U.S. Department
of Transportation
Federal Transit Administration

ORDER

FTA O 5400.1

November 1, 1994

Subject: OVERSIGHT REVIEWS

1. PURPOSE. The purpose of this order is to establish processes and procedures that will ensure a coordinated, cohesive, and uniform level of oversight activity while avoiding unnecessary duplication and overlap of reviews. All oversight reviews including civil rights, procurement, financial management oversight (FMO), safety, state management reviews, and triennial reviews are required to follow the same processes and procedures and are fully coordinated through the Regional Administrators. The order describes the internal mechanisms for establishing a grantee risk rating; the work program; conducting oversight reviews; and considering corrective actions, sanctions, and their monitoring. The oversight process described in this order is intended to be customer service oriented and to provide an opportunity to interact with grantees to better support transit service. This order does not preclude "spot" compliance reviews based on serious, previously undisclosed, situations that surface because of a specific, or series of, incident(s).

2. REFERENCES.

   a. Title VI of the Civil Rights Act of 1964, 42 U.S.C.

   b. 49 U.S.C. 5307(i), "Mass Transit Block Grants

   c. 49 C.F.R. Parts 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;" Part 37 "Transportation Services for Individuals with Disabilities (ADA);" and Part 38, "Americans with Disabilities Act (ADA)"

   d. OMB Circular A-128, "Audits of State and Local Governments," dated 4-12-85.

   e. FTA Order 2910.1D, "Office of Inspector General Audit Activities, Responsibilities, Follow-up, and Corrective Action," dated 08-23-94.

   f. FTA Order 9010.1B, "Triennial Review," dated 04-05-93.

   g. Triennial Review Handbook, dated 09-94.

3. APPLICABILITY. This order is applicable to the review of recipients of FTA-funded grants.

DISTRIBUTION: FTA Headquarters Offices (T-W-2)
FTA Regional Offices (T-X-2)

OPI: Office of Grants Management

4. BACKGROUND. The FTA oversight program is intended to inform and assist FTA management and FTA assistance recipients in carrying out their individual responsibilities as stewards of public funds under the Federal transit law. Meeting our responsibilities as stewards of public funds has always been an FTA priority. Changes in enabling legislation and appropriated resources have shaped our approach to this aspect of our mission at any particular point in time. In enacting the block grant formula program for urbanized areas under the Surface Transportation Assistance Act of 1982 (STAA) Congress recognized the role FTA had long sought of reliance upon grantee assurances coupled with greater emphasis on monitoring the adequacy of local systems to ensure proper planning, technical, financial and administrative control. The Act established an oversight framework comprised of grantee self-certifications at the grant award phase; annual audits to ascertain that grantees are carrying out their programs of projects and certifications in a manner consistent with applicable laws and cross-cutting requirements; and triennial reviews conducted by FTA to examine grantee management of formula funds and grantee performance with specific reference to compliance with statutory and administrative requirements.

Also in this time period, because of problems experienced in certain major construction projects, FTA began to monitor the construction management of a few large and complex capital projects by retaining engineering consultants. This was done in lieu of hiring staff, during a period when the agency ultimately experienced a 27 percent staff reduction. The program, financed by FTA's smaller research and planning programs, was useful immediately to FTA and its recipients. To expand it, the agency requested and was granted authority in the FY 1986 and FY 1987 DOT appropriations acts to use up to one-half of one percent of the funding available under its major capital programs to contract for such activity. This authority was subsequently incorporated into the agency's authorization legislation on enactment of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA). It was limited to this specific program support function, known as project management oversight (PMO), but served to demonstrate the improvement that could be made in FTA stewardship by such use of program funds.

Accordingly, in FY 1990, again in response to a request from FTA to help address weaknesses identified in other areas, Congress expanded the agency's authority to use program funds for contracting modeled on the PMO program. The additional authority encompassed safety, procurement, management and financial compliance reviews and audits of any recipient of FTA grant funds.

During this evolution of oversight functions, in October 1989 the Office of Management and Budget (OMB) cited the review and oversight of grants as a potential high risk area in FTA. The Office of Inspector General (OIG) reported that FTA was not maintaining adequate oversight of its program and the General Accounting Office (GAO) reported that FTA was not using established program management and oversight tools to direct corrective action at the grantee in a systematic and timely manner. Many of the

improvements FTA has undertaken were made in close collaboration with representatives of the OIG, GAO and the Office of the Secretary. Some of the improvements are reflected in this Oversight Reviews Order such as the section on resolving noncompliance findings, which addresses enforcement and sanctions.

5. INTRODUCTION. This order provides a common framework for regional and headquarters staff to administer oversight reviews of grant recipients. The guidance is laid out in three principal sections. Section 6 provides a brief description of the current oversight programs. Section 7 details the processes and procedures that are to be followed in the performance of oversight reviews and Section 8 affords guidance on resolving noncompliance and the use of available remedies and sanctions.

6. OVERSIGHT REVIEW PROGRAMS.

a. Triennial Reviews. The triennial review is a reconnaissance review that takes maximum advantage of the work of other reviews, principally the single annual audit under OMB Circular A-128, OIG and GAO reports, procurement and FMO review, and other expert special purpose reviews performed by contractors hired by FTA. A problem or issue addressed in an audit or other expert review will be investigated immediately, and the triennial review will serve as a follow-up to the problem or issue.

Section 15 data are utilized in triennial reviews to determine industry trends, expenditures for maintenance, fleet utilization, and comparisons of a grantee's current and past performance. During the reviews, test samples are used to provide assurance that grantee programs are being executed in accordance with FTA administrative and statutory requirements. The reviews are a part of FTA's management functions and are used as a management tool by both the grantee and FTA. They are conducted in accordance with FTA Order 9010.1B, "Triennial Reviews", and the Triennial Review Handbook.

b. Financial Management Oversight. This program was established to assess grantees' financial management systems in order to determine whether they are sufficient to process Federal funds and perform adequately. For each designated grantee, the FMO evaluates the grantee's financial management systems, assesses grantee's internal controls, and provides technical assistance for financial management systems/internal controls.

The review provides an in-depth analysis of: accounting and financial system controls, how payments move through the system, when and how payments are approved and made, the timeliness of payments, the cost of project change, and the adequacy of the tracking system through all phases of the project. The review also includes an evaluation of the overall organization charged with the financial management responsibility. The criteria used for the FMO review are found in 49

CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

c. Civil Rights. The purpose of the civil rights review in accordance with Executive Order 11764 is to determine compliance with four areas: Title VI of the Civil Rights Act of 1964, Equal Employment Opportunity (EEO), Disadvantaged Business Enterprise (DBE), and the Americans with Disabilities Act (ADA) of 1990. The grantee must ensure that no person shall on the grounds of race, color, creed, national origin, sex, age, or disability, be excluded for participating in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through financial assistance under the Federal Transit Act, as amended. The provisions of this section apply to service delivery, employment, and business opportunities and are considered to be in addition to and not in lieu of the provisions of Title VI of the Civil Rights Act of 1964.

d. Americans with Disabilities Act Program Implementation. The purpose of the ADA implementation is to determine if the grantee's ADA paratransit and key station programs are being implemented and if they meet the ADA mandates related to accessible vehicles, facilities, and certain service requirements. The Department of Transportation DOT issued a final rule, 49 CFR Parts 37 and 38 "Transportation for Individuals with Disabilities," which implements the law. The rule contains provisions on the acquisition of accessible vehicles by private and public entities, requirements for complementary paratransit service by public entities operating fixed route systems, provisions for accessible facilities and buildings, and accessible transportation service. The ADA implementation is designed to look at the technical and engineering aspects of the grantee's program and focuses on vehicles and facilities.

e. Procurement System Reviews. The purpose of the procurement system review is to ensure that grantees meet the requirements and standards of the common rule on administrative requirements for grants, 49 CFR Part 18.35, as it specifically applies to procurements. The standards are applicable to FTA third-party procurements and allow grantees and subgrantees to use their own procurement procedures that reflect applicable State and local regulations, provided that the procurements conform to applicable Federal law. Some of the requirements that are reviewed during the procurement system reviews call for the grantee to maintain a contract administration that ensures contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders; to ensure ethical conduct; to have written policy that includes procedures for identifying and preventing real and apparent organizational conflicts of interests; to foster greater economy and efficiency; and to address proper records maintenance.

f. State Management Reviews. To the extent permitted by law, it is FTA's intent to give the States the maximum discretion possible in designing and managing the rural program to meet non-urbanized public transportation needs (49 U.S.C 5300)

and the program to meet the special transportation needs of the elderly and persons with disabilities (49 U.S.C. 5310). Under the Department of Transportation regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18 (Common Rule), States rely on their own laws and procedures instead of Federal procedures in the areas of financial management systems, equipment, and procurement. Reviews of the State's management of Section 5310 and Section 5311 programs are to be conducted every three years as a standard practice. Reviews may be required more frequently if problems are identified, or less frequently if previous reviews have indicated sound management practices and no major changes have occurred. Unlike triennial reviews for the formula fund recipients, which is a statutory requirement, the state management review is an FTA initiated oversight procedure to determine if a State is administering the programs in accordance with FTA requirements.

g. Safety Reviews. Under Section 22 of the Federal Transit Act, codified as 49 U.S.C.5329 (a) and (b), "Safety Authority," the Secretary has authority to investigate the operations of the grantee for any conditions that appear to create a serious hazard of death or injury especially to patrons of the transit service. Safety reviews also include reviews for drug and alcohol testing and state safety oversight of fixed rail guideway systems.

7. PROCESSES AND PROCEDURES FOR REVIEWS. In order to maximize resources available, including travel and contractors, and to ensure that each Regional Office's oversight needs are met, each Regional Administrator and each Headquarters Associate Administrator and Staff Office Director with oversight responsibility will appoint a member to serve on an Oversight Review Council. The Oversight Review Council will be a self-managed working group. The Oversight Review Council will be responsible for development of oversight review schedules, quality of oversight reviews, and coordination of the reviews to avoid overlap and to achieve a comprehensive, uniform, and cohesive oversight approach. All reviews of grantees will be coordinated in conjunction with the Regional Administrator.

a. Review Schedule Development. On June 1 of each fiscal year, the Office of Grants Management will distribute the risk assessment form to each Regional Office. Regional officials and staff will complete the form for each grantee within 60 days, by August 1. Essentially, the risk assessment process focuses on the grantee and Federal compliance requirements and the relative risk or expectation of noncompliance by the grantee. From the ranking process, the Regional Administrator will develop an oversight plan for those grantees requiring special attention and an overall regional oversight plan. The Regional Administrator will submit the regional oversight plan to the Office of Grants Management. After the Office of Grants Management receives all plans, an Oversight Review Council meeting or conference call will be held for the purpose of developing final oversight plans to allocate oversight resources including contractors, travel funds,

etc. The oversight plan must be completed no later than August 30 of each year and coordinated with the Regional Administrator. The plan will be designed to avoid duplication and will determine the length and scope of the review and report any special circumstances to the Administrator.

b. Grantee Notification. A grantee notification letter will be drafted for the Regional Administrator's signature informing the grantee that a review(s) is proposed to be performed during the fiscal year. The letter will also indicate the proposed length and scope of the review, the proposed time period for the site visit portion of the review, and identify the review leader for the review. This letter also may request that specific information be submitted to the Regional Office prior to the initiation of the review. The letter should be sent to the grantee well in advance of the commencement of the review.

c. Desk Review. Certain oversight functions, such as the triennial review program, may include a desk review prior to a site visit. The reviewer(s) will examine pertinent grantee data maintained in the Regional Office files. In conducting the review, the reviewer(s) may require the assistance of other staff members with legal, civil rights, safety and security, engineering, or other specialized experience and technical skills to adequately perform the review.

d. Preparation for Site Visit. When it is determined that a site visit is a necessary part of an oversight review, the tentative date of the site visit will be coordinated with the Oversight Review Council, the Regional Administrator, and the grantee. If the dates of the site visit change from the original schedule, the oversight representative is responsible for coordinating all confirmations. Once this has been completed, the oversight representative will draft a site visit agenda letter for the Regional Administrator to send to the grantee. This letter, in addition to confirming the dates and objectives of the site visit, will advise the grantee of FTA concerns and items to be discussed, as well as identify documents and records needed for review during the site visit. The grantee will be requested to have available the appropriate personnel needed to address identified matters of concern. The letter should be received by the grantee at least 30 days prior to the site visit.

e. Site Visit. The site visit begins with an entrance conference with grantee management officials. Throughout the review process, every effort should be made to assure the grantee that this is a customer service based process. The review leader may conduct this conference which will consist of a reiteration of the purpose and agenda of the review, discussion of any known deficiencies or issues, and a discussion of any concerns the grantee would like to address. After all site visit agenda activities are completed, the review leader will conduct an exit conference with the grantee's management officials to present preliminary review findings and proposed improvements, remedies, or corrective actions. When

agreement is reached on a specific follow-up action, a completion date for the grantee's corrective action will be set.

f. Draft Review Report. Within 30 days of the site visit, the reviewer(s) will prepare a comprehensive draft report which documents the review, specifies needed corrective actions, and establishes deadlines for when corrective action will be undertaken and when the action will be completed. It will also indicate whether the corrective actions and deadlines were agreed to at the site visit exit conference or were determined at a later date. The draft report will be reviewed by the Regional Administrator or his designee who will ensure timely review of the initial draft. After the internal review, any draft report revisions necessary will be made and a letter prepared for the Regional Administrator's signature to transmit the draft report to the grantee for comment. Copies of the draft report are also to be sent to the FTA cognizant Headquarters office for review. All reviewing parties will be given 30 days to respond. Within 30 days after receipt of comments (or expiration of the 30-day period, if no comments are received), the final report will be prepared.

g. Final Review Report. A draft letter will be developed for the Regional Administrator's signature transmitting the final review report to the grantee. If the Regional Administrator wishes, this letter may summarize the noncompliance findings of the review. Each write-up should include: a summary of the Federal requirement, a description of the problem, a description of the corrective action needed to remedy the problem, and the deadline for completing necessary corrective actions.

The transmittal letter should request written acknowledgment, within 30 days of issuance, of the findings requiring corrective actions and the grantee's agreement to time frames for taking such actions. The letter should emphasize that the grantee must include the status of all identified corrective actions needed to remedy a problem in subsequent transmittals quarterly. If the corrective actions are unlikely to be accomplished within an 180-day period, the letter must specify how the corrective action process will be monitored. The Regional Administrator also may utilize this letter to commend grantees for noteworthy accomplishments or to provide additional information related to reviews. A copy of each final report is to be sent to the responsible Headquarters office.

h. Report Format. Each oversight report, including civil rights, procurement, FMO, safety, state management reviews, and triennial reviews will be in a narrative format, addressed to the Regional Administrator with appropriate attachments. A copy should be sent to the cognizant Headquarters office. The report should provide: a brief description of the grantee in the context of its urban area, areas of noncompliance, problem areas needing follow-up, a brief summary of each requirement area reviewed and the general findings, items highlighted in the entrance and exit interviews with the grantee's General Manager and senior staff

not already addressed, and may include a summary statement about the general well-being of the grantee or to emphasize any good points found during the review.

i. Terminology. For consistency and ease of review the following terminology shall be used in all FTA oversight reviews.

(1) Finding. The discovery or determination of a grantee's management performance.

(2) Recommendation. An action presented for consideration process to improve grantee's management performance.

(3) Compliance. The determination that a grantee has met or exceeded the Federal grant requirements for management performance.

(4) Noncompliance. The determination that a grantee has failed to meet Federal grant requirements in at least one management performance area.

(5) Compliance with Follow-Up. The determination that a grantee's management performance is generally in agreement with the requirements, but that some action must be taken for full compliance.

(6) Problems. An issue regarding a grantee's management performance.

(7) Corrective Actions. An action that is proposed to improve a grantee's management performance.

(8) Monitoring. To track grantees' accomplishment of proposed actions for improved management performance.

j. Documentation. All relevant information relating to the oversight of each grantee will be maintained in such manner as to be easily and quickly identified, complete, and readily available for use. A uniform record-keeping system will be established. Guidance on this record-keeping system is contained in the Triennial Review Handbook, which requires an open permanent file be established for all grantees. One general open oversight file will be established for each grantee. This is for the purpose of retaining information on audits by the Office of Inspector General (OIG), the General Accounting Office (GAO), public accounting firms, and any other audits and all FTA reviews including procurement, safety, FMO, project management oversight (PMO), and all others. This will help to facilitate the grantee risk determination process. Correspondence and documents relevant to the grantee risk determination, audits, and pertinent reviews will be inserted into this file as received or generated. Information in the open, permanent oversight file will also be used to provide background information when conducting

oversight reviews of grantees. The closure of all compliance findings must be documented.

k. Determining Deficiencies and Corrective Actions. Fundamental to the ultimate objective of assisting grantees to improve their management and operating systems is the identification of any deficiencies or weakness in those systems. The Regional Administrator or his designee is responsible for determining and monitoring necessary corrective action(s) of a proposed deficiency as detailed in an oversight report to ensure that corrective actions are accomplished by each grantee in a timely and effective manner.

l. Follow-Up on Corrective Actions. If found in noncompliance with Federal grant requirements and in order to continue eligibility for receipt of Federal funds, grantees must take corrective action to comply with Federal statutory and administrative requirements. Grantee progress in implementing corrective actions is to be addressed in appropriate grantee reports to FTA.

The Regional Administrator must designate an oversight staff member who is responsible for monitoring and overseeing the corrective actions that each grantee is charged with making. Each deficiency will be identified, the proposed corrective actions specified, and a schedule established as a part of the process for overseeing that corrective actions are accomplished by each grantee in a timely and effective manner. The closure of noncompliance findings must be documented by letter from the transit agency outlining the necessary actions taken on resolving the noncompliance items. When the grantee notifies FTA in writing that all corrective actions have been implemented, FTA will send the grantee a closure letter. (See Attachment A.)

8. RESOLVING NONCOMPLIANCE FINDINGS. This section addresses situations where a grantee is not making progress in correcting deficiencies and emphasizes the importance that FTA places on the need for grantees to take appropriate and speedy action to meet Federal mandates after the concern has been brought to their attention. It provides general guidance for determining when and what type of action FTA should take to encourage grantees to achieve compliance to remain eligible to receive Federal grant funds. The process also provides guidance on the leverage that may be used through the funding process, and the sanctions that may be imposed on grantees who fail to take necessary corrective action.

a. FTA Identification of Noncompliance. FTA has several resources available to identify grantee management deficiencies and noncompliances. Normally, grantee management deficiencies are identified and resolved as a result of routine reviews conducted by FTA regional staff, review of various documents and correspondence such as grantee progress and financial status reports, or the annual FTA risk determination program. In addition, FTA conducts several post-award reviews including triennial reviews, PMO, FMO, procurement reviews, civil rights,

and safety reviews. Other sources of grantee compliance information is provided through the A-128 audit process, and through DOT OIG and GAO audits.

b. Remedies and Sanctions. 49 U.S.C. requires grantees to meet certain conditions to be eligible to receive Federal funds and prescribes various remedies and sanctions for grantees' programs that fail to comply with Federal administrative or statutory requirements. Additionally, 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements for State and Local Governments," clearly describes the essential elements of Federal grant requirements and, if necessary, the enforcement tools available. It is the agency's goal to use remedies and sanctions in such a way as to encourage grantees to achieve compliance while making it clear that absolute refusal to take the necessary actions will not allowed.

For general guidance, the following is a summary of 49 CFR Part 18 and 49 U.S.C. 5307(i) that specify sanctions in regard to triennial reviews. audits, and various subject matter reviews. To further clarify the use of citations of the regulations and law, sample letters are attached for easy reference.

(1) Compliance Provisions. 49 CFR Part 18 describes pre-award and post-award grant requirements and special conditions for "high risk" grantees or subgrantees in the pre-award stage and enforcement remedies for grantees or subgrantees who significantly fail to comply with terms in the post-award stage.

In the pre-award stage, FTA may consider a grantee "high risk" if: the grantee has a history of unsatisfactory performance, is not financially stable, has a management system which does not meet the required standards, has not conformed to terms and conditions of previous awards, a general lack of history, i.e., is a new grantee, or is otherwise not responsible. If FTA determines that an award will be made, special conditions or restrictions may be imposed in the award that correspond to the high risk condition.

The special conditions may include: payment on a reimbursement basis, withholding authority to proceed to the next project phase until receipt of evidence of acceptable performance within a given funding period, requiring additional or detailed financial reports, additional project monitoring, requiring the grantee or subgrantee to obtain technical or management assistance; or establishing additional approvals.

In the post-award stage, if a grantee substantially fails to comply with any terms of an award, whether stated in a Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, FTA may take one or more of the following actions, as appropriate given

the circumstances: temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee or more severe enforcement action; disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity not in compliance, wholly or partly suspend or terminate the current award for the grantee's program; withhold further awards for the program; or take other remedies that may be legally available.

Remedies/Sanctions. FTA may reduce or withdraw obligated funding assistance, reduce or deny further obligations, require specific action by the grantee as a condition for further drawdown or award, terminate a project for cause, or take other action as appropriate depending on the severity of non-compliance and the grantee's ability and willingness to implement corrective actions.

(2) Triennial Reviews, Audits and Other Reviews By Appropriate Experts. 49 U.S.C. 5307(i) states, "The Secretary shall, at least on an annual basis, conduct or require the recipient to have independently conducted, reviews and audits as may be deemed necessary or appropriate by the Secretary ... and that in addition to these reviews and audits, the Secretary shall, "not less than once every three years, perform a full review and evaluation of the performance of a recipient in carrying out the recipient's program...".

Remedies/Sanctions. If it is determined during a triennial review, an audit, or other review, that the grantee has failed to carry out its activities in a manner that is consistent with Federal requirements, 49 U.S.C. Section 5307(i) provides that, "(3) The Secretary may make appropriate adjustments in the amount of annual grants in accordance with the Secretary's findings under this subsection, and may reduce or withdraw such assistance or take other action as appropriate in accordance with the Secretary's review, evaluation, and audits under this subsection."

(3) Due Process. Prior to imposing sanctions, FTA will give the grantee adequate opportunity to contest the findings, to take corrective action, and/or to show cause why FTA should not take adverse action. FTA will forward to the OIG or the Department of Justice information on any suspected civil or criminal wrongdoing.

(a) Level I Noncompliance. A Level I noncompliance is a first time or one-time violation of Federal administrative requirements. These include delinquent or incomplete quarterly progress reports, failure to request required FTA concurrence, inadequate financial reporting, failure to keep complete property records, etc. These types of noncompliance actions are most often the result of grantee lack of knowledge or information or understanding the importance

of the requirement and are often inadvertent violations. (See Attachment B.)

FTA Due Process.

Phase 1-Remedies. The FTA Regional Administrator will formally notify the grantee by letter of the noncompliance finding, the required remedial action to come into compliance, and will request that the grantee confirm in writing within 30 days. With the notification letter, FTA staff will offer to provide technical assistance to review written guidance and grant management requirements by either telephone or personal meeting(s) with the grantee. The discussion can determine whether or not the grantee has on file for ready reference all FTA manuals, circulars, etc. The discussions may be used to assist the grantee in developing a corrective action plan.

Phase 2-Remedies. The FTA Regional Administrator will review and determine acceptability of the resolution plan and will establish a "suspense file" for monitoring grantee progress. All actions must be completed within one year. If the grantee takes corrective action, the corrective action must be validated.

Phase 3-Remedies. A grantee's failure to take corrective action within one year moves the noncompliance or deficiency issue to Level II which would signify a "history" of unsatisfactory performance under "high risk," 49 CFR Part 18.12. Extenuating circumstances beyond the control of the grantee may necessitate extending the Level I process, however, the circumstances must be well documented and on file with the Regional Office.

(b) Level II Noncompliance. In addition to grantees who have posed a "history" of unsatisfactory performance through recurring violations of FTA requirements, a "high risk" finding may be determined through an evaluation of the grantee that identifies clear violations of FTA written policies, including but not limited to, spare ratio, contingency fleet, real property requirements, known non-competitive procurements or sole source procurements, and failure to adequately resolve compliance findings resulting from other program reviews. (See Attachment C.)

FTA Due Process.

Phase 4-Remedies. The FTA Regional Administrator will formally notify the grantee of the high risk determination and of special conditions that may apply, the reasons for imposing the special conditions, the required corrective actions and the time allowed for completing the corrective actions, and the method of requesting reconsideration.

Phase 5-Remedies. The Regional Administrator, in the notification letter, will request the grantee to respond in writing within 30 days. FTA regional staff will review grantee progress for compliance no less than on a monthly basis. Failure to submit required reports on time will move the noncompliance issue to Level III. If, however, the grantee has taken corrective actions, validation must be provided within six months. Through the annual risk determination process, the Regional Administrator may assign oversight resources to provide follow-up assistance such as procurement reviews, civil rights reviews, FMO reviews, or State safety reviews, where more specific recommendations may be made to further define for the grantee the course of action required to come into compliance. FTA may also request that the grantee obtain additional audits, reviews, or technical assistance as provided under the grant agreement.

The grantee will be expected to cooperate fully to correct the deficiency. Full compliance will be expected as quickly as possible. FTA regional staff will be in close contact with the grantee to track compliance through phone calls, memoranda, and site visits. There may be extenuating circumstances that delay a grantee from completing compliance actions with one or more Federal requirements. The circumstances should be carefully explained and documented by the grantee and FTA regional staff. The circumstances will be evaluated on a case-by-case basis and progress monitored by the FTA regional staff.

Phase 6-Remedies. A letter will be developed for the signature of the Administrator to the Chairman of the Board that details the nature of the outstanding issue, documents willingness on the part of FTA to work with the grantee toward correcting the problem, documents the FTA correspondence trail and provides formal warning of the seriousness of the issue and the intent to impose sanctions if corrective actions are not taken.

(c) Level III Noncompliance. The grantee has previously been notified by letter of noncompliance action and the course of action necessary to achieve compliance. At Level III, FTA has worked with the grantee for more than two years to help the grantee achieve compliance. The grantee has shown little willingness or ability to take corrective actions. Or, in other cases the noncompliance areas are clear and willing violations of Federal statutes such as procurement regulations, civil rights legislation, safety or drug-free workplace or drug-testing programs, or financial management issues. The case presents clear violations of Federal statute(s) and the following sanctions will apply. (See Attachment D.)

Phase 7-Sanctions. The Regional Administrator will require the grantee to report monthly on progress toward achieving compliance. As provided by 49 CFR Part 18.12, the FTA Regional Administrator will place restrictions on future grant approvals involving the area of noncompliance and restrict the receiving of funds in existing grants until corrective measures are taken. Alternately, remove grantee's access to the Electronic Clearinghouse Operations (ECHO) payments or prohibit fund draw-downs until item is corrected. Other actions may include the disallowance of all or part of the cost of the activity not in compliance, reduce the grantee's portion of the apportioned funds by a percentage or temporarily withhold cash payments pending correction of the deficiency.

Phase 8-Sanctions. Suspend in whole or part and/or terminate the current grant award for cause or withhold further grant awards until full compliance is achieved.

9. RELATED OVERSIGHT. In addition to oversight reviews, FTA staff exercise oversight by taking actions upon the findings and recommendations relating to individual grantees that are issued by auditors or outside contractors. Most grantees are required to have an annual audit performed by an independent auditor using the FTA Compliance Supplement for Single Audits under OMB Circular A-128. Federal auditors, including auditors from the DOT OIG and the GAO may also select a program, an area, or individual grantee for audit. The findings and recommendations in these audits must be tracked and brought to resolution in accordance with FTA Order 2910.1D, "Office of Inspector General Audit Activities, Responsibilities, Followup, and Corrective Action", and coordinated under the guidance of the Oversight Review Council.

The Office of Management and Budget (OMB) has prescribed a process for executing all requirements relating to the Federal Managers' Financial Integrity Act (FMFIA). One FMFIA requirement is for specific reporting by the Secretary of Transportation to the

President and Congress each year on each material weakness or high risk area. FTA must prepare an annual FMFIA report from the Administrator to the Secretary of Transportation that includes specific information on each material weakness and high risk area. This report includes detailed information on plans and milestones for correcting the material weakness or high risk area.

At the time of the report, the responsible office must document and validate the actions taken to correct the material weakness; the validation process used to verify that corrective actions were taken; and assurance that the actions taken are satisfactory, cost efficient, and effective. The OIG reviews the validation and correction process and OMB approves that the high risk area has been corrected before final issue of the Secretary's Annual FMFIA Assurance Letter to the President and Congress.

10. RESPONSIBILITIES. The responsibilities of executive level officials are summarized below.

a. The Associate Administrator for Grants Management is responsible for the risk assessment, triennial reviews (including States), FMO reviews, ADA program implementation and for appointing a member to the Oversight Review Council.

b. The Associate Administrator for Budget and Policy is responsible for all matters relating to the Federal Managers' Financial Integrity Act, including the development and maintenance of the FTA Management Control Plan and preparation of the Annual Assurance Report on material weakness and high risk areas designated by OMB. Also acts as liaison office with OMB and Congress and is responsible for appointing a member to the Oversight Review Council.

c. The Associate Administrator for Administration is responsible for procurement systems reviews and coordination of OIG and GAO audits and follow-up with Regional Offices to ensure corrective actions have been taken and for appointing a member to the Oversight Review Council.

d. The Associate Administrator for Technical Assistance and Safety is responsible for safety reviews and for appointing a member to the Oversight Review Council.

e. The Director, Office of Civil Rights, is responsible for compliance reviews, monitoring and oversight to assure that FTA's programs, internal and external, do not discriminate on the basis of race, color, sex, national origin, creed, age, or disability and is responsible for appointing a member to the Oversight Review Council.

f. The Office of Chief Counsel is responsible for opinions of legal sufficiency.

g. Each Regional Administrator is responsible for proper oversight of grantees in the region and must assure that:

(1) The responsibility for oversight of each grantee is assigned to a staff member, particularly in the areas of monitoring and overseeing corrective actions.

(2) An "oversight file" is maintained for each grantee.

(3) A "Grantee Risk Determination" form has been completed for each grantee to determine the relative risk of high, medium, or low before the end of each fiscal year.

(4) A "Regional Grantee Oversight Plan" has been developed before the end of each fiscal year for the ensuing fiscal year. (The plan must assign a risk rating to each grantee, set forth the proposed type of review or other actions for those grantees who pose a potential risk, and estimate the resources needed to perform the proposed actions.)

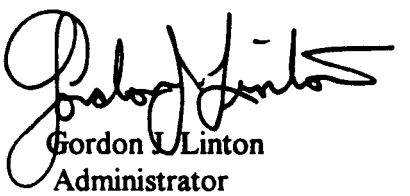
(5) If adequate resources are not available at the Regional Office to execute the "Regional Grantee Oversight Plan," assistance is requested by memorandum.

(6) The type of additional work or assistance that needs to be applied in the case of each grantee is specified, the corrections that a grantee must take are specified, and the grantee is making timely progress in correcting deficiencies.

(7) An oversight review coordinator is assigned to manage the oversight process in each region and staff to conduct the oversight reviews are selected.

(8) A-128 audits are reviewed for findings and recommendations and that corrective actions have been taken.

(9) A regional representative is appointed to the Oversight Council.



Gordon J. Linton
Administrator

ATTACHMENT A

Re: [Name of Oversight Program]
Compliance Findings Closure

Dear Grantee:

Thank you for your letter [date] outlining necessary actions taken by [transit agency] on resolving noncompliance with follow-up items that were contained and discussed in the [name of oversight review report] for [transit agency]. Specifically, these findings were reported in the areas of [compliance requirements]. Your response enabled the closing of the items and consequently, no further action to this [name of oversight review] is necessary.

Regarding [compliance requirement], a noncompliance finding, the [transit agency] was required to [describe necessary corrective action]. On [date] the [transit agency] successfully implemented [describe action plan] which satisfactorily resolved this finding. Based upon this action, we have concluded that the corrective action implemented by [transit agency] enables us to close the finding.

Regarding [grant requirement], a noncompliance finding with follow-up action required, the [transit agency] successfully implemented [describe action plan] thereby satisfactorily resolving this finding. Based upon this course of action, the FTA concludes that the finding is closed.

If you have questions about this action, please contact [regional contact person] at [telephone number].

Sincerely,

ATTACHMENT B

Re: Level I Noncompliance Findings Phase 3
[Name of Oversight Program]

Dear Grantee:

Thank you for your recent letter outlining the actions taken by [transit agency] on resolving noncompliance with follow-up items that were contained and discussed in the [name and date of review performed] for [transit agency]. Specifically, these findings were reported in the areas of [name the findings]. Your response enabled the closing of [name the items resolved], but leaves open for resolution the area of [name requirement]. Based on your response, FTA has closed two of the three findings. You are granted a 30-day extension or until [date] to close the remaining findings.

Regarding the area of [name requirement], the transit agency was required to provide [describe corrective action necessary]. You previously submitted, and we concurred, [describe corrective action] calling for all action to be complete by [date]. The [transit agency] then submitted a revised project implementation schedule calling [describe action required] to be complete by [date]. However, this [describe action] was not maintained and has been revised yet another time. You have now proposed a schedule that calls for all corrective action to be completed within [timeframe]. We concur with this schedule, but also caution you that under the provisions found in 49 CFR 18.12 [transit agency] is liable to be determined a "high risk" grantee. Specifically, a grantee who has not conformed to terms and conditions of previous awards, ..."may be considered a "high risk" and the awarding agency may place special conditions on awards."

Please report your progress in attaining compliance to us quarterly until such time as the necessary corrective action is complete. FTA staff is available to provide whatever technical assistance you may find necessary and remains available to review written guidance and grant management requirements with you by either telephone or personal meeting.

If you have any questions, please contact [regional contact person] at [telephone number].

Sincerely,

ATTACHMENT C

Re: Level II - Noncompliance Findings Phase 5
[Name of Oversight Program]

Dear Grantee

We have by both informal communications and by letter(s) [dated ___] and [dated_____], informed [name of agency] that during a [name of oversight review] conducted on [date] your agency was in noncompliance with the [name requirement]. In accordance with 49 CFR 18.43 which states that if a grantee "fails to comply with any term of an award," the awarding agency may "wholly or partly suspend or terminate the current award for the grantee's program." Failure to submit the required corrective action by [deadline date] is cause for suspension of payments to your agency and discontinuance of grant application reviews. The lack of action by [name of agency] has also jeopardized the award of future grants. FTA has not received the required [describe corrective action] in order to close the finding. We are quite concerned over the significance of the unresolved issue since it has been an ongoing matter for more than [give length of time].

Since [name of agency] has been delinquent in accomplishing the required corrective action, we intend to [suspend the agency's letter of credit] or [remove access to the Electronic Clearinghouse Operations (ECHO)] unless the action is complete within 30 days or by ___date_____. We request timely resolution of this matter to ensure appropriate delivery of funds for both [agency name] and it clients.

If you have any questions, please contact [regional contact] at [telephone number]

Sincerely,

ATTACHMENT D

Re: Level III - Noncompliance Findings
[Name of Oversight Program]

Dear Grantee:

We have exhausted all formal and informal administrative tools available to resolve [transit agency] noncompliance with [describe requirement] found in [name of oversight review report]. Specifically, the failure to correct [describe compliance action required] which has been an ongoing issue for more than [timeframe] . There was extensive correspondence and records of meetings, telephone calls, and personal discussions with you relating to this matter. Furthermore, following extensive negotiations we accepted your original and revised schedules and extended timeframes for bringing this matter to resolution. You have failed to provide [describe action that should have been taken] as detailed in our letters of ____date_____ and ___date_____. In accordance with 49 U.S.C. 5307(i) "The Secretary may make appropriate adjustments in the amount of annual grants. . . and may reduce or withdraw such assistance or take other action as appropriate . . .". In this instance, FTA intends to adjust [name of transit agency] portion of the Section 9 formula apportionment by reducing it by ten percent.

If there are extenuating circumstances affecting your ability to comply with these particular grant requirements and you have not made us aware of those circumstances, you should at this time carefully document your status. Conversely, if you have already taken action to correct the deficiency then please provide validation of your compliance actions.

If you have any questions, please contact (regional contact) at (telephone number).

Sincerely,