would have had a significant adverse effect on the structural integrity of the vehicle, or documentation that it has ceased use of the vehicles in fixed-route service. Before placing the vehicles back in service, submit documentation that it has made the vehicles accessible.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that it has canceled the lease for inaccessible vehicles.

GOVERNING DIRECTIVE

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 37.79 Purchase or lease of new rail vehicles by public entities operating rapid or light rail systems

Each public entity operating a rapid or light rail system making a solicitation after August 25, 1990, to purchase or lease a new rapid or light rail 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 37.85 Purchase or lease of new intercity and commuter rail cars

Amtrak or a commuter authority making a solicitation after August 25, 1990, to purchase or lease a new intercity or commuter rail car 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 37.81 Purchase or lease of used rail vehicle by public entities operating rapid or light rail systems

(c) Good faith efforts shall include at least the following steps:

(1) An initial solicitation for used vehicles specifying that all used vehicles are to be lift-equipped and otherwise accessible to and usable by individuals with disabilities, or, if an initial solicitation is not used, a documented communication so stating;

(2) A nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and

(3) Advertising in trade publications and contacting trade associations.

49 CFR 37.87 Purchase or lease of used intercity and commuter rail cars

(c) Good faith efforts shall include at least the following steps: An initial solicitation for used vehicles specifying that all used vehicles 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; and 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.

49 CFR 37.83 Remanufacture of rail vehicles and purchase or lease of remanufactured rail vehicles by public entities operating rapid or light rail systems

(a) This section applies to any public entity operating a rapid or light rail system which takes one of the following actions:

(1) After August 25, 1990, remanufactures a light or rapid rail vehicle so as to extend its useful life for five years or more or makes a solicitation for such remanufacturing;

(2) Purchases or leases a light or rapid rail 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 rapid or light rail 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 doing so would have a significant adverse effect on the structural integrity of the vehicle.

(d) If a public entity operates a rapid or light rail system any segment of which is included on the National Register of Historic Places and if making a rapid or light rail 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 need only make (or purchase or lease a remanufactured vehicle with) those modifications that do not alter the historic character of such vehicle.

(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 a determination of the historic character of the vehicle.

49 CFR 37.89 Remanufacture of intercity and commuter rail cars and purchase or lease of remanufactured intercity and commuter rail cars

(a) This section applies to Amtrak or a commuter authority which takes one of the following actions:

(1) Remanufactures an intercity or commuter rail car so as to extend its useful life for ten years or more;

(2) Purchases or leases an intercity or commuter rail car which has been remanufactured so as to extend its useful life for ten years or more.

(b) Intercity and commuter rail cars 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 an intercity or commuter rail car so as to be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless an engineering analysis demonstrates that remanufacturing the car to be accessible would have a significant adverse effect on the structural integrity of the car.

49 CFR Part 38—Americans with Disabilities Act (ADA) Accessibility Standards for Transportation Vehicles

Subpart B—Buses, Vans and Systems

§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.

Subpart C—Rapid Rail Vehicles and Systems

§38.55 Priority seating signs

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

Subpart D—Light Rail Vehicles and Systems

§38.75 Priority seating signs

(a) Each vehicle shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities, and that other passengers should make such seats available to those who wish to use them.

(b) Where designated wheelchair or mobility aid seating locations are provided, signs shall indicate the location and advise other passengers of the need to permit wheelchair and mobility aid users to occupy them.

Subpart E—Commuter Rail Cars and Systems

§38.105 Priority seating signs

(a) Each car shall contain sign(s) which indicate that certain seats are priority seats for persons with disabilities and that other passengers should make such seats available to those who wish to use them.

ADA-GEN3. Do all vehicles used in fixed-route service provided under contract or other arrangement or relationship, including microtransit and commuter bus service, meet the requirements of 49 CFR Part 38?

BASIC REQUIREMENT
All vehicles used in fixed-route service operated under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement), including those used in fixed-route, microtransit, and commuter bus service, must be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs.

APPLICABILITY
Recipients who enter into any type of contract or other arrangement or relationship, including, but not limited to, a grant, subgrant, or cooperative agreement, for fixed-route service. Note that the DOT ADA regulations apply equally to “pilot” programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER
When an entity enters into a contractual or other arrangement (including, but not limited to, an award, subaward, or cooperative agreement) or relationship with a private entity to operate fixed-route service, including microtransit and commuter bus service, all of the vehicles acquired and used in the service must be accessible. The contractor must meet the entity’s obligations as it “stands in the shoes” of the entity and the entity cannot contract away its obligations to provide accessible service.

49 CFR Part 37 subpart H Over-the-Road Buses is specific to private entities and does not govern public entities contracting for fixed-route service. Unlike private over-the-road bus operators, public entities may not require advance notice for accessible vehicles to be made available.

INDICATOR OF COMPLIANCE

a. *Do all vehicles used in fixed-route service under contract or other arrangement, or relationship meet the requirements of 49 CFR Part 38?*

INSTRUCTIONS FOR REVIEWER

Onsite, review sample contracts, awards, subawards, cooperative agreements, and any other type of arrangement or relationship with another entity for fixed-route service, including commuter bus and microtransit, to identify vehicle accessibility requirements. Review information on service being provided under contract or other arrangement or relationship to determine whether advance notice is necessary for accessible vehicles to be provided.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if the vehicles used by a private entity operating fixed-route service on its behalf or under its banner are not accessible. The recipient is deficient if advance notice is required for accessible vehicles to be made available.

DEFICIENCY CODE ADA-GEN3-1: Contracted service vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that it has required any private entity operating fixed route services on its behalf or under its banner under any contract or other arrangement or relationship to use accessible equipment for fixed-route service and provided a timeframe for the contractor to be in compliance.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that all vehicles used in fixed route service are accessible, and any requirements for advance notice for accessible vehicles to be made available have been eliminated.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that services found to be noncompliant have been discontinued.

GOVERNING DIRECTIVE

49 CFR 37.7 Standards for accessible vehicles

(a) For purposes of this part, a vehicle shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the standards set forth in part 38 of this title.

(c) Over-the-road buses acquired by public entities (or by a contractor to a public entity as provided in §37.23 of this part) shall comply with §38.23 and subpart G of part 38 of this title.

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

ADA-GEN4. Since the last Comprehensive Review, if vehicles were acquired for demand-response service to the general public (or a segment of the general public defined by characteristics such as age, disability, or income), other than for complementary paratransit service meeting the requirements of Subpart F of 49 CFR Part 37, were the requirements of 49 CFR Part 37.77 met?

BASIC REQUIREMENT
Vehicles used in demand-response service are required to be readily accessible to and usable by individuals with disabilities, including those who use wheelchairs; inaccessible vehicles may only be acquired if the entity can demonstrate that the service, when viewed in its entirety, meets the requirements for equivalent service under 49 CFR 37.77(c).

APPLICABILITY
Recipients who provide demand-response service to the general public or open to a segment of the general public defined by characteristics such as age, disability, or income.

DETAILED EXPLANATION FOR REVIEWER
Demand-response service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. Public entities operating demand-response service for the general public, or open to a segment of the general public defined by characteristics such as age, disability, or income, must purchase or lease accessible vehicles. Inaccessible vehicles can only be acquired upon demonstration 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. 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. Recipients must ensure that any entity using non-accessible vehicles in demand-response service operated under contract or other arrangement or relationship with the recipient provide equivalent service according to this standard.

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 recipient has acquired any inaccessible vehicles in the past three years, it must produce an analysis of its services demonstrating that equivalent service is and will continue to be provided to persons with disabilities, including wheelchair users, according to the requirements contained in 49 CFR 37.77(c). This is in addition to, and must support, any certification of equivalent service.

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.

INDICATOR OF COMPLIANCE

a. *If the recipient acquired non-accessible equipment for demand-response service the last Comprehensive Review, can the recipient document that equivalent service is and will continue to be provided to persons with disabilities, including wheelchair users, in accordance with the criteria found in 49 CFR 37.77(c)?*

b. *If inaccessible vehicles are used for demand-responsive service, can the recipient demonstrate that equivalent service is provided?*

c. *If the recipient transitioned from a fixed-route to demand-responsive service, are all the vehicles used in service accessible?*

INSTRUCTIONS FOR REVIEWER

Review the listing of vehicle procurements to determine whether new vehicles were acquired for demand responsive service since the last Comprehensive Review. 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). Ask specifically about response time and fares for accessible vehicles.

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 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 DEFICIENCY DETERMINATION

The recipient is deficient 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 (note that such documentation must support any certification of equivalent service, and that a certification alone is insufficient).

DEFICIENCY CODE ADA-GEN4-1: Demand-response vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: Ensure that all future vehicle acquisitions specify only accessible vehicles meeting the requirements of 49 CFR Part 38 until it can demonstrate that equivalent service is provided.

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.

ADA-GEN5. If the recipient has engaged the services of a taxi company, transportation network company, or other private entity to operate demand-response service, on its behalf or in conjunction with its services, including microtransit, mobility on demand, or services provided using autonomous vehicles, are all vehicles accessible, or can equivalent service be documented per 49 CFR §37.77(c)(1)-(7)?

BASIC REQUIREMENT
No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

APPLICABILITY
Recipients who enter into a contract or other arrangement or relationship, including but not limited to a grant, subgrant, or cooperative agreement, for demand-response service. Note that the DOT ADA regulations apply independent of the use of any Federal funding, and equally to “pilot” programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER
Public entities operating demand-response service (including microtransit) for the general public or open to a segment of the general public defined by characteristics such as age, disability, or income who enter into a contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) with a private entity must ensure that services provided through such arrangement are accessible to and usable by persons with disabilities, including wheelchair users. Where inaccessible vehicles are used, equivalent service must be provided to persons with disabilities, including those who use wheelchairs, according to the criteria found in 49 CFR 37.77(c). If the private entity lacks sufficient accessible vehicles to ensure that service is equivalent, the recipient may engage the services of another entity that has a sufficient number of accessible vehicles, require the private entity to provide a sufficient number of accessible vehicles, or provide accessible vehicles from its own fleet.

Regardless of funding source, ADA compliance is required as a condition of eligibility for Federal funding. Whether FTA funds a particular service or not is irrelevant; in order for the entity itself to be compliant, and therefore eligible for FTA funding, its services must be operated according to ADA requirements.

INDICATOR OF COMPLIANCE

a. *If the recipient entered into a contract or other arrangement or relationship with a private entity to provide demand-response service, is equivalent service provided according to the criteria found in 49 CFR §37.77(c)?*

INSTRUCTIONS FOR REVIEWER

Onsite, examine the terms of any contract or other arrangement or relationship between the recipient and the private entity to determine how accessible vehicles are provided. Discuss how the recipient ensures that sufficient accessible vehicles are available to ensure the provision of equivalent service to persons with disabilities, including wheelchair users, according to the seven regulatory criteria, and obtain and review documentation in support of the entity's certification of equivalent service. Review any oversight reports. Ask specifically about response time, fares, and any constraints on capacity or service availability involving accessible vehicles. When discussing constraints on capacity or service availability, ask about the rate of canceled trips, and trip request wait times (how long it takes to match a rider with a driver before a trip is confirmed) for accessible vehicles.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it entered into a contract or other arrangement or relationship with a private entity, and all vehicles are not accessible, or it cannot document that equivalent service is provided to persons with disabilities, including wheelchair users, according to the regulatory criteria. (Note that such documentation must support any certification of equivalent service, and that a certification alone is insufficient)

DEFICIENCY CODE ADA-GEN5-1: Demand-response equivalent service deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit a plan to either replace inaccessible vehicles with accessible vehicles, 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).

SUGGESTED CORRECTIVE ACTION 2: 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).

SUGGESTED CORRECTIVE ACTION 3: Submit evidence of implementation of 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).

SUGGESTED CORRECTIVE ACTION 4: Submit documentation that the service has been discontinued.

GOVERNING DIRECTIVE

49 CFR 37.5 Nondiscrimination

(a) No entity shall discriminate against an individual with a disability in connection with the provision of transportation service.

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or

demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public.

(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

ADA-GEN6. Are facilities for providing public transportation that were constructed since the last Comprehensive Review, or transit stops within the public right of way established since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

BASIC REQUIREMENT
Newly constructed facilities, including transit stops within the public right of way, must meet US DOT accessibility requirements.

APPLICABILITY
Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER
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. "*Facility* means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located." 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.

On January 17, 2025, new DOT ADA requirements for transit stops within the public right of way became effective. These incorporate the Public Rights Of Way Accessibility Guidelines (PROWAG) as enforceable regulatory standards. Any bus stop or facility established in the public right of way as of that date is required to comply.

INDICATOR OF COMPLIANCE
a. Can the recipient demonstrate that the newly constructed facilities and transit stops within the public right of way meet accessibility requirements? If not, can the recipient demonstrate that meeting the accessibility requirements was structurally impracticable?

INSTRUCTIONS FOR REVIEWER
Review awards to determine whether new facilities were constructed since the last Comprehensive Review, or new transit stops established in the public right of way after January 17, 2025. Obtain a list of facilities that were constructed since the last Comprehensive Review, or transit stops established after January 17, 2025. Discuss the list with the regional office to determine if they are aware of any accessibility issues. Work with the regional office and the RCRO to determine which facility(ies) and transit stops to tour during the site visit. Onsite, review procurement files to determine if procurements refer to US DOT ADA requirements. If the recipient has a signage standard or other documentation of system signage design, review the standard to ensure it complies with ADA requirements, including the requirements of 36 CFR Part 1191 Section 703. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation of structural impracticality that is the unique characteristics of terrain preventing 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 DEFICIENCY DETERMINATION
The recipient is deficient if it constructed a new facility that did not meet US DOT accessibility requirements and cannot document structural impracticability.

DEFICIENCY CODE ADA-GEN6-1: New facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation of structural impracticability.

SUGGESTED CORRECTIVE ACTION 3: Submit a revised signage standard that complies with ADA requirements.

GOVERNING DIRECTIVE
49 CFR 37.9 Standards for accessible transportation facilities

(a) Transportation facilities other than transit stops in the public right-of-way.

(1) 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.

(b) Transportation facilities (transit stops) in the public right-of-way.

(1) Except as set forth in paragraph (b)(2) of this section, if new construction or alterations of a transit stop located in the public right-of-way commence after January 17, 2025, the new construction or alterations of the transit stop shall comply with the requirements set forth in the appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

(2) New construction or alterations of transit stops located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before January 17, 2025, are not required to be consistent with the requirements set forth in the appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities. *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.

ADA-GEN7. Are facilities that were altered since the last Comprehensive Review, or transit stops within the public right of way altered since January 17, 2025, readily accessible to and usable by individuals with disabilities, according to the DOT standards for transportation facilities or public rights of way?

BASIC REQUIREMENT
Altered facilities must meet US DOT accessibility requirements.

APPLICABILITY
Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER
If the entity alters an existing facility used to provide public transportation, including a transit stop within the public right of way, the altered portions of the facility must be accessible. If the altered portion includes the path of travel, the path of travel must be accessible. When the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards, the alterations must be made accessible to the maximum extent feasible. 49 CFR 37.43(b) defines “to the maximum extent feasible” as “the occasional case where the nature of an existing facility makes it impossible to fully comply with applicable standards through a planned alteration.”

If the area being altered contains a primary function, such as a station platform, an additional requirement is triggered to make the path of travel to and from the altered area accessible, unless the cost of doing so is disproportionate to the cost of the alterations to the primary function area. The regulations define “disproportionate” as exceeding 20 percent of the cost of the alteration to the area containing the primary function. The US DOT ADA regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility elements to provide greatest access.

An entity must provide documentation sufficient to support that it has made the facility (or altered portion(s) of the facility) accessible to the maximum extent feasible or that alterations required but not made to the path of travel were disproportionate to the overall alterations in terms of cost and scope.

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.

On January 17, 2025, new DOT ADA requirements for transit stops within the public right of way became effective. These incorporate the Public Rights Of Way Accessibility Guidelines (PROWAG) as enforceable regulatory standards. Any transit stop within the public right of way that has been altered as of that date is required to comply.

INDICATORS OF COMPLIANCE
a. Can the recipient demonstrate that the recently altered facilities meet accessibility requirements?

b. *Can the recipient provide documentation that the facility was made accessible to the maximum extent feasible?*

c. *If the alteration to the facility(ies) involving an area containing a primary function did not result in making the path of travel to and from the altered area accessible, can the recipient demonstrate that the cost of alterations required to make the path of travel accessible were disproportionate to the overall alterations in terms of cost and scope?*

INSTRUCTIONS FOR REVIEWER
Review awards in TrAMS to determine whether facilities, including transit stops within the public right of way, were altered since the last Comprehensive Review. Discuss with the regional office any correspondence regarding altered facilities and transit stops within the public right of way and ADA accessibility. Obtain a list of newly altered facilities and transit stops within the public right of way.

Review procurement files to determine if architectural & engineering (A&E) services refer to US DOT ADA requirements, including PROWAG. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements, including PROWAG. If the recipient has a signage standard or other documentation of system signage design, review the standard to ensure it complies with ADA requirements, including the requirements of 36 CFR Part 1191 Section 703. Review documentation that the facility was made accessible to the maximum extent feasible. Tour the newly altered facility(ies), noting presence or absence in primary function areas of elements such as accessible parking, accessible routes, accessible counters, ramps, and elevators. Use the table below to assist with this documentation. The elements listed are not all-inclusive or may not apply to the particular altered facility.

Primary Function Area Accessibility Element (List not all-inclusive)	**Element Present (Yes, No, or Not Applicable)**
Accessible Parking	-
Accessible Routes	-
Accessible Counters	-
Ramps	-
Elevators	-
Escalators	-
(Add element)	-

Discuss with the recipient whether the alteration involved an area containing a primary function and if the path of travel to and from the altered area was not made accessible. Obtain and review documentation that the cost of the alterations required to make the path of travel accessible were disproportionate to the overall cost and scope of the alterations.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it altered a facility for providing public transportation that did not meet US DOT accessibility requirements and cannot document that it either made the facility accessible to the maximum extent feasible or the cost of making the path of travel to and from the altered area accessible was disproportionate to the overall alterations in terms of cost and scope.

DEFICIENCY CODE ADA-GEN7-1: Facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that the facility was made accessible to the maximum extent feasible.

SUGGESTED CORRECTIVE ACTION 3: Submit a schedule for making the necessary modifications to make the path of travel accessible.

SUGGESTED CORRECTIVE ACTION 4: Submit documentation supporting cost disproportionality with regard to the path of travel.

SUGGESTED CORRECTIVE ACTION 5: Submit a revised signage standard that complies with ADA requirements.

GOVERNING DIRECTIVE
49 CFR 37.9 Standards for accessible transportation facilities

(a) Transportation facilities other than transit stops in the public right-of-way.

(1) 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.

(b) Transportation facilities (transit stops) in the public right-of-way.

(1) Except as set forth in paragraph (b)(2) of this section, if new construction or alterations of a transit stop located in the public right-of-way commence after January 17, 2025, the new construction or alterations of the transit stop shall comply with the requirements set forth in the appendix to 36 CFR part 1190, which apply to pedestrian facilities located in the public right-of-way covered by the Americans with Disabilities Act.

(2) New construction or alterations of transit stops located in the public right-of-way on which construction has begun, or all approvals for final design have been received, before January 17, 2025, are not required to be consistent with the requirements set forth in the appendix to 36 CFR part 1190, but are otherwise required to be readily accessible to and usable by individuals with disabilities. *49 CFR 37.43 Alteration of transportation facilities by public entities*

(a)(1) When a public entity alters an existing facility or a part of an existing facility used in providing designated public transportation services in a way that affects or could affect the usability of the facility or part of the facility, the entity shall make the alterations (or ensure that the alterations are made) in such a manner, to the maximum extent feasible, that the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon the completion of such alterations.

(2) When a public entity undertakes an alteration that affects or could affect the usability of or access to an area of a facility containing a primary function, the entity shall make the alteration in such a manner that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, upon completion of the alterations. *Provided,* that alterations to the path of travel, drinking fountains, telephones and bathrooms are not required to be made readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, if the cost and scope of doing so would be disproportionate.

(c) As used in this section, a *primary function* is a major activity for which the facility is intended. Areas of transportation facilities that involve primary functions include, but are not necessarily limited to, ticket purchase and collection areas, passenger waiting areas, train or bus platforms, baggage checking and return areas and employment areas (except those involving non-occupiable spaces accessed only by ladders, catwalks, crawl spaces, very narrow passageways, or freight (non-passenger) elevators which are frequented only by repair personnel).

(d) As used in this section, a “path of travel” includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, parking areas, and streets), an entrance to the facility, and other parts of the facility. The term also includes the restrooms, telephones, and drinking fountains serving the altered area. An accessible path of travel may include walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through corridors, waiting areas, concourses, and other improved areas, parking access aisles, elevators and lifts, bridges, tunnels, or other passageways between platforms, or a combination of these and other elements.

(e)(1) Alterations made to provide an accessible path of travel to the altered area will be deemed disproportionate to the overall alteration when the cost exceeds 20 percent of the cost of the alteration to the primary function area (without regard to the costs of accessibility modifications).

(2) Costs that may be counted as expenditures required to provide an accessible path of travel include:
(i) Costs associated with providing an accessible entrance and an accessible route to the altered area (e.g., widening doorways and installing ramps);
(ii) Costs associated with making restrooms accessible (e.g., grab bars, enlarged toilet stalls, accessible faucet controls);
(iii) Costs associated with providing accessible telephones (e.g., relocation of phones to an accessible height, installation of amplification devices or TDDs);
(iv) Costs associated with relocating an inaccessible drinking fountain.

(f)(1) When the cost of alterations necessary to make a path of travel to the altered area fully accessible is disproportionate to the cost of the overall alteration, then such areas shall be made accessible to the maximum extent without resulting in disproportionate costs;

(2) In this situation, the public entity should give priority to accessible elements that will provide the greatest access, in the following order:
(i) An accessible entrance;
(ii) An accessible route to the altered area;
(iii) At least one accessible restroom for each sex or a single unisex restroom (where there are one or more restrooms);
(iv) Accessible telephones;
(v) Accessible drinking fountains;
(vi) When possible, other accessible elements (e.g., parking, storage, alarms).

(g) If a public entity performs a series of small alterations to the area served by a single path of travel rather than making the alterations as part of a single undertaking, it shall nonetheless be responsible for providing an accessible path of travel.

(h)(1) If an area containing a primary function has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area, or a different area on the same path of travel, are undertaken within three years of the original alteration, the total cost of alteration to the primary function areas on that path of travel during the preceding three year period shall be considered in determining whether the cost of making that path of travel is disproportionate.

ADA-GEN8. Does the recipient follow ADA provision of service requirements?

BASIC REQUIREMENT
Service must comply with the US DOT ADA regulations regarding provision of service.

APPLICABILITY
Recipients who provide service including recipients who enter into contracts or other arrangements or relationships with other entities to provide service on their behalf.

DETAILED EXPLANATION FOR REVIEWER
The US DOT ADA regulations (49 CFR 37.161- 37.173) detail specific requirements for service. (For ferry service requirements see question ADA-GEN12.) 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 it enforces implementation.

(a) Stop announcements are required for fixed-route service at transfer points, major intersections, destination points, intervals along the route sufficient to orient passengers to their location, 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 the accuracy and usability of the annunciators and that drivers announce stops when the automated system is not functioning and any stop upon request.

(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 the accuracy and usability of the annunciators and that an alternative mechanism is available 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. The entity may ask whether an animal is a service animal and what functions it performs as such. The entity may not impose species or breed restrictions.

The entity may require that a service animal be harnessed, leashed, or tethered while in public places, unless these devices interfere with the service animal's work or the person's disability prevents use of these devices. In such cases, the entity may require that the person maintain control of the animal via voice, signal, or other effective means.

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) Signage designating wheelchair locations is required on buses. Signage designating priority seating is required on buses and rail vehicles. 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.

(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. While the dimensions and capacities required for lifts, ramps, and securement areas have not changed, many vehicles are capable of accommodating larger and heavier wheelchairs. Where this is the case, it is inappropriate to limit the size and/or weight of the wheelchairs an entity will accommodate to the minimum standards. Entities must accommodate wheelchairs according to the true capacities of their vehicles.

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. Entities may not require wheelchair users to sign or submit waivers as a condition of accommodating them.

(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. The entity may not seek waivers from standees who require the use of the lift.

(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; which format (Braille, audio, large-type, etc.) is not specified. 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.

(j) The key to ensuring compliance with these policies is ensuring that all employees are aware of them 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. For employees, this might be done through initial and refresher trainings.

(k) Having policies is not sufficient; the recipient must also monitor compliance with the policies.

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 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? Does the recipient make securement location(s) available to*

wheelchair users? Are securement locations designated? 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? Does the recipient require wheelchair users to sign waivers as a condition of service?

e. *Does the recipient understate the size and weight of wheelchairs that it is able to transport?*

f. *Does the recipient deploy the lift or ramp at any stop upon request? Are there any stops at which the recipient does not deploy lifts? Does the recipient require standees to sign waivers as a condition of lift use?*

g. *Does the recipient provide service to persons using respirators, concentrators, and portable oxygen?*

h. *Does the recipient provide information in accessible formats upon request?*

i. *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?*

j. *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?*

k. *Does the recipient monitor employees for compliance with the service provisions?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the 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 sample 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. Review paratransit information for general ADA deficiencies (service animals, wheelchair conditions, waivers, etc.).

During the site visit, 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, and how stops are announced upon request. Check if inoperative announcement systems are addressed during pre-trip inspections.

2. Ask managers and trainers how they accommodate service animals, and whether there are requirements for identification or restrictions on species or breed.

3. Ask managers and trainers how they accommodate needs for priority seating in revenue service.

4. Ask managers and trainers how they accommodate wheelchair users requiring the use of the securement area(s) in revenue service. Look at signage designating the securement area as such.

5. Review public and agency materials for any restrictions on size or weight limitation on wheelchairs that will be transported.

6. 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.

7. Ask the recipient for a list of stops at which it does not deploy lifts or ramps and the reasons for not deploying lifts or ramps at those stops.

8. If not addressed in written material, ask whether or not the recipient provides service to persons using respirators, concentrators, and portable oxygen.

9. Discuss any request for information in accessible formats and how the recipient honored the request.

10. Review information on requests for reasonable modifications. During the site visit, request the policy for and discuss implementation of the reasonable modification process.

11. 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.

12. 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 pre-site visit or site visit 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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that stops are announced on fixed-route service including when the automated system is not functioning, stops are announced upon request or that a means of route identification on fixed-route stops served by more than one route is provided, including when the automated system is not functioning.

DEFICIENCY CODE ADA-GEN8-1: Stop announcement/vehicle ID mechanisms deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has implemented procedures to announce stops on fixed-route service and evidence that it monitors implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has implemented procedures to identify routes at fixed-route stops served by more than one route and evidence that it monitors implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that it monitors implementation of procedures to identify routes at fixed-route stops served by more than one route.

The recipient is deficient if it limits service animals to dogs or includes breed-specific provisions.

DEFICIENCY CODE ADA-GEN8-2: Imposition of improper service animal restrictions

SUGGESTED CORRECTIVE ACTION: Submit revised procedures for accommodating service animals that remove the provisions discussed in this report.

The recipient is deficient if it does not make priority seating available to individuals with disabilities. The recipient is deficient 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.

DEFICIENCY CODE ADA-GEN8-3: Priority seating deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has implemented procedures to make priority seating available to individuals with disabilities and evidence that it monitors implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has implemented procedures to make securement areas with flip-up seating available to wheelchair users, including asking other passengers with disabilities to vacate such seats. Alternatively, the recipient may submit documentation that it has removed all seating from the securement areas in all of its vehicles.

The recipient is deficient if it sets weight or size limitations on wheelchairs meeting the definition contained in 49 CFR 37.3 that understate fleet capacity.

DEFICIENCY CODE ADA-GEN8-4: Weight/size limitations on wheelchairs

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to transport any and all wheelchairs as defined in 49 CFR 37.3 that its vehicles can accommodate.

The recipient is deficient if it places conditions upon the transport of wheelchairs meeting the definition contained in 49 CFR 37.3, including requiring ancillary equipment, requires documentation regarding transportability, requires wheelchair users to transfer to a seat, or requires waivers from wheelchair users as a condition of providing service.

DEFICIENCY CODE ADA-GEN8-5: Inappropriate conditions required for transportation of wheelchairs

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has removed conditions requiring wheelchairs to be equipped with ancillary equipment such as footrests, push handles, brakes, or other equipment.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it has removed any conditions requiring wheelchairs to be certified as “transportable.”

SUGGESTED CORRECTIVE ACTION 3: Submit documentation that it no longer requires wheelchair users to transfer to a vehicle seat.

SUGGESTED CORRECTIVE ACTION 4: Submit documentation that it no longer requires waivers from wheelchair users as a condition of providing service.

The recipient is deficient if it does not deploy lifts and ramps for riders who request this, at any stop on any route, or requires waivers from standees who use a wheelchair lift as a condition of providing service.

DEFICIENCY CODE ADA-GEN8-6: Lift/ramp deployment deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has implemented procedures to deploy lifts and ramps at any stop on any route (when requested) and evidence that it monitors the implementation of these procedures.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it no longer requires waivers from standees who use a wheelchair lift as a condition of providing service.

The recipient is deficient if it does not provide service to persons using respirators, concentrators, and portable oxygen.

DEFICIENCY CODE ADA-GEN8-7: Portable oxygen and respirators deficiency

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to provide service to passengers using respirators, concentrators, and portable oxygen and evidence that it monitors implementation of these procedures.

The recipient is deficient if it does not provide information in alternative formats upon request.

DEFICIENCY CODE ADA-GEN8-8: Alternative accessible formats not provided

SUGGESTED CORRECTIVE ACTION: Submit procedures for processing requests for public information in alternative formats.

The recipient is deficient if it does not have a process to accept and address requests for reasonable modifications or 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.

DEFICIENCY CODE ADA-GEN8-9: Reasonable modification deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has a process to accept and address requests for reasonable modifications.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that it makes information about how to make requests for reasonable modifications readily available to the public.

SUGGESTED CORRECTIVE ACTION 3: Submit documentation that it provides a means, accessible to and usable by individuals with disabilities, to request a modification.

The recipient is deficient 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.

DEFICIENCY CODE ADA-GEN8-10: ADA training not adequate

SUGGESTED CORRECTIVE ACTION: Submit 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, along with evidence of implementation.

The recipient is deficient if it does not monitor its operations for compliance with the service provisions.

DEFICIENCY CODE ADA-GEN8-11: Insufficient monitoring of operations for ADA service provisions

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that its operations comply with ADA service provisions.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of procedures for ensuring that its operations comply with ADA service provisions.

GOVERNING DIRECTIVE
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.

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.

ADA-GEN9. Does the recipient ensure that accessibility equipment is maintained in operative condition, and that individuals who rely on accessible equipment are accommodated when that equipment is inoperative?

BASIC REQUIREMENT
Service must be accessible to and usable by persons with disabilities.

APPLICABILITY
Recipients who provide service

DETAILED EXPLANATION FOR REVIEWER
Public and private entities must maintain in operative condition those features of vehicles and facilities that are required to make them accessible to and usable by persons with disabilities, including wheelchair users. For ferry systems, the requirement for maintenance of accessible features applies to passenger facilities.

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 vision or hearing impairments. Accessibility features must be repaired promptly if they are damaged or out of order. (Isolated or temporary interruptions in service or access due to maintenance or repairs are not prohibited.) When accessibility features are damaged or out of order, §37.161(b) requires the agency to repair them promptly. The regulations do not state a time limit for making particular repairs, given the variety of circumstances involved. As Appendix D to §37.161 notes, however, "repairing accessible features must be made a high priority." When an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

An important part of maintaining accessibility features so that they are "accessible to and usable by individuals with disabilities" is ensuring they are free from obstructions. Locked accessible doors and accessible paths of travel that are blocked by equipment or boxes of materials are not accessible to or usable by individuals with disabilities. Agencies have an obligation to enforce parking bans and to keep accessible features clear if they have direct control over the area. This can include removing illegally parked vehicles occupying accessible parking spaces or access aisles in station parking lots, removing bicycles obstructing ramps and accessible routes, and removing snow from ramps and accessible routes. Where a transit agency does not have direct control over the areas with accessibility features, FTA expects coordination with other public entities or private property owners.

Public entities are required to have a system of regular and frequent maintenance checks for wheelchair lifts and ramps on non-rail vehicles that is sufficient to ensure that the lifts are operational. There is no specific requirement for daily cycling of lifts and ramps, though many entities have adopted this practice to meet this requirement for regular and frequent maintenance checks. The procedures must be designed to ensure that the person discovering an inoperative lift or ramp is not a person waiting to use it at the bus stop.

Public entities must ensure that operators report immediately any in-service lift and ramp failures. The vehicle with the inoperable lift or ramp must be removed from service before the beginning of the next service day and the entity must repair the lift or ramp before the vehicle is returned to service. In the event that there is no spare vehicle available and the entity would be required to reduce service to repair the lift or ramp, it may keep the vehicle with the inoperable lift or ramp in service for no more than three days (if the entity serves an area of over 50,000 population) or five days (if the entity serves an area of 50,000 or less population). After these times have elapsed, the vehicle must go into the shop, not to return to service until the lift is repaired. Even during the three- or five-day period, if an accessible spare vehicle becomes available at any time, it must be used in place of the vehicle with the inoperative lift or

an inaccessible spare that is being used in its place. In any case in which a vehicle is operating on a fixed route with an inoperative lift (including in-service failures), and the headway to the next accessible vehicle exceeds 30 minutes, the entity must promptly (i.e., within 30 minutes) provide alternative transportation to persons with disabilities who are unable to use the vehicle.

One advantage to ramp-equipped buses is that the ramps are typically easy to deploy manually if the automatic mechanism is out of order. Many transit agencies have policies directing drivers to manually deploy the ramp for the waiting rider instead of calling for alternative transportation. FTA considers local policies that direct drivers to manually deploy ramps in lieu of arranging for alternative transportation acceptable.

The recipient must monitor its compliance with these US DOT ADA maintenance requirements, including the requirements to take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature and to provide alternative service for in-service lift and ramp failures.

INDICATORS OF COMPLIANCE

a. *Does the recipient have a system of regular maintenance checks to ensure that accessibility features of vehicles and facilities are operational?*

b. *When an elevator or other accessibility feature is out of service or otherwise unusable, does the recipient ensure that individuals who rely on the elevator or feature are accommodated?*

c. *Does the recipient have procedures to minimize downtime whenever an accessibility feature of a vehicle or facility is out of service?*

d. *Does the recipient ensure that vehicles with inoperative lifts or ramps are not placed into service unless no alternative accessible vehicles are available, and do not remain in service longer than three days (for areas over 50,000 population) or five days (for areas of 50,000 population or less)?*

e. *Does the recipient require vehicle operators to report lift and ramp failures immediately?*

f. *When lifts or ramps fail in service and cannot be deployed, is alternative accessible service provided to persons with disabilities within 30 minutes, if the headway to the next accessible bus exceeds 30 minutes?*

g. *Does the recipient ensure that the usability of accessible paths of travel is maintained and provide alternative service or other means of compliance when necessary?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website and other public materials for information on service during elevator failures, including public notification procedures. Onsite, review complaints regarding failure to provide alternative arrangements when elevators are out of service. If there are complaints, determine if the complaints indicate that the recipient does not have or did not follow its procedure for providing alternative arrangements. During the site visit, discuss the alternative service arrangements and

how the public is notified promptly about outages and alternative service. Review recipient's outage records. Determine the time requirements, if any, govern in-house elevator repair. Review contract provisions governing timely contractor response to and repair of elevator outages. Review maintenance records for regular and frequent checks to ensure elevators are operational.

Review operating and training manuals, websites, and other information (internal and external) for information or procedures for ensuring that accessible routes are maintained and unobstructed. Such procedures can address the agency's plans for maintaining/repairing accessible equipment/features, towing vehicles parked illegally or removing snow in/from access aisles or accessible spaces, ramps, etc. When touring facilities, note and follow up with the recipient on any inoperative elevators or blocked accessible paths of travel. Determine if the recipient is aware of the situation and, if so, how the recipient became aware of the situation, how soon it plans to address it, and what alternative arrangements are being made for passengers with disabilities.

Review driver handbooks, operating and training manuals, and internal bulletins for information or procedures on lift and ramp availability. Review ADA complaints addressing lift and ramp failures. Review data on fleet accessibility and the number of accessible spares. During the site visit, discuss pre-check procedures and responses to in-service lift/ramp malfunctions. If drivers are reporting in-service lift/ramp failures immediately as required, the frequency of in-service lift/ramp failures may be an indicator of the adequacy of lift/ramp maintenance.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not accommodate passengers when an elevator is out of service.

DEFICIENCY CODE ADA-GEN9-1: Elevator or other accessibility feature service deficiency

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to accommodate passengers when an elevator or other accessibility feature is out of service.

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented ongoing monitoring procedures to ensure reliability of elevators and other accessibility features.

The recipient is deficient if it does not prevent vehicles with inoperative lifts or ramps from being placed into service if there are accessible spares.

DEFICIENCY CODE ADA-GEN9-2: Vehicles with inoperative lift/ramp placed in service

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has implemented procedures to prevent vehicles with an inoperative lift or ramp from being placed into service if there are accessible spares and evidence that it monitors the implementation of these procedures.

The recipient is deficient if it does not require bus operators to report lift and ramp failures immediately.

DEFICIENCY CODE ADA-GEN9-3: Lift/ramp failures not reported immediately

SUGGESTED CORRECTIVE ACTION: Submit a policy requiring operators to report lift and ramp failures immediately and evidence of its implementation.

The recipient is deficient if it does not take vehicles with inoperative lifts or ramps out of service within the required time frames.

DEFICIENCY CODE ADA-GEN9-4: Vehicles with inoperative lift/ramp not removed from service

SUGGESTED CORRECTIVE ACTION: Submit procedures for taking vehicles with inoperative lifts or ramps out of service within the required time frames.

The recipient is deficient if it does not provide alternative accessible service to individuals with disabilities within 30 minutes in any case when a vehicle with an inoperable lift or ramp is in service on a route with headways greater than 30 minutes to the next accessible bus.

DEFICIENCY CODE ADA-GEN9-5: Alternative accessible service not provided

SUGGESTED CORRECTIVE ACTION: Submit procedures for providing alternative accessible service within 30 minutes on routes with headways greater than 30 minutes when a vehicle lift or ramp fails while in service and/or when a vehicle with an inoperable lift or ramp is used in service.

The recipient is deficient if it does not ensure that the usability of accessible paths is maintained and does not provide alternative service when necessary.

DEFICIENCY CODE ADA-GEN9-6: Usability of accessible paths not maintained

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that accessible paths are maintained in a usable manner, and that alternative service is provided whenever obstructions or conditions of disrepair prevent its use by persons with disabilities.

GOVERNING DIRECTIVE
49 CFR 37.161 Maintenance of accessible features: General

(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 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.

(c) The entity shall ensure that vehicle operators report to the entity, by the most immediate means available, any failure of a lift to operate in service.

(d) Except as provided in paragraph (e) of this section, when a lift is discovered to be inoperative, the entity shall take the vehicle out of service before the beginning of the vehicle's next service day and ensure that the lift is repaired before the vehicle returns to service.

(e) If there is no spare vehicle available to take the place of a vehicle with an inoperable lift, such that taking the vehicle out of service will reduce the transportation service the entity is able to provide, the public entity may keep the vehicle in service with an inoperable lift for no more than five days (if the entity serves an area of 50,000 or less population) or three days (if the entity serves an area of over 50,000 population) from the day on which the lift is discovered to be inoperative.

(f) In any case in which a vehicle is operating on a fixed route with an inoperative lift, and the headway to the next accessible vehicle on the route exceeds 30 minutes, the entity shall promptly provide alternative

transportation to individuals with disabilities who are unable to use the vehicle because its lift does not work.

ADA-GEN10. Is route-deviation service open to the general public?

BASIC REQUIREMENT
Route-deviation service, when provided, must be open to the general public, advertised as such, and accessible to and useable by persons with disabilities.

APPLICABILITY
Recipients that provide route-deviation service

DETAILED EXPLANATION FOR REVIEWER
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.

The requirements for use of accessible vehicles in demand-responsive service apply to route-deviation service. (See question ADA-GEN14)

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 route-deviation 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 meeting the requirements of 49 CFR 37.77(c) provided to individuals who require an accessible vehicle particularly in terms of response time?*

INSTRUCTIONS FOR REVIEWER
Prior to the site visit, review the 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 are 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 DEFICIENCY DETERMINATIONS
The recipient is deficient if it provides route-deviation service but does not provide or promote the route-deviation service to the general public.

> DEFICIENCY CODE ADA-GEN10-1: Route-deviation service provided but not provided/promoted to the general public
>
> SUGGESTED CORRECTIVE ACTION: Submit documentation, such as public information and dispatching procedures, documenting that the service deviates for the general public or must submit documentation that it has implemented ADA complementary paratransit service.

The recipient is deficient if it operates non-accessible equipment in route-deviation service and cannot document that equivalent service is provided.

> DEFICIENCY CODE ADA-GEN10-2: Equivalent service not provided
>
> SUGGESTED CORRECTIVE ACTION 1: Ensure that all future vehicle acquisitions specify accessible vehicles until it can demonstrate that equivalent service is provided.
>
> SUGGESTED CORRECTIVE ACTION 2: Submit procedures for providing equivalent service and evidence that the procedures have been implemented.

GOVERNING DIRECTIVE
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.

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.

ADA-GEN11. Is rail service accessible to and usable by persons with disabilities?

BASIC REQUIREMENT
Rail service must be accessible to and usable by persons with disabilities.

APPLICABILITY
Recipients that provide rail service, including light, rapid, and commuter rail

DETAILED EXPLANATION FOR REVIEWER
Under the US DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the recipient provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs. In addition, because every new, used, and remanufactured rail car is required to be accessible since 1991, most trains will have more than one accessible car. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. An accessible car is not usable if it cannot be boarded or a passenger requiring the station-based equipment cannot disembark. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train must realign so as to permit boarding other accessible cars.

Where rail vehicles operate in a high-platform, level-boarding mode, devices or systems must be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors, or, for commuter rail vehicles, between-car bellows. Some systems have had success with platform-mounted bollards, but this requires a high degree of precision on the part of the operator to properly position the train. For commuter rail, the requirement does not apply where between-car bellows are provided.

US DOT ADA regulations do not define what constitutes a “high platform.” However, because the hazard of falling to the track bed exists wherever level boarding is used, a light rail system operating trains of more than one car where level boarding is provided is required to have between-car barriers as stipulated in the US DOT ADA regulations.

All rail operators are required to ensure that new stations comply with ADA requirements for new construction. This includes a requirement that the rail-to-platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. US DOT ADA regulations provide for exceptions to this requirement for commuter and light rail if it is not structurally or operationally feasible to provide level boarding, and the recipient lists alternate methods of boarding that may be used. There is no such exception for rapid rail; all newly constructed rapid rail stations must provide level-entry boarding within the gap tolerances prescribed for each type of vehicle in 49 CFR Part 38. If commuter or light rail stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented for each, the recipient may be in violation of the US DOT ADA regulations. Further, if a rail operator undertakes any alterations to a station, those alterations must also be accessible per the US DOT ADA standards.

New and altered commuter and intercity rail stations must provide level boarding or an effective means of providing accessible boarding to each accessible car in each train. The performance standard of 49 CFR 37.42 requires that passengers with disabilities have access to all accessible cars available to passengers without disabilities in each train using a station. If all wheelchair locations are occupied by other wheelchair users in cars where the doors normally open at a station, FTA expects the rail operator to double-stop, reposition a portable wayside lift, or deploy car-borne lifts or move a lift, where necessary, in order to provide transportation to a wheelchair user in an unoccupied wheelchair location.

INDICATORS OF COMPLIANCE

a. *Is at least one car per train accessible?*

b. *If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), are all passengers wanting to board or alight at that single point able to do so?*

c. *If the rail system operates in a level-boarding mode, are between-car barriers provided for trains consisting of more than one car?*

d. *For any commuter rail station altered or constructed since the last review, is accessible boarding provided to each accessible car of the train?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on accessibility. Review copies of public information on riding rail service, such as a rider guide or customer information.

Review the rail fleet management plan for procedures for ensuring at least one accessible car per train and accessible boarding/alighting. Note: For light and rapid rail, "train" consists of two or more vehicles.

Review rail car specifications for between-car barriers. If level boarding is provided and vehicles are not equipped with between-car barriers, verify that station-based between-car barriers are provided. During the facility tour, verify that trains consisting of more than one car provide between-car barriers.

Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridge plates. If accessible boarding is provided at a single point, i.e., as with a mini-high platform or wayside lift, to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. If all the wheelchair positions in the car aligning with the accessible

boarding point are occupied, at subsequent stations the train must realign so as to permit boarding other accessible cars. If time permits, observe or ride the service. Determine how accessible cars are identified for customers.

Obtain a list from the recipient of altered or constructed new commuter rail stations since the last Comprehensive Review that identifies any stations that do not provide level boarding. For commuter and intercity rail stations that do not provide for level boarding, check with the regional office or the FTA Office of Civil Rights or Chief Counsel to determine whether FTA and/or the Federal Railroad Administration (FRA) approved the method of accessible boarding provided as required under 49 CFR 37.42. Prior to the site visit, review the recipient's website for information on accessibility. Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridge plates. Review public information on riding rail service, such as a rider guide or customer information for discussion on accessible boarding.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if at least one car per train is not accessible.

DEFICIENCY CODE ADA-GEN11-1: One-car-per-train rule deficiency

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that at least one car per train is accessible.

The recipient is deficient if accessible boarding is provided at a single point and all passengers wanting to board or alight at that single point are unable to do so.

DEFICIENCY CODE ADA-GEN11-2: Accessible boarding not provided

SUGGESTED CORRECTIVE ACTION: Submit procedures for aligning the train so as to permit all passengers wanting to board or alight at that single point are able to do so.

The recipient is deficient if between-car barriers are not provided.

DEFICIENCY CODE ADA-GEN11-3: Lacking between-car barriers

SUGGESTED CORRECTIVE ACTION: Submit a plan for retrofitting cars with between-car barriers.

The recipient is deficient if for commuter rail stations constructed or altered since the last Comprehensive Review level boarding is not provided or has not been substantiated as an exception.

DEFICIENCY CODE ADA-GEN11-4: Commuter rail level boarding deficiency

SUGGESTED CORRECTIVE ACTION: Prior to making this deficiency, discuss with the RCRO. Submit documentation supporting platform-related exceptions. The FTA headquarters will determine corrective actions for noncompliant new construction or alterations and operational deficiencies.

GOVERNING DIRECTIVE

49 CFR 37.42 Service in an Integrated Setting to Passengers at Intercity, Commuter, and High-Speed Rail Station Platforms Constructed or Altered After February 1, 2012

(a) In addition to meeting the requirements of sections 37.9 and 37.41, an operator of a commuter, intercity, or high-speed rail system must ensure, at stations that are approved for entry into final design or that begin construction or alteration of platforms on or after February 1, 2012, that the following

performance standard is met: individuals with disabilities, including individuals who use wheelchairs, must have access to all accessible cars available to passengers without disabilities in each train using the station.

(b) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which no track passing through the station and adjacent to platforms is shared with existing freight rail operations, the performance standard of paragraph (a) of this section must be met by providing level-entry boarding to all accessible cars in each train that serves the station.

(c) For new or altered stations serving commuter, intercity, or high-speed rail lines or systems, in which track passing through the station and adjacent to platforms is shared with existing freight rail operations, the railroad operator may comply with the performance standard of paragraph (a) by use of one or more of the following means:

(1) Level-entry boarding;

(2) Car-borne lifts;

(3) Bridge plates, ramps or other appropriate devices;

(4) Mini-high platforms, with multiple mini-high platforms or multiple train stops, as needed, to permit access to all accessible cars available at that station; or

(5) Station-based lifts;

(d) Before constructing or altering a platform at a station covered by paragraph (c) of this section, at which a railroad proposes to use a means other than level-entry boarding, the railroad must meet the following requirements:

(1) If the railroad operator not using level-entry boarding chooses a means of meeting the performance standard other than using car-borne lifts, it must perform a comparison of the costs (capital, operating, and life-cycle costs) of car-borne lifts and the means chosen by the railroad operator, as well as a comparison of the relative ability of each of these alternatives to provide service to individuals with disabilities in an integrated, safe, timely, and reliable manner. The railroad operator must submit a copy of this analysis to FTA or FRA at the time it submits the plan required by paragraph (d)(2) of this section.

(2) The railroad operator must submit a plan to FRA and/or FTA, describing its proposed means to meet the performance standard of paragraph (a) of this section at that station. The plan must demonstrate how boarding equipment or platforms would be deployed, maintained, and operated; and how personnel would be trained and deployed to ensure that service to individuals with disabilities is provided in an integrated, safe, timely, and reliable manner.

(3) Before proceeding with constructing or modifying a station platform covered by paragraphs (c) and (d) of this section, the railroad must obtain approval from the FTA (for commuter rail systems) or the FRA (for intercity rail systems). The agencies will evaluate the proposed plan and may approve, disapprove, or modify it. The FTA and the FRA may make this determination jointly in any situation in which both a commuter rail system and an intercity or high-speed rail system use the tracks serving the platform. FTA and FRA will respond to the railroad's plan in a timely manner, in accordance with the timetable set forth in paragraphs (d)(3)(i) through (d)(3)(iii) of this paragraph.

49 CFR 37.93 One car per train rule

(a) The definition of accessible for purposes of meeting the one car per train rule is spelled out in the applicable subpart for each transportation system type in part 38 of this title.

(b) Each person providing intercity rail service and each commuter rail authority shall ensure that, as soon as practicable, but in no event later than July 26, 1995, that each train has one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(c) Each public entity providing light or rapid rail service shall ensure that each train, consisting of two or more vehicles, includes at least one car that is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, as soon as practicable but in no case later than July 25, 1995.

49 CFR 38.63 Between-car barriers (rapid rail)

(a) *Requirement.* Suitable devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Acceptable solutions include, but are not limited to, pantograph gates, chains, motion detectors or similar devices.

(b) *Exception.* Between-car barriers are not required where platform screens are provided which close off the platform edge and open only when trains are correctly aligned with the doors.

49 CFR 38.85 Between-car barriers (light rail)

Where vehicles operate in a high-platform, level-boarding mode, devices, or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

49 CFR 38.109 Between-car barriers (commuter rail)

Where vehicles operate in a high-platform, level-boarding mode, devices or systems shall be provided to prevent, deter or warn individuals from inadvertently stepping off the platform between cars. Appropriate devices include, but are not limited to, pantograph gates, chains, motion detectors or other suitable devices.

ADA-GEN12. Is ferry service accessible to and usable by persons with disabilities*?*

BASIC REQUIREMENT
Ferry service must be accessible to and usable by persons with disabilities.

APPLICABILITY
Recipients that provide ferry service

DETAILED EXPLANATION FOR REVIEWER
Ferry service is covered by 49 CFR Part 39, “Transportation for Individuals with Disabilities: Passenger Vessels,” which became effective November 10, 2010. This rule prohibits owners and operators of passenger vessels, including U.S. and foreign-flag vessels, from discriminating against passengers on

the basis of disability; requires vessels and related facilities to be accessible; and requires owners and operators of vessels to take steps to accommodate passengers with disabilities.

Accessibility of landside facilities are addressed by Subpart D. Subpart E, which addresses the accessibility of the vessels themselves, is reserved until the U.S. Architectural and Transportation Barriers Compliance Board issues applicable standards, and such standards are incorporated into the US DOT ADA regulations. Requirements for assistance and services to passengers with disabilities are contained in Subpart F.

Passenger vessel operators are required to make a designated complaints resolution official (CRO) available for contact on each vessel and at each terminal. The CRO may be available in-person or via telephone. If a telephone link is used, text telephone (TTY) or telecommunications relay service (TRS) must be available so that persons with hearing impairments are able to communicate readily with the CRO.

The CRO must have the authority to make dispositive resolution of complaints on the entity's behalf, including the power to overrule the decisions of any other personnel (but cannot countermand a decision of the master of the vessel with respect to safety matters). In any situation in which any person complains or raises concern with the entity's personnel about discrimination, policies, or services with respect to passengers with a disability, and personnel do not immediately resolve the issue to the passenger's satisfaction or do not provide a requested accommodation, the entity's personnel must immediately inform the passenger of the right to contact a CRO and the location and/or phone number of the available CRO.

Public operators of passenger vessels are required to make reasonable modifications in policies, practices, or procedures when necessary to accommodate individuals with disabilities, unless they can demonstrate that making such modifications would fundamentally alter the nature of the service.

Passenger vessel operators may not limit the number of persons with disabilities on a vessel, require medical documentation, or require advance notice, and may not require a passenger with a disability to travel with another person, subject passengers with disabilities to restrictions that do not apply to other passengers, or impose higher fares, surcharges or other fees.

If a passenger vessel operator provides, contracts for, or otherwise arranges for transportation to and from a passenger vessel, the entity must ensure that the transfer service is accessible to and usable by persons with disabilities.

The entity must provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance or other vehicle drop-off point and the location where passengers board and disembark from the vessel. This includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim areas.

Passenger vessel operators are required to promptly provide assistance to passengers with disabilities who are not able to get on or off a vessel without assistance and may use any means to which the passenger consents (such as lifts, ramps, boarding chairs, or assistance by vessel personnel). However, the entity cannot require a passenger with a disability to accept assistance if he or she is readily able to get on or off of the vessel independently.

Passenger vessel operators must permit individuals with mobility disabilities to use power and manual wheelchairs and other mobility aids such as walkers, crutches, canes, braces, or similar devices in any areas that are open to pedestrian use. In addition, the entity must also make reasonable modifications to its policies, practices, or procedures to permit the use of other powered mobility devices used by persons with mobility impairments (e.g., Segways), unless it can be demonstrated that a specific device cannot be operated on board the vessel consistent with legitimate safety requirements.

Briefings or other safety-related information must be provided through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary. This includes providing written materials in alternative formats that persons with vision impairments can use. Entities must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, unless it is required of all passengers. Passengers with disabilities must be provided with whatever assistance is necessary to enable their full participation in safety or emergency evacuation drills that are provided to all passengers, and maintain evacuation programs, information, and equipment in locations that passengers with disabilities can readily access and use.

INDICATORS OF COMPLIANCE

a. *Is a CRO made available on each vessel and at each terminal? Does the CRO have power to overrule the decisions of any other personnel except for the master of the vessel with respect to safety matters?*

b. *Are requests for reasonable modifications in policies, practices, or procedures made unless such modifications would fundamentally alter the nature of the service?*

c. *Is the number of persons with disabilities on a vessel limited?*

d. *Is medical documentation or advance notice from a passenger with a disability required?*

e. *Is a passenger with a disability required to travel with another person?*

f. *If transportation service is provided to and from the ferry, is the transfer accessible?*

g. *Is assistance provided as requested to passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas?*

h. *Is assistance provided promptly to passengers with disabilities who are not able to board or disembark without assistance?*

i. *Are passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces, or similar devices restricted from using any areas that are open to pedestrians?*

j. Are briefings and other safety-related information provided to passengers with hearing or vision impairments? Is written material provided in alternative formats upon request?

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on accessibility. Review copies of public information on riding ferry service, such as a rider guide or customer information. Review ADA policies and procedures, if written. From the review of these documents, ascertain the recipient's policies and procedures on use of the CRO; making reasonable modifications; the number of persons with disabilities allowed on the vessel; advanced notification of travel by persons with disabilities; personal assistants accompanying persons with disabilities; transfer service provided to persons with disabilities; assistance provided to persons with disabilities; alternative formats used for briefing and safety-related information; and, restrictions on accessing areas by persons with disabilities. Onsite, discuss these policies and procedures and how they are implemented.

Obtain and review an organization chart and job description for responsibilities of the CRO. Obtain and review ferry operations ADA training materials to ascertain if ferry personnel are made aware of the CRO and their role. Onsite, during complaint file review, note any ADA-related ferry complaints and how they are resolved. Determine if decisions made by the CRO are resolved by personnel other than the master of the vessel with respect to safety matters. When touring the facility and vessel, review posted information to determine if the recipient publicizes how the CRO can be contacted.

For transfers offered to persons with disabilities, when onsite, tour the passenger ferry terminal and walk the route designated for such transfers noting the transit connections and whether the route is accessible.

For information offered in accessible formats, when onsite, discuss audio and visual provision of service information during travel. During the facility tour, review postings in the terminal and on a vessel to confirm implementation of the recipient's policies. If time permits, ride the service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not appropriately designated a CRO or the CRO does not have the authority to overrule the decisions of other personnel except for the master of the vessel with respect to safety matters.

DEFICIENCY CODE ADA-GEN12-1: CRO missing or lacking authority

SUGGESTED CORRECTIVE ACTION: Submit evidence, such as an organization chart, job description, or Board or management directive, that it has designated a CRO. Submit a policy stating that the CRO has the authority to overrule personnel except for the master of the vessel with respect to safety matters.

The recipient is deficient if it does not accept requests for reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the modifications would fundamentally alter the nature of the service.

DEFICIENCY CODE ADA-GEN12-2: Reasonable modification not provided for ferry service

SUGGESTED CORRECTIVE ACTION: Submit a procedure for making reasonable modifications to policies, practices, and procedures when necessary to avoid discrimination on the basis of disability unless the modifications would fundamentally alter the nature of the service.

The recipient is deficient if it inappropriately limits the number of passengers with disabilities on a vessel for other than weight or stability issues related to legitimate safety issues as determined by the captain.

DEFICIENCY CODE ADA-GEN12-3: Limits on passengers with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: Submit revised policies and procedures that prohibit limiting the number of passengers with a disability on a passenger vessel except for weight or stability issues for legitimate safety reasons as determined by the captain.

The recipient is deficient if medical documentation or advance notice is required from a passenger with a disability or if it requires a passenger with a disability to travel with another person.

DEFICIENCY CODE ADA-GEN12-4: Excessive requirements placed on passenger with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased requiring medical documentation, advance notice from a passenger with a disability or requiring passengers with disabilities from traveling with another passenger.

The recipient is deficient if non-accessible transportation is provided to and from the vessel.

DEFICIENCY CODE ADA-GEN12-5: Non-accessible transportation to/from vessel

SUGGESTED CORRECTIVE ACTION: Submit evidence that it provides accessible transportation to and from the vessel.

The recipient is deficient if it does not 1) provide assistance as requested to ferry passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas, or 2) provide prompt assistance to passengers with disabilities who are not able to board or disembark without assistance.

DEFICIENCY CODE ADA-GEN12-6: Assistance not provided to passengers with disabilities

SUGGESTED CORRECTIVE ACTION: Submit procedures to provide assistance as requested to ferry passengers with disabilities in moving between the terminal entrance or drop-off point and the ferry boarding location, including assistance with ticket counters and baggage checking/claim areas, and/or provide assistance promptly to passengers with disabilities who are not able to board or disembark without assistance, along with evidence of implementation.

The recipient is deficient if it does not provide briefings and other safety-related information provided to passengers with hearing or vision impairments or if written material is not provided in alternative formats upon request.

DEFICIENCY CODE ADA-GEN12-7: Ferry service safety information provision deficiencies

SUGGESTED CORRECTIVE ACTION: Submit evidence that briefings and safety-related information is provided to passengers with hearing or vision impairments, or written material provided in alternative formats upon request.

The recipient is deficient if it restricts passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces or similar devices from using any areas that are open to pedestrians.

DEFICIENCY CODE ADA-GEN12-8: Restrictions on passengers with wheelchairs or mobility aids

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased restricting passengers with wheelchairs and mobility aids such as walkers, crutches, canes, braces, or similar devices from using any areas that are open to pedestrians.

GOVERNING DIRECTIVE

49 CFR 39.21 What is the general nondiscrimination requirement of the part?

(b)(2) As a PVO that is a public entity, you must make reasonable modifications in policies, practices, or procedures when necessary to avoid discrimination on the basis of disability, unless you can demonstrate that making the modifications would fundamentally alter the nature of the services, programs, or activities you offer.

49 CFR 39.29 May PVOs limit the number of passengers with a disability on a passenger vessel?

As a PVO, you must not limit the number of passengers with a disability other than individuals with a mobility disability on your vessel. However, if in the captain's judgment, weight or stability issues are presented by the presence of mobility devices and would conflict with legitimate safety requirements pertaining to the vessel and its passengers, then the number of passengers with mobility aids may be limited, but only to the extent reasonable to prevent or avoid such a conflict.

49 CFR 39.33 May PVOs require a passenger with a disability to provide a medical certificate?

Except as provided in §39.31, you must not require a passenger with a disability to have a medical certificate as a condition for being provided transportation on your vessel.

49 CFR 39.35 May PVOs require a passenger with a disability to provide advance notice that he or she is traveling on or using a passenger vessel when no particular services are sought?

As a PVO, you must not require a passenger with a disability to provide advance notice of the fact that he or she is traveling on or using a passenger vessel when the passenger is not seeking particular auxiliary aids or services, or special privileges or services, that in order to be provided need to be arranged before the passenger arrives to board the vessel.

49 CFR 39.41 May a passenger with a disability be required to travel with another person?

(a) You must not require that a passenger with a disability travel with another person as a condition of being provided transportation on or use of a passenger vessel.

(b) Your personnel are not required to perform personal tasks (*e.g.,* assisting with eating, dressing, toileting) for a passenger.

49 CFR 39.45 May PVOs impose other restrictions on passengers with a disability that they do not impose on other passengers?

(a) As a PVO, you must not subject passengers with a disability to restrictions that do not apply to other passengers, except as otherwise explicitly permitted in this part.

(b) Restrictions you must not impose on passengers with a disability include, but are not limited to, the following:

    (1) Restricting passengers' movement within the vessel or a terminal;

(2) Requiring passengers to remain in a holding area or other location in order to receive transportation or services;

(4) Requiring passengers to wear badges or other special identification; or

(5) Requiring ambulatory passengers, including but not limited to blind or visually impaired passengers, to use a wheelchair or other mobility device in order to receive assistance required by this Part or otherwise offered to the passenger.

(c) Special muster stations for disabled individuals are permissible for emergency evacuations in order to centrally locate available resources.

49 CFR 39.81 What assistance must PVOs provide to passengers with a disability in getting to and from a passenger vessel?

(a) As a PVO, if you provide, contract for, or otherwise arrange for transportation to and from a passenger vessel in the U.S. (*e.g.,* a bus transfer from an airport to a vessel terminal), you must ensure that the transfer service is accessible to and usable by individuals with disabilities, as required by this Part.

(b) You must also provide assistance requested by or on behalf of a passenger with a disability in moving between the terminal entrance (or a vehicle drop-off point adjacent to the entrance) of a terminal in the U.S. and the place where people get on or off the passenger vessel. This requirement includes assistance in accessing key functional areas of the terminal, such as ticket counters and baggage checking/claim. It also includes a brief stop upon request at an accessible toilet room.

49 CFR 39.83 What are PVOs' obligations for assisting passengers with a disability in getting on and off a passenger vessel?

(a) If a passenger with a disability can readily get on or off a passenger vessel without assistance, you are not required to provide such assistance to the passenger. You must not require such a passenger with a disability to accept assistance from you in getting on or off the vessel unless it is provided to all passengers as a matter of course.

(b) With respect to a passenger with a disability who is not able to get on or off a passenger vessel without assistance, you must promptly provide assistance that ensures that the passenger can get on or off the vessel.

(c) When you have to provide assistance to a passenger with a disability in getting on or off a passenger vessel, you may use any available means to which the passenger consents (*e.g.,* lifts, ramps, boarding chairs, assistance by vessel personnel).

49 CFR 39.89 What requirements apply to on-board safety briefings, information, and drills?

As a PVO, you must comply with the following requirements with respect to safety briefings, information, or drills provided to passengers:

(a) You must provide the briefings or other safety-related information through means that effectively communicate their content to persons with vision or hearing impairments, using auxiliary aids and services where necessary for effective communication. This includes providing written materials in alternative formats that persons with vision impairments can use.

(b) You must not require any passenger with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that you impose such a

requirement on all passengers. You must not take any action adverse to a qualified individual with a disability on the basis that the person has not "accepted" the briefing.

(c) As a PVO, if you present on-board safety briefings to passengers on video screens, you must ensure that the safety-video presentation is accessible to passengers with impaired hearing (*e.g.,* through use of captioning or placement of a sign language interpreter in the video).

(d) You must provide whatever assistance is necessary to enable passengers with disabilities to participate fully in safety or emergency evacuation drills provided to all passengers.

(e) You must maintain evacuation programs, information, and equipment in locations that passengers can readily access and use.

49 CFR 39.101 What are the requirements for providing Complaints Resolution Officials?

(a) As a PVO, you must designate one or more Complaints Resolution Officials (CROs).

(b) You must make a CRO available for contact on each vessel and at each terminal that you serve. The CRO may be made available in person or via telephone, if at no cost to the passenger. If a telephone link to the CRO is used, TTY or TRS service must be available so that persons with hearing impairments may readily communicate with the CRO. You must make CRO service available in the language(s) in which you make your other services available to the general public.

(e) You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the PVO. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO may not be given authority to countermand a decision of the master of a vessel with respect to safety matters.

ADA-GEN13. Does the recipient monitor service provided under contract or other arrangement or relationship with a private entity, or service provided by another public entity on the recipient's behalf, for compliance with the U.S. Department of Transportation (US DOT) ADA regulations?

BASIC REQUIREMENT
Service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY
Recipients who enter into contracts or other arrangements or relationships with other entities, lease vehicles or otherwise rely on another entity to provide service. Note that the DOT ADA regulations apply equally to "pilot" programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to ensure that service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) adheres to the same ADA requirements that apply to the recipient. This includes written contracts or informal arrangement that reflects an ongoing relationship between the parties. See ADA-GEN5 for a more detailed explanation of each requirement.

INDICATOR OF COMPLIANCE

a. *How does the recipient monitor service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) with a private entity, service provided by lessees, or service provided by another public entity on the recipient's behalf under contract or other arrangement or relationship for:*

    1. *Complaint procedures?*

    2. *Vehicle acquisition?*

    3. *Facility construction and alterations?*

    4. *Service provision, including reasonable modification, training to proficiency in the performance of duties (including use of wheelchair securement systems and treating individuals with disabilities with dignity and respect), accommodation of service animals and portable oxygen, etc.? (See ADA-GEN8)*

    5. *Maintenance of accessible features?*

    6. *Route-deviation service?*

    7. *Rail service?*

    8. *Ferry service?*

INSTRUCTIONS FOR REVIEWER

Review sample transportation service contracts and other arrangements or relationships, agreements to provide supplemental transportation, and leases for ADA requirements, including training and service related requirements. Review contract management procedures, including tracking and monitoring service quality. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements, including those governing training to proficiency in the conduct of duties. Onsite, discuss ADA policies and procedures with the recipient and review recipient's oversight files for the contractor(s) and lessee(s) to be visited during the site visit. Discuss ADA policies and procedures with the contractors/lessees visited.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with ADA provisions of service requirements.

DEFICIENCY CODE ADA-GEN13-1: Insufficient oversight of contracted service for ADA requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the ADA service provisions.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence of implementation of procedures for ensuring that contractors, entities with which the recipient has other arrangements or relationships, and lessees comply with the relevant US DOT ADA requirements.

GOVERNING DIRECTIVE

49 CFR 39.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed-route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR 39.23 What are the requirements concerning contractors to owners and operators of passenger vessels?

(a) If, as a PVO, you enter into a contractual or other arrangement or relationship with any other party to provide services to or affecting passengers, you must ensure that the other party meets the requirements of this Part that would apply to you if you provided the service yourself.

ADA-GEN14. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT
The recipient must ensure that subrecipients comply with the US DOT ADA regulations.

APPLICABILITY
Recipients with subrecipients

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to ensure that subrecipients adhere to all relevant ADA requirements. See preceding questions for a more detailed explanation of each requirement.

States must obtain certifications of equivalent service from Sections 5307, 5311, and 5339 subrecipients before the subrecipient acquires non-accessible vehicles for demand-response service, not including ADA complementary paratransit service. Note: Even though the US DOT ADA regulations do not list Section 5339 subrecipients as having to file certifications of equivalent service with a state administering agency for purchases of non-accessible vehicles for demand-response service, Section 5339 funds take on the requirements of the Section 5307 or 5311 program, depending on the program the funds support. Therefore, a certification of equivalent service is required from Section 5339 subrecipients. The requirement does not apply to Section 5310 subrecipients that are providing closed door service to their own clientele. The ADA regulations do not require non-state recipients to obtain certifications of equivalent service. Many recipients obtain the annual certification and assurances from subrecipients. The certification of equivalent service is included in the FTA annual certifications and assurances. The recipient must look behind the certification, that is, determine if the subrecipient provides equivalent service before the subrecipient acquires non-accessible vehicles for demand-response service.

All Section 5311 subrecipients, including private nonprofit entities, are to follow the rules for public entities.

INDICATORS OF COMPLIANCE

a. *How does the recipient monitor subrecipients for?*

    1. *Complaint procedures?*

    2. *Vehicle acquisition?*

    3. *Facility construction and alterations?*

    4. *Service provision, such as reasonable modification, training, etc.?*

    5. *Maintenance of accessible features?*

    6. *Route-deviation service?*

    7. *Rail service?*

    8. *Ferry service?*

b. *Does the state have on file certifications of equivalent service from Section 5307, 5311, and 5339 subrecipients that acquire non-accessible vehicles for general public demand-response service?*

INSTRUCTIONS FOR REVIEWER

Review subrecipient agreements for ADA requirements, including training requirements. Request and review contract management procedures. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited during the site visit. Note: FTA is looking for a Comprehensive Review of service provision requirements. Recipients are not required to ensure that subrecipients monitor for each service provision. Discuss ADA policies and procedures with the subrecipient(s) visited.

Review the state or program management plan to determine whether the recipient allows subrecipients to purchase non-accessible equipment for demand-response service. If so, review how the recipient determines whether the subrecipient provides equivalent service. Determine how the state obtains certifications of equivalent service from Sections 5307, 5311, and 5339 subrecipients before the subrecipient acquires non-accessible vehicles for demand-response service, not including ADA complementary paratransit service.; if annual certifications are used, determine how the state reviews the subrecipients' supporting documentation to ensure compliance.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not monitor and ensure that its subrecipients comply with relevant US DOT ADA requirements.

DEFICIENCY CODE ADA-GEN14-1: Insufficient oversight of subrecipients for ADA requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements

The state is deficient if it does not obtain a certification of equivalent service from Section 5307, 5311, or 5339 subrecipients that acquire non-accessible vehicles for general public demand-response service.

DEFICIENCY CODE ADA-GEN14-2: Insufficient oversight of ADA vehicle accessibility requirements

SUGGESTED CORRECTIVE ACTION: Submit procedures for obtaining certifications of equivalent service from Section 5307, 5311, and 5339 subrecipients before the subrecipients acquire non-accessible equipment for demand-response service.

GOVERNING DIRECTIVE

Chapter 53 of title 49, United States Code, as amended by Fixing America's Surface Transportation Act Related FAST and MAP-21 provisions, Section 5339. Grants for buses and bus facilities

(a)(3) Grant requirements--The requirements of--

(A) section 5307 shall apply to recipient of grants made in urbanized areas under this subsection; and

(B) section 5311 shall apply to recipients of grants made in rural areas under this subsection.

49 CFR 200.332 Requirements for pass-through entities

A pass-through entity must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed-route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

49 CFR Part 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public

(d) A public entity receiving FTA funds under 49 U.S.C. 5311 or a public entity in a small urbanized area which receives FTA funds under 49 U.S.C. 5307 from a state administering agency rather than directly from FTA, which determines that its service to individuals with disabilities is equivalent to that provided other persons shall, before any procurement of an inaccessible vehicle, file with the appropriate state program office a certificate that it provides equivalent service meeting the standards of paragraph (c) of this section.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
During the review were any issues/areas of concerns identified during the review:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA.

- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year.

- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings.

- Are any oversight review, investigation, or audit findings currently open.

- Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT).

- What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources.

- Have any ADA complaints been filed with FTA.

- Does the ADA complaint process provide for due process.

- Does the recipient have forward-facing seats in the front of buses.

- Does the recipient appear to have the capacity and employee training to ensure compliance with the ADA.

- Do the recipient, contractors, and lessees appear to have sufficient accessible spare vehicles to meet the ADA service requirements.

- Did background research or site visit observations reveal any potential issues or concerns about the recipient's compliance with ADA requirements not covered previously in this section.

- If the recipient operates a demand-responsive service of any kind, and relies on equivalent service to accommodate persons with disabilities who require accessible vehicles, are the accessible vehicles comparable in nature to the inaccessible vehicles provided to ambulatory passengers (e.g., are ambulatory passengers provided with luxury vehicles while wheelchair users are provided only with Low-Speed Vehicles as classified by NHTSA).

- If the recipient has engaged the services of a private entity to operate demand-responsive services on its behalf or under its banner via contract or other arrangement or relationship, how does the recipient ensure that equivalent service is provided to persons with disabilities, including those who use wheelchairs?

- If the recipient has engaged the services of a private entity to operate demand-responsive services on its behalf or under its banner via contract or other arrangement or relationship, what oversight or controls does the recipient have in place to ensure compliance with DOT ADA nondiscrimination requirements in connection with the provision of such services?

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REFERENCES

1. 2 CFR 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. 49 CFR Part 39, “Transportation for Individuals with Disabilities: Passenger Vessels”

6. 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

7. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019

8. Notice of Concurrence

9. Emergency Relief rule

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13. AMERICANS WITH DISABILITIES ACT (ADA) COMPLEMENTARY PARATRANSIT

PURPOSE OF THIS REVIEW AREA
Under 49 CFR 37.121(a), 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. “Comparability” is determined by 49 CFR 37.123-37.133. Requirements for complementary paratransit do not apply to commuter bus, commuter rail, or intercity rail systems.

QUESTIONS TO BE EXAMINED
1. If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?

2. Does the recipient’s paratransit eligibility determination process meet ADA complementary paratransit service requirements?

3. Does the recipient provide ADA complementary paratransit service to out-of-town visitors on the same basis as it provides service to eligible riders?

4. Does the recipient’s paratransit service meet the ADA complementary paratransit service requirements?

5. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?

6. Does the recipient place any limits on the availability of service to ADA paratransit eligible individuals?

7. Does the recipient monitor service provided under contract or other arrangement or relationship, or service provided by another entity on the recipient’s behalf, for compliance with 49 CFR Part 37, Subpart F?

8. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with 49 CFR Part 37, Subpart F?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Paratransit rider’s guide
- Paratransit application form
- Operations, dispatch, scheduling or reservation procedures
- Sample notification letter templates for conditional eligibility, temporary eligibility, and denials
- ADA complementary paratransit service contracts
- Oversight tools for service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement), including required reports, questionnaires, and checklists for ADA complementary paratransit service
- For contracts or other arrangements, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis
- Copies of contracts or other agreements, or terms of other relationships (including, but not limited to, awards, subawards or cooperative agreements) with private entities to operate ADA complementary paratransit service

- Oversight tools for subrecipients, including required reports, questionnaires, and checklists for ADA complementary paratransit service
- For subrecipients, samples of completed oversight tools such as completed check lists, meeting minutes, reports, or summaries, and in particular, evidence of responsiveness to issues identified during analysis of service criteria outlined in 49 CFR 37.131 analysis

Note that it is possible for paratransit guides and information to point to general ADA deficiencies covered in the previous section. For example, while the paratransit guide may be the only place that a requirement for boarding direction or service animal harnesses is found, that does not make it a paratransit-specific deficiency. Use the deficiency codes in the ADA General section for these types of deficiencies, if found. The two ADA sections are designed to work together.

Recipient Follow-up

- Service denials for the past three years by year
- Travel times for the past three years by year
- Missed trips for the past three years by year
- Telephone hold time performance for reservations lines for the past three years by year
- No-show policy (If any)

ADA-CPT1. If the recipient is a public operator of a fixed-route service (bus or rail), does it provide ADA complementary paratransit service?

BASIC REQUIREMENT

Public operators of a fixed route system must provide paratransit as a complement to the fixed-route system.

APPLICABILITY

Public operators of a fixed-route system (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER

Each public operator of a fixed-route system (bus and rail) is required to provide complementary paratransit. The requirement to provide complementary paratransit service does not apply to commuter bus or commuter rail, as defined by 49 CFR 37.3, or to university service as discussed in 49 CFR 37.25.

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.

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 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 to provide service on the institution’s behalf.

INDICATORS OF COMPLIANCE

a. If the recipient is a public operator of fixed-route service other than commuter rail or

commuter bus service, is complementary paratransit service provided?

INSTRUCTIONS FOR REVIEWER
Prior to the site visit, review the 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 ADA-GEN10).

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it is a public operator of a fixed-route system (other than commuter bus or commuter rail) and does not provide paratransit as a complement to the fixed-route system.

DEFICIENCY CODE ADA-CPT1-1: Failure to provide complementary paratransit

SUGGESTED CORRECTIVE ACTION: Submit a plan with milestones for implementing paratransit as a complement to its fixed-route service according to the criteria described in 49 CFR Part 37, subpart F.

GOVERNING DIRECTIVE

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 connecter 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.

ADA-CPT2. Does the recipient's paratransit eligibility determination process meet ADA complementary paratransit service requirements?

BASIC REQUIREMENT
ADA complementary paratransit service must be provided to ADA eligible individuals.

APPLICABILITY
Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER
Each entity providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. The entity must process a completed application within 21 calendar days of submittal. If after 21 calendar days, the entity has not made an eligibility determination, the applicant must be treated as eligible and must be provided service on the 22nd day until and unless the entity denies the application.

Individuals may be ADA paratransit eligible on the basis of a temporary, conditional or permanent disability. The entity is not required to implement conditional eligibility.

Applicants given conditional or temporary eligibility must be given a written decision conveying the determination and information on the right to an appeal. The written determination denying eligibility and those granting less than unconditional eligibility cannot just state that it has been determined that the applicant can use fixed-route service. As explained in Appendix D to 49 CFR 37.125, a mere recital that the applicant can use fixed-route transit is not sufficient. The reasons must specifically convey the evidence in the matter and relate it to the eligibility criteria.

The entity is required to establish an appeals process for persons denied eligibility or granted conditional or temporary eligibility. Applicants can be required to submit written notice that they intend to exercise their appeal rights. However, an applicant cannot be required to submit a written appeal, as this would constitute a prohibited unreasonable administrative burden on the applicant. The entity may require that this written notice be filed within 60 days of the denial of a person's application. The process must include an opportunity to be heard to present information and "separation of authority" between those hearing the

appeal and those that made the original decision to deny eligibility. An individual may also waive the in-person hearing and proceed on the basis of a written presentation.

The entity is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

Eligibility for complementary paratransit is directly related to the functional ability of individuals with disabilities to use fixed-route transit services. Eligibility is not based on a diagnosis or type of disability. Individuals with the same diagnosis or disability can have very different functional abilities to use fixed-route services. Similarly, eligibility is not based on the type of mobility aids that individuals use. Use of a wheelchair does not imply automatic eligibility, for example, since many individuals who use wheelchairs are able to use fixed-route services for many or all of their trips. Nor is ADA paratransit eligibility based on age, income or whether or not individuals can drive or have access to private automobile transportation.

The entity may request basic personal identifying information on its application forms, such as name, date of birth and home address. Collection of other information, such as income or personal vehicle ownership, must be clearly optional; the entity is deficient if it uses such information as a basis for determining paratransit eligibility. A process by which applications collecting such additional information are rejected as "incomplete" is an indication that the information is not optional and has become a part of the eligibility process. Note that entities that have system-wide policies requiring all children under a certain age to travel with an adult (for fixed-route transit as well as complementary paratransit) may apply these policies to eligibility determinations for children.

The entity may note as part of its eligibility process whether or not the applicant travels with a personal care attendant (PCA) but may not establish a process to "approve" travel with a PCA. A PCA is someone designated or employed specifically to help the eligible individual meet his or her personal needs. Those needs may or may not include assistance involving the transportation process; most functions performed by a PCA do not involve travel. The entity may not involve itself in the selection of an individual's PCA nor seek to "approve" persons serving as PCAs. The entity may not require an individual indicating that s/he travels with a PCA to always travel with a PCA, or deny service based on the absence of a PCA for a particular trip or trips. The entity may not require the individual to be accompanied by the same PCA.

INDICATORS OF COMPLIANCE

a. *Are eligibility decisions made within 21 days of receipt of a complete application? If an application is not processed within 21 days, is presumptive eligibility granted on the 22nd day until and unless the application is denied in writing?*

b. *Does the recipient give to persons who are denied eligibility or given conditional or temporary eligibility a written notice with specific reasons for the decision?*

c. *Are applicants notified of the right to an appeal? Do applicants have at least 60 days to appeal? Does the process include an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it? If a decision is not made within 30 days of completing the appeal process, is paratransit service provided until and unless a decision to deny the appeal is issued?*

d. *Do the eligibility criteria include inappropriate factors such as income, ability to drive, vehicle ownership, access to other transportation or the results of travel training? For application forms that include such information, will the application be rejected if it is "incomplete"?*

e. *As part of the eligibility process, does the recipient seek to approve persons serving as PCAs? Does it require individuals who note they travel with a PCA to always travel with a PCA? Does it require a rider's PCA to provide assistance with boarding, disembarking or the transportation process? Does it require riders using PCAs to always be accompanied by a PCA, or by the same PCA?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service. Review information provided to the public that describes the ADA complementary paratransit services and the eligibility process.

Onsite, discuss with the recipient how the application progress is documented, processed, and monitored, and how eligibility determinations are made. Spot check recent application files and the determination letters issued to ensure that the recipient processed them within 21 calendar days and whether notification was timely. If not, determine whether and how applicants are informed that they can schedule and use the ADA paratransit service on the 22nd day until such time that the application is denied.

Review template certification letters. Onsite, review a sample of recent application files and determination letters for denial of eligibility, conditional eligibility, and temporary eligibility. Reasons provided must specifically reference transit-related functional skills. The reasons must specifically convey the evidence in the matter and relate it to the applicant's functional abilities.

Review public information that describes the ADA complementary paratransit services and the eligibility process and template certification letters to determine how applicants are notified of the right to an appeal. Verify that at least 60 days are provided to the applicant to request an appeal. Determine if the notice requires an applicant to submit a written justification prior to the appeal hearing, as this would constitute a prohibited unreasonable administrative burden.

Review appeal procedures to verify that the appeals process provides for separation of functions; that is, separation of authority between any individuals hearing the appeal and any individuals who made the original decision to deny eligibility or grant conditional or temporary eligibility. Verify that the applicant is provided an opportunity to be heard; an applicant may waive the in-person hearing and proceed on the basis of a written presentation. Verify that written appeals are not required (though notification of intent to appeal can be required in writing). Verify that transportation is provided when decisions have not been made within 30 days of completing the appeal process; the recipient is not required to provide ADA complementary paratransit pending the determination of the appeal. Review a sample of appeal files to verify documentation and timely processing and notification.

Review paratransit application form(s) and procedures for inappropriate eligibility factors such as income, ability to drive, vehicle ownership, access to other transportation, the results of travel training, or applicant's address. If application forms or procedures contain such factors, determine if they are used as eligibility criteria or in determining completeness of the form or if applications are rejected if this information is not provided.

Review the paratransit application form(s) for questions regarding PCAs. Review public information that describes the ADA complementary paratransit services and the eligibility process for requirements regarding PCAs.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not grant presumptive eligibility for applications not processed within 21 days of receipt of a complete application.

DEFICIENCY CODE ADA-CPT2-1: Presumptive eligibility deficiencies

SUGGESTED CORRECTIVE ACTION: Submit a procedure for granting presumptive eligibility for applications not processed within 21 days until and unless the recipient denies the application.

The recipient is deficient if it does not provide the specific reasons for granting less than unconditional eligibility.

DEFICIENCY CODE ADA-CPT2-2: Eligibility letter deficiencies

SUGGESTED CORRECTIVE ACTION: Submit a procedure for stating the specific reason for granting less than unconditional eligibility and evidence of its implementation.

The recipient is deficient if it does not have an eligibility appeals process. The recipient is deficient if its deadline for filing an appeal is shorter than 60 days. The recipient is deficient if it requires the applicant to submit a written justification prior to the appeal hearing. The recipient is deficient if the appeals process does not provide for an opportunity to be heard, separation of functions or written notification of the decision and the reason for it. The recipient is deficient if it does not provide paratransit service within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

DEFICIENCY CODE ADA-CPT2-3: Eligibility appeals process not properly implemented

SUGGESTED CORRECTIVE ACTION 1: Submit an eligibility appeals process.

SUGGESTED CORRECTIVE ACTION 2: Submit an eligibility appeals process that provides for at least 60 days to file an appeal.

SUGGESTED CORRECTIVE ACTION 3: Submit an eligibility appeals process that does not require the applicant to submit a written justification prior to the appeal hearing.

SUGGESTED CORRECTIVE ACTION 4: Submit an eligibility appeals process that provides for an opportunity to be heard, separation of functions, and written notification of the decision and the reason for it.

SUGGESTED CORRECTIVE ACTION 5: Submit an eligibility appeals process that provides the applicant with paratransit service when the appeal decision is not made within 30 days of completing the appeal process until and unless a decision to deny the appeal is issued.

The recipient is deficient if its eligibility determination considers inappropriate factors such as income, ability to drive, vehicle ownership, access to other transportation or the results of travel training, or applicant address.

DEFICIENCY CODE ADA-CPT2-4: Eligibility criteria deficiencies

SUGGESTED CORRECTIVE ACTION: Submit a revised eligibility process that eliminates the inappropriate factors.

The recipient is deficient if its eligibility process includes “approval” of the use of a PCA. The recipient is deficient if it requires individuals who note that they travel with a PCA to always travel with a PCA. The recipient is deficient if it requires a rider’s PCA to provide assistance with boarding, disembarking or with the transportation process. A recipient is deficient if it requires riders using PCAs to always be accompanied by the same PCA.

DEFICIENCY CODE ADA-CPT2-5: Personal care attendant deficiencies

SUGGESTED CORRECTIVE ACTION 1: Submit revised eligibility procedures that do not purport to “approve” the use of a PCA, only record whether or not the rider travels with a PCA.

SUGGESTED CORRECTIVE ACTION 2: Submit revised eligibility procedures that do not condition the accommodation of an eligible rider’s PCA upon the eligible rider always traveling with a PCA.

SUGGESTIVE CORRECTIVE ACTION 3: Submit revised eligibility procedures that do not condition the accommodation of a PCA upon the PCA providing assistance with boarding, disembarking, or the travel process.

SUGGESTED CORRECTIVE ACTION 4: Submit revised eligibility procedures that do not condition the accommodation of a PCA upon the applicant always traveling with the same PCA.

GOVERNING DIRECTIVE
49 CFR 37.125 ADA paratransit eligibility: Process

Each public entity required to provide complementary paratransit service by §37.121 of this part shall establish a process for determining ADA paratransit eligibility.

(c) If, by a date 21 days following the submission of a complete application, the entity has not made a determination of eligibility, the applicant shall be treated as eligible and provided service until and unless the entity denies the application.

(d) The entity's determination concerning eligibility shall be in writing. If the determination is that the individual is ineligible, the determination shall state the reasons for the finding.

(g) 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.

(3) The entity is not required to provide paratransit service to the individual pending the determination on appeal. However, if the entity has not made a decision within 30 days of the completion of the appeal process, the entity shall provide paratransit service from that time until and unless a decision to deny the appeal is issued.

(i) In applications for ADA paratransit eligibility, the entity may require the applicant to indicate whether or not he or she travels with a personal care attendant.

Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR9

Transit systems are free to suspend in-person assessments and use a remote or paper process for eligibility determinations. The DOT ADA regulations at 49 CFR 37.125 do not require in-person assessments for paratransit eligibility, and in fact do not specify how the eligibility process should work. Because a paper or virtual process is not typically as effective in assessing functional ability accurately, a transit system also may decide to be overly broad in who they find eligible, and then reassess during regular recertification sometime in the future. Note that because applicants would be presumptively eligible after 21 days under 49 CFR 37.125(c) if their applications are not processed, a transit system may wish preemptively to offer presumptive eligibility for the duration of the COVID-19 public health emergency, subject to reevaluation once the public health emergency ends. Complete suspension of the eligibility process is not permitted, because 49 CFR 37.131(f)(2) specifically prohibits the use of wait lists to access the service.

ADA-CPT3. Does the recipient provide ADA complementary paratransit service to out-of-town visitors on the same basis as it provides service to eligible riders?

BASIC REQUIREMENT
ADA complementary paratransit service must be provided to out-of-town visitors on the same basis as it provides service to persons found eligible through its eligibility process.

APPLICABILITY
Public providers of fixed-route service (other than commuter rail or commuter bus service).

DETAILED EXPLANATION FOR REVIEWER
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 REVIEWER

Prior to the site visit, 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

Onsite, 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. Onsite, 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. Sample the files for requests received in the past year.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not accept documentation of eligibility issued by the visitor's home jurisdiction.

DEFICIENCY CODE ADA-CPT3-1: Home jurisdiction eligibility documentation not accepted or not accepted directly from the visitor

SUGGESTED CORRECTIVE ACTION: Submit a procedure for accepting documentation of eligibility issued by the visitor's home jurisdiction from the visitor.

The recipient is deficient if it does not provide service to visitors based on apparent disabilities or documentation of disability.

DEFICIENCY CODE ADA-CPT3-2: Service not provided to visitors with apparent or documented disabilities

SUGGESTED CORRECTIVE ACTION: Submit a procedure 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 is deficient if it does not provide service to visitors for 21 days within a 365-day period.

DEFICIENCY CODE ADA-CPT3-3: Service to visitors not provided for at least 21 days

SUGGESTED CORRECTIVE ACTION: Submit a procedure for providing visitors with 21 days of service within a 365-day period.

The recipient is deficient if it does not process visitors' requests for service the same day or not more than one day later.

DEFICIENCY CODE ADA-CPT3-4: Service to visitors not provided under same conditions as eligible riders

SUGGESTED CORRECTIVE ACTION: Submit a procedure 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, 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.

ADA-CPT4. Does the 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)

DETAILED EXPLANATION FOR REVIEWER
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 ¾ 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 ¾-mile wide on either side of a fixed route, with a ¾-mile radius around the end points. The ¾-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 ¾-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 ¾-mile radius from the center of each station. The ¾-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 ¾-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 on days 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 ¾-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 ¾ 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 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.

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?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, 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. Onsite, discuss with the recipient the paratransit service factors and how the recipient ensures that they are met.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not provide origin-to-destination service when needed.

DEFICIENCY CODE ADA-CPT4-1: Origin-to-destination service deficiency

SUGGESTED CORRECTIVE ACTION: Submit evidence that it provides origin-to-destination service.

The recipient is deficient if it does not provide service between points within at least ¾-mile radius of fixed bus routes, or between points within a ¾-mile radius of one rail station to points within a ¾-mile radius of another rail station, or within the core service area. The recipient is deficient 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.

DEFICIENCY CODE ADA-CPT4-2: Service area deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that the service area for its ADA complementary paratransit system includes all areas within a ¾-mile radius of fixed bus routes and a ¾-mile radius of rail stations.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that complementary paratransit service is provided within the core service area.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence of a legal bar preventing the provision of service across jurisdictional boundaries or must submit evidence that service is provided across jurisdictional boundaries.

The recipient is deficient if it does not provide next-day service, accept reservations on all days prior to service days, or accept reservations during regular business hours.

DEFICIENCY CODE ADA-CPT4-3: Next-day service deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that complementary paratransit service is provided on a next-day, not 24-hour, basis.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that reservations are 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 CORRECTIVE ACTION 3: Submit evidence that reservations are taken during regular business hours.

The recipient is deficient 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.

DEFICIENCY CODE ADA-CPT4-4: Paratransit fare deficiency

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that paratransit fares do not exceed twice the fare for a comparable trip using fixed routes.

SUGGESTED CORRECTIVE ACTION 2: For fare-free routes, zones or areas, submit the results of an analysis showing that paratransit fares for comparable fixed-route trips made using the fare-free service are also free.

SUGGESTED CORRECTIVE ACTION 3: For fare-free routes, zones or areas where other entities assume the responsibility for paying the fixed-route fare, submit evidence that they have included a requirement that such entities include paratransit fares in their arrangements with the recipient for comparable fixed-route trips made using the fare-free service or provide the trips fare-free without compensation from the third party.

SUGGESTED CORRECTIVE ACTION 4: For fare-free promotions available for a defined, limited period of time, submit evidence that it has conducted an analysis supporting the designation of such promotions as a "discount."

SUGGESTED CORRECTIVE ACTION 5: Submit evidence that it has ceased requiring personal care attendants accompanying eligible riders to pay a fare.

The recipient is deficient if it imposes restrictions or priorities based on trip purpose (other than for subscription service).

DEFICIENCY CODE ADA-CPT4-5: Trip purpose restrictions or prioritization

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased the application of trip purpose restrictions or priorities.

The recipient is deficient if paratransit service is not available during the same hours and days as fixed-route service.

DEFICIENCY CODE ADA-CPT4-6: Paratransit service hours and days do not match those of fixed-route service

SUGGESTED CORRECTIVE ACTION: Submit evidence that the hours and days during which paratransit service operates are the same as those for a comparable trip using the fixed-route system.

The recipient is deficient if at least one other individual may not accompany an eligible passenger or may not accompany the eligible passenger in addition to the PCA.

DEFICIENCY CODE ADA-CPT4-7: Restrictions on companions

SUGGESTED CORRECTIVE ACTION 1: Submit evidence that at least one other individual may accompany an eligible passenger.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence 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 CFR 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 ¾ 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 1½ 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.

41 U.S.C. §12143

(a) General rule - It shall be considered discrimination for purposes of Section 12132 of [Title 41] and Section 794 of Title 29 for a public entity which operates a fixed route system… to fail to provide with respect to the operations of its fixed route system… paratransit and other special transportation

services to individuals with disabilities… that are sufficient to provide to such individuals a level of service (1) which is comparable to the level of designated public transportation services provided to individuals without disabilities using such system; or (2) in the case of response time, which is comparable, to the extent practicable, to the level of designated public transportation services provided to individuals without disabilities using such system.

ADA-CPT5. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?

BASIC REQUIREMENT
Recipients may- but are not required to - 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 rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER
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. *If the recipient has adopted a no-show policy, does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?*

b. *If the recipient has adopted a no-show policy, does the recipient impose a mandatory financial penalty as part of its no-show policy?*

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 REVIEWER

Prior to the site visit, 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

Onsite, 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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it suspends riders for an unreasonable amount of time (consult with the FTA Office of Civil Rights as needed). The recipient is deficient 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). The recipient is *not* deficient if it does not suspend riders and has no policy for doing so.

DEFICIENCY CODE ADA-CPT5-1: Unreasonable no-show suspension

SUGGESTED CORRECTIVE ACTION 1: Submit a procedure for suspending riders for a reasonable amount of time.

SUGGESTED CORRECTIVE ACTION 2: Submit a procedure for suspending a rider only after establishing that the rider has a pattern or practice of missing scheduled trips.

SUGGESTED CORRECTIVE ACTION 3: Submit evidence that it is no longer suspending paratransit riders for missing scheduled trips.

The recipient is deficient if it imposes an involuntary financial penalty for no-shows.

DEFICIENCY CODE ADA-CPT5-2: Financial penalty imposed for no-shows

SUGGESTED CORRECTIVE ACTION 1: Submit documentation that it has ceased the assessment of financial penalties for no-shows and notified the public of this policy change.

SUGGESTED CORRECTIVE ACTION 2: Submit a procedure for accepting payment for missed trips in lieu of suspension only if voluntarily agreed to by the passenger.

The recipient is deficient if it counts no-shows not under the rider's control toward suspension.

DEFICIENCY CODE ADA-CPT5-3: Suspension based on no-shows not under rider control

SUGGESTED CORRECTIVE ACTION: Submit a procedure for only counting no-shows under the rider's control toward the suspension.

The recipient is deficient 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.

DEFICIENCY CODE ADA-CPT5-4: Insufficient no-show suspension procedures

SUGGESTED CORRECTIVE ACTION 1: Submit 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 CORRECTIVE ACTION 2: Submit an appeals process that offers the opportunity for the rider to appeal.

SUGGESTED CORRECTIVE ACTION 3: Submit an appeals process that provides the rider an opportunity to be heard.

SUGGESTED CORRECTIVE ACTION 4: Submit 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.

ADA-CPT6. Does the recipient place limits on the availability of service to ADA paratransit eligible individuals?

BASIC REQUIREMENT
Recipients shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals.

APPLICABILITY
Public providers of fixed-route service (other than commuter rail or commuter bus service)

DETAILED EXPLANATION FOR REVIEWER
The US DOT ADA regulations specify that an entity may not limit the availability of complementary paratransit to eligible individuals by using various capacity constraints to limit service. Any operational

pattern or practice that has the effect of limiting availability is also prohibited (e.g., trip denials, late pick-ups, missed trips, or excessively long trips). “Pattern or practice” in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the entity, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. A substantial number of late arrivals that are significantly late can trigger this provision.

In order to determine whether capacity constraints exist, entities should have a definition of ADA trip denial, missed trip (i.e., trip missed by the entity), on-time performance, and excessively long trip. The entity’s definitions must make distinctions between trips it or its contractors miss (where the customer is not transported or elects not to take the trip) and late pickups (where the customer takes the trip despite vehicle arrival outside of the pickup window). Entities are required to plan and budget for 100 percent of demand for next-day service. The entity may not intentionally plan to deny, miss, or otherwise not serve a percentage of trips.

The regulations allow entities to negotiate pickup times with ADA eligible persons within a one-hour +/- window. If the entity cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one-hour window, the trip must be tracked as a denial due to the entity’s inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, it must be tracked as two denials. (If the rider accepts the “return” trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

The entity may not limit the number of trips an individual will be provided. For example, the entity cannot have a policy of no more than four trips per day. Accordingly, the entity cannot set a minimum or maximum number of trips for an eligible individual. Similarly, policies limiting the number of trip requests per telephone call are considered restrictive.

The entity may not use what amounts to a waiting list. Although it may not be called a waiting list, placing callers’ names on a list when the schedules are full and informing them they will be contacted if space becomes available would constitute a prohibited waiting list. Similarly, telling callers the schedules are full and suggesting they call back later to see if space becomes available would be a waiting list.

Entities may accept a trip request during a reservation call and internally schedule the trip later (within the pickup window communicated to the rider at the time of reservation), which are often referred to as confirmed but unscheduled trips.

Entities should have a mechanism in place for monitoring, tracking, and verifying these indicators of capacity constraints. While there is no regulatory requirement for record-keeping or monitoring in any particular way, entities must be able to demonstrate that the trip denials it does have, as well as the missed trips, late pickups, trips of excessive length, etc., are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Entities should track service for ADA trips separately from non-ADA trips.

INDICATORS OF COMPLIANCE

a. *Where the recipient cannot provide a trip at the requested time, does the recipient negotiate trip times so that trips are scheduled within one hour before or after an individual’s desired departure time?*

b. *Does the recipient appropriately categorize denials?*

c. *Does the recipient appropriately categorize untimely pickups, missed trips, and excessive trip lengths?*

d. *Does the recipient restrict the number of trips an eligible individual will be provided?*

e. *Does the recipient limit the availability of service by using any kind of waiting list?*

f. *Does any operational pattern or practice significantly limit the availability of service to eligible individuals?*

INSTRUCTIONS FOR REVIEWER

Prior to the site visit, review the recipient's website for information on ADA complementary paratransit service reservations and scheduling. Review the rider guide or other customer information and reservation procedures. Note references to negotiating eligible trip requests within the one-hour window, and the handling and documentation of potential trip denials. Verify that the recipient does not limit the number of trips an individual will be provided. Verify that the recipient does not use what amounts to a waiting list. Note how the recipient logs its reservations, pickup times, and scheduled trips.

Onsite, discuss if the entity tracks a trip as a denial if it cannot be scheduled no more than one hour before or after the desired departing time, even if a rider accepts the trip. Similarly, if only one leg of a round trip can be reserved, and the rider declines to take both trips, determine if the agency tracks that as two denials. (If the rider accepts the "return" trip, only one trip has been denied). If the rider refuses an alternate time that is within the one-hour window, it is not a denial for the purposes of ADA compliance.

Onsite, discuss with the recipient how it ensures it does not have capacity constraints. Review reports from the reservation and scheduling software, if available. If not available, discuss with the recipient how it schedules trips, for example, in 15- or 30-minute blocks, and review with the recipient driver manifests for a recent day with higher than average ridership, typically a day in the beginning of the month, to see if there are indications of late trips, missed trips or excessively long trips. Evaluate data on trip denials, on-time performance, missed trips, and excessively long trips for the past year and the current year for any operational pattern or practice that has the effect of limiting availability such as trip denials, late pickups, missed trips or excessively long trips. If data indicate no pattern or practice of capacity constraints and the recipient does not collect or analyze data to ensure that capacity constraints do not develop, document such as an issue of concern for FTA awareness.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not schedule trips at the requested time and does not negotiate trips within one hour before or after an individual's desired departure time.

DEFICIENCY CODE ADA-CPT6-1: ADA complementary paratransit scheduling deficiencies

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as updated public information and scheduling procedures, that demonstrates that it negotiates trips within one hour before or after an individual's desired departure time.

The recipient is deficient if rides scheduled outside the hour before-or-after scheduling window are not tracked as denials, even when a rider accepts the trip. The recipient is deficient if it does not track as two denials when one leg of a roundtrip cannot be reserved and the rider declines both trips.

DEFICIENCY CODE ADA-CPT6-2: ADA complementary paratransit service denial tracking deficiencies

SUGGESTED CORRECTIVE ACTION 1: Submit documentation, such as updated scheduling procedures, that rides scheduled outside the hour before-or-after scheduling window are tracked as denials.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation, such as updated scheduling procedures, that declined roundtrips are tracked as two denials when one leg of the trip cannot be reserved.

The recipient is deficient if it restricts the number of trips an eligible individual will be provided.

DEFICIENCY CODE ADA-CPT6-3: ADA complementary paratransit service restricted for eligible individuals

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as updated public information and scheduling procedures, demonstrating that it has eliminated restrictions on the number of trips.

The recipient is deficient if it restricts the availability of trips using any type of waiting list.

DEFICIENCY CODE ADA-CPT6-4: ADA complementary paratransit service waiting lists

SUGGESTED CORRECTIVE ACTION: Submit documentation, such as updated public information and revised scheduling procedures, demonstrating that it has eliminated the use of waiting lists or practices that amount to waiting lists.

The recipient is deficient if it demonstrates an operational pattern or practice that significantly limits the availability of complementary paratransit service.

DEFICIENCY CODE ADA-CPT6-5: Limits or capacity constraints on ADA complementary paratransit service

SUGGESTED CORRECTIVE ACTION: Submit a plan to eliminate an operational pattern or practice that creates ADA complementary paratransit capacity constraints.

The recipient is deficient if it does not have a mechanism in place for monitoring, tracking, and verifying indicators of capacity constraints sufficient to indicate that untimely pickups, denials, missed trips, and excessive trip lengths experienced by riders are not due to an operational pattern or practice that significantly limits the availability of ADA paratransit service.

DEFICIENCY CODE ADA-CPT6-6: Inability to demonstrate lack of capacity constraints through available tracking data.

SUGGESTED CORRECTIVE ACTION: Submit evidence that aggregate data on paratransit performance is being collected and monitored on a regular and ongoing basis for indications of systemic capacity constraints

GOVERNING DIRECTIVE
49 CFR 37.131 Service criteria for complementary paratransit

(a) *Response time*.

(1) 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."

(b) *Capacity constraints.* The entity shall not limit the availability of complementary paratransit service to ADA paratransit eligible individuals by any of the following:

(1) Restrictions on the number of trips an individual will be provided;

(2) Waiting lists for access to the service; or

(3) Any operational pattern or practice that significantly limits the availability of service to ADA paratransit eligible persons.

(i) Such patterns or practices include, but are not limited to, the following:

(A) Substantial numbers of significantly untimely pickups for initial or return trips;

(B) Substantial numbers of trip denials or missed trips;

(C) Substantial numbers of trips with excessive trip lengths.

(ii) Operational problems attributable to causes beyond the control of the entity (including, but not limited to, weather or traffic conditions affecting all vehicular traffic that were not anticipated at the time a trip was scheduled) shall not be a basis for determining that such a pattern or practice exists.

ADA-CPT7. Does the recipient monitor service provided under contract or other arrangement or relationship, by another entity on the recipient's behalf, for compliance with 49 CFR Part 37, Subpart F?

BASIC REQUIREMENT
ADA complementary paratransit service provided under contract or other arrangement or relationship (including, but not limited to, an award, subaward, or cooperative agreement) by a taxi company, transportation network company, or other private entity, as well as service provided by another public entity must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY
Recipients who contract out or otherwise rely on another entity to provide all or a portion of their complementary paratransit service. Note that the DOT ADA regulations apply equally to "pilot" programs or demonstration projects.

DETAILED EXPLANATION FOR REVIEWER
When a public entity enters into a contractual or other arrangement or relationship (including, but not limited to, an award, subaward or cooperative agreement) with another public or private entity to operate any aspect of its ADA complementary paratransit service, the public entity is responsible for ensuring that the service provided meets all of the requirements of the US DOT ADA regulations that would apply to the public entity if the public entity provided the service itself. Where an entity relies on another public entity

to provide paratransit service on its behalf, the entity remains responsible for meeting the requirements of 49 CFR part 37 Subpart F. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the private entity operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met.

For example, if a transit operator relies on a taxi company or transportation network company (TNC) or other private entity to provide a portion of its paratransit service, it must ensure that all paratransit-eligible riders, including wheelchair users, receive service according to the paratransit service criteria. See preceding questions for a more detailed explanation of each requirement.

It should be noted that many transit operators are engaging the services of a taxi company, TNC or other private entity to provide what they describe variously as “premium” or “non-ADA” service. While there is no such thing as “non-ADA service”, such “premium” services would be regarded as demand-response and would be required to meet the requirements for equivalent service. This service is evaluated under ADA-GEN5 in the Americans with Disabilities Act (ADA) – General section of this workbook.

INDICATOR OF COMPLIANCE

a. *If a recipient enters into a contract or other arrangement or relationship with a private entity for all or a portion of its ADA complementary paratransit service or relies on any other public entities to provide the service, does the recipient ensure that the service provided meets the ADA complementary paratransit requirements as outlined in 49 CFR part 37 Subpart F?*

INSTRUCTIONS FOR REVIEWER

Review contracts and other agreements to ascertain if the recipient communicated ADA requirements, including contracts to provide eligibility services and agreements with supplemental transportation providers such as taxi overflow service. Review contract management procedures to understand how the recipient will ensure the contractor complies with the requirements. Review monitoring procedures and documentation for monitoring activities conducted during the review period to note if ADA requirements were reviewed.

Onsite, discuss the recipient’s tracking, monitoring, and reporting procedures for all contractor functions, including eligibility. Review oversight files for the contractor(s) and entity(ies) to be visited during the site visit to determine if the program is implemented in accordance with the agreement. Discuss ADA complementary paratransit policies and procedures with the contractor(s) visited to determine if the program is implemented in accordance with the agreement. See ADA-CPT1-1 for specific requirements.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not ensure that service provided through contracted or other arrangements or relationships with private entities complies with ADA complementary paratransit service requirements.

DEFICIENCY CODE ADA-CPT7-1: Insufficient oversight of contractors/other private entities providing ADA complementary paratransit

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that service provided on its behalf by contractors or other providers complies with the ADA service provisions.

SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of procedures for ensuring that service provided on its behalf by contractors or other providers complies with the ADA service provisions.

Governing Directive

49 CFR 37.23 Service under contract

(a) When a public entity enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to operate fixed route or demand responsive service, the public entity shall ensure that the private entity meets the requirements of this part that would apply to the public entity if the public entity itself provided the service.

(b) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles, for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement or relationship with a public entity, shall acquire accessible vehicles in all situations in which the public entity itself would be required to do so by this part.

(c) A public entity which enters into a contractual or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) or relationship with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(d) A private entity that provides fixed route or demand responsive transportation service under contract or other arrangement (including, but not limited to, a grant, subgrant, or cooperative agreement) with another private entity shall be governed, for purposes of the transportation service involved, by the provisions of this part applicable to the other entity.

ADA-CPT8. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with 49 CFR Part 37, Subpart F?

BASIC REQUIREMENT
ADA complementary paratransit service provided by subrecipients must be comparable to fixed-route service.

APPLICABILITY
Recipients with subrecipients that operate fixed-route service

DETAILED EXPLANATION FOR REVIEWER
Recipients are required to ensure that subrecipients adhere to all relevant ADA complementary paratransit requirements. In other words, the entity must ensure that the service provided on its behalf meets all the requirements that it would be required to meet if it provided the service directly. The entity is not permitted to defer to the subrecipient operating the service. The entity must have procedures in place to monitor the performance of such service to ensure that these requirements are met. Where a state provides Section 5311 funds to a subrecipient that is private nonprofit to operate a fixed-route service, the requirement to provide complementary paratransit applies to this service.

See preceding questions for a more detailed explanation of each requirement. The US DOT ADA regulations contain no exemptions for “pilot” or demonstration projects.

INDICATOR OF COMPLIANCE
a. *Does the recipient monitor subrecipients for ADA complementary paratransit service as outlined in 49 CFR part 37 Subpart F?*

INSTRUCTIONS FOR REVIEWER
Review subrecipient agreements to ascertain if the recipient communicated ADA requirements, including training requirements, to the subrecipient as part of the contractual obligations. Review reports,

questionnaires, and checklists used for ensuring compliance with ADA requirements to determine how the recipient monitors that the ADA requirements are met. Onsite, discuss ADA policies and procedures with the recipient and review the oversight files for the subrecipient(s) to be visited. Discuss ADA complementary paratransit policies and procedures with the subrecipient(s) visited to determine if the program is implemented in accordance with the agreement. See ADA-CPT1-1 for specific requirements.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that its subrecipients comply with ADA provision of service requirements.

> DEFICIENCY CODE ADA-CPT8-1: Insufficient oversight of subrecipients for ADA complementary paratransit
>
> SUGGESTED CORRECTIVE ACTION: Submit specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements.
>
> SUGGESTED CORRECTIVE ACTION: Submit evidence of implementation of specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements.

Governing Directive

49 CFR 200.332 Requirements for pass-through entities

A pass-through entities must:

> Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:
>
> (1) Review financial and performance reports.
>
> (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.
>
> (3) Issue a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including ADA reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of ADA?
- Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?
- Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?
- Are any oversight review, investigation or audit findings currently open?
- Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?
- What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?
- Have any ADA complaints been filed with FTA?
- Does the recipient have a definition for ADA trip denial, missed trip (i.e., trip missed by the recipient), on-time performance, and excessively long trip?
- Does the recipient monitor its service for a pattern or practice of capacity constraints?
- If the recipient requires the use of prepurchased or prepaid fare media, are there concerns with the ability of riders to obtain service on a next-day basis?
    - How readily and widely available is the fare media?
    - Is travel required to obtain fare media, including when paying via cash or check?
    - What is the lead time to establish and replenish prepaid accounts or receive fare media, including when paying via cash or check?
    - Changes to the recipient's ADA complementary paratransit service (i.e., change in no-show/late cancellation policy, change in fare payment methods, implementation of door-to-door, curb-to-curb or origin-to-destination service) that have been implemented since the last Comprehensive Review
    - Changes to the recipient's ADA complementary paratransit delivery (e.g., change or add contractors, enter into a delegated management agreement with a public or private entity, combine service with another agency, change from in-house to contracted operation or vice-versa, or otherwise change its business model) that have been implemented since the last Comprehensive Review
    - Accuracy of operation data
    - Training provided to staff
    - Provision of complementary paratransit service not covered previously in this section

REFERENCES

1. 2 CFR 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. 49 CFR Part 39, “Transportation for Individuals with Disabilities: Passenger Vessels”

6. FTA Circular 4710.1, “Americans with Disabilities Act (ADA) Guidance”

USEFUL WEBLINKS

1. FTA ADA Website

2. US DOT Disability Law Guidance

3. ADA Standards for Transportation Facilities

4. Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities

5. Project ACTION

6. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation

7. U.S. Department of Justice ADA Homepage

8. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019

9. Notice of Concurrence

10. Emergency Relief rule

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14. Reserved

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15. SCHOOL BUS

PURPOSE OF THIS REVIEW AREA
Recipients are prohibited from providing school bus service in competition with private school bus operators unless the service qualifies and is approved by the Federal Transit Administration (FTA) Administrator under an allowable exemption. Federally funded equipment or facilities cannot be used to provide exclusive school bus service.

QUESTIONS TO BE EXAMINED
1. If the recipient operates school bus service, does it meet one of the exemptions, have FTA approval, and use only locally-funded assets?

2. If the recipient operates tripper service, does it meet FTA requirements?

3. Does the recipient ensure that subrecipients, contractors and lessees that operate school bus service, do so in accordance with FTA regulations?

4. Does the recipient ensure that subrecipients, contractors, and lessees that operate tripper service do so in accordance with FTA regulations?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- List of assets used in exclusive school bus operations for:
  1. recipients
  2. subrecipients
  3. contractors
  4. lessees
- List of subrecipients, contractors, and lessees that operate exclusive school bus service
- List of any complaints received relating to school bus service

Recipient Follow-up
- Recipient application transmitted to the FTA Administrator requesting approval, including a copy of the certification in lieu of notice
- The agreement with the FTA Administrator

SB1. If the recipient operates school bus service, does it meet one of the exemptions, have FTA approval, and use only locally-funded assets?

BASIC REQUIREMENT
A recipient may not engage in school bus operations unless it meets one of the exemptions, has received FTA approval, and uses only locally-funded equipment and facilities.

APPLICABILITY
Recipients that provide bus service

DETAILED EXPLANATION FOR REVIEWER
The FTA Administrator makes the determination of whether to permit a recipient to operate exclusive school bus service under one of the allowable exemptions. Upon notice of approval by the Administrator, the recipient enters into an agreement with the FTA.

Exclusive school bus service operated under an approved exemption must use locally-owned vehicles that are not housed or maintained in an FTA-funded facility. FTA-funded equipment and facilities cannot be used for exclusive school bus service under any circumstances.

INDICATORS OF COMPLIANCE

a. *Does the recipient operate school bus service? If no, move to the next question.*

b. *Has the recipient received authorization from the Administrator to engage in school bus operations?*

    1. *Has the recipient entered into an agreement with the Administrator?*

    2. *Has the recipient promptly notified the Administrator of any changes in its operations which might jeopardize the continuation of an exemption?*

c. *Are buses, facilities or equipment used in school bus operations locally-funded?*

INSTRUCTIONS FOR REVIEWER

Obtain and review prior documentation in FTA's oversight tracking system (OTrak) to verify if the recipient has previously engaged in school bus service. Review the recipient website, route maps, and schedules to determine if school bus service is currently provided. In discussions with the regional office, request and review any agreement between the recipient and the FTA Administrator to ensure the recipient's school bus operations are implemented in accordance with the agreement. Review the recipient's source of funds provided in the Financial Management and Capacity review area to determine if school bus revenue/subsidy is recorded.

Receive and review the recipient listing of assets used in school bus operations (i.e., buses, facilities, and equipment) and cross reference to the Federal asset listing provided in the review area Satisfactory and Continuing Control to verify that federally funded assets are not used in school bus operations.

During the tour of facilities, look for buses that carry designations such as "school bus" or "school special."

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it operates school bus service and has not obtained authorization from the FTA Administrator.

DEFICIENCY CODE SB1-1: Operates school bus service without FTA authorization

SUGGESTED CORRECTIVE ACTION 1: Submit a plan and schedule to cease providing school bus service that has not been authorized by the FTA Administrator and provide documentation of implementation of the plan and schedule.

SUGGESTED CORRECTIVE ACTION 2: Request approval from the FTA Administrator through the FTA regional office for provision of school bus service.

The recipient is deficient if it operates authorized school bus service but with FTA-funded equipment and/or facilities.

DEFICIENCY CODE SB1-2: FTA-funded equipment used in school bus service

SUGGESTED CORRECTIVE ACTION: Submit a plan and schedule to cease using FTA-funded equipment or facilities for school bus service and provide documentation of implementation of the plan.

GOVERNING DIRECTIVE
49 CFR Part 605, Subpart B: School Bus Agreements §605.12 Use of project equipment:

No recipient or operator of project equipment shall engage in school bus operations using buses, facilities or equipment funded under 49 U.S.C. chapter 53. A recipient or operator may, however, use such buses, facilities and equipment for the transportation of school students, personnel and equipment in incidental charter bus operations. Such use of project equipment is subject to part 604 of this title.

49 CFR Part 605, Subpart B: School Bus Agreements §605.14 Agreement

Except as provided in §605.11 no assistance shall be provided under the Acts unless the applicant and the Administrator shall have first entered into an agreement (this is executed via Category 4. Private Sector Protections of FTA's annual Certifications and Assurances for Grants and Cooperative Agreements) that the applicant will not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators.

SB2. If the recipient operates tripper service, does it meet FTA requirements?

BASIC REQUIREMENT
Tripper service operated to accommodate the needs of school students and personnel must be open to the public, stop only at the operator's regular service stops with only de minimis route alterations, operate with regular route service, and not carry designations such as "school bus" or "school special."

APPLICABILITY
Recipients that provide bus service

DETAILED EXPLANATION FOR REVIEWER
Recipients are permitted to provide school tripper service to accommodate the needs of school students and personnel. The school bus regulation defines school tripper service as regularly scheduled mass transportation service that is open to the public and is designed or modified to accommodate the needs of school students and personnel. Tripper service allows a recipient to:

- Utilize various fare collections or subsidy systems
- Modify the frequency of service
- Make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools

Buses used in tripper service must:

- Be open and promoted to the public

- Not carry designations such as “school bus” or “school special”

- Stop at regular bus stops

School tripper service should operate and look like all other regular service. All routes traveled by tripper buses must be within the regular route service as indicated in the published route schedules. Schedules listing tripper routes should be on the recipient’s regular published schedules or on separately published schedules that are available to the public with all other schedules, including on the website. Demand-response service does not qualify for the tripper service exception.

INDICATORS OF COMPLIANCE

a. *Does the recipient operate tripper service to transport school students or personnel? If no, move to the next question.*

b. *If the recipient provides tripper service:*

   - *Is the tripper service open and promoted to the public?*

   - *Are the buses used in tripper service free from any associated signage or designation such as "school bus" or "school special"?*

   - *Does the tripper service stop at regular bus stops with only de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools?*

INSTRUCTIONS FOR REVIEWER

Obtain and review prior documentation in OTrak to verify if the recipient has provided tripper service. Review the recipient’s website, route maps, brochures, and timetables to determine if information on school tripper service is made available to the public. If the information is not available from the recipient’s website, follow up with the recipient for copies of route maps, brochures, and timetables. Review information from the recipient on what is displayed on destination signs on buses on school tripper routes.

During the tour of facilities, look for buses that carry designations such as “school bus” or “school special.” If time permits, look at buses used in school tripper service during pullout.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it operates school tripper service that is not open to the public, does not stop at regular bus stops with only de minimis route alterations, or carries designations such as “school bus” or “school special.”

DEFICIENCY CODE SB2-1: Tripper violations

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has discontinued school tripper service that does not meet the FTA requirements or has modified the service to comply with FTA requirements.

GOVERNING DIRECTIVE
49 CFR Part 605, Subpart A: General 605.3 Definitions

Tripper service means regularly scheduled mass transportation service which is open to the public, and which is designed or modified to accommodate the needs of school students and personnel, using various fare collections or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry designations such as “school bus” or “school special.” These buses may stop only at a grantee or operator's regular service stop. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.

49 CFR Part 605, Subpart B: School Bus Agreements §605.13 Tripper Service

The prohibition in § 605.12 shall not apply to tripper service.

“*Final Policy Statement on FTA’s School Bus Operations Regulations” 73 FR 53384 September 16, 2008 IV. FTA Final Policy -Tripper Service*

With respect to a recipient’s regularly scheduled public transportation service, FTA shall interpret the definition of ‘‘tripper service’’ under 49 CFR 605.3(b), as it historically has interpreted that definition, to allow a recipient to (1) utilize ‘‘various fare collections or subsidy systems,’’ (2) modify the frequency of service, and (3) make de minimis route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools.

SB3. Does the recipient ensure that subrecipients, contractors and lessees that operate school bus service, do so in accordance with FTA regulations?

BASIC REQUIREMENT:
The recipient is responsible for ensuring that subrecipients, contractors, and lessees comply with school bus regulations.

APPLICABILITY
Recipients with subrecipients, contractors, or lessees

DETAILED EXPLANATION FOR REVIEWER
The recipient must ensure that exclusive school bus service operated by subrecipients is provided under one of the exemptions and that school bus service provided by subrecipients, contractors, and lessees does not involve FTA-funded equipment or facilities. Private contractors and lessees can operate school bus service with locally-funded assets.

INDICATORS OF COMPLIANCE

a. *How does the recipient perform oversight of contractors and lessees that provide school bus service?*

b. *How does the recipient perform oversight of subrecipients that provide school bus service?*

INSTRUCTIONS FOR REVIEWER
Obtain and review prior review documentation in OTrak to ascertain if any contractors, lessees, or

subrecipients with FTA-funded assets have operated school bus service. Obtain and review the recipient's oversight procedures and materials (i.e., reports, questionnaires, and checklists) for information relating to how it performs oversight of the school bus requirements. Follow up with the recipient as to whether there are any contractors, lessees, or subrecipients with FTA-funded assets that operate school bus service.

For subrecipients, contractors, and lessees selected for a site visit, complete the following:

- Onsite, review the oversight files for the contractor(s), lessee(s), and subrecipient(s) to be visited.
- During the visit to the contractor(s), lessee(s), and/or subrecipient(s), discuss if school bus service is provided with FTA-funded assets. Tour facilities to determine if locally-funded assets, used in school bus service, are stored in FTA-funded facilities or if FTA-funded assets are used in school bus service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that contractors and lessees comply with the school bus service requirements.

> DEFICIENCY CODE SB3-1: Insufficient oversight of contractors and lessees who operate school bus service with FTA-funded assets
>
> SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that contractors and lessees comply with the school bus service requirements and evidence that the procedures have been implemented.

The recipient is deficient if it does not ensure that subrecipients comply with school bus service requirements.

> DEFICIENCY CODE SB3-2: Insufficient oversight of subrecipients who operate school bus service
>
> SUGGESTED CORRECTIVE ACTION 1: Submit procedures for ensuring that subrecipients comply with the school bus service requirements and evidence that the procedures have been implemented.
>
> SUGGESTED CORRECTIVE ACTION 2: Work with the subrecipient to obtain through the FTA regional office FTA approval for providing school bus service.

GOVERNING DIRECTIVE

2 CFR 200.318(b)

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

2 CFR 200.332 Requirement for pass-through entities

A pass-through entity must: …(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

> (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a

subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

SB4. Does the recipient ensure that subrecipients, contractors, and lessees that operate tripper service do so in accordance with FTA regulations?

BASIC REQUIREMENT
The recipient must ensure that school tripper service operated by subrecipients, contractors, and lessees operates and looks like all other regular service.

APPLICABILITY
Recipients with subrecipients, contractors, or lessees

DETAILED EXPLANATION FOR REVIEWER
The recipient is responsible for overseeing subrecipients, contractors, and lessees that operate FTA-funded tripper service to ensure that service is open to the public, stops only at regular service stops with only de minimis route alterations, operates with regular route service, and does not carry designations such as “school bus” or “school special.”

INDICATORS OF COMPLIANCE

a. *How does the recipient perform oversight of contractors and lessees that provide FTA-funded tripper service?*

b. *How does the recipient perform oversight of subrecipients that provide FTA-funded tripper service?*

INSTRUCTIONS FOR REVIEWER
Obtain and review the prior year RIR in OTrak to ascertain if any contractors, lessees, and subrecipients with FTA-funded assets operate tripper service. Obtain and review the recipient’s oversight procedures and materials (i.e., reports, questionnaires, and checklists) for information relating to oversight of tripper service requirements.

For subrecipients, contractors, and/or lessees selected for a site visit, review websites, route maps, and schedules to determine if tripper service is provided in compliance with the regulations. Onsite, review the recipient’s oversight files for the contractor(s), lessee(s), and subrecipient(s) to be visited. During the visit to the contractor(s), lessee(s), and subrecipient(s), discuss the provision of tripper service to determine if it is operated in compliance with FTA requirements. Tour facilities to look for buses that carry designations such as “school bus” or “school special.”

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that subrecipients, contractors, and lessees comply with the tripper service requirements.

DEFICIENCY CODE SB4-1: Insufficient oversight of subrecipients, contractors, and lessees who operate tripper service

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients, contractors, and lessees comply with the tripper service requirements and evidence that the

procedures have been implemented.

GOVERNING DIRECTIVE
2 CFR 200.318(b)

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

2 CFR 200.332 Requirement for pass-through entities

A pass-through entity must: …(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

> (2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Has FTA received any complaints against the recipient or any of its subrecipients, contractors, and lessees alleging noncompliance with school bus regulations?
- Does it appear that any subrecipients, contactors, and lessees are providing non-compliant school bus or tripper service?
- Any other potential school bus/tripper service issues or concerns not covered above?

REFERENCES
1. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 605, “School Bus Operations”
3. “Final Policy Statement on FTA’s School Bus Operations Regulations” 73 FR 53384 September 16, 2008

USEFUL WEBLINKS
1. Previous Decisions

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16. CHARTER BUS

PURPOSE OF THIS REVIEW AREA
Recipients are prohibited from using FTA-funded equipment and facilities to provide charter service that unfairly competes with private charter operators. Recipient may operate charter only when the service meets a specified exception defined in rule.

QUESTIONS TO BE EXAMINED
1. Does the recipient operate or maintain charter bus service outside of an exemption or exception?

2. If the recipient operates charter bus service under an authorized exception, does it maintain notices and records and has it reported charter bus service to the Federal Transit Administration (FTA) on time?

3. Does the recipient ensure subrecipient, contractor, or lessee compliance with charter bus service and records requirements?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Charter service log, along with a clear statement identifying which exception the recipient relied upon when it provided charter service
- List of real property (including facilities) and equipment used in charter bus operations for:
  1. recipients
  2. subrecipients
  3. contractors
  4. lessees
- Listing of subrecipients, contractors, and lessees that operate charter service
- Listing of any complaints received related to charter bus service

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CB1. Does the recipient operate or maintain charter bus service outside of an exemption or exception?

BASIC REQUIREMENT
Except under limited exceptions, recipients may not use FTA assistance to operate or maintain charter bus service.

APPLICABILITY
Recipients that provide bus service

DETAILED EXPLANATION FOR REVIEWER
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:

CHARTER SERVICE EXEMPTIONS
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	No (unless the recipient exceeds 80 hours per year and has not petitioned 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: Date and description of the official government event and the number of charter service hours requested Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances) Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area
2. Qualified Human Service Organization (QHSO)	No	Yes	Yes	Evidence that QHSO receives funding, directly or indirectly, from the programs listed in the Program Inventory of the Coordinated Council on Access and Mobility (CCAM) located on FTA's charter service website 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

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
4. When no registered charter provider responds to notice from a recipient	Yes	Yes	Yes	None
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

The charter regulations do not apply to equipment that is solely 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.

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. *During the review period, 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 CB3.*

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 no exemptions or exceptions apply, is the service operated and maintained using only locally-funded assets?*

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

e. *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 REVIEWER

Review the recipient's website, printed public information, and local telephone listing to determine if charter service is advertised. Discuss with the recipient any service it has performed that is not listed on published schedules to determine its applicability to the Charter Bus requirements. Obtain and review the 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 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 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.

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 DEFICIENCY DETERMINATIONS

The recipient is deficient if it operates charter service that does not comply with the requirements under a limited exemption or exception.

DEFICIENCY CODE CB1-1: Charter service not operated under exemption or exception

SUGGESTED CORRECTIVE ACTION: Cease operating charter service that does not meet an exemption or exception. If the recipient wishes to continue to provide charter service, submit procedures for ensuring that services are consistent with an exemption or exception allowed under the charter regulation and evidence that the procedures have been implemented.

The recipient is deficient if it operates service with locally-funded equipment but stores or maintains it in an FTA-funded facility.

DEFICIENCY CODE CB1-2: FTA-funded facility(ies) used in charter service

SUGGESTED CORRECTIVE ACTION: Submit a plan for ensuring that locally-funded equipment used to provide charter service is not stored and/or maintained in an FTA-funded facility.

GOVERNING DIRECTIVE
49 CFR Part 604.2 Applicability

(b)The requirements of this part do 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 do not apply to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, or 49 U.S.C. 5311.

(d) The requirements of this part do 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 do not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310 or 49 U.S.C. 5311.

(f) The requirements of this part do 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 part 601, subpart D of this chapter.

(g) The requirements of this part do 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 604.5 Purpose

This subpart identifies the limited exceptions that allow recipients to provide charter services.

49 CFR Part 604.6 Government officials on official government business

(a) A recipient may provide charter service to government officials (Federal, State, and local) for official government business including non-transit related purposes, if the recipient:

(1) Provides the service in its geographic service area;

(2) Does not generate revenue from the charter service, except as required by law; and

(3) After providing such service, records the following:

(i) The government organization's name, address, phone number, and e-mail address;

(ii) The date and time of service;

(iii) The number of passengers (specifically noting the number of government officials on the trip);

(iv) The origin, destination, and trip length (miles and hours);

(v) The fee collected, if any; and

(vi) The vehicle number for the vehicle used to provide the service.

(b) A recipient that provides charter service under this section shall be limited annually to 80 charter service hours for providing trips to government officials for official government business.

(c) A recipient may petition the Administrator for additional charter service hours only if the petition contains the following information:

(1) Date and description of the official government event and the number of charter service hours requested;

(2) Explanation of why registered charter providers in the geographic service area cannot perform the service (e.g., equipment, time constraints, or other extenuating circumstances); and

(3) Evidence that the recipient has sent the request for additional hours to registered charter providers in its geographic service area.

(d) FTA shall post the request for additional charter service hours under this section in the Government Officials Exception docket, docket number FTA-2007-0020 at *https://www.regulations.gov*. Interested parties may review the contents of this docket and bring questions or concerns to the attention of the Ombudsman for Charter Services. The written decision of the Administrator regarding the request for additional charter service hours shall be posted in the Government Officials Exception docket and sent to the recipient.

49 CFR Part 604.7 Qualified human service organizations

(a) A recipient may provide charter service to a qualified human service organization (QHSO) for the purpose of serving persons:

(1) With mobility limitations related to advanced age;

(2) With disabilities; or

(3) With low income.

(b) If an organization serving persons described in paragraph (a) of this section receives funding, directly or indirectly, from any of the human services Federal financial assistance programs listed in the Program Inventory of the Coordinated Council on Access and Mobility (CCAM) located on FTA's charter service website, the QHSO shall not be required to register on the FTA charter registration website.

(c) If a QHSO serving persons described in paragraph (a) of this section does not receive funding from any of the programs listed in the CCAM Program Inventory, the QHSO shall register on the FTA charter registration website in accordance with § 604.15.

(d) A recipient providing charter service under this section must record the following information after providing service, regardless of whether the QHSO receives funding from any of the programs listed in the CCAM Program Inventory:

(1) The QHSO's name, address, phone number, and e-mail address;

(2) The date and time of service;

(3) The number of passengers;

(4) The origin, destination, and trip length (miles and hours);

(5) The fee collected, if any; and

(6) The vehicle number for the vehicle used to provide the service.

49 CFR Part 604.8 Leasing FTA-funded equipment and drivers

(a) A recipient may lease its FTA-funded equipment and drivers to registered charter providers for charter service only if the following conditions exist:

(1) The private charter operator is registered on the FTA charter registration Web site;

(2) The registered charter provider owns and operates buses or vans in a charter service business;

(3) The registered charter provider received a request for charter service that exceeds its available capacity either of the number of vehicles operated by the registered charter provider or the number of accessible vehicles operated by the registered charter provider; and

(4) The registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area.

(b) A recipient leasing vehicles and drivers to a registered charter provider under this section shall record:

(1) The registered charter provider's name, address, telephone number, and e-mail address;

(2) The number of vehicles leased, types of vehicles leased, and vehicle identification numbers; and

(3) The documentation presented by the registered charter provider in support of paragraphs (a)(1) through (4) of this section.

(c) In accordance with § 604.26, if a registered charter provider seeking to lease vehicles has filed a complaint requesting that another registered charter provider be removed from the FTA charter registration website, then the registered charter provider seeking to lease vehicles is not required to exhaust the vehicles from that registered charter provider while the complaint is pending before leasing vehicles from a recipient.

49 CFR Part 604.9 When no registered charter provider responds to notice from a recipient

(a) A recipient may provide charter service, on its own initiative or at the request of a third party, if no registered charter provider responds to the notice issued in § 604.14:

(1) Within 72 hours for charter service requested to be provided in less than 30 days; or

(2) Within 14 calendar days for charter service requested to be provided in 30 days or more.

(b) A recipient shall not provide charter service under this section if a registered charter provider indicates an interest in providing the charter service set out in the notice issued pursuant to § 604.14 and the registered charter provider has informed the recipient of its interest in providing the service.

(c) After providing the service, a recipient shall record:

(1) The group's name, address, phone number, and e-mail address;

(2) The date and time of service;

(3) The number of passengers;

(4) The origin, destination, and trip length (miles and hours);

(5) The fee collected, if any; and

(6) The vehicle number for the vehicle used to provide the service.

49 CFR Part 604.10 Agreement with registered charter providers

(a) A recipient may provide charter service directly to a customer consistent with an agreement entered into with all registered charter providers in the recipient's geographic service area.

(b) If a new charter provider registers in the geographic service area subsequent to the initial agreement, the recipient may continue to provide charter service under the previous agreement with the other charter providers up to 90 days without an agreement with the newly registered charter provider.

(c) Any of the parties to an agreement may cancel the agreement at any time after providing the recipient a 90-day notice.

49 CFR Part 604.11 Petitions to the Administrator

(a) A recipient may petition the Administrator for an exception to the regulations in this part to provide charter service directly to a customer for:

(1) Events of regional or national significance;

(2) Hardship (only for non-urbanized areas under 50,000 in population or small urbanized areas under 200,000 in population); or

(3) Unique and time-sensitive events (e.g., funerals of local, regional, or national significance) that are in the public's interest.

(b) The petition to the Administrator shall include the following information:

(1) (i) The date and description of the event; (ii) The type of service requested and the type of equipment; (iii) The anticipated number of charter service hours needed for the event; and (iv) The anticipated number of vehicles and duration of the event; and

(2) For an event of regional or national significance, the petition shall include a description of how registered charter providers were consulted, how registered charter providers will be utilized in providing the charter service, a certification that the recipient has exhausted all of the registered charter providers in its geographic service area, and submit the petition at least 90 days before the first day of the event described in paragraph (b)(1) of this section;

(3) For a hardship request, a petition is only available if the registered charter provider that has indicated an interest in providing the charter service set out in the notice issued pursuant to § 604.14 has a deadhead time that exceeds total trip time from initial pickup to final drop-off, including wait time. The petition shall describe how the registered charter provider's minimum duration would create a hardship on the group requesting the charter service; or

(4) For unique and time sensitive events, the petition shall describe why the event is unique or time sensitive and how providing the charter service would be in the public's interest.

(c) When a petition meeting the requirements of paragraph (b) is received, the Administrator will review the materials and issue a written decision either granting or denying the request, in whole or in part. In making this decision, the Administrator may seek such additional information as the Administrator deems necessary. The Administrator's decision shall be filed in the Petitions to the Administrator docket, number FTA-2007-0022 at *https://www.regulations.gov* and sent to the recipient.

(d) Any exception granted by the Administrator under this section shall be effective only for the event identified in paragraph (b)(1) of this section.

(e) A recipient shall send its petition to the Administrator by e-mail to *ombudsman.charterservice@dot.gov*.

(f) A recipient shall retain a copy of the Administrator's approval for a period of at least three years and shall include it in the recipient's quarterly report posted on the charter registration Web site.

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) A recipient providing charter service under the exceptions in this subpart shall post the records required under this subpart on the FTA charter registration website 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 Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)

CE11: ***May recipients add new routes to take schoolchildren to school or other sites for meals?***

A: Yes. Recipients may establish new routes that serve critical community needs at any time. FTA's charter rule at 49 CFR 604.3(c)(1) defines charter service as the exclusive use of a bus or van for a negotiated price. If a recipient provides exclusive transportation for schoolchildren to meal sites, and the service is funded by a third-party, such service would be categorized as a charter service. Although normally prohibited under FTA formula funding, charter service is eligible for COVID-19 response for up to 45 days from the beginning of each state of emergency incident period. For charter services lasting longer than 45 days, the recipient should submit a request to the Emergency Relief Docket.

CB2. If the recipient operates charter bus service under an authorized exception, does it maintain notices and records and has it reported charter bus service to the Federal Transit Administration (FTA) on time?

BASIC REQUIREMENT
All 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
Recipients that provide bus service

DETAILED EXPLANATION FOR REVIEWER
Recipients providing charter service under the following four exceptions must report to FTA on charter activity:

- Government officials on official government business (604.6)
- Qualified human service organizations (604.7)
- Leasing FTA-funded equipment and drivers (604.8)
- When no registered charter provider responds to notice from a recipient (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 must report 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.

INDICATORS OF COMPLIANCE

a. *What records does the recipient maintain of charter bus service provided in the past three years?*

b. *Has the recipient reported all charter bus service quarterly?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's source of funds provided in the Financial Management and Capacity review area to determine if charter revenue is recorded. Review the FTA charter registration website to verify which exceptions were relied upon to provide the charter service and if the recipient 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 bus service quarterly reports website (www.transit.dot.gov/regulations-and-guidance/access/charter-bus-service/charter-bus-service-quarterly-reports) 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).

Note: Reporting is only required when a recipient, subrecipient, contractor, or lessee provides charter service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not maintain notices and records for at least three years.

DEFICIENCY CODE CB2-1: Charter bus records and notices not maintained

SUGGESTED CORRECTIVE ACTION: Submit procedures for maintaining notices and records for at least three years and evidence that the procedures have been implemented.

The recipient is deficient if it did not report to the FTA quarterly for all applicable exceptions on time.

DEFICIENCY CODE CB2-2: Charter reports not submitted on time

SUGGESTED CORRECTIVE ACTION: Submit the missing quarterly reports in the FTA charter reporting website. Submit procedures for submitting the required information for all applicable exceptions on time.

GOVERNING DIRECTIVE
FTA Charter Service Quarterly Exceptions Reporting Form and Instructions

49 CFR Part 604.2 Applicability

(b) The requirements of this part do 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 do not apply to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, or 49 U.S.C. 5311.

(d) The requirements of this part do 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 do not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, or 49 U.S.C. 5311.

(f) The requirements of this part do 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 part 601, subpart D, of this chapter.

(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) A recipient providing charter service under the exceptions in this subpart shall post the records required under this subpart on the FTA charter registration website 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.

CB3. Does the recipient ensure subrecipient, contractor, or lessee compliance with charter bus service and records requirements?

BASIC REQUIREMENT
Except under limited exceptions and exemptions, contractors, lessees, and subrecipients may not use FTA assistance to operate or maintain charter bus service. Those that do operate charter service under an authorized exemption or exception with FTA-funded assets are required to maintain notices and records for at least three years and report to the recipient quarterly.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
The recipient must ensure that all subrecipients, contractors, and lessees comply with charter bus service, notice, and reporting requirements. See the explanation for reviewer for question CB1 and CB2 above for detailed explanation of charter bus requirements.

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure that contractors and lessees comply with FTA charter requirements?*

b. *How does the recipient ensure that contractors and lessees maintain records for charter bus service provided for three years and obtain the necessary information to report charter service quarterly?*

c. *How does the recipient ensure that subrecipients comply with FTA charter requirements?*

d. *How does the recipient ensure that subrecipients maintain records for charter bus service provided for three years and obtain the necessary information to report charter service quarterly?*

INSTRUCTIONS FOR REVIEWER
For subrecipients, contractors, and lessees selected for a site visit:

- Search the FTA charter website to determine if the recipient reported that the subrecipients, contractors, and lessees provided charter service.
- Review the subrecipient agreements, contracts, or lease agreements for charter bus provisions and verify that the recipient fully communicated its policy, and the charter rules related to FTA-funded assets. Review the recipient's oversight procedures and oversight files to determine how the recipient verified compliance with charter regulations.
- Review the subrecipient's, contractor's, and lessee's websites and public information materials to determine if charter service is provided. During the site visit(s), discuss charter service.
- During facilities tours, determine if locally-funded assets used in charter bus service are stored in FTA-funded facilities or if FTA-funded assets are used in charter bus service and not reported.
- Discuss charter record-keeping and reporting requirements and practices. Using a quarterly report submitted in the FTA Charter Registration website: (1) identify any service provided by a subrecipient, contractor, or lessee, and (2) obtain the subrecipient's, contractor's, or lessee's

charter logs and confirm what is reported with the record.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not ensure that contractors and lessees comply with the charter service requirements.

DEFICIENCY CODE CB3-1: Insufficient oversight of contractor and/or lessee charter service

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that contractors and lessees comply with the charter bus service requirements and evidence that the procedures have been implemented.

The recipient is deficient if it does not ensure that contractors and lessees that operate charter bus service maintain records for three years and provide the necessary information for submitting quarterly reports timely.

DEFICIENCY CODE CB3-2: Insufficient oversight of contractor and/or lessee charter records and reporting

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that contractors and lessees maintain records for charter bus service provided for three years and provide the recipient the necessary information for submitting quarterly reports timely.

The recipient is deficient if it does not ensure that subrecipients comply with charter service requirements.

DEFICIENCY CODE CB3-3: Insufficient oversight of subrecipient charter service

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients comply with the charter service requirements and evidence that the procedures have been implemented.

The recipient is deficient if it does not ensure that subrecipients that operate charter bus service maintain records for three years and provide the necessary information for submitting quarterly reports timely.

DEFICIENCY CODE CB3-4: Insufficient oversight of subrecipient charter records and reporting

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients maintain records for charter bus service provided for three years and provide the recipient the necessary information for submitting quarterly reports timely.

GOVERNING DIRECTIVE
2 CFR 200.318(b) Oversight of Contractors

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

2 CFR 200.332 Requirement for pass-through entities

A pass-through entity must: …(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

1) Review financial and performance reports.

2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward

(f) Depending upon the pass-through entity's assessment of the risk posed by the subrecipient (as described in paragraph (c) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

1) Providing subrecipients with training and technical assistance on program-related matters; and

2) Performing site reviews of the subrecipient's program operations; and

3) Arranging for agreed-upon-procedures engagements as described in §200.425.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Did the recipient on behalf of itself or a subrecipient, contractor, or lessee request an advisory opinion from FTA's Office of Chief Counsel? If yes, what was the outcome? Was the advisory opinion followed?

- Did any registered charter provider request a cease-and-desist order against the recipient, subrecipient, contractor, or lessee? If yes, what was the outcome? Was the cease-and-desist order followed?

- Did any registered charter provider, or its duly authorized representative, file a complaint with the Office of the Chief Counsel against the recipient alleging noncompliance with the charter regulation? If yes, did the recipient file an answer within 30 days of the date of the FTA notification?

- Does it appear that any subrecipients, contactors, or lessees are providing charter bus service outside of an authorized exemption or exception?

- Any other potential charter bus issues or concerns not covered above?

REFERENCES

1. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 604, “Charter Service”; Final Rule; Federal Register, January 14, 2008

USEFUL WEBLINKS

0. Charter Home Page (includes dockets, reporting forms and instructions, and other resources)
1. Charter Registration Website
2. Questions and Answers
3. Regulations.gov
4. FTA Charter Reports
5. Coronavirus Aid, Relief, and Economic Security Act
6. FTA’s Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
7. Notice of Concurrence
8. Emergency Relief rule

17. DRUG-FREE WORKPLACE ACT

PURPOSE OF THIS REVIEW AREA
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.

QUESTIONS TO BE EXAMINED
1. Does the recipient have a written policy as prescribed in the Drug Free Workplace Act (DFWA) that is distributed to all award-related employees?

2. Does the recipient have an on-going drug free awareness program?

3. Did the recipient report to FTA all criminal convictions of award-related employees for a Federal or State drug statute violation that occurred in the workplace since the last Comprehensive Review?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Written drug free workplace policy
- Examples of drug free awareness notification such as brochures, posters, information on bulletin boards, employee assistance programs
- Number of employees with a Federal or State criminal drug statute conviction during the review period

Recipient Follow-up
- Documentation of conviction notification by an employee to the recipient
- Information about any personnel action(s) taken regarding conviction notifications

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DFWA1. Does the recipient have a written policy as prescribed in the Drug Free Workplace Act (DFWA) that is distributed to all award-related employees?

BASIC REQUIREMENT
Recipients are required to have and distribute to award-related employees a written drug-free workplace policy as prescribed by the DFWA.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
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 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 part of 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 subrecipient's, 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, such as those in the following examples?*

Required Element	Page Number
The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited	-
Employees must abide by the terms of the policy statement as a condition of employment	-
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	-

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. Determine if the following required elements are included:

- states that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
- states that all 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 employee. On site, discuss with the recipient how it implements its policy for distributing a copy to each employee. On-site, review sample employee files to ascertain if acknowledgment of receipt of the policy is documented.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have a written Drug Free Workplace Act policy.

DEFICIENCY CODE DFWA1-1: No written DFWA policy

SUGGESTED CORRECTIVE ACTION: Submit a written DFWA policy.

The recipient is deficient if its written Drug Free Workplace Act policy does not include all required elements.

DEFICIENCY CODE DFWA1-2: DFWA policy lacking required elements

SUGGESTED CORRECTIVE ACTION: Submit an amended DFWA policy that includes all required elements along with documentation that the revised policy has been distributed to all award-related employees.

The recipient is deficient if it does not distribute the Drug Free Workplace Act policy to award-related employees.

DEFICIENCY CODE DFWA1-3: DFWA policy not distributed

SUGGESTED CORRECTIVE ACTION: Submit a process for distributing the Drug Free Workplace Act policy to award-related employees, along with documentation that the policy has been distributed.

GOVERNING DIRECTIVE

41 U.S.C. 8103. Drug free workplace requirements for Federal grant recipients

(a) In General.—

(1) Persons other than individuals.—A person other than an individual shall not receive a grant from a Federal agency unless the 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 grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the 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 the 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 the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (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) Lets 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.

49 CFR 32.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in §32.205 be given to each employee who will be engaged in the performance of any Federal award.

DFWA2. Does the recipient have an on-going drug free awareness program?

BASIC REQUIREMENT
Recipients of FTA funds are required to have an on-going drug free awareness program for award-related employees.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
In addition to establishing and maintaining a drug free workplace environment, the recipient must establish an ongoing drug free awareness program that informs employees about the dangers of drug abuse and any available drug counseling, rehabilitation, and employee assistance programs. This information can be distributed periodically and on a general basis to all employees. In some cases, recipients may rely on an employee assistance program to provide drug free awareness information. This procedure is acceptable, provided the material includes a drug free workplace message.

INDICATOR OF COMPLIANCE

a. How are award-related employees periodically informed about the dangers of drug abuse and any available counseling and employee assistance programs?

INSTRUCTIONS FOR REVIEWER

Follow up onsite by reviewing information on bulletin boards, training records, safety meeting minutes, etc., and other methods used to inform the recipient's employees of its drug free awareness program. Discuss how often the information is updated, refreshed or presented to employees.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not inform employees about the dangers of drug abuse in the workplace, the policy on drug-abuse, and the opportunities for assistance.

DEFICIENCY CODE DFWA2-1: No ongoing drug free awareness program

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has implemented a drug free awareness program and informed employees of the dangers of drug abuse and any available rehabilitation, and employee assistance programs.

GOVERNING DIRECTIVE

41 U.S.C. 8103(a). Drug free workplace requirements for Federal grant recipients

(a) In General.—

(1) Persons other than individuals.—A person other than an individual shall not receive a grant from a Federal agency unless the 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 grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations.

(C) making it a requirement that each employee to be engaged in the performance of the 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 the 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 the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

49 CFR 32.210 To whom must I distribute my drug-free workplace statement?

You must require that a copy of the statement described in §32.205 be given to each employee who will be engaged in the performance of any Federal award.

DFWA3. Did the recipient report to FTA all criminal convictions of award-related employees for a Federal or State drug statute violation that occurred in the workplace since the last Comprehensive Review?

BASIC REQUIREMENT
Recipients must report a criminal conviction of an award-related employee for Federal or State drug statute violations in the workplace to the FTA within ten calendar days after learning of the conviction and take appropriate action with the employee within 30 days after learning of the conviction.

APPLICABILITY
All recipients

DETAILED EXPLANATION FOR REVIEWER
When the recipient receives notice of an employee's criminal conviction for a drug statute violation that occurred in the workplace, it has ten calendar days within which to report, in writing, the conviction to the FTA regional counsel. Recipients must provide the individual's position title and the awards in which the individual was involved. Further, the recipient must take one of the following actions within 30 days of receiving notice of such a conviction: 1) take appropriate personnel action up to and including termination, consistent with the Rehabilitation Act of 1973, as amended; or 2) require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes.

INDICATORS OF COMPLIANCE

a. *Did any employee report a drug statute conviction occurring in the workplace? If yes, on what date did the employee report such to the recipient?*

b. *When did the recipient report the drug statute conviction to FTA?*

c. *What actions did the recipient take to rectify the situation?*

INSTRUCTIONS FOR REVIEWER
Obtain a listing of drug statute convictions reported to the recipient during the review period and identify the dates upon which such convictions occurred and when the recipient was made aware of such and that it was within five days after such conviction.

Confer with the regional office to ascertain if the recipient reported the conviction of an award-related employee for a drug statute violation that occurred in the workplace and obtain evidence of when the report was submitted. Receive and compare the notification (received from the regional office) with information provided by the recipient to determine if the conviction was reported to the FTA regional counsel within required time frame (ten calendar days after learning of the conviction). Follow up during the site visit to address any unresolved issues.

Follow-up during the site visit and discuss with the recipient to determine what action(s) was taken relative to the employee involved in the drug statute conviction, up to and including termination or requiring the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it did not notify FTA that a conviction had occurred and/or did not take appropriate personnel actions; or such actions were not within the required time frames.

DEFICIENCY CODE DFWA3-1: Inadequate criminal drug statute violation reporting

SUGGESTED CORRECTIVE ACTION: Report any outstanding convictions and/or actions taken within the period of the Comprehensive Review and develop procedures to report such actions in the future within the required timeframes.

GOVERNING DIRECTIVE

41 U.S.C. 8103(a). Drug free workplace requirements for Federal grant recipients

(a) In General.—

(1) Persons other than individuals.—A person other than an individual shall not receive a grant from a Federal agency unless the 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 grantee's workplace and specifying the actions that will be taken against employees for violations of the prohibition;

(B) establishing a drug-free awareness program to inform employees about—

(i) the dangers of drug abuse in the workplace;

(ii) the grantee's policy of maintaining a drug-free workplace;

(iii) available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed on employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of the 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 the 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 the conviction;

(E) notifying the granting agency within 10 days after receiving notice under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of a conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is convicted, as required by section 8104 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A) to (F).

49 CFR 32.225 What actions must I take concerning employees who are convicted of drug violations in the workplace?

There are two actions you must take if an employee is convicted of a drug violation in the workplace:

(a) First, you must notify Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, as required by §32.205(c)(2), or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Second, within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Any other potential DFWA issues or concerns not covered above?

REFERENCES
1. 41 U.S.C. Sections 8101 et seq., Drug Free Workplace Act

2. 49 CFR PART 32— GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

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18. DRUG AND ALCOHOL PROGRAM

PURPOSE OF THIS REVIEW AREA
Recipients receiving Section 5307, 5309, 5311, or 5339 funds 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 recipient have a board-adopted drug and alcohol misuse policy?

2. Does the recipient provide the minimum required training for all covered employees and supervisors/officers?

3. Does the recipient obtain drug and alcohol testing records from employees' previous DOT employers and are all records stored in a secure location with controlled access?

4. Do all medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications?

5. Does the recipient ensure that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees administer their drug and alcohol programs in accordance with 49 CFR parts 40 and 655?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Copy of board-adopted/responsible individual drug and alcohol policy with date of adoption
- List of covered employees placed in safety-sensitive positions (include name and date placed in position)
- List of supervisors or company officials charged with making reasonable suspicion determinations during the review period (include name(s) and date(s) of when each supervisor or official first began making reasonable suspicion determinations)
- Copies of training programs for covered employees and supervisors (for example, sign-in sheets, certificates of completion, etc.)
- Certificates of service agents for the Medical Review Officer, Breath Alcohol Technicians, Collectors, and Substance Abuse Professionals
- Management Information System (MIS) reports for previous five years for recipient, subrecipients, and contractors.
- List of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees

Recipient Follow-up
- Sample drug and alcohol testing record requested from a new hire's previous DOT covered employer

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DA1. Does the recipient have a board-adopted drug and alcohol misuse policy?

BASIC REQUIREMENT
Recipients of Sections 5307, 5309, 5311 or 5339 funds must have a board-adopted/responsible individual anti-drug and alcohol misuse policy.

APPLICABILITY
Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER
Recipients 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.

The 50 percent random drug testing rate applies 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 10 percent.

The following checklist identifies the minimum requirements of a drug and alcohol testing policy as defined by 49 CFR 655.15:

(1) Proof of policy adoption by the appropriate local governing board or other “final authority” with effective date indicated

(2) Identity of the person, office, branch, and 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) Procedures for testing for the presence of prohibited drugs or alcohol misuse, protecting the employee and integrity of the drug and alcohol testing process, safeguarding the validity of test results, and ensuring the test results are attributed to the correct covered employee.

(7) Proof of the requirement that a covered employee submits to drug and alcohol testing

(8) Description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer’s policy.

(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) If applicable, proof of notice provided to covered employees identifying additional elements of an anti-drug use or alcohol misuse program and proof that those elements are not inconsistent with, or contrary to, Federal regulations.

NOTE TO REVIEWER: 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.

Federal Railroad Administration (FRA) regulations cover commuter rail operations. United States Coast Guard (USCG) regulations cover ferry vessel operations. The policy, which would include elements

required by USCG, must require employees considered safety-sensitive by the USCG (crew members with a merchant mariners document or under a certificate of inspection) to submit to random alcohol tests under FTA authority.

INDICATORS OF COMPLIANCE

a. *Does the recipient have a drug and alcohol policy?*

b. *When was the policy adopted by the governing board/individual authority?*

c. *Does the policy include all the required elements, including those 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	-	-
3. Employee categories subject to testing	-	-
4. Prohibited behavior *(See 49 CFR 655.21 and 655.31-35)*	-	-
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 REVIEWER

Review the recipient's drug and alcohol policy and verify all the required elements in the chart above are included and it has a process for ensuring the policy statement is made available to each covered employee. Onsite, discuss with the recipient how it distributes a copy to each employee or provides written notice of its availability.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if 1) it does not have a policy addressing the required elements included in the Governing Directive, or 2) there is no process for making the policy available to all covered employees.

DEFICIENCY CODE DA1-1: Drug and alcohol policy missing or lacking required elements

SUGGESTED CORRECTIVE ACTION 1: Submit an amended policy that includes the required elements and evidence that it has been made available to all affected employees.

SUGGESTED CORRECTIVE ACTION 2: Submit a process for ensuring the current policy is made available to all covered employees.

GOVERNING DIRECTIVE
49 CFR 655.15 Policy statement contents

The local governing board/authorized individual 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 procedures that will be used to test for the presence of prohibited drugs or alcohol misuse, protect the employee and the integrity of the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct covered employee.

(f) The requirement that a covered employee submit to drug and alcohol testing administered in accordance with this part.

(g) A description of the kind of behavior that constitutes a refusal to take a drug or alcohol test, and a statement that such a refusal constitutes a violation of the employer's policy.

(h) 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.

(i) 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.

(j) The employer shall inform each covered employee if it implements elements of an anti-drug use or alcohol misuse program that are not required by this part. An employer may not impose requirements that are inconsistent with, contrary to, or frustrate the provisions of this part.

49 CFR 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 collection site before the testing process commences (see §40.63 (c) or §40.72(d)(3), as applicable) for a pre-employment test is not deemed to have refused to test; The

collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

(3) Fail to provide a specimen for any drug test required by this part or DOT agency regulations. Provided that an employee who does not provide a specimen because he or she has left the testing site before the testing process commences (see §40.63 (c) or § 40.72(d)(3), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;

(4) In the case of a directly observed or monitored urine collection in a drug test, fail to permit the observation or monitoring of an employee's provision of a specimen (see §§40.67(m) and 40.69(g));

(5) Fail to provide a sufficient amount of specimen 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) as applicable);

(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(c). 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;

(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, fail to remove objects from mouth, fail to permit inspection of the oral cavity, or fail to complete a rinse when requested);

(9) For an observed urine 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; or

(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. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.

DA2. Does the recipient provide the minimum required training for all covered employees and supervisors/officers?

BASIC REQUIREMENT
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
Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER
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.

Covered employees training is insufficient as it relates to the 60 minutes of drug awareness if the training is not solely 60 minutes of drug awareness. The 60 minutes should not encompass other areas (e.g. alcohol awareness, Human Resources, etc.)

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

Supervisors and/or company officials training is insufficient as it relates to the 60 minutes of the physical, behavioral, and performance indicators of probable drug use and 60 minutes of the physical, behavioral, speech, and performance indicators of alcohol misuse if the training is not solely 60 minutes on each topic. The 120 minutes should not encompass other areas (Human Resources, etc.)

NOTE: Records indicating 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.

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure all covered employees receive the required 60 minutes of training?*

	Number of records reviewed	**Number of records that indicated required training was received**
Employees	-	-

b. *How does the training for covered employees cover 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. *How does the recipient ensure 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?*

	Number of records reviewed	Number of records that indicated required training was received
Supervisors/other officials	-	-

d. How does the training cover the physical, behavioral, and performance indicators of probable drug use and the physical, behavioral, speech, and performance indicators of probable alcohol misuse?

INSTRUCTIONS FOR REVIEWER
Review the recipient's response to the above indicators of compliance submitted in response to the RIR or obtain and review training protocols, as applicable, to ascertain that the recipient provides the required training.

For those that began safety-sensitive duty and supervisor duty within two years of the review, obtain a listing and select a sample of covered employees for record review. Onsite, sample the training records for these employees to determine if they received the required training and if the required topics were addressed. If no employees began safety-sensitive duties within the review period, a determination of compliance can only be made on the training program described by the recipient.

For supervisors and/or company officials who make reasonable suspicion determinations, obtain a listing and select a sample of supervisors and/or company officials for record review. Onsite, sample the training records for the supervisors and/or company officials to determine if they received the required reasonable suspicion training and if the required topics were addressed. NOTE. Recipients are only required to maintain training records for two years.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not have an employee education and training program or covered employees have not received the 60 minutes of training.

DEFICIENCY CODE DA2-1: Employee training not provided/insufficient

SUGGESTED CORRECTIVE ACTION: Submit its covered employee training protocols and documentation that covered employees placed in safety-sensitive positions within the past two years have received 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, along with procedures for ensuring covered employees receive the training.

The recipient is deficient if supervisors or other officials who make reasonable suspicion determinations have not received the 120 minutes of training.

DEFICIENCY CODE DA2-2: Supervisor training not provided/insufficient

SUGGESTED CORRECTIVE ACTION: Submit its reasonable suspicion training protocols and documentation that supervisors and other officials designated within the past two years to make reasonable suspicion determinations have received the required training, along with procedures for ensuring training is provided before individuals can make reasonable suspicion testing decisions.

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:

(a) *Education*. The education component shall include display and distribution to every covered employee of: informational material and a community service hot-line telephone number for employee assistance, if available.

(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.

DA3. Does the recipient obtain drug and alcohol testing records from employees' previous DOT employers and are all records stored in a secure location with controlled access?

BASIC REQUIREMENT
Recipients must obtain previous drug and alcohol testing Information from previous DOT employers for employees performing safety-sensitive functions and must retain drug and alcohol testing information for all covered employees in a secure location with controlled access.

APPLICABILITY
Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER
Recipients, after obtaining an employee's written consent, must request information on the US DOT drug and alcohol testing history for the two previous years of any employee who is seeking to begin performance of safety-sensitive duties for the recipient for the first time (i.e., a new hire, an employee who transfers into a safety-sensitive position). Recipients must request the following information from US DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- Alcohol tests with a result of 0.04 or higher alcohol concentration
- Verified positive drug tests
- Refusals to be tested (including verified adulterated or substituted drug test results)
- Other violations of US DOT agency drug and alcohol testing regulations

- The employee's successful completion of US DOT return-to-duty requirements (including follow-up tests), if applicable

If the previous employer does not have information about the return-to-duty process (e.g., for an employer who did not hire an employee who tested positive on a pre-employment test), the recipient must obtain this information from the employee.

The recipient must obtain and review this information before the employee first performs safety-sensitive functions, if feasible. If this is not feasible, the recipient must demonstrate that it has made a good faith effort to obtain and review the information as soon as possible. Good faith effort can be demonstrated through the documentation of obtaining the employee's signature to request information from the previous US DOT-regulated employer(s) and in providing documentation that the previous US DOT-regulated employer(s) was/were contacted.

If the employee refuses to provide written consent, the recipient must not permit the employee to perform safety-sensitive functions. If the recipient obtains information that the employee has violated a US DOT agency drug and alcohol regulation, it must not use the employee to perform safety-sensitive functions unless it also obtains information that the employee has subsequently complied with return-to-duty requirements.

Recipients must maintain records on program administration and the test results of individuals for whom it has testing responsibility. The records must be maintained by the recipient in a secure location with controlled access. As an example, program records should be maintained in locked file cabinets, with a limited number of keys that cannot be duplicated without proper authorization. In addition, only the program manager and his/her designee(s) should have access to the keys. If a service agent is used to administer the testing program, the service agent can maintain some or all the records.

NOTE: Recipients are only required to maintain these records for three years, therefore, documentation of meeting this requirement can only be substantiated for employees placed in safety-sensitive functions during the Comprehensive Review period.

INDICATORS OF COMPLIANCE

a. *Are previous drug and alcohol testing program records obtained from prior employers before allowing an employee to perform safety-sensitive functions for more than 30 days?*

b. *Are drug and alcohol testing program records retained in a secure location with controlled access?*

INSTRUCTIONS FOR REVIEWER

On site, discuss how and when in the hiring process the recipient obtains drug and alcohol testing information from prior employers with US DOT drug and alcohol testing programs. Obtain a listing of new hires during the Comprehensive Review period that previously worked for an employer with a US DOT drug and alcohol testing program, along with the date they first began safety-sensitive functions. Sample employee records to review during the site visit to ascertain that previous drug and alcohol testing records were obtained prior to the employee performing safety-sensitive functions. Follow up with the recipient to determine if good-faith efforts were made to obtain the records, if not on file. For any previous records that indicate the employee had violated a US DOT agency drug and alcohol regulation, discuss with the recipient how it confirmed that the employee subsequently complied with the return-to-duty requirements of Subpart O of the regulations.

During the site visit, ask to be shown where the records are stored. Determine the security measures, such as locked cabinets.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it allows employees to perform safety-sensitive functions for more than 30 days, before obtaining, or making a good faith effort to obtain, the drug and alcohol information from prior employers.

DEFICIENCY CODE DA3-1: Deficiencies in process of checking previous drug and alcohol testing records

SUGGESTED CORRECTIVE ACTION: Submit a process for ensuring that the previous drug and alcohol testing records for employees are reviewed, and/or demonstrate a process for documenting the recipient's good faith efforts to obtain the records, before allowing employees to perform safety-sensitive functions for more than 30 days.

The recipient is deficient if it does not retain employee's drug and alcohol records in a secure location with controlled access.

DEFICIENCY CODE DA3-2: Drug and alcohol program records not secure

SUGGESTED CORRECTIVE ACTION: Submit documentation that it has moved program records to a secure location with controlled access.

GOVERNING DIRECTIVE
49 CFR 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a) (1) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraphs (b) through (j) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (*i.e.,* a new hire, an employee transferring into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

49 CFR 655.71 Retention of records

(a) *General requirements.* An employer shall maintain records of its anti-drug and alcohol misuse program as provided in this section. The records shall be maintained in a secure location with controlled access.

DA4. Do all medical review officers, substance abuse professionals, breath alcohol technicians,

and collectors in the drug and alcohol testing program have the required qualifications?

BASIC REQUIREMENT
Only those individuals with the required qualifications may serve as medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program.

APPLICABILITY
Recipients with safety-sensitive employees excluding commuter rail-only providers

DETAILED EXPLANATION FOR REVIEWER
Medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program must meet specific training requirements as defined in 49 CFR part 40 and maintain current documentation of meeting those requirements.

INDICATORS OF COMPLIANCE

a. *Do the medical review officers, substance abuse professionals, breath alcohol technicians, and collectors that support the recipient's program have the required qualifications?*

Title	Certification/Refresher Training Date	Requirement	Requirement met? (y/n)
Medical Review Officer	**-**	**Within five years**	**-**
Breath Alcohol Technicians	**-**	**Within five years**	**-**
Collectors	**-**	**Within five years**	**-**

Title	Certification/Continuing Education	Requirement	Requirement met? (y/n)
Substance Abuse Professional	**-**	**Within three years/ 12 professional development hours**	**-**

INSTRUCTIONS FOR REVIEWER
Obtain the certificates of the service agents who support the recipient's drug and alcohol testing program. Onsite, confirm that all the qualifications of the service agents are up to date:

- Certifications dated within three years: substance abuse professionals
- Certifications dated within five years: Breath alcohol technicians, collectors, and medical review officers

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it cannot provide up to date certificates of agents supporting its drug and alcohol testing program.

DEFICIENCY CODE DA4-1: Missing qualifications of service agents

SUGGESTED CORRECTIVE ACTION: Submit any missing credential documentation.

NOTE TO REVIEWER: The reviewer is to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE

49 CFR 40.31 Who may collect urine specimens for DOT drug testing?

(a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.

(b) A urine collector must meet training requirements of §40.33.

49 CFR 40.33 What training requirements must a collector meet?

To be permitted to act as a urine collector in the DOT drug testing program, you must meet each of the requirements of this section:

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(g) *Documentation*. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

49 CFR 40.121 Who is qualified to act as an MRO?

To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

(d) *Requalification training.* During each five-year period from the date on which you satisfactorily completed the examination under paragraph (c)(2) of this section, you must complete requalification training.

(e) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

49 CFR 40.211 Who conducts DOT alcohol tests?

(a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

49 CFR 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

(e) *Refresher training.* No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(g) *Documentation*. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.

49 CFR 40.281 Who is qualified to act as a SAP?

To be permitted to act as a SAP in the DOT drug and alcohol testing program, you must meet each of the requirements of this section:

(d) *Continuing education.* During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (*e.g.,* CEUs) relevant to performing SAP functions.

(e) *Documentation.* You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

SAP Assessments and Evaluations

Under 49 CFR §§ 40.291, the SAP may conduct an assessment and evaluation of an employee who has violated DOT drug and alcohol regulations either face to face or remotely.

If a SAP is not prohibited from using technology within the parameters of the SAP's State-issued license or other credential(s), a remote evaluation must be conducted in accordance with the following criteria:

(i) The technology must permit real-time audio and visual interaction between the SAP and the employee; and

(ii) The quality of the technology (e.g., speed of the internet connection and clarity of the video display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would otherwise gather in an in-person face-to-face interaction, while providing security to protect the confidentiality of the communications at the level expected by industry standards for remote substance abuse evaluations.

Re-qualification Timelines for Certain Service Agents

Under 49 CFR §§ 40.33(e), 40.121(d), 40.213(e), and 40.281(d), collectors, MROs, STT/BATs, and SAPs are required to maintain their DOT required qualifications to continue to act as service agents in the DOT drug and alcohol testing program. Specifically, collectors and STT/BATs must complete refresher training every five years, MROs must complete requalification training every five years, and SAPs must complete 12 professional development hours every three years.

DA5. Does the recipient ensure that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees administer their drug and alcohol programs in accordance with 49 CFR parts 40 and 655?

BASIC REQUIREMENT
The recipient must ensure that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees who receive 49 U.S.C. 5307, 5309, 5311, or 5339 funds directly from the recipient administer their drug and alcohol programs in accordance with the requirement in 49 CFR parts 40 and 655.

APPLICABILITY
Recipients with subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees who receive 49 U.S.C. 5307, 5309, 5311, or 5339 funds directly from the recipient

DETAILED EXPLANATION FOR REVIEWER
Recipients and their subrecipients, contractors, subcontractors, and lessees are required to have a drug and alcohol testing program for safety-sensitive employees. Recipients are responsible for overseeing the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. The oversight program must ensure that all aspects of the drug and alcohol programs follow 49 CFR part 655 "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations", as amended, and 49 CFR part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Programs", as amended.

FTA does not dictate how recipients must oversee the programs. However, elements of an effective oversight program will ensure:

***Items will be examined during a baseline Comprehensive Review**

- Drug and alcohol policies include required elements and are approved by the governing body
- Employees performing safety-sensitive functions are covered
- Testing procedures are in place for marijuana, cocaine, opioids, phencyclidine, amphetamines, and alcohol
- 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
- Employees and supervisors have received the required training
- Testing performed under the employer's own authority is segregated from the testing done under FTA's authority (separate random testing pool, separate specimens, non-US DOT forms used)
- *Drug and Alcohol Management Information System (DAMIS/MIS) reports are submitted
- *Medical review officers, substance abuse professionals, breath alcohol technicians, and collectors in the drug and alcohol testing program have the required qualifications

Some recipients ensure compliant drug and alcohol programs by including subrecipients, contractors, subcontractors, or lessees in their programs.

INDICATORS OF COMPLIANCE

a. *Has the recipient ensured that subrecipients, contractors, lessees, and subcontractors with safety-sensitive employees submitted annual MIS reports in DAMIS?*

b. *Does the recipient or its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees ensure that the qualifications of the medical review officer(s), substance abuse professionals, breath alcohol technicians, and collectors are up to date?*

INSTRUCTIONS FOR REVIEWER
For the sample subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees to be visited, request that the recipient obtain or ensure that the providers have available the MIS reports for the past three years and the certificates of the service agents that support the drug and alcohol programs. During the site visit to the subrecipient, contractor, subcontractor, or lessee, confirm that the certificates for all service agents are current. If service agents are listed in the provider's drug and alcohol policy, compare the certificates provided with the service agents listed in the policy to ensure that the qualifications of the current agents were provided.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient 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.

DEFICIENCY CODE DA5-1: Insufficient oversight over drug & alcohol programs of subrecipients, contractors, subcontractors, and/or lessees

SUGGESTED CORRECTIVE ACTION 1: Ensure that the missing MIS reports are submitted in DAMIS for the past reporting year by September 30 or, if the September 30 deadline cannot be met because of the timing of the site visit, maintain missing MIS reports internally with the reason for revision. Submit missing MIS, along with procedures for ensuring that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees submit MIS reports in DAMIS.

SUGGESTED CORRECTIVE ACTION 2: Submit the qualifications of the medical review officers, substance abuse professionals, breath alcohol technicians, and collectors that support the programs of its subrecipients, contractors, subcontractors, and lessees, along with procedures for ensuring that the service agents that support the drug and alcohol programs of subrecipients, contractors, subcontractors, and lessees have current qualifications.

GOVERNING DIRECTIVE
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 49 U.S.C. 5307, 5309, or 5311 funds directly from the recipient complies with this part.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Has the FTA conducted a drug and alcohol program compliance audit in the past two Federal fiscal years? If yes, when was the site visit?
- Is an audit scheduled for the current Federal fiscal year?
- Is the recipient's policy missing required elements not addressed in the chart at indicator DA1*c*?
- Is the recipient testing for the required substances?

- Is there evidence that not all safety-sensitive employees, as defined by FTA, are included in a drug and alcohol testing program?

- Are safety-sensitive employees involved in ferry operations tested randomly for alcohol under FTA authority?

- Does it appear MIS reports for the recipient, subrecipient, contractor, subcontractor, or lessee were not submitted or were incorrect?

- Did the recipient, or its consortium (if applicable) achieve the minimum random testing rates of (50 percent) for drugs and 10 percent for alcohol?

- Does the recipient conduct post-accident testing?

- Are there concerns regarding the recipient's oversight of the drug and alcohol programs of its subrecipients, contractors, subcontractors, or lessees?

- Any other potential drug and alcohol program issues or concerns not previously covered in this section?

REFERENCES

1. 49 CFR Part 40, "Procedures for Transportation Workplace Drug Testing Programs"

2. 49 CFR Part 655, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations"

USEFUL WEBLINKS

1. FTA Drug and Alcohol Testing Homepage

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

10. Notice of Concurrence

19. SECTION 5307 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA
The recipient must participate in the transportation planning process in accordance with Federal Transit Administration (FTA) requirements and the metropolitan and statewide planning regulations.

Recipients shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a program of projects (POP).

Recipients are expected to have a written, locally developed process for soliciting and considering public comment before raising a fare or carrying out a major transportation service reduction.

For fixed-route service supported with Section 5307 assistance, fares charged to seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours will not be more than one half the peak hour fares.

QUESTIONS TO BE EXAMINED
1. Does the recipient have a written agreement with the metropolitan planning organization (MPO), the state(s), and any other local or regional providers of public transportation that identifies their mutual responsibilities in carrying out the metropolitan transportation planning process and do they jointly agree upon and develop specific written provisions for the development and sharing of performance information?

2. Does the recipient provide information about its available funding under Section 5307 to the public and provide for public involvement in the development of the Program of Projects (POP) it proposes to undertake?

3. Does the recipient have a written policy that describes the public comment process on increases in the basic fare structure or implementing a major service reduction that addresses the required elements?

4. For Section 5307-funded fixed-route service, does the recipient charge no more than half the peak-hour fare for seniors, persons with disabilities, and individuals presenting Medicare cards during off-peak hours?

5. Does the recipient ensure that subrecipients, contractors, and lessees that receive Section 5307 funds or use Section 5307-funded property comply with Section 5307 half-fare and public-comment requirements?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- For recipients in small urbanized areas (50,000 to 200,000 in population):
    - signed metropolitan transportation planning agreement (or agreements) between the recipient, MPO, state(s), and public providers of public transportation. There can be one or more than one written agreement(s) among the MPO, the State(s), and the providers of public transportation serving the UZA. See governing directive below.
    - written provisions for developing and sharing performance data and the selection of performance targets, as well as the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO, if not addressed in metropolitan transportation planning agreement.
- For recipients in large urbanized areas (over 200,000 in population):
    - The FHWA and the FTA jointly review and evaluate the transportation planning process for each TMA no less than once every 4 years to determine if the process

meets the requirements of applicable provisions of Federal law. Section 5307 recipients shall participate in this quadrennial Certification Review, along with the MPO, the State(s), and the other providers of public transportation. Large urbanized area recipients therefore are at lower risk for non-compliance (due to the redundant planning oversight functions), thus a full survey/scan is not necessary under the Triennial Review.

- If the recipient relies on the public involvement process of the TIP to meet Section 5307 public involvement requirements:
  - MPO public participation plan
  - TIPs and TIP notices published since the last review
- If the recipient relies on its own Section 5307 public involvement process:
  - POP public notices for the past three years
  - Consultative process, including how coordination is performed with interested parties, if written
  - List of complaints received from interested parties in relation to the POP consultative process
  - Proposed POPs and final proposed POPs, if amended
- Written policy for soliciting public comment prior to implementing a fare increase or major service reduction
- Half fare/special identification card application
- List of fare increases and major service reductions implemented since last review with date of implementation

Recipient Follow-up

- If the recipient relies on its own Section 5307 public involvement process, documentation of the public involvement process (meeting agendas, internal communications, documents relating the public transit-human services coordinated planning process, comments received, transcripts of public hearing and meetings, internal reports, board minutes)
- If the recipient raised fares or implemented a major service reduction since the last review:
  - Samples of public information (e.g., newspaper classifieds, website, etc.)
  - Sample documentation of public hearings (board minutes, public meeting minutes, news articles, etc.)
  - Internal documentation of how public comment was considered prior to implementing any fare increases or major service reductions
  - Internal working documents showing original plans and actual plans that were implemented for major service reductions
- Documentation for monitoring fare increases and major service reductions implemented by subrecipients
- Information on the half-fare programs of subrecipients, contractors, or lessees to be visited
- Most recent MPO adopted public participation plan, if applicable
- MPO TIP public notice(s) for the past three years, if applicable
- Executive summary of the results of the most recent Planning Certification Review for large urbans in which the MPO agreement was reviewed.

5307:1. Does the recipient have a written agreement (or agreements) with the metropolitan planning organization (MPO), the state(s), and any local or regional providers of public transportation that identifies their mutual responsibilities in carrying out the metropolitan transportation planning process and do they jointly agree upon and develop specific written provisions for the development and sharing of performance information?

BASIC REQUIREMENT

Recipients and entities responsible for the transportation planning and programming processes in metropolitan planning areas are required to determine their mutual responsibilities in carrying out the metropolitan transportation planning process in a written agreement (or agreements). Recipients must **jointly develop provisions with the MPO and State for developing and sharing performance information.**

APPLICABILITY
Section 5307 recipients who did not participate in the most recent quadrennial Certification Review of the MPO planning process and section 5307 recipients that typically operate in UZAs under 200,000 in population.

DETAILED EXPLANATION FOR REVIEWER
The planning regulations require that the MPO, the state(s), and the public transportation operator(s) cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the state(s), and the public transportation operator(s) serving the metropolitan planning area. Written agreements are required to address at least: 1) the recipient's responsibilities, 2) the development and sharing of information for financial plans, and 3) the development of the annual listing of obligated projects. If the recipient intends to rely on the MPO's public involvement process to meet Section 5307 public involvement requirements, FTA encourages it to state so in the agreement.

Recipients must also jointly agree upon and develop specific written provisions to cooperatively develop and share information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO, and the collection of data for the State asset management plan. These provisions shall be documented either (1) as part of the metropolitan planning agreements; or (2) in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

INDICATORS OF COMPLIANCE

a. *Is the recipient a party to a written agreement (or agreements) with the MPO, State(s), and providers of public transportation?*

b. *If the recipient is a party to a written agreement (or agreements) with the MPO, state(s), and providers of public transportation, does the agreement address:*

Element	Comment
Recipient's responsibilities in carrying out the metropolitan transportation planning process (required)	-
Development and sharing of information for financial plans (required)	-
Development of the annual listing of obligated projects (required)	-
Use of the MPO public involvement process to meet Section 5307 public involvement requirements (recommended if applicable)	-

c. *Did the recipient jointly agree to and develop written provisions for cooperatively developing and sharing the following performance information:*

Element	How Addressed?
Transportation performance data	-
Selection of performance targets	-
Reporting of performance targets	-
Reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO	-
Collection of data for the State asset management plan	-

INSTRUCTIONS FOR REVIEWER
For recipients in small urbanized areas, obtain and review the signed metropolitan transportation planning agreement (or agreements) to ensure the required elements are included. Ensure that the recipient has signed the agreement (or agreements). There can be one or more written agreement(s) among the MPO, the State(s), and the providers of public transportation serving the small UZA. For all other recipients who participated in a recent quadrennial Planning Certification Review of the MPO planning process or typically operate in UZAs over 200,000 in population, request a copy of the executive summary of the results of the recipient's most recent Certification report. The Planning Certification findings will help determine if any deficiencies were found in the MPO agreement and if they were resolved, thereby not requiring a redundant TR action. If the MPO is an operating entity (i.e., a Section 5307 direct recipient), consult to ascertain who the providers of public transportation are in the metropolitan planning area. Ensure that providers of public transportation and the State(s) are parties to the written agreement (or agreements).

Obtain documentation and discuss with the recipient how it addresses the requirement for developing and agreeing to specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO, and the collection of data for the State asset management plan. Document in the table above how and where the recipient included the written provisions to meet the requirement.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not have a metropolitan transportation planning agreement (or agreements) with the MPO, the State(s), and the providers of public transportation.

> DEFICIENCY CODE 5307:1-1: No metropolitan transportation planning agreement (or agreements)
>
> SUGGESTED CORRECTIVE ACTION: Submit a fully executed agreement (or agreements) with the MPO, state(s), and transit providers that specifies the mutual responsibilities for carrying out the metropolitan transportation planning and programming process (i.e., continuous, cooperative, and comprehensive).

The recipient is deficient if the metropolitan transportation planning agreement (or agreements) does (do) not address recipient's responsibilities in the development and sharing of information for financial plans, or the development of the annual listing of obligated projects.

DEFICIENCY CODE 5307:1-2: Recipient's responsibilities under the metropolitan transportation planning agreement (or agreements) are not clearly identified.

SUGGESTED CORRECTIVE ACTION: Submit a fully executed agreement (or agreements) that specifies the mutual responsibilities for carrying out the metropolitan transportation planning and programming process including, cooperatively developing long-range transportation plans and TIPs, the sharing of information for financial plans, and the development of the annual listing of obligated projects.

The recipient is deficient if it did not (1) jointly agree to and develop written provisions for cooperatively developing and sharing performance information with the state and MPO, or (2) the agreement does not address all provisions for developing and sharing performance information.

DEFICIENCY CODE 5307:1-4: No written provisions for developing and sharing performance information.

SUGGESTED CORRECTIVE ACTION: Submit written provisions for developing and sharing performance data and the selection of performance targets, as well as the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO, if not addressed in metropolitan transportation planning agreement.

Note: The reviewer is to coordinate to determine the appropriate corrective action for this deficiency.

GOVERNING DIRECTIVE
23 CFR 450.314(a) and (h) Metropolitan Planning Agreements

(a) The MPO, the State(s), and the providers of public transportation shall cooperatively determine their mutual responsibilities in carrying out the metropolitan transportation planning process. These responsibilities shall be clearly identified in written agreements among the MPO, the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement between all responsible parties should be developed. The written agreement(s) shall include specific provisions for the development of financial plans that support the metropolitan transportation plan (see §450.324) and the metropolitan TIP (see §450.326), and development of the annual listing of obligated projects (see §450.334).

(h) (1) The MPO(s), State(s), and the providers of public transportation shall jointly agree upon and develop specific written provisions for cooperatively developing and sharing information related to transportation performance data, the selection of performance targets, the reporting of performance targets, the reporting of performance to be used in tracking progress toward attainment of critical outcomes for the region of the MPO (see § 450.306(d)), and the collection of data for the State asset management plan for the NHS for each of the following circumstances:

(i) When one MPO serves an urbanized area;
(ii) When more than one MPO serves an urbanized area; and
(iii) When an urbanized area that has been designated as a TMA overlaps into an adjacent MPA serving an urbanized area that is not a TMA.

(2) These provisions shall be documented either:
(i) As part of the metropolitan planning agreements required under paragraphs (a), (e), and (g) of this section; or
(ii) Documented in some other means outside of the metropolitan planning agreements as determined cooperatively by the MPO(s), State(s), and providers of public transportation.

5307:2. Does the recipient provide information about its available funding under Section 5307 to the public and provide for public involvement in the development of the Program of Projects (POP) it proposes to undertake?

BASIC REQUIREMENT
Recipients must provide for public involvement in the development of the Section 5307 POP.

APPLICABILITY
Section 5307 recipients

DETAILED EXPLANATION FOR REVIEWER
Both the planning regulations and Section 5307 require public participation. The planning regulations require that the metropolitan transportation planning process include a proactive participation plan that provides complete information, timely public notice, and reasonable public access to key decisions, and supports early and continuing involvement of the public in developing plans and TIPs. (The recipient's projects must be programmed in the TIP to be eligible for funding.) Section 5307 recipients also have specific requirements for public participation related to the POP. POP public participation requirements do not apply to funds flexed into a Section 5307 award.

FTA allows a Section 5307 recipient to rely on the locally adopted public participation requirements for the TIP in lieu of the separate public-review process required in the development of the POP if the recipient has coordinated with the MPO and ensured that the public is aware that the TIP development process is being used to satisfy the POP public participation requirements. The recipient may rely on the MPO public participation process for the TIP even when notices are published less than annually.

In order for a recipient to rely on the TIP public involvement process for the TIP to meet Section 5307 public involvement requirements for the POP:

- The MPO must have an adopted public participation plan.
- The TIP document (public participation plan, notice, or TIP) must state that public notice of public participation activities and time established for public review of and comments on the TIP will satisfy the POP requirements.

FTA encourages (but does not require) recipients to state in the metropolitan transportation planning agreement with the MPO, State(s), and providers of public transportation that it relies on the public participation process for the TIP to satisfy Section 5307 public involvement requirements for the POP.

If the recipient relies on its own process to satisfy POP public participation requirements, it must:

- Make available to the public information concerning the amount of funds available under the Section 5307 program and the POP that the recipient proposes to undertake with such funds.
- Develop a proposed POP in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals. Participation in the public transportation-human services planning process satisfies this requirement.
- Publish the proposed POP in sufficient detail and in such a manner as to afford affected citizens, private transportation providers, representatives of welfare recipients and low-income individuals, and, as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to comment on it and on the performance of the recipient.
- Provide an opportunity for a public hearing to obtain the views of the public on the proposed POP. Most recipients include in the public notice an announcement that the proposed POP is available for review and that, if requested, a public hearing will be held. Some local laws or recipient policies make the public hearing mandatory.
- Ensure that the proposed POP provides for the coordination of Section 5307 public transportation services with transportation services assisted with other Federal sources. Coordination may occur at many levels, from simple information sharing to total consolidation of services. Participation in the public transportation-human services planning process satisfies this requirement.

- Consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, in preparing the final POP. Participation in the public transportation-human services planning process satisfies this requirement.
- Make the final POP available to the public.

Where there are multiple designated recipients and/or multiple MPOs, this public participation requirement may be met in several separate processes for the different areas involved.

INDICATORS OF COMPLIANCE

a. *Does the designated or direct recipient rely on the MPO's public participation process for the Transportation Improvement Program (TIP) to meet Section 5307 POP public participation requirements? If no, go to indicator b.*

   1) *Does the MPO have an adopted public participation plan meeting the requirements detailed in 23 CFR 450.316? For recipients in small urbanized areas (under 200,000 in population), does the public participation plan describe the minimum required elements of the MPO's public participation process? For recipients in large urbanized areas (over 200,000 in population), do the results of the MPO's most recent planning Certification Review demonstrate that the MPO's public participation plan describes the minimum required elements of the MPO's public participation process?*

      -The FHWA and the FTA jointly review and evaluate the transportation planning process for each TMA no less than once every 4 years to determine if the process meets the requirements of applicable provisions of Federal law. Section 5307 Recipients shall participate in this quadrennial Certification Review, along with the MPO, the State(s), and the other providers of public transportation. Large urbanized area recipients therefore are at lower risk for non-compliance (due to the redundant planning oversight functions), thus a full survey/scan is not necessary under the Triennial Review.

Element	Addressed in Plan (page #)
Provide adequate public notice of public participation activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP	-
Provide timely notice and reasonable access to information about transportation issues and processes	-
Employ visualization techniques to describe metropolitan transportation plans and TIPs	-
Make public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web	-
Hold any public meetings at convenient and accessible locations and times	-

Element	Addressed in Plan (page #)
Demonstrate explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP	-
Seek out and consider the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services	-
Provide an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues that interested parties could not reasonably have foreseen from the public involvement efforts	-
Coordinate with the statewide transportation planning public involvement and consultation processes under 23 CFR Part 450 Subpart B	-
Periodically review the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process	-

2) *Do the TIP document(s) state public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP public review requirements of the Section 5307 Program?*

b. *If the recipient uses its own public participation process, does it meet the requirements listed in 49 U.S.C. 5307(b)(1) through (7) concerning public participation in development of a POP?*

1) *How does the recipient make available to the public information concerning the amount of funds available under the Section 5307 Program and the POP that the recipient proposes to undertake with such funds?*

2) *How does the recipient develop a proposed POP in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals?*

3) *Is the proposed POP published in sufficient detail and in such a manner as to afford affected members of the public, private transportation providers, representatives of welfare recipients and low-income individuals, and as appropriate, local elected officials, reasonable and adequate opportunity to examine the proposed program and to submit comments on the proposed program and on the performance of the recipient?*

POP Elements	Comments
A brief description of the projects	-

POP Elements	Comments
Sub-allocation among public transportation providers, if applicable	-
Total project costs	-
Federal share for each project	-

4) *Does the recipient provide an opportunity for a public hearing to obtain the views of the public on the proposed POP?*

5) *How did the recipient ensure that the proposed POP provides for the coordination of Section 5307 public transportation services with transportation services assisted with other Federal sources?*

6) *How are comments and views received considered, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, in preparing the final POP?*

7) *How is the final POP made available to the public?*

c. *If the recipient uses its own or the MPO's public participation process, for projects that do not involve substantial changes to the function, location, or capacity of transit system assets, did it:*

1) *Ensure/make the amount of funding available to the public?*

2) *Ensure/make the final program of projects available to the public?*

3) *Document or ensure the MPO documents the process followed in the previous two bullets?*

d. *If the recipient uses its own or the MPO's public participation process, for projects that involve substantial changes to the function, location, or capacity of transit system assets, did the recipient comply with or ensure the MPO complied with all Section 5307 public participation requirements? If no, explain:*

INSTRUCTIONS FOR REVIEWER

For recipients that rely on the MPO's public participation process: Obtain the MPO's adopted public participation plan and TIPs and TIP notices published since the last review. If the recipient is located in a small urbanized area, review the plan to ensure it describes procedures, strategies, and desired outcomes for the required elements. Follow up with the recipient if unable to locate the required items in the plan. Review the MPO's adopted public participation plan, TIPs, and TIP public notice(s) to determine which TIP document(s) states that public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP requirements of the Section 5307 Program. The TIP document does not have to be verbatim, however, elements of the statement should be consistent with the integrity of the requirement.

For recipients that use their own public participation process: Review the public notices for the past three years to ensure that they address the required items and to determine if the final POP was made available to the public. Obtain and review documentation that describes the consultative process and obtain documentation (i.e., meeting agendas, internal communications, documents relating the public transit-human services coordinated planning process, etc.) to ensure that the recipient consulted with interested parties, including private transportation providers and human services organizations or transit

operators representing the employment-related transportation needs of welfare recipients and low-income individuals and the proposed POP provides for the coordination of Section 5307 service with transportation services assisted with other Federal sources.

Obtain and review documentation, such as a public notice, to ensure that the recipient provided an opportunity for a public hearing. Obtain and review written comments received, transcripts of public hearings and meetings, and internal reports that address the comments to ensure they were considered prior to final issuance. Review board minutes and agendas of subsequent meetings to determine if the comments were presented to the Board. Follow up onsite for additional information on how the recipient's decision makers considered any comments received.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it relies on the MPO's public participation process to satisfy POP public participation requirements, but the MPO does not have an adopted public participation plan that describes the minimum required elements of the public participation process.

> DEFICIENCY CODE 5307:2-1: Adopted MPO public participation plan missing minimum elements.
>
> SUGGESTED CORRECTIVE ACTION: Submit a revised MPO public participation plan that addresses all required elements or its own process for involving the public in the development of the POP.

The recipient is deficient if it relies on the MPO's public participation process to satisfy POP public participation requirements but none of the MPO's TIP documents (public participation plan, notice, or TIP) state the public involvement process for the TIP is being used to satisfy the Section 5307 POP requirements.

> DEFICIENCY CODE 5307:2-2: TIP documents missing POP statement
>
> SUGGESTED CORRECTIVE ACTION: Submit a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements or its own process for involving the public in the development of the POP.

The recipient is deficient if it: (1) failed to make available to the public the amount of Section 5307 funds, (2) did not develop the proposed POP in consultation with interested parties, (3) did not publish a proposed POP or in a manner that provided opportunity to examine the proposed program and to submit comments, (4) did not provide an opportunity for a public hearing on the proposed POP, (5) did not ensure that a proposed POP provides for the coordination of Section 5307 services with transportation assisted from other Federal sources, (6) did not consider comments received in preparing the final POP, or (7) did not make the final POP available to the public.

> DEFICIENCY CODE 5307:2-3: Elements missing in POP public participation procedures
>
> SUGGESTED CORRECTIVE ACTION 1: Submit a procedure for making available to the public the amount of Section 5307 funds and evidence of its implementation or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.
>
> SUGGESTED CORRECTIVE ACTION 2: Submit a procedure for developing the proposed POP in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals, along with evidence of its implementation or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.

SUGGESTED CORRECTIVE ACTION 3: Submit a procedure for publishing a proposed POP that provides opportunity to examine the proposed program and to submit comments or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.

SUGGESTED CORRECTIVE ACTION 4: Submit a procedure for providing an opportunity for a public hearing on the proposed POP and evidence of its implementation or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.

SUGGESTED CORRECTIVE ACTION 5: Submit a procedure for providing for the coordination of Section 5307 services with transportation assisted from other Federal sources and evidence of its implementation or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.

SUGGESTED CORRECTIVE ACTION 6: Submit a procedure for considering comments received in preparing the final POP and evidence of its implementation or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.

SUGGESTED CORRECTIVE ACTION 7: Submit a procedure for publishing the final POP along with a copy of the final published POP, or a TIP document stating that the public involvement for the TIP is being used to satisfy Section 5307 public involvement requirements.

GOVERNING DIRECTIVE

23 CFR 450.316 Interested parties, participation, and consultation

(a) The MPO shall develop and use a documented participation plan that defines a process for providing individuals, affected public agencies, representatives of public transportation employees, public ports, freight shippers, providers of freight transportation services, private providers of transportation (including intercity bus operators, employer-based commuting programs, such as carpool program, vanpool program, transit benefit program, parking cash-out program, shuttle program, or telework program), representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities, representatives of the disabled, and other interested parties with reasonable opportunities to be involved in the metropolitan transportation planning process.

(1) The MPO shall develop the participation plan in consultation with all interested parties and shall, at a minimum, describe explicit procedures, strategies, and desired outcomes for:
   (i) Providing adequate public notice of public participation activities and time for public review and comment at key decision points, including a reasonable opportunity to comment on the proposed metropolitan transportation plan and the TIP;
   (ii) Providing timely notice and reasonable access to information about transportation issues and processes;
   (iii) Employing visualization techniques to describe metropolitan transportation plans and TIPs;
   (iv) Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web;
   (v) Holding any public meetings at convenient and accessible locations and times;
   (vi) Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP;
   (vii) Seeking out and considering the needs of those traditionally underserved by existing transportation systems, such as low-income and minority households, who may face challenges accessing employment and other services;

(viii) Providing an additional opportunity for public comment, if the final metropolitan transportation plan or TIP differs significantly from the version that was made available for public comment by the MPO and raises new material issues that interested parties could not reasonably have foreseen from the public involvement efforts;
(ix) Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part; and
(x) Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process.

23 CFR 450.326 (b) Development and content of the transportation improvement program (TIP).

(b) The MPO shall provide all interested parties with a reasonable opportunity to comment on the proposed TIP as required by § 450.316(a). In addition, in nonattainment area TMAs, the MPO shall provide at least one formal public meeting during the TIP development process, which should be addressed through the participation plan described in § 450.316(a). In addition, the MPO shall publish or otherwise make readily available the TIP for public review, including (to the maximum extent practicable) in electronically accessible formats and means, such as the World Wide Web, as described in § 450.316(a).

FTA Circular 9050.1A Chapter V, Section 6 Program of Projects (POP) and Public Participation Requirements

A POP is a list of projects proposed by the Designated Recipient to be funded from the UZA's Section 5307 and 5339(a) apportionment. If more than one recipient will apply for grants for projects in the POP, each grant application must include the portion of the POP that identifies the projects to be funded in the grant. The POP must include a description of each project to be funded from the UZA's apportionment(s), including any suballocation among public transportation providers, total project costs, local share, and Federal share for each project. Section 5307 and 5339(a) projects may be included in the same POP for administrative purposes. Where there are multiple designated recipients or MPOs for a UZA, the POP may be presented in several separate parts for the purpose of programming and public participation….
c. Public Participation Requirements. To receive a grant under Sections 5307 or 5339(a), a recipient must meet certain public participation requirements when developing a POP and must certify compliance with these requirements. The requirements are listed in 49 U.S.C. 5307(b)(1) through (7) and are discussed in the paragraphs below. The recipient may satisfy these requirements in whole or in part through the development of the MPA's TIP and the local coordinated public transit-human services transportation plan. Either the Designated Recipient for a UZA or each individual Direct Recipient must:

(1) Make available to the public information concerning the amount of funds available under the Section 5307 and/or 5339(a) programs and the POP that the recipient(s) propose(s) to undertake with such funds;

(2) Develop a proposed POP for activities the Designated or Direct Recipient(s) will finance, in consultation with interested parties, including private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals for any proposed Section 5307 or 5339(a) projects;

(3) Publish the proposed POP in sufficient detail and in a way that gives affected members of the public, private transportation providers, local elected officials, and representatives of welfare recipients and low-income individuals (for any proposed Section JARC projects) reasonable and adequate opportunity to examine the proposed program and submit comments on the proposed program and on the performance of the recipient;

(4) Provide an opportunity for a public hearing to obtain the views of the public on the proposed POP;

(5) Ensure that the proposed POP provides for the coordination of Section 5307 or 5339 public transportation services with transportation services assisted with other Federal sources;

(6) Consider comments and views received, including those of private transportation providers and human services organizations or transit operators representing the employment-related transportation needs of welfare recipients and low-income individuals for any proposed Section 5307 JARC projects, in preparing the final POP; and

(7) Make the final POP available to the public. Note: Where there are multiple Designated Recipients and/or multiple MPOs, this public participation requirement may be met in several separate processes for the different areas involved.

d. Satisfying the Requirement for Public Participation in Development of the POP using the Transportation Improvement Program Process. FTA has determined that when a recipient follows the procedures of the public involvement process outlined in the FHWA/FTA planning regulations that pertain to the development of the metropolitan TIP, the recipient satisfies the public participation requirements associated with development of the POP that recipients of Section 5307 and 5339(a) funds must meet. A recipient that chooses to integrate the two should coordinate with the MPO and make sure the public knows that the recipient is using the public participation process associated with TIP development to satisfy the public hearing requirements of Section 5307(b). The recipient must ensure the TIP document explicitly states that the public notice of public involvement activities and time established for public review and comment on the TIP will satisfy the POP requirements of the Section 5307 and 5339(a) programs. Furthermore, FTA encourages recipients to include such a reference in the metropolitan planning agreement required between public transportation operators, MPOs, and States, as called for in 23 CFR 450.314. Regulations at 23 CFR 450.316 provide a detailed description of the public participation plan.

5307:3. Does the recipient have a written policy that describes the public comment process on increases in the basic fare structure or implementing a major service reduction that addresses the required elements?

BASIC REQUIREMENT
Recipients are expected to have a written policy that describes the public comment process on increases in the basic fare structure and on major service reductions.

APPLICABILITY
Section 5307 recipients

DETAILED EXPLANATION FOR REVIEWER
Section 5307 recipients certify annually that they have a locally developed process to solicit and consider public comment prior to raising a fare or implementing a major reduction in public transportation service. Recipients are expected to have a written policy that describes the public comment process. The recipient is responsible for defining a major service reduction that addresses fixed route and/or demand response service. The definition(s) can be defined as a standard, such as elimination of a route or reduction of “X” percent of service hours or miles.

The policy should provide an opportunity for a public hearing or meeting for any fare increase or major service reduction. It should describe how such meetings will be conducted and how the results will be considered. A public meeting is not mandatory; however, an opportunity for a public meeting in order to solicit comment must be provided. Some recipients offer an opportunity for public comment for all fare and service changes.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF
Public Comment Process Flexibility

FTA granted recipients flexibility in implementing the Title VI requirements for conducting a fare and equity analysis in noting that temporary service changes in response to an emergency do not rise to the level of a major service change, so a service equity analysis is not required. Similarly, FTA exempts all temporary fare changes enacted as a result of an emergency from the fare equity analysis requirement. However, if a transit agency chooses to make permanent any changes made during an emergency, or if changes last longer than twelve months (service) or six months (fare), then the transit agency must perform a service or fare equity analysis.

Given this flexibility for meeting the Title VI requirements, FTA has granted the same flexibility for meeting the Section 5307 requirements for implementing a public comment process on increases in the basic fare structure and on major service reductions. Consequently, a temporary service reduction as a result of an emergency is by definition not a "major reduction in service" unless it lasts longer than a year or otherwise becomes permanent. Therefore, the recipient must still meet the requirement of a written policy that describes the public comment process, but it does not need to follow that policy unless its service reductions lasted longer than a year.

INDICATORS OF COMPLIANCE

a. *Does the recipient have a written policy?*

b. *Does the recipient's written policy define a "major" service reduction?*

c. *Does the recipient's written policy provide an opportunity for a public hearing or public meeting and describe how the recipient will conduct it?*

d. *Does the written policy describe how the recipient will consider the results of the public hearing or public meeting in the process of changing fares and service?*

e. *If the recipient raised fares or implemented a major service reduction since the last Comprehensive Review, did the recipient:*
   - *Follow its policy for providing an opportunity for a public hearing or public meeting for any fare increase or major service reduction? If not, what was done differently?*
   - *Follow its policy for considering the results of the public hearing or public meeting in the decision-making process? If not, what was done differently?*

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

f. *If the recipient reduced service in response to the COVID-19 public health emergency, was the service reduction "major" as defined by the recipient?*
   - *If the "major" service reduction lasted more than 12 months, did the recipient implement its public comment process?*

INSTRUCTIONS FOR REVIEWER
Obtain and review the written policy to determine if it defines a major service reduction, provides an opportunity for a public hearing or meeting, describes how the recipient will conduct the public hearing or meeting, and describes how the recipient will consider the results of the public hearing or meeting in the process of changing fares and service.

Obtain a list of fare increases and major service reductions implemented since the last review with date of implementation. Review the recipient's website to determine if a fare increase or major service reduction was implemented over the review period. Compare current fares with the fares described in the recipient's previous review documentation. Compare the route structure and service described on the website with that discussed in prior review documentation. Review the Title VI section of this manual to obtain information on any fare increases or service reductions implemented since the last review. Note effective dates and the dates of public meetings, if any, to discuss the changes. Determine if an opportunity for a public hearing or meeting was provided, either advertised on the website or submitted as part of the document request in the Title VI section of this guide. Review internal working documents (transcripts from public hearings, board minutes, staff summaries) to determine if the recipient followed its policy for considering the results of the meetings in the decision-making process. Onsite, discuss the process or any follow-up items with the recipient.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Review the recipient's website and discuss with the recipient if it instituted a major service change due to the COVID-19 public health emergency. Review the recipient's website and inquire of the recipient if the major service change was returned to the pre-COVID-19 level. If the service change lasted more than one year, determine if the recipient implemented its public comment process on major service reductions. Verify that the information provided by the recipient in response to the indicators of compliance in this section with the Title VI section, question TVI8.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have a written policy that describes the public comment process on increases in the basic fare structure or implementing a major service reduction.

DEFICIENCY CODE 5307:3-1: No written policy for public comment

SUGGESTED CORRECTIVE ACTION: Submit a written policy that describes the public comment process on increases in the basic fare structure or implementing a major service reduction.

The recipient is deficient if its policy does not 1) define a major service reduction, 2) provide an opportunity for a public hearing or meeting, 3) describe how it will conduct a public hearing or meeting and/or describe how the recipient will conduct such hearings or meetings, or 4) explain how the recipient will consider public comments.

DEFICIENCY CODE 5307:3-2: Public comment policy missing required elements

SUGGESTED CORRECTIVE ACTION: Submit a public comment policy that was amended to address the missing element(s) for soliciting and considering public comments prior to a fare increase or major service reduction.

The recipient is deficient if it did not follow its policy for 1) soliciting public comment and/or 2) considering the results of public hearings or meetings in the implementation of the final plan.

DEFICIENCY CODE 5307:3-3: Public comment process not followed

SUGGESTED CORRECTIVE ACTION(S): 1) If the recipient has reverted back to its previous condition that pre-existed the fare increase or major service reduction, for the next fare increase or major service reduction, submit documentation that it followed its policy for soliciting public comment and considering the results of public meetings or hearings in the implementation of the final plan, or 2) If the recipient has not reverted back to its previous condition, submit documentation that it has followed its policy for soliciting public comment and considering the results of the public meetings or hearings in the implementation of the final plan for the sustained fare increase or major service reduction.

GOVERNING DIRECTIVE
FTA Circular 9050.1A, Chapter VI, Program Management and Administrative Requirements

2.I.(1) The recipient is expected to have a written policy that describes the public comment process on increases in the basic fare structure and on major service reductions. The recipient is responsible for defining a major service reduction. The policy should provide an opportunity for a public hearing or public meeting for any fare increase or major service reduction and should describe how the recipient will conduct such meetings and how the recipient will consider the results of such meetings in the process of changing fares and service. A public meeting is not mandatory; however, the recipient must provide an opportunity for a public meeting in order to solicit comment.

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CR2

Under FTA's Title VI Circular 4702.1B, transit providers that operate 50-or-more fixed route vehicles in peak service and are located in an urbanized area (UZA) with a population of 200,000 or more, must perform a service equity analysis whenever they make a major service change. The service equity analysis evaluates the impacts of the proposed service changes on Title VI-protected populations and low-income populations. Temporary service changes in response to an emergency do not rise to the level of a major service change, so a service equity analysis is not required. Similarly, FTA exempts all temporary fare changes enacted as a result of an emergency from the fare equity analysis requirement. However, if a transit agency chooses to make permanent any changes made during an emergency, or if changes last longer than 12 months (service) or 6 months (fare), then the transit agency must perform a service or fare equity analysis.

FTA does expect that all transit agencies will take reasonable measures to implement temporary service or fare changes equitably to prevent unintentional discrimination. FTA does not require a transit agency to document this process, get board approval prior to implementing changes, or share documentation on the changes with FTA, but FTA recommends that transit agencies document the rationale for specific service reductions, as well as steps taken to ensure equitable reductions in service, in the event someone files a complaint.

Changes directly or indirectly related to an emergency, including ridership and budget reductions, that continue longer than 12 months (service) or 6 months (fare), or are planned in advance as permanent require an equity analysis. As outlined in the Title VI Circular Chapter IV, Section 7, any major service change that lasts longer than 12 months is considered permanent and requires a service equity analysis. This timeframe applies to major service changes initially enacted in response to the COVID-19 public health emergency. Similarly, any fare change - even if initially enacted in response to an emergency - that lasts longer than 6 months is considered permanent and requires a fare equity analysis. Further, transit agencies must prepare an equity analysis during the planning process for planned major service changes or fare changes consistent with the Circular.

5307:4. For Section 5307-funded fixed-route service, does the recipient charge no more than half the peak-hour fare for seniors, persons with disabilities, and individuals presenting Medicare cards during off-peak hours?

BASIC REQUIREMENT
For fixed-route service, fares charged to seniors, persons with disabilities or an individual presenting a Medicare card during off peak hours must not be more than one half the peak hour fares.

APPLICABILITY
Recipients with 5307-funded fixed-route service

DETAILED EXPLANATION FOR REVIEWER
Fares charged to seniors, persons with disabilities, and Medicare cardholders during off-peak hours for Section 5307-funded fixed-route service must not be more than half the fare charged during peak hours. If there are services such as neighborhood circulator and shuttle services with fares that are different from the recipient's fare for its regular local service, separate half fares are needed for each type of service. The half fare should take into account zone and transfer charges. Recipients are only required to offer a half fare on the single trip base fare when paid in cash or using media that pay the fare of the single trip (smart cards, apps). They are not required to offer half-fare versions of multi-trip passes or other fare media.

The requirement is applicable to fixed-route service only including:

- All fixed-route services and non-charter service to sporting events that operate in both peak and off-peak hours and use or involve facilities and equipment financed with Section 5307 funds, whether the services are provided by the recipient directly, by a contractor, by a subrecipient, or by another entity that leases facilities and/or equipment from the recipient
- Any express and commuter service that operates beyond peak hours
- Fixed-route services for which the recipient has not defined peak hours
- Fixed-route services that operate with reduced fares in both the peak and off-peak

This requirement is not applicable to:

- Demand responsive services, including route deviation services
- Services that operate only during peak hours, such as express and commuter service
- Services that operate only in the off-peak hours (e.g., lunchtime circulators and non-charter weekend service to sporting events)
- Services funded with other FTA assistance that do not use Section 5307-funded equipment or are not operated out of Section 5307-funded facilities

A "senior" is defined by FTA as "an individual who is 65 years of age or older." Recipients are permitted to use a definition that extends this fare to younger (e.g., 62 and over) persons. (FTA Circular 9050.1A)

Persons with disabilities are defined by FTA as persons "who by reason of illness, injury, age, congenital malfunction, or other incapacity or temporary or permanent disability (including any individual who is a wheelchair user or has semi-ambulatory capabilities), cannot use effectively, without special facilities, planning, or design, mass transportation service or a mass transportation facility." (49 CFR 609.3). Medicare is available for people age 65 or older, younger people with disabilities, and people with end stage renal disease (permanent kidney failure requiring dialysis or transplant).

The recipient determines its peak hours. Peak hours can be seasonal. If the recipient determines it is not large enough, or demand is not strong enough, to identify or justify peak hour service, then its entire service should be defined as "off peak." In this instance, the recipient has two options:

1. Review ridership data and determine the peak ridership hours and develop a policy for half fare, or

2. Choose not to determine a peak period and offer half fares during all hours.

The half-fare program, as applied, may require passengers to show proof of eligibility when they pay their fare in order to receive the half fare. Examples of proof of eligibility include a driver's license, Medicare card, special identification card, and Americans with Disabilities Act (ADA) complementary paratransit eligibility card.

Whether or not a recipient who issues its own special identification card as the sole basis for paying the half fare, a Medicare card must be accepted as proof of eligibility. The recipient may request a photo ID to confirm identity if a passenger uses a Medicare card to confirm identity. Obtaining a special identification card must be relatively easy. For example, though not strictly prohibited, requiring individuals to travel to a

single office, which may be inconveniently located, is not consistent with the intent of this requirement. The location(s) should be accessible by transit.

INDICATORS OF COMPLIANCE

a. *What is the full peak-hour fare? What is the fare charged to seniors, persons with disabilities, and individuals presenting a Medicare card during off-peak hours?*

b. *How does the recipient define peak and off-peak hours? During what hours are reduced fares available?*

c. *Are any Section 5307-funded fixed-route services that operate during off-peak hours not included in the half fare program?*

d. *What proof of eligibility is required for seniors, persons with disabilities, and individuals with a Medicare card at time of boarding?*

e. *Where can a rider obtain the agency-issued identification? Is the location(s) accessible by transit?*

INSTRUCTIONS FOR REVIEWER

Review the recipient's website and fare information to determine if half fares are offered to seniors, persons with disabilities, and individuals presenting a Medicare card. Ensure that the half fare is not more than half the full peak hour fare, including zone or transfer charges.

Review the recipient's website, fare information, system maps, and half-fare/special identification card application to determine if information on the half-fare program is made available to the public. Confirm that the half fare is at least offered during off-peak hours.

Review the recipient's website for the description of the half-fare program and the requirements for participation.

If the recipient requires a special identification card in order to receive the half-fare:

- Review the website, fare information, system maps, and half-fare/special identification card application to determine if information on how to obtain and eligibility for the card are made available to the public.
- Review the application procedures and requirements to verify that a Medicare card is considered sufficient proof of eligibility. The recipient may require proof of identity and validation of the status of the card at the time the application is presented.
- Verify that physical locations to receive special identification cards are accessible by transit.
- Review any complaints about the special identification card procedures to determine what barriers, if any, there are to obtaining the card.
- On-site, discuss the special identification card process with the recipient to ensure the process is properly implemented.

If the recipient requires passengers to show proof of eligibility when they pay their fare in order to receive the half fare, but does not require special identification cards, review the documentation required for proof of eligibility. Examples include a driver's license, Medicare card, and ADA complementary paratransit eligibility card. Where the documentation does not provide proof of identity, the recipient may require photo identification, provided the recipient is not asking for further proof of eligibility.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it charges more than one half the peak hour fares during off-peak hours on any applicable service.

DEFICIENCY CODE 5307:4-1: Half fare not offered on applicable services

SUGGESTED CORRECTIVE ACTION: Submit a plan and schedule for implementing a half-fare program and/or extending half fares to all Section 5307-funded services, along with documentation that it has implemented the program. Provide evidence that such plan is being properly executed in relation to all instances of non-compliance.

The recipient is deficient if it does not make available to the public information on the half-fare program, eligibility requirements, and/or how to apply for a special identification card.

DEFICIENCY CODE 5307:4-2: Half-fare public information not provided

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has informed the public of its half-fare program, eligibility requirements, and/or how to apply for a special identification card.

The recipient is deficient if it does not accept a Medicare card as proof of eligibility.

DEFICIENCY CODE 5307:4-3: Medicare card not accepted for half-fare eligibility

SUGGESTED CORRECTIVE ACTION: Submit a plan to accept the Medicare card as proof of eligibility for the half fare, along with evidence of its implementation.

GOVERNING DIRECTIVE
49 U.S.C 5307(c) Grant Recipient Requirements (1)(D)

(c)Grant Recipient Requirements.—A recipient may receive a grant in a fiscal year only if—

(1) the recipient, within the time the Secretary prescribes, submits a final program of projects prepared under subsection (b) of this section and a certification for that fiscal year that the recipient (including a person receiving amounts from a Governor under this section)—

(D) will ensure that elderly and handicapped individuals, or an individual presenting a Medicare card issued to that individual under title II or XVIII of the Social Security Act (42 U.S.C. 401 et seq., 1395 et seq.), will be charged during non-peak hours for transportation using or involving a facility or equipment of a project financed under this section not more than 50 percent of the peak hour fare

49 CFR 609.3 Definitions

Elderly and handicapped person means those individuals who, by reason of illness, injury, age, congenital malfunction, or other permanent or temporary incapacity or disability, including those who are non-ambulatory wheelchair-bound and those with semi-ambulatory capabilities, are unable without special facilities or special planning or design to utilize mass transportation facilities and services as effectively as persons who are not so affected.

49 CFR 609.23 Reduced Fare

Applicants for financial assistance under section 5307 of the Federal transit laws (49 U.S.C. Chapter 53), must, as a condition to receiving such assistance, give satisfactory assurances, in such manner and form as may be required by the Federal Transit Administrator and in accordance with such terms and conditions as the Federal Transit Administrator may prescribe, that the rates charged elderly and handicapped persons during non-peak hours for transportation utilizing or involving the facilities and equipment of the project financed with assistance under this section will not exceed one-half of the rates

generally applicable to other persons at peak hours, whether the operation of such facilities and equipment is by the applicant or is by another entity under lease or otherwise.
FTA Circular 9050.1A, Chapter I, Introduction and Background, Section 4 Definitions
73. Senior. A senior is an individual who is 65 years of age or older.

FTA Circular 9050.1A, Chapter VI, Program Management and Administrative Requirements, Section 2 Certifications Required for Formula Grant Programs in Urbanized Areas

f. Fares Charged to Seniors and Persons with Disabilities During Nonpeak Hours.
For transportation service that uses or involves a facility or equipment or project financed under Section 5307 or 5339(a), a recipient must certify that the fares charged to seniors, individuals with disabilities, or individuals presenting a Medicare card during nonpeak hours are not more than 50 percent of the peak-hour fare, regardless of whether the service is provided by the recipient or by another entity under contract, lease, or other arrangement.

(1) Applicability to Services Provided. This requirement applies only to fixed-route service, including fixed-route services and non-charter services to special events that operate in both peak and off-peak hours, any express or commuter services that operate beyond peak hours, fixed-route services for which the recipient has not defined peak hours, and fixed-route services that operate with reduced fares during both peak and off-peak periods. This requirement is not applicable to demand-responsive services, services that operate only during peak hours, services that operate only in the off-peak hours, or services funded with other FTA assistance that do not use Section 5307 or 5339(a)-funded equipment or are not operated out of Section 5307 or 5339(a)-funded facilities.

(2) Peak vs. Off-Peak Service. For the purposes of administering this requirement, if a recipient determines it is not large enough, or that demand is not strong enough, to identify or justify a difference between peak-hour and nonpeak service, then its entire service should be defined as nonpeak. In this instance, the recipient in question has two options: (1) review ridership data and determine the system's peak ridership hours and develop a policy for half-fare or (2) choose not to determine a peak period and consider all operational time "non-peak," and therefore, entitling seniors, individuals with disabilities, or individuals presenting a Medicare card to the half fare at all operational times.

(3) Applicability to Fare Structures. Recipients are only required to offer a half fare on the single-trip base fare when paid in cash or using media that pay the fare of the single trip (smart cards or apps). Recipients are not required to offer half-fare versions of multi-trip passes and other multi-trip fare media.

(4) Medicare Card Eligibility. Because a Medicare card does not constitute proof of an individual's identity, it is reasonable for a transit agency to request confirmation of the individual's identity, either through secondary photo identification or by using a photographic identification card issued by the transit agency. It is also reasonable for a transit agency to verify the validity of the Medicare card being presented. In facilitating the application process for half-fare eligibility, a transit agency may request that the applicant validate the status of the card at the time the half-fare application is presented.

Appendix A to Part 609 - Elderly and Handicapped

9. *Question:* Can the operator require that elderly and handicapped persons come to a central office to register for an off-peak half-fare program?

Answer: FTA strongly encourages operators to develop procedures which maximize the availability of off-peak half-fares to eligible individuals. Requiring individuals to travel to a single office which may be inconveniently located is not consistent with this policy, although it is not strictly prohibited. FTA reserves the right to review such local requirements on a case-by-case basis.

5307:5. Does the recipient ensure that subrecipients, contractors, and lessees that receive Section 5307 funds or use Section 5307-funded property comply with Section 5307 half-fare and public-comment requirements?

BASIC REQUIREMENT
The recipient must ensure that subrecipients, contractors, and lessees that receive Section 5307 funds or use Section 5307-funded property comply with Section 5307 half-fare and public-comment requirements.

APPLICABILITY
Section 5307 recipients with subrecipients, contractors, or lessees that receive Section 5307 funds or use Section 5307-funded property

DETAILED EXPLANATION FOR REVIEWER
The recipient must ensure that subrecipients, contractors, and lessees that receive Section 5307 funds or use Section 5307-funded property have a process that is followed for obtaining and considering public comment for fare increases and major service reductions. Either the recipient or its subrecipients, contractors, or lessees are expected to have a written policy that describes the public comment process.

The recipient is also responsible for ensuring that these subrecipients, contractors, and lessees comply with half-fare requirements where applicable. The oversight program should ensure that:

- A half fare is offered for applicable services during off peak hours
- The definition of off-peak hours is reasonable
- Identification requirements allow eligible persons to obtain the half fare, including ensuring that a Medicare card is accepted as proof of eligibility

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure that contractors and lessees comply with half-fare and public comment requirements?*

b. *How does the recipient ensure that Section 5307 subrecipients comply with half-fare and public comment requirements?*

INSTRUCTIONS FOR REVIEWER
Review sample subrecipient agreements, contracts, and lease agreements for a discussion of the direction given to subrecipients, contractors, or lessees regarding compliance with half-fare and public-comment requirements. Review the recipient's oversight procedures and oversight materials (i.e., questionnaires and checklists) for evidence that the recipient ensures compliance with half-fare and public-comment requirements.

During the site visit to the recipient, review the oversight files for the entities to be visited to determine if the recipient addresses the half-fare and public-comment requirements and followed up on any findings. Determine if the recipient reviewed the public comment policies for the required elements. If not, review the policies for the required elements.

Prior to the site visit to the entities, review the websites for the subrecipient, contractor, and/or lessee to be visited for information on the half-fare program. During the site visits to the entities, discuss the half-fare program and public comment policy and their implementation. Follow up with the recipient for information if not available on the subrecipient's, contractor's or lessee's website(s).

If the subrecipient, contractor, or lessee has fare and service policies that are different from the recipient, review the public comment policies for fare increases and major service reductions for the subrecipient, contractor, and lessee to be visited to determine if they address the required items.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not ensure that subrecipients, contractors, and lessees that operate Section 5307 service comply with public comment requirements.

DEFICIENCY CODE 5307:5-1: Insufficient oversight of fare increases and major service reductions

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients, contractors, and lessees comply with public comment requirements and evidence of their implementation.

The recipient is deficient if it does not ensure that subrecipients, contractors, and lessees that operate fixed-route service comply with the Section 5307 half-fare requirements.

DEFICIENCY CODE 5307:5-2: Insufficient oversight of half fare

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that subrecipients, contractors, and lessees comply with half-fare requirements and evidence of their implementation.

GOVERNING DIRECTIVE
2 CFR 200.318(b) Oversight of Contractors

Recipients and subrecipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. See also § 200.501(h).

2 CFR 200.332 Requirements for pass-through entities

A pass-through entity must:

(e)

Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through

entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

FTA Circular 5010.1F, Chapter 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. FTA monitors awards and the federally assisted projects thereunder to confirm that recipients establish and follow procedures that comply with Federal requirements and the terms and conditions outlined. a. Recipient Role. Recipients are required to apply for and manage FTA awards in the Transit Award Management System (TrAMS). In addition to FTA's responsibility to monitor FTA awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities, including those conducted by subrecipients, to ensure compliance with applicable Federal requirements. This includes the administration and management of the award and any funds "passed through" by the recipient to a subrecipient in compliance with Federal regulations, the grant or cooperative agreement, and applicable FTA circulars . Annual, independent, organization-wide audits, 2 CFR 200, subpart F, "Audits," audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's compliance with Federal requirements. (See Chapter V, "FTA Oversight," of this circular.) The recipient's responsibilities include but are not limited to the following actions: (1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(4) Provide administrative and management support for project implementation;

(5) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(6) Ensure conformity to grant agreements and cooperative agreements, applicable statutes, codes, ordinances, and safety standards;

(9) Ensure compliance with FTA and Federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- If the recipient is located in a designated TMA (population 200,000 or more), when was the last Planning Certification Review completed by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA)?
    - Did the recipient participate in the review?
    - Are there any outstanding corrective actions from the Planning Certification Review that pertain to the recipient?

- If the recipient is not in a TMA (area with population under 200,000), are there any outstanding corrective actions from the metropolitan planning or statewide planning findings that pertain to the recipient?

- Does the recipient's definition of major service reduction appear reasonable? Is it consistent with the definition of major service changes in the recipient's Title VI plan?

- How does the recipient make available to the public information on the half-fare program?

- Does the recipient appear to make it difficult to receive a half-fare special identification card?

- Any other potential issues or concerns about the recipient's public involvement/comment processes, half fare, or procedures for overseeing subrecipient compliance with these requirements?

REFERENCES

1. 23 U.S.C. Section 134, Federal Aid Highways, "Metropolitan Transportation Planning"
2. 49 U.S.C. Chapter 53, Federal Transit Laws
3. 2 CFRs 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
4. 23 CFR Part 450, "Planning Assistance and Standards"
5. FTA Circular 9050.1A, "Urbanized Areas Formula Grant Program Guidance"

USEFUL WEB LINKS

1. Major Policy and Planning Issues
2. Planning Index: A to Z
3. Planning Certification Reviews
4. Transportation Planning Capacity Building
5. National Transit Institute (NTI) Courses
6. Coronavirus Aid, Relief, and Economic Security Act
7. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
8. Notice of Concurrence
9. Emergency Relief rule

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20. SECTION 5310 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA
Recipients must expend Section 5310 funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all subrecipient leases of Section 5310-funded vehicles. Leases of Section 5310-funded vehicles must include required terms and conditions. Either the recipient or subrecipient must hold title to the leased vehicles.

QUESTIONS TO BE EXAMINED
1. Does the distribution of Section 5310 funds meet program requirements?

2. Are Section 5310 apportionments applied to eligible projects and awarded to subrecipients eligible to receive this funding?

3. Are all Section 5310 projects included in a locally developed, coordinated public transit-human service transportation plan?

4. Are all Section 5310 funds used for services that meet the specific needs of seniors and individuals with disabilities?

5. Does the recipient comply with Section 5310 vehicle lease requirements?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- State correspondence approving a public body to coordinate services for seniors and persons with disabilities, if applicable
- Certification documentation that no nonprofits are readily available, if applicable
- Sample Section 5310 vehicle lease

Recipient Follow-up
- Evidence of consultation with responsible local officials, publicly owned operators of public transportation, private transportation providers, nonprofit transportation providers, human service providers, seniors, individuals with disabilities, and other members of the public
- For instances of shared designation or if Section 5310 funds are transferred to Section 5311 or 5307 recipients to apply for directly, documentation that the 55 percent requirement is met for the apportionment
- Coordinated plans, if not available on recipient website
- If service is operated directly, ridership/operating reports monitoring incidental service or a day's worth of driver manifests
- Documentation that a lease was agreed to in writing.

5310:1. Does the distribution of Section 5310 funds meet program requirements?

BASIC REQUIREMENT
Section 5310 funds must be used in large urbanized, small urbanized, and rural areas as apportioned unless certified by the Governor after consultation with stakeholders.

APPLICABILITY
State recipients of Section 5310 funds except insular areas

DETAILED EXPLANATION FOR REVIEWER
States are the designated recipients for Section 5310 funds in small urbanized and rural areas. A state or another entity (e.g., transit provider or metropolitan planning organization (MPO)) may be the designated recipient for a large urbanized area. States must use funds apportioned to an area (rural areas, small urban areas, and each large urbanized area) as apportioned.

A state may use funds apportioned for small urbanized and rural areas for projects serving another area of the state if the governor of the state certifies that all of the objectives of the Section 5310 program are being met in the specified areas. For example, if all objectives of the Section 5310 program are being met in rural areas, funds designated for rural areas may be transferred to an urbanized area. A state may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large urbanized areas may not be transferred to other areas.

INDICATORS OF COMPLIANCE

a. *How are funds apportioned to large urbanized, small urbanized, and rural areas tracked so that they are awarded to projects in the appropriate areas?*

b. *In the area(s) from which funds were transferred, were responsible local officials, publicly owned operators of public transportation, and nonprofit providers consulted?*

INSTRUCTIONS FOR REVIEWER
Review the state management plan to determine if the state transfers funds.

Review programs of projects in TrAMS for evidence of how funds are tracked by apportionment. If necessary, ask the state to provide documentation of how funds are tracked.

Review Section 5310 awards in TrAMS for governor certifications regarding fund transfers. If funds were transferred, review evidence of consultation with responsible local officials, publicly owned operators of public transportation, and nonprofit transportation providers. Ensure that the state has not transferred funds from a large urbanized area.

POTENTIAL DEFICIENCY DETERMINATIONS
The state is deficient if it does not track Section 5310 funds by apportionment area.

> DEFICIENCY CODE 5310:1-1: Section 5310 projects not tracked by apportionment area
>
> SUGGESTED CORRECTIVE ACTION: Submit procedures for tracking Section 5310 funds by rural, small urban, and each large urbanized area.

The state is deficient if the governor did not certify that the objectives of the Section 5310 program are being met in the area(s) from which funds are transferred. The state is deficient if it did not consult with responsible local officials, publicly owned operators of public transportation, and nonprofit providers before transferring funds.

> DEFICIENCY CODE 5310:1-2: Section 5310 funds transferred without governor's certification
>
> SUGGESTED CORRECTIVE ACTION 1: Submit a governor's certification for transferred funds and procedures for obtaining the governor's certification when funds are transferred.
>
> SUGGESTED CORRECTIVE ACTION 2: Submit procedures for consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers before transferring funds between rural and small urbanized areas or to large urbanized areas.

GOVERNING DIRECTIVE
FTA Circular 9070.1H, Chapter III General Program Information

3. TRANSFER OF APPORTIONMENTS

b. Transfer to Other Areas within the Program. A state may use funds apportioned for small urbanized and rural areas for projects serving another area of the state if the Governor of the state certifies that all of the objectives of the Section 5310 program are being met in the specified areas. For example, if all objectives of the Section 5310 program are being met in rural areas, funds designated for rural areas may be transferred to urbanized areas of less than 200,000 in population. Funds apportioned to small urbanized and rural areas may also be transferred for use anywhere in the state, including large urbanized areas, if the state has established a statewide program for meeting the objectives of the Section 5310 program. A recipient may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large UZAs may not be transferred to other areas.

5310:2. Are Section 5310 apportionments applied to eligible projects and awarded to subrecipients eligible to receive this funding?

BASIC REQUIREMENT
At least 55 percent of Section 5310 funds must be used for "traditional" projects. Subrecipients of Section 5310 "traditional" funds must be private nonprofit organizations or approved or certified governmental authorities. Funding must be spent on eligible projects that meet the specific needs of seniors and individuals with disabilities.

APPLICABILITY
Designated recipients of Section 5310 funds

DETAILED EXPLANATION FOR REVIEWER
Not less than 55 percent of apportionment amounts shall be available for traditional Section 5310 projects – those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. The requirement applies to each apportionment – rural, small urban, and each large urbanized area. The 55 percent is a floor. A recipient may use more of its Section 5310 funds for these capital projects but may not use less. State administration funds are not counted toward meeting the 55 percent.

Three categories of subrecipients are eligible for these funds:

- A private nonprofit organization; or
- A state or local governmental authority that:
    1. is approved by a state to coordinate services for seniors and individuals with disabilities; or
    2. certifies that there are no nonprofit organizations readily available in the area to provide the service.

Designation in a large urbanized area may be shared. For example, a state may be the designated recipient for "traditional" funds while the large urbanized area recipient may be designated for "other" funds. The 55 percent requirement applies to the apportionment, not to the POP of each shared

designee. Therefore, the designated recipients should coordinate to ensure that the 55 percent requirement is met.

Also, designated recipients may allow recipients that receive direct awards under sections 5307 or 5311 (Indian tribes) to apply for Section 5310 funds directly. In these instances, a designated recipient must be able to demonstrate that it meets the requirement for the apportionments, including projects not included in its POPs.

The requirement to spend at least 55 percent on "traditional" capital projects do not apply to funds flexed (transferred) into the program.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Traditional Projects

The CRRSAA requires that all CARES Act funds that remain unobligated as of December 27, 2020, as well as all CRRSAA funds shall, to the maximum extent possible, be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies to FTA that the recipient has not furloughed any employees. Recipients are responsible for ensuring that payments of CARES Act and CRRSAA funds to subrecipients are consistent with this requirement. (CA1) All funding provided to Section 5310 by the CRRSAA may be used for any expenses otherwise eligible in the Section 5310 program, including operating expenses. (CA30). This flexibility also extends to ARP funding administered under Section 5310 (CA48).

Local Match

The CRRSAA waives the requirement for local share for previously apportioned (FY21 and prior) unobligated Section 5310 funds. Any unobligated Section 5310 funds may be obligated at a 100-percent Federal share. These funds are specifically Section 5310 program funds rather than funding allocated under the CRRSAA program. The use of these Section 5310 formula funds must comply with all Section 5310 requirements, including the 55 percent minimum expenditure for "traditional" capital projects, and inclusion of projects in the coordinated plan. (CA31)

INDICATORS OF COMPLIANCE

a. *Is at least 55 percent of the Section 5310 apportionments in each area applied to "traditional" Section 5310 capital projects? (If the recipient funds only traditional Section 5310 projects, then skip the below table)*

Traditional Projects **Apportionment: (Rural, Small Urban, Large Urbanized Area)**				
Federal fiscal year:	**20XX**	**20XX**	**20XX**	**20XX**
Apportionment:	-	-	-	-
Award number	-	-	-	-
Award number	-	-	-	-
Award number	-	-	-	-
Total projects	-	-	-	-

Traditional Projects Apportionment: (Rural, Small Urban, Large Urbanized Area)				
Percentage of apportionment	-	-	-	-
55 percent met? (yes or no)	-	-	-	-

b. If "traditional" projects are carried out by governmental authorities, are they approved by the state to coordinate services for seniors and individuals with disabilities OR have certified annually or at least with each award that there are no nonprofit corporations readily available in the area to provide the service?

c. Are all awards (both traditional and non-traditional) made to eligible subrecipients for eligible projects?

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

For CRRSAA and ARP awards in Section 5310, complete the following chart,

Traditional Projects: Supplemental Funds Apportionment: Rural, Small Urban, Large Urbanized Area		
Apportionment:	CRRSAA	ARP
Award Number	-	-
Award Number	-	-
Total Projects	-	-
Percentage of apportionment dedicated to operating expenses	-	-

d. For any awards that include funding for activities other than payroll and other operating expenses, did recipient certify that it had not furloughed any employees since March 27, 2020? Is there any indication to contradict such a certification?

e. If recipient passed funding through to a private provider of public transportation, did the operator either 1) meet all eligibility requirements as a recipient of Section 5307, Section 5310, or Section 5311? Or 2) access the CRRSAA funding through an existing designated or direct recipient of Section 5311 or Section 5310 funding?

INSTRUCTIONS FOR REVIEWER

Review the state/program management plan and subrecipient applications to verify subrecipient and project eligibility for Section 5310 funding. Many states have continued to fund "traditional" capital projects only. If the state funds "traditional" capital projects only, skip completing the above table.

In cases where the recipient programs “traditional” and “other” projects, review the POP uploaded with the award application to see if it lists “traditional” and “other” projects separately by apportionment area and to determine which projects are classified as “traditional” and the amount of funds programmed for “traditional” projects. For the period covered by the review, complete the table above for each apportionment (rural, small urban, each large urbanized area) to document that the 55 percent floor is met. Onsite, follow up with the recipient, if necessary.

Note: The requirement applies to the apportionment, not the award. An award may have multiple years of funding. The account classification code will indicate the year of the funds and whether the funds are for rural, small urban, or large urbanized areas.

Review the state/program management plan to determine if designation is shared and with whom. In these instances, discuss with the recipient how funds are split and how the 55 percent for “traditional” capital projects is met. If the recipient does not meet the 55 percent requirement, obtain from the recipient evidence that when the apportionment is viewed in its entirety the requirement is met.

Review the state/program management plan to determine if the recipient allows direct recipients of Sections 5307 or 5311 to apply for Section 5310 funds directly. In these instances, the POP will only include the funds applied for directly by the recipient. Obtain from the recipient evidence that when the apportionment is viewed in its entirety, including any award made to subrecipients who apply for Section 5310 funds directly, the 55 percent requirement is met.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

Traditional Projects

Under CRRSAA and ARP, any funding for Section 5310 activities must prioritize operating expenses, unless the recipient certifies that it has not furloughed any employees since March 27, 2020. The FTA has defined operating expenses in the Frequently Asked Questions section of its website for CARES, CRRSAA, and ARP, as follows:

> Funds available under the CARES Act, CRRSAA, and ARP are available for all operating activities (net fare revenues) that occur on or after January 20, 2020. All three Acts provide funds for eligible expenses under Sections 5307 and 5311, but only CRRSAA and ARP provide funds for eligible expenses under Section 5310.
>
> In general, operating expenses are those costs necessary to operate, maintain, and manage a public transportation system. Operating expenses usually include such costs as driver salaries, fuel, and items having a useful life of less than one year, including personal protective equipment and cleaning supplies. Preventive maintenance is considered an operating expense for the purposes of CARES Act, CRRSAA, and ARP reimbursement. See Chapter IV of the Urbanized Area Formula Program circular, Chapter III of the Enhanced Mobility of Seniors and Individuals with Disabilities Program circular or Chapter III of the Formula Grants for Rural Areas circular for more information on eligible operating expenses.
>
> CARES Act, CRRSAA, and ARP funding can be used for administrative leave, such as leave for employees due to reductions in service, leave required for a quarantined worker, or and leave for an employee to receive the COVID-19 vaccine, including reasonable time for the employee to recover from potential side effects.

Complete the chart of CRRSAA and ARP awards, noting the percentage of projects included that do not fit within the definition of operating expenses. If there are projects that are not operating in nature, review the recipient’s certification that it had not furloughed any employees after March 27, 2020. Note whether that certification does not agree with your knowledge of the recipient’s operations during the public health

emergency. Please note that, under FAQ CA42, a recipient can also certify that it is not currently furloughing any employees AND “to the maximum extent possible” CRRSAA funds will be used for operating expenses.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if less than 55 percent of funds are used by eligible recipients for “traditional” capital projects.

DEFICIENCY CODE 5310:2-1: 5310 traditional project requirements not met

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that at least 55 percent of Section 5310 funds are expended on “traditional” Section 5310 capital projects undertaken by eligible subrecipients.

The recipient is deficient if it does not have the appropriate documentation for governmental authorities receiving “traditional” Section 5310 assistance.

DEFICIENCY CODE 5310:2-2: No documentation for governmental authorities

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that governmental authorities that receive “traditional” Section 5310 capital funds are eligible.

The recipient is deficient if it does not direct all CRRSAA and ARP funding to payroll and operations of public transit or include a certification either that it has not furloughed any employees after March 27, 2020 or that it is not currently furloughing any employees and will dedicate CRRSAA and ARP funds for operating expenses “to the maximum extent possible.”

DEFICIENCY CODE 5310:2-3: Lack of furlough certification

SUGGESTED CORRECTIVE ACTION: Submit evidence that it did not furlough any employees while using supplemental funding for non-operating expenses.

The recipient is deficient if it awards funding to ineligible subrecipients or awards funding for ineligible projects.

DEFICIENCY CODE 5310:2-4: Awards made to ineligible projects or subrecipients

SUGGESTED CORRECTIVE ACTION: Submit procedures for evaluating the eligibility of awards made to subrecipients. If ineligible costs were incurred, the recipient must work with regional office to determine if funds are due back to the FTA

GOVERNING DIRECTIVE
FTA Circular 9070.1H, Chapter III General Program Information

5. ELIGIBLE SUBRECIPIENTS FOR TRADITIONAL SECTION 5310 PROJECTS. Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Further, the law provides that, for these projects, a recipient may allocate the funds apportioned to it to:

   a. A private nonprofit organization; or

   b. A state or local governmental authority that:

(1) is approved by a state to coordinate services for seniors and individuals with disabilities; or

(2) certifies that there are no nonprofit organizations readily available in the area to provide the service.

These provisions, found at 49 U.S.C. 5310(b)(1) and (b)(2), essentially maintain the status quo for traditional Section 5310 projects.

Governmental authorities eligible to apply for Section 5310 funds as "coordinators of services for seniors and individuals with disabilities" are those designated by the state to coordinate human service activities in a particular area. Examples of such eligible governmental authorities are a county agency on aging or a public transit provider which the state has identified as the lead agency to coordinate transportation services funded by multiple federal or state human service programs.

3. TRANSFER OF APPORTIONMENTS.

c. Transfer of FHWA Flexible Funds.
Flexible funds from the FHWA may be transferred to the Section 5310 program for use by the recipient. The funds will be treated under the Section 5310 program requirements, with the exception of the local match and the minimum requirement that 55 percent be spent on traditional Section 5310 projects.
The FHWA funds will maintain the FHWA eligible match, including the application of the sliding scale for a higher Federal share. The State or UZA must obligate the flexed funds during the Federal transit program period of availability.

FTA Circular 9070.1H, Chapter IV Eligible Projects and Requirements

1.ELIGIBLE ACTIVITIES. Section 5310 funds are available for capital and operating expenses to support the provision of transportation services to meet the specific needs of seniors and individuals with disabilities.

Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Notably, this 55 percent is a floor, not a ceiling—recipients may use more than 55 percent of their apportionment for this type of project.

This means that at least 55 percent of any rural, small urbanized area, or large urbanized area's annual apportionment must be utilized for public transportation capital projects that are planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities. It is not sufficient that seniors and individuals with disabilities are merely included (or assumed to be included) among the people who will benefit from the project.

Eligible projects for the required 55 percent of capital projects include the capital cost of contracting for the provision of transit services for seniors and individuals with disabilities and other specialized shared-ride transportation services. The purchase of rolling stock or the acquisition of ADA complementary paratransit service are eligible capital expenses that may also qualify as public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate, provided the projects are carried out by eligible subrecipients (see Chapter III) and these projects are included in the area's coordinated plan.

2.ELIGIBLE CAPITAL EXPENSES THAT MEET THE 55 PERCENT REQUIREMENT.

Funds for the Section 5310 program are available for capital expenses as defined in 49 U.S.C. 5302 to support public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Examples of capital expenses that meet the 55 percent requirement, which must be carried out by an eligible recipient or subrecipient as described in Chapter III, include but are not limited to:

a. Rolling stock and related activities for Section 5310-funded vehicles

   (1) Acquisition of expansion or replacement buses or vans, and related procurement, testing, inspection, and acceptance costs;

   (2) Vehicle rehabilitation or overhaul;

   (3) Preventive maintenance;

   (4) Radios and communication equipment; and

   (5) Vehicle wheelchair lifts, ramps, and securement devices.

b. Passenger facilities related to Section 5310-funded vehicles

   (1) Purchase and installation of benches, shelters, and other passenger amenities.

c. Support facilities and equipment for Section 5310-funded vehicles

   (1) Extended warranties that do not exceed the industry standard;

   (2) Computer hardware and software;

   (3) Transit-related intelligent transportation systems (ITS);

   (4) Dispatch systems; and

   (5) Fare collection systems.

14. Lease of Rolling Stock or Related Equipment. Requirements regarding leases are governed by the Uniform Guidance, 2 CFR 200. Please see FTA Circular 5010.1 for a summary of requirements related to leasing.

15. e. Acquisition of Transportation Services under a Contract, Lease, or Other Arrangement. This may include acquisition of ADA complementary paratransit services when provided by an eligible recipient or subrecipient as defined in Chapter III. Both capital and operating costs associated with contracted service are eligible capital expenses. User-side subsidies/vouchers for alternatives to public transportation are considered one form of eligible arrangement. All services must meet all Federal civil rights requirements, including those requiring equivalent service to persons with disabilities, particularly wheelchair users, in the provision of demand-responsive service and any ADA title II program access responsibilities administered by the U.S. Department of Justice. Funds may be requested for contracted services covering a time period of more than one year. The capital eligibility of acquisition of services as authorized in 49 U.S.C. 5310(b)(4) is limited to the Section 5310 program.
16. f. Support for Mobility Management and Coordination Programs among Public Transportation Providers and Other Human Service Agencies Providing Transportation. Mobility management is an eligible capital cost. Mobility management techniques may enhance transportation access for populations beyond those served by one agency or organization within a community. For

example, a nonprofit agency could receive Section 5310 funding to support the personnel costs of sharing services it provides to its own clientele with other seniors and/or individuals with disabilities and to coordinate usage of vehicles with other nonprofits; however, operating costs of service are excluded. Mobility management is intended to build coordination among existing public transportation providers and other transportation service providers with the result of expanding the availability of service. Mobility management activities may include:

(1) The promotion, enhancement, and facilitation of access to transportation services, including the integration and coordination of services for individuals with disabilities, seniors, and low-income individuals;

(2) Support for short-term management activities to plan and implement coordinated services;

(3) The support of state and local coordination policy bodies and councils;

(4) The operation of transportation brokerages to coordinate providers, funding agencies, and passengers;

(5) The provision of coordination services, including employer-oriented transportation management organizations' and human service organizations' customer-oriented travel navigator systems and neighborhood travel coordination activities such as coordinating individualized travel training and trip planning activities for customers;

(6) The development and operation of one-stop transportation traveler call centers to coordinate transportation information on all travel modes and to manage eligibility requirements and arrangements for customers among supporting programs; and

(7) Operational planning for the acquisition of intelligent transportation technologies to help plan and operate coordinated systems inclusive of geographic information systems (GIS) mapping, global positioning system technology, coordinated vehicle scheduling, dispatching and monitoring technologies, as well as technologies to track costs and billing in a coordinated system, and single smart customer payment systems. (Acquisition of technology is also eligible as a standalone capital expense).

Capital activities (e.g., acquisition of rolling stock and related activities, acquisition of services, etc.) to support ADA-complementary paratransit service may qualify toward the 55 percent requirement, so long as the service is provided by an eligible recipient/subrecipient as defined in section 5, above, and is included in the coordinated plan.

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CA1

Yes, the CARES Act and CRRSAA provide funds to prevent, prepare for, and respond to COVID-19; both the CARES Act and CRRSAA provide funds for expenses eligible under Sections 5307 and 5311, but only CRRSAA provides funds for expenses eligible under Section 5310. FTA generally will consider all expenses normally eligible under the Section 5307, 5310 and 5311 programs that are incurred on or after January 20, 2020 to be in response to economic or other conditions caused by COVID-19 and thus eligible under the CARES Act and CRRSAA, as applicable.

The CRRSAA requires that all CARES Act funds that remain unobligated as of December 27, 2020, as well as all CRRSAA funds shall, to the maximum extent possible, be directed to payroll and operations of public transit (including payroll and expenses of private providers of public transportation), unless the recipient certifies to FTA that the recipient has not furloughed any employees. Recipients are responsible for ensuring that payments of CARES Act and CRRSAA funds to subrecipients are consistent with this requirement. See also CA32 regarding private provider subrecipients. CARES Act and CRRSAA funds

are available for operating expenses for all FTA Section 5307, 5310 and 5311 recipients, including those in large urban areas, and including administrative leave for transit workers.

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CA14

Yes. Operators that meet the definition of public transportation service and that are otherwise eligible to be a recipient or subrecipient under the Urbanized Area Formula Program (Section 5307), Enhanced Mobility of Seniors and Individuals with Disabilities (Section 5310) or the Rural Areas Formula Program (Section 5311) may receive CARES Act or CRRSAA funding (as applicable) if allocated funds by the designated recipient (see also CA32). To receive funding as a recipient or subrecipient, the public transportation operations must meet all eligibility and program requirements of either Section 5307, 5310, or Section 5311. Further, private providers of public transportation are now considered to be eligible subrecipients for both CARES Act and CRRSAA funds. As a subrecipient, the operator must receive CARES Act or CRRSAA funding through an existing designated or direct recipient of Urbanized Area, or Rural Area or Enhanced Mobility of Seniors and Individuals with Disabilities formula funding. 49 U.S.C. §§ 5302(4), 5307(c), 5311(a)(2), 5310(b).

Frequently Asked Questions (FAQ) Regarding Coronavirus Disease 2019 (COVID-19), CA48

Funding requirements under ARP are the same as those for the CARES Act and CRRSAA, with the following exceptions:

1. All ARP funding administered under Sections 5307, 5310, and 5311 must be obligated in a grant by September 30, 2024 and must be disbursed by September 30, 2029.

2. All ARP funding administered under Sections 5307, 5310, and 5311 should be directed to payroll and operations of public transportation (including payroll and expenses of private providers of public transportation), unless the recipient certifies to the Administrator of the Federal Transit Administration that the recipient has not furloughed any employees since March 27, 2020 (the enactment date of the CARES Act). Please also see new FAQs CA49-CA57.

Except for the items described above, all FAQs explaining funding and program requirements for CARES Act and CRRSAA funds also apply to ARP funds.

5310:3. Are all Section 5310 projects included in a locally developed, coordinated public transit-human service transportation plan?

BASIC REQUIREMENT
Projects selected for funding under the Section 5310 program must be included in a locally developed, coordinated public transit-human services transportation plan.

APPLICABILITY
Designated recipients of Section 5310 funds

DETAILED EXPLANATION FOR REVIEWER
Recipients must certify that: (1) projects selected for funding under the Section 5310 program are included in a locally developed, coordinated public transit-human services transportation plan; and, (2) that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public.

Public transit-human services transportation plans must contain:

- An assessment of available services that identifies current transportation providers (public, private and nonprofit)
- An assessment of transportation needs of individuals with disabilities and seniors, older adults, and people with low incomes
- Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to improve efficiencies in service delivery
- Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified

The plans must be developed and approved with representation from seniors and individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public. Recipients are required to submit the coordinated plans to FTA. FTA does not review and approve the plan; however it must be available publicly, and FTA may refer to it during the grant review process.

Recipients must certify that projects were selected from this process and must refer to the plan in the POP.

INDICATORS OF COMPLIANCE

a. *Are all Section 5310 projects included in a public transit-human services transportation plan?*

b. *Do coordinated plans for the Section 5310 program address the required elements?*

Coordinated Plan Required Elements	
Required Element	**Reviewer Comments**
An assessment of available services that identifies current transportation providers (public, private, and nonprofit)	-
An assessment of transportation needs for individuals with disabilities and seniors	-
Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery	-
Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified	-

c. *Were plans developed and approved with representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public?*

INSTRUCTIONS FOR REVIEWER

Review the state/program management plan for a discussion of the public transit-human services transportation plans. Review any technical assistance documents provided by the recipient providing guidance on development of the plans. Review the recipient's website for and/or obtain the coordinated plan for the recipient and/or Section 5310 subrecipient to be visited to ensure that the plan includes the

required elements. Obtain the POP for active Section 5310 awards in TrAMS and confirm that the project for the subrecipient to be visited is included in the coordinated plan(s).

Review the plan(s) for a discussion of what entities participated in the development of the plans to ensure that the plans were developed with representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public. If necessary, follow up with the recipient during the site visit.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if Section 5310 projects are not included in a coordinated plan.

DEFICIENCY CODE 5310:3-1: Section 5310 projects not included in coordinated plans

SUGGESTED CORRECTIVE ACTION: Submit an amended coordinated plan(s) that includes all Section 5310 projects, along with procedures for ensuring that updates to the plan(s) include all projects.

The recipient is deficient if its coordinated plans do not address the required elements.

DEFICIENCY CODE 5310:3-2: Coordinated plans missing required elements

SUGGESTED CORRECTIVE ACTION: Submit an amended coordinated plan(s) that addresses the required elements, along with procedures for ensuring that updates to the plan(s) address the required elements.

The recipient is deficient if its coordinated plans were developed and approved without representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public.

DEFICIENCY CODE 5310:3-3: Inadequate public involvement efforts for coordinated plans

SUGGESTED CORRECTIVE ACTION: Submit procedures for developing and approving coordinated plans with representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public.

GOVERNING DIRECTIVE
FTA Circular 9070.1H, Chapter V Planning and Program Development

5. DEVELOPMENT OF THE COORDINATED PUBLIC TRANSIT-HUMAN SERVICES TRANSPORTATION PLAN

   b. Required Elements. Projects selected for funding shall be included in a coordinated plan that minimally includes the following elements at a level consistent with available resources and the complexity of the local institutional environment:

      (1) An assessment of available services that identifies current transportation providers (public, private, and nonprofit);

      (2) An assessment of transportation needs for individuals with disabilities and seniors. This assessment can be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service;

(3) Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery; and

(4) Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified.

6. PARTICIPATION IN THE COORDINATED PUBLIC TRANSIT-HUMAN SERVICES TRANSPORTATION PLANNING PROCESS.

Recipients shall certify that the coordinated plan was developed and approved through a process that included participation by seniors; individuals with disabilities, including wheelchair users; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public. Note that the required participants include not only transportation providers but also providers of human services and members of the public who can provide insights into local transportation needs. It is important that stakeholders be included in the development, approval, and implementation of the local coordinated public transit–human services transportation plan. A planning process in which stakeholders provide their opinions but have no assurance that those opinions will be considered in the outcome does not meet the requirement of "participation." Explicit consideration and response should be provided to public input received during the development of the coordinated plan. Stakeholders should have reasonable opportunities to be actively involved in the decision-making process at key decision points, including, but not limited to, development and approval of the proposed coordinated plan document.

5310:4. Are all Section 5310 funds used for services that meet the specific needs of seniors and individuals with disabilities?

BASIC REQUIREMENT
Section 5310 funds must be used for capital and operating expenses to support the provision of transportation services to meet the specific needs of seniors and individuals with disabilities. Incidental services must not conflict with the provision of public transit service. Recipients and subrecipients are encouraged, to the maximum extent feasible, to coordinate transportation services assisted by multiple Federal sources.

APPLICABILITY
Section 5310 recipients

DETAILED EXPLANATION FOR REVIEWER
Section 5310 funds are available to meet the transportation needs of seniors and individuals with disabilities. The recipient must ensure that Section 5310-funded services are being used to support eligible transportation services for seniors and individuals with disabilities.

If the designated recipient administers a competitive application process, the program application package will request a description of the proposed project, including service area, eligible customers, and days and hours of operation. The recipient may require subrecipients to report information on the services provided and populations served (e.g., general public, seniors, individuals with disabilities) on a periodic basis. The recipient may also observe a subrecipient's service during site visits.

Direct recipients, may also have subrecipients or lease Section 5310-funded vehicles to other providers. Under these circumstances, the direct recipient would be responsible for oversight.

FTA encourages maximum use of Section 5310-funded vehicles. Vehicles are to be used for the project stated in the award application and subrecipient agreement. Beyond those needs, vehicles should be used to meet other transportation needs of seniors and individuals with disabilities; to meet other Federal program or project needs; and finally, to meet other local transportation needs.

The program may provide for maximum feasible coordination with transportation services assisted by other Federal sources. Subrecipients should be encouraged to the extent feasible to also provide service to seniors and individuals with disabilities not affiliated with their agency, as well as to the general public, on an incidental basis if such service does not interfere with transportation services for seniors and individuals with disabilities.

Recipients and subrecipients may coordinate and assist in meal delivery service for homebound persons on a regular basis if this service does not conflict with the provision of mass transit service or result in a reduction of service to transit passengers. Section 5310 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment related to meal delivery. The number and size of vehicles applied for must be determined by the number of passengers to be transported, not meal delivery capacity.

Similarly, incidental use of a vehicle for non-passenger transportation on an occasional or regular basis is also permitted as long as it does not result in a reduction of service quality or availability of public transportation service.

The recipient must ensure that incidental service does not interfere with the provision of transit service. The recipient may request information on incidental service in the subrecipient application process. Along with the number of passengers, miles, and other statistics, some recipients require subrecipients or lessees to report periodically on meal delivery and other incidental service. Some recipients observe subrecipients' or lessee's service during site visits.

INDICATORS OF COMPLIANCE

a. *For recipients with Section 5310 subrecipients or lessees:*

    i. *How are Section 5310 program services monitored to ensure that they are eligible?*

    ii. *How are meal delivery and other incidental services monitored to ensure that they do not conflict with the provision of transit service or result in a reduction of service to transit passengers?*

b. *For recipients that provide Section 5310 service directly:*

    i. *Are services eligible?*

    ii. *Do meal delivery and other incidental services conflict with the provision of transit service or result in a reduction of service to transit passengers?*

INSTRUCTIONS FOR REVIEWER

Review the state/program management plan, subrecipient application, and subrecipient agreement for a discussion of the direction given to subrecipients on incidental service. Review a sample lease agreement for a discussion of incidental service.

Review monitoring materials, such as ridership and vehicle use reports and site visit checklists for evidence that the recipient ensures that services are provided to seniors and individuals with disabilities and that incidental services do not detract from transportation services. Onsite, review the oversight file(s) for the subrecipient(s) to be visited to determine if the recipient has implemented its oversight program.

During the subrecipient site visit, discuss incidental services.

For recipients that provide Section 5310 service directly, review public information and ridership/ operating reports on the services provided. If the recipient does not compile reports, review a day's worth of driver manifests. Onsite, discuss with the recipient how it ensures that incidental services do not conflict with the provision of transit service.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it operates ineligible service.

DEFICIENCY CODE 5310:4-1: Ineligible Section 5310 services

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased using Section 5310 funds for ineligible activities and determine the appropriate remedy for recovering funds already expended.

The recipient is deficient if it does not monitor subrecipients or lessees to ensure that eligible service continues to be provided.

DEFICIENCY CODE 5310:4-2: Insufficient monitoring of Section 5310 eligible services

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that Section 5310-funded services continue to be eligible for assistance.

The recipient is deficient if it does not monitor its own service or that of its subrecipients or lessees to ensure that incidental services do not interfere with the provision of transportation service to seniors and individuals with disabilities.

DEFICIENCY CODE 5310:4-3: Insufficient monitoring of Section 5310 incidental service

SUGGESTED CORRECTIVE ACTION: Develop procedures for ensuring that incidental service provided by itself or its Section 5310 subrecipients does not detract from transportation service for seniors and individuals with disabilities.

GOVERNING DIRECTIVE
FTA Circular 9070.1H, Ch. VI Program Management and Administrative Requirements

3. VEHICLE USE. FTA encourages maximum use of vehicles funded under the Section 5310 program. Consistent with the requirements under 2 CFR 200, vehicles are to be used first for program-related needs for which a Section 5310 award is made and then to meet other Federal programs or project needs, providing these uses do not interfere with the project activities originally funded. If the vehicle is no longer needed for the original program or project, the vehicle may be used in other activities currently or previously supported by a Federal agency. Vehicles may be used.

   a. For Section 5310 Project and Program Purposes: Recipients should consider how best to meet the needs of all seniors and people with disabilities in a particular community in the recipient's project selection process. The program must provide for maximum feasible coordination with transportation services assisted by other Federal sources. Subrecipients should be encouraged, to the extent feasible, to also provide service to seniors and people with disabilities not affiliated with their agency, as well as to the general public, on an incidental basis if such service does not interfere with transportation services for seniors and people with disabilities. In some situations, it may be appropriate to provide Section 5310 assistance to an agency to provide transportation exclusively to its own clients, but even in situations in which it is not feasible for the agency to provide services to those in the community beyond its own clients, that agency must, when practicable, make the vehicle itself available to provide transportation service to other seniors and people with disabilities at times the agency is not using the vehicle for award-related purposes.

The recipient shall use the vehicle in the project or program for which it was acquired as long as needed, even if the project does not continue to receive Federal funding.

b. For Other Federal Programs or Project Purposes. During the period the vehicle is used to serve the project or program needs for which it was acquired, the recipient or subrecipient shall make it available for use on other projects or programs, as long as such other use does not interfere with the service for which the vehicle was originally acquired. First preference for such other use will be given to other projects or programs sponsored by FTA, and second preference will be given to projects or programs sponsored by other Federal agencies. Finally, vehicles may be used by non-federally funded providers, first to meet the needs of seniors and people with disabilities and then to serve the transportation needs of the general public on an incidental basis.

c. Incidental Use. Incidental use is when a recipient or subrecipient allows the use of federally funded assets by another entity for non-public transit purposes. Incidental use of federally funded assets is permitted for recipients of funding under all FTA programs, including Section 5310. The incidental use cannot interfere with the purpose of the original grant (2 CFR 200.313). That is, the non-transit activity may not reduce or limit transit service provided with those same assets. Incidental use, by definition, is not public transportation. Thus, it is impossible for an incidental use trip to be a public transportation trip. FTA is required to exclude service data for incidental use from the apportionment of formula grants.

(1) For Meal Delivery. Under the Incidental Use policy, transit service providers receiving assistance under this section may coordinate and assist in providing meal delivery services for homebound people on a regular basis, if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. The number and size of vehicles applied for under Section 5310 must be determined only by the number of passengers to be transported, not meal delivery capacity. Section 5310 funds may not be used to purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment, such as racks or heating or refrigeration units, related to meal delivery. For further information regarding incidental use, please refer to FTA Circular 5010.1.

5310:5. Does the recipient comply with Section 5310 vehicle lease requirements?

BASIC REQUIREMENT
Recipients must agree in writing to all subrecipient Section 5310 vehicle lease agreements. Section 5310 vehicle lease agreements must contain required provisions. Leases of Section 5310 vehicles to private operators must be awarded through a competitive process.

APPLICABILITY
Section 5310 recipients

DETAILED EXPLANATION FOR REVIEWER
Vehicles acquired under the Section 5310 program may be leased to other entities such as local governmental authorities or agencies, other private nonprofit agencies, or private for-profit operators. Since the recipient is responsible for ensuring that the terms and conditions of the original award with FTA are met, the recipient must agree, in writing, to each lease between the subrecipient and the lessee.

Lease agreements must:

- Contain the terms and conditions that must be met in providing transportation service to seniors and people with disabilities
- Contain the relevant requirements of the FTA master agreement
- Specify that the leased vehicle shall be used to provide transportation service to seniors and individuals with disabilities

- If other uses are allowed, specify that the vehicle may be used for incidental purposes only after the needs of these individuals have been met

The recipient or subrecipient must hold title to leased assets.

Recipients and subrecipients may lease any of their assets to others on an incidental basis so long as the lease agreement holds the lessee responsible for compliance with all of the requirements the recipient or subrecipient itself is responsible for, including applicable and relevant terms and conditions of FTA's master agreement.

A recipient or subrecipient may lease its assets to a private entity to operate in public transit service so long as the entity has been selected through a competitive process and so long as the lease agreement obliges the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement.

INDICATORS OF COMPLIANCE

a. *If the recipient has Section 5310 subrecipients that lease Section 5310 vehicles, does the recipient agree to the leases in writing?*

b. *Are the required provisions included in Section 5310 vehicle lease agreements, including the relevant requirements of the FTA master agreement?*

Section 5310 Vehicle Lease Contents	
Terms and conditions that must be met in providing transportation service to seniors and individuals with disabilities	-
Compliance with the relevant requirements of the FTA master agreement	-
Requirement that the vehicle must be used for transportation service for seniors and individuals with disabilities	-
If other uses are allowed, requirement that the needs of seniors and individuals must be met before using the vehicle for other uses	-

c. *Does the recipient or subrecipient hold title to leased Section 5310 vehicles?*

d. *If Section 5310 vehicles are leased to a private entity to operate in public transit service, was the entity selected through a competitive process?*

INSTRUCTIONS FOR REVIEWER

Review the state/program management plan to determine if the recipient allows leases of Section 5310-funded vehicles.

Review a lease agreement to confirm that a written agreement was executed with the lessee and to determine if the leases contain terms and conditions that must be met in providing transportation service to seniors and individuals with disabilities, including compliance with all of the requirements the recipient itself is responsible for.

Review the state/program management plan to determine if the recipient agrees to subrecipient leases in writing and if the recipient or the subrecipient holds title to leased vehicles. Review documentation that a subrecipient lease was agreed to in writing.

If vehicles are leased to private entities to operate in public transportation service, determine if the entities were selected through a competitive process by obtaining and reviewing procurement files.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not agree to the leases of Section 5310-funded vehicles by subrecipients in writing.

DEFICIENCY CODE 5310:5-1: Section 5310 lease agreements not agreed to in writing

SUGGESTED CORRECTIVE ACTION: Submit written approvals of subrecipient leases of Section 5310-funded vehicles and procedures for approving leases of subrecipient Section 5310-funded vehicles in writing.

The recipient is deficient if Section 5310-funded vehicle lease agreements do not contain the required provisions.

DEFICIENCY CODE: 5310:5-2: Section 5310 lease agreements missing required provisions

SUGGESTED CORRECTIVE ACTION 1: Submit an amended lease of Section 5310-funded vehicles that contains the required terms and conditions that must be met in providing transportation service to seniors and individuals with disabilities.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for ensuring that subrecipient leases of Section 5310-funded vehicles contain the required terms and conditions that must be met in providing transportation service to seniors and individuals with disabilities.

The recipient is deficient if it or a subrecipient does not hold title to leased vehicles.

DEFICIENCY CODE 5310:5-3: Title not held in Section 5310 leases

SUGGESTED CORRECTIVE ACTION: Submit evidence that it or the subrecipient holds title to leased Section 5310-funded vehicles.

The recipient is deficient if private operators are not selected through a competitive process.

DEFICIENCY CODE 5310:5-4: Leases to private operators not awarded through a competitive process

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for selecting private operators through a competitive process.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for ensuring that subrecipients select private operators through a competitive process.

GOVERNING DIRECTIVE
FTA Circular 9070.1H, Ch. VI Program Management and Administrative Requirements

4. LEASING VEHICLES ACQUIRED WITH SECTION 5310 FUNDS. Vehicles acquired under the Section 5310 program may be leased to other entities such as local governmental authorities or agencies, other private nonprofit agencies, or private for-profit operators. Under such a lease, the

lessee operates the vehicles on behalf of the Section 5310 subrecipient and provides transportation to the subrecipient's clientele as described in the grant application.
The lease between the Section 5310 subrecipient and the lessee contains the terms and conditions that must be met in providing transportation service to seniors and people with disabilities. Because the purpose of the Section 5310 grant is to provide transportation service to seniors and people with disabilities, other uses of the vehicle are permitted only as long as such uses do not interfere with service to seniors and people with disabilities.

The recipient, being responsible for ensuring that the terms and conditions of the original award with FTA are met, must agree, in writing, to each lease between the subrecipient and the lessee. Such an agreement should specify that the leased vehicle shall be used to provide transportation service to seniors and people with disabilities and that the vehicle may be used for incidental purposes only after the needs of these individuals have been met.

Recipients may lease any of their assets to others on an incidental basis so long as the lease agreement holds the lessee responsible for compliance with all of the requirements the recipient itself is responsible for. Thus, the lessee must adhere to applicable and relevant terms and conditions of FTA's master agreement in the maintenance and use of the asset. For example, a recipient may not lease its revenue vehicles to a private company to conduct charter operations except to the extent the recipient itself would be able to conduct charter operations.

A recipient may lease its assets to a private entity to operate in public transit service so long as the entity has been selected through a competitive process and so long as the lease agreement obliges the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement. A finite lease term should be established as well as a clear price and scope of work.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- Are there concerns about the eligibility of any subrecipients?

- Any potential issues or concerns about the management or implementation of the Section 5310 program not covered previously in this section?

REFERENCES
1. 49 U.S.C. Chapter 53, Federal Transit Laws

2. FTA Circular 9070.1H "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"

USEFUL WEBLINKS
1. State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs

2. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools

3. Questions and Answers on the Section 5310, JARC and New Freedom Programs

4. Enhanced Mobility of Seniors & People with Disabilities Fact Sheet (Section 5310)

5. Coordinating Council on Access and Mobility – FTA Webpage

6. Coronavirus Aid, Relief, and Economic Security Act

7. FTA's Frequently Asked Questions From FTA Grantees Regarding Coronavirus Disease 2019
8. Notice of Concurrence
9. Emergency Relief rule
10. Emergency Relief docket

21. SECTION 5311 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA
States must expend Section 5311 funds on eligible projects to support rural public transportation services and intercity bus transportation.

QUESTIONS TO BE EXAMINED
1. Are all Section 5311 funds used for public transportation projects, including job access and reverse commute projects, in rural areas?

2. Does the state allow Indian tribes, even those that participate in the Tribal Transit Program, to participate in its Section 5311 program?

3. Has the state programmed at least 15 percent of its apportionment on eligible intercity bus projects?

4. Does the state use RTAP funding to support nonurbanized transit activities in transportation research, technical assistance, training, and related support services?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Governor's certifications for intercity bus for the review period, if applicable
- Intercity bus studies

RECIPIENT FOLLOW-UP
- Records of requests for Section 5311 funding
- Documentation of consultation that supports requirements outlined in FTA C. 9040.1H for intercity bus

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5311:1 Are all Section 5311 funds used for public transportation projects, including job access and reverse commute projects, in rural areas?

BASIC REQUIREMENT
Section 5311 funds must be used to support rural public transportation services.

APPLICABILITY
States

DETAILED EXPLANATION FOR REVIEWER
Section 5311 funds are available for expenditure for public transportation projects (including job access reverse commute) and intercity bus projects for people living in rural areas. Public transportation is defined as mass transportation by bus (or rail or other surface conveyance) either publicly or privately owned, which provides, to the public, general or special service on a regular and continuing basis. Section 5311 projects may include transportation to and from urbanized areas. Charter or sightseeing service is not eligible.

Section 5311 service may be designed to maximize use by members of the public who are transportation disadvantaged, including seniors, individuals with disabilities, and tribal members. Coordinated human service transportation that primarily serves seniors and individuals with disabilities, but that is not restricted from carrying other members of the public, is considered open to the general public if it is promoted as public transportation service.

States are responsible for ensuring that Section 5311 funds are being used to support eligible services. Applications generally request a description of the proposed service, including service area, eligible customers, days and hours of operation, and route information. The state must enter into an agreement with subrecipients prior to expending funds on a project that specifies the project to be funded under the award. Some states require Section 5311 applicants to provide information on marketing. States typically require subrecipients to report information on the services provided (e.g., populations served - general public, seniors, individuals with disabilities) on a periodic basis. States can observe subrecipients' service during site visits. States might also assist subrecipients in developing marketing plans and a public transportation “brand.”

Transit service providers receiving assistance under Section 5311 may coordinate and assist in providing meal delivery service for homebound persons on a regular basis if this service does not conflict with the provision of mass transit service or result in a reduction of service to transit passengers. The Federal Transit Administration (FTA) expects the nutrition program to pay operating costs attributable to meal delivery. Section 5311 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment related to meal delivery.

Similarly, incidental use of a vehicle for non-passenger transportation on an occasional or regular basis is also permitted, as long as it does not result in a reduction of service quality or availability for public transportation.

In some localities, a subrecipient receives both Section 5307 and 5311 funding to provide public transportation to urbanized and surrounding rural areas. These subrecipients should use Section 5311 funds only to assist the rural portion of those localities. Because of the wide range of circumstances under which an operator may provide services in both urbanized and rural areas, FTA expects the subrecipient to develop a reasonable basis related to the service provided, for allocating operating costs between the two FTA funding sources. The subrecipient should also apply this procedure to “joint” capital projects.

The state must ensure that incidental service provided by subrecipients does not interfere with the provision of transit service. The state may request information on incidental service in the subrecipient application. Along with the number of passengers, miles and other statistics, some states require subrecipients to report periodically on meal delivery and other incidental service. Some states observe subrecipients’ service during site visits.

INDICATORS OF COMPLIANCE

a. *For states with Section 5311 subrecipients:*

    i. *How are Section 5311 program services monitored to ensure that they are provided within a rural area or to and from a rural area?*

    ii. *How are services monitored to ensure that they are open and promoted to the general public?*

    iii. *How are meal delivery and other incidental services monitored to ensure that they do not conflict with the provision of transit service or result in a reduction of service to transit passengers, and the nutrition program pays the operating costs attributable to meal delivery?*

    iv. *How does the recipient ensure that subrecipients have a methodology for distributing operating and capital costs to the respective program if the subrecipient also receives Section 5307 funds?*

b. *For states that provide Section 5311 service directly:*

    i. *Are Section 5311 program services provided within a rural area or to and from a rural area?*

ii. *Are services open and promoted to the general public?*

iii. *Do meal delivery and other incidental services conflict with the provision of transit service or result in a reduction of service to transit passengers? Does the nutrition program pay the operating costs attributable to meal delivery?*

iv. *Is there a methodology for distributing costs to the respective program, if the state also receives Section 5307 funds?*

INSTRUCTIONS FOR REVIEWER

Review the Section 5311 state management plan, subrecipient application, and subrecipient agreement for a discussion of the direction given to subrecipients on general public, rural versus urban, and incidental service. Ascertain the requirements the state imposes on subrecipients regarding the provision of general public and incidental services. Review monitoring materials, such as program reports and site visit checklists, for data on how the state monitors compliance relating to general public and incidental services.

Review the website for the Section 5311 subrecipient(s) to be visited to see how the service is promoted to the general public. Onsite, review the oversight file(s) for the subrecipient(s) to be visited for evidence that the state's oversight program is implemented. During subrecipient site visits, discuss with the subrecipient its transportation program.

For states that provide service directly, review the website for information on rural service. Review schedules, system maps, and other information for Section 5311-funded service to determine if the service operates in rural areas or operates to and from a rural and urban area. Discuss the methodology for allocating costs to the rural service. Onsite, discuss with the state.

POTENTIAL DEFICIENCY DETERMINATIONS

The state is deficient if it does not ensure that service operates within or to/from a rural area.

DEFICIENCY CODE 5311:1-1: Ineligible Section 5311 services

SUGGESTED CORRECTIVE ACTION: Submit evidence that it has ceased providing/using Section 5311 funds for ineligible service.

NOTE: FTA will determine if any additional corrective action is necessary.

The state is deficient if it does not ensure that service is open and promoted to the general public.

DEFICIENCY CODE 5311:1-2: Insufficient monitoring of general public service

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that Section 5311-funded services provided by itself or subrecipients are open and promoted to the general public.

The state is deficient if it does not ensure that costs are allocated between rural and urban service.

DEFICIENCY CODE 5311:1-3: Insufficient monitoring of rural vs urban service

SUGGESTED CORRECTIVE ACTION: Submit procedures for ensuring that costs are allocated between rural and urban service.

The state is deficient if it does not ensure that incidental services do not interfere with the provision of public transportation service or nutrition programs cover the cost of meal delivery.

DEFICIENCY CODE 5311:1-4: Insufficient monitoring of incidental service

SUGGESTED CORRECTIVE ACTION 1: Submit procedures for ensuring that incidental service provided by itself or subrecipients does not detract from the provision of public transportation services.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for ensuring that nutrition programs pay the cost of meal delivery.

GOVERNING DIRECTIVE
FTA Circular 9040.1H, Chapter. III, Section 1 Eligible Recipients

Eligible Recipients and Subrecipients.

a. Eligible recipients for Section 5311 funds include States and Indian Tribes that receive an FTA award directly from the Federal government. Eligible subrecipients for Section 5311 funds include States and local governmental authorities, nonprofit organizations, and operators of public transportation or intercity bus service that receive FTA grant funds indirectly through a recipient. Regional development organizations may be eligible as a local governmental authority. For questions, please contact the applicable FTA Regional Office. In the case of intercity bus projects, private for-profit operators of transit services or intercity bus services may participate in the Section 5311 program as third-party contractors for recipients or as subrecipients. State agencies may limit subrecipient eligibility requirements to comply with State laws or to further program goals.
Recipients and subrecipients of Section 5311 funds must serve rural areas, defined as any area outside of a UZA, as defined in this circular, with a population of less than 50,000. A UZA consists of a core area and the surrounding densely populated area with a total population of 50,000 or more, with boundaries fixed by the Bureau of the Census. Areas not within an urbanized area with a population of 50,000 or more as of the most recent decennial census are eligible for Section 5311 funding even if they are included within the metropolitan area planning boundary, which includes the surrounding area expected to be urbanized within 20 years and/or the air quality nonattainment boundary.

Eligible Service and Service Areas.

b. States can use Section 5311 funds for public transportation projects, JARC projects, and intercity bus transportation projects in rural areas. States may allocate Section 5339 National Distribution funds to fixed-route operators in any area of the State, including rural areas, or may transfer funds to Tribes. Section 5311 projects may include public transportation to or from rural areas. The service area may include destinations across a State line. Operators of interstate service are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations.

A State must spend at least 15 percent of its Section 5311 apportionment to develop and support intercity bus transportation, unless, after consultation with affected intercity bus service providers, it is determined that the intercity bus service needs of the State are met adequately. Chapter IX of this circular provides more guidance on funding for intercity bus transportation.

Incidental Use.

The purpose of Section 5311 and Section 5339 assistance is the provision of public transportation services, and FTA encourages maximum feasible coordination with other rural transportation services,

including intercity bus service. FTA policy on project property resource sharing allows project property to be used for purposes other than that specified in the original award on an incidental basis. A rural transit provider may use a Section 5311 or Section 5339 vehicle for non-passenger transportation on an occasional or regular basis, such as package delivery or the provision of closed-door service to a human services agency if this incidental use does not result in a reduction of service quality or availability of public transportation service. The incidental use policy does not preclude the recipient's use of Section 5311 assistance to support the transportation of passengers by a private provider that is not primarily engaged in passenger transportation. For example, a recipient may use Section 5311 funds to support a contract mail carrier that incidentally provides intercity passenger transportation, if the carrier has appropriate regulatory authority to carry passengers. Section 5311 funds may only be used to subsidize the passenger transportation services of the mail carrier. A rural transit provider may design its Section 5311- and Section 5339-funded services to maximize use by members of the general public who are transportation disadvantaged. Transportation-disadvantaged people include seniors, people with disabilities, and low-income individuals. Transit service providers receiving assistance under Section 5310 (Enhanced Mobility of Seniors and Individuals with Disabilities) or Section 5311 may coordinate and assist in providing meal delivery service for homebound people on a regular basis, if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. FTA expects that a nutrition program will pay the operating costs attributable to meal delivery. Capital assistance from Sections 5311 and 5339 may not be used to purchase vehicles used solely for meal delivery or to purchase specialized equipment, such as racks or heating or refrigeration units, related to meal delivery.

Additional information on incidental use is available in Chapter IV of FTA Circular 5010.1.

PRIVATE TAXI OPERATORS AND TRANSPORTATION NETWORK COMPANIES AS SUBRECIPIENTS.

Private operators of public transportation are eligible subrecipients of Section 5311 funds. The definition of "public transportation" includes "shared-ride surface transportation services." Private taxi companies and transportation network companies (TNC) that provide shared-ride on-demand service to the general public on a regular basis are operators of public transportation and therefore eligible subrecipients. "Shared-ride" means two or more passengers in the same vehicle who are otherwise not traveling together. Similar to general public Demand Response and ADA complementary paratransit service, every trip does not have to be shared-ride in order for a taxi company or TNC to be considered a shared-ride operator, but the general nature of the service must include shared rides.

Local (municipal/State) statutes and regulations or company policy generally determine whether a taxi company or TNC provides shared-ride or exclusive-ride service. For example, if the local regulation or policy permits the driver to determine whether or not a trip may be shared, the service is not shared-ride. Similarly, a service is not shared-ride if the regulation or policy requires the first passenger that hires a taxi or TNC to consent to additional riders. In essence, services that can be reserved for the exclusive use of individuals or private groups, either by the operator or the first passenger's refusal to permit additional passengers, is exclusive-ride service. The primary Federal award recipient should request documentation from the taxi company or TNC to ensure the company is providing shared-ride service prior to award in order to determine whether the company qualifies as a subrecipient.

As subrecipients, private taxi operators and TNCs are subject to the same Federal requirements as the public entity making the subgrant. This includes ensuring that service for persons with disabilities, particularly wheelchair users, is equivalent to that available to persons without disabilities. Recipients should confirm whether additional requirements apply under the program access requirements applicable to public entities under regulations issued under Title II of the ADA by the U.S. Department of Justice. Taxi companies and TNCs that provide only exclusive-ride service are not eligible subrecipients; however, they may participate in the Section 5311 program as contractors for JARC projects. Exclusive-ride taxi companies may receive Section 5311 funds to purchase accessible taxis under contract with a State, Designated Recipient, or eligible subrecipient, such as a local government or nonprofit organization. The taxi company may hold title to the accessible vehicle(s) as long as the agreement between the State,

Designated Recipient, or subrecipient and the taxi company is sufficient to establish satisfactory continuing control. Acceptable means of establishing satisfactory continuing control could include a State, Designated Recipient, or subrecipient's lien on the vehicle or contract provisions that require: The accessible taxi to be used to provide transportation for people with disabilities utilizing the service for JARC purposes; and The vehicle may not be removed from service or disposed of prior to the end of its useful life without the express written consent of the FTA recipient or subrecipient.

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CE4

Yes. The use of transit vehicles is eligible as an incidental use if the delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. As part of Emergency Relief efforts authorized by 49 U.S.C. § 5324, FTA also will permit recipients to use Section 5307/5311 funds administered under the provisions of the Emergency Relief program, CARES Act or CRRSAA funds until January 20, 2022, to pay for the operational costs of such services. In addition, these services may be eligible for FEMA's Public Assistance program, and to maximize the funding available to them to respond to the COVID-19 public health emergency, FTA recommends that recipients check with their State Office of Emergency Services to determine whether those resources are available, or to seek reimbursement from the entity requesting the service. A recipient may charge only costs not covered by other entities to an FTA grant. During the COVID-19 public health emergency, prior approval for the incidental use of vehicles or equipment for the provision of essential services is not required, although recipients should notify their FTA Regional Office.

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CA48

Funding requirements under ARP are the same as those for the CARES Act and CRRSAA, with the following exceptions:

1. All ARP funding administered under Sections 5307, 5310, and 5311 must be obligated in a grant by September 30, 2024 and must be disbursed by September 30, 2029.

2. All ARP funding administered under Sections 5307, 5310, and 5311 should be directed to payroll and operations of public transportation (including payroll and expenses of private providers of public transportation), unless the recipient certifies to the Administrator of the Federal Transit Administration that the recipient has not furloughed any employees since March 27, 2020 (the enactment date of the CARES Act). Please also see new FAQs CA49-CA57.

3. States are required to set aside 15 percent of their Section 5311 ARP apportionment for intercity bus activities unless they certify, after consultation, that intercity bus needs in the state have been met. The $100 million in ARP funding specifically designated for intercity bus must be used for intercity bus projects unless the State does not have any eligible recipients for intercity bus funds. In addition, the Rural Transit Assistance Program (RTAP) set-aside of 2 percent of Section 5311 funds applies.

4. Private providers of public transportation are eligible to become subrecipients of CARES Act and CRRSAA funds, but not ARP funding.

Except for the items described above, all FAQs explaining funding and program requirements for CARES Act and CRRSAA funds also apply to ARP funds.

5311:2 Does the state allow Indian tribes, even those that participate in the Tribal Transit Program, to participate in its Section 5311 program?

BASIC REQUIREMENT
States must allow Indian tribes, even those that participate in the Tribal Transit Program, to participate in their Section 5311 programs.

APPLICABILITY
States, excluding insular areas

DETAILED EXPLANATION FOR REVIEWER
The Section 5311 program of projects must provide for fair and equitable distribution of funds within the state, including Indian tribes. Tribal Transit Program funds are not meant to replace or reduce funds that Indian tribes receive from states through Section 5311 but are used to enhance public transportation on Indian reservations and other tribal transit services.

For many states, demand exceeds the availability of funding. The state may restrict Section 5311 funding by increasing the local match requirement, by limiting the use of funds (e.g., operating assistance only), or by imposing other limitations. Some states, for example, give priority to maintenance of effort over service expansion. Doing so may prevent new providers, including Indian tribes, from participating in the Federal assistance program. FTA has determined that giving priority to maintenance of effort provides for the fair and equitable distribution of funds.

INDICATOR OF COMPLIANCE
a. *Are Indian tribes, even those that participate in the Tribal Transit Program, eligible to participate in the state's Section 5311 program?*

List of Indian Tribes in the State	List of Tribal Section 5311 Subrecipients	Comments
-	-	-
-	-	-
-	-	-
-	-	-

INSTRUCTIONS FOR REVIEWER
Review the Section 5311 state management plan for the process for selecting projects and subrecipient applications for project eligibility to determine if the receipt of Tribal Transit Program funds restricts eligibility. Review the process for selecting applicants to confirm it is consistent with the state management plan. Review program of projects in TrAMS to determine if any Indian tribes are subrecipients. Compare the list of tribal subrecipients with the most recent Federal Register Notice "Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs" to determine how many listed tribes in the state do not receive Section 5311 assistance. As of the publication of this guide, the most recent notice was published January 30, 2020.

Review the record of requests received that the state is required to maintain to meet its Title VI requirements for Indian tribes that were rejected and accepted for funding. Onsite, discuss tribal eligibility with the state and any applications from tribes that were denied.

POTENTIAL DEFICIENCY DETERMINATION
The state is deficient if Indian tribes are not allowed to participate in the state's Section 5311 program or if receipt of Tribal Transit Program funds restricts the ability to participate in the program.

DEFICIENCY CODE 5311:2-1: Indian tribes excluded from Section 5311 program

SUGGESTED CORRECTIVE ACTION: Submit a revised state management plan that incorporates a process for distributing funding that enables Indian tribes, including those participating in the Tribal Transit Program, to participate in the state's Section 5311 program and evidence that it was implemented in the next application cycle. Submit evidence that it obtained public comment on the plan revisions.

GOVERNING DIRECTIVE
FTA Circular 9040.1H, Chapter V Planning & Program Development

1. FAIR AND EQUITABLE DISTRIBUTION.

The POP the State submits to FTA for approval must provide for fair and equitable distribution of the Section 5311 and Section 5339(a) apportionment in the State, including Indian reservations, as well as maximum feasible coordination with other public transportation services assisted by other Federal sources. The State should document its process for selecting recipients consistent with the SMP as outlined in Chapter VI. The TTP funds set aside for Indian Tribes are not meant to replace or reduce funds that Indian Tribes receive from States through the Section 5311 program but should be used to enhance public transportation on Indian reservations and other Tribal transit services. FTA encourages States to use the increase in funding for rural transit under IIJA to support expansion of transit service to areas without service and to improve the level of service or coverage in areas that have minimal service.

5311:3 Has the state programmed at least 15 percent of its apportionment on eligible intercity bus projects?

BASIC REQUIREMENT
The state is required to expend at least 15 percent of its Section 5311 apportionment to carry out a program to develop and support intercity bus transportation, unless the governor certifies that the intercity bus service needs of the state are being met adequately through an extensive consultation process. These funds must be used for actual expenses that support eligible intercity bus projects in a state.

APPLICABILITY
States excluding insular areas

DETAILED EXPLANATION FOR REVIEWER
Connection to the national network of intercity bus service is an important goal of Section 5311(f) and services funded must make meaningful connections wherever feasible. Intercity bus projects may include package express service, if it is incidental to passenger transportation. The definition of intercity bus does not include commuter service (service designed primarily to provide daily work trips within the local commuting area). Commuter service is excluded because it is considered a local public transportation service, eligible for assistance under Section 5311, but not counting toward the required percentage for Section 5311(f).

Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Intercity bus does not include air, water, or rail service. While much of the public transportation service assisted under Section 5311 covers large distances because of the nature of the areas served, not all long-distance trips are included in the definition of intercity service. For example, service that provides extensive circulation within a region (in contrast to regular but infrequent service from limited points in the community of origin to limited points in the destination community) is not considered intercity service, although it may be an eligible public transportation service. Similarly, service that only incidentally stops at an intercity bus facility among other destinations within the city at either end of a route that covers a long distance, without regard to scheduled connections, is eligible for Section 5311 assistance as public transportation, but is not an intercity feeder service. The statute identifies eligible intercity bus activities, including:

- Planning and marketing for intercity bus transportation
- Capital awards for intercity bus shelters, joint-use stops and depots
- Operating awards through purchase-of-service agreements, user-side subsidies and demonstration projects
- Coordination of rural connections between small transit operations and intercity bus carriers

This listing does not preclude other capital and operating projects for the support of rural intercity bus service.

Service that acts as a feeder to intercity bus service and makes meaningful connections with scheduled intercity bus service to more distant points is eligible. The feeder service is not required to have the same characteristics as the intercity bus service to which it connects. For example, it can be demand responsive. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service.

The state is required to expend no less than 15 percent of its Section 5311 apportionment on a program to develop and support intercity bus transportation in rural areas. The requirement applies only to the funds FTA apportions to the state; it does not apply to any funds the state transfers to its Section 5311 program. It also does not apply to Rural Transportation Assistance Program (RTAP) or Appalachian Development Public Transportation Assistance Program funds. Note that since insular areas (American Samoa, Guam, and Northern Mariana Islands) can use their consolidated awards for any purpose or program authorized under the programs, they are not required to spend 15 percent of their Section 5311 apportionments on intercity bus service.

The state may spend less than 15 percent of its Section 5311 apportionment if the governor (or designee) certifies that the intercity bus service needs of the state are adequately met. The governor must certify in each apportionment year that the state does not program the required percentage of funds. The state may include more than one apportionment year in a certification.

Before the governor certifies that intercity bus needs are adequately met, the state must consult with affected intercity bus service providers. FTA has established minimum requirements for the intercity bus consultative process. Please see the Section 5311 Circular for requirements of the consultation process. The process must:

- Identify intercity bus providers in the state
- Consult with identified providers and the intercity bus industry
- Provide an opportunity for intercity bus providers to submit proposals for funding
- Demonstrate a direct correlation between the results of the consultation process and a determination that the state’s intercity bus needs are adequately met

The state management plan must document the procedure to be implemented for the consultative process.

A state may have obligated and assigned funds to intercity bus projects in prior years or reserved funds for intercity bus projects not yet selected. A state may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In either case, if the funds committed or reserved for intercity bus projects are later determined to not be needed for intercity bus service, the state may submit a retroactive certification within the period of availability of funds. This action will permit the use of the prior year funds for other rural transit projects.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

States must spend 15 percent of their CARES and ARP Section 5311 funds on intercity bus transportation, unless the Governor certifies, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately. The requirement to spend 15 percent of the Section 5311 apportionment on intercity bus transportation does not apply to CRRSAA, although intercity bus is still an eligible expense. States that allocated less than 15 percent of CARES or ARP funding for intercity bus expenses must have undergone a new consultation process under federal public transportation law (49 U.S.C. § 5311(f)(2)) if the previous consultation process concluded prior to April 2, 2020, when FTA apportioned CARES Act funds. A state's intercity bus needs may have changed since the last consultation.

ARP also provides $100 million to states for intercity bus transportation. The funding is for bus operators that partner with recipients or subrecipients of Section 5311(f) funds. The funds are allocated in the same ratio as funds provided under Section 5311 in FY2020. If a State or territory does not have bus providers eligible under Section 5311(f), funds may be used for any expense eligible under Section 5311.

INDICATORS OF COMPLIANCE

a. *Are the intercity bus activities that the state is pursuing eligible?*

b. *For the four years covered by the review, document the recipient's allocation for expenditures on intercity bus projects:*

Intercity Bus Projects				
Federal fiscal year:	**20XX**	**20XX**	**20XX**	**20XX**
Apportionment:	-	-	-	-
Award number	-	-	-	-
Award number	-	-	-	-
Award number	-	-	-	-
Total projects	-	-	-	-
Percentage of apportionment	-	-	-	-
Governor's certification (yes, no, or not applicable)	-	-	-	-

c. *If the state programmed less than 15 percent of its apportionment on intercity bus projects, did the governor certify that intercity bus needs are adequately met during the period of availability of the funds?*

d. *Did the state consult with intercity bus providers before seeking the governor's certification?*

Consultative Process Minimum Requirements	Comment
Identification of intercity bus providers in the state	-
Activities the state performed as part of consultation with identified providers and intercity bus organizations	-
An opportunity for intercity bus providers to submit proposals for funding as part of the state's distribution of its annual apportionment	-
Direct correlation between the results of the consultation process and demonstrated that the state's intercity bus needs are adequately met	-

FLEXIBILITIES AND ADMINISTRATIVE RELIEF

e. *Did the recipient allocate less than 15 percent of CARES or ARP the funding to intercity bus expenses?*

   I. *If yes, did the governor certify that intercity bus needs are being met?*

   II. *If yes, when did the recipient's previous consultation process conclude?*

   III. *If the consultation process concluded prior to April 2, 2020, was a new process completed? If no, explain*

Intercity Bus Projects		
Supplemental Funds Program	**CARES Act**	**ARP Act**
Apportionment:	-	-
Intercity bus allocation	-	-
Percentage of apportionment	-	-

f. Did the recipient use the additional ARP funds allocation for projects where bus operators purchased with recipients or subrecipients of Section 5311 funds?

I. If no, were there no bus providers eligible under Section 5311?

II. If no, were funds used for eligible Section 5311 expense?

INSTRUCTIONS FOR REVIEWER
Review the state management plan for a discussion of the state's intercity bus program and a description of eligible projects. Review the Section 5311 program of projects in TrAMS for:

i. Descriptions of the state's intercity bus projects.

ii. The amount and percentage of funds the state has programmed for its intercity bus needs for the four most recent apportionment years. To determine the percentage, compare the amount programmed for intercity bus projects to the annual apportionment, not the total amount of the award.

Onsite, discuss the nature of the projects. Ensure that the projects serve rural areas and provide for meaningful connections to the intercity bus network.

Go to the FTA website and pull apportionments for the years of the three most recent Section 5311 awards. Note: The requirement applies to the apportionment, not the award. An award may have multiple years of funding. The account classification code will indicate the year of the funds. For awards with multiple years of funds, check with the state for the year of funds used for intercity bus projects.

FLEXIBILITIES AND ADMINISTRATIVE RELIEF
Calculate the amount that should be allocated to intercity bus expenses by completing the table provided above. If the award application does not indicate that 15 percent of the CARES or ARP apportionment or the actual apportionment in the ARP Act was allocated for intercity bus expenses, discuss with the recipient. If the governor certified that needs are met, confirm that the recipient conducted a consultation process after April 2, 2020.

POTENTIAL DEFICIENCY DETERMINATIONS
The state is deficient if projects selected or funded do not meet the definition of intercity bus service or are not consistent with eligible activities.

DEFICIENCY CODE 5311:3-1: Ineligible intercity bus projects

SUGGESTED CORRECTIVE ACTION 1: Cease counting ineligible service towards the 15 percent requirement in future awards.

SUGGESTED CORRECTIVE ACTION 2: Submit documentation that the subrecipient has modified the service to make it eligible for intercity bus funding or identified new projects that are eligible.

The state is deficient if the governor did not certify within the period of availability of funds.

DEFICIENCY CODE 5311:3-3: Intercity bus certification lacking

SUGGESTED CORRECTIVE ACTION: Consult with the FTA regional office regarding the corrective action.

The state is deficient if it did not follow a consultative process before certifying that intercity bus needs were adequately met.

DEFICIENCY CODE 5311:3-4: No intercity bus consultative process

SUGGESTED CORRECTIVE ACTION: Submit a revised state management plan that includes a consultative process and evidence that it obtained public comment on the revised plan.

GOVERNING DIRECTIVE
FTA Circular 9040.1H, Chapter IX Intercity Bus

3. GOVERNOR'S CERTIFICATION. A state is required to expend at least 15 percent of its apportionment for an intercity bus program, unless "the Governor of the State certifies to the Secretary, after consultation with affected intercity bus service providers, that the intercity bus service needs of the State are being met adequately."

   The statutory provision for certification by the governor implies a statewide assessment of intercity bus service currently available and of any existing needs. The legislative history indicates that the assessment of intercity bus needs may be made relative to other rural needs in the state. A state certifying that its needs are adequately met must demonstrate that it has assessed statewide intercity mobility needs no more than four years before the date of the certification. In the SMP, the state must document its consultation process and any process that it develops for periodically assessing statewide needs. FTA will evaluate evidence that the state has followed its process in state management reviews approximately every three years.

   A state must certify that the intercity bus service needs of the state are being met adequately for each fiscal year that it does not intend to use 15 percent of its Section 5311 apportionment for intercity bus service. The state may include more than one year in a single signed certification.
   If the state determines that expenditure of some amount of funds less than the full 15 percent will result in needs being met adequately, it may submit a "partial" certification for the remainder of the 15 percent and spend only the portion needed to ensure that the intercity bus needs are met adequately.

   In some cases, a state may have obligated and assigned funds to intercity bus projects in prior years, or reserved funds for intercity bus projects not yet selected. A state may also have withheld prior year funds from obligation pending a decision on intercity bus needs. In any of those cases, if the funds committed or reserved for intercity bus projects are later determined not to be needed for intercity bus service, the state may submit a retroactive certification within the period of availability of the funds. This action will permit the use of the prior year funds for other rural transit projects, subject to the notification and approval conditions described in Chapter V of this circular and consultation with intercity bus providers before certification.

   The governor of the state or an authorized designee must sign a certification letter addressed to the FTA Regional Administrator. The letter should include sufficient information regarding the consultation process and needs assessments in order to demonstrate the certification is supported by the results of the process. In addition, in its oversight activities, FTA will examine the basis for a governor's certification. The assurance the state makes as part of the annual Certifications and Assurances that it will meet the requirements of Section 5311(f) is not a substitute for a certification by the governor that the needs are met adequately if the 15 percent minimum is not attained. Appendix B provides a sample certification letter.

   CONSULTATION PROCESS REQUIREMENTS.

   b. The state's intercity consultation process must include the following elements:
   (1) identification of intercity bus providers in the state;

(2) activities the state will perform as part of consultation with identified providers and intercity bus organizations;

(3) an opportunity for intercity bus providers to submit proposals for funding as part of the state's distribution of its annual apportionment; and

(4) a direct correlation between the results of the consultation process and a determination that the state's intercity service needs are being met adequately: and

(5) Transparency as to the State's required intercity bus plans and processes and an opportunity for intercity bus operators to be involved in the development of those plans.

7. ELIGIBLE SUBRECIPIENTS. The definition of a subrecipient in Section 5311(a)(2) includes an operator of intercity bus service that receives Federal transit program grant funds through a State or Indian Tribe that is a recipient. In some instances, intercity bus providers may prefer to maintain a contractual relationship. The State may use either mechanism to provide assistance to private operators for intercity bus service. In either case, the State must conduct all transactions in a manner that provides full and open competition to ensure that the private operator is qualified, will provide eligible service, can comply with Federal and State requirements, and is the best or only provider available to offer service at a fair and reasonable cost.

8. ELIGIBLE SERVICES AND SERVICE AREAS. Connection to the national network of intercity bus service is an important goal of Section 5311(f) and services funded must make meaningful connections wherever feasible. Examples to determine meaningful connections include but are not limited to consideration of whether there are common stops or schedules allowing for public transit and other passengers to transfer to and from intercity bus service. Intercity bus projects may include package express service if it is incidental to passenger transportation.

   The definition of intercity bus does not include commuter service (service designed primarily to provide daily work trips within the local commuting area). Commuter service is excluded because it is considered a local public transportation service, eligible for assistance under Section 5311 but not counting toward the required percentage for Section 5311(f). A service is defined as a computer service if at least 50 percent of passengers make a return trip on the same day across all service runs for one year.

   Intercity service is not limited by the size of the vehicle used or by the identity of the carrier. Intercity bus does not include air, water, or rail service. While much of the public transportation service assisted under Section 5311 covers large distances because of the nature of the areas served, not all long distance trips are included in the definition of intercity service. For example, service that provides extensive circulation within a region (in contrast to regular but infrequent service from limited points in the community of origin to limited points in the destination community) is not considered intercity service, although it may be an eligible public transportation service. Similarly, service that only incidentally stops at an intercity bus facility among other destinations within the city at either end of a route that covers a long distance, without regard to scheduled connections, is eligible for Section 5311 assistance as public transportation, but is not an intercity feeder service.

9. ELIGIBLE ACTIVITIES. Eligible activities under Section 5311(f) must support intercity bus service in rural areas. Section 5311(f) specifies eligible intercity bus activities to include "planning and marketing

for intercity bus transportation, capital grants for intercity bus shelters, joint-use facilities, operating grants through purchase-of-service agreements, user-side subsidies and demonstration projects, and coordination of rural connections between small public transportation operations and intercity bus carriers." (Section 5311(f)(1)(A–E).

This listing does not preclude other capital and operating projects for the support of rural intercity bus service. For example, the state may provide operating assistance to a public or private nonprofit organization for the direct operation of intercity service after appropriate consideration of participation by private for-profit service providers. Capital assistance may be provided to purchase vehicles or vehicle-related equipment such as wheelchair lifts. Charter and tour services are not eligible for FTA assistance. (see 49 CFR part 604).

FTA encourages the participation of private companies that provide public transportation to the maximum extent feasible in this and other FTA programs. Among the various types of projects in which private intercity bus operators may wish to participate are improvements to existing or new intercity terminal facilities for rural passengers, modifications to transit facilities to facilitate shared use by intercity bus, intercity rail, and rural transit operators; operating assistance to support specific intercity route segments; and applications of intelligent transportation systems (ITS) technology for coordinated information and scheduling.

FTA funds can be used for all aspects of intercity bus and rail facilities in facilities (such as intermodal terminals) that meet the criteria in Section 5302(4)(G) for joint development projects. FTA published final guidance for joint development projects in the *Federal Register* on January 31, 2024 (89 FR 6184). See FTA Circular 7050.1C, "Federal Transit Administration Guidance on Joint Development."

Additionally, per 49 U.S.C. 5323(r), a recipient of assistance under Chapter 53 may not deny reasonable access for a private intercity bus or charter transportation operator to federally funded public transportation facilities, including intermodal facilities, park and ride lots, and bus-only highway lanes. In determining reasonable access, capacity requirements of the recipient of assistance and the extent to which access would be detrimental to existing public transportation services must be considered. This may include, for example, a review of physical constraints at the facility, scheduling and resource availability, and safety and security measures needed."

10. FEEDER SERVICE. The "coordination of rural connections between small transit operations and intercity bus carriers" may include the provision of service that acts as a feeder to intercity bus service, and makes meaningful connections with scheduled intercity bus service to more distant points. The feeder service is not required to have the same characteristics as the intercity service with which it connects. For example, feeder service may be demand-responsive, while intercity service is by definition fixed route. Examples of eligible costs include marketing and extended hours of service in order to connect with scheduled intercity service. Where feasible, intercity bus feeder service may also provide access to intercity connections with rail or air service. Rural transit providers operating feeder service with destinations across state lines are required to comply with the Federal Motor Carrier Safety Administration (FMCSA) regulations. Intrastate feeder service may also trigger compliance with FMCSA regulations if interlining is involved (issuing a single ticket for the feeder service and the trip provided by an interstate carrier). Section 5311(f) funds may be used for expenses incurred by a public transit operator as a result of FMCSA requirements triggered by the provision of feeder services.

*FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), C*A21

It depends. All requirements for the Section 5311 program apply unless otherwise noted for CARES Act and ARP funding; however CRRSAA does not require States to set aside 15 percent of their

apportionment for intercity bus. Additional funding for intercity bus is available from and administered by the Department of the Treasury (see OF2).

FTA Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19), CA28

It depends. A State that intends to allocate less than 15 percent of CARES Act or ARP funds for intercity bus expenses must undergo a new consultation process under Federal public transportation law (49 U.S.C. § 5311(f)(2)) if the previous consultation process concluded prior to April 2, 2020, when FTA apportioned CARES Act funds. A consultation undertaken after April 2, 2020 satisfies the requirement for ARP funding as well as CARES Act funding; however, States that believe their intercity needs may have changed have the option to undertake a new consultation.

CRRSAA does not require States to set aside 15 percent of their apportionment for intercity bus. Additional supplemental funding for intercity bus is administered by the Department of the Treasury (see OF2).

5311:4 Does the state use RTAP funding to support nonurbanized transit activities in transportation research, technical assistance, training, and related support services?

BASIC REQUIREMENT
The state is apportioned funding for its Rural Transportation Assistance Program to make grants and contracts for transportation research, technical assistance, training and related support services in rural areas. RTAP provides a source of funding to assist in the design and implementation of training and technical assistance projects and other support services tailored to meet the needs of transit operators in rural areas.

APPLICABILITY
States

DETAILED EXPLANATION FOR REVIEWER
States may use RTAP funds to support rural transit activities in four categories: training, technical assistance, research, and related support services. The purchase of equipment to support the four eligible activities is an eligible expense.

States should develop State RTAP activities through a process that provides maximum opportunity for the participation of rural transit operators, both public and private, to identify and establish priority areas of need for transportation research, technical assistance, training, and related support services in rural areas. Establishment of a State RTAP advisory committee is one effective way to enable rural transit operators within the State to provide ongoing review and comment on the State's program development and delivery. The costs associated with implementing a State RTAP advisory committee are eligible RTAP expenses.

States have broad discretion in deciding how best to provide assistance and implement projects under the State RTAP. Delivery mechanisms include:

1. Assistance by in-house State staff;

2. Contracts with private consultants, universities, nonprofit organizations, State transit associations, or other operator organizations;

3. Contracts for administration of State RTAP or particular elements of it by the State's Local Technical Assistance Program (LTAP) center (an FHWA-sponsored resource with a demonstrated capacity for delivering training and technical assistance on highway topics that may represent a valuable in-state resource for transit as well);

4. Support of peer-to-peer networks of individuals to provide assistance to one another;

5. Interagency agreements with other State agencies, both within the State and in other states; and

6. Scholarships or tuition and expenses for people attending training courses or workshops.

States may not use State RTAP funds for State administrative or overhead expenses. However, any State administrative expense incurred in administering the State RTAP may be covered by the 10 percent of a State's annual Section 5311 formula apportionment available for State administration. The direct cost of using State staff to deliver RTAP services such as training or technical assistance is a program expense, not an administrative expense.

INDICATOR OF COMPLIANCE

a. Are there financial management policies and procedures for awarding funds, providing assistance, and implementing projects with RTAP funds?

b. How are RTAP program services monitored to ensure that activities are eligible?

INSTRUCTIONS FOR REVIEWER

Review the Section 5311 state management plan to determine how the state uses its RTAP funds. Review requests for RTAP funding by subrecipients and determine if the method of approval and delivery of funding is appropriate, given the delivery mechanisms described in the FTA Circular C9040.1H Circular for Rural Areas Formula Grant Programs Guidance, including the following:

1. Assistance by in-house State staff;

1. Contracts with private consultants, universities, nonprofit organizations, State transit associations, or other operator organizations;

2. Contracts for administration of State RTAP or particular elements of it by the State's Local Technical Assistance Program (LTAP) center (an FHWA-sponsored resource with a demonstrated capacity for delivering training and technical assistance on highway topics that may represent a valuable in-state resource for transit as well);

3. Support of peer-to-peer networks of individuals to provide assistance to one another;

4. Interagency agreements with other State agencies, both within the State and in other states; and

5. Scholarships or tuition and expenses for people attending training courses or workshops.

Discuss with the state how it monitors the expenses awarded RTAP funding, and request documentation of its monitoring efforts.

POTENTIAL DEFICIENCY DETERMINATIONS

The State is deficient if RTAP funds are applied to ineligible projects, such as activities that are not primarily designed and delivered to benefit rural transit providers; State administration efforts; or activities that do not fall under the approved categories of transportation research, technical assistance, training, and related support services.

DEFICIENCY CODE 5311:4-1: Ineligible RTAP activities

SUGGESTED CORRECTIVE ACTION: Cease funding the ineligible activities and work with the regional office to determine how to cover the costs that are not eligible under RTAP. Also, the state must submit updated procedures on how it will define eligibility in the future.

The state is deficient if it does not provide adequate oversight of the funds awarded for RTAP activities of subrecipients. Oversight can be demonstrated by review of required documentation of the RTAP activities being funded, for example.

DEFICIENCY CODE 5311:4-2: Insufficient monitoring of funds

SUGGESTED CORRECTIVE ACTION: Develop a method of ensuring that activities requested for RTAP funding are spent for the intended purpose.

GOVERNING DIRECTIVE
FTA Circular 9040.1H, Chapter X Rural Transportation Assistance Program

4. STATE PROGRAM DEVELOPMENT AND DELIVERY

a. Eligible Assistance Categories. States may use RTAP funds to support rural transit activities in four categories: training, technical assistance, research, and related support services. The purchase of equipment to support the four eligible activities is an eligible expense.

b. Program Development. The state should develop state RTAP activities through a process that provides maximum opportunity for the participation of rural transit operators, both public and private, in identifying and establishing priority areas of need for transportation research, technical assistance, training, and related support services in rural areas. Establishment of a state RTAP advisory committee is one effective way to enable rural transit operators within the state to provide ongoing review and comment on the state's program development and delivery. The costs associated with implementing a state RTAP advisory committee are eligible RTAP expenses.

c. Program Delivery. States have broad discretion in deciding how best to provide assistance and implement projects under the state RTAP program. Delivery mechanisms include:

(1) assistance by in-house state staff;

(2) contracts with private consultants, universities, nonprofit organizations, state transit associations, or other organizations of operators;

(3) contracts for administration of the state RTAP program or particular elements of it by the state's local technical assistance program (LTAP) center (a Federal Highway Administration [FHWA]-sponsored resource with a demonstrated capacity for delivering training and technical assistance on highway topics that may represent a valuable in-state resource for transit as well);

(4) support of peer-to-peer networks of individuals to provide assistance to each other;

(5) interagency agreements with other state agencies, both within the state and in other states; and

(6) scholarships or tuition and expenses for people to attend training courses or workshops.

d. State Administrative Expenses. The state may not use state RTAP funds for state administrative or overhead expenses. However, any state administrative expense incurred in administering the state

RTAP program may be covered by the 10 percent of a state's annual Section 5311 formula apportionment available for state administration. The direct cost of using state staff to deliver RTAP services such as training or technical assistance is a program expense, not an administrative expense. Contracts with other organizations to administer and deliver RTAP services may include reasonable administrative and overhead costs.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Are there concerns about the eligibility of any subrecipients?
- Any potential issues or concerns about the management or implementation of the Section 5311 program not covered previously in this section?

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FTA Circular 9040.1H, "Formula Grants for Rural Areas: Program Guidance and Application Instructions

USEFUL WEBLINKS

1. State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs
2. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools
3. Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs
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. Emergency Relief docket
9. FTA Apportionment Tables

22. PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP)

PURPOSE OF THIS REVIEW AREA
Recipients must comply with the Public Transportation Agency Safety Plan (PTASP) regulation (49 CFR Part 673) to ensure public transportation providers develop and implement an Agency Safety Plan (ASP). The PTASP Final Rule published in the Federal Register April 11, 2024, became effective May 13, 2024. FTA expects transit agencies to address the regulatory changes in the new PTASP Final Rule in their next Agency Safety Plan (ASP) annual update.

FTA requires applicable recipients to certify that they have established an ASP that meets the requirements of the PTASP regulation and 49 U.S.C. 5329(d) as part of the annual Certifications and Assurances for FTA grants and cooperative agreements. FTA notes that per 49 U.S.C. 5307(c)(1)(L), this certification is a required condition of receiving section 5307 funding and other grant funding to which Section 5307 requirements apply. FTA monitors these certifications in its Transit Award Management System (TrAMS).

FTA assesses compliance with the PTASP regulation through its existing triennial review process, as well as through other oversight mechanisms, using the criteria in this manual when FTA receives a report from an industry stakeholder of alleged noncompliance. If FTA determines the agency is out of compliance with the PTASP regulation and/or 49 U.S.C. 5329(d), FTA will inform the transit agency in writing of the finding(s) of noncompliance. The transit agency has 14 days to develop a plan for remedying the finding(s) and 90 days from the date of notification by FTA to remedy the finding(s). If the recipient is in non-compliance after 90 days, then FTA may restrict all 5307 grants and all other grant funding where 5307 requirements apply.

QUESTIONS TO BE EXAMINED

1. **Does the recipient have an ASP?**
2. **Has the recipient established required roles and responsibilities.**
3. **Does the ASP include the required elements?**
4. **Does the recipient maintain its PTASP documents for a minimum of three years?**
5. **Does the recipient monitor subrecipients for compliance with PTASP requirements?**
6. **Did the State recipient develop and certify ASPs on behalf of small public transportation providers?**

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request
Recipients with ASPs
- ASP(s) and all referenced documents, including policies and/or procedures
- Documentation of the recipient's Board of Directors' or equivalent entity's approval of the ASP
- Documentation of the Safety Committee's approval of the ASP (large urbanized area providers) or of development or update of the ASP in cooperation with frontline transit worker representatives (non-large urbanized area providers)
- Documentation of the ASP approval by the State Safety Oversight Agency (SSOA) (rail transit modes only)

- Organizational chart or other documentation of the CSO/SMS Executive's uninterrupted line of reporting to the Accountable Executive, if not included in the ASP
- Emergency Preparedness and Response Plan, if not included in the ASP (rail transit modes only)
- List of small public transportation providers for which the State developed ASPs, if applicable
- Small public transportation provider State ASP opt out letter, if applicable

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PTASP1. Does the recipient have an ASP?

BASIC REQUIREMENT
The Public Transportation Agency Safety Plans (PTASP) regulation requires operators of public transportation systems that are recipients of FTA Section 5307 awards and operators of rail transit systems subject to the State Safety Oversight Program (SSOP) to have an ASP.

The PTASP regulation at § 673.11(a)(5) requires each transit agency to establish a process and timeline for conducting an annual review and update of its ASP.

Per § 673.17(b), each transit agency that is not a large urbanized area provider must develop its ASP and subsequent updates in cooperation with frontline transit worker representatives.

Per § 673.11(a)(1) the ASP and any updates to the ASP must be signed by the Accountable Executive and approved by

- For a transit agency that is a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity.
- For all other transit agencies, the transit agency's Board of Directors or an equivalent entity.

For a rail transit agency (RTA), the ASP also must be approved by the State Safety Oversight Agency (SSOA) (Please note that an SSOA has the authority to establish more specific requirements for the rail transit agencies in its State by defining these in the SSOA's Program Standard. A Triennial Review will not be assessing compliance with requirements set by an SSOA.)

If an agency makes no updates to the ASP, it does not need to be signed and approved again. The agency should record and retain information about the annual review, noting that the review did not result in any changes to the ASP.

APPLICABILITY
Section 5307 recipients and rail transit agencies subject to the State Safety Oversight Program (SSOP) who operate a public transportation system.

DETAILED EXPLANATION FOR REVIEWER
Recipients of financial assistance under 49 U.S.C. Section 5307 who operate public transportation and operators of rail transit systems subject to the SSOP must implement an ASP. Section 5307 recipients who operate transit modes under the safety oversight of the United States Coast Guard (USCG), such as passenger ferry service, or the Federal Railroad Administration (FRA), such as commuter rail service, do not need to have an ASP for those modes. Recipients that *do not* operate public transportation are not required to have an ASP. States are required to develop ASPs for small public transportation providers in their jurisdiction, unless the small public transportation provider opts to develop its own plan and notifies the State.

Recipients subject to the PTASP regulation that receive Section 5307 funding and serve an urbanized area with a population of 200,000 or more (large urbanized area providers) must establish a Safety Committee compliant with 49 CFR § 673.19. This Safety Committee must approve the transit agency's ASP and any updates to the ASP before approval by the agency's Board of Directors or equivalent entity.

Recipients subject to the PTASP regulation that serve a small urbanized area (an urbanized area with a population of fewer than 200,000) must develop an ASP and subsequent updates in cooperation with frontline transit worker representatives. The ASP must include or incorporate by reference a description of how frontline transit worker representatives cooperate in the development and update of the ASP.

A recipient who is subject to the PTASP regulation is required to have its ASP, and subsequent updates to its ASP, signed by its Accountable Executive, approved by its Safety Committee (if such Committee is required based on the size of the urbanized area served and receipt of Section 5307 funding), and approved by its Board of Directors or equivalent entity. Rail transit agency ASPs also must be approved by the designated State Safety Oversight Agency (SSOA).

NOTE: A small public transportation provider is a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route transit modes or in any one non-fixed route transit mode and does not operate rail transit.

INDICATORS OF COMPLIANCE

a. *Is the recipient required to have an ASP?*

    1) *If no, what exception to ASP requirement is applicable?*

b. *If the recipient is required to have an ASP, does it have one?*

c. *On what date was the ASP adopted?*

d. *On what date was the ASP last updated?*

e. *For recipients serving a small urbanized area (an urbanized area with a population of less than 200,000), was the ASP developed and/or updated in cooperation with frontline transit worker representatives?*

    1) *How did the recipient cooperate with frontline transit worker representatives and what documentation describes and substantiates this cooperation?*

f. *Are the ASP, and subsequent updates to the ASP, signed by the Accountable Executive?*

    1) *What is the name, title, and role of the Accountable Executive who signed the ASP?*

    2) *Who appointed this person as the Accountable Executive for the ASP?*

    3) *If the Accountable Executive who signed the TAM plan is different from the Accountable Executive who signed the ASP, explain why:*

g. *For large urbanized area providers, are the ASP, and subsequent updates to the ASP, approved by the recipient's Safety Committee?*

    1) *On what date was the ASP, and subsequent updates to the ASP, approved by the Safety Committee?*

h. *How was approval provided and what documentation substantiates approval by the Safety Committee?*

i. *Are the ASP, and subsequent updates to the ASP, approved by the recipient's Board of Directors or equivalent entity?*

1) *If approved by an equivalent entity, what is the entity and what is that entity's relationship to the recipient?*

2) *On what date was the ASP, and subsequent updates to the ASP, approved by the Board of Directors or equivalent entity?*

3) *How was approval provided and what documentation substantiates approval by the Board of Directors or equivalent entity?*

j. Does the recipient operate a rail transit mode that is subject to the SSOP?

1) *If yes, what entity is the designated State Safety Oversight Agency (SSOA)?*

2) *On what date was the ASP approved by the SSOA?*

3) *How was approval provided and what documentation substantiates approval by the SSOA?*

INSTRUCTIONS FOR REVIEWER
Request and review the recipient's ASP(s). A recipient may have multiple ASPs to address different transit modes. Review evidence that:

- For recipients serving a small urbanized area (an urbanized area with a population of less than 200,000), the ASP was developed and/or updated in cooperation with frontline transit worker representatives. Obtain and review the description and evidence of such cooperation as referenced in the ASP.

- The ASP contains the signature of the Accountable Executive. Cross reference the Accountable Executive in the ASP to confirm it is the same individual in the TAM plan.

- For large urbanized area providers, the ASP and subsequent updates were approved by the Safety Committee. Obtain update and review evidence of such approval as referenced in the ASP.

- The ASP addresses approval of the Board of Directors or equivalent entity. Obtain and review evidence of such approval as referenced in the ASP.

- The ASP for a rail transit mode subject to the SSOP addresses approval of the SSOA. Obtain and review evidence of such approval as referenced in the ASP.

POTENTIAL DEFICIENCY INFORMATION
The recipient is deficient if it is required to, but does not have, an ASP in place.

DEFICIENCY CODE PTASP1-1: ASP not in place.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting the ASP.
SUGGESTED CORRECTIVE ACTION 2: Submit the ASP.

NOTE: If the recipient has an ASP in place, no deficiency is needed. Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if its ASP, or subsequent updates to the ASP, are not signed by the Accountable Executive.

DEFICIENCY CODE PTASP1-2: ASP not signed by the Accountable Executive.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting a copy of the ASP signed by the Accountable Executive.

SUGGESTED CORRECTIVE ACTION 2: Submit a copy of the ASP signed by the Accountable Executive.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if its ASP, or subsequent updates to the ASP, are not approved by its Board of Directors or equivalent entity.

DEFICIENCY CODE PTASP1-3: ASP not approved by Board of Directors or equivalent entity.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the Board of Directors or equivalent entity approved the ASP.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the Board of Directors or equivalent entity approved the ASP.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it operates rail service subject to the SSOP and its ASP is not approved by the SSOA.

DEFICIENCY CODE PTASP1-4: ASP not approved by SSOA

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the SSOA approved the ASP.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the SSOA approved the ASP.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to have a Safety Committee and its ASP, or subsequent updates to the ASP, are not approved by its Safety Committee.

DEFICIENCY CODE PTASP1-5: ASP not approved by Safety Committee.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the Safety Committee approved the ASP and for getting Board of Directors or equivalent entity subsequent to Safety Committee approval.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the Safety Committee approved the ASP. Submit evidence that the Board of Directors or equivalent entity approved the ASP after the Safety Committee approval.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to develop or update its ASP in cooperation with frontline transit worker representatives and its ASP has not been developed or updated in cooperation with frontline transit worker representatives.

DEFICIENCY CODE PTASP1-6: ASP not developed/updated in cooperation with frontline transit worker employee representatives.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the recipient developed or updated its ASP in cooperation with frontline transit worker representatives.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the recipient developed or updated its ASP in cooperation with frontline transit worker representatives.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is a large urbanized area provider and its ASP, or subsequent updates to the ASP, are not approved by the Safety Committee prior to Board of Directors or equivalent entity, in accordance with 49 CFR § 673.11(a)(1)(i).

DEFICIENCY CODE PTASP1-7: ASP not approved by the Safety Committee prior to the Board of Directors or equivalent entity as required.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the recipient has corrected the order of ASP approvals.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the recipient developed or updated its ASP demonstrating the approvals will be obtained as required.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

GOVERNING DIRECTIVE

49 CFR § 673.1 Applicability

(a) This part applies to any State, local governmental authority, and any other operator of a public transportation system that receives Federal financial assistance under 49 U.S.C. Chapter 53.

(b) This part does not apply to an operator of a public transportation system that only receives Federal financial assistance under 49 U.S.C. 5310, 49 U.S.C. 5311, or both 49 U.S.C. 5310 and 49 U.S.C. 5311 unless it operates a rail fixed guideway public transportation system.

49 CFR § 673.5 Definitions

Accountable Executive means a single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a transit agency; responsibility for carrying out the transit agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the transit agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the transit agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

Large urbanized area provider means a recipient or subrecipient of financial assistance under 49 U.S.C. 5307 that serves an urban area with a population of 200,000 or more as determined by the most recent decennial Census.

Rail fixed guideway public transportation system means any fixed guideway system, or any such system in engineering or construction, that uses rail, is operated for public transportation, is within the jurisdiction of a State, and is not subject to the jurisdiction of the Federal Railroad Administration. These include but are not limited to rapid rail, heavy rail, light rail, monorail, trolley, inclined plane, funicular, and automated guideway.

Rail transit agency means any entity that provides services on a rail fixed guideway public transportation system.

Safety Committee means the formal joint labor-management committee on issues related to safety that is required by 49 U.S.C. 5329 and [49 CFR part 673].

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

Transit agency means an operator of a public transportation system that is a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 or a rail transit agency.

49 CFR § 673.11 General Requirements

(a) A transit agency or State must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by

> (i) For a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity; or
>
> (ii) For all other transit agencies, the transit agency's Board of Directors or an equivalent entity

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(e) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop Public Transportation Agency Safety Plans for those modes of service.

49 CFR § 673.13 Certification of Compliance

(a) Each direct recipient, or State as authorized in §673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part by the start of operations. . . A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by a rail fixed guideway public transportation system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.

(b) On an annual basis, a direct recipient or State must certify its compliance with this part. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part.

49 CFR § 673.17 Cooperation with frontline transit worker representatives.
(b) Each transit agency that is not a large urbanized area provider must:

(1) Develop its Public Transportation Agency Safety Plan, and subsequent updates, in cooperation with frontline transit worker representatives; and

(2) Include or incorporate by reference in its Public Transportation Agency Safety Plan a description of how frontline transit worker representatives cooperate in the development and update of the Public Transportation Agency Safety Plan.

49 U.S.C. § 5329(d) Public Transportation Agency Safety Plan

(1) In general.-- Each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—

> (A) a requirement that the board of directors (or equivalent entity) of the recipient approve, or, in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under paragraph (5), followed by the board of directors (or equivalent entity) of the recipient approve, the agency safety plan and any updates to the agency safety plan;
>
> (B) for each recipient serving an urbanized area with a population of fewer than 200,000, a requirement that the agency safety plan be developed in cooperation with frontline employee representatives.

PTASP2. Has the recipient established required roles and responsibilities?

BASIC REQUIREMENT
A recipient's Accountable Executive must designate a CSO or Safety Management System (SMS) Executive. A large urbanized area provider must establish a Safety Committee. The Safety Committee must consist of an equal number of frontline transit worker representatives and management representatives. Frontline transit worker representatives must be selected by a labor organization that represents the plurality (greatest number) of frontline transit workers employed by the agency or a contractor, to the extent labor organizations represent the frontline workforce. If the transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

APPLICABILITY
Section 5307 recipients and rail transit agencies subject to the SSOP who operate a public transportation system.

DETAILED EXPLANATION FOR REVIEWER
Transit agencies that are required to develop an ASP must ensure that the Accountable Executive designates a CSO/SMS Executive. The CSO/SMS Executive is an adequately trained individual who has the authority and responsibility for day-to-day implementation and operation of the recipient's SMS. Recipients may either identify a CSO/SMS Executive, or the Accountable Executive may also serve in that role.

If the CSO/SMS Executive is not the Accountable Executive, the individual must meet the following criteria:

- Be designated as the CSO/SMS Executive by the Accountable Executive.
- Direct line of reporting to the Accountable Executive.
- For rail transit modes, may not serve in other operational and maintenance capacities, unless those functions have a nexus to safety.

The CSO/SMS Executive is responsible for the following two oversight roles:

- Oversight of the safety function. Responsibilities may include:
    - Overseeing safety risk management practices.
    - Overseeing safety event investigations.
    - Communicating with executive leadership and the Board of Directors or Equivalent entity.
    - Managing internal safety audit programs.
    - Overseeing safety certification.
    - Coordinating with the State Safety Oversight Agency, if applicable.
- Management of the SMS function. Responsibilities may include:
    - Serving as the agency's SMS subject matter expert.
    - Coordinating Key Staff.
    - Facilitating the development, implementation, and continuous improvement of SMS processes and activities.
    - Procuring technical resources for SMS implementation and operation.
    - Socializing SMS activities with agency executives and staff as necessary.
    - Communicating SMS implementation progress and challenges.

A large urbanized area provider must establish a Safety Committee compliant with 49 CFR § 673.19.

A recipient's Safety Committee must have an equal number of frontline transit worker representatives and management representatives. To the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions, such as operations and maintenance, across the transit system.

Frontline transit worker representatives must be selected by a labor organization that represents the plurality of the frontline workforce employed by the recipient or a contractor, to the extent labor organizations represent the frontline workforce. For recipients with multiple labor organizations whose membership includes frontline transit workers, the labor organization that represents the plurality, or the greatest number of frontline transit workers employed by the recipient or contractor, selects frontline transit worker representatives to serve on the Safety Committee. This labor organization may select frontline transit worker representatives for the Safety Committee throughout the organization, not just

from their membership. If a labor organization does not represent the frontline workforce, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

Each large urbanized area provider must include or incorporate by reference in its Public Transportation Agency Safety Plan procedures regarding the composition, responsibilities, and operations of the Safety Committee which, at a minimum, must address:

(1) The organizational structure, size, and composition of the Safety Committee and how it will be chaired;

(2) How meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded and maintained;

(3) Any required training for Safety Committee members related to the transit agency's Public Transportation Agency Safety Plan and the processes, activities, and tools used to support the transit agency's SMS;

(4) The compensation policy established by the agency for participation in Safety Committee meetings;

(5) How the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed; transit agency information, resources, and tools; and submissions to the transit worker safety reporting program to support its deliberations;

(6) How the Safety Committee will reach and record decisions;

(7) How the Safety Committee will coordinate and communicate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

(8) How the Safety Committee will manage disputes to ensure it carries out its operations. The Safety Committee may use the dispute resolution or arbitration process from the transit agency's Collective Bargaining Agreement, or a different process that the Safety Committee develops and agrees upon, but the Accountable Executive may not be designated to resolve any disputes within the Safety Committee; and

(9) How the Safety Committee will carry out its responsibilities.

The Safety Committee must conduct the following activities to oversee the transit agency's safety performance:

(1) Review and approve the transit agency's Public Transportation Agency Safety Plan and any updates

(2) Set annual safety performance targets for the safety risk reduction program; and

(3) Support operation of the transit agency's SMS by:

(i) Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of potential consequences identified through the transit agency's safety risk assessment,

including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;

(ii) Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and

(iii) Identifying safety deficiencies for purposes of continuous improvement, including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

INDICATORS OF COMPLIANCE

a. *Which does the agency have: a Chief Safety Officer (CSO) or a Safety Management System (SMS) Executive. What is the name of the person designated for this role?*

b. *Was CSO or SMS Executive designated by the Accountable Executive? What evidence was reviewed to substantiate this designation?*

c. *Does the CSO/SMS Executive hold a direct line of reporting to the Accountable Executive? What evidence was reviewed to substantiate this?*

d. *If a large urbanized area provider,*

    1) *Has the recipient established a Safety Committee? Identify evidence used to substantiate this.*

    2) *Does the Safety Committee have an equal number of frontline transit worker representatives and management representatives? Identify evidence used to substantiate this.*

    3) *To the extent labor organizations represent the frontline workforce, did the labor organization that represents the plurality of the recipient's workforce employed by the recipient or a contractor select the frontline transit worker representatives? Identify evidence used to substantiate this.*

    4) *If the transit agency's frontline transit workers are not represented by a labor organization, has the agency adopted a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee? Identify evidence used to substantiate this.*

e. *Have all required procedures regarding the composition, responsibilities, and operations of the Safety Committee been established? Identify evidence used to substantiate this.*

    a. *The Safety Committee's dispute resolution process must not identify the Accountable Executive as responsible for resolving disputes. Identify evidence used to substantiate this.*

f. *Is the Safety Committee responsible for:*

    a. *Reviewing and approving the transit agency's ASP?*
    b. *Setting annual safety performance targets for the safety risk reduction program?*
    c. *Supporting operation of the transit agency's SMS by:*

        i. *Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of potential consequences identified through the transit agency's safety risk assessment, including safety risk mitigations associated with*

any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;

ii. Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and

iii. Identifying safety deficiencies for purposes of continuous improvement, including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

Identify evidence used to substantiate this.

INSTRUCTIONS FOR REVIEWER

Review the recipient's ASP to determine if the Accountable Executive is also functioning as the CSO/SMS Executive or to determine if the Accountable Executive designated a CSO/SMS Executive. Verify that the CSO/SMS Executive job description aligns with responsibilities for the CSO/SMS Executive described in the regulation. Discuss any differences between the job description and the CSO/SMS Executive responsibilities in the regulation.

If the CSO/SMS Executive is not the Accountable Executive, obtain documentation, such as the organization chart, correspondence, meeting minutes, etc. that demonstrates there is a direct reporting line between the two positions.

NOTE: The CSO/SMS can be a contractor, provided they meet all requirements specified for the role.

For large urbanized area providers, review the recipient's ASP to determine whether the recipient has established a Safety Committee and whether the committee is responsible for, at a minimum: (1) reviewing and approving the agency's ASP and any updates to the ASP; (2) setting annual safety performance targets for the safety risk reduction program; (3) identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of potential consequences identified through the recipient's safety risk assessment; (4) identifying safety risk mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (5) identifying safety deficiencies for purposes of continuous improvement.

Obtain documentation of the membership of the Safety Committee to determine if the committee is comprised of an equal number of frontline transit worker representatives and management representatives. Obtain documentation of the process used to select frontline employee membership to determine if frontline transit worker representatives were selected by a labor organization representing the plurality of the recipient's frontline workforce employed by the recipient or a contractor (the largest number of frontline workers), to the extent labor organizations represent the frontline workforce. If frontline transit workers are not represented by a labor organization, obtain documentation that the transit agency has adopted a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

Obtain documentation to determine that all required procedures regarding the composition, responsibilities, and operations of the Safety Committee have been established. Obtain documentation demonstrating that the Accountable Executive has not been designated to resolve any disputes within the Safety Committee.

POTENTIAL DEFICIENCY INFORMATION

The recipient is deficient if it did not identify a CSO/SMS Executive or designate the Accountable Executive to serve as the CSO/SMS Executive.

DEFICIENCY CODE PTASP2-1: No designated CSO/SMS Executive.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the Accountable Executive designated a CSO/SMS Executive or that the Accountable Executive serves as the CSO/SMS Executive.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the Accountable Executive designated a CSO/SMS Executive or that the Accountable Executive serves as the CSO/SMS Executive.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if its CSO/SMS Executive does not have a direct line of reporting to the Accountable Executive.

DEFICIENCY CODE PTASP2-2: No direct line of reporting to Accountable Executive.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the CSO/SMS Executive has a direct line of reporting to the Accountable Executive.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the CSO/SMS Executive has a direct line of reporting to the Accountable Executive.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to establish a Safety Committee and it has not done so.

DEFICIENCY CODE PTASP2-3: No Safety Committee.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the recipient established a Safety Committee.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the recipient established a Safety Committee.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to establish a Safety Committee and the Committee is not comprised of an equal number of frontline transit worker representatives and management representatives.

DEFICIENCY CODE PTASP2-4: Safety Committee not established as required.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the recipient established a Safety Committee comprised of an equal number of frontline transit worker representatives and management representatives.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the recipient established a Safety Committee comprised of an equal number of frontline transit worker representatives and management representatives.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to establish a Safety Committee, its frontline workforce is represented by one or more labor organizations, and the labor organization representing the greatest number of frontline workers did not select the frontline transit worker representatives to serve on the Safety Committee.

DEFICIENCY CODE PTASP2-5: Safety Committee membership not selected as required.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the frontline transit worker representatives on the Safety Committee were selected by the labor organization representing the greatest number of frontline workers.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that frontline transit worker representatives on the Safety Committee were selected by the labor organization representing the greatest number of frontline workers.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to establish a Safety Committee and the committee is not responsible for, at a minimum: 1) Reviewing and approving the transit agency's ASP and any updates to the ASP; (2) Setting annual safety performance targets for the safety risk reduction program (3) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the recipient’s safety risk assessment; (4) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (5) identifying safety deficiencies for purposes of continuous improvement.

DEFICIENCY CODE PTASP2-6: Safety Committee is not responsible for minimum requirements.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the Safety Committee is responsible for, at a minimum: 1) Reviewing and approving the transit agency's ASP and any updates to the ASP; (2) Setting annual safety performance targets for the safety risk reduction program (3) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the recipient’s safety risk assessment; (4) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (5) identifying safety deficiencies for purposes of continuous improvement.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the Safety Committee is responsible for, at a minimum: 1) Reviewing and approving the transit agency's ASP and any updates to the ASP; (2) Setting annual safety performance targets for the safety risk reduction program (3) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the recipient’s safety risk assessment; (4) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and (5) identifying safety deficiencies for purposes of continuous improvement.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to establish a Safety Committee, its frontline workforce is not represented by a labor organization, and the recipient has not established a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

DEFICIENCY CODE PTASP2-7: Transit agency does not have a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that the recipient has established a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that the recipient has established a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if it is required to establish a Safety Committee, and the Safety Committee does not have all required procedures regarding the composition, responsibilities, and operations of the Safety Committee. The recipient is deficient if the procedures designate the Accountable Executive to resolve disputes within the Safety Committee.

DEFICIENCY CODE PTASP2-8: Safety Committee procedures not established as required.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting evidence that all required Safety Committee procedures are established as required.

SUGGESTED CORRECTIVE ACTION 2: Submit evidence that all required Safety Committee procedures are established as required.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

GOVERNING DIRECTIVE
49 CFR § 673.23 Safety Management Policy

(d)(2) Chief Safety Officer or Safety Management System (SMS) Executive. The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of a transit agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.

49 CFR § 673.5 Definitions

Chief Safety Officer means an adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in

this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

Safety Management System (SMS) Executive means a Chief Safety Officer or an equivalent.

49 CFR § 673.19 Safety Committees

(a) Establishing the Safety Committee. Each large urbanized area provider must establish and operate a Safety Committee that is:

(1) Appropriately scaled to the size, scope, and complexity of the transit agency; and

(2) Convened by a joint labor-management process.

(b) Safety Committee membership. The Safety Committee must consist of an equal number of frontline transit worker representatives and management representatives. To the extent practicable, the Safety Committee must include frontline transit worker representatives from major transit service functions, such as operations and maintenance, across the transit system.

(1) The labor organization that represents the plurality of the transit agency's frontline transit workers must select frontline transit worker representatives for the Safety Committee.

(2) If the transit agency's frontline transit workers are not represented by a labor organization, the transit agency must adopt a mechanism for frontline transit workers to select frontline transit worker representatives for the Safety Committee.

(c) Safety Committee procedures. Each large urbanized area provider must include or incorporate by reference in its Public Transportation Agency Safety Plan procedures regarding the composition, responsibilities, and operations of the Safety Committee which, at a minimum, must address:

(1) The organizational structure, size, and composition of the Safety Committee and how it will be chaired;

(2) How meeting agendas and notices will be developed and shared, and how meeting minutes will be recorded and maintained;

(3) Any required training for Safety Committee members related to the transit agency's Public Transportation Agency Safety Plan and the processes, activities, and tools used to support the transit agency's SMS;

(4) The compensation policy established by the agency for participation in Safety Committee meetings;

(5) How the Safety Committee will access technical experts, including other transit workers, to serve in an advisory capacity as needed; transit agency information, resources, and tools; and submissions to the transit worker safety reporting program to support its deliberations;

(6) How the Safety Committee will reach and record decisions;

(7) How the Safety Committee will coordinate and communicate with the transit agency's Board of Directors, or equivalent entity, and the Accountable Executive;

(8) How the Safety Committee will manage disputes to ensure it carries out its operations. The Safety Committee may use the dispute resolution or arbitration process from the transit agency's Collective Bargaining Agreement, or a different process that the Safety Committee develops and agrees upon, but the Accountable Executive may not be designated to resolve any disputes within the Safety Committee; and

(9) How the Safety Committee will carry out its responsibilities identified in paragraph (d) of this section.

(d) Safety Committee responsibilities. The Safety Committee must conduct the following activities to oversee the transit agency's safety performance:

(1) Review and approve the transit agency's Public Transportation Agency Safety Plan and any updates as required at § 673.11(a)(1)(i);

(2) Set annual safety performance targets for the safety risk reduction program as required at § 673.11(a)(7)(iii); and

(3) Support operation of the transit agency's SMS by:

(i) Identifying and recommending safety risk mitigations necessary to reduce the likelihood and severity of potential consequences identified through the transit agency's safety risk assessment, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program;

(ii) Identifying safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended, including safety risk mitigations associated with any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program; and

(iii) Identifying safety deficiencies for purposes of continuous improvement as required at § 673.27(d), including any instance where the transit agency did not meet an annual safety performance target in the safety risk reduction program.

49 U.S.C. 5329(d) Public Transportation Agency Safety Plan

(1). In general.-- Each recipient or State, as described in paragraph (3), shall certify that the recipient or State has established a comprehensive agency safety plan that includes, at a minimum—

(A) a requirement that the board of directors (or equivalent entity) of the recipient approve, or, in the case of a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more, the safety committee of the entity established under paragraph (5), followed by the board of directors (or equivalent entity) of the recipient approve, the agency safety plan and any updates to the agency safety plan;

49 U.S.C. 5329(d)(5) Safety Committee

(A) In general.—For purposes of this subsection, the safety committee of a recipient shall—

(i) be convened by a joint labor-management process;

(ii) consist of an equal number of—

(I) frontline employee representatives, selected by a labor organization representing the plurality of the frontline workforce employed by the recipient or, if applicable, a contractor to the recipient, to the extent frontline employees are represented by labor organizations; and

(II) management representatives; and

(iii) have, at a minimum, responsibility for—

(I) identifying and recommending risk-based mitigations or strategies necessary to reduce the likelihood and severity of consequences identified through the agency's safety risk assessment;

(II) identifying mitigations or strategies that may be ineffective, inappropriate, or were not implemented as intended; and

(III) identifying safety deficiencies for purposes of continuous improvement.

(B) Applicability.—This paragraph applies only to a recipient receiving assistance under section 5307 that is serving an urbanized area with a population of 200,000 or more.

PTASP3. Does the ASP include the required elements?

BASIC REQUIREMENT
A recipient subject to the PTASP regulation must have an ASP that meets the requirements of 49 CFR Part 673.

APPLICABILITY
Section 5307 recipients and rail transit agencies subject to the SSOP who operate a public transportation system.

DETAILED EXPLANATION FOR REVIEWER
A recipient of financial assistance under Section 5307 and rail transit agencies who are subject to the PTASP regulation must, at a minimum, include the following requirements under 49 CFR 673 in its ASP:

- Signature of the Accountable Executive: *Covered in question PTASP1.*
- Approval of Safety Committee (large urbanized area providers only): *Covered in question PTASP1.*
- Approval of Board of Directors, or equivalent entity: *Covered in question PTASP1.*
- Safety Performance Targets: Safety performance targets must be based on the safety performance measures established in FTA's National Public Transportation Safety Plan. A recipient must make its safety performance targets available to States and Metropolitan Planning Organizations (MPO) to aid in the planning process.
- Safety Risk Reduction Program: Large urbanized area providers must include a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must, at a minimum:

- Address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles that includes safety risk mitigations;
- Address the reduction and mitigation of assaults on transit workers that includes safety risk mitigations;
- Include the safety performance targets set by the Safety Committee for the safety risk reduction program performance measures established in the National Public Transportation Safety Plan. These targets must be set—
  - Based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD);
  - For all modes of public transportation; and
  - Based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.
- When the Safety Committee, as part of the transit agency's safety risk reduction program, identifies and recommends safety risk mitigations based on a safety risk assessment, the transit agency must include or incorporate by reference these mitigations in the ASP, and the Accountable Executive must implement these mitigations.

- Safety Management System: A recipient's Safety Management System must be appropriately scaled to the size, scope and complexity of the recipient and include the following elements:
  - *Safety Management Policy*: The Safety Management Policy includes information relevant to developing and carrying out the other SMS elements. Part 673 requires the following four Safety Management Policy elements:
    - Written policy statement with safety objectives
    - Transit Worker Safety Reporting Program
    - Communication of the Safety Management Policy throughout the agency
    - Establishment of authorities, accountabilities, and responsibilities
  - *Safety Risk Management (SRM)*: SRM is a process for identifying hazards and analyzing, assessing, and mitigating safety risk. Part 673 requires the following three elements to establish and implement a process for managing safety risk:
    - Hazard identification – Hazard is defined as any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.
      - A transit agency must consider, as a source for hazard identification:
        - Data and information provided by an oversight authority, including but not limited to FTA, the State, or as applicable, the State Safety Oversight Agency having jurisdiction;
        - Data and information regarding exposure to infectious disease provided by the CDC or a State health authority; and
        - Safety concerns identified through Safety Assurance activities.
    - Safety risk assessment – Includes a composite of predicted severity and likelihood of the potential consequences of the identified hazards, to

determine if safety risk mitigation is necessary and to inform prioritization of safety risk mitigations.

- Safety risk mitigation – method(s) to eliminate or reduce the effects of hazards.

  - A transit agency must consider, as a source for safety risk mitigation:
    - Guidance provided by an oversight authority, if applicable, and FTA; and
    - Guidelines to prevent or control exposure to infectious diseases provided by the CDC or a State health authority.

  - For large urbanized area providers:

    - This process must address the role of the Safety Committee.

    - The Accountable Executive must implement safety risk mitigations for the safety risk reduction program that are recommended by the Safety Committee and included in the ASP.

    - When the Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program, and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive must prepare a written statement explaining their decision. The Accountable Executive must submit and present this explanation to the transit agency's Safety Committee and Board of Directors or equivalent entity.

- *Safety Assurance*: Safety Assurance helps to ensure that mitigations put in place to manage safety risk are carried out and working as intended, potential safety issues are identified early, and safety objectives are met. Part 673 requires Safety Assurance to focus on three processes:

  - Safety performance monitoring and measurement. Recipients may adopt various methods to collect and use information to support safety performance monitoring and measurement activities, such as: observing transit operations, conducting audits, reviews, and assessments, etc.

  - Management of change. Recipients must evaluate proposed or future changes that may introduce new hazards or impact the agency's safety performance. These changes may include organizational and budgetary changes; staffing changes; changes to operations or maintenance procedures; changes to service or service environment; the design and construction of major capital projects (such as New Starts and Small Starts projects and associated certifications); and modifications to equipment, vehicles, and facilities, to name a few. **This element is not required for a small public transportation provider's ASP.**

  - Continuous improvement. Recipients must develop a process to assess its safety performance annually. The process must include identification of

deficiencies in the transit agency's SMS and deficiencies in performance against safety performance targets. Assessments could be based on annual reviews, how well the recipient is meeting additional agency-wide or mode-specific targets, and/or how well the recipient has accomplished the safety objectives specified in the Safety Management Policy Statement. Assessments also may be tied to the annual review and update of the ASP. For large urbanized area providers, this process must address the role of the Safety Committee. Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.

- A large urbanized area provider that does not meet an established annual safety performance target set by the Safety Committee for the safety risk reduction program must:
  - Assess associated safety risk; Mitigate associated safety risk based on the results of a safety risk assessment; and allocate its safety set-aside in the following fiscal year to safety-related projects eligible under 49 U.S.C. 5307 that are reasonably likely to assist the transit agency in meeting the safety performance target in the future.
- A transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment.

- *Safety Promotion*: Recipients must establish and implement a comprehensive safety training program for all operations transit workers and transit workers directly responsible for safety, including de-escalation training, safety concern identification and reporting training, and refresher training. Large urbanized area providers must include maintenance transit workers in the comprehensive safety training program. Recipients must communicate safety and safety performance information throughout the organization, including information on hazards and safety risk relevant to transit worker roles and responsibilities and safety actions taken in response to reports submitted through the Transit Worker Safety Reporting Program. A transit agency must also communicate the results of cooperation with frontline transit worker representatives or Safety Committee activities, as applicable.

- Annual review and update of the ASP: Recipients must establish a process and timeline for conducting an annual review and update of their ASP.

- Approval of SSOA, for rail transit modes: *Covered in question PTASP1.*

- Emergency Preparedness and Response Plan **(Recipients that operate rail service not subject to FRA regulations)**: Recipients must have an Emergency Preparedness and Response Plan or procedures that address, at a minimum, assigning transit worker responsibilities during an emergency and coordinating with Federal, State, regional, and local officials for emergency preparedness and response in the service area.

- Roadway Worker Protection Policies: Rail transit agencies must include any policies and procedures regarding rail transit workers on the roadway the rail transit agency has issued.

- Risk-based inspection policies: Rail transit agencies must include policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.

INDICATOR OF COMPLIANCE

a. Does the recipient's ASP address the following elements?

Table 22-1: Indicators of Compliance			
Required Elements ***All PTASPs***	**Addressed? (Y/N)**	**Page Reference**	**Comments/Notes**
Signature of Accountable Executive *(covered in question PTASP1)*	-	-	-
Approval of Board of Directors, or equivalent entity *(covered in question PTASP1)*	-	-	-
Safety Performance Targets for all PTASP-applicable agencies	-	-	-
• Major Events – This includes all safety and security major events as defined by the NTD.			
• Major Event Rate – This includes all safety and security major events as defined by the NTD, divided by Vehicle Revenue Miles (VRM).			
• Collision Rate – This includes all collisions reported to the NTD divided by VRM.			
• Pedestrian Collision Rate – This includes all collisions "with a person," as defined by the NTD, divided by VRM.			
• Vehicular Collision Rate – This includes all collisions "with a motor vehicle," as defined by the NTD, divided by VRM.			
• Fatalities – This includes all fatalities as defined by the NTD.			
• Fatality Rate – This includes all fatalities as defined by the NTD, divided by VRM.			
• Transit Worker Fatality Rate – This includes all transit worker fatalities as defined by the NTD, including the categories "Transit Employee/Contractor," "Transit Vehicle Operator," and "Other Transit Staff," divided by VRM.			

Table 22-1: Indicators of Compliance			
Required Elements ***All PTASPs***	**Addressed? (Y/N)**	**Page Reference**	**Comments/Notes**
• Injuries – This includes all injuries as defined by the NTD.			
• Injury Rate – This includes all injuries as defined by the NTD, divided by VRM.			
• Transit Worker Injury Rate – This includes all transit worker injuries as defined by the NTD, including the categories “Transit Employee/Contractor,” “Transit Vehicle Operator,” and “Other Transit Staff,” divided by VRM.			
• Assaults on Transit Workers – This includes all assaults on transit workers as defined by the NTD.			
• Rate of Assaults on Transit Workers – This includes all assaults on transit workers as defined by the NTD, divided by VRM.			
• System Reliability – This includes Major Mechanical System failures as defined by the NTD.			
Safety Management System that addresses:	-	-	-
• Safety Management Policy	-	-	-
• Safety Risk Management (SRM)	-	-	-
• Safety Assurance (SA)	-	-	-
• Safety Promotion	-	-	-
Annual review and update of the ASP	-	-	-
Small UZA Providers Only	-	-	-
Frontline transit worker cooperation *(covered in question PTASP1)*	-	-	-
Large UZA Providers Only	-	-	-

Table 22-1: Indicators of Compliance			
Required Elements ***All PTASPs***	**Addressed? (Y/N)**	**Page Reference**	**Comments/Notes**
Approval of Safety Committee *(covered in question PTASP1)*	-	-	-
Safety Risk Reduction Program	-	-	-
• Addresses the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles	-	-	-
• Addresses the reduction and mitigation of assaults on transit workers	-	-	-
• Includes annual safety Performance Targets set by the Safety Committee for the safety risk reduction program performance measures established in the National Safety Plan based on a three-year rolling average of data submitted to the National Transit Database.	-	-	-
• Major Events			
• Major Event Rate			
• Collisions			
• Collision Rate			
• Injuries			
• Injury Rate			
• Assaults on Transit Workers			
• Rate of Assaults on Transit Workers			
• Includes safety risk reduction program mitigations identified and recommended by the Safety Committee based on a safety risk assessment	-	-	-
• The Accountable Executive implements safety risk reduction program mitigations that are recommended by the Safety Committee and included in the ASP.	-	-	-
Rail Transit Modes Only			

Table 22-1: Indicators of Compliance			
Required Elements ***All PTASPs***	**Addressed? (Y/N)**	**Page Reference**	**Comments/Notes**
Approval by SSOA *(covered in question PTASP1)*	-	-	-
Emergency Preparedness and Response Plan	-	-	-
Any Roadway Worker Protection policies the transit agency has issued	-	-	-
Policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.	-	-	-

INSTRUCTIONS FOR REVIEWER
Using the table above, review the recipient's ASP for the required elements. Confirm that all of the elements listed are discussed in the plan.

POTENTIAL DEFICIENCY INFORMATION
The recipient is deficient if required element(s) are missing from the ASP.

DEFICIENCY CODE PTASP3-1: ASP missing required element(s)

NOTE TO REVIEWER: Deficiency Code PTASP3-1 should be used for ASP missing elements not included in Deficiency Codes PTASP3-2 and PTASP 3-3.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting an updated ASP that addresses missing elements.

SUGGESTED CORRECTIVE ACTION 2: Submit an updated ASP that addresses missing elements.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

The recipient is deficient if the ASP is missing any of the 14 safety performance targets required of all recipients subject to the PTASP regulation.

DEFICIENCY CODE PTASP3-2: ASP missing any of the 14 required safety performance target(s)

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting an updated ASP that addresses all 14 required safety performance targets.

SUGGESTED CORRECTIVE ACTION 2: Submit an updated ASP that addresses all 14 required safety performance targets.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

If the recipient is a large urbanized area provider, the recipient is deficient if one of the required safety performance targets for the Safety Risk Reduction Program is missing.

DEFICIENCY CODE PTASP3-3: ASP missing required safety performance target(s) for the Safety Risk Reduction Program

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting an updated ASP that addresses all the required safety performance targets for the Safety Risk Reduction Program.

SUGGESTED CORRECTIVE ACTION 2: Submit an updated ASP that addresses all the required safety performance targets for the Safety Risk Reduction Program.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

GOVERNING DIRECTIVE
49 CFR § 673.11 General Requirements

(a) A transit agency or State must establish a Public Transportation Agency Safety Plan that meets the requirements of this part and, at a minimum, consists of the following elements:

(1) The Public Transportation Agency Safety Plan, and subsequent updates, must be signed by the Accountable Executive and approved by—

(i) For a large urbanized area provider, the Safety Committee established pursuant to § 673.19, followed by the transit agency's Board of Directors or an equivalent entity; or

(ii) For all other transit agencies, the transit agency's Board of Directors or an equivalent entity.

(2) The Public Transportation Agency Safety Plan must document the processes and activities related to Safety Management System (SMS) implementation, as required under subpart D of this part.

(3) The Public Transportation Agency Safety Plan must include annual safety performance targets based on the safety performance measures established under the National Public Transportation Safety Plan. Safety performance targets for the safety risk reduction program are only required for large urbanized area providers.

(4) The Public Transportation Agency Safety Plan must address all applicable requirements and standards as set forth in FTA's Public Transportation Safety Program and the National Public Transportation Safety Plan. Compliance with the minimum safety performance standards authorized under 49 U.S.C. 5329(b)(2)(C) is not required until standards have been established through the public notice and comment process.

(5) Each transit agency must establish a process and timeline for conducting an annual review and update of the Public Transportation Agency Safety Plan.

(6) A rail transit agency must include or incorporate by reference in its Public Transportation Agency Safety Plan.

(i) An emergency preparedness and response plan or procedures that addresses, at a minimum, the assignment of transit worker responsibilities during an emergency; and coordination with Federal, State, regional, and local officials with roles and responsibilities for emergency preparedness and response in the transit agency's service area;

(ii) Any policies and procedures regarding rail transit workers on the roadway the rail transit agency has issued; and

(iii) The transit agency's policies and procedures developed in consultation with the State Safety Oversight Agency to provide access and required data for the State Safety Oversight Agency's risk-based inspection program.

(7) The Public Transportation Agency Safety Plan of each large urbanized area provider must include a safety risk reduction program for transit operations to improve safety performance by reducing the number and rates of safety events, injuries, and assaults on transit workers. The safety risk reduction program must, at a minimum:

(i) Address the reduction and mitigation of vehicular and pedestrian safety events involving transit vehicles that includes safety risk mitigations consistent with § 673.25(d)(3);

(ii) Address the reduction and mitigation of assaults on transit workers that includes safety risk mitigations consistent with § 673.25(d)(4);

(iii) Include the safety performance targets set by the Safety Committee pursuant to § 673.19(d)(2) for the safety risk reduction program performance measures established in the National Public Transportation Safety Plan. These targets must be set—

(A) Based on a three-year rolling average of the data submitted by the large urbanized area provider to the National Transit Database (NTD);

(B) For all modes of public transportation; and

(C) Based on the level of detail the large urbanized area provider is required to report to the NTD. The Safety Committee is not required to set a target for a performance measure until the large urbanized area provider has been required to report three years of data to the NTD corresponding to such performance measure.

(iv) Include or incorporate by reference the safety risk mitigations identified and recommended by the Safety Committee as described in § 673.25(d)(5).

(b) A transit agency may develop one Public Transportation Agency Safety Plan for all modes of service or may develop a Public Transportation Agency Safety Plan for each mode of service not subject to safety regulation by another Federal entity.

(c) A transit agency must maintain its Public Transportation Agency Safety Plan in accordance with the recordkeeping requirements in subpart E of this part.

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that transit agency notifies the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and

the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

(e) Agencies that operate passenger ferries regulated by the United States Coast Guard (USCG) or rail fixed guideway public transportation service regulated by the Federal Railroad Administration (FRA) are not required to develop Public Transportation Agency safety plans for those modes of service.

49 CFR § 673.13 Certification of Compliance

(a) Each direct recipient, or State as authorized in § 673.11(d), must certify that it has established a Public Transportation Agency Safety Plan meeting the requirements of this part by the start of operations. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part. A State Safety Oversight Agency must review and approve a Public Transportation Agency Safety Plan developed by a rail fixed guideway public transportation system, as authorized in 49 U.S.C. 5329(e) and its implementing regulations at 49 CFR part 674.

(b) On an annual basis, a direct recipient or State must certify its compliance with this part. A direct recipient must certify that it and all applicable subrecipients are in compliance with the requirements of this part.

49 CFR § 673.15 Coordination with Metropolitan, Statewide, and Non-Metropolitan Planning Processes

(a) A State or transit agency must make its safety performance targets available to States and Metropolitan Planning Organizations to aid in the planning process.

(b) To the maximum extent practicable, a State or transit agency must coordinate with States and Metropolitan Planning Organizations in the selection of State and MPO safety performance targets.

49 CFR § 673.21 General Requirements

Each transit agency must establish and implement a Safety Management System under this part. A transit agency Safety Management System must be appropriately scaled to the size, scope and complexity of the transit agency and include the following elements:

(a) Safety Management Policy as described in § 673.23;

(b) Safety Risk Management as described in § 673.25;

(c) Safety Assurance as described in § 673.27; and

(d) Safety Promotion as described in § 673.29.

49 CFR § 673.23 Safety Management Policy

(a) A transit agency must establish its organizational accountabilities and responsibilities and have a written statement of Safety Management Policy that includes the transit agency's safety objectives and a description of the transit agency's Safety Committee or approach to cooperation with frontline transit worker representatives.

(b) A transit agency must establish and implement a process that allows transit workers to report safety concerns, including assaults on transit workers, near-misses, and unsafe acts and conditions to senior

management, includes protections for transit workers who report, and includes a description of transit worker behaviors that may result in disciplinary action.

(c) The Safety Management Policy must be communicated throughout the transit agency's organization.

(d) The transit agency must establish the necessary authorities, accountabilities, and responsibilities for the management of safety amongst the following individuals or groups within its organization, as they relate to the development and management of the transit agency's SMS:

(1) *Accountable Executive.* The transit agency must identify an Accountable Executive. The Accountable Executive is accountable for ensuring that the transit agency's SMS is effectively implemented throughout the transit agency's public transportation system. The Accountable Executive is accountable for ensuring action is taken, as necessary, to address substandard performance in the transit agency's SMS. The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for the transit agency's safety performance cannot be delegated and always rests with the Accountable Executive.

(i) The Accountable Executive of a large urbanized area provider must implement safety risk mitigations for the safety risk reduction program that are included in the Agency Safety Plan under § 673.11(a)(7)(iv).

(ii) The Accountable Executive of a large urbanized area provider receives and must consider all other safety risk mitigations recommended by the Safety Committee, consistent with requirements in §§ 673.19(d) and 673.25(d)(6).

(2) *Chief Safety Officer or Safety Management System (SMS) Executive.* The Accountable Executive must designate a Chief Safety Officer or SMS Executive who has the authority and responsibility for day-to-day implementation and operation of a transit agency's SMS. The Chief Safety Officer or SMS Executive must hold a direct line of reporting to the Accountable Executive. A transit agency may allow the Accountable Executive to also serve as the Chief Safety Officer or SMS Executive.

(3) *Safety Committee.* A large urbanized area provider must establish a joint labor-management Safety Committee that meets the requirements of § 673.19.

(4) *Transit agency leadership and executive management.* A transit agency must identify those members of its leadership or executive management, other than an Accountable Executive, Chief Safety Officer, or SMS Executive, who have authorities or responsibilities for day-to-day implementation and operation of a transit agency's SMS.

(5) *Key staff.* A transit agency may designate key staff, groups of staff, or committees to support the Accountable Executive, Chief Safety Officer, Safety Committee, or SMS Executive in developing, implementing, and operating the transit agency's SMS.

49 CFR § 673.25 Safety risk management

(a) *Safety Risk Management process*. A transit agency must develop and implement a Safety Risk Management process for all elements of its public transportation system. The Safety Risk Management process must be comprised of the following activities: hazard identification, safety risk assessment, and safety risk mitigation.

(b) *Hazard identification*.

(1) A transit agency must establish methods or processes to identify hazards and potential consequences of the hazards.

(2) A transit agency must consider, as a source for hazard identification:

(i) Data and information provided by an oversight authority, including but not limited to FTA, the State, or as applicable, the State Safety Oversight Agency having jurisdiction;

(ii) Data and information regarding exposure to infectious disease provided by the CDC or a State health authority; and

(iii) Safety concerns identified through Safety Assurance activities carried out under § 673.27

(c) *Safety risk assessment*.

(1) A transit agency must establish methods or processes to assess the safety risks associated with identified hazards.

(2) A safety risk assessment includes an assessment of the likelihood and severity of the potential consequences of identified hazards, taking into account existing safety risk mitigations, to determine if safety risk mitigation is necessary and to inform prioritization of safety risk mitigations.

(d) *Safety risk mitigation*.

(1) A transit agency must establish methods or processes to identify safety risk mitigations or strategies necessary as a result of the transit agency's safety risk assessment to reduce the likelihood and severity of the potential consequences. For large urbanized area providers, these methods or processes must address the role of the transit agency's Safety Committee.

(2) A transit agency must consider, as a source for safety risk mitigation:

(i) Guidance provided by an oversight authority, if applicable, and FTA; and

(ii) Guidelines to prevent or control exposure to infectious diseases provided by the CDC or a State health authority.

(3) When identifying safety risk mitigations for the safety risk reduction program related to vehicular and pedestrian safety events involving transit vehicles, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area provider and its Safety Committee must consider mitigations to reduce visibility impairments for transit vehicle operators that contribute to accidents, including retrofits to vehicles in revenue service and specifications for future procurements that reduce visibility impairments.

(4) When identifying safety risk mitigations for the safety risk reduction program related to assaults on transit workers, including to address a missed safety performance target set by the Safety Committee under § 673.19(d)(2), each large urbanized area provider and its Safety Committee must consider deployment of assault mitigation infrastructure and technology on transit vehicles and in transit facilities. Assault mitigation infrastructure and technology includes barriers to restrict the unwanted entry of individuals and objects into the workstations of bus operators.

(5) When a large urbanized area provider's Safety Committee, as part of the transit agency's safety risk reduction program, identifies and recommends under § 673.19(c)(6) safety risk

mitigations, including mitigations relating to vehicular and pedestrian safety events involving transit vehicles or assaults on transit workers, based on a safety risk assessment conducted under § 673.25(c), the transit agency must include or incorporate by reference these safety risk mitigations in its ASP pursuant to § 673.11(a)(7)(iv).

(6) When a large urbanized area provider's Safety Committee recommends a safety risk mitigation unrelated to the safety risk reduction program, and the Accountable Executive decides not to implement the safety risk mitigation, the Accountable Executive must prepare a written statement explaining their decision, pursuant to recordkeeping requirements at § 673.31. The Accountable Executive must submit and present this explanation to the transit agency's Safety Committee and Board of Directors or equivalent entity

49 CFR § 673.27 Safety Assurance

(a) *Safety Assurance process.* A transit agency must develop and implement a safety assurance process, consistent with this subpart. A rail fixed guideway public transportation system, and a recipient or subrecipient of Federal financial assistance under 49 U.S.C. Chapter 53 that operates more than one hundred vehicles in peak revenue service, must include in its safety assurance process each of the requirements in paragraphs (b), (c), and (d) of this section. A small public transportation provider only must include in its safety assurance process the requirements in paragraphs (b) and (d) of this section.

(b) *Safety performance monitoring and measurement.* A transit agency must establish activities to:

(1) Monitor its system for compliance with, and sufficiency of, the transit agency's procedures for operations and maintenance;

(2) Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or were not implemented as intended. For large urbanized area providers, these activities must address the role of the transit agency's Safety Committee;

(3) Conduct investigations of safety events to identify causal factors; and

(4) Monitor information reported through any internal safety reporting programs.

(c) *Management of change.*

(1) A transit agency must establish a process for identifying and assessing changes that may introduce new hazards or impact the transit agency's safety performance.

(2) If a transit agency determines that a change may impact its safety performance, then the transit agency must evaluate the proposed change through its Safety Risk Management process.

(d) *Continuous improvement.*

(1) A transit agency must establish a process to assess its safety performance.

(i) This process must include the identification of deficiencies in the transit agency's SMS and deficiencies in the transit agency's performance against safety performance targets required in § 673.11(a)(3).

(ii) For large urbanized area providers, this process must also address the role of the transit agency's Safety Committee, and include the identification of deficiencies in the transit agency's performance against annual safety performance targets set by the Safety

Committee under § 673.19(d)(2) for the safety risk reduction program required in § 673.11(a)(7).

(iii) Rail transit agencies must also address any specific internal safety review requirements established by their State Safety Oversight Agency.

(2) A large urbanized area provider must monitor safety performance against annual safety performance targets set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7).

(3) A large urbanized area provider that does not meet an established annual safety performance target set by the Safety Committee under § 673.19(d)(2) for the safety risk reduction program in § 673.11(a)(7) must:

(i) Assess associated safety risk, using the methods or processes established under § 673.25(c);

(ii) Mitigate associated safety risk based on the results of a safety risk assessment using the methods or processes established under § 673.25(d). The transit agency must include these mitigations in the plan described at § 673.27(d)(4) and in the Agency Safety Plan as described in § 673.25(d)(5); and

(iii) Allocate its safety set-aside in the following fiscal year to safety-related projects eligible under 49 U.S.C. 5307 that are reasonably likely to assist the transit agency in meeting the safety performance target in the future.

(4) A transit agency must develop and carry out, under the direction of the Accountable Executive, a plan to address any deficiencies identified through the safety performance assessment as described in this section.

49 CFR 673.29 Safety promotion

(a) *Competencies and training.*

(1) A transit agency must establish and implement a comprehensive safety training program that includes de-escalation training, safety concern identification and reporting training, and refresher training for all operations transit workers and transit workers directly responsible for safety in the transit agency's public transportation system. The training program must include refresher training, as necessary.

(2) Large urbanized area providers must include maintenance transit workers in the safety training program.

(b) *Safety communication.* A transit agency must communicate safety and safety performance information throughout the transit agency's organization that, at a minimum, conveys information on hazards and safety risk relevant to transit workers' roles and responsibilities and informs transit workers of safety actions taken in response to reports submitted through a transit worker safety reporting program. A transit agency must also communicate the results of cooperation with frontline transit worker representatives as described at § 673.17(b) or the Safety Committee activities described in § 673.19.

49 CFR 673.5 Definitions

Equivalent entity means an entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

Hazard means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Safety Assurance means processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management Policy means a transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities for the management of safety.

Safety performance target means a quantifiable level of performance or condition, expressed as a value for the measure, related to safety management activities, to be achieved within a specified time period.

Safety Promotion means a combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk assessment means the formal activity whereby a transit agency determines Safety Risk Management priorities by establishing the significance or value of its safety risk.

Safety Risk Management means a process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating the safety risk of their potential consequences.

Safety risk mitigation means a method or methods to eliminate or reduce the severity and/or likelihood of a potential consequence of a hazard.

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

PTASP4. Does the recipient maintain its PTASP documents for a minimum of three years?

BASIC REQUIREMENT
A recipient who is subject to the PTASP regulation must maintain documents that set forth its ASP for a minimum of three years after they are created.

APPLICABILITY
Recipients of Section 5307 funding and rail transit agencies subject to the SSOP that operate a public transportation system

DETAILED EXPLANATION FOR REVIEWER
A recipient who is subject to the PTASP regulation must maintain documents that set forth its ASP, including those related to the implementation of its SMS, and results from SMS processes and activities. A recipient must maintain documents that are included in whole, or by reference, in the ASP that describe the programs, policies, and procedures for carrying out its ASP (i.e. training records, written safety

policies, employee bulletins, etc.). The recipient must maintain these documents for a minimum of three years after they are created.

INDICATORS OF COMPLIANCE

a. *Explain the recipient's record retention policy for its ASP.*

    1) *What types of documents are maintained?*

    2) *How long are documents maintained?*

    3) *Where and how is the policy documented?*

b. *Does the recipient follow its record retention policy?*

    1) *Identify records requested to confirm the recipient is following its policy.*

INSTRUCTIONS FOR REVIEWER

Discuss with the recipient its process for maintaining documents that set forth its ASP and results from SMS processes and activities, and documents included in whole or by reference that describe the programs, policies, and procedures for carrying out its ASP. Confirm that these documents are maintained for a minimum of three years.

POTENTIAL DEFICIENCY INFORMATION

The recipient is deficient if it does not maintain documents that set forth its ASP and results from SMS processes and activities, and documents included in whole or by reference that describe the programs, policies, and procedures for carrying out its ASP for a minimum of three years.

DEFICIENCY CODE PTASP4-1: No process to maintain ASP documents.

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting a process to ensure the recipient maintains documents that set forth its ASP and results from SMS processes and activities, and documents included in whole or by reference that describe the programs, policies, and procedures for carrying out its ASP for a minimum of three years.

SUGGESTED CORRECTIVE ACTION 2: Submit a process to ensure the recipient maintains documents that set forth its ASP and results from SMS processes and activities, and documents included in whole or by reference that describe the programs, policies, and procedures for carrying out its ASP for a minimum of three years.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

GOVERNING DIRECTIVE

49 CFR § 673.31 Safety Plan Documentation

At all times, a transit agency must maintain documents that set forth its Public Transportation Agency Safety Plan, including those related to the implementation of its SMS, and results from SMS processes and activities. A transit agency must maintain documents that are included in whole, or by reference, that describe the programs, policies, and procedures that the transit agency uses to carry out its Public Transportation Agency Safety Plan. These documents must be made available upon request by FTA or other Federal entity, or a State or State Safety Oversight Agency having jurisdiction. A transit agency must maintain these documents for a minimum of three years after they are created.

PTASP5: Does the recipient monitor subrecipients for compliance with PTASP requirements?

BASIC REQUIREMENT
Recipients must ensure that subrecipients with ASPs comply with FTA requirements.

APPLICABILITY
Recipients with subrecipients of Section 5307 funds that operate public transportation service and are ***not*** direct recipients of FTA.

DETAILED EXPLANATION FOR REVIEWER
Recipients with subrecipients that are required to have their own ASP must ensure that the subrecipients comply with FTA PTASP requirements. At a minimum, the recipient should review the subrecipient's ASP to ensure that they address the requirements.

INDICATORS OF COMPLIANCE

a. *Does the recipient have subrecipients subject to ASP requirements?*

b. *Does the recipient monitor subrecipients for compliance with PTASP requirements? (Use Table 22-1: Indicators of PTASP Compliance, on page 22-22 for reference)*

INSTRUCTIONS FOR REVIEWER
Review oversight materials, including checklists and other evidence that the recipient is monitoring subrecipients who are required to develop an ASP. During the site visit, review the file for one such subrecipient to ensure that the recipient has reviewed for compliance with the PTASP requirements. Complete the table on page 22-22 by indicating:

- (1) Yes or no if the recipient monitors for the requirement;
- (2) Where evidence of the monitoring is documented; and
- (3) Any comments or notes to support the results of the review of the oversight process.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that subrecipients that are required to have an ASP and are not direct recipients of FTA funds comply with PTASP requirements.

DEFICIENCY CODE PTASP5-1: Insufficient oversight of subrecipients for PTASP requirements

SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting procedures for ensuring that subrecipients comply with PTASP requirements.

SUGGESTED CORRECTIVE ACTION 2: Submit procedures for ensuring that subrecipients comply with PTASP requirements.

NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

GOVERNING DIRECTIVE
2 CFR 200.332 Requirements for pass-through entities

All pass-through entities must:

(e) Monitor the activities of a subrecipient as necessary to ensure that the subrecipient complies with Federal statutes, regulations, and the terms and conditions of the subaward. The pass-through entity is responsible for monitoring the overall performance of a subrecipient to ensure that the goals and objectives of the subaward are achieved. In monitoring a subrecipient, a pass-through entity must:

(1) Review financial and performance reports.

(2) Ensure that the subrecipient takes corrective action on all significant developments that negatively affect the subaward. Significant developments include Single Audit findings related to the subaward, other audit findings, site visits, and written notifications from a subrecipient of adverse conditions which will impact their ability to meet the milestones or the objectives of a subaward. When significant developments negatively impact the subaward, a subrecipient must provide the pass-through entity with information on their plan for corrective action and any assistance needed to resolve the situation.

(3) Issue a management decision for audit findings pertaining only to the Federal award provided to the subrecipient from the pass-through entity as required by § 200.521.

(4) Resolve audit findings specifically related to the subaward. However, the pass-through entity is not responsible for resolving cross-cutting audit findings that apply to the subaward and other Federal awards or subawards. If a subrecipient has a current Single Audit report and has not been excluded from receiving Federal funding (meaning, has not been debarred or suspended), the pass-through entity may rely on the subrecipient's cognizant agency for audit or oversight agency for audit to perform audit follow-up and make management decisions related to cross-cutting audit findings in accordance with section § 200.513(a)(4)(viii). Such reliance does not eliminate the responsibility of the pass-through entity to issue subawards that conform to agency and award-specific requirements, to manage risk through ongoing subaward monitoring, and to monitor the status of the findings that are specifically related to the subaward.

PTASP6: Did the recipient develop ASPs on behalf of small public transportation provider?

BASIC REQUIREMENT
States must develop an ASP on behalf of any small public transportation provider that is located in that State, unless the small public transportation provider opts to develop its own ASP and notifies the State of its decision to do so.

APPLICABILITY
States

DETAILED EXPLANATION FOR REVIEWER
States must draft and certify ASPs on behalf of small public transportation providers that are located in that State, unless a small provider opts to draft and certify its own safety plan and notifies the State that it will do so. A small public transportation provider is an operator who meets all of the following requirements:

- Is a recipient or sub-recipient of FTA's Urbanized Area Formula Program,
- Has 100 or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode, and

- Does not operate a rail fixed guideway public transportation system.

Regardless of who drafts and certifies a safety plan, each transit operator is required to carry out and implement its own safety plan, including all SMS-related activities.

INDICATORS OF COMPLIANCE

a. *For what small public transportation providers are the State responsible for drafting and certifying ASPs?*

b. *Which small public transportation providers opted out of the State-developed ASP? How and when was the State notified?*

c. *Did the State develop an ASP on behalf of all small public transportation providers in the State that did not opt out?*

d. *What evidence was reviewed to substantiate the response?*

INSTRUCTIONS FOR REVIEWER

Request from the recipient and review a listing of all small public transportation providers in the State. Discuss with the recipient how it worked with those providers to develop the ASPs. Obtain evidence from the recipient that it developed an ASP for these providers.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not develop an ASP for small public transportation providers located in its State that did not opt out and notify the State of the decision to do so.

> DEFICIENCY CODE PTASP6-1: State did not develop ASP for small public transportation providers.
>
> SUGGESTED CORRECTIVE ACTION 1: Develop a plan for submitting documentation that the recipient developed an ASP for all small public transportation providers in the State that have not opted out.
>
> SUGGESTED CORRECTIVE ACTION 2: Submit documentation that the recipient developed an ASP for all small public transportation providers in the State that have not opted out.
>
> NOTE TO REVIEWER: Suggested Corrective Action 1 must be dated within 14 days after the final report issuance date. Suggested Corrective Action 2 must be dated within 90 days after the final report issuance date.

GOVERNING DIRECTIVE

49 CFR § 673.5 Definitions

Small public transportation provider means a recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service across all non-rail fixed route modes or in any one non-fixed route mode and does not operate a rail fixed guideway public transportation system.

49 CFR § 673.11 General Requirements

(d) A State must draft and certify a Public Transportation Agency Safety Plan on behalf of any small public transportation provider that is located in that State. A State is not required to draft a Public Transportation Agency Safety Plan for a small public transportation provider if that transit agency notifies

the State that it will draft its own plan. In each instance, the transit agency must carry out the plan. If a State drafts and certifies a Public Transportation Agency Safety Plan on behalf of a transit agency, and the transit agency later opts to draft and certify its own Public Transportation Agency Safety Plan, then the transit agency must notify the State. The transit agency has one year from the date of the notification to draft and certify a Public Transportation Agency Safety Plan that is compliant with this part. The Public Transportation Agency Safety Plan drafted by the State will remain in effect until the transit agency drafts its own Public Transportation Agency Safety Plan.

ISSUES/AREAS OF CONCERN FOR FTA'S AWARENESS
Did background research and/or onsite observations support any of the concerns below:

- If the recipient operates more than one mode of transit, does the ASP(s) address all modes not subject to safety oversight by the FRA or the USCG?
- If the recipient contracts out part or all its service, does the ASP include the contractors providing this service?
- Is the recipient's Safety Management Policy communicated throughout the agency?
- Does the recipient implement a Safety Risk Management process for all elements of its transit system? Does the process include safety hazard identification, safety risk assessment, and safety risk mitigation?
- Does the recipient have a Safety Assurance process that includes safety performance monitoring and measurement activities, including mitigation monitoring, and continuous improvement?
- If the recipient is not a small public transportation provider, does the recipient's Safety Assurance process include activities for management of change?
- Does the recipient implement its documented Safety Promotion process? Does the process include safety training, including de-escalation training, safety concern identification and reporting training and refresher training? Does the process include safety communication?
- For large urbanized area providers, does the recipient's comprehensive safety training program include maintenance transit workers?

23. CYBERSECURITY

PURPOSE OF THIS REVIEW AREA
Recipients that operate rail fixed guideway public transportation systems must certify compliance with the requirements for establishing a cybersecurity process under 49 U.S.C. § 5323(v).

QUESTION TO BE EXAMINED
1. Has the recipient certified that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
None

Recipient Follow-up
None

C1. Has the recipient certified that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks?

BASIC REQUIREMENT
Recipients must certify they have established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks.

APPLICABILITY
Recipients that operate rail service

DETAILED EXPLANATION FOR REVIEWER
The National Defense Authorization Act for Fiscal Year 2020, Pub. L. 116-92, § 7613 added 49 U.S.C. Section 5323(v). This section requires each recipient that operates rail fixed guideway public transportation systems to certify to FTA that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks. The recipient is to use the approach described in the voluntary standards and best practices developed by the National Institute of Standards and Technology (NIST) and the Secretary of Homeland Security. The recipient also is to identify hardware and software it determines should be tested and analyzed by a third party to mitigate cybersecurity risk. This requirement applies to the entire operations of the transit system, not just the rail portion.

FTA is verifying if and how, recipients are developing their plan for identifying and reducing cybersecurity risks. Recipients are to certify in the Transit Award Management System (TrAMS) by correctly completing Category 19 of the Annual Certifications and Assurances to indicate their compliance with this requirement.

INDICATOR OF COMPLIANCE
a. Has the recipient certified that it has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks?

INSTRUCTIONS FOR REVIEWER
Review the recipient's annual certifications and assurances in TrAMS to confirm that the recipient certified its compliance with the requirement to establish a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks. Discuss with the recipient its process for establishing

the written plan for reducing cybersecurity risks and how it has been implemented. If a written plan is in place, discuss with the recipient how it has been implementing the plan. Do not obtain or retain any copies of the process or plan for FTA records.

POTENTIAL DEFICIENCY DETERMINATION
NOTE TO REVIEWER: Do not make a deficiency if the recipient has not:

- Completed the certification and assurance in TrAMS
- Established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks
- Does not have a written cybersecurity plan
- Is not implementing its written cybersecurity plan.

Notify the Regional Office and note the recipient's response in the Issues/Areas of Concern for FTA Awareness for further follow up by FTA.

GOVERNING DIRECTIVE
49 U.S.C. 5323 (v) Cybersecurity Certification for Rail Rolling Stock and Operations

(1) Certification. As a condition of financial assistance made available under this chapter, a recipient that operates a rail fixed guideway public transportation system shall certify that the recipient has established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks.

(2) Compliance. For the process required under paragraph (1), a recipient of assistance under this chapter shall-

(A) utilize the approach described by the voluntary standards and best practices developed under section 2(c)(15) of the National Institute of Standards and Technology Act (15 U.S.C. 272(c)(15)), as applicable;

(B) identify hardware and software that the recipient determines should undergo third-party testing and analysis to mitigate cybersecurity risks, such as hardware or software for rail rolling stock under proposed procurements; and

(C) utilize the approach described in any voluntary standards and best practices for rail fixed guideway public transportation systems developed under the authority of the Secretary of Homeland Security, as applicable.

(3) Limitations on statutory construction. Nothing in this subsection shall be construed to interfere with the authority of-

(A) the Secretary of Homeland Security to publish or ensure compliance with requirements or standards concerning cybersecurity for rail fixed guideway public transportation systems; or

(B) the Secretary of Transportation under Section 5329 to address cybersecurity issues as those issues relate to the safety of rail fixed guideway public transportation systems.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

Did background research and/or onsite observations support any of the concerns below:

- Has the recipient completed the certification and assurance in TrAMS?
- Has the recipient established a process to develop, maintain, and execute a written plan for identifying and reducing cybersecurity risks?
- Does the recipient have a written plan for reducing cybersecurity risk? Is it being implemented?

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws

USEFUL WEBLINKS

1. National Institute of Standards and Technology Cybersecurity Framework
2. Cybersecurity & Infrastructure Security Agency