FTA

FEDERAL TRANSIT ADMINISTRATION

Comprehensive Review Guide for Triennial and State Management Reviews Fiscal Year 2018

U.S. Department of Transportation
Federal Transit Administration

TABLE OF CONTENTS

FOREWORD

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. **SATISFACTORY CONTINUING CONTROL**
7. **MAINTENANCE**
8. **PROCUREMENT**
9. **DISADVANTAGED BUSINESS ENTERPRISE**
10. **TITLE VI**
11. **AMERICANS WITH DISABILITIES ACT - GENERAL**
12. **AMERICANS WITH DISABILITIES ACT - COMPLEMENTARY PARATRANSIT**
13. **EQUAL EMPLOYMENT OPPORTUNITY**
14. **SCHOOL BUS**
15. **CHARTER BUS**
16. **DRUG FREE WORKPLACE ACT**
17. **DRUG AND ALCOHOL PROGRAM**
18. **SECTION 5307 PROGRAM REQUIREMENTS**
19. **SECTION 5310 PROGRAM REQUIREMENTS**
20. **SECTION 5311 PROGRAM REQUIREMENTS**

FOREWORD

OVERVIEW

FTA's Triennial and State Management Reviews (Comprehensive Reviews) take a broad look at recipient management practices as well as compliance with program and administrative requirements across a broad spectrum of topic areas in accordance with 49 U.S.C. Chapter 53. Areas of review include financial management and capacity, technical capacity, maintenance, procurement, civil rights, and others.

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

Historically, FTA's comprehensive oversight reviews have been split across two programs – the Triennial Review and the State Management 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(h)(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 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 carryout 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 comprehensive reviews is modified to reflect any changes in requirements made over the preceding year in the funding programs and FTA policy. This document incorporates those changes and is intended to be a guide for recipients, FTA staff, and FTA contractors on conducting reviews.

The fiscal year 2018 (FY 2018) Comprehensive Review Guide is the culmination of a "back to basics" exercise to identify the minimum compliance requirements to which recipients are expected to comply and the optimal methods for assessing compliance with those requirements. Key to this effort was ensuring that all requirements were directly related to specific, citable, written requirements while also maintaining the overall intent of the reviews. This new guide clearly articulates what is expected of recipients and exactly how FTA will go about determining compliance.

These changes are in direct response to feedback received from FTA recipients, FTA contractors, and colleagues, and is part of FTA's ongoing commitment to improve consistency and transparency in its oversight reviews. We anticipate that these changes will result in a more efficient review process that provides our recipients with a clearer understanding of what is expected during a Comprehensive Review, how FTA reviewers determine compliance, and why a finding of deficiency is made.

REVIEW AREAS

The review areas of Federal fiscal year 2018 (FY2018) Comprehensive Review have been restructured to better align with the functional and organizational structure of recipients receiving reviews. The most significant changes include:

- Reordering the review areas to group them more logically, such as grouping all the civil rights review areas Disadvantaged Business Enterprise (DBE), Title VI, Americans with Disabilities Act (ADA), and Equal Employment Opportunity (EEO) together

- Splitting Technical Capacity into five review areas

- Combining four review areas that addressed Section 5307 program requirements, Planning/Program of Projects, Public Comment on Fare Increases and Major Service Reductions, Half Fare, and Security, into one review area, Section 5307 Program Requirements

FY2017 COMPREHENSIVE REVIEW AREAS	FY2018 COMPREHENSIVE REVIEW AREAS
1. Financial Management and Capacity	2. Financial Management and Capacity
2. Technical Capacity	3. Technical Capacity – Award Management 4. Technical Capacity – Program Management 5. Technical Capacity – Project Management 19. Section 5310 Program Requirements 20. Section 5311 Program Requirements
3. Maintenance	7. Maintenance
4. Americans with Disabilities Act (ADA)	11. Americans with Disabilities Act (ADA) – General 12. Americans with Disabilities Act (ADA)– Complementary Paratransit
5. Title VI	10. Title VI
6. Procurement	8. Procurement
7. Disadvantaged Business Enterprise (DBE)	9. Disadvantaged Business Enterprise (DBE)
8. Legal	1. Legal
9. Satisfactory and Continuing Control	6. Satisfactory and Continuing Control
10. Planning/Program of Projects	4. Technical Capacity – Program Management 18. Section 5307 Program Requirements
11. Public Comment on Fare Increases and Major Service Reductions	18. Section 5307 Program Requirements
12. Half Fare	18. Section 5307 Program Requirements
13. Charter Bus	14. Charter Bus
14. School Bus	15. School Bus
15. Security	18. Section 5307 Program Requirements

FY2017 COMPREHENSIVE REVIEW AREAS	FY2018 COMPREHENSIVE REVIEW AREAS
16. Drug-Free Workplace and Drug and Alcohol Program	16. Drug-Free Workplace Act 17. Drug and Alcohol Program
17. Equal Employment Opportunity	13. Equal Employment Opportunity

REVIEW AREA AND QUESTION FORMAT

Each review area has 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 table below)
- References and useful weblinks
- Issues/areas of concern for FTA awareness

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

FY2018 Comprehensive Review Guide Question Format	
1. Basic Requirement	The minimum requirement to which all applicable recipients are expected to comply. Requirements are written in plain language and are directly tied to a law, regulation, circular, master agreement, or other binding guidance.
2. Review Area Question	Over-arching question to be examined in relation to the basic requirement to determine whether a recipient is not deficient or deficient.
3. Applicability	Types of recipients to which the requirement applies, which may be defined by funding program, type of recipient, number of transit employees, fleet size, modes operated, arrangement with other entities (subrecipients), or other characteristics
4. Indicators of Compliance	Question(s) FTA reviewers will answer in order to make a determination about a recipient's compliance with the basic requirement. Indicators will identify specific issues to address which may lead to findings of not deficient or deficient.
5. Determining Compliance	Specific instructions to FTA's reviewers about what and how to evaluate for each indicator of compliance

FY2018 Comprehensive Review Guide Question Format	
6. Potential Deficiency Determinations	Condition(s) under which a recipient could be deficient along with the deficiency code and suggested corrective action
7. Governing Directive(s)	Citations from law, regulation, circular, master agreement or other binding guidance that identifies the basis of the requirement and any deficiencies

The questions relating to subrecipient, contractor, and lessee oversight appear at the end of each review area.

As in past years, the guide will be available at FTA's website at www.transit.dot.gov, along with additional information on FTA's oversight programs and other resources. FTA-sponsored workshops will also be conducted throughout the year to provide additional information on the content of the FTA Comprehensive Review Guide and the review process. For technical assistance or additional information, please reach out to one of the FTA's ten regional offices.

1. LEGAL

PURPOSE OF THIS REVIEW AREA

The recipient must promptly notify the Federal Transit Administration (FTA) of legal matters and additionally notify the U.S. DOT Office of Inspector General (OIG) of any instances relating to false claims under the False Claims Act or fraud. Recipients must comply with restrictions on lobbying requirements.

QUESTIONS TO BE EXAMINED

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

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

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

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- List of litigations, breaches, defaults, disputes or instances where the Federal government was named as a party to litigation or a legal disagreement since the last review
- Listing of false claims received or criminal violation committed related to Federal assistance since the last review
- Details of lobbying activities conducted and/or awards received based on such activities

Recipient Follow-up

- Office of Management and Budget (OMB) Standard Form LLL

L1. Since the last Comprehensive Review did the recipient promptly notify 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

EXPLANATION

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

INDICATORS OF COMPLIANCE

a. *Were there any legal matters including major disputes, breaches, defaults, or litigation where the Federal government was named as a party or FTA-funded assets could be affected? If no, move to the next question.*

b. If yes, did the recipient notify FTA's Chief Counsel or its Regional Counsel?

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

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

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the regional office that it has submitted the applicable information to the FTA Chief Counsel or Regional Counsel along with a process to ensure timely notification in the future.

GOVERNING DIRECTIVE
FTA Master Agreement, Section 39

"If a current or prospective legal matter that may affect the Federal Government emerges, the Recipient must promptly notify the FTA Chief Counsel, or FTA Regional Counsel for the Region in which the Recipient is located. (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 U.S. DOT OIG of any instances relating to false claims under the False Claims Act or fraud?

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

APPLICABILITY
All recipients

EXPLANATION
Recipients must promptly notify the U.S. DOT Inspector General and the FTA Chief Counsel or regional counsel for the region in which the recipient is located if the recipient has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the recipient, or other person has 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, 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, officials, 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 no, move to the next question.

b. If yes, did the recipient notify FTA's Chief Counsel or its Regional Counsel and the U.S. DOT OIG?

DETERMINING COMPLIANCE
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 DETERMINATIONS
The recipient is deficient if it did not notify FTA's Chief Counsel or Regional Counsel and the U.S. 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, civil or criminal crime not reported

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the FTA regional office that it has submitted applicable information to the FTA Chief Counsel or Regional Counsel and the U.S. DOT OIG and a process to ensure timely notification in the future.

GOVERNING DIRECTIVE
FTA Master Agreement, Section 39(3)

"If the Recipient has credible evidence that a Principal, Official, Employee, Agent, or Third Party Participant of the Recipient, or other person has 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 such matters as fraud, conflict of interest, bribery, gratuity, or similar misconduct involving federal assistance, 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."

L3. Since the last Comprehensive Review, did the recipient and any subrecipients use only non-appropriated 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 local funds to lobby for transit purposes, recipients and subrecipients must file OMB Standard Form LLL quarterly.

APPLICABILITY
All recipients

EXPLANATION
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, Office of Management and Budget (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 any of the following Federal actions:

- Awarding of any Federal contract or subcontract exceeding $100,000
- Making of any Federal grant or subgrant exceeding $100,000
- Making of any Federal loan exceeding $150,000
- Entering into any Federal cooperative agreement exceeding $100,000
- Extension, continuation, renewal, amendment, or modification of any Federal contract, grant, or cooperative agreement exceeding $100,000 or of a loan exceeding $150,000

Updates to OMB Standard Form LLL 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) attempting to influence such action
- A change in the officer(s), employee(s), or member(s) contacted to attempt to influence such 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 contractor or subcontractor confirms lobbying activities, did the recipient obtain the OMB Standard Form LLL and provide it to the FTA?*

DETERMINING COMPLIANCE

Confirm with the FTA's Office of Chief Counsel if the recipient conducts lobbying activities and obtain copies of OMB Standard Form LLL to determine if disclosures were made quarterly when required. In preparing the ECHO sample, review payments made for professional services not clearly described in financial reports to determine if Federal funds may have been used for lobbying or if required disclosures were not submitted for local funds used in such activities.

Review award agreements in Transit Award Management System (TrAMS) to determine if the recipient issued any contracts and/or subrecipient agreements in excess of $100,000 during the review period. If none, move to the next review section.

During the review of procurement files, determine whether or not a subrecipient, contractor or subcontractor was certified to conduct lobbying activities.

Review subrecipient grant applications to assess source of local match funds and whether Federal funds are used as Federal match.

On a select basis, and during a visit to the subrecipient, follow up on whether Federal funds were obtained through a paid lobbyist.

On-site, discuss with the recipient its process for obtaining information on lobbying activities conducted by subrecipients, contractors, or subcontractors.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it used Federal funds to compensate any person to influence or attempt to influence a covered action to obtain Federal funds on their behalf.

DEFICIENCY CODE L3-1: Federal funds used for lobbying

SUGGESTED CORRECTIVE ACTION: The recipient must work with the FTA Regional Counsel to determine the appropriate corrective action steps to be taken.

The recipient is deficient if it used local 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 and/or a quarterly update for an event that should have been reported and submitted to the FTA.

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit a process to the FTA regional office for reporting lobbying activities on OMB Standard Form LLL and any quarterly updates. The recipient must submit an initial OMB Standard Form LLL and/or a report for any quarter in which there was a material change to the FTA Regional Counsel.

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

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit a process to the FTA regional office for obtaining the required lobbying information, including reporting lobbying activities on OMB Standard Form LLL and any quarterly updates, for its subrecipients, contractors, and subcontractors.

GOVERNING DIRECTIVES
49 CFR 20.100

"(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

"(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 200.331 Requirement for pass-through entities

"All pass-through entities must: …(d) Monitor the activities of the subrecipient as necessary 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."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Did background research or site visit observations reveal any potential legal issues or concerns not covered above?

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. 49 CFR Part 20, "New Restrictions on Lobbying"
4. FTA Master Agreement

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 authority; and financial management systems in place to match, manage, and charge only allowable cost to the award. The recipient must conduct required single audits and provide financial oversight of subrecipients.

QUESTIONS TO BE EXAMINED
1. Does the recipient have 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 and balances 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 and track the use of Federal funds for eligible expenses and disburse advance payment funds within three business days?

5. Has the recipient complied with requirements for charging indirect costs to Federal Transit Administration (FTA) awards?

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

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

8. Does the recipient provide the required local match from eligible sources for FTA awards?

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

10. Does the recipient adequately ensure financial oversight of its subrecipients?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Financial statements or comprehensive annual financial reports for the past three years
- Financial policies and procedures
- Organizational chart
- Position and job descriptions for award related personnel
- Most recent variance report(s) demonstrating that budget/actual comparisons are completed for awards
- Financial plan projecting revenues and expenses for the next three years (or longer), including the assumptions and notes to the financial plan
- Operating and capital budgets for the past three years
- Listing of local or state legislation, with sunset provisions, impacting transit funding
- State/transportation improvement program (S/TIP)

- Annual budget to actual reconciliation reports for the review period

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 CAP or Indirect Cost Rate Proposal (ICRP)
- Approval notification of the central services plan
- Board meeting minutes for the review period
- Listing of sources of funding used for local match, along with a description

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F1. Does the recipient have 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 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

EXPLANATION
Recipients should have detailed policies and procedures for managing FTA funds; outlining the grantee's internal control practices to prevent waste, loss, and misuse of federal funds; levels of authority; the accounting software being used; required financial reporting; financial oversight of subrecipients; etc. The policies and procedures should show evidence that they have been updated as a result of any previous audit findings, significant organizational or software modifications, and/or changes to Federal regulatory requirements.

INDICATORS OF COMPLIANCE

a. *Does the recipient have written financial policies and procedures?*

b. *How do policies and procedures address internal control practices to prevent waste, loss and misuse of federal funds including: (if written, cite location; otherwise explain for each)*

   - *Responsibilities, qualifications, training, supervision, and evaluation of financial staff*
   - *Organizational structure, levels and delegation of authority, access, and segregation of duties*
   - *Financial planning*
   - *Safeguarding of funds*
   - *Recording and identification of assets; including the use of such*
   - *Prevention of duplicate and overbilling*
   - *Allowable costs in accordance with 2 CFR Part 200 Subpart E—Cost Principles. Are these policies and procedures written?*
   - *Cash Management and Payment in accordance with 2 CFR 200.305 Payment. Are these policies and procedures written?*

- *Accounting software being used*
- *Required financial reporting, review, and approval*
- *Record retention*
- *Financial oversight of subrecipients, if applicable*
- *An audit, testing or review program for internal control systems*

c. *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?*

d. *Have policies and procedures been updated to reflect any changes to federal regulatory requirements?*

DETERMINING COMPLIANCE

Review the recipient's financial policies and procedures for how they address the sub-bullets under indicator b. Procedures for allowability of costs and cash management must be written. For other sub-bullets in indicator b, if not explicitly stated in the policies and procedures, follow-up with the recipient and/or discuss on site how the recipient addresses the sub-bullets.

Review findings for 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. On site discuss any significant changes that have occurred within the organization, including changes to financial software or systems being used and verify procedures were updated to reflect those changes.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have financial policies and procedures, including written procedures for determining the allowability of costs and ensuring funds are distributed in a timely manner.

DEFICIENCY CODE F1-1: Missing, insufficient, or out of date financial operating procedures

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office financial operating 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 and reflect recommendations from audit findings or significant changes in the organization. The recipient must submit documentation that it has trained appropriate staff on the new policies and procedures.

The recipient is deficient if it does not have established policies and procedures for internal financial controls:

DEFICIENCY CODE F1-2: Lacking internal financial controls

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office new policies and procedures for establishing internal financial controls consistent with 2 CFR 200.303 Internal Controls and 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).

GOVERNING DIRECTIVES

2 CFR Part 200.302 Financial management

(a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds.

(b) The financial management system of each non-Federal entity must provide for the following:

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes.

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

(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 Part 200.303 Internal controls

The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States or the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.

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

FTA Circular 5010.1E Award Management Requirements (f) Standards of Internal Control and Audit Resolutions

(1) General

a) Recipient management policies that govern implementation of the Award must be clearly stated, understood throughout the organization, and conformed to applicable legislative and administrative requirements.

b) The recipient’s formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.

c) Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to

authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.

d) A system of organizational planning should exist to determine financial, property, and personnel resource needs.

e) Written operating procedures must exist and be simply stated, yet meet the recipient's operating, legal, and regulatory requirements. In developing its procedures, the recipient should consider such factors as feasibility, cost, risk of loss or error, and availability of suitable personnel; other important considerations are the prevention of illegal or unauthorized transactions or acts.

f) The recipient's information system must reliably provide needed operating and financial data for decision-making and performance review.

g) The recipient must provide proper supervision and performance must be subject to review of an effective internal audit program.

h) All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work; all must be held fully accountable for the proper discharge of their assignments.

i) Expenditures must be controlled so that construction, equipment, other property, and services are acquired and received as contracted for (as to quality, quantity, price, and time of delivery); authorizations for expenditures must conform to applicable statutes, regulations, and policies.

j) All real property, equipment, expendables, and funds must be safeguarded to prevent misuse, misappropriation, waste, or unwarranted deterioration or destruction.

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

BASIC REQUIREMENT
Recipients must have an organizational structure that clearly defines, assigns, and delegates appropriate authority for all financial duties. Those duties must be carried out by properly qualified personnel and be segregated within the organization and reviewed to ensure that adequate internal checks and balances exist.

APPLICABILITY
All recipients

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

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

must provide proper supervision including an adequate system of internal checks and balances.

INDICATORS OF COMPLIANCE

a. *Does the recipient's organizational structure define, assign, and delegate authority for all financial duties?*

b. *What are the recipient's minimum required qualifications for senior financial and accounting staff?*

c. *Are financial functions and responsibilities segregated?*

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

e. *Does the recipient have adequate internal checks and balances?*

DETERMINING COMPLIANCE

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

Request and review position descriptions and staff job descriptions to determine if required qualifications match actual job needs and ensure the positions align with the recipient's organization chart.

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

During review of 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.

Review the recipient's procedures to verify that it has a program to effectively resolve the results/findings of external audits, internal audits (if applicable), and oversight reviews. Review audit and oversight review reports for the past three years and any associated corrective actions related to delegation or segregation of financial duties and functions. If not available in subsequent reports, on site discuss how the recipient resolved audit and oversight findings/recommendations.

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: The recipient must develop and submit to the FTA regional office a revised organizational structure demonstrating a segregation of financial duties and functions to create an internal system of financial checks and balances.

The recipient is deficient if it does not have any required financial or accounting qualifications for senior financial/accounting staff or if current personnel does not meet the required qualifications.

> DEFICIENCY CODE F2-2: Missing financial qualifications
>
> SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA minimum financial/accounting qualification 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; the recipient is deficient if its approving/authorizing official draws down funds.

DEFICIENCY CODE F2-3: ECHO draws not properly approved

SUGGESTED CORRECTIVE ACTION: The recipient must develop a process to ensure someone other than the approving official request ECHO funds. The recipient must submit to the FTA regional office a process documenting that an authorized official approves each ECHO request. The recipient will update the authorizing official in ECHO or have the authorizing official delegate authority in writing to the person approving the requests. The recipient must 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: The recipient must develop and submit to the FTA 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 it does not have adequate internal checks and balances.

DEFICIENCY CODE F2-5: Inadequate internal checks and balances

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office evidence of an adequate and implemented system of internal checks and balances.

GOVERNING DIRECTIVES
FTA Circular 5010.1E Award Management Requirements

(f) Standards of Internal Control and Audit Resolutions.

(1) General.

b) The recipient's formal organization structure must clearly define, assign, and delegate appropriate authority for all duties.

c) Responsibility for duties and functions must be segregated within the organization to ensure that adequate internal checks and balances exist. Recipients should pay particular attention to authorization, performance, recording, inventory control, and review functions to reduce the opportunity for unauthorized or fraudulent acts.

g) The recipient must provide proper supervision and performance must be subject to review of an effective internal audit program.

h) All personnel must be properly qualified for their assigned responsibilities, duties, and functions; education, training, experience, competence, and integrity should be considered in assigning work; all must be held fully accountable for the proper discharge of their assignments.

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

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

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

INDICATORS OF COMPLIANCE

a. *How does the recipient track and account for federal awards and generate required financial reports?*

b. *Are federal awards identified with the Catalog of Federal Domestic Assistance (CFDA) title and number, federal award identification number and year, name of the federal agency, and name of the pass-through entity, if any?*

c. *Do records contain information pertaining to federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest? Are these supported by source documentation?*

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

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

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

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

In TrAMS obtain the most recent Federal Financial Report and compare to the recipient's internal records generated from its financial systems to determine that amounts reported, i.e. expenditures, encumbrance, 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 DETERMINATIONS

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; and do not allow the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to Federal statutes, regulations, and the terms and conditions of the award agreement.

DEFICIENCY CODE F3-1: Financial management systems deficiencies

SUGGESTED CORRECTIVE ACTION 1: The recipient must 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: The recipient must develop and submit to the FTA regional office 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 DIRECTIVES

2 CFR Part 200.302 (f) *Financial Management*

(a) …the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award.

(b) The financial management system of each non-Federal entity must provide for the following:

(1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.

(2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in §200.327 Financial reporting and 200.328 Monitoring and reporting program performance.

(3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.

(4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes.

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

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

BASIC REQUIREMENT
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 dispersed within three business days.

APPLICABILITY
All recipients

EXPLANATION
Recipients request Federal funds through ECHO. The recipient's records must support ECHO requests. The information should be traced back to an invoice for goods or services or internal records, i.e. timesheets, and be supported by information from the recipient's accounting system. Either the individual who is the registered ECHO approving official, or a person to whom this person has delegated the authority in writing, must approve each ECHO request. The approving/authorizing official must not draw the funds.

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

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).

As with interest earned on funds not disbursed within three business days, recipients must return to FTA amounts due to the Federal Government resulting from federal claims and debts, excess payments, disallowed costs, refunds due, and other amounts or similar transactions.

Recipients may only request funds for expenses that are eligible under the award.

INDICATORS OF COMPLIANCE

a. *Are drawdowns tracked by ALI? Were any ALIs overcharged?*

b. *Does backup documentation support the amount of the ECHO draw?*

c. *Are all expenses charged to the award eligible?*

d. *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?*

e. *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?*

DETERMINING COMPLIANCE
During discussion with the regional office, inquire if there were any federal claims and debts, excess payments, disallowed costs, refunds due, and other amounts demanded from the recipient and if such accounts have been returned.

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

- The purpose of the draw was eligible under the award.
- The recipient's records show funds requested by ALI, the ALI is not overcharged or erroneously charged for unallowable amounts, and the recipient has made the appropriate requests for budget amendments or revisions.
- The calculation and documentation were accurate and complete.
- The funds were disbursed within three business days.
- FTA was timely notified for drawdowns exceeding $50 million.
- If any refunds, obtain and review documentation that the recipient returned amounts as demanded.

Complete Exhibit 2.1 at the end of this section.

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

DEFICIENCY CODE F4-1: ECHO documentation deficient

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for documenting ECHO draws. Discuss with the FTA regional office if it wants to require the recipient to submit ECHO requests for prior approval. The recipient must document and work with the FTA regional office to reimburse FTA for ineligible expenses charged to awards, plus applicable interest. The recipient must implement and submit to the FTA regional office documentation of training conducted of the appropriate staff on new policies and procedures.

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

DEFICIENCY CODE F4-2: Funds not disbursed timely

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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. The recipient must work with the FTA regional office to determine if interest is owed in accordance with 31 CFR Part 205. The recipient must 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 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: The recipient must submit to the FTA regional office documentation related to the Federal funds owed and must 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 DIRECTIVES
2 CFR Part 200.302 (b)(4) Financial Management

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

2 CFR Part 200.303 Internal Controls

"The non-Federal entity must (a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in 'Standards for Internal Control in the Federal Government' issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO)."

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

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

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

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

FTA Master Agreement Section 10 (c)

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

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

BASIC REQUIREMENT
To charge indirect costs to an award, a recipient 1) must have an approved cost allocation plan (CAP) or indirect cost rate proposal (ICRP) OR 2) may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC) if it has never had an approved indirect cost rate.

APPLICABILITY
All recipients

EXPLANATION
Under federally funded award programs, recipients may incur both direct and indirect costs. A CAP or ICRP is required to support the distribution of indirect costs to the award program. Cost allocation is often found in state departments of transportation and municipal systems where overhead/administrative charges are allocated to the transit program.

A central service CAP, is used by a state-wide, local government-wide, and Indian Tribe-wide agency to distribute executive and central level support functions to operating units which benefit from them. All state-wide central service CAPs must be submitted to the U.S. Department of Health and Human Services (DHHS) annually, within six months prior to the beginning of each governmental unit's fiscal year. Each local government that has been designated a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant Federal agency annually. The cognizant agency for all governmental units or agencies not identified by OMB is determined based on the Federal agency providing the largest amount of Federal funds. Unless required by the cognizant agency, local-wide CAPs do not have to be submitted for review and approval. However, they must be updated annually and maintained for audit. If the cognizant agency does not require the recipient to submit the plan to it for approval, FTA reserves the right to review the plan. FTA approves plans only for recipients for which it is the cognizant agency.

An ICRP is 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. An ICRP may include the allocable portion of a central service CAP. A governmental unit for which a Federal cognizant agency has been designated must submit its ICRP to its Federal cognizant agency with six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant agency for indirect cost.

Effective December 26, 2014, a governmental unit that receives more than $35 million in direct Federal awards must submit its indirect cost proposal to its cognizant agency. Other governmental units or agencies must develop an indirect cost proposal and maintain it for audit. Consequently, non-Federal entities that have never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to 2 CFR Part 200, "States and Local Government and Indian Tribe Indirect Cost Proposals," paragraph D.1.b (receive below $35 million in direct Federal funding), may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely.

In situations where a governmental unit or agency does not have an established cognizant agency identified per 2 CFR Part 200 or the appropriate agency has determined that annual review of the plan or rate is not required, annual review is not required, but these entities must continue to develop annual plans regarding indirect costs and maintain the proposal and related supporting documentation for audit. Unless required by FTA or the cognizant agency, these governmental units are not required to submit their proposals for review and approval.

In addition to the initial submission, FTA requires submission of the CAP under the following circumstances:

- annually, if the recipient is a major local government
- the recipient has made a change in its organizational structure and its accounting system, that may significantly impact the CAP
- the recipient changes the CAP
- if requested by FTA

FTA requires ICRPs to be submitted in the following circumstances:

- The recipient is working on its first federal assistance Award or has not previously had an ICRP reviewed and accepted (note that such recipients may be eligible for the de minimis rate described above).
- The recipient has made a change in its accounting system that significantly impacts the previously approved ICRP and its basis of application.

- The recipient's proposed ICRP exceeds the rate(s) last approved by FTA by more than 20 percent. 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 changes the ICRP methodology.
- The recipient is either a local governmental unit that receives more than $35 million in direct federal funding or a non-profit entity. In accordance with 2 CFR part 200, these entities must submit their plan annually to their cognizant agency.

As applicable, most FTA recipients submit CAPs/ICRPs to the U.S. Department of Housing and Urban Development (HUD). States submit CAPs to DHHS and universities submit CAPs to the Department of Defense Office of Naval Research (DOD Navy). The below table shows the respective cognizant agency for the entities listed.

Entity Type	Appendix to 2 CFR Part 200	Cognizant Agency
State and Local Airport, Transit Authority, Port Authority or Transit District	Appendix V – (CAP) Appendix VII – (ICRP)	DOT
State Government	Appendix V – (CAP) Appendix VII – (ICRP)	DHHS
State and Local Housing and Development Districts	Appendix V – (CAP) Appendix VII – (ICRP)	HUD
Local Government	Appendix V – (CAP) Appendix VII – (ICRP)	DHHS
Tribe	Appendix V	Department of the Interior
University (Institute of Higher Education)	Appendix III	DHHS or DOD Navy based on amount of funding
Non-Profit	Appendix IV	Determined by the agency providing the largest funding amount or special arrangement
Public Assistance Agencies	Appendix VI	DHHS

INDICATORS OF COMPLIANCE

a. *Does the recipient charge indirect costs to awards? If no, move to next question*

b. *Does the recipient charge indirect costs using the de minimus rate? If no, move to next indicator. If yes, can the recipient document that it is eligible to charge the de minimus (has never had an approved indirect cost rate and is not a state or local governmental unit that receives more than $35 million in direct Federal funding)?*

c. *Does the recipient have an approved CAP and/or ICRP? (If a formal approval is not available, verify whether the recipient complied with the submission requirements of its cognizant agency).*

d. *Was the annual 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 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?*

DETERMINING COMPLIANCE

Review Federal Financial Reports (FFRs) and award application project budgets in TrAMs to determine if the recipient charges indirect costs. If the recipient charges the de minimis rate, verify that the recipient 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 is charging above 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 with the regional office staff and verify on site if this is the case.

Review the recipient's responses to its prior Comprehensive Review by accessing the review package from the FTA oversight tracking system (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. If applicable, review the central service plan and document the approved amounts. 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. 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 DETERMINATIONS

The recipient is deficient if it charges indirect costs to FTA awards, but does not have an approved CAP or ICRP.

> 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.

GOVERNING DIRECTIVES

Appendix III to 2 CFR Part 200, C. 11 A (1) Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), 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 to an educational institution, the cognizant agency for indirect costs assignment must default to HHS."

Appendix IV to 2 CFR Part 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 with 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 non-profit organization, the assignment will not be changed unless there is a shift in the dollar volume of the Federal awards to the organization for at least three years. b. Except as otherwise provided in §200.44 Indirect (F&A) costs paragraph (f) of this Part, 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 Indirect (F&A) costs paragraph (g) of this Part, 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 Part 200, D State/Local Governmentwide Central Service Cost Allocation Plans, Submission Requirements

"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…Each major local government is also required to submit a plan to its cognizant agency for indirect costs annually. 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. 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 Part 200, f.1 and 3 State/local governmentwide central service cost allocation plans, negotiation and approval of central service plans

"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. 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 Part 200, D. b. and d States and Local Government and Indian Tribe Indirect Cost Proposals, Submission and Documentation of Proposals

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

2 CFR Part 200.414 (f)

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

(MTDC) which may be used indefinitely."

2 CFR Part 200.414 (g)

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

FTA Circular. 5010.1E, Appendix F, Cost Allocation Plans, 3d

"When FTA is the cognizant agency, the CAP must be submitted under the following circumstances: (1) for an initial plan, (2) annually for major local governments, (3) for a change in organizational structure and accounting system that may significantly impact the CAP, (4) for a change in CAP methodology, and/or (5) upon request for all other entities. All CAPs must be retained for audit."

FTA Circular. 5010.1E, Appendix G, Indirect Cost Rate Proposals, 3

"When FTA is the cognizant agency for indirect costs, the ICRP should be submitted to the FTA when:

a. The recipient is working on its first federal assistance Award or has not previously had an Indirect Cost Rate Proposal reviewed and accepted (note that such recipients may be eligible for the de minimis rate described in section 1 above).

b. The recipient has made a change in its accounting system that significantly impacts the previously approved Indirect Cost Rate Proposal and its basis of application.

c. The recipient's proposed Indirect Cost Rate Proposal exceeds the rate(s) last approved by FTA by more than 20 percent. 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 changes the Indirect Cost Rate Proposal methodology.

e. The recipient is either a local governmental unit that receives more than $35 million in direct federal funding or a non-profit entity. In accordance with 2 CFR part 200, these entities must submit their plan annually to their cognizant agency."

F6. Has the recipient conducted the required Single Audits, submitted the required documentation to the FAC and FTA, and resolved any identified issues?

BASIC REQUIREMENT
Non-Federal entities that expend $750,000 or more in Federal awards in their fiscal year are required to conduct an independent single audit, submit required documentation timely, and resolve identified issues.

APPLICABILITY
All recipients

EXPLANATION
2 CFR 200 Subpart F requires all non-Federal entities that expend $750,000 or more in Federal awards in

a year to conduct an independent single audit. In the case of independent transit authorities, the audit will cover all aspects of that authority. Where the transit provider is a municipal department or part of a larger governmental organization, the audit may cover the entire organization, including the Federal funds used for transit.

Single audit reports must be completed and data collection form and reporting package (financial statements, summary schedule of prior audit findings, auditor's report and 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. If the annual single audit report contains no FTA or other U.S. Department of Transportation (US DOT) program findings, recipients are only required to submit a copy of the OMB Data Collection Form (SF-SAC) to the FTA regional office. If the single audit contained FTA or other US DOT program findings, recipients are required to submit a copy of the entire audit report to the FTA regional office.

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.

INDICATORS OF COMPLIANCE

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

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

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

Audit Year	Required submission date	Actual submission date

c. *Did the recipient submit the required information to the FTA?*

- *If there were any findings related to FTA or US DOT programs in any of the required Single Audits, did the recipient submit a copy of the audit and the Data Collection Forms (SF-SAC) to the FTA regional office?*
- *If there were no findings related to FTA or US DOT programs in any of the required Single Audits, did the recipient submit copies of the SF SAC to the FTA regional office?*

d. *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?

DETERMINING COMPLIANCE

Review ECHO drawdowns for the past three years to determine if the recipient expended over $750,000 in any of the three years covered by the Comprehensive Review. Review the recipient's website to ascertain if its budget/financial statements are accessible. Review the statement of expenditures for total funds projected to be expended or expended by the agency for each year of the review period. Obtain from the recipient a schedule of federal expenditures during the review period, by fiscal year to determine if the $750,000 threshold was met. If the recipient was not required to conduct a single audit, move to the next question.

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

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

If there were findings identified in the SF-SAC, download a copy of the respective Single Audit report from FAC. Review the Schedule of Findings and Questioned Costs; and Schedule of Prior Federal Award Findings to obtain details about the finding(s) identified and whether it/they applied to an FTA or US DOT program(s). If there were findings and recommendations made related to FTA or US DOT program, access the Single Audit module in OTRAK to determine if the recipient submitted one copy of their annual single audit report to the regional office for the respective year(s).

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 to determine if the recipient has been reporting on its progress to implementing recommendations made by the single auditor in the respective report.

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

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

The recipient is deficient if it did conduct the required Single Audits but did not submit its audit report data

collection form and reporting package to the FAC by the due date.

DEFICIENCY CODE F6-2: Single audit submissions deficient

SUGGESTED CORRECTIVE ACTION: The recipient must submit its audit report data collection form and reporting package to the FAC; the recipient must submit documentation to the FTA regional office that it has submitted its audit report data collection form and reporting package to the FAC; the recipient must submit to the FTA regional office a process to ensure that future submissions are completed timely.

The recipient is deficient if it had no Single Audit findings and did not submit the required SF-SACs to the FTA regional office; if the recipient had Single Audit findings but did not submit a copy of the audit report to the FTA regional office.

DEFICIENCY CODE F6-3: Single audit submissions deficient

SUGGESTED CORRECTIVE ACTION: The recipient must submit single audits, management letter comments, and/or SF-SACs to the FTA regional office.

The recipient is deficient if it has not taken action to resolve deficiencies or opportunities for improvement identified in their Single Audit related to FTA program requirements promptly or reported on the status of outstanding audit findings in progress reports.

DEFICIENCY CODE F6-4: Outstanding annual audit deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures and a schedule for resolving single audit findings. The recipient must report on the status of addressing audit findings in its progress reports.

GOVERNING DIRECTIVES

2 CFR Part 200.501 (a) Audit required

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

2 CFR Part 200.512 Report submission (a) General

"(1) The audit must be completed and the data collection form described in paragraph (b) of this section and reporting package described in paragraph (c) of this section must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.

2 CFR Part 200.512 Report submission (b) Data Collection

"(1) The auditee must submit required data elements described in Appendix X to Part 200 -Data Collection Form (Form SF-SAC), which state whether the audit was completed in accordance with this part and provides information about the auditee, its Federal programs, and the results of the audit. The data must include information available from the audit required by this part that is necessary for Federal agencies to use the audit to ensure integrity for Federal programs. The data elements and format must be approved by OMB, available from the FAC, and include collections of information from the reporting package described in paragraph (c) of this section. A senior level representative of the auditee (e.g., state controller, director of finance, chief executive officer, or chief financial officer) must sign a statement to be included as part of the data collection that says that the auditee complied with the requirements of this

part, the data were prepared in accordance with this part (and the instructions accompanying the form), the reporting package does not include protected personally identifiable information, the information included in its entirety is accurate and complete, and that the FAC is authorized to make the reporting package and the form publicly available on a Web site."

FTA Circular. 5010.1E, Ch. VI, Section 8b

"Recipients are required to submit one copy of their annual single audit report to FTA if the audit report contains any findings and recommendations related to the FTA program or other DOT program findings. In those cases, in which the audit report does not contain any FTA findings or recommendations, a copy of only the Federal Clearinghouse transmittal sheet "Data Collection Form for Reporting on Audits of States, Local Governments, and Non-Profit Organizations, OMB Form SF-SAC" should be submitted to the FTA regional or metropolitan office."

FTA Circular. 5010.1E, Ch. VI, Section 8d (3)

"The recipient must resolve the deficiencies or opportunities for improvement identified in their audit. The resolution of audits begins with FTA's report to the recipient and continues until the recipient corrects identified deficiencies, implements needed improvements, or demonstrates that the findings or recommendations are not valid or do not warrant management action…The 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."

F7. Does the recipient have financial resources to provide local share for active awards and to adequately 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

EXPLANATION
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).

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

INDICATORS OF COMPLIANCE

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

Source	***Amount***	***Status (elected, discretionary, by law, etc.)***
Total		

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

Source	***Amount***	***Status (elected, discretionary, by law, etc.)***	***Assumptions***
Total			

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?*

DETERMINING COMPLIANCE

Review the recipient's financial plan projecting revenues and expenses for the next three years (or longer), annual audit reports, local or state legislation, the current year budget and/or financial statements, comprehensive annual financial report (CAFR) 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 there are significant changes that may affect the recipient's revenues.
- Review revenue and expense categories to compare amounts allocated to determine if there has been any significant change in funds; to ensure that reports are not showing or projecting deficits, layoffs, service cuts, or deferred or late maintenance and/or going concerns. Determine if there is discussion from management explaining the changes in financial condition and/or service operations from year to year.
- Review the assumptions and notes to the financial plan, the current year 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 financial policies and procedure for a process to reconcile budget revisions for changes in line item budgets. Request a sampling of annual budget/actual reconciliation reports and review changes in expense categories to ensure revenues and expenses are adjusted based upon reasonable assumptions and do not adversely affect the recipient's financial condition and its ability to maintain the FTA-funded program. Review board meeting minutes for justification of changes in expenses, if required.

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, or 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: The recipient must submit to the FTA regional office a plan for reducing expenditures, increasing revenues, or a combination of both to compensate for a budget shortfall.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office a new or revised multi-year financial plan if the recipient fails to demonstrate financial capacity.

GOVERNING DIRECTIVES

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 5010.1E, Ch. VI, Section 4 Financial Plan

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

F8. Does the recipient provide the required local match from eligible sources for FTA awards?

BASIC REQUIREMENT
Recipients are required to provide local matches for FTA awards from eligible sources.

APPLICABILITY
All recipients

EXPLANATION
All local share used to match FTA awards must come from non-US DOT sources, except for Federal Lands Highway Program funds. No FTA program funds can be used as a source of local match for other FTA programs, even when the funds are contract revenue. 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.

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

INDICATORS OF COMPLIANCE

a. *Are the funds used for local match eligible?*

b. *Does the recipient fully document volunteered services or in-kind contributions used as local match?*

DETERMINING COMPLIANCE
Review award applications for budgeted/allocated amounts defined to match the federal funds. Review progress reports to verify changes in allocated amounts and/or changes in sources of funds used for local match. Review the financial capacity subsection of the OAT from OTRAK to identify if FTA has any concerns relating to local share. On site, review in-kind charges to the award as part of the ECHO sample to determine eligibility, and that the value is documented and supported, and represents a cost that would otherwise be charged.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it cannot document that the funds used for local match are eligible; if the value of non-cash share is not documented; if the non-cash share represents a cost that is not eligible under the program; or if the non-cash share is not included in the net project costs in the project budget.

DEFICIENCY CODE F8-1: Ineligible local match

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office 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.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office procedures for ensuring that the value of non-cash share is documented, the non-cash share represents a cost that would otherwise be eligible under the program, and the non-cash share is included in the net project costs of the project budget.

GOVERNING DIRECTIVES
2 CFR Part 200.306 Cost sharing or matching

"(b) For all Federal awards, any shared costs or matching funds and all contributions, including cash and third party in-kind contributions, must be accepted as part of the non-Federal entity's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the non-Federal entity's records;

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

(3) Are necessary and reasonable for accomplishment of project or program objectives;

(4) Are allowable under Subpart E—Cost Principles of this part;

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

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

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

F9. 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
All recipients of FTA operating funds

EXPLANATION
Section 5307 operating assistance was available to all recipients in urbanized areas (UZAs) with populations under 200,000 through FY2012, and, in very limited circumstances, to UZAs with populations

over 200,000. Pursuant to MAP-21, operating assistance remained eligible in UZAs with populations less than 200,000; however, previously authorized exemptions for specific UZAs over 200,000 were repealed and replaced with a single nationwide exemption for fixed-route transit operators that operate fewer than 100 buses in peak service. Qualifying operators are eligible for operating assistance in an amount based on an individual operator's percentage of all public transportation service in the UZA.

Sections 5316 and 5317 funds, last apportioned in FY2012, were available to be used for operating assistance in all UZAs.

MAP-21 expanded eligible Section 5307 activities to include job access and reverse commute (JARC) projects, which provide nontraditional transportation services intended to serve the employment-related transportation needs of welfare recipients and low-income individuals. These projects were previously eligible under the repealed Section 5316 program. JARC projects may include operating assistance in a large UZA, where operating assistance is otherwise not an eligible expense. Operating assistance for eligible JARC projects is not limited by the "100 bus" special rule for operating assistance established by MAP-21 under 5307(a)(2).

Section 5310 operating funds are available for public transportation projects that exceed the Americans with Disabilities Act (ADA) minimum requirements, improve access to fixed-route service and decrease reliance by individuals with disabilities on ADA paratransit, or provide alternatives to public transportation that assist seniors and individuals with disabilities with transportation.

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 9030.1E, Appendix C 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. *Does the recipient receive operating assistance from FTA? If no, skip to next question.*

b. *If yes, how does the recipient calculate net operating/project costs?*

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

DETERMINING COMPLIANCE

Review the recipient's awards in TrAMS to determine if they receive operating funds from FTA. 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 9030.1E, Appendix C, Operating Calculation 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.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if its requested funds for operating assistance 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 F9-1: Ineligible operating expense calculation

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office 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.

GOVERNING DIRECTIVES
FTA Circular 9030.1E, Ch. IV, Section 4. 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 9030.1E, 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 9040.1G, Ch. III, Section 4; FTA C. 9070.1G, Ch. III, Section 16 Operating Expenses

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

FTA Circular 9045.1, Ch. III, Section 12; FTA C. 9050.1, Ch. III, Section 12 Federal and Local Matching Requirements

"The Federal share of the eligible operating costs may not exceed 50 percent of the net operating costs of the activity. Recipients may use up to 10 percent of their apportionment to support program administrative costs including administration, planning, and technical assistance, which may be funded at 100 percent Federal share."

F10. Does the recipient adequately ensure financial 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; requirements regarding the use of indirect cost when reimbursement is sought from a Federal award program are met; and annual independent single audits conducted by subrecipients expending $750,000 or more in Federal awards in a year.

APPLICABILITY
All recipients

EXPLANATION
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 adequately ensure that its subrecipients have sufficient financial controls in place?*

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

c. *How does the recipient ensure that single audits of subrecipients are conducted and FTA program related findings resolved?*

DETERMINING COMPLIANCE
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.

Review correspondence between the recipient and its subrecipients regarding documentation of corrective action plans and/or closure of findings.

Review the recipient's application process to determine if subrecipient's financial 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 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.

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 rate; results of sampled invoices reviewed; and follow-up items, if applicable, to assess compliance. During the site visit to a subrecipient, review the back-up documentation for at least one invoice to the recipient to ensure that the subrecipient is using the approved rate.
- Verify whether the subrecipient's expenditures exceeded the $750,000 Single Audit threshold. Documents may include annual financial statements and/or annual budgets.
- Verify that reports can be generated by its subrecipient to identify FTA-funded assets, liabilities, revenues and expenses.

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.

If the oversight process for financial controls, compliance with Federal indirect cost rate, or single audit requirements (including findings resolution) is insufficient to address the questions above, ask follow-up questions in the review package or conduct on-site interviews with staff to perform this assessment.

POTENTIAL DEFICIENCY DETERMINATIONS

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; if the recipient does not ensure that subrecipients can adequately document reimbursement requests.

DEFICIENCY CODE F10-1: Insufficient financial oversight of subrecipient financial management systems

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 F10-2: Insufficient financial oversight of subrecipient indirect cost

SUGGESTED CORRECTIVE ACTION: The recipient must submit procedures to the FTA regional office, 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 F10-3: Insufficient financial oversight of subrecipient audits

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for obtaining and reviewing subrecipients' single audits and monitoring the resolution of audit findings.

GOVERNING DIRECTIVES

2 CFR Part 200.331(d) Requirements for pass-through entities

"All pass-through entities must…Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include: (1) Reviewing financial and performance reports required by the pass-through entity. (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. (3) Issuing 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 Management decision. (e) 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; and (2) Performing on-site reviews of the subrecipient's program operations; (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services. "

2 CFR Part 200.331(a)(4) Requirements of pass-through entities

"All pass-through entities must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information…An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f)…"

2 CFR Part 200.331(f) Requirements for pass-through entities

"All pass-through entities must…Verify that every subrecipient is audited as required by Subpart F - Audit Requirements 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 Audit requirements."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. What financial management or capacity concerns are identified in the OAT? How does background research and onsite investigation support the OAT assessment?

2. What was the nature of any single audit report findings not reported to FTA that should have been?

3. 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?

4. 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?

5. Is the recipient missing written financial policies and procedures for its financial management practices?

6. Have financial policies and procedures been regularly updated?

7. Does the recipient develop and maintain financial management reports comparing actual expenses against budgets with explanations of significant variances?

8. Do the recipient's policies and procedure appear to provide a sufficient framework to ensure proper internal financial control?

9. Do the recipient officials routinely review financial reports?

10. Has the recipient had numerous ECHO rejections or made numerous credits/refunds in the ECHO system?

11. Has FTA implemented drawdown restrictions due to non-compliance with requirements?

12. Is the recipient's cost allocation plan (CAP) or indirect cost rate proposal (ICRP) outdated, unapproved, or does not support the rate being charged on the FFRs?

13. Does the recipient's financial and accounting staff appear to have sufficient qualifications, experience, and supervision to ensure proper internal financial controls over FTA funds? If not, explain.

14. Has there been a turnover of financial management staff? Are there any openings not filled? What is the impact on the recipient?

15. Does the recipient's financial system appear to be sufficient to accurately track and account for FTA funds at the appropriate level of detail and generate any required report by FTA? Are there discrepancies between the recipient's financial records and that shown in TrAMS? If yes, explain.

16. Has the recipient experienced deficits? How has this affected operations and investment? Are project delays present due to deficit management? Is the recipient in risk of losing state or local funding?

17. Are there indications of unfunded liabilities, state or local match is not available, funds are being redirected from originally budgeted purposes, or the sources of local funds are changing?

18. If new transit service or an expansion of existing service is planned, have those plans been reflected in financial plans?

19. 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?

20. Do the recipient's procedures for financial oversight of subrecipients appear likely to provide sufficient assurance of the financial controls, management, and capacity of subrecipients?

21. Did background research or site visit observations reveal 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 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

3. FTA Circular 5010.1E, “Award Management Requirements”

4. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Application Instructions”

5. FTA Circular 9040.1G, “Formula Grants for Rural Areas: Program Guidance and Application Instructions”

6. FTA Circular 9045.1, “New Freedom Program Guidance and Application Instructions”

7. FTA Circular 9070.1G, “Enhanced Mobility of Senior and Individuals with Disabilities Program Guidance and Application Instructions”

USEFUL WEBLINKS

Flexible Funds: FHWA and FTA Programs

Revenue Bonds

Debt Service Reserve Financing

Electronic Clearing House Operation (ECHO) Web User Manual for FTA and FAA

Federal Audit Clearinghouse (FAC)

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

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 flat dollar amounts such as $80,000
f. Select any unusual credits that appear to be systematic

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, 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 print out of the ECHO screen.
   d. Ensure the sum of the underlying transactions equals the amount of the ECHO transactions selected in Step 2.
   e. For each selected ECHO transaction, select a minimum of one underlying transaction to verify that supporting source documents such as cancelled checks, paid bills, payrolls, time and attendance records, contracts, and subaward documents are maintained to support the underlying transaction(s) selected.
   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.

EXHIBIT 2.1 EXAMINATION OF ECHO (Including ARRA) 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)	Financial Purpose Code	ECHO Transaction Date	ECHO Transaction Amount (minimum of 9)	Segregation of Duties (Y/N)	Underlying Transaction Amount	Federal Share	Source Documentation for Underlying Transaction Amount (i.e. invoice, payroll, etc.)	Award Eligible (Y/N)	Date of Disbursement

3. TECHNICAL CAPACITY – AWARD MANAGEMENT

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

QUESTIONS TO BE EXAMINED
1. Has the recipient submitted milestone progress reports (MPRs) and Federal Financial Reports (FFRs) to FTA on time?

2. Are the recipient's FFRs complete and accurate?

3. Are the recipient's MPRs complete and accurate?

4. Has the recipient submitted complete Program of Projects (POP) Status Reports on time?

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

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Award management and reporting procedures, if written
- Closeout schedule for all open awards

Recipient Follow-up
- Correspondence from FTA regional office regarding reporting issues

TC-AM1. Has the recipient submitted milestone progress reports (MPRs) and Federal Financial Reports (FFRs) to FTA on time?

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

APPLICABILITY
All recipients

EXPLANATION
Recipients are required to submit MPRs and FFRs based on the reporting frequency established by FTA, but at a minimum, annually. The following table shows the reporting frequency for MPRs and FFRs by program. FTA, at its discretion, can require more frequent reporting.

MPR and FFR Reporting Frequency		
Recipient/Program	**Project**	**Reporting Frequency***
Non-state recipients in large UZAs (>200,000) >$1 million in FTA awards	All	Quarterly
	Beginning October 1, 2017, for awards <$2 million	Annually
Recipients in large UZAs (>200,000) <$1 million in FTA awards	Section 5309-funded facility construction projects Section 5329	Quarterly

MPR and FFR Reporting Frequency		
Recipient/Program	**Project**	**Reporting Frequency***
Recipients in small UZAs (<200,000) State-administered programs	All other projects	Annually

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?*

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/Annual (Oct 1 – Oct 30)	
	MPR	FFR	MPR	FFR	MPR	FFR	MPR	FFR
FY 20XX								
FY 20XX								
FY 20XX								

DETERMINING COMPLIANCE

Determine the required reporting frequency based on the chart above. Discuss with the FTA regional office if any more frequent reporting frequencies have been required of the recipient in the past three years or if the recipient or specific award has a different reporting schedule based on a risk analysis.

Examine MPRs and FFRs in Transit Award Management System (TrAMS) to determine if they have been submitted and submitted on time.

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.

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit the delinquent report(s) for the most recent reporting period, and submit to the FTA regional office procedures for submitting future reports on time. The recipient must email the FTA regional office when the delinquent reports and the next two quarterly reports are submitted or the next annual report is submitted in TrAMS.

GOVERNING DIRECTIVE

2 CFR 200.327 Financial reporting.

Unless otherwise approved by OMB, the Federal awarding agency may solicit only the standard, OMB-approved governmentwide data elements for collection of financial information (at time of publication the Federal Financial Report or such future collections as may be approved by OMB and listed on the OMB Web site). This information must be collected with the frequency required by the terms and conditions of the Federal award, but no less frequently than annually nor more frequently

than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes, and preferably in coordination with performance reporting.

2 CFR 200.328 Monitoring and reporting program performance.

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

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

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

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

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

(1) Recipients located in urbanized areas of 200,000 or more populations. Recipients located in urbanized areas of 200,000 or more populations who receive more than $1 million in funds from FTA, FFRs and MPRs must be submitted and are due to FTA within 30 days after the end of each quarter, *i.e*., by January 30, April 30, July 30, and October 30. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting. Recipients located in urbanized areas of 200,000 or more populations who receive less than $1 million in funds from FTA, FFRs and MPRs must be submitted and are due October 30, one month after the federal fiscal year (FY) ends. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

(2) Recipients located in urbanized areas of less than 200,000 populations. FFRs and MPRs must be submitted and are due October 30, one month after the federal fiscal year (FY) ends. The FTA regional or metropolitan office may request more frequent reporting or additional reports if circumstances warrant additional reporting.

(3) FTA may utilize a risk based approach to change the frequency of reporting requirements for a particular Award or recipient. This will be noted in the Grant Agreement or Cooperative Agreement.

(4) Exceptions:

(a) Section 5309 Grants: All grant recipients, regardless of location and population area, are required to submit quarterly reports in TrAMS according to the dates in subsection 3.e.(1) above when grants include construction of facility.

(b) State Departments of Transportation (State DOTs): State DOTs are required to report annually for all state administered programs; this includes Sections 5303, 5304, 5307 (Governor's Apportionment), 5310, 5311, former Section 5316, and former Section 5317 programs. The exception described in the preceding paragraph applies to the State DOTs.

(c) If the provisions of this FTA Circular 5010.1 differ from the provisions of the applicable FTA Programmatic Circular, the Program Circular takes precedence. FTA at its discretion may always require more stringent reporting or specialized reports. Depending on project complexity, at its discretion, FTA may also request other special reports or quarterly project management meetings."

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

TC-AM2. Are the recipient's 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

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

- **Federal cash receipts** are the amount of FTA funds received for the period and are reported on a cash basis—when the funds are actually received.

- **Federal cash disbursements** are the amount of FTA funds disbursed as of the end of the reporting period and are reported on a cash basis—when the funds are actually disbursed. For recipients that draw funds on a reimbursement basis, Federal funds are reported as disbursed only after they are received.

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

- **Unobligated balance** is the amount of an award that has not been expended and is not covered by a binding commitment (unliquidated obligation) and is reported on an accrual basis.

- **Indirect expense** is the amount of indirect costs charged to an award by the reporting organization and is reported on an accrual basis. The rate must be based on a previously approved cost allocation plan or indirect cost proposal. The recipient must report the total amount of indirect expenses incurred on a cumulative basis. The information should include the type of rate (whether it is provisional, predetermined, final or fixed), the rate approved by the cognizant agency, the total base amount from which the indirect cost rate is determined, the period covered by the approved rate, amount charged to the award, and the Federal share of the indirect expenses charged. For indirect costs of other organizations or subrecipients that are charged to the award, notes are added to the FFR regarding the rates of these organizations.

- The recipient should address any **FTA comments** either in a revised or the next report.

The recipient should have procedures to ensure that FFRs are 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.

INDICATORS OF COMPLIANCE

a. *Does the recipient prepare FFRs on a cash or accrual basis of accounting?*

b. *Are Federal cash receipts and disbursements reported?*

c. *Does the information in the FFR match the last award budget? Are any identified cost overruns or identified savings explained?*

d. *Has the recipient provided explanations of any reconciliations identified in FFRs?*

e. *Is cash on hand reported in any FFR? If yes, has the recipient provided an explanation? Did the FTA regional office determine the explanation was adequate?*

f. *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?*

g. *If the recipient charges indirect costs to awards, have the correct rates and amounts been entered in the FFR?*

h. *Are there any discrepancies in information or data reported on MPRs and FFRs? If yes, has the recipient provided an explanation?*

i. *Has the recipient certified the information provided in each FFR is accurate?*

j. *Has the recipient responded to any FTA comments on FFRs?*

DETERMINING COMPLIANCE

Examine FFRs in TrAMS:

- Determine if Federal cash receipts and disbursements are reported on a cash basis and if income is recorded when earned instead of when received, and expenses are recorded when incurred instead of when paid.

- Review award budgets and ensure information on FFRs matches. If it does not, ascertain the reason for the difference.

- If FFRs contain reconciliations, ascertain the reason the reconciliations were required.

- If cash on hand is reported, determine if an explanation is provided in the remarks and certifications tab. Discuss with the FTA regional office whether the explanation of cash on hand is adequate.

- Review FFRs, MPRs, and award dates of procurements to determine if unliquidated obligations are not reported and should be. For example, an MPR may indicate that the recipient has awarded a construction contract but the FFR does not report unliquidated obligations. During the site visit, discuss with the recipient how it calculates unliquidated obligations and confirm the calculation is based on obligations incurred by the non-Federal entity for which an expenditure has not been recorded.

- If indirect costs are charged, confirm the recipient is charging the approved rate or the de minimis rate, if allowed.

- Review FTA comments in TrAMS regarding reports and look for evidence the recipient has addressed the comments. Discuss the adequacy of the recipient's responses with the FTA regional office. During the site visit, follow up with the recipient on any outstanding FTA comments.

- Review financial management procedures for discussion on how the recipient captures and reports information in the progress reports.

POTENTIAL 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: The recipient must submit revised reports that include the missing/corrected information and/or addresses FTA comments and submit to the FTA regional office procedures for including all required information in future reports. The recipient must notify the regional office when the next reports are submitted.

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

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

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

GOVERNING DIRECTIVES

2 CFR 200.327 Financial reporting

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

2 CFR 200.97 Unliquidated obligations

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

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

c. Federal Financial Report (FFR). FTA's electronic FFR report is consistent with and includes information identified in OMB's Standard Form FFR (SF FFR). A recipient must submit an FFR for

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

The FFR must contain the following elements:

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

(2) Reported financial data should be accurate to the last Award Budget (this may be the initial Award, or last revision to the Award Budget or amendment to the Award) and the reporting period. The requirement for accuracy does not rule out inclusion of reasonable estimates when precise measurement is impractical, uneconomical, unnecessary, or conducive to delay. Financial data reported may reconcile data included in the prior report, and must be explained in the explanation/remarks section of the report.

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

(4) Financial data reported should be derived from accounts that are maintained on a consistent, periodic basis; material changes in accounting policies or methods and their effect must be clearly explained.

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

(6) The recipient is responsible for indicating whether or not it is charging indirect costs to the Award at the time of application. If the recipient is charging indirect costs to the Award, the recipient is responsible for having an approved Indirect Cost Rate Proposal or Cost Allocation Plan approved by the cognizant agency on file, and uploading the documentation into their TrAMS "Recipient Profile." The recipient must report on related indirect expenditures.

(7) The recipient must provide financial information related to the FFR categories: Federal Cash, Recipient Share, Unliquidated Obligations, and Program Income.

TC-AM3. Are the recipient's MPRs complete and accurate?

BASIC REQUIREMENT
Recipients are required to submit MPRs that are as complete as possible, highlighting progress toward project objectives and any potential problem areas.

APPLICABILITY
All recipients

EXPLANATION
Progress reports are the primary written communication between recipients and FTA. Recipients must submit MPRs in TrAMS for each open award within 30 days of the end of the reporting period. Reports must

be submitted for all active/executed awards, even if no activity occurred on those awards since the last report. 2 CFR part 200, Subpart D and FTA C. 5010.1E detail the information that, at a minimum, must be included in these reports. Reporting on operating assistance is limited to the estimated and actual date when funding has been expended.

INDICATORS OF COMPLIANCE

a. *Does the MPR provide the status of each milestone that has passed during the prior reporting period including the actual completion dates for any milestones and revised completion dates for any milestones not met?*

b. *Does the MPR contain a narrative of activity status and any problems encountered in implementation, specification preparation, bid solicitation, resolution of protests, or third-party contract awards?*

c. *If there were award budget changes, is there discussion of the change?*

d. *Is there an analysis of each significant project cost variance? Completion and acceptance of equipment and construction or other work should be discussed, together with a breakout of the costs incurred and those costs required to complete the project using quantitative measures, such as hours worked, sections completed, or units delivered.*

e. *If there were schedule changes, is there:*
   - *An explanation of why scheduled milestones or completion dates were not met?*
   - *Identification of problem areas and a narrative on how the problems will be solved?*
   - *A discussion of the expected impacts and the efforts to recover from the delays?*

f. *If there are rolling stock ALIs, is a contract award milestone included?*

g. *If there were outstanding claims exceeding $100,000 or claims settled during the reporting period, are a brief description, estimated costs, and the reasons for the claims included?*

h. *If change orders are listed for the reporting period, is a description provided, including amount exceeding $100,000, and which are pending or settled?*

i. *If real property was acquired since the last Comprehensive Review, were all actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel reported?*

j. *Are there any discrepancies in information or data reported on MPRs and FFRs? If yes, has the recipient provided an explanation?*

DETERMINING COMPLIANCE

Examine MPRs in TrAMS to determine if they include the required information in the indicators above.

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 contracts discussed, or other parties in the Legal section to ensure that any exceeding $100,000 or involving a controversial matter or highly publicized matter were included.

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, or fail to highlight progress towards meeting project objectives and any potential problem areas, as detailed in the governing directive below.

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit revised reports that include the missing information and the recipient must submit to the FTA regional office procedures for ensuring all required information is included in future reports.

GOVERNING DIRECTIVE
200.328 Monitoring and reporting program performance.

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

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

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

(2) The non-Federal entity must submit performance reports using OMB-approved governmentwide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:

(i) A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.

(ii) The reasons why established goals were not met, if appropriate.

(iii) Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

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

(d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

(e) The Federal awarding agency may make site visits as warranted by program needs.

(f) The Federal awarding agency may waive any performance report required by this part if not needed.

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

d. Milestone Progress Reports (MPR). The MPRs must be submitted for each active Award. The MPR is the primary written communication between the recipient and FTA. This report must be submitted electronically. If only operating assistance is included in the Award, the reporting requirements are limited to the actual dates when all federal assistance has been expended.

The information provided in MPR reports should be as complete as possible, highlighting progress toward project objectives and any potential problem areas.

Each MPR must include the following data as appropriate:

(1) The current status, at a minimum, of each milestone that has passed during the prior reporting period, within an active Award. FTA, at its discretion, may request a recipient to update each milestone within an active Award. MPRs should identify:

- The actual completion dates for any milestones completed during the reporting period, and
- Any revised dates when any original (or last revised) completion dates were not met.

(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 solved.

(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 4220.1, and amounts exceeding $100,000, pending or settled, during the reporting period. This list should be accompanied by a brief description. Identification of change orders does not imply notification, acceptance, or approval of budgetary changes that might be required.

(10) A list of claims or litigation involving third-party contracts and potential third-party contracts that:

- Have a value exceeding $100,000;
- Involve a controversial matter, irrespective of amount; or
- Involve a highly publicized matter, irrespective of amount.

(11) A list of all real property acquisition actions, including just compensation, property or properties under litigation, administrative settlements, and condemnation for each parcel during the reporting period.

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

TC-AM4. Has the recipient submitted complete Program of Projects (POP) Status Reports on time?

BASIC REQUIREMENT
Recipients of Sections 5310 and 5311 awards must submit their Program of Projects Status Reports to FTA.

APPLICABILITY
5310 and 5311 recipients

EXPLANATION
Designated recipients of Sections 5310 and 5311 funds must submit program of projects status reports for each open award annually, except designated recipients in large urbanized areas which must submit quarterly status reports. These reports should be attached to the recipient's corresponding MPR in the TrAMS.

Reports must include:

1. Updated program of projects 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
2. Budget revisions for changes in line item budgets
3. Significant civil rights compliance issues, such as Title VI, Equal Employment Opportunity, or Disadvantaged Business Enterprise complaints against the recipient or subrecipients
4. Notable accomplishments or problems involving Section 5310 subrecipients

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?*

Late or missing Program of Project 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/Annual (Oct 1 – Oct 31)	
	5310	**5310**	**5310**	**5310**	**5311**
FY 20XX					
FY 20XX					
FY 20XX					

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

c. *Does the updated program of projects 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?*

DETERMINING COMPLIANCE

Examine the recipient's MPRs in TrAMS to determine if they have been submitted on time and include the required information for the Annual Program of Projects Status Reports as detailed in indicators above. All recipients of Sections 5310 and 5311 funding must submit status reports annually (prior to October 31), except designated recipients in large urbanized areas which must submit quarterly status reports.

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 Annual Program of Projects Status Reports or the reports do not include all the required information.

DEFICIENCY CODE TC-AM4-1: Annual Status reports missing or lacking required information

SUGGESTED CORRECTIVE ACTION: The recipient must submit in TrAMS the Annual Program of Projects Status Reports for the past year and submit to the FTA regional office procedures for submitting the reports with the required information at the required interval.

GOVERNING DIRECTIVES

FTA Circular 9040.1G, Chapter. V, Section 19. 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 program of projects for each approved grant that contains active projects. The updated program of projects should reflect revised project descriptions, changes in projects from one category to another, and adjustments within budget categories. The updated program of projects can be attached in the electronic status report. If revisions to the program of projects 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 Enterprise [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 subrecipients."

FTA Circular 9070.1G, Chapter. VI, Section 23. Reporting Requirements

"a. Annual Program of Projects Status Reports. By October 31 each year, the state or designated recipient should submit to FTA a program status report for each active grant, covering the twelve-month period ending September 30. Designated recipients in large urbanized areas must submit quarterly 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 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, 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 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 Enterprise (DBE) complaints against the recipient or subrecipients), 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?

APPLICABILITY
All recipients

BASIC REQUIREMENT
The recipient must expend awards timely and close out projects and awards when project activity is completed.

EXPLANATION
Projects may not require the amount of funds originally requested and obligated and therefore funds may remain after the project is completed. The recipient may reprogram remaining funds to other projects. When developing a program of projects for the new year, the recipient should look to available funds in existing awards before applying for new funds. Doing so can minimize the length of time an award is open and the number of open awards.

Recipients should take into account the status of current awards before awarding a subrecipient an award for a new project.

Recipients should aim to complete projects within the period of availability of funds, which is the time funds are available for obligation. 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. FTA expects projects to be completed within a reasonable, specified time and as scheduled in the award agreement and updated in progress reports. Sections 5310 and 5311 programs of projects should be implemented within two to three years of award approval. 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. For large, complicated construction or technology projects, completing the project and closing the award within the period of availability may not be feasible.

Funds deobligated within the period of availability are 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	**SAFETEA-LU**	**MAP-21/FAST Act**
5305	Year of apportionment plus 3	Year of apportionment plus 3
5307	Year of apportionment plus 3	Year of apportionment plus 5
5309 formula	Year of apportionment plus 3	N/A
5309 discretionary	Year of apportionment plus 2	Year of apportionment plus 4
5310	Year of apportionment plus 2	Year of apportionment plus 2
5311	Year of apportionment plus 2	Year of apportionment plus 2
5316	Year of apportionment plus 2	N/A
5317	Year of apportionment plus 2	N/A
5329	N/A	Year of apportionment plus 2
5337	N/A	Year of apportionment plus 3
5339	N/A	Year of apportionment plus 3

Recipients should not excessively prolong the life of the award. 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.

The recipient should initiate award closeout with subrecipients within 90 days after all funds are expended and all work activities for the project are completed. The recipient must initiate closeout with FTA within 90 days after all work activities for a POP are completed. A final FFR, 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 before closing an award.

Examples of good award management practices include:

1) As part of the annual 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 the TRAMS
10) Tie third party contracts to projects, then tie projects to award
11) When funding a project out of multiple awards, develop a drawdown plan
12) When funding a project out of multiple awards, charge retainage to the newest award (and report it as an unliquidated obligation) to enable the closing of older awards

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

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

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

INDICATORS OF COMPLIANCE

a. *As part of the development of the annual program of projects, 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?*

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

e. *Do the recipient's procedures require initiating award closeout with FTA within 90 days of completion of all activity in the program of projects and/or the applicable Federal assistance has been expended for all eligible costs?*

DETERMINING COMPLIANCE

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

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 spend the oldest funds first, track the progress of projects, close out completed awards, reprogram unused balances to other activities, initiate award closeout timely, or has open awards that should be closed.

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an award closeout plan.

The recipient must submit to the FTA regional office more effective procedures for award management (spending older funds first, tracking project progress, identifying project balances, reprogramming unused project funds to other projects, reassigning older projects to newer awards, or closing out projects) to enable it to close awards more timely.

The recipient must work with the FTA regional office to revise award budgets with the existing award schedule to assure funds can be spent and drawn down in active awards.

The recipient must work with the FTA regional office to deobligate funds and close awards if funds remain in inactive awards or if projects are indefinitely delayed.

GOVERNING DIRECTIVES

2 CFR 200.343 Closeout

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

(a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.

(b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.

(c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.

(d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

(e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §200.310 Insurance coverage through 200.316 Property trust relationship and 200.329 Reporting on real property.

(g) The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.

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

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

a. Closeout by Recipient. "The recipient is responsible to initiate closeout of the Award, within 90 days after the end of the period of performance, or after all approved activities are completed and/or the applicable federal assistance has been expended for all eligible costs. Any deviation from the approved Award must be documented in the closeout amendment."

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

15. CLOSEOUT. States should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. The states should similarly initiate program of project closeout with FTA within ninety days after all work activities for the program of projects are completed. A final federal financial report (SF 424), final budget, and final program of projects must be submitted electronically via the FTA electronic award management system at the time of closeout.

FTA expects grants awarded for a specific program of projects to be completed within a reasonable, specified time frame, generally two to three years. If small amounts of funds remain in an inactive grant, the state should request that the funds be deobligated and the project closed out. If the deobligated funds are still within their period of availability, FTA can 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.

FTA Circular 9070.1G, Chapter VI Program Management and Administrative Requirements

19. CLOSEOUT. Recipients should initiate project closeout with subrecipients within ninety days after all funds are expended and all work activities for the project are completed. Recipients should similarly initiate POP closeout with FTA within ninety days after all work activities for the POP are completed. A final Federal Financial Report, final budget, and final POP must be submitted electronically via the electronic grant management system at the time of closeout.

FTA expects grants awarded for a specific POP to be completed within a reasonable, specified time frame, generally not to exceed two to three years. Although this circular provides recipients with a great deal of flexibility in developing and subsequently revising programs of projects, it is not FTA's intent that grants be continually revised or amended in ways that will excessively prolong the life of the grant, and consequently result in a large number of active Section 5310 grants. If small amounts of funds remain in an inactive grant, the recipient 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 recipient along with other currently available funds. Otherwise the deobligated funds lapse and are reapportioned by FTA among states and UZAs in a subsequent year.

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Were any concerns identified in the recipient's award management procedures in the FTA's Oversight Assessment Tool (OAT)? Did background research and/or onsite observations support these concerns?

2. Do the data in the MPRs, program status reports and FFRs, the award closeout history, and the information from FTA regional office staff indicate that the recipient may have a weakness with award management practices? If yes, explain.

3. If there are FTA comments on FFRs or MPRs, does the recipient appear to understand them and has it responded appropriately?

4. If the recipient has a significant number of open and inactive awards, is the recipient lacking the capacity to adequately track and monitor awards and/or close them out?

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

6. Did background research or site visit observations reveal 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 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

3. FTA Circular 5010.1E, "Award Management Requirements"

4. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions

5. FTA Circular 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"

USEFUL WEBLINKS

1. The Federal Financial Report (FFR)

2. FFR Instruction Guide for Recipients

3. State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs

4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT

PURPOSE OF THIS REVIEW AREA
The recipient must follow the public involvement process for transportation plans; develop and submit a State Management Plan to the Federal Transit Administration (FTA) for approval; report in the Federal Funding Accountability and Transparency Act Subaward Reporting System (FSRS) on subawards; and ensure subrecipients comply with the terms of the award.

QUESTIONS TO BE EXAMINED
1. Does the state involve transit providers and nonmetropolitan local officials in the development of the long-range transportation plan and the State Transportation Improvement Program (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 programs?

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

4. Did the recipient obtain 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 FSRS for all subawards over $25,000 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
- Standard subrecipient application and agreement for each type of program funding, if different
- Standard transit management or service operator contract and/or lease agreement for each type of program funding, if different
- List of subrecipients, contractors, and lessees that includes:
    1. Type of program funds received (Section 5307, 5310, etc.)
    2. Type of service operated (demand response, fixed-route, charter, school bus, etc.)
    3. Type of entity (private for profit, private nonprofit, public, etc.)
- Oversight procedures including sample oversight checklists/monitoring materials, training materials/manuals for subrecipients and/or contractors/lessees
- Sample documentation of oversight conducted of subrecipients, contractors, and/or lessees of facilities or equipment
- Public involvement process for development of the long-range transportation plan and STIP

Recipient Follow-up
- State/program management plan(s)
- FSRS reporting procedures, if written
- Performance and progress reports submitted by subrecipients and/or contractors/lessees

TC-PgM1. Does the state involve transit providers and nonmetropolitan local officials in the development of the long-range 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 governments and officials in the development of these plans.

APPLICABILITY
States

EXPLANATION
The planning regulations require cooperation or coordination by the state with transit operators or nonmetropolitan local officials with responsibility for transportation. Participation in the public transportation-human services planning process helps satisfy this requirement.

INDICATORS OF COMPLIANCE

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

b. *At what key decision points are transit providers provided an opportunity for comment?*

c. *Does the state have a separate and discrete process for cooperating with nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation in the development of the long-range statewide transportation plan and the STIP?*

d. *How does the process provide an opportunity for the participation of nonmetropolitan local governments and/or local officials in the development of these plans?*

DETERMINING COMPLIANCE
Review the state's documented public involvement process for developing the long-range transportation plan and the STIP to ascertain how it involves transit providers to obtain their review and comments at key decision points. Review the state's process to determine how it ensures that it cooperates with and obtains review and comment from nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation in the development of the long-range statewide transportation plan and the STIP.

POTENTIAL DEFICIENCY DETERMINATIONS
The state is deficient if it does not provide opportunities for involving transit providers or nonmetropolitan local officials in the development of the long-range statewide transportation plan or the STIP.

> DEFICIENCY CODE TC-PgM1-1: State transportation planning process lacking involvement by transit providers and/or local officials
>
> SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office a process for involving public transit providers and/or nonmetropolitan local officials in the development of the long-range statewide transportation program and the STIP.

GOVERNING DIRECTIVES
23 CFR 450.208 Coordination of planning process activities

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

(1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. When carrying out transportation planning activities under this part, the State and MPOs shall coordinate on information, studies, or analyses for portions of the transportation system located in MPAs [metropolitan planning areas]. The State(s), the MPO(s), and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decision making and the resolution of disagreements;

(4) Cooperate with affected local elected and appointed officials with responsibilities for transportation, or, if applicable, through RTPOs [regional transportation planning organizations] 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, participation, 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…"

TC-PgM2. 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 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 Sections 5310 and 5311 programs and, under certain circumstances, the Section 5339 program. Recipients must update plans regularly to incorporate any changes in program management or new requirements.

APPLICABILITY
Designated recipients of Sections 5310, 5311 or 5339 funds

EXPLANATION
Each state that administers the Sections 5310, 5311, and 5339 programs and each designated recipient of Section 5310 funds that passes funds to recipients, is required to have and submit a 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 for the programs.

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

FTA strongly encourages recipients to issue timely revisions to state/program management plans, particularly when information helpful to minority 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 eligibility or award cycle. 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.

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 submitted to FTA? Does the approved plan reflect current policy/process?*

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? Does the submitted plan reflect current policy/process?*

DETERMINING COMPLIANCE

Obtain the current state/program management plans from the recipient. Verify with the FTA regional office that the current plans match the plans submitted to and/or approved by FTA.

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

Topics	Page Number			Comments
	5311	5310	5339	
Program Goals and Objectives				

Topics	Page Number			Comments
	5311	5310	5339	
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				
Program Measures				
Program Management				

Topics	Page Number			Comments
	5311	5310	5339	
Other Provisions				

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, award application sessions for indication that the significant changes were discussed and provided for discussion to the public. Posting the revised plan(s) on the recipient's website seeking comments on revisions meets the requirement.

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: The recipient must submit to the FTA regional office an updated state/program management plan(s) that reflects current practice. The recipient must 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: The recipient must submit to the FTA regional office a revised state/program management plan(s) that addresses all required topics.

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: The recipient must submit to the FTA regional office procedures for seeking public comment when significant revisions are made to a state/program management plan. 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).

GOVERNING DIRECTIVES
FTA Circular 9070.1G, Chapter VII, State and Program Management Plans

"1. GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5310 and 5311 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 9040.1G, Chapter VI, State Management Plans

"1. GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering the state-managed portions of FTA's Section 5311, 5310, 5316, 5317, and 5339 programs. Each state is required to have an approved SMP on file with the appropriate FTA regional 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."

FTA Circular 5100.1, Chapter VI, State and Program Management Plans

"1. GENERAL. The State Management Plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5339 program. The Program Management Plan (PMP) is a document that describes the designated recipient's policies and procedures for administering Federal Transit Administration's (FTA) Section 5339 program in a large urbanized area (UZA). A PMP may not be necessary if there is only one designated recipient. 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 UZAs whereas the SMP is developed by the state. All recipients may amend an existing or approved SMP/PMP or create a stand-alone section in order to meet the requirement for these documents.

a. Each recipient, whether a state or a designated recipient in a large UZA, 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."

TC-PgM3. Has the recipient entered into agreements with each subrecipient that includes all the information required by FTA and 2 CFR part 200?

APPLICABILITY
All recipients with subrecipients

BASIC REQUIREMENT
Recipients must enter into an agreement with each subrecipient. Agreements must state the terms and conditions of assistance and includes information required by FTA and 2 CFR part 200.

EXPLANATION
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.

Recipients must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not

available, the recipient must provide the best information available to describe the Federal award and subaward. See *2 CFR 200.331 Requirements for pass-through entities* for required information.

INDICATORS OF COMPLIANCE

a. *Has the recipient entered into a written agreement with each subrecipient?*

b. *Do the subrecipient agreements include the information required by 2 CFR part 200?*

DETERMINING COMPLIANCE

Using the table below and the clause checklist in Procurement, review the standard subrecipient agreements for each FTA program and a sample executed subrecipient agreement for the subrecipient selected for review in accordance with the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment to determine if the agreements contain the information required by 2 CFR part 200. Note that when some of the information required by 2 CFR part 200 is not available, the pass-through entity must provide the best information available to describe the federal award and subaward. Incorporating the FTA Master Agreement by reference meets the requirement to include all federally required clauses.

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 of award to the recipient by the Federal agency	
Subaward period of performance 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 obligation	
Total amount of the Federal award committed to the subrecipient by the pass-through entity	
Federal award description as required to be responsive to the Federal Funding Accountability and Transparency Act	
Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity	

Required Agreement Information	
Information	**Comment**
Catalog of Federal Domestic Assistance (CFDA) number and name; the pass-through entity must identify the dollar amount made available under each Federal award	
Identification of whether the award is research and development (R&D)	
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, i.e. federally required clauses	
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	
Indirect Costs: If a federally approved indirect cost rate is negotiated between the subrecipient and the Federal government, this rate must be used. If no such rate exists, the subrecipient may either negotiate a rate with the pass-through entity and the subrecipient (in compliance with this part), or elect the de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f), if eligible.	
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	
Appropriate terms and conditions concerning closeout of the subaward	

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it has not entered into an agreement with each subrecipient.

DEFICIENCY CODE TC-PgM3-1: Missing written agreements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office executed written agreements with each subrecipient. The recipient must submit to the FTA regional office procedures for entering into written agreements with each subrecipient prior to the expenditure of federal funds on a local project.

The recipient is deficient if subrecipient agreements do not include required elements.

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an amended subrecipient agreement template that includes missing FTA requirements. The recipient must submit documentation to the regional office that the amended agreement has been used in the next project application cycle.

GOVERNING DIRECTIVES
2 CFR 200.331 Requirements for pass-through entities.

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

(1) Federal Award Identification.

(i) Subrecipient name (which must match the name associated with its unique entity identifier);

(ii) Subrecipient's unique entity identifier;

(iii) Federal Award Identification Number (FAIN);

(iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;

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

(vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

(vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;

(viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;

(ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);

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

(xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;

(xii) Identification of whether the award is R&D; and

(xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).

(2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;

(3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;

(4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);

(5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and

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

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

"In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-

Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

(I) 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 governmentwide 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.

(J) 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."

TC-PgM4. Did the recipient obtain 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
All recipients with subrecipients

EXPLANATION
Any subrecipient in receipt of an award or contract exceeding $100,000 is subject to the same disclosure and updating 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.

INDICATOR OF COMPLIANCE

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

DETERMINING COMPLIANCE
Using the table below, review the subrecipient application(s) and agreement(s) to see if either contains the lobbying certification. Also, using the table below, select a sample of executed subrecipient agreements in accordance with the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment to determine if the recipient obtained signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000. Obtaining the FTA annual certifications and assurance from subrecipients meets the requirement.

Subaward	Comments

Subaward	Comments

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

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

SUGGESTED CORRECTIVE ACTION: The recipient must submit a process to the FTA regional office for obtaining signed lobbying certifications from subrecipients before entering into agreements exceeding $100,000.

GOVERNING DIRECTIVES
49 CFR 20.110 Certifications and Disclosures

"(a) Each person shall file a certification…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…Shall file a certification…to the next tier above."

TC-PgM5. 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 debarred or suspended when entering into agreements exceeding $25,000.

APPLICABILITY
All recipients with subrecipients

EXPLANATION
Each recipient is required to ensure, to the best of its knowledge and belief, that none of its subrecipients are suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third party contract expected to equal or exceed $25,000, recipients must verify that the 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.

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.

In the event that 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. *How and when does the recipient determine and verify that subrecipients are not suspended or debarred?*

b. *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 grant an exception?*

DETERMINING COMPLIANCE

Review the state/program management plan(s), subrecipient applications, and subrecipient agreement(s) for information on how the recipient determines ineligibility of suspended or debarred subrecipients.

Using the table below, review subrecipient applications and agreement(s) to see if they contain the suspension and debarment certification or clause. Also, using the table below, select a sample of executed subrecipient agreements in accordance with the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment. During the site visit, review the subrecipient files for the sample to verify the recipient is making this determination before entering into any subrecipient agreements by:

- Checking System for Award Management (SAM) Exclusions (at SAM.gov);
- Collecting a certification; or
- Adding a clause or condition to the covered transaction.

Subaward	Comments

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

Review SAM.gov to determine if any subrecipients in the sample are suspended or debarred.

During the site visit, ask the recipient if any of its subrecipients were suspended or debarred after initial award. If so, determine the date the recipient became aware and verify no awards were extended or renewed after that date.

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 excluded parties are not participating

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for making excluded party determinations before entering into an agreement. For the next application cycle, submit to FTA 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.

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.

GOVERNING DIRECTIVES
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?

(d) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.
(e) 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."

TC-PgM6. Has the recipient reported subaward information to FSRS for all subawards over $25,000 timely?

BASIC REQUIREMENT
FFATA requires recipients to report subaward information to FSRS by the end of the month following the month in which the subaward was made.

APPLICABILITY
All recipients with subrecipients

EXPLANATION
All direct recipients of FTA awards, award amendments and cooperative agreements over $25,000 awarded on or after October 1, 2010, are subject to the requirement of FFATA, which requires recipients to report subaward information to FSRS at www.FSRS.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.

Recipients must report the information about each first tier subaward over $25,000 (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 the direct recipient makes 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 FSRS. 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.

Information and training materials about FFATA subaward reporting and FSRS are posted on www.USASpending.gov/news.

INDICATORS OF COMPLIANCE

a. *Has the recipient reported subaward information to FSRS for all subawards greater than or equal to $25,000, including subaward amendments making the total award greater than or equal to $25,000?*

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

DETERMINING COMPLIANCE

In TrAMS, access the program of projects for an award in each FTA program for which the subrecipient receives funding. Select a sample of subrecipients in accordance with the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment and complete columns (1), (2), and (3) in the following table. During the site visit, ask the recipient to provide the information needed to complete columns (4) and (5).

(1) FTA Award Number	(2) Subaward Entity	(3) Amount	(4) Award Date	(5) Date Reported to FSRS	(6) Comments

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not report subaward information to FSRS or does not do so timely.

DEFICIENCY CODE TC-PgM6-1: FFATA reporting deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must report all missing information to FSRS and notify the FTA regional office when complete. The recipient must also submit to the FTA regional office procedures for reporting future subawards to FSRS timely.

GOVERNING DIRECTIVES
FTA Circular 5010.1E, Chapter III, Section 3.f Federal Funding Accountability and Transparency Act (FFATA) Subaward and Executive Compensation Reporting.

"Recipients awarded new federal assistance greater than or equal to $25,000 as of October 1, 2010, are subject to FFATA subaward and executive compensation reporting requirements as outlined in the Office of Management and Budget's guidance issued August 27, 2010. These recipients must 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 $25,000. Additionally, all recipients must report the names and compensation of their five most highly compensated officers, and first-tier subrecipients must report the names and compensation of their five most highly compensated officers, if in the preceding fiscal year they received 80 percent or more of their annual gross revenues in federal Awards; and $25,000 or more in annual gross revenues from federal Awards; and the public does not have access to this information about the compensation of the senior executives of those recipients or subrecipients 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.

Instructions and the FFATA Subaward Reporting System (FSRS) can be found at: www.fsrs.gov."

TC-PgM7. 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
All recipients with subrecipients

EXPLANATION
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 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.

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 Technical Capacity takes an overall look at the systems in place for monitoring compliance with a range of Federal requirements. Appropriate systems 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.

Large recipients may have written procedures for oversight of subrecipients. Smaller recipients may have informal oversight mechanisms, such as periodic meetings. FTA expects recipients with a significant number of subrecipients to have formal oversight mechanisms.

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, on-site 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 recipients process for monitoring subrecipients?*

b. *How does the recipient evaluate subaward and/or subrecipient risk?*

c. *Has the recipient conducted risk assessments of its subrecipient?*

d. *How does the recipient evaluate subaward performance?*

e. *How are the outcomes of risk assessments incorporated into the oversight process?*

f. *What actions has the recipient taken to address identified compliance issues or risk with subrecipients?*

DETERMINING COMPLIANCE

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 communicates performance measures, addresses mitigating risks identified, and the review areas overseen. Review the schedule of oversight activities conducted since the last 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.

On site, discuss the oversight program with the recipient to ensure that oversight of the FTA program is clearly understood and addresses the required elements. 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.

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: The recipient must submit to the FTA regional office procedures for evaluating subrecipient risk and a comprehensive program monitoring subrecipients for compliance with Federal requirements and performance goals, along with documentation of implementation.

The recipient must submit to the FTA regional office procedures for taking action to correct issues of subrecipient non-compliance.

GOVERNING DIRECTIVE
2 CFR 200.331 Requirement for pass-through entities.

"All pass-through entities must:

(b) Evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring described in paragraph (e) of this section, which may include consideration of such factors as:

(1) The subrecipient's prior experience with the same or similar subawards;

(2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has 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 (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).

(c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.207 Specific conditions.

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision.

(e) 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 on-site reviews of the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Is this the first Comprehensive Review for the recipient?

2. 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?

3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies or findings currently open?

4. Are any issues related to technical capacity, program management, or subrecipient oversight indicated in the FTA's Oversight Assessment Tool (OAT)?

5. Has the recipient taken on new subrecipients since the last Comprehensive Review? If yes, how many?

6. Does the recipient provide technical assistance to subrecipients in meeting Federal requirements?

7. Did background research or site visit observations reveal 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 180.300, What Must I Do Before I Enter Into A Covered Transaction With Another Person At The Next Lower Tier?

5. 2 CFR Parts 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 5010.1E, “Award Management Requirements”

9. FTA Circular 5100.1, “Bus and Bus Facilities Formula Program: Guidance and Application Instructions”

10. FTA Circular 9040.1G, “Formula Grants for Rural Areas: Program Guidance and Application Instructions

11. FTA Circular 9070.1G “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. www.USASpending.gov/news

3. Office of Management and Budget Open Government Directive - Federal Spending Transparency

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

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 all applicable laws and regulations, using sound management practices; and prepare force account plans.

QUESTIONS TO BE EXAMINED
1. For projects undertaken since the last Comprehensive Review, did the recipient 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?

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. 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)?

4. Since the last Comprehensive Review, if the subrecipient used force account labor for an FTA-funded capital project, did it comply with FTA requirements?

INFORMATION NEEDED FROM RECIPIENT
Recipient Follow-up
- Project management plans, if written
- Quality control procedures, if written
- Sample project progress meeting minutes/reports
- Procedures for administering and monitoring construction projects, bus procurements, and other capital projects, if written
- Force account work plan(s), for sample project(s)

TC-PjM1. For projects undertaken since the last Comprehensive Review, did/does the recipient 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?

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

EXPLANATION
The recipient must ensure continuous management of projects under an award. Recipients are required to have a formal Project Management Plan (PMP) for all major capital projects. A major capital project is a project that: involves the construction, extension, rehabilitation, or modernization of a fixed guideway or a New Starts project with a total project cost in excess of $100 million, or has been determined to be a major capital project by the Administrator, based on criteria in 49 CFR Part 633.

Recipients with smaller capital projects, such as construction projects, rolling stock procurements, technology projects, and planning projects should have a mechanism for technical oversight of these projects. Regular meetings between the project manager and contractor(s) should be held to review project status. Even though not required, some recipients have project management plans, especially for construction projects.

Many recipients that do not have the technical expertise or internal resources to manage large projects hire an architectural and engineering (A&E) firm or other consultant to serve as project manager or provide technical oversight. A recipient that is 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's information technology (IT) department may oversee technology projects, also 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 failure in performance by a contractor, there may be deficiencies in the recipient's technical oversight of projects. The recipient's 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.

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 with requirements.

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:

- Requests for proposals
- Monthly, quarterly or annual reports
- Meetings
- Site visits
- Vehicle/facility inspections

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

Large recipients may have written procedures for oversight of transit management or service contractors, or lessees. Smaller recipients may have informal oversight mechanisms, such as periodic meetings. FTA expects recipients 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 provide administrative and management support of project implementation?*

b. *How does the recipient provide technical inspection and supervision by qualified professionals of all work in progress?*

c. *Did the recipient obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions?*

d. *How does the recipient ensure conformity to applicable statutes, codes, ordinances, and safety standards?*

e. *Has the recipient had any fines, cease and desist orders, legal actions, or judgments for permit, zoning, safety, or other violations related to FTA-funded projects?*

f. *How does the recipient monitor activities under the award to assure schedules are met and other performance goals are achieved? 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?*

g. *How does the recipient keep 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?*

h. *For all FTA-funded projects, including those carried out by contractors and/or lessees, what is the recipient's process for determining the applicability of, and ensuring compliance with, all Federal requirements?*

DETERMINING COMPLIANCE

Review project management plans and quality control procedures 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. 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. Onsite, review project management oversight files for documentation that the recipient has implemented its process and is actively participating in the oversight of projects.

Review procedures for oversight of transit management or service contractors and lessees, if written, for the recipient's procedures for overseeing such projects. Review site visit checklist(s)/reports, and vehicle and facility checklists to ascertain what FTA requirements they address. Examine documented follow-up of corrective actions on any deficiencies discovered during the monitoring of a transit management or service contractor and/or lessee to determine how the recipient ensures issues are resolved and mitigated in future projects.

Onsite, discuss the resources the recipient dedicates or plans to dedicate to project management and how it mitigates/plans to mitigate any projected shortfalls in oversight. Confirm the use of specific monitoring mechanisms. Review the files for the contractor(s) and lessee(s) to be visited during the site visit to determine implementation.

Note: For management of transit operating 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.

Type of Project	Comments
Construction	
Revenue rolling stock Bus Rail	
Technology	
Planning	
Design/build/operate/ maintain (DBOM)	
Operations/ maintenance	
Leases	

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, and analyses of significant project cost variances and a discussion 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 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's 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.

Delayed Projects	Award Number(s)	Comments

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not provide administrative and management support of project implementation; provide technical inspection and supervision by qualified professionals of work in progress; 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-PjM1-1: Insufficient project management

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for providing administrative and management support of project implementation; technical inspection and supervision by qualified professionals; obtaining all necessary permits, approvals and waivers; and ensuring projects conform to Federal, state, and local statutes, codes, ordinances, and safety standards. The recipient must 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.

The recipient is deficient if it has project delays or budget overruns due to lack of technical inspection or supervision of a project(s).

DEFICIENCY CODE TC-PjM1-2: Excessive delay/cost overrun in project implementation

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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].

The recipient is deficient if it does not ensure that transit management contractors and/or lessees comply with Federal requirements.

DEFICIENCY CODE TC-PjM1-3: Inadequate oversight of transit management contractor(s)/lessee(s)

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that transit management contractors and/or lessees comply with Federal requirements.

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

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

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

(1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(2) Provide administrative and management support of project implementation;

(3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;

(5) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;

(6) Keep expenditures within the latest approved Award Budget;

(7) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;….

(16) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions…."

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
Recipients using their own work force on capital improvement projects are required to develop and submit to FTA a force account plan and 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, recipients must obtain FTA approval of the force account plan before incurring costs.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
Work performed by the recipient's work force on capital projects, other than grant 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 a recipient's own labor forces. These are: (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 a force account plan and justification prior to incurring costs and submit the plan to FTA. Prior FTA approval is not required. When the cost of force account work to be performed equals $10,000,000 or more, prior FTA approval 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.

INDICATORS OF COMPLIANCE

a. *Since the last Comprehensive Review, has the recipient had any force account work? If no, move to the next question.*

b. *For force account work exceeding $1 million but less than $10 million, did the recipient submit a force account plan to FTA prior to incurring costs?*

c. *For force account work of $10 million or more, did FTA approve the plan prior to incurring costs?*

DETERMINING COMPLIANCE
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 plan for work that exceeds $1 million. For force account work exceeding $10 million, determine if the FTA regional office has approved the plan. If not submitted with the FTA regional office, obtain a copy of the force account plan(s) to ensure that the work is justified on the basis of cost, exclusive expertise, safety and efficiency of operations, or union agreement. Determine if costs were incurred prior to the submittal or approval of the justification or plan as part of the review of ECHO draws in the Financial Management and Capacity area. Follow up with the

recipient to ensure that it has a plan for all force account work that meets the threshold for a plan as identified in the recipient award application in TrAMS.

POTENTIAL DEFICIENCY DETERMINATIONS
For force account work greater than $1 million but less than $10 million, the recipient is deficient if it 1) did not develop a force account plan and/or 2) submit the plan to FTA prior to incurring costs.

DEFICIENCY CODE TC-PjM2-1: Force account plan not submitted

SUGGESTED CORRECTIVE ACTION: The recipient must cease incurring costs until a force account plan is submitted to FTA.

For force account work of $10 million or more, the recipient is deficient if it did not receive FTA approval of the force account plan prior to incurring costs.

DEFICIENCY CODE TC-PjM2-2: No approval of force account plan

SUGGESTED CORRECTIVE ACTION: The recipient must cease incurring costs until a force account plan is approved by FTA.

GOVERNING DIRECTIVE
FTA Circular 5010.1E, Chapter IV, Section 5 Design and Construction of Facilities.

d. Force Account. Force account is the use of a recipient's 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. 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, recipients may be required to submit a justification to use force account and/or the Force Account Plan for FTA approval.

(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.

Note that a force account plan is prepared at the project level; it, therefore, may cover multiple Grants, Cooperative Agreements, or Amendments thereto. It may be prepared prior to or subsequent to Award, but must be in place before incurring costs.

(4) 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:

(a) Cost savings.

The justification documentation must include the following information to be justified based on cost savings:

1 A comparison of the present worth of the estimated cash drawdown for both the force account and private sector contract options;

2 The recipient should use the current interest rate paid on one-year Treasury Bills as the discount rate;

3 The recipient should include the cost of preparing documents, cost of administration, and inspection, cost of labor, materials and specialized equipment, cost of overhead, and profit for private contract;

4 Unit prices for labor; materials and equipment; overhead; and profit, if applicable for private contract;

5 Certification that costs presented are fair and reasonable; and

6 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.

(b) 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.

(c) Safety and efficiency of operations.

The justification documentation must include the following information to be justified based on safety and efficiency of operations:

1 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;

2 Efficiency concerns, which may be addressed by a present worth calculation, including an estimate of the value of lost transit operation efficiency; and

3 In emergency situations where the recipient uses its own workforce, the recipient may submit a waiver to the Emergency Relief docket.

(d) Union Agreement.

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.

(5) Force Account Plans. Prior to incurring costs, a recipient must develop force account plans 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 costs:

(a) A description of the scope of work;

(b) A copy of the construction plans and specifications which includes a detailed estimate of costs and a detailed schedule and budget; and

(c) A copy of the proposed Agreement when another public agency is involved.

Special care must be taken to ensure that requirements of 2 CFR part 200 are followed, especially for charging expendable property to force account projects and making sure that allowable costs are assigned to the correct activity code.

TC-PjM3. 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

EXPLANATION
Recipients are responsible for federal assistance that "passes through" to a subrecipient. The recipient's 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 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

See question TC-PjM1 above for a more detailed explanation of project management requirements.

INDICATOR 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?

DETERMINING COMPLIANCE
Review copies of project management plans, quality control procedures state/program management plan(s) and the subrecipient agreement(s) for procedures for administering and monitoring projects. 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's process for overseeing projects. Select a sample of subrecipient files (agreements) in accordance with the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment to review for the contractual obligations placed upon the subrecipient for compliance with FTA requirements.

During the site visit, discuss the recipient's quality control procedures for projects. Discuss monitoring activities and the resources the recipient dedicates or plans to dedicate to project management and how it mitigates/plans to mitigate any projected shortfalls in oversight. Review project management oversight files for documentation that the recipient has implemented its process and is actively participating in the oversight of projects.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it did not ensure technical inspection and supervision of projects undertaken by subrecipients.

DEFICIENCY CODE TC-PjM3-1: Continuing oversight of subrecipient projects lacking

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for providing adequate technical oversight of projects undertaken by subrecipients along with evidence of implementation.

GOVERNING DIRECTIVES
49 CFR 200.331 Requirements for pass-through entities.

"All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision."

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

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

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

(8) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(9) Provide administrative and management support of project implementation;

(10) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(11) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;

(12) 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;

(13) Keep expenditures within the latest approved Award Budget;

(14) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements;….

(17) Obtain all necessary prior approvals and/or waivers before incurring costs or taking any requested actions…"

TC-PjM4. Since the last Comprehensive Review, if the subrecipient used force account labor for an FTA-funded capital project, did it comply with FTA requirements?

BASIC REQUIREMENT
Subrecipients using their own work force on capital improvement projects are required to develop and submit to the FTA a force account plan and 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, subrecipients must obtain FTA approval of the force account plan before incurring costs.

APPLICABILITY
Recipients with subrecipients

EXPLANATION
Many FTA requirements flow through the recipient to subrecipients. The recipient is responsible for ensuring that these entities are aware of and comply with FTA force account requirements. The recipient must have sufficient documentation to support subrecipient compliance. See force account explanation under question TC-PjM2 for more information.

INDICATORS OF COMPLIANCE

a. *For force account work exceeding $1 million but less than $10 million, did the recipient submit a force account plan to FTA prior to allowing the subrecipient to incur costs?*

b. *For force account work of $10 million or more, did the recipient submit a force account plan to FTA and did FTA approve the plan prior to allowing the subrecipient to incur costs?*

DETERMINING COMPLIANCE
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 plan for subrecipient work that exceeds $1 million. If not submitted with the FTA regional office, obtain a copy of the force account plan(s) to ensure that the

work is justified on the basis of cost, exclusive expertise, safety and efficiency of operations, or union agreement. Determine if costs were incurred prior to the submittal or approval of the justification or plan. Review the state/program management plan(s) for discussion of requirements for subrecipients to develop force account plans and to submit to the recipient, as applicable and how the recipient ensures this is done.

During the site visit, review ECHO draws for subrecipients to ensure that costs were incurred only after submittal of the plan. Follow up with the recipient to ensure that it has a plan for all force account work by subrecipients that meets the threshold for a plan.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it did not submit a subrecipient's force account plan to FTA for force account work exceeding $1 million prior to allowing the subrecipient to incur costs.

DEFICIENCY CODE TC-PjM4-1: Incurred costs prior to submittal/approval of force account plan

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that subrecipients do not incur costs before the recipient submits the plan to FTA or obtains prior FTA approval.

For subrecipient force account work greater than $1 million but less than $10 million, the recipient is deficient if the subrecipient 1) did not develop and submit to the recipient a force account plan and/or 2) the recipient did not submit the plan to FTA prior to subrecipient incurring costs.

DEFICIENCY CODE TC-PjM4-2: Subrecipient force account plan not submitted

SUGGESTED CORRECTIVE ACTION: The recipient must direct the subrecipient to cease incurring costs until a force account plan is submitted to FTA.

For subrecipient force account work of $10 million or more, the recipient is deficient if it did not receive FTA approval of the subrecipient force account plan prior to subrecipient incurring costs.

DEFICIENCY CODE TC-PjM4-3: No approval of subrecipient force account plan

SUGGESTED CORRECTIVE ACTION: The recipient must direct the subrecipient to cease incurring costs until a force account plan is approved by FTA.

GOVERNING DIRECTIVE
49 CFR 200.331 Requirements for pass-through entities.

"All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Is this the first Comprehensive Review for the recipient?

2. Is the recipient embarking on a type of FTA-funded project that is new to it?

3. Does the recipient have subrecipients or transit contractors?

4. 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 or project management?

5. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies or findings currently open?

6. Are any issues related to technical capacity and/or project management indicated in the FTA's Oversight Assessment Tool (OAT)?

7. 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 being delivered on time or within budget?

8. Do MPRs contain reasonable explanations and/or recovery plans for budget and/or schedule variances?

9. Has the recipient contracted out project management responsibilities to a third party?

10. Are there concerns about the recipient's project management oversight of subrecipients?

11. Did background research or site visit observations reveal 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 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

3. FTA Circular 5010.1E, "Award Management Requirements"

USEFUL WEBLINKS

1. Construction Project Management Handbook (2009 Update)

2. Project and Construction Management Guidelines (2003 Update)

3. Project Management Oversight Lessons

4. Quality Management System Guidelines

5. State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs

6. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools

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6. 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 and submit required reports and notifications to FTA?

2. Did the recipient follow FTA requirements for incidental use of real property?

3. Has the recipient made appropriate efforts to use, lease, or dispose of idle facilities?

4. Is FTA-funded real property (land and improvements thereon) used solely for its originally authorized purpose?

5. If the recipient disposed of FTA-funded real property since the last Comprehensive Review, were FTA requirements followed?

6. Does the recipient have flood insurance for any FTA-funded buildings located in areas 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?

7. Does the state maintain control over FTA-funded equipment?

8. Was equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and FTA requirements?

9. Are bus fleets managed in accordance with FTA requirements for spare ratios and contingency fleets?

10. Does the rail fleet management plan meet FTA requirements?

11. If the recipient or a subrecipient used FTA capital assistance to finance the lease of any transit facilities or equipment, was a certification provided to FTA that a cost-effectiveness determination was conducted prior to entering into the lease or receiving the award?

12. Does the recipient maintain control over FTA-funded property and ensure that subrecipients, contractors, and lessees use FTA-funded property for project purposes?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request

- Listing of FTA-funded real property with incidental use
- Listing of FTA-funded real property owned/managed by contractors, subrecipients or lessees
- Sample incidental use agreements
- FTA-funded real property inventory
- Excess FTA-funded real property inventory listing
- Real property and equipment disposition procedures
- List of FTA-funded assets identifying if it:
    1. Has an incidental use
    2. Is directly operated and/or maintained
    3. Is third-party operated and/or maintained

- List of FTA-funded facilities constructed or renovated since the last review or 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
- Last physical inventory conducted with the reconciliation
- List of vehicles identified as active or inactive
- Contingency fleet plan
- Rail fleet management plan

Recipient Follow-up
- Notification to FTA for the real property removed from the service originally intended at the time of award approval or put property to additional or substitute uses
- Excess real property utilization plan
- Disposition request/approval correspondence
- Proof of funds reimbursed to FTA (sale records or financial reports), if required
- Asset management procedures
- Request/approval correspondence between the recipient and FTA

SCC1. Does the recipient maintain adequate records on the status of real property and submit required reports and notifications to FTA?

BASIC REQUIREMENT
For Awards and Cooperative Agreements (and funding increments to existing Awards and Cooperative Agreements) awarded on or after December 26, 2014, recipients must maintain adequate property records and submit annual reports on the status of real property in which the Federal Government retains an interest. For awards made before December 26, 2014, recipients are required to prepare and maintain an inventory and utilization plan for all property that is no longer needed to carry out any transit program.

APPLICABILITY
All recipients

EXPLANATION
For Awards and Cooperative Agreements (and funding increments to existing Awards and Cooperative Agreements) awarded on or after December 26, 2014, FTA requires that recipients maintain a real property inventory and submit reports at least annually on the status of real property in which the Federal government retains an interest. A real property inventory must include: property location/physical address; use and condition; 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 identification number; appraised value and date; anticipated disposition or action proposed; date of disposal; and sale price of the property. If the property is excess, the recipient must identify the reasons for having excess property, such as purchase to a logical boundary. This inventory is necessary in order to accurately account for assets, and determine an equitable valuation of federal interest retained in the property.

For Awards and Cooperative Agreements awarded before December 26, 2014, if FTA-funded real property is no longer needed for any transit purpose, the recipient or subrecipient is required to prepare or update an excess real property inventory and utilization plan. The plan should identify and explain the reason for excess property. The inventory list should include such things as location, summary of any conditions on the title, original acquisition cost, Federal participation ratio, FTA award number, appraised value and date, brief description of improvements, current use, and the anticipated disposition or action

proposed. Unless FTA and the recipient agree otherwise, the excess real property inventory and updated excess property utilization plan should be retained by the recipient and made available upon request and during an FTA review.

INDICATORS OF COMPLIANCE

a. *For FTA-funded real property purchased under an award made after December 26, 2014, has the recipient submitted real property reports to FTA annually?*

Real Property 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 identification number	
Appraised value and date	
Anticipated disposition or action proposed	
Date of disposal; and sale price of the property	
Use and condition of the property	

b. *If property is excess, identify the reasons for having excess property, such as purchase to a logical boundary.*

c. *For FTA-funded excess real property purchased under an award made before December 26, 2014, was an excess property inventory and utilization plan prepared or updated?*

Excess Real Property Inventory Utilization Plan Required Elements	Comments
Location	
Summary of any conditions on the title	

Excess Real Property Inventory Utilization Plan Required Elements	Comments
Original acquisition cost	
Federal participation ratio	
FTA award number	
Appraised value and date	
Brief description of improvements	
Current use	
Anticipated disposition or action proposed	

DETERMINING COMPLIANCE

Confer with the regional office to determine if the recipient is required to submit a real property report, and when and how submission is required. Review the Transit Award Management System (TrAMS) to determine if the recipient submitted the real property report. If not submitted, obtain the report from the recipient and review it to determine it addresses the required elements.

Obtain and review the recipient's excess real property inventory and excess real property utilization plan to confirm it contains the required elements. Discuss with the recipient whether the plan is current.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not submitted the required property report timely.

DEFICIENCY CODE SSC1-1: Property reports not submitted timely

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA regional office real property reports along with procedures for preparing and submitting such reports timely.

The recipient is deficient if real-property reports do not contain the required information including reasons for having excess real property.

DEFICIENCY CODE SSC1-2: Property reports missing information

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA regional office updated real property reports with all missing information.

For FTA-funded excess real property purchased under an award made before December 26, 2014, the recipient is deficient if it has not prepared a written plan for disposing of it, if the plan does not include all the required elements, or if the plan is out-of-date.

DEFICIENCY CODE SSC1-3: Lacking excess real property utilization inventory/plan out-of-date

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a written excess real property utilization plan, that includes all required elements, or an update to the existing plan.

GOVERNING DIRECTIVES
2 CFR 200.311 Real property

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

2 CFR 200.329 Reporting on real property

"The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require 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)."

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

"(2) Use. Real property must be used for the originally 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 without prior FTA written approval. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or 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 intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

(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, useful life, date placed in service, original acquisition cost 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.

(5) Reporting on Real Property. Recipients must maintain adequate records on the status of real property in which the Federal Government retains an interest. FTA requires that recipients maintain a real property inventory on file for review upon request by FTA to satisfy the requirements of 2 CFR § 200.329, which requires recipients to submit reports on an annual basis for real property in which the Federal Government retains an interest. In instances where the federal interest in the real property will extend for a period of 15 years or more, a recipient may request FTA's permission to report at multi-year frequencies, not to exceed a five-year reporting period. A Real Property Inventory must include: 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 identification number; appraised value and date; anticipated disposition or action proposed; date of disposal; and sale price of the property. If the property is excess, identify the reasons for having excess property, such as purchase to a logical boundary. This inventory is necessary in order to accurately account for assets, and determine an equitable valuation of federal interest retained in the property. The Excess Real Property Inventory and Utilization Plan requirement applies only to Grants or Cooperative Agreements awarded before December 26, 2014. The Real Property Reporting requirement (Real Property Inventory) replaces the Excess Real Property Inventory and Utilization Plan requirement for Grants and Cooperative Agreements (and funding increments to existing Grants and Cooperative Agreements) awarded on or after December 26, 2014.

FTA Circular 5010.1D Chapter IV, Section 2. Real Property, (j) Disposition (1)

"(1) Excess Real Property Inventory and Utilization Plan. The grantee shall prepare and keep up to date an excess property inventory and utilization plan for all property that is no longer needed to carry out any transit purpose. The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost, and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed."

SCC2. Did the recipient follow FTA requirements for incidental use of real property?

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

APPLICABILITY
All recipients

EXPLANATION
Incidental use is defined as the authorized use of real property (and equipment) acquired or improved with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Real property includes land, affixed land improvements, structures, and appurtenances. 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. (Note that licenses and leases of air rights are treated as incidental uses, not disposition of excess property.) Such use must be compatible with the approved purposes of the project, must not interfere with intended public transportation uses of project assets, must not in any way interfere with the recipient's continuing control over the use of the property, and must not compromise safety. FTA encourages recipients to make incidental use of FTA-funded real property when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenue, non-profit uses are permitted, under certain circumstances.

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

Recipients should consult with FTA prior to continuing incidental use of real property.

INDICATORS OF COMPLIANCE

a. *Does the recipient have incidental uses of any FTA-funded real property? If no, move to the next question.*

b. *Was FTA consulted about the incidental use?*

c. *Is the incidental use compatible with the original purpose of the award?*

d. *Does the recipient maintain continuing control over the property?*

e. *Are proceeds used for eligible transit capital or operating expenses or as the non-Federal share of an eligible award?*

DETERMINING COMPLIANCE

Obtain incidental use consultations since the last Comprehensive Review from the regional office. 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. During the review of Electronic Clearinghouse Operations (ECHO) draws in the Financial Management and Capacity area, select a sample revenue transaction of income obtained from project property and verify that the income was used to offset cost associated with the FTA-funded service.

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

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it uses FTA-funded real property incidentally and did not consult with FTA.

DEFICIENCY CODE SCC2-1: Failure to consult with FTA on incidental use

SUGGESTED CORRECTIVE ACTION: The recipient must consult FTA, or cease unauthorized use, for any incidental uses of real property of which FTA is unaware and submit to the FTA regional office procedures for consulting FTA for future incidental uses.

The recipient is deficient if the incidental use affects a property's transit capacity or use.

DEFICIENCY CODE SCC2-2: Incidental use affects transit capacity or use

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the FTA regional office that it has ceased incidental uses of real property that interfere with transit purposes.

The recipient is deficient if the incidental use interferes with its continuing control over project property.

DEFICIENCY CODE SCC2-3: Incidental use interferes with property control

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for maintaining satisfactory continuing control over real property used for incidental purposes.

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

DEFICIENCY CODE SCC2-4: Incidental use income not used for eligible expenses

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the FTA regional office that it has applied incidental use income to transit purposes.

GOVERNING DIRECTIVES

2 CFR 200.311 Real property

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

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

"(6) Non-Transit Uses of FTA Assisted Real Property. FTA's policy is to permit recipients maximum flexibility in determining the best and most cost-effective use of federally-assisted property. To this end, FTA encourages non-transit uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. These non-transit uses are by one of three means: incidental use, joint development, or shared use.

(a) Incidental Use. Incidental uses must be compatible with the approved purposes of the Award and may not interfere with either the intended uses of the property or the recipient's ability to maintain satisfactory continuing control. The recipient should consult with FTA before continuing with incidental use. An incidental use may not affect a property's transit capacity or use. Alterations to accommodate an incidental use should have no negative impact on the transit service or activity. FTA continues to monitor the incidental use after the Award is closed and the recipient is required to keep an inventory of the use. FTA reviews the inventory during the triennial review process.

1 Examples of incidental use include:

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

2 Revocation. An incidental use agreement should permit revocation by the recipient.

3 Limits. The recipient agrees that any incidental use of federally assisted property will not exceed that permitted under applicable federal requirements and federal guidance. The recipient may permit non-transit public entities and private entities to have incidental use of its federally assisted facilities and equipment, including alternative fueling facilities and associated equipment, subject to the following considerations:

a Needed Property. This policy applies only to property that continues to be needed and used for an FTA Award. It is FTA's intention to assist only in the purchase of property that is needed for an FTA Award.
b Purpose & Activity. The use must not compromise the safe conduct of the intended purpose and activity of the initial public transit activity under the Award.
c Continuing Control. The use must not in any way interfere with the recipient's continuing control over the use of the property or the recipient's continued ability to carry out the Award.
d No-Income Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, no-income uses are also permitted under certain circumstances:

For example, a no-income use could include a private, for-profit transit operator offered queue space, or loading space, at an intermodal facility for the purpose of generating rides, providing a consolidated transit option for the public, and a seamless transit transfer opportunity at no cost. The no-income use shows that the value of having the

private operator: 1) benefits transit, as a whole; 2) expands upon the local transportation alternatives; and 3) allows the public to transfer seamlessly.

e Income. Proceeds from incidental use including licensing and leasing of air rights or leasing of other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental uses including the use of air rights may be retained by the recipients (without returning the federal share) if the income is used for eligible transit capital, or operating expenses. This income cannot be used as part of the non-federal share of the Award from which it was derived. However, it may be used as part of the non-federal share of another FTA Award."

SCC3. Has the recipient made appropriate efforts to use, lease, or dispose of idle facilities?

BASIC REQUIREMENT
Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property.

APPLICABILITY
All recipients

EXPLANATION
All FTA-funded real property is expected to be used for the originally authorized purpose throughout the useful life of the property as long as needed for that purpose. 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:

(1) they are necessary to meet workload requirements which may fluctuate and they are allocated appropriately to all programs or

(2) 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. Under the exception previously stated, 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. *Does the recipient have any FTA-funded facilities that have been idle for more than one year?*

b. *What efforts have been made to use, lease, or dispose of idle facilities?*

c. *Has the recipient charged costs incurred for idle facilities for more than one year to an FTA award?*

DETERMINING COMPLIANCE
Confer with the regional office on whether it is aware of any idle facilities. Onsite discuss with the recipient why facilities are idle.

Reasons for Idle Facilities	Comments

Reasons for Idle Facilities	Comments
The idle facility is necessary to meet workload requirements which may fluctuate	
Costs were necessary when acquired and the facility is now idle because of changes in program requirements	
Efforts to achieve more economical operations, reorganization, termination were implemented	
There are other causes which could not have been reasonably foreseen	

For facilities that have been idle for more than a year, discuss steps planned or taken to use, lease or dispose of the facilities. 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 DETERMINATIONS
The recipient is deficient if it has idle facilities and does not have plans or has not taken steps to use, lease, or dispose of the facilities.

DEFICIENCY CODE SCC3-1: Lacking plans for idle facilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a plan for using, leasing, or disposing of idle facilities.

The recipient is deficient if it has idle facilities and charged costs incurred for more than one year while the facility was idle to an FTA award.

DEFICIENCY CODE SCC3-2: Idle facility cost charged to an award

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for periodically reviewing property records, identifying idle facility cost, and limiting reimbursement of such cost from an FTA award to no more than one year.

GOVERNING DIRECTIVES
FTA Circular 5010.1E Chapter IV, Section 2. Real Property, (i) Property Management

"(2) Use. Real property must be used for the originally 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 without prior FTA written approval. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or 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 intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

(4) Idle Facilities and Idle Capacity

(a) Idle facility means completely unused facilities that are excess to the recipient's current needs. Idle capacity means the unused capacity of partially used facilities. Idle capacity is the difference

between that which a facility could achieve under 100 percent operating time, on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and the extent to which the facility was actually used to meet demands during the accounting period.

(b) Costs of Idle Facilities or Idle Capacity. Cost 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 unallowable except to the extent that they are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all programs or 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. Under the exception previously stated, 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.

SCC4. Is FTA-funded real property (land and improvements thereon) used solely for its originally authorized purpose?

BASIC REQUIREMENT
Recipients must use real property for project purposes.

APPLICABILITY
All recipients

EXPLANATION
All FTA-funded real property is expected to be used for the originally authorized purpose as long as needed for that purpose. During that time, the recipient must not dispose of or encumber its title or other interests in the real property. 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.

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?*

b. *If yes, was FTA notified?*

DETERMINING COMPLIANCE
Obtain notification of property put to additional or substitute uses since the last Comprehensive Review from the regional office. Obtain and review the recipient's real property inventory to ascertain if any property is identified as being used for a purpose other than originally approved, removed from service or put to additional or substitute use and determine if FTA was appropriately notified. 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. During the site visit, tour the FTA-funded facility(ies) to confirm current uses of FTA-funded real property to ensure that they are used for authorized purposes and not unauthorized incidental uses.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it did not notify FTA when property was removed from the service originally intended at the time of award approval or put to additional or substitute use.

DEFICIENCY CODE SCC4-1: Real property not used for authorized purposes

SUGGESTED CORRECTIVE ACTION: The recipient must inform the FTA regional office of real property that has been removed from service or put to additional or substitute uses without FTA approval and must 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.

GOVERNING DIRECTIVES
2 CFR 200.311 Real property

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

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

"(2) Use. Real property must be used for the originally 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 without prior FTA written approval. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or 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 intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

SCC5. 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
All recipients

EXPLANATION
When real property is no longer needed for any transit purpose, the recipient must request and follow disposition instructions from FTA. The instructions must provide for one of the following alternatives:

1. Retain title after compensating the FTA
2. Sell the property and compensate the 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 the FTA with the method of disposition for real property?

b. If required, was FTA reimbursed for its share of disposition proceeds?

DETERMINING COMPLIANCE
Review the recipient's real property disposal request for FTA's approval of the disposition method. Review FTA's approval to verify the approved disposition method, along with FTA's instructions on disposition proceeds. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. 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 SCC5-1: Failure to obtain FTA approval for real property disposal

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office information on the method of disposition of real property for which it did not obtain prior FTA approval along with procedures for obtaining FTA approval on the method of 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 SCC5-2: Failure to reimburse FTA after disposal of real property

SUGGESTED CORRECTIVE ACTION: The recipient must work with the FTA regional office to determine if proceeds are owed FTA from the disposition of FTA-funded real property.

GOVERNING DIRECTIVES
2 CFR 200.311 Real property

"(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a 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 awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property."

FTA Circular 5010.1E Chapter IV, Section 2. Real Property, (j) Real Estate Disposition, (2) Disposition

"(b) Disposition Methods. "When real property is no longer needed for any transit purpose, the recipient will request disposition instructions from FTA. The allowable disposition methods are as follows:

1 Sell and Reimburse FTA. Competitively market and sell the property and pay FTA the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original Award multiplied by the best obtainable price, minus reasonable sales costs. If the property has never been used for the appropriate purposes of the Award, the recipient shall sell the property and pay FTA the greater of FTA's share of the fair market value or the entire amount of federal assistance spent on that property.

2 Offset. Sell the property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA in accordance with 2 CFR § 200.311.

3 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. Examples of future FTA eligible capital transit projects include: the acquisition of buses, facilities and equipment.

4 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.

5 Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in the Federal Register to transfer property (land or equipment) to a public agency with no repayment to FTA. This is a competitive process, and there is no guarantee that a particular public agency will be awarded the excess property. See 49 U.S.C. § 5334(h)(1)– (h)(3).

6 Transfer to Another Award. Transfer the property to another FTA eligible Award. The federal interest continues.

7 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 or market survey. 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.

8 Sales Procedure. Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value."

SCC6. 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

EXPLANATION
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.

INDICATORS OF COMPLIANCE

a. *Does the recipient have any plans to or did it use Federal funds to construct buildings 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?*

b. *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 having an insurable cost of $10,000 or more?*

DETERMINING COMPLIANCE
Confer with the regional office to obtain input of any property that may be in flood zone for the recipient. 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.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not have, or has inadequate, flood insurance for any FTA-funded facility in a special floods hazard area.

DEFICIENCY CODE SCC6-1: Insufficient flood insurance

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation of adequate flood insurance protection.

GOVERNING DIRECTIVES
FTA Circular 5010.1E, Ch IV, Section 4.p. Insurance

"(1) Flood Insurance. The Recipient agrees to have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a (a), for any building located in a special flood hazard area (100-year flood zone), before receiving federal assistance to acquire, construct, reconstruct, repair, or improve that building. Additionally, the building and its contents must be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. Current limits are $500,000 per building and $500,000 for the contents of each building.

FTA has defined building and contents coverage in its Emergency Relief rule, 49 CFR part 602, as follows:

(a) Building. For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.

(b) Contents coverage. For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage."

SCC7. 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
All recipients of FTA funds

EXPLANATION
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, but they are not required to do so. However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA-funded equipment.

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

INDICATORS OF COMPLIANCE
For State recipients, answer only indicator (a). For all other recipients, answer only indicators (b)-(d).

a. How does the State maintain control over FTA-funded equipment for services it provides?

b. Do 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)	
Acquisition date	
Acquisition cost	
Federal participation percentage	
Location	
Useful life *(per FTA C. 5010.1E)*	
Use and condition	
Disposition data, including date of disposal and sale price, or method used to determine fair market value	

c. *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?*

d. *What procedures and systems does the non-state recipient have in place to prevent loss, damage, or theft of FTA-funded equipment?*

DETERMINING COMPLIANCE

For states: Review the state's procedures for maintaining control over FTA-funded equipment to understand how it manages, uses and disposes of FTA-funded equipment. 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 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 equipment records to determine that the state is following its procedures in using, managing, and disposing of the FTA-funded assets.

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

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

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

POTENTIAL DEFICIENCY DETERMINATIONS

The **state recipient** is deficient if it does not have procedures for using, managing, and disposing of FTA-funded equipment.

> DEFICIENCY CODE SCC7-1: No state procedures for FTA-funded equipment
>
> SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office evidence that the state procedures for maintaining control over FTA-funded equipment have been implemented.

The **state recipient** is deficient if it does not follow its procedures for using, managing, and disposing of FTA-funded equipment.

> DEFICIENCY CODE SCC7-2: State equipment procedures not followed
>
> SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office 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 SCC7-3: Inadequate equipment records
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office updated equipment records which include all of the required information.

The **non-state recipient** is deficient if it does not perform a biennial inventory or reconcile the results.

> DEFICIENCY CODE SCC7-4: No evidence of physical inventory or reconciliation
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 SCC7-5: Inadequate property control system

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an adequate control system to prevent future loss, damage, or theft of FTA-funded equipment.

GOVERNING DIRECTIVES
2 CFR 200.313 Equipment

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

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

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated."

SCC8. Was equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and FTA requirements?

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

APPLICABILITY
All non-state recipients

EXPLANATION
The recipient must notify FTA immediately when any project property is withdrawn from project use prior to the end of its useful life or when any project property is used in a manner substantially different from the representations the recipient made in the award agreement or cooperative agreement for the project.

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

Even after the equipment's useful life is expended, FTA is entitled to its share of the remaining Federal interest (subject to the next paragraph). The Federal interest is the greater of the FTA share of the straight line depreciated value (based on years or miles for rolling stock) or the sale price. The recipient may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

Equipment with a unit market value of $5,000 or less that has reached the end of its service life requires no FTA reimbursement. Equipment that has reached the end of its service life and for which the unit market value exceeds $5,000 requires reimbursement to FTA of the proportionate share of the fair market value or the net proceeds of the sale. Net proceeds are the amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and any necessary expenses associated with repairs to make saleable.

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

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

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

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

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

INDICATORS OF COMPLIANCE

a. *Was FTA notified when equipment with remaining useful life was withdrawn from project use or applied to a different use?*

b. *Did FTA concur with the method of disposition for equipment removed from service before the end of service life?*

c. *Was FTA reimbursed for its share of proceeds, if required?*

d. *Were retained proceeds applied to reduce the project's eligible cost?*

e. *Were insurance proceeds applied to the cost of replacing any damaged or destroyed project equipment or rolling stock?*

DETERMINING COMPLIANCE

Confer with the regional office regarding requests for disposition of equipment, returned proceeds, and like-kind exchanges since the last Comprehensive Review. Obtain notifications to FTA regarding equipment withdrawn from project use or applied to a different use. Obtain requests to FTA for disposition instructions for equipment removed from service before the end of useful life. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. Obtain verification of proceeds transferred back to FTA (i.e., sale records and financial reports). Review

records documenting how fair market value was arrived at for any equipment not sold competitively. Review the recipient's accounting system to verify the sale proceeds are restricted for use in subsequent capital awards. Review TrAMS to ensure that in any subsequent capital award the application/awards contain information showing FTA that the gross project cost has been reduced by the amount of the proceeds.

The following table defines the useful life of several typical FTA-funded items based on FTA Circular 5010 1.E. For items not listed by FTA, useful life definitions may be obtained from other reasonable sources, including the Department of Defense (DOD) and Internal Revenue Service (IRS), based on acceptable accounting principles. It should be noted that the Altoona bus test reports for individual bus models do not define the useful life of rolling stock.

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

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not notify FTA of equipment prematurely removed from service.

DEFICIENCY CODE SCC8-1: Failure to notify FTA of equipment removed from service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 disposition proceeds or obtain FTA permission to apply the proceeds to another capital project.

DEFICIENCY CODE SCC8-2: Non-permitted use of equipment disposal proceeds

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office reimbursement of FTA's share of proceeds from disposed property or obtain approval for retaining the proceeds to apply to another capital project. The recipient must submit to the FTA regional office 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 SCC8-3: Non-permitted use of insurance proceeds

SUGGESTED CORRECTIVE ACTION: The recipient must work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. The recipient must submit to the FTA regional office procedures for addressing insurance proceeds.

GOVERNING DIRECTIVES
2 CFR 200.313 Equipment

"(b) 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.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property….

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

(1) Items of equipment with a current per unit fair market value of $5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of $5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions."

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

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

(3) Disposition or Inappropriate Use Before the End of the Asset's Useful Life: Any disposition of project property before the end of its useful life requires prior FTA approval. FTA is entitled to its share of the remaining Federal interest.

(c) Insurance Proceeds. If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee agrees to:

1 Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service (Listed below are two examples of the application of insurance proceeds.), or

2 Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

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

(4) Disposition or Use of Assets for Other Than Purposes of the Award after the End of Their Useful Life.

(a) Retain and Use Elsewhere. After the minimum useful life of federally assisted property is reached or the property is no longer needed for the original Award, it may be used by the recipient for other transit projects or programs. FTA prior approval of this alternative is not required. FTA retains its interest in the federally assisted property if its fair market value exceeds $5,000.

(b) Disposition of Property with a Fair Market Value of More Than $5,000. After the useful life of federally assisted property is reached, or the property is no longer needed for the original Award, rolling stock and equipment with a current market value exceeding $5,000 per unit, or unused supplies with a total aggregate fair market value of more than $5,000, may be retained or sold. FTA is entitled to an amount calculated by multiplying the current market value, or proceeds from sale, by FTA's percentage of participation in the cost of the original purchase. Rolling stock and equipment that is sold may have the

amount due FTA reduced by an amount of $500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(c) Sell and Use the Proceeds for Other Capital Awards, 49 U.S.C. § 5334(h)(4). After the useful life is met, or the property is no longer needed, and with prior FTA approval, the recipient may sell its federally assisted property for which there is no longer any public transportation purposes and use the proceeds to reduce the gross project cost of other future FTA eligible capital transit Awards. The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a future capital Award, and reduce the liability as the proceeds are applied to one or more FTA approved capital Awards. If new applications are not immediately anticipated, the recipient must inform the appropriate FTA contact of the disposition within a reasonable amount of time. Otherwise, the subsequent capital application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction. The proceeds cannot retroactively be applied to an existing Award or project unless the Award is still open.

(d) Disposition of Property with a Fair Market Value of $5,000 or Less Value. After the useful life of its federally assisted property is reached, rolling stock and equipment with a unit market value of $5,000 or less, or supplies with a total aggregate market value of $5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained. FTA approval of this action is not required."

SCC9. 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
All recipients with urban bus service

EXPLANATION
For recipients with 50 or more fixed-route buses in urban service, a reasonable spare ratio should not exceed 20 percent of the vehicles operated in maximum fixed-route service. For fleets of fewer than 50 fixed-route vehicles, judgment must be applied based on the age of the fleet and operating conditions to determine the reasonable number of spare vehicles.

INDICATORS OF COMPLIANCE

a. *How many revenue buses does the recipient operate in urban service?*

b. *For fixed-route bus fleets of 50 or more revenue vehicles operated in urban service, does the spare ratio exceed FTA's 20-percent guideline?*

c. *For fixed-route bus fleets of 50 or fewer buses operated in urban service, does the spare ratio appear reasonable?*

Spare Ratio Calculation	
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)	

d. 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
Need for contingency fleet activation	
Justification for activation and period of time of activation	
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	

DETERMINING COMPLIANCE

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. Discuss the results of the analysis with the FTA regional office to determine if there is special dispensation for the recipient, i.e., operates in rough terrain, etc.

Obtain a rolling stock roster from the recipient to compare with what is reported in TrAMS and make updates to the spare ratio calculation. Obtain documentation from the recipient of peak requirements, such as documentation from the scheduling software or other dispatch records documenting the peak of the peak. Onsite obtain and check pull-out logs or fueling logs to verify peak hour requirements and buses in service at the time of the site visit. Determine when the maximum number of vehicles is required and how often. If the spare ratio is more than 20 percent, ask the recipient to explain the reasons why, such as overall age of the fleet, different types of technologies, unique weather operating conditions, etc. Determine if the spare ratio is over the useful life benchmark. Determine whether and how often the recipient is able to meet pullout. Consult with the FTA regional office if there are any extenuating circumstances that would justify not making a deficiency finding.

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. Note that FTA permits agencies to include vehicles that have not met their minimum useful life in their contingency fleet if the recipient is introducing zero emission vehicles into its fleet. Ensure that the plan addresses the current contingency fleet.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if its spare ratio for fleets of 50 or more buses is higher than 20 percent or for fleets of fewer than 50 buses appears unreasonable.

DEFICIENCY CODE SCC9-1: Excessive fixed-route bus spare ratio

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a plan for reducing the spare ratio to 20 percent for fleets of 50 or more buses or to what is reasonable for fleets under 50 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.

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 SCC9-2: Lacking contingency plan/plan out of date

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office a contingency fleet plan for its contingency fleet.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office a revised contingency fleet plan that addresses all the required topics.

GOVERNING DIRECTIVES
FTA Circular 5010.1E*, Chapter. IV, Section 4. Equipment and Supplies (Including Rolling Stock)*

"k. Rolling Stock Spare Ratio Policies. Spare ratios will be taken into account in the review of 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 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 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 recipients operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed-route service. FTA does not set a specific spare ratio for smaller operators, 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…

(3) Spare Ratio Deviation. Recipients 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 for small deviations. 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 (2) 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."

FTA Circular 5010.1E, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock), k. Rolling Stock Spare Ration 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, how they will be protected and list the maintenance activities performed on the bus to ensure they maintain their contingency bus fleet status.

SCC10. Does the rail fleet management plan meet FTA requirements?

BASIC REQUIREMENT
Recipients must manage rail fleets in accordance with FTA requirements.

APPLICABILITY
All recipients with rail service

EXPLANATION
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 take into account 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?*

DETERMINING COMPLIANCE

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, follow up with the recipient to ensure that it is current and reflects the current operating environment, i.e., addresses the current fleet, operating policies, etc. 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.

POTENTIAL DEFICIENCY DETERMINATIONS

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 SCC10-1: Lacking rail fleet management plan/plan out of date

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office a rail fleet management plan.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office an updated rail fleet management plan that includes all required elements or reflects current operations.

GOVERNING DIRECTIVES
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 individualized, 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), and maintenance facilities and staff capabilities."

SCC11. If the recipient or a subrecipient used FTA capital assistance to finance the lease of any transit facilities or equipment, was a certification provided to FTA that a cost-effectiveness determination was conducted prior to entering into the lease or receiving the award?

BASIC REQUIREMENT
For leases entered into before October 1, 2015, and financed with FTA capital assistance, recipients must certify to FTA that a cost-effectiveness determination was conducted prior to receiving the award or entering into the lease.

APPLICABILITY
All recipients

EXPLANATION
A lease may qualify for capital assistance if it meets the following criteria:

- The capital asset to be acquired by lease is eligible for capital assistance
- There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect
- Leasing the capital asset is more cost-effective than purchase or construction of the asset

Many recipients enter into capital leases for tires.

INDICATOR OF COMPLIANCE

a. *Did the recipient certify to FTA that a cost-effectiveness determination was conducted prior to receiving the award or entering into the lease?*

DETERMINING COMPLIANCE
Review projects in TrAMS to determine if the recipient uses FTA funds to finance the lease of capital items and if it entered into the lease before October 1, 2015, and since the last Comprehensive Review. If yes, determine if the recipient certified to FTA that it conducted a cost-effectiveness determination prior to receiving the award or entering into the lease. If necessary, follow up with the regional office. During the site visit, discuss the capital lease(s) with the recipient.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it did not certify to FTA that it conducted a cost-effectiveness determination prior to receiving the award or entering into the lease.

DEFICIENCY CODE SCC11-1: No certification of cost effectiveness to FTA for capital lease

SUGGESTED CORRECTIVE ACTION: Consult the FTA regional office for corrective action related to capital leasing deficiencies. The recipient may be required to certify to FTA that it conducted a cost-effectiveness determination if certification is not on file, but FTA will determine if corrective action is possible or if Federal participation in the project must be withdrawn.

GOVERNING DIRECTIVES
FTA C. 5010.1D, *Ch. IV, Section 3.j(3)*

"Cost Effectiveness. Grantees shall obtain FTA review of the cost-effectiveness determination prior to entering into any capital lease. Grantees should reference Circular A–94 for cost-effectiveness calculations and to obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit."

SCC12. Does the recipient maintain control over FTA-funded property and ensure that subrecipients, contractors, and lessees use FTA-funded property for project purposes?

BASIC REQUIREMENT
The recipient is responsible for ensuring that subrecipients, contractors, and lessees use FTA-funded property for project purposes.

APPLICABILITY
All recipients with subrecipients, contractors, or lessees

EXPLANATION
Assets acquired with FTA funds may be leased to other entities such as local public bodies or agencies, private nonprofit organizations, or private for-profit operators. Under a lease acquired with FTA

assistance, the lessee operates the assets on behalf of the recipient or subrecipient and provides transportation as described in the award application.

FTA requires recipients to exercise control over FTA-funded property provided or leased to subrecipients, contractors, or lessees and to ensure that it is used for project purposes.

Non-state recipient: For any equipment provided or leased to subrecipients, contractors, or lessees, 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.

Recipients may lease FTA-funded assets to private operators. Prior FTA concurrence is required for equipment leased on or after November 1, 2008. If the lease is described in the award application, FTA approval of the award constitutes approval of the lease. When FTA-funded equipment and rolling stock is leased to a private operator, the lease should contain certain provisions (see Indicators of Compliance).

INDICATORS OF COMPLIANCE

a. *How does the recipient monitor its subrecipients to ensure that FTA-funded real property is used for project purposes?*

b. *How does the recipient monitor its contractors and lessees to ensure that FTA-funded real property is used for project purposes?*

c. *How does the recipient maintain control over and monitor use of FTA-funded equipment awarded to subrecipients or used by contractors, or leased to third parties?*

d. *Has the recipient received written approval from FTA for leases of FTA-funded assets to private operators? Do the leases contain the required provisions?*

Required Lease Provisions	Comments
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	

Required Lease Provisions	Comments
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	

DETERMINING COMPLIANCE
Review a listing of subrecipients, contractors, and lessees that have FTA-funded real property (land and improvements thereon). Review the recipient's real property report to ensure that FTA-funded real property operated by contractors, lessees, or subrecipients is included. Select sample agreements, contracts and lease agreements in accordance with the sampling procedures in the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment for the requirements imposed on the use of FTA-funded real property.

For states: Review the state management plan and the state's oversight procedures and related oversight materials.

For non-states: Review the program management plan(s) and the recipient's oversight procedures and related sample oversight materials.

For all recipients: Confer with the FTA regional office on whether it has approved any leases between the recipient and private operators. Obtain FTA approvals for the leases. 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.

During site visits to subrecipients, contractors, and lessees, discuss and confirm whether the subrecipients, contractors, and lessees comply with the FTA-funded real property requirements. If the oversight files for the subrecipients, contractors, or lessees to be visited identified non-compliance issues, follow up with the recipient and/or subrecipient, contractor, or lessee to determine how the issues were resolved.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not ensure that subrecipients, contractors, or lessees use FTA-funded real property for project purposes.

> DEFICIENCY CODE SCC12-1: Inadequate control of real property
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for monitoring the use of FTA-funded real property by subrecipients, contractors, or lessees.

The recipient is deficient if it is unable to demonstrate procedures to manage and maintain continuing control over FTA-funded equipment, along with ensuring the equipment is used for project purposes.

> DEFICIENCY CODE SCC12-2: Inadequate control of equipment
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office revised procedures for control of equipment operated by subrecipients, contractors, or lessees.

The recipient is deficient if it does not have FTA concurrence for leasing FTA-funded assets to private operators or if the lease does not include the required provisions.

DEFICIENCY CODE SCC12-3: Lease issues

SUGGESTED CORRECTIVE ACTION 1: The recipient must obtain approval for leases of FTA-funded assets to private operators and must submit to the FTA regional office procedures for obtaining prior FTA approval before leasing FTA-funded assets to private operators.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office 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.

GOVERNING DIRECTIVES
2 CFR 200.311 Real property

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

2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.331 Requirement for pass-through entities

"All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision.

(e) 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 on-site reviews of the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services."

FTA Circular 5010.1E, Chapter 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. Chapter III of this circular describes the mechanics and requirements for administration of FTA Awards, Chapter IV describes the requirements for managing FTA Awards and Projects, and Chapter VI describes the requirements for the financial management of FTA Awards and Projects.

a. Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that "passes through" to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, "Audits", audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient's Certifications and Assurances (See Chapter V, "Oversight," of this circular).

The recipient's responsibilities include, but are not limited to, actions that:

(1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;

(2) Provide administrative and management support of project implementation;

(3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;

(5) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;

(6) Keep expenditures within the latest approved Award Budget;

(7) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements; …"

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

"(4) The Recipient as Lessor. In all instances in which the recipient is a lessor (the party leasing an asset to another), the recipient must obtain FTA's written concurrence before leasing federally assisted assets to others. In addition, for equipment leasing, recipients must comply with FTA's Charter Service regulations, School Bus Operations regulations, and with requirements below:

(5) Leasing FTA Assisted Assets to Others for Transit Service. The recipient may enter into a contract for leasing its federally assisted property to a private operator (the lessee). The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement. Under this arrangement, the recipient (the lessor) should include the following provisions in the proposed lease agreement:

1 The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement;

2 The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property; and

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

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Did background research or site visit observations reveal any potential satisfactory continuing control issues or concerns not covered above?

REFERENCES

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

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

3. FTA Circular 5010.1E, "Award Management Requirements"

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7. 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. Do recipients 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

M1. Does the recipient have a written maintenance plan(s) for 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
All recipients with direct control over FTA-funded assets

EXPLANATION
Public transit requires a considerable investment in buildings, equipment, and machinery. Proper maintenance of assets is key to protecting the FTA investment and prolonging the useful life of the asset. All recipients must have a written maintenance plan(s) for FTA-funded assets. These plans must describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals. 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 the fleet management plan.

A model program for FTA- funded facilities and equipment would include:

- An organization and assignment of responsibility for facility and equipment maintenance
- A system of periodic inspections and preventive maintenance to be performed at certain defined intervals (required in regulation). Such a system may be part of a recipient's maintenance management information system. Maintenance intervals might be measured in terms of time (daily, monthly, or annually) or in terms of use (hours).
- A record-keeping system that maintains adequate permanent records of maintenance and inspection activity for buildings and equipment.
- For Section 5307-funded facilities and equipment, goals and objectives of the maintenance program and how they will be met (required in regulation).

The maintenance programs should address specific mission critical and safety items, which include, but are not limited to:

- Buildings
- Elevators
- Escalators
- Passenger stations/shelters
- Parking lots
- Right-of-way (guideway, track, ballast, etc.)
- Electric distribution and control equipment
- Plumbing systems
- Overhead doors
- Vehicle maintenance lifts
- Vehicle washers and wash water recycling systems
- Heating and/or air conditioning units
- Power substations, etc.
- Security equipment

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 and facility-related equipment?*

   iii. *Equipment?*

b. *Does the written maintenance plan(s) identify a system of periodic inspections and preventive maintenance for:*

i. Vehicles?

ii. Facilities and facility-related equipment?

iii. Equipment?

DETERMINING COMPLIANCE
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 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: The recipient must submit to the FTA regional office 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 SCC10-1: 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: The recipient must submit to the FTA regional office a written maintenance plan for FTA-funded facilities and/or equipment.

The recipient is deficient if the vehicle/vessel maintenance plan 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: The recipient must submit to the FTA regional office 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) 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: The recipient must submit to the FTA regional office 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 DIRECTIVES
2 CFR 200.313 Equipment

"A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section…(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements...(4) Adequate maintenance procedures must be developed to keep the property in good condition."

FTA C. 5010.1E, Ch. IV Management of the Award, Section 4n(4). Equipment and Supplies (Including Rolling Stock)

"n. Management of Federally Assisted Property.

(4) Maintenance and Warranty.

(a) Maintenance. Adequate maintenance procedures must be developed and implemented to keep the federally assisted property in good condition. Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing. Recipients must have a written vehicle maintenance plan and a facility/equipment maintenance plan. These plans should describe a system of periodic inspections and preventive maintenance to be performed at certain defined intervals."

FTA C. 9030.1E, Ch. VI Program Management and Administrative Requirements, Section 1 Certifications Required by 49 U.S.C. 5307

"1.(5) Maintenance. According to 49 U.S.C. 5307(d)(1)(C), a recipient must certify that it will maintain its federally assisted facilities and equipment.

The recipient must keep equipment and facilities acquired with federal assistance in good operating order. This includes maintenance of rolling stock (revenue and nonrevenue), machinery and equipment, and facilities. Every recipient of Section 5307 program funds must have in its files a maintenance plan. The maintenance plan should identify the goals and objectives of a maintenance program, which may include, for example, vehicle life, frequency of road calls, and maintenance costs compared to total operating costs. The maintenance plan should establish the means by which the grantee will meet such goals and objectives."

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
All recipients with direct control over FTA-funded assets

EXPLANATION
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 the vehicles' useful life.

INDICATORS OF COMPLIANCE

a. *For vehicles/vessels, are the recipient's actual maintenance practices consistent with the plan/program?*

Mode Operated	Fleet Size	# of Vehicle/Vessel Sampled

Mode	Vehicle/ Vessel	Plan Identified Maintenance Interval	Date of PM	Actual Vehicle/Vessel Mileage/Hours	Actual Interval between inspections	PM on time? Y/N

b. *For facilities and equipment, are the recipient's actual maintenance practices consistent with the written plan?*

Facility/Equipment	Maintenance Interval	Date of PM	Actual Interval between PM inspections	PM conducted on time? Y/N

Facility/Equipment	Maintenance Interval	Date of PM	Actual Interval between PM inspections	PM conducted on time? Y/N

DETERMINING COMPLIANCE

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.

FTA allows recipients discretion in determining the appropriate intervals for preventative maintenance inspections to accommodate such things as specific manufacturer recommendations, vehicle/vessel age, unique site and operating conditions, etc. FTA expects recipients to follow their program for preventative maintenance but understands that circumstances may prevent inspections being completed exactly at the interval specified. To account for this, FTA allows a 10 percent deviation from the scheduled interval as being considered on time. Review the sample preventive maintenance history to determine if fewer than 80 percent of the inspections for any mode or operation occurred on time.

For each vehicle/vessel chosen, examine the preventive maintenance history for the preceding 12 months. Using the table above, note the date when each inspection was accomplished and record the vehicle mileage (or hours) at the time of each inspection.

For 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.

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.

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: The recipient must submit to the FTA regional office:

- 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 to the FTA regional office:
    - 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 to the FTA regional office, 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: The recipient must submit to the FTA regional office:

- 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 to the FTA regional office:
    - 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 to the FTA regional office, 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 DIRECTIVES

2 CFR 200.313, Equipment

"A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures."

FTA C. 5010.1E, Ch. IV Management of the Award, Section 4. Equipment and Supplies (Including Rolling Stock)

"n. Management of Federally Assisted Property

(4) Maintenance and Warranty

(a)…Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing…

(b) Recipients must keep satisfactory records pertaining to the use of federally assisted property, and submit to FTA upon request such information as may be required to assure compliance with federal requirements…"

FTA C. 5010.1E Ch. IV 4(n)(4), Maintenance and Warranty

"(a)…Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing…

(b) Recipients must keep satisfactory records pertaining to the use of federally assisted property, and submit to FTA upon request such information as may be required to assure compliance with federal requirements…"

M3. Does the recipient's vehicle maintenance program address maintenance of wheelchair lifts and other accessibility features?

BASIC REQUIREMENT
The U.S. Department of Transportation (US DOT) ADA regulations require all vehicle accessibility features be maintained and operational.

APPLICABILITY
All recipients with direct control over FTA-funded assets

EXPLANATION
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?*

DETERMINING COMPLIANCE
For vehicles: Review the recipient's vehicle preventive maintenance procedures and checklists for the entire fleet to determine if maintenance elements for wheelchair lifts, ramps, and other ADA equipment are incorporated or addressed separately with specific checklists.

As part of the record sample selected for preventive maintenance review, review sample maintenance records for the entire fleet to determine if regular and periodic maintenance checks are being performed for

wheelchair lifts and ramps, and accessibility features are checked regularly for proper operation and maintained in operational condition.

Note whether the recipient has and is following maintenance procedures for wheelchair lifts, ramps, and other accessibility equipment. Assess the recipient's ability to promptly repair accessibility features if they are damaged or out of order. Differentiate between unrepaired maintenance features and isolated or temporary interruptions in service or access due to maintenance or repairs.

For facilities: Review the recipient's maintenance program and the maintenance checklists to determine if maintenance elements for accessibility features for its facilities and facility-related equipment are addressed. As part of the record sample selected for preventive maintenance review, sample facility maintenance records, ensuring that accessibility features are maintained regularly and repaired promptly if out of order.

Note whether the recipient has and is following maintenance procedures for facility-related accessibility features. Review reports on elevator and escalator availability, if available, for evidence of repairs made and the recipient's ability to promptly repair accessibility features if they are damaged or out of order. Differentiate between unrepaired maintenance features and isolated or temporary interruptions in service or access due to maintenance or repairs.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it's preventive maintenance program does not address accessibility features.

> DEFICIENCY CODE M3-1: Accessible features not addressed in preventive maintenance program
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional civil rights officer (RCRO) 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: The recipient must submit to the FTA RCRO evidence that its preventive maintenance program for ADA accessibility features is being implemented.

The recipient is deficient if the recipient does not maintain accessibility features in operational condition.

> DEFICIENCY CODE M3-3: Accessibility features not maintained
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for maintaining accessible features promptly and evidence of implementation.

GOVERNING DIRECTIVES
49 CFR 37.161, Maintenance of Accessible Features – General

"(a) Public and private entities providing transportation services shall maintain in operative condition those features of facilities and vehicles that are required to make the vehicles and facilities readily accessible to and usable by individuals with disabilities. These features include, but are not limited to, lifts and other means of access to vehicles, securement devices, elevators, signage and systems to facilitate communications with persons with impaired vision or hearing.

(b) Accessibility features shall be repaired promptly if they are damaged or out of order. When an accessibility feature is out of order, the entity shall take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

(c) This section does not prohibit isolated or temporary interruptions in service or access due to maintenance or repairs."

49 CFR 37.163 - Keeping vehicle lifts in operative condition: Public entities

"(a)This section applies only to public entities with respect to lifts in non-rail vehicles, (b) The entity shall establish a system of regular and frequent maintenance checks of lifts sufficient to determine if they are operative."

FTA C. 5010.1E Ch. IV (4)(n)(4)(b), Maintenance and Warranty

"Recipients must keep satisfactory records pertaining to the use of federally assisted property, and submit to FTA upon request such information as may be required to assure compliance with federal requirements…"

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
All non-state recipients with direct control over FTA-funded assets

EXPLANATION
If the recipient has equipment under warranty, FTA requires that the recipient have 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 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?*

DETERMINING COMPLIANCE
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 ACTIONS: The recipient must submit to the FTA regional office 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 effectively

SUGGESTED CORRECTIVE ACTIONS: The recipient must submit to the FTA regional office 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 C. 5010.1E Ch. IV 4(n)(4)(c), Warranties

"Recipients are responsible for:

1 Establishing and maintaining a system for recording warranty claims; this system should provide information needed by the recipient on the extent and provisions of coverage and on claims processing procedures; and

2 Identifying and diligently enforcing the system for recording warranty claims."

M5. Do recipients have an effective mechanism for monitoring subrecipients', contractors', and lessees' maintenance activities?

BASIC REQUIREMENT
States 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
All recipients with subrecipients, contractors, and lessees of FTA-funded assets

EXPLANATION
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, 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, 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. *Do all recipients 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 do all recipients 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 do all recipients ensure that subrecipients, contractors, and lessees pursue warranty claims for FTA-funded facilities?*

DETERMINING COMPLIANCE

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.

Review maintenance plans, and organizational charts to determine who is responsible for monitoring the maintenance activities of subrecipients, contractors, and lessees and how often this is done.

Review the recipient's oversight records and reports to determine how the recipient is actively monitoring the activities of subrecipients, contractors and lessees.

For each subrecipient, contractor, and lessee visited:

- Obtain the maintenance records for a minimum of three FTA funded vehicles or one percent of the FTA-funded fleet, whichever is greater. Review for compliance with the maintenance requirements in the maintenance plan or procedures.

- Review a sample of warranty claims to learn how timely and aggressively warranty claims have been pursued and collected. Compare the records of claims submitted with claims settled.

POTENTIAL DEFICIENCY DETERMINATIONS

The <u>state recipient</u> 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 <u>non-state recipient</u> 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; or

- Does not ensure that subrecipients, contractors, or lessee establish and maintain a warranty program.

  DEFICIENCY CODE M5-1: Inadequate oversight of subrecipient, contractor or lessee maintenance activities

  SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office 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 DIRECTIVES
2 CFR 200.313, Equipment

"A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section. (d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements...(4) Adequate maintenance procedures must be developed to keep the property in good condition."

2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.331 Subpart D, Requirements for Pass-Through Entities

"All pass-through entities must monitor the activities of the subrecipient as necessary 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…"

FTA C. 5010.1E Ch. IV (4)(n)(4), Maintenance and Warranty

"(a) Recipients must maintain federally assisted property in good operating order and in compliance with any applicable federal regulations that may be issued and follow applicable guidance that may be issued, except to the extent that FTA determines otherwise in writing

b) Recipients must keep satisfactory records pertaining to the use of federally assisted property, and submit to FTA upon request such information as may be required to assure compliance with federal requirements"

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Have any oversight reviews, audits, or investigations of the recipient conducted since the last triennial review (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?

2. 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?

3. Are any issues related to maintenance indicated in the recipient Oversight Assessment Tool (OAT)? Does background research and/or site investigation support these concerns?

4. For Section 5307-funded assets, does the maintenance plan(s) address goals and objectives?

5. Are there indications that preventive maintenance is being deferred?

6. Are there patterns of service interruptions due to inadequate maintenance?

7. Have there been safety incidents related to maintenance?

8. Have there been early retirements and/or mid-life overhauls of FTA funded assets due to maintenance?

9. Are there indications that the recipient may not have adequate maintenance procedures, reporting systems, and/or technical expertise to adequately maintain and operate FTA-funded assets?

10. Did site/visual inspections of any FTA-funded assets reveal any evidence of insufficient maintenance?

11. If maintenance is conducted by a third-party contractor, does the recipient adequately monitor adherence with contract terms?

12. Does the recipient appear to have adequate resources (organizational structure, staffing levels, training, experience, etc.) assigned to maintenance of FTA- funded assets?

13. Do employees assigned to assess subrecipient, contractor, or lessee maintenance performance have a maintenance background?

14. Do PM records appear to be accurate?

15. Do facility and equipment maintenance plans address mission critical items and security equipment?

16. Does the recipient have maintenance management reporting system in place to track vehicle, equipment, and facility preventive maintenance? Does the system include evaluative performance criteria?

17. What performance reports inform senior management about maintenance activities?

18. How long are the records for FTA-funded facilities and equipment kept?

19. Did background research or site visit observations reveal 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 CFR Parts 200 and 1201, "Uniform Administrative Requirements", Cost Principles, and Audit Requirements for Federal Awards"

3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities (ADA)"

4. FTA Master Agreement

5. FTA Circular 5010.1E, "Award Management Requirements"

USEFUL WEBLINKS

1. FTA State of Good Repair and Asset Management Website

8. Procurement

PURPOSE OF THIS REVIEW AREA
States: When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 2 CFR §200.322 (*Procurement of Recovered Materials*) and ensure that every purchase order or other contract includes any clauses required by section 2 CFR §200.326 (*Contract Provisions*). All other non-Federal entities, including subrecipients of a state, will follow 2 CFR §§200.318 (*General Procurement Standards*) through 200.326 (*Contract Provisions*).

Non-state recipients: The non-Federal entity must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR part 200.

Where Federal Transit Administration (FTA) funds are used in procurements for services or supplies, or where FTA-funded facilities or assets are used in revenue contracts, FTA Circular 4220.1F applies. FTA funds, even operating assistance, can be segregated from local funds. FTA Circular 4220.1F does not apply to wholly locally-funded capital procurements.

Please note that FTA Circular 4220.1F will be updated in fiscal year (FY) 2018 in order to incorporate the provisions of the Super Circular, 2 CFR part 200. Until that update is issued, when there is a conflict between FTA Circular 4220.1F and the Super Circular, the Super Circular supercedes.

Note to reviewers: 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.

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. Does the recipient have and follow written procurement protest procedures?

4. Does the recipient make awards only to responsible contractors?

5. Does the recipient maintain records sufficient to detail the history of each procurement?

6. Does the recipient ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders?

7. Does the recipient ensure that it conducts all procurement transactions in a manner that provides full and open competition and does not restrict competition in its procurement process?

8. Did the recipient appropriately use each method of procurement?

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 for each procurement action above the Simplified Acquisition Threshold?

11. Did the recipient include applicable federal clauses in FTA-funded procurements exceeding the micro-purchase limit and construction contracts over $2,000?

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. Did the recipient appropriately include and account for liquidated damages in its procurements?

14. Did the recipient approve, evaluate, and document change orders to procurements?

15. If the recipient included options in an FTA-funded procurement, did it base the quantity 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 a "piggyback" procurement method, did it comply with applicable requirements regarding inclusion of Federal requirements, assignability, and price, and no cardinal changes?

18. Did the recipient ensure that appropriate FTA approval was acquired for advance payments and that adequate protection was exercised for progress payments?

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 pre-award and post-delivery audit requirements?

21. Does the recipient perform oversight of its subrecipients' FTA-funded procurement activities?

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 policies
- Procurement protest procedures
- List of FTA-funded procurements conducted since the last review. Identify the following items for each award:
    1. Date
    2. Dollar value
    3. Type (professional service, architectural & engineering, operations management services, rolling stock, construction, materials and supplies)
    4. Method: (invitation for bid, request for proposal, pre-qualified bidders, sole source, single bid, brand name, award-to-other-than-low-bidder, piggyback, joint procurements, options)
    5. New Start or Small Start-related procurement
    6. Awarded by contractors or subrecipients
    7. Change order, if applicable
    8. Disadvantaged Business Enterprise (DBE) goal, if applicable
- List of protests received or denied since last review (Non-state recipients, only)
- List of revenue contracts awarded since the last review

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

EXPLANATION
All recipients must have written procurement policies and procedures.

States recipients. When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with 2 CFR §200.322 (*Procurement of Recovered Materials*) and ensure that every purchase order or other contract includes any clauses required by section 2 CFR §200.326 (*Contract Provisions*).

Non-state recipients. The non-Federal entity, including subrecipients of a state, must use its own documented procurement procedures which reflect applicable State, local, and tribal laws and regulations, and conform to applicable Federal law and the standards identified in 2 CFR part 200. Policies and procedures must explain how the recipient will ensure compliance with the standards and requirements identified in 2 CFR §§200.318 (General Procurement Standards) through 200.326 (Contract Provisions) including:

General procurement standards:

- Contract oversight: Recipients must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

- Standards of conduct: Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity. 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. 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.

- Award to responsible contractors: The recipient must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement.

- Procurement history: The recipient must maintain records sufficient to detail the history of the procurement. These records will include, but are not necessarily limited to the following:

rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

- Time and Material contracts: The recipient may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Since this contract type generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the recipient awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

- Contract dispute resolution: The recipient alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims.

Competition:

- Full and open competition: All procurement transactions must be conducted in a manner that provides full and open competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
    - Placing unreasonable requirements on firms in order for them to qualify to do business;
    - Requiring unnecessary experience and excessive bonding;
    - Noncompetitive pricing practices between firms or between affiliated companies;
    - Noncompetitive contracts to consultants that are on retainer contracts;
    - Organizational conflicts of interest;
    - Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
    - Any arbitrary action in the procurement process.

- Geographic Preference: The recipient must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in 2 CFR part 200 preempts state licensing laws. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- Procedures for procurement transactions: The recipient must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
    - Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offerors must be clearly stated; and

- Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- Prequalification: The recipient must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.

Methods of procurement:

- Allowed methods of procurement: Recipients must use one of the following methods of procurement: (1) micro-purchases; (2) small purchase procedures; (3) sealed bid; (4) competitive proposals; or (5) non-competitive proposals.

Contract cost and price

- Cost or price analysis: Recipients must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

- Profit: Recipients must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- Estimated costs: Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the recipient under 2 CFR part 200 Subpart E—Cost Principles. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

- Cost plus: The cost plus a percentage of cost and percentage of construction cost methods of contracting 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 as follows:
    - A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
    - A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
    - A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

Contract provisions

- Contract provisions: Recipient's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards.

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. *If the recipient is a state, does it have written procurement policies and procedures?*

b. *If the recipient is not a state, does it have written procurement policies and procedures that conform to 2 CFR §§200.318 (General Procurement Standards) through 200.326 (Contract Provisions)?*

DETERMINING COMPLIANCE

Request and review the recipient's procurement policies and procedures.

For non-state recipients, determine if the procurement policies and procedures address the items in the table below. If not, discuss on site with the recipient to determine and note why and how the recipient ensures compliance with the requirements.

Requirements	Addressed? (Y/N)	Page reference	Comments/Notes
General Procurement Standards			
Maintenance of contract oversight			
Maintenance of written standards of conduct			
Avoidance of unnecessary or duplicative items			
Contracting with responsible contractors			
Maintenance of written procurement history			
Use of time and material contracts			
Procedures for contract dispute resolution			
Competition			
Promotion of full and open competition			
Prohibition on geographic preference			
Procedures for procurement transactions			
Use and maintenance of prequalification lists			

Requirements	Addressed? (Y/N)	Page reference	Comments/Notes
Methods of procurement			
Allowed methods of procurement:			
DBE participation			
Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms			
Cost and price			
Cost or price analysis			
Negotiation of contractor profit			
Use of estimated costs			
Prohibition of cost plus contracts:			
Contract provisions			
Inclusion of required contract provisions			
Bonding requirements			
Bonding requirements for construction or facility improvement contracts			
Other requirements			
Prohibition of exclusionary or discriminatory specifications			
Compliance with Buy America			

POTENTIAL DEFICIENCY DETERMINATIONS

The state or non-state 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: The recipient must develop and submit to the FTA regional office procurement policies that include all required provisions.

The non-state recipient is deficient if it does not have written procedures for procurement transactions that ensure that all procurements 1) incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured and 2) 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: The recipient must develop and submit to the FTA regional office procurement transaction procedures that include all required provisions.

Non-state recipients are deficient if procurement policies and procedures contain provisions that are contrary to the provisions outlined above or the recipient does not have a formal method to ensure compliance with the provisions.

DEFICIENCY CODE P1-3: Procurement policies and procedures not current/complete

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office revised procurement policies that include all required provisions and ensure compliance with 2 CFR 200.318 through 200.326.

GOVERNING DIRECTIVE

§200.317 Procurements by states

"When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§ 200.318 General procurement standards through 200.326 Contract provisions."

§200.318 General procurement standards

"(a) The non-Federal entity must use its own documented procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section.

(b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity 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 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.

(d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services.

(f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j)(1) The non-Federal entity may use time and material type contracts only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and material type contract means a contract whose cost to a non-Federal entity is the sum of:

(i) The actual cost of materials; and

(ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.

(2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.

(k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction."

§200.319 Competition

"(a) All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, and invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business;

(2) Requiring unnecessary experience and excessive bonding;

(3) Noncompetitive pricing practices between firms or between affiliated companies;

(4) Noncompetitive contracts to consultants that are on retainer contracts;
(5) Organizational conflicts of interest;
(6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
(7) Any arbitrary action in the procurement process.

(b) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(c) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(d) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period."

§200.320 Methods of procurement to be followed.

"The non-Federal entity must use one of the following methods of procurement.

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed $3,000 (or $2,000 in the case of acquisitions for construction subject to the Davis-Bacon Act). To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) In order for sealed bidding to be feasible, the following conditions should be present:

(i) A complete, adequate, and realistic specification or purchase description is available;

(ii) Two or more responsible bidders are willing and able to compete effectively for the business; and

(iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

(i) The invitation for bids will be publicly advertised and bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids;

(ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;

(iii) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(v) Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;

(2) Proposals must be solicited from an adequate number of qualified sources;

(3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;

(4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(5) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) [Reserved]

(f) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

(1) The item is available only from a single source;

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or

(4) After solicitation of a number of sources, competition is determined inadequate."

§200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms

"(a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section."

§200.322 Procurement of recovered materials

"A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines."

§ 200.323 Contract cost and price

"(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used."

§200.325 Bonding requirements

"For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

(a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract."

§200.326 Contract provisions

"The non-Federal entity's contracts must contain the applicable provisions described in Appendix II to Part 200—Contract Provisions for non-Federal Entity Contracts Under Federal Awards."

Additional Guidance:
FTA Circular 4220.1F Chapter III

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

EXPLANATION
Recipients are required to maintain written standards of conduct governing the performance of their employees engaged in the award and administration of contracts supported by Federal funds. The standards must:

- Preclude any employee officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the election, award, or administration of a contract supported with FTA assistance. Such a conflict would arise when any of those previously listed has a financial or other interest in a firm considered for a contract.

- Include information that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal value.

- Provide for disciplinary action for violation of such standards by the recipient's officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

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?*

DETERMINING COMPLIANCE
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. Please note that state and/or local laws may have requirements that are more restrictive than the Federal requirements below. Recipients must adhere to those state and local requirements.

Review standards of conduct to ensure that, at a minimum, they:

- Preclude any employee officer, agent, or board member or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing from participating in the election, award, or administration of a contract supported with FTA assistance.

- Include information that the recipient's officers, employees, or agents may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements.

- Provide for disciplinary action for conflict of interest violations by the recipient's officers, employees, or agents, or by contractors or subrecipients or their agents to the extent permitted by state or local law or regulations.

- 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: The recipient must develop and submit to the FTA regional office written standards of conduct that include all required provisions.

The recipient is deficient if its written standards of conduct do not contain required elements.

DEFICIENCY CODE P2-2: Incomplete standards of conduct

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office written standards of conduct that include all missing provisions.

GOVERNING DIRECTIVES
2 CFR 200.318 (c)(1) & (2)

"(1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.

(2) If the non-Federal entity 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 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."

FTA Master Agreement (23), 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:

(a) The Recipient or its Subrecipients' officers, employees, board members, or agents engaged in the selection, award, or administration of any third party agreement,

(b) The immediate family members or partners of those listed above in section 4.a(1)(a) of this Master Agreement, and

(c) An entity or organization that employs or is about to employ any person that has a relationship with the Recipient or its Subrecipient listed above in sections 4.a(1)(a) and (b) of this Master Agreement;

(2) Prohibit those individuals listed above in section 4.a(1) from:

(a) Engaging in any activities involving the Recipient or any of its Subrecipients' present or potential Third Party Participants at any tier, including selection, award, or administration of a third party agreement in which the individual has a present or potential financial or other significant interest, and

(b) Accepting a gratuity, favor, or anything of monetary value from a present or potential Third Party Participant in the Recipient's Underlying Agreement, unless the gift is unsolicited and has an insubstantial financial or nominal intrinsic value; and

(3) Establish penalties, sanctions, or other disciplinary actions for violations, as permitted by state or local law or regulations, that apply to those individuals listed above in section 4.a(1) and the Recipient or Subrecipient's Third Party Participants."

Additional Guidance:
FTA Circular. 4220.1F Chapter III

P3. Does the recipient have and follow written procurement protest procedures?

BASIC REQUIREMENT
The recipient must have and follow written protest procedures in compliance with all applicable state and local laws and regulations.

APPLICABILITY
All recipients

EXPLANATION
Recipients must have written protest procedures to handle and resolve protests of procurement actions.

FTA recipients are responsible for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, protests of awards, disputes, and claims using good administrative practices and sound business judgment. FTA encourages the recipient to use appropriate alternative dispute resolution procedures.

INDICATORS OF COMPLIANCE
a. Does the recipient have written protest procedures?

b. Has the recipient received any procurement protests since the last Comprehensive Review? If yes, did it follow its protest procedures?

DETERMINING COMPLIANCE
Prior to the site visit, request and review the recipient's written protest procedures. Protest procedures may be contained in the recipient's policies and procedures or in a separate document.

Review milestone progress reports in TrAMS for protests noted. Onsite, ask the recipient for any bid protests received or denied. If there have been any protests during the review period, review related documentation to determine if the recipient followed its written protest procedures.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not have written protest procedures.

DEFICIENCY CODE P3-1: No written protest procedures

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office written protest procedures.

The recipient is deficient if it has written protest procedures and received protests, but did not follow its procedures.

DEFICIENCY CODE P3-2: Protest procedures not followed

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation of implemented procedures to ensure that its protest procedures are followed.

GOVERNING DIRECTIVES
2 CFR §200.318(k)

Section 200.318(k) provides that a recipient "alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the [recipient] of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the [recipient] unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction."

Guidance note regarding notifying FTA of Protests and Appeals to FTA

FTA's involvement in bid protests is limited. The Uniform Guidance, as adopted by DOT, no longer includes the language in 49 C.F.R. §18.36(b)(12) that provided for a direct appeal to FTA of a recipient's final decision on a bid protest. The Uniform Guidance provides that:

> "The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction." – 2 C.F.R. § 200.318(k)

Thus, the FTA's role is limited to considering matters that are "primarily a Federal concern." Accordingly, Section (1)(b)(2)(a) of Chapter VII of FTA Circular 4220.1F, which provides for direct appeals to FTA, is no longer applicable.

P4. Does the recipient make awards only to responsible contractors?

APPLICABILITY
All recipients

BASIC REQUIREMENT
The recipient must only contract with responsible firms.

EXPLANATION
49 U.S.C. Section 5325 (j) requires recipients to make FTA-assisted contract awards only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract. Responsibility is determined by the recipient after receiving bids or proposals and before making contract award. FTA expects the prospective contractor to demonstrate affirmatively to the recipient that it qualifies as "responsible" and that its proposed subcontractors also qualify as "responsible."

Factors that may be considered when making responsibility determinations include:

- Integrity and Ethics. Has a satisfactory record of integrity and business ethics.
- Public Policy. Is in compliance with the public policies of the Federal government.
- Administrative and Technical Capacity. Has the necessary organization, experience, accounting, and operational controls, and technical skills, or the ability to obtain them.
- Financial Resources. Has, or can obtain, sufficient financial resources to perform the contract.
- Performance Record. Is able to provide a satisfactory current and past performance record.

Recipients are also required to ensure, to the best of their knowledge and belief, that none of its principals, affiliates, third party contractors, and subcontractors is suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third party contract expected to equal or exceed $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 part 180 defines a principal as an officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities related to a covered transaction. The recipient should have a similar review process for its principals as it does for its contractors and subrecipients regarding suspension and debarment.

In the event that a recipient becomes aware, after the award of a contract, that an excluded party is participating in a covered transaction, it must promptly inform the FTA regional office in writing of this information. The recipient may continue any covered transaction in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. The recipient is not required to continue the transaction and may consider termination. However, the recipient may not renew or extend the covered transaction (other than through a fully documented no-cost time extension) with the excluded party.

INDICATORS OF COMPLIANCE

a. *Do procurement files contain documentation that the recipient made written responsibility determinations prior to award, considering all required information?*

b. *Prior to award, does the recipient have documentation that third party contractors are not suspended or debarred?*

c. *Did the recipient extend a contract with a contractor after it determined that the contractor had been suspended or debarred?*

DETERMINING COMPLIANCE

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 a written responsibility determination was made for each successful bidder prior to award and that consideration was given to matters such as:

- contractor integrity,
- compliance with public policy,
- record of past performance, and
- financial and technical resources.

Review contract and subrecipient files to verify if the recipient 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 written responsibility determinations that include the required elements prior to award.

DEFICIENCY CODE P4-1: Responsibility determination deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation of an implemented process to make adequate responsibility determinations prior to award of a contract. For the next procurement, submit to the FTA regional office 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.

DEFICIENCY CODE P4-2: No verification that excluded parties are not participating

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for making excluded party determinations before entering into applicable transactions. For the next procurement, submit to FTA 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: The recipient must confer with the FTA regional office for any contract that was extended or renewed with a suspended or debarred contractor.

GOVERNING DIRECTIVES
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, including the performance reported in the Contractor Performance Assessment Reports required under section 5309(l)(2); and

(D) the contractor's financial and technical resources."

2 CFR 180.300

"What must I do before I enter into a covered transaction with another person at the next lower tier? When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by: (a) Checking SAM Exclusions; or (b) Collecting a certification from that person; or (c) Adding a clause or condition to the covered transaction with that person."

2 CFR 180.310

"What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction? (a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate. (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135."

Additional Guidance:
FTA Master Agreement (23), Section 4(b)

FTA Circular 4220.1F Chapter III. d. (1) (c)

P5. Does the recipient maintain records sufficient to detail the history of each procurement?

BASIC REQUIREMENT
The recipient must maintain a written history of each procurement.

APPLICABILITY
All recipients

EXPLANATION
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 will vary greatly for different procurements.

INDICATORS OF COMPLIANCE

a. *Does the recipient have policies and/or procedures for documenting procurement files?*

b. *Do procurement files reviewed include required historical information?*

DETERMINING COMPLIANCE
Review recipient's policies and/or procedures for documenting procurement files to ensure that the policy requires, at a minimum, written documentation of the following:

- 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)

During the site visit, examine selected procurement files, in accordance with records sampling procedures, to determine if procurement records include the minimum information listed above, as well as all documentation required in the recipient's policies and/or procedures.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if, for any procurement examined, procurement records do not contain the minimum documentation required and any additional information noted in the recipient's policies and/or procedures.

DEFICIENCY CODE P5-1: Incomplete written documentation of procurement history

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that the deficiencies identified in its record-keeping process have been corrected.

GOVERNING DIRECTIVE
2 CFR 200.318(i)

"The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price."

P6. Does the recipient ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders?

BASIC REQUIREMENT
Recipients must have oversight mechanisms to ensure that contractors perform in accordance with the terms of their contracts.

APPLICABILITY
All recipients

EXPLANATION
Recipients are required to have mechanisms in place that ensures that contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. 2 CFR part 200 assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including protests of awards, disputes, and claims using good administrative practices and sound business judgment. Neither FTA nor 2 CFR part 200 relieves the recipient of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration.

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?*

DETERMINING COMPLIANCE
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 specification of their contracts or purchase orders. Review information in TrAMS 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)(1), 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 the 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, and the recipient cannot demonstrate that it has taken remedial action in accordance with its policies and procedures.

DEFICIENCY CODE P6-1: Contract administration system not implemented

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA regional office revised procurement procedures that include oversight procedures and remedies for non-performance, along with evidence of implementation.

GOVERNING DIRECTIVE
2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

P7. Does the recipient ensure that it conducts all procurement transactions in a manner that provides full and open competition and does not restrict competition in its procurement process?

BASIC REQUIREMENT
Procurement transactions must be non-restrictive.

APPLICABILITY
All recipients

EXPLANATION
Restricting Competition:
Recipients must conduct procurement transactions in a manner providing full and open competition. Recipients are prohibited from restricting competition in federally supported procurement transactions. Some of the situations considered to be restrictive of competition include but are not limited to:

- Placing unreasonable requirements on firms in order for them to qualify to do business;
- Requiring unnecessary experience and/or excessive bonding;
- Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement;
- Having overly burdensome requirements for approval of an equal product;
- Noncompetitive pricing practices between firms or between affiliated companies;
- Noncompetitive contracts to consultants that are on retainer contracts;
- Organizational conflicts of interest; and
- Any arbitrary action in the procurement process.

Geographic Preference:
Recipients are prohibited from specifying in-state or local geographical preferences, or evaluating bids or proposals in light of in-state or local geographic preferences, even if those preferences are imposed by state or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-state dealers.

Exceptions expressly mandated or encouraged by law include the following:

- A&E Services. Geographic location may be a selection criterion if an appropriate number of qualified firms are eligible to compete for the contract in view of the nature and size of the project. Although geographic preferences are permissible in procurements for A&E services, the reviewer should ensure that their use does not restrict competition (i.e., the use of geographic preference leaves only one or two qualified firms to bid on the contract).
- Licensing. A state may enforce its licensing requirements, provided that those requirements do not conflict with Federal law.
- Major Disaster or Emergency Relief. Federal assistance awarded under the Stafford Act, 42 U.S.C. Section 5150, to support contracts and agreements for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities permits a preference, to the extent feasible and practicable, for organizations, firms, and individuals residing or doing business primarily in an area affected by a major disaster or emergency.

Section 418 of the fiscal year (FY) 2015 Appropriations Act and Section 415 of the Consolidated Appropriations Act, 2016, Public Law 114-113 (FY 2016 Appropriations Act) prohibit FTA from using FY2015 or FY2016 funds to implement, administer, or enforce the prohibition of geographic preferences under 49 CFR 18.36(c)(2), (now 2 CFR 200.319(b)) for construction hiring purposes. "Construction hiring purposes" means hiring of the construction labor workforce for a construction project. Section 418 applies to all FTA awards, including awards funded under the Hurricane Sandy Emergency Relief and Transportation Investment Generating Economic Recovery (TIGER) programs. Recipients are asked to provide the FTA Regional Office notice of using local hiring preferences on construction projects.

On March 6, 2015, US DOT announced an initiative to permit, on an experimental basis, FTA recipients and subrecipients to utilize various contracting requirements that generally have been disallowed due to concerns about adverse impacts on competition. This initiative, being initially carried out as a pilot program was extended until March 6, 2017. Unless accepted into the pilot program, FTA recipients may not include local hiring or geographic preferences in FTA-funded projects, except for construction hiring purposes and other exceptions described above.

Prequalification Lists:
Except for small and micro purchases, proposals and/or bids must be publicly solicited from an adequate number of sources. Recipients are prohibited from restricting competition in federally supported procurement transactions. Recipients are not required to prequalify potential bidders. However, recipients that place such a requirement on potential bidders must adhere to FTA's requirements. If a recipient requires prospective bidders to prequalify, it must ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough sources to ensure full and open competition. Recipients must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Prequalification should not be confused with reviews of technical qualifications that are an essential process in two-step and qualifications-based procurements.

Revenue Contracts:
Revenue contracts are those in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. If, however, one party seeks access to a public transportation

asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, FTA will work with the recipient to determine appropriate procedures, as necessary.

INDICATORS OF COMPLIANCE

a. *Does the recipient restrict competition by applying unreasonable requirements, requiring unnecessary experience or excessive bonding, or by specifying brand names only?*

b. *Does the recipient include prohibited geographic preferences in procurements?*

c. *If the recipient uses prequalification lists for any of its procurements, does it do so properly?*

d. *If the recipient awarded revenue contracts during the review period did it use a competitive process for the award, as applicable?*

DETERMINING COMPLIANCE

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.

<u>During the site visit</u>:

- Review procurement files (including procurements that received two or fewer bids or responses), particularly legal notices and solicitation documents, to determine whether procurements were unreasonably restrictive. If a procurement only received one or two responses, did the specifications include non-essential requirements that only a single manufacturer can meet? Did potential bidders submit pre-submission questions regarding compliance with the specifications or other contract requirements? Examine any bid protests and any questions and answers to solicitations to determine if there are any perceived restrictions from potential bidders.

- Review procurement files for use of geographic preferences outside of the allowable exceptions. Examine any bid protests and any questions and answers to solicitations to determine if there are any potential geographic preference issues. These may include bid/evaluation preferences for, or restricting competition to, in-state or local firms. In-state licensing requirements do not constitute geographic preference. When contracting for A&E services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

- 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).

- Review the list of revenue contracts awarded. On site, discuss with the recipient, and evaluate procurement files to determine if a competitive process was used when the recipient provided access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property when there were several potential competitors for a limited opportunity.

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.

> DEFICIENCY CODE P7-1: Lacking full and open competition for one or more methods of procurement
>
> SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office procurement procedures that ensure full and open competition in all procurement transactions.

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: The recipient must cease using inappropriate geographic preferences in FTA-funded procurements and submit to the FTA regional office documentation of a revised procurement process that prohibits the improper use of geographic preferences. For the next procurement, the recipient must submit to the FTA regional office 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 potentials bidders from qualifying during the solicitation process.

> DEFICIENCY CODE P7-3: Inadequate prequalification criteria
>
> SUGGESTED CORRECTIVE ACTION: The recipient must provide to the FTA regional office documentation demonstrating that deficiencies identified in its prequalification process have been corrected. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it provided access to public transportation assets for the primary purpose of either producing revenue in connection with an activity related to public transportation, or creating business opportunities with the use of FTA-assisted property and there were several potential competitors for a limited opportunity, but it did not conduct a competitive process.

> DEFICIENCY CODE P7-4: Lacking full and open competition for revenue contracts
>
> SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office with evidence that it has updated its procurement process to include procedures for competing revenue contracts when applicable. The recipient must obtain prior FTA regional office approval before entering into the next revenue contract.

GOVERNING DIRECTIVES

49 U.S.C. 5325(a). Contract requirements

"(a) Competition. Recipients of assistance under this chapter shall conduct all procurement transactions in a manner that provides full and open competition as determined by the Secretary."

49 U.S.C. 5325(h). Contract requirements

"(h) Grant prohibition. A grant awarded under this chapter or the Federal Public Transportation Act of 2012 2015 may not be used to support a procurement that uses an exclusionary or discriminatory specification."

2 CFR 200.319 (a)

"All procurement transactions must be conducted in a manner providing full and open competition consistent with the standards of this section. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to: (1) Placing unreasonable requirements on firms in order for them to qualify to do business; (2) Requiring unnecessary experience and excessive bonding; (3) Noncompetitive pricing practices between firms or between affiliated companies; (4) Noncompetitive contracts to consultants that are on retainer contracts; (5) Organizational conflicts of interest; (6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and (7) Any arbitrary action in the procurement process."

2 CFR 200.319 (c)(1)

"When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated."

2 CFR 200.319 (b)

"The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract."

2 CFR 200.319 (d)

"The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period."

Master Agreement (23), Section 16

FTA Circular 4220.1F Chapter VI 2. (g)

"In-State or Local Geographic Restrictions. Specifying in-State or local geographical preferences, or evaluating bids or proposals in light of in-State or local geographic preferences, even if those preferences are imposed by State or local laws or regulations. In particular, 49 U.S.C. Section 5325(i) prohibits an FTA recipient from limiting its bus purchases to in-State dealers. Exceptions expressly mandated or encouraged by Federal law include the following: 1) Architectural Engineering (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. 2) Licensing. A State may enforce

its licensing requirements, provided that those State requirements do not conflict with Federal law. 3) 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 the area affected by a major disaster or emergency."

FTA Circular 4220.1F Chapter 2. b. (4) Revenue Contracts
"A revenue contract is a contract in which the recipient or subrecipient provides access to public transportation assets for the primary purpose of either producing revenues in connection with an activity related to public transportation, or creating business opportunities with the use of FTA assisted property. The recipient has broad latitude in determining the extent and type of competition appropriate for a particular revenue contract. Nevertheless, to ensure fair and equal access to FTA assisted property and to maximize revenue derived from such property, the recipient should conduct its revenue contracting as follows: (a) Limited Contract Opportunities. If there are several potential competitors for a limited opportunity (such as advertising space on the side of a bus), then the recipient should use a competitive process to permit interested parties an equal chance to obtain that limited opportunity. (b) Open Contract Opportunities. If, however, one party seeks access to a public transportation asset (such as a utility that might seek cable access in a subway system), and the recipient is willing and able to provide contracts or licenses to other parties similarly situated (since there is room for a substantial number of such cables without interfering with transit operations), then competition would not be necessary because the opportunity to obtain contracts or licenses is open to all similar parties. In the case of joint development, as explained below, FTA will work with the recipient to determine appropriate procedures, as necessary."

P8. Did the recipient appropriately use each method of procurement?

BASIC REQUIREMENT
The non-Federal entity must appropriately use one of the following methods of procurement: micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals**.**

APPLICABILITY
Non-State recipients

EXPLANATION
Micro-purchases may be made without obtaining competitive quotations if the recipient determines that the price to be paid is fair and reasonable. These purchases should be distributed equitably among qualified suppliers in the local area, and should not be split to avoid the requirements for competition above the micro-purchase threshold.

Small purchase procedures require that price or rate quotations be obtained from an adequate number of qualified sources (at least two). The solicitations and quotations may be either oral or written.

For procurements exceeding the Federal simplified acquisition threshold (currently $150,000), sealed bids or competitive proposals are generally required.

- Sealed Bids/IFB – Bids are publicly solicited and the award is made to the lowest (best price), responsive (meets all specifications), and responsible (is qualified to perform the work) bidder.
- Competitive Proposals/RFP – Proposals are publicly solicited from an adequate number of sources and the award is made to the responsive and responsible proposer whose offer is most advantageous to the recipient, with price and other factors considered. Recipients must identify their evaluation factors and indicate the relative importance that each has towards the award.

Non-competitive proposals: When the recipient requires supplies or services available from only one responsible source, and no other supplies or services will satisfy its requirements, the recipient may make

a sole-source award. In the case of a sole-source award, the recipient should prepare a written cost analysis and justification. The property or services are available from one source if one of the conditions described below is present:

- Unique or Innovative Concept. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the grantee only from one source and in the past, has not been available from another source.
- Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.
- Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the grantee's needs.

A recurring problem has been the procurement of professional services. Often these services are procured with little or no competition. While such services can be procured on a sole-source basis if justified, in general, a competitive environment does exist for professional services and the recipient needs to follow federal requirements when FTA funds are used to pay for these services.

With a single bid, the documentation should include a cost analysis, as well as an explanation as to why a single bid was obtained. Upon receiving a single bid or proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and should include a survey of potential sources that chose not to submit a bid or proposal.

Time and materials contracts are listed as a restricted type of procurement. 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 small purchase procedures, was it done in accordance with requirements?*

c. *If the recipient used sealed bid procedures, was it done in accordance with requirements?*

d. *If the recipient used competitive proposal procedures, was it done in accordance with requirements?*

e. *Did the recipient include written justification of any non-competitive or sole source procurements in the procurement file?*

f. *If the recipient had awarded a contract to a single bidder, did it appropriately determine that the item was available only from a single source?*

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 identified?*

DETERMINING COMPLIANCE

Review the recipient's policies and procedures for dollar thresholds (if applicable) for micro-purchase, small purchase, sealed bid, competitive proposals or non-competitive proposals/sole source procurements.

Review the list of FTA-funded procurements to determine which types of procurement were used.

Micro-purchase: Review selected procurements to determine if:

- this method was only used for procurements $3,500 or less,
- the procurements were distributed equitably if there was more than one qualified supplier in the local area,
- the recipient documented its determination that the price was reasonable with a description of how that determination was made, and
- there was no evidence that procurements were split to avoid procurement requirements for purchases above the micro-purchase threshold (such as repeated purchases of the same item(s)).

Small purchase: Review selected procurements to determine if:

- this method was only used for procurements when appropriate (2 CFR part 200 increased the simplified acquisition threshold to $150,000 for procurements funded by awards issued on or after December 26, 2014. Procurements funded by awards issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of $100,000. (per 49 CFR 18.36(d)),
- price or rate quotations were obtained from an adequate (at least two) number of qualified sources, and
- there was no evidence that procurements were split to avoid procurement requirements for purchases above the small purchase threshold (such as repeated purchases of the same item(s)).

Sealed bid: Review selected procurements to determine if:

- bids were solicited from an adequate number of known suppliers,
- bids were publicly advertised,
- the invitation for bids defined the items or services in order for the bidder to properly respond,
- bids were publicly opened at the time and place prescribed in the invitation for bids,
- a firm fixed price contract (lump sum or unit price) was awarded to the lowest responsive and responsible bidder, and
- any or all bids were rejected only if there was a sound, documented reason

Competitive proposal: Review selected procurements to determine if:

- requests for proposals were publicly advertised,
- 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
- contracts were awarded to the responsible firm whose proposal is most advantageous, with price and other factors considered.
- For A&E procurements, price should not be a factor in the selection criteria. These procurements are reviewed in a following question of the review.

Non-competitive procurement: Review selected procurements to determine if one of the following conditions was met:

- The recipient appropriately determined that the item was available from only a single source. Property or services are available from one source because one of the conditions described below is present:
    - *Unique or Innovative Concept*. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details of which are kept confidential or are patented or copyrighted, and is available to the recipient only from one source and in the past, has not been available from another source.
    - *Patents or Restricted Data Rights*. Patent or data rights restrictions preclude competition.
    - *Substantial Duplication Costs*. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
    - *Unacceptable Delay*. In the case of a follow-on contract for the continued development or production of highly specialized equipment and major components, when it is likely that award to another contractor would result in unacceptable delays in fulfilling the recipient's needs.
- There was a public exigency or emergency for the requirement which would not permit a delay resulting from competitive solicitation. When relying on this provision, recipients may use a non-competitive procurement method only for its reasonable needs to address the exigency or emergency. For example, a recipient's facility receives an unprecedented 24-inches of snow in 24 hours in October and it does not have a snow removal contract in place. The recipient may enter into a non-competitive snow removal contract to clear the snow. However, the recipient may not use this emergency to justify entering into a non-competitive snow removal contract for the entire winter season.
- FTA expressly authorized noncompetitive proposals in response to a written request from the recipient.

Determine if the recipient included a written sole source justification in its procurement file.

Single bidder: 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 and a survey of potential sources that chose not to submit a bid or proposal.

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. During the site visit, examine at least one time and materials procurement file to determine if there was information noting that this was the only suitable type of procurement and that a ceiling price was included.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it made procurements using micro-purchase procedures but used this method for procurements over $3,500, did not make reasonable price determinations, did not distribute purchases equitably if applicable, and/or if there was evidence of splitting improperly.

DEFICIENCY CODE P8-1: Improper micro-purchase procedures used

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to correctly implement micro-purchase procedures. For the next micro-purchase, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using small purchase procedures for procurements over $150,000, price or rate quotations were not obtained from an adequate number of qualified sources, and/or if there is evidence of splitting procurements to be within the small purchase threshold.

DEFICIENCY CODE P8-2: Improper small purchase procedures used

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to correctly implement small purchase procedures. For the next small purchase, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it made procurements using sealed bid procedures but bids were not publicly advertised and/or a fixed price contract was not awarded to the lowest responsive, responsible bidder.

DEFICIENCY CODE P8-3: Improper sealed bid procedures used

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to correctly implement sealed bid procedures. For the next sealed bid, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made procurements using competitive proposal procedures but requests for proposals were not publicly advertised, evaluation criteria and their relative importance were not identified in the solicitation documents, and/or price and other factors were not considered in the award.

DEFICIENCY CODE P8-4: Improper competitive proposal procedures used

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has updated its procurement process to correctly implement competitive proposal procedures. For the next competitive proposal, submit to the FTA regional office documentation that the required procedures were followed.

The recipient is deficient if it made sole source procurements but does not have a sole-source justification in its procurement files, and/or if its justification does not include at least one of the conditions permitting the use of a sole source procurement.

DEFICIENCY CODE P8-5*:* Lacking required justification(s) and documentation for sole-source award(s)

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence of an implemented policy to ensure that future sole source 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, or possibly terminate the existing contract for convenience, and rebid for the required goods and services in accordance with Federal requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it does not have the appropriate justification for single-bid awards.

DEFICIENCY CODE P8-6*:* Lacking required justification(s) and documentation for single-bid award(s)

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence of an implemented policy to ensure that future single bid procurements are properly documented. For the next applicable procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if FTA funds were used for a time and materials contract 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: The recipient must submit to the FTA regional office 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 DIRECTIVES

2 CFR 200.320 (a) Procurement by micro-purchases

"Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold *($3,000 or less prior to October 1, 2015; $3,500 or less effective October 1, 2015)*. To the extent practicable, the non-Federal entity must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the non-Federal entity considers the price to be reasonable."

FTA 4220.1F Chapter VI 3. a. (2) (b) Prohibited Divisions

"The recipient may not divide or reduce the size of its procurement to avoid the additional procurement requirements applicable to larger acquisitions."

FTA 4220.1F Chapter VI 3. a. (2) (c) Documentation

"FTA's only documentation requirement for micro-purchases is a determination that the price is fair and reasonable and a description of how the recipient made its determination. FTA does not require the recipient to provide its rationale for the procurement method used, selection of contract type, or reasons for contractor selection or rejection."

2 CFR 200.320 (b) Procurement by small purchase procedures

"Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources."

2 CFR 200.320 (c) Procurement by sealed bids (formal advertising)

"Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply. (1) In order for sealed bidding to be feasible, the following conditions should be present: (i) A complete, adequate, and realistic specification or purchase description is available; (ii) Two or more responsible bidders are willing and able to compete effectively for the business; and (iii) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price. (2) If sealed bids are used, the following requirements apply: (i) Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised; (ii) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond; (iii) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly; (iv) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and (v) Any or all bids may be rejected if there is a sound documented reason."

2 CFR 200.320 (d) Procurement by competitive proposals

"The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply: (1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical; (2) Proposals must be solicited from an adequate number of qualified sources; (3) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and for selecting recipients; (4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered"

2 CFR 200.320 (f) Procurement by noncompetitive proposals

"Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply: (1) The item is available only from a single source; (2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; (3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the non-Federal entity; or (4) After solicitation of a number of sources, competition is determined inadequate." *FTA Circular 4220.1F Chapter VI 3. i. Other Than Full and Open Competition*."

FTA Circular 4220.1F Chapter VI 3. i. (1) (b) 2. Single Bid or Single Proposal

"Upon receiving a single bid or single proposal in response to a solicitation, the recipient should determine if competition was adequate. This should include a review of the specifications for undue restrictiveness and might include a survey of potential sources that chose not to submit a bid or proposal. a. Adequate Competition. FTA acknowledges competition to be adequate when the reasons for few responses were caused by conditions beyond the recipient's control. Many unrelated factors beyond the recipient's control might cause potential sources not to submit a bid or proposal. If the competition can be determined adequate, FTA's competition requirements will be fulfilled, and the procurement will qualify as a valid competitive award. b. Inadequate Competition. FTA acknowledges competition to be inadequate when, caused by conditions within the recipient's control. For example, if the specifications used were within the recipient's control and those specifications were unduly restrictive, competition will be inadequate."

2 CFR 200.318 (j)(1)

"The non-Federal entity may use a time and materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time and materials type contract means a contract whose cost to a non-Federal entity is the sum of: (i) The actual cost of materials; and (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit. (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls."

P9. Does the recipient procure 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

EXPLANATION
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 interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property. Unless FTA determines otherwise in writing, neither a recipient or its subrecipients may use qualifications-based procurement procedures to acquire other types of services if those services are not directly in support of, directly connected to, directly related to, or do not lead to construction, alteration, or repair of real property. For design/build procurements, FTA expects recipients and their subrecipients 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, states are required to use competitive proposal procedures based on the Brooks Act or an equivalent qualifications-based requirement adopted before August 10, 2005.

For qualifications-based procurements under the Brooks Act, (unlike other two-step procurement procedures in which price is an evaluation factor), an offeror's qualifications are evaluated to determine contract award. Price must not be considered during the selection phase in these procurements. Firms are selected based only on their qualifications. 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 State determines is fair and reasonable.

INDICATORS OF COMPLIANCE

a. *If the recipient is a state, does it have and follow a 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 of the Brooks Act?*

b. *If the recipient is not a state or is a state that does not have a procedure for the procurement of A&E services adopted prior to August 10, 2005, does it use competitive proposals based on the Brooks Act when procuring A&E services?*

DETERMINING COMPLIANCE
Prior to the site visit, review State statutes, the state management plan, and other documentation of procurement procedures for procedures for contracting for A&E service through qualifications-based requirements. For recipients that are not a state, review their procedures for qualifications-based procurements. Review the list of procurements provided in advance of the review for procurements that would likely require these types of procedures. On site, discuss with the recipient, and evaluate procurement files to determine if these procedures were used when procuring applicable services, but not used when procuring services that do not meet the definition of A&E services.

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. 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.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it is 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 State also is deficient if it is using a qualifications-based method for procuring non-A&E services and does not have a State statute authorizing that type of procurement.

DEFICIENCY CODE P9-1: State A&E procurement deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office procedures for following qualifications-based procedures when using FTA assistance to contract for A&E services. For the next procurement, the State must submit to the FTA regional office documentation that the required process was implemented.

A non-State recipient is deficient if it does not follow the Brooks Act when using FTA assistance to contract for A&E services or has used qualifications-based procedures when not appropriate.

DEFICIENCY CODE P9-2: Non-state A&E procurement deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office procedures for following qualifications-based procedures when using FTA assistance to contract for A&E services. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES
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."

§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."

2 CFR § 200.320(d)(5)

"The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort."

FTA Circular 4220.1F Chapter IV 2. h. (2) (a)

"FTA has long administered the requirement for using qualifications-based procurement procedures for selection of contractors that perform A&E services, generally associated with the construction, alteration, or repair of real property. FTA interprets 49 U.S.C. Section 5325(b) to authorize the use of qualifications-based procurement procedures only for those services that directly support or are directly connected or related to construction, alteration, or repair of real property. FTA's interpretation of 49 U.S.C. Section 5325(b) is consistent with typical Federal policies implementing the "Brooks Act," 40 U.S.C. Section 1102, which limits qualifications-based procurement procedures to research, planning, development, design, construction, alteration, or repair of real property. Thus, if services, such as program management, feasibility studies, or mapping, are not directly in support of, directly connected to, or directly related to, or lead to construction, alteration, or repair of real property, then the recipient may not use qualifications-based procurement procedures to select the contractor that will perform those services."

Third Party Contracting FAQs

Q. Can a transit authority make multiple awards to A&E firms for a discipline such as surveying, when no specific tasks have been identified, and then select the best firm for the specific task to negotiate with? We have several surveying projects that may materialize, but none are certain. We would like to advertise for "Surveying Services" and make multiple awards for on-call services. Then, when a project or task for surveying is identified we would select the best A&E firm for a specific task and negotiate with them. If an agreement could not be made we would proceed to negotiate with the next most qualified firm. The idea is to identify qualified firms for surveying and avoid having to advertise and rank each firm for each task or project.

A. You may make multiple awards to cover your needs for various disciplines, as you described them; e.g., geothermal, railroad, surveying, etc. However, your solicitation needs to describe how the work will actually be assigned, and not leave the process undefined. For example, if you evaluate company A initially as being the best for geothermal work, then all such work should be given to that company as tasks are defined, assuming the company can perform within the timeframes required for the task. You should not leave it to someone's judgment later to withhold work from company A and give it to company B based on a subjective judgment that B would be better than A for this job even though A was evaluated first initially. We would also not let the selected companies update their qualifications during the term of the contract and so be rated higher that they were initially. There should be a finite period for these contract awards, after which a new round of qualifications-based awards would be made.

P10. Does the recipient develop independent cost estimates and conduct cost and/or price analysis for each procurement action above the 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. As a starting point, the recipient must make independent estimates before receiving bids or proposals.

APPLICABILITY
Non-State recipients

EXPLANATION
Recipients must perform cost or price analyses in connection with every procurement exceeding the Simplified Acquisition Threshold (currently $150,000); after receiving bids, but before awarding a contract. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation. A cost analysis must be performed for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements, unless price reasonableness can be established based on market prices. Price analysis (i.e., using catalog or market prices) may be performed for all other procurements.

The independent cost estimate (ICE) is a tool to assist in determining the reasonableness of the bid or proposal being evaluated; that is, to assist in performing the cost or price analysis. An ICE is the starting point for conducting a cost or price analysis. It is required for all procurements exceeding the 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 inspection of the product itself and review of items like drawings, specifications, and prior data. The word "independent" 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 (e.g., for architect-engineer procurements during price negotiations), 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 unreasonably high or low-cost proposals.

INDICATORS OF COMPLIANCE

a. *Did the recipient develop ICE prior to the receipt of bids and proposals for procurements above the Simplified Acquisition Threshold?*

b. *Did the recipient conduct a cost analysis or price analysis for every procurement action above the Simplified Acquisition Threshold?*

DETERMINING COMPLIANCE
Prior to the site visit, examine the recipient's policies and procedures. Onsite, review selected procurements to determine if the recipient developed an independent estimate prior to receipt of bids or proposals for procurements above the Simplified Acquisition Threshold.

Determine if a cost analysis was performed for: (1) procurements which require that offerors submit detailed elements of direct and indirect costs; (2) procurements where adequate price competition is lacking; and/or (3) sole-source procurements.

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 procurements above the Simplified Acquisition Threshold.

DEFICIENCY CODE P10-1: Lacking independent cost estimate

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include development of

independent cost estimates prior to receipt of bids or proposals. For the next procurement, submit to the FTA regional office 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 procurements above the Simplified Acquisition Threshold.

DEFICIENCY CODE P10-2: Lacking required cost/price analysis

SUGGESTED CORRECTIVE ACTION: The recipient must provide the FTA regional office documentation that it has updated its procurement process to include performing applicable cost or price analysis procurements above the Simplified Acquisition Threshold. For the next applicable procurement, submit to FTA documentation that the required analysis was implemented.

GOVERNING DIRECTIVES
2 CFR § 200.323

"(a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.

(b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under Subpart E—Cost Principles of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used."

FTA Circular 4220.1F Chapter VI 6. a. Cost Analysis

"The recipient must obtain a cost analysis when a price analysis will not provide sufficient information to determine the reasonableness of the contract cost. The recipient must obtain a cost analysis when the offeror submits elements (that is, labor hours, overhead, materials, and so forth) of the estimated cost, (such as professional consulting and A&E contracts, and so forth). The recipient is also expected to obtain a cost analysis when price competition is inadequate, when only a sole source is available, even if the procurement is a contract modification, or in the event of a change order. The recipient, however, need not obtain a cost analysis if it can justify price reasonableness of the proposed contract based on a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation."

FTA Circular 4220.1F Chapter VI 6. b. Price Analysis

"If the recipient determines that competition was adequate, a price analysis, rather than a cost analysis, is required to determine the reasonableness of the proposed contract price. As discussed previously in subsection 3.a of this Chapter, the price analysis for micro-purchases may be limited. Similarly, the

recipient may use an abbreviated price analysis for small purchases in most cases. 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 limit and construction contracts over $2,000?

APPLICABILITY
All recipients

BASIC REQUIREMENT
Recipients must include and implement required clauses in its procurements.

EXPLANATION
Recipients are required to include specific required clauses in FTA-funded procurements, intergovernmental agreements (e.g., those involving states and other public entities), and subrecipient agreements. FTA Master Agreement identifies certain clauses that apply to third party contracts. 2 CFR 200.326 and Appendix II to 2 CFR part 200 identify contract provisions for non-Federal contracts under a Federal award. FTA C. 4220.1F discusses Federal requirements that affect a recipient's acquisitions.

Additional guidance is provided through FTA's Third Party Procurement Frequently Asked Questions website. Through the National Rural Transportation Assistance Program (RTAP), FTA developed ProcurementPRO, an on- line procurement tool that assists recipients in developing procurement packages. Using ProcurementPRO, can assist a recipient in developing a procurement package that includes federally required clauses.

Recipients may not modify their own contracts after award to include Federal clauses and so make them eligible for procuring goods and services with Federal funds. Recipients may, however, modify its state's (General Services Administration (GSA)-type contracts to add Federal clauses when they issue orders against those state 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 at the end of this section. Procurements above the micro-purchase threshold must include all applicable FTA clauses as part of the solicitation, purchase order, or contract. A general reference to FTA guidelines is not sufficient to meet this requirement. A checklist of required clauses is provided at the end of this section. The checklist provides a citation from the FTA Master Agreement for each required clause. Certifications, reports, and forms that are required for DBE, Buy America, debarment, and suspension and lobbying are also included as are other required items to assist in determining whether the recipient's policies and procedures are actually being followed. The applicability of FTA clauses to different types of procurements is shown in the exhibit. Note that the construction of ferry vessels using Federal funds is considered a public works project and therefore, the clauses related to construction contracts are applicable.

INDICATOR OF COMPLIANCE
a. Did the recipient include applicable required clauses in FTA-funded procurements?

DETERMINING COMPLIANCE
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 exhibit at the end of this section.

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: The recipient must provide the FTA regional office revised procurement procedures that address inclusion of all FTA-required third party contract clauses through use of a clause checklist or other mechanism. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES:
APPENDIX II TO PART 200—CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

"In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the

compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide 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 §200.322 Procurement of recovered materials."

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 received signed certification from bidders.

APPLICABILITY
All recipients

EXPLANATION
Transit Vehicle Manufacturer (TVM) Certification: As part of their DBE program, all recipients must require that each TVM, as a condition of being authorized to bid on transit vehicle procurements funded by FTA, certify that it has complied with the requirements of 49 CFR 26.49. Only those TVMs listed on FTA's certified list or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. The recipient is required to include a provision in its bid specifications requiring the TVM certification as a condition of permission to bid. The certification should reference 49 CFR part 26 (not Part 23).

A list of certified TVMs that have submitted required DBE information to FTA is available at the FTA website: https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/eligible-tvms-list. However, this list is not exclusive and recipients should consult with FTA to verify the status of TVMs not currently on the website. Prior to award, evidence that this website has been checked or evidence of communication with FTA's Office of Civil Rights to validate TVM certification, should be included in applicable procurement files. FTA has instructed TVMs to submit to recipients a copy of their FTA approval letters along with the TVM certifications.

The TVM definition is codified at 49 CFR 26.5. Note that producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered to be TVMs. Further, to the extent to which a vehicle remanufacturer is responding to a solicitation for new or remanufactured vehicles with a vehicle to which the remanufacturer has provided post-production alterations or retro-fitting, that remanufacturer is considered a TVM. Again, only certified TVMs are eligible to bid on FTA-assisted procurements. Businesses that manufacture, mass- produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered TVMs.

Lobbying Certification: Recipients are required to include a lobbying certification in agreements, contracts, and subcontracts exceeding $100,000. Signed certifications regarding lobbying must be obtained by the recipient from subrecipients and contractors. Subrecipients retain their contractors' certifications and contractors retain subcontractors' certifications. The recipient is responsible for ensuring that they fulfill the requirements in applicable direct procurements exceeding $100,000.

Buy America Certification: Buy America regulations require that all steel, iron, and manufactured products used in the project are produced in the United States. Solicitations for steel, iron, and manufactured products must contain a Buy America certification, unless the procurement is subject to a general waiver or the small purchase waiver. Buy America requirements also apply to capital leases for rolling stock and related equipment. Buy America requirements applicable to rolling stock procurements are discussed in more detail in Part D, Revenue Rolling Stock Procurements.

The small purchase waiver is now included in 49 U.S.C 5323(j)(13) and provides that the term "small purchase" means a purchase of not more than $150,000. On September 16, 2016, the FTA Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver. The statutory language is clear that the small purchase waiver applies to purchases of $150,000 or less, regardless of the size of the project. Therefore, purchases made with FTA financial assistance, including capital, planning, or operating assistance, are subject to the waiver. The waiver applies both to purchases made directly by

recipients or subrecipients and to purchases made by third-party contractors on behalf of the recipient or subrecipient. This provision of the FAST Act applies to all purchases made after October 1, 2015. The $150,000 contract value is based on the total contract amount, including labor and options, and not just the value of the goods purchased. Also, recipients are not permitted to break up procurements in order to stay under the $150,000 threshold. Finally, if a solicitation may result in bids near $150,000, recipients should include the Buy America certifications in the solicitation, with a note clarifying that if the bid is more than $150,000, the bidder must certify per the Buy America requirements, but if the bid is $150,000 or less, no certification will be necessary.

Buy America statute applies to:

- All purchases of steel, iron, and manufactured products greater than $150,000, regardless of whether they involve capital, operating, or planning funds
- Contractors and subcontractors if the contract or subcontract is more than $150,000, including labor and options
- Purchases made using an intergovernmental agreement and jointly purchased manufactured products
- Purchases of used items

For all procurements more than $150,000, the recipient shall include in its bid or request for proposal an appropriate notice of the Buy America provision. Such specifications shall require, as a condition of responsiveness, that the bidder or offeror submit with the bid or offer a completed Buy America certificate in accordance with 49 CFR §§ 661.6 or 661.12 of this part, as appropriate. Recipients should include only the applicable Buy America certification. Inclusion of both certifications for both rolling stock and non-rolling stock procurements is discouraged and may result in confusion on the part of the contractor as to the applicable Buy America requirements.

Recipients may not obtain signed Buy America certifications after contract award for its own contracts or contracts of other recipients to make the contracts eligible for Federal funding. Recipients may, however, obtain signed Buy America certifications before buying off state GSA-type contracts to make them eligible for Federal funding. The recipient should consider the full GSA-type contract amount, not the amount of its purchase, when determining whether Buy America requirements apply to those purchases.

If a bidder or offeror cannot certify compliance with Buy America requirements, the recipient must seek a waiver of the Buy America statute before it may award the contract to the bidder or offeror. Buy America waivers are available on one of the following grounds: applying Buy America requirements would be inconsistent with the public interest; the materials produced in the United States are not produced in a sufficient and reasonably available quantity or are not of a satisfactory quality (i.e., non-availability waiver); or including domestic material will increase the cost of the overall project by more than 25 percent.

The Buy America waiver for minivans was rescinded on December 3, 2012.

INDICATORS OF COMPLIANCE

a. *For FTA-funded vehicle procurements including procurements of remanufactured vehicles, did the recipient include the required DBE TVM certifications in solicitations and receive and verify signed certifications as part of bid responsiveness?*

b. *Did the recipient include required lobbying certifications in solicitations and receive signed certifications from contractors as part of bid responsiveness in procurements over $100,000?*

c. *Did the recipient include required Buy America certifications in solicitations and receive signed certifications from contractors as part of bid responsiveness in applicable procurements over $150,000 that included iron, steel or manufactured products?*

DETERMINING COMPLIANCE

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:

- DBE TVM certifications
- Lobbying certifications
- Buy America certifications

For transit vehicle manufacturer 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 contact 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. TVM status cannot be cured after bid or proposal submittal, but before contract award.

Examine procurement files for inclusion of required Lobbying certifications in solicitations and receipt of signed certifications from bidders in agreements, contracts, and subcontracts exceeding $100,000.

Examine procurement files for inclusion of required Buy America certifications in solicitations and receipt of signed certifications from bidders for:

- all purchases of steel, iron, and manufactured products greater than $150,000, regardless of whether they involve capital, operating, or planning funds
- contractors and subcontractors if the contract or subcontract is more than $150,000, including labor and options
- purchases made using an intergovernmental agreement and jointly purchased manufactured products
- purchases of used items

If a bidder or offeror cannot 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

The recipient is deficient if it does not include, where applicable, a provision in its bid specifications requiring TVM certifications, if the files do not contain TVM certifications from successful bidders, or if the TVM certification is out of date (references Part 23 instead of Part 26). The recipient is deficient if it cannot provide evidence that it ensured that the manufacturer was an eligible TVM at the time it submitted its bid or proposal.

> DEFICIENCY CODE P12-1: No TVM certification
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO procedures for obtaining signed TVM certifications and for ensuring that manufacturers are eligible TVMs at the time of bid or proposal submission. The recipient must submit to the RCRO an updated TVM certification template to be used in future transit vehicle procurements. The recipient must submit to the FTA regional office a copy of the signed form with the next revenue rolling stock procurement.

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 contractors or subcontractors

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for obtaining signed lobbying certifications. The recipient must submit to the FTA regional office a copy of the signed lobbying certification with the next applicable procurement.

The recipient is deficient if it did not include applicable Buy America provision in its solicitation documents.

DEFICIENCY CODE P12-3: Buy America provision not in solicitation and/or contract

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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, or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, the recipient must provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, the recipient must submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office 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, or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, the recipient must provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, the recipient must submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office 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, or manufactured products not subject to a general waiver. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

For procurements for which a Buy America certification was not obtained, the recipient must provide the FTA regional office information documenting that the procurement complies with the Buy America provisions.

For procurements in progress for which bids have not been received, the recipient must submit to the FTA regional office documentation that it included, via an addendum, Buy America requirements in the solicitation.

The recipient must submit to the FTA regional office a copy of the signed Buy America certification before awarding the contract for the next procurement subject to Buy America requirements.

GOVERNING DIRECTIVES
49 CFR 26.49 (a)

*"*If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section."

FTA Circular 9030.1E Chapter V 11.

h. "The recipient is obligated to determine, by checking the TVM listing on FTA's website or by checking with FTA's Office of Civil Rights at the time of bid opening, that the manufacturer likely to receive the contract is in compliance with part 26."

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."

P13. Did the recipient appropriately include and account for liquidated damages in its procurements?

BASIC REQUIREMENT
If recipients include liquidated damages in procurements, the rate must be stated and it must be based on a calculation. Any recovered damages should be credited back to the project account.

APPLICABILITY
Non-state recipients

EXPLANATION
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 weight 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. The procurement file should include a record of the calculation and rationale for the amount of the damages assessed.

The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. Any liquidated damages recovered should be credited to the project account involved unless FTA permits otherwise.

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 third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders. There are methods that may be more appropriate than liquidated damages to incentivize or enforce contractor performance.

INDICATORS OF COMPLIANCE

a. *If the recipient included liquidated damages in its procurements, did it specify the rate in the contract, based on a calculation and rationale?*

b. *If the recipient recovered liquidated damages in its FTA-funded procurements, did it appropriately account for those damages with FTA?*

DETERMINING COMPLIANCE
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 visits, examine selected contract files, in accordance with records sampling procedures, for liquidated damages clause(s). Determine if the rationale for and calculation of 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 DETERMINATIONS
The recipient is deficient if a liquidated damages rate is not specified in the solicitation documents but is included in a resulting contract. The recipient is deficient if it cannot provide a reasonable explanation regarding expected damages as a result of late completion and an appropriate mathematical basis for the dollar value of the liquidated damages.

DEFICIENCY CODE P13-1: Improper use of liquidated damage clause

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office written procedure for the correct use of liquidated damages clauses. If clauses are in existing contracts improperly, direct the recipient to modify the contract to eliminate the clause or provide a justification for the use and level of liquidated damages. Direct the recipient to obtain prior FTA regional office approval before awarding the next contract with a liquidated damage clause.

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 P13-2: Improper accounting for recovered liquidated damages

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for appropriately accounting for recovered liquidated damages.

GOVERNING DIRECTIVE
Master Agreement, 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."

FTA Circular 4220.1F Chapter IV 2. b. (6) (b)1

"Liquidated Damages. FTA has determined that a recipient may use liquidated damages if the recipient reasonably expects to suffer damages through delayed contract completion, or if weight requirements are exceeded, and the extent or amount of such damages are uncertain and would be difficult or impossible to determine. The rate and measurement standards must be calculated to reasonably reflect the recipient's costs should the standards not be met, and must be specified in the solicitation and contract. The assessment for damages is often established at a specific rate per day for each day beyond the contract's delivery date or performance period. A measurement other than a day or another period of time, however, may be established if that measurement is appropriate, such as weight requirements in a rolling stock purchase. The procurement file should include a record of the calculation and rationale for the amount of damages established. Any liquidated damages recovered must be credited to the project account involved unless FTA permits otherwise."

P14. Did the recipient approve, evaluate, and document change orders to procurements?

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

EXPLANATION
Recipients use their own procurement procedures that reflect applicable state and local laws and regulations, provided that the process ensures competitive procurement and the procedures conform to applicable Federal law, including 2 CFR part 200, and FTA Circular 4220.1F, "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. Change orders must be approved by authorized recipient officials. Change orders are, in effect, sole source procurements. 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 $150,000. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation.

To be eligible for FTA assistance under the recipient's award or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its award or cooperative agreement, and reasonable for the completion of project scope.

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?*

DETERMINING COMPLIANCE
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
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 award and reasonable for the completion of project's scope. A change to a contract that is beyond the scope of that contract, is a new non-competitive or sole source award that must be justified under the provisions for non-competitive procurements.

Determine if documentation for selected change orders included:

- Cost justification
- Approval by an authorized official

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it executed change orders to contracts that were not within the scope of the contract, did not evaluate the cost of the change, and/or did not document authorized official approval in accordance with its procurement procedures.

DEFICIENCY CODE P14-1: Insufficient documentation to support change orders

SUGGESTED CORRECTIVE ACTION: The recipient must submit compliant change order procedures to the FTA regional office. For the next change order, submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES
FTA Circular 4220.1F Chapter VII 2. a. The Recipient's Role and Responsibilities

"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. The recipient is also responsible for evaluating and making the necessary decisions involving any claim of a constructive change. In general, FTA expects each recipient to comply with the following procedures: (1) Approval Requirements. FTA expects the recipient to have cost justifications supporting each change order it may issue. FTA also expects the recipient's authorized official to approve any proposed change order before it is issued. (2) Cost Restrictions. To be eligible for FTA assistance under the recipient's grant or cooperative agreement, the cost of the change, modification, change order, or constructive change must be allowable, allocable, within the scope of its grant or cooperative agreement, and reasonable for the completion of project scope."

FTA Circular 4220.1F Chapter VI 3. i. (1) (b)

"When the recipient requires an existing contractor to make a change to its contract that is beyond the scope of that contract, the recipient has made a sole source award that must be justified."

P15. If the recipient included options in an FTA-funded procurement, did it base the amount 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

EXPLANATION
Recipients may include options in contracts that reflect reasonably foreseeable need. If a recipient chooses to use options, the option quantities or periods in the bid 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. If the options were not evaluated as part of the award, the exercise of the options is considered a sole-source procurement.

If the option quantities on a rolling stock or replacement parts purchase appear to exceed the recipient's reasonably foreseeable needs, the recipient may be in violation of the five- or seven-year limitation.

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?*

DETERMINING COMPLIANCE

Prior to the site visit, examine the recipient's policies and procedures to determine if the recipient describes the use 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. If the documentation does not appear to be sufficient, provide this information to the FTA regional office for their further review and action.

During the site visit, examine selected contract files, in accordance with records sampling procedures, for contracts that included options. 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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if the contact quantities were not based on the recipient's foreseeable needs.

DEFICIENCY CODE P15-1: Contract quantities not based on need

SUGGESTED CORRECTIVE ACTION: The recipient must develop 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: The recipient must develop 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 to the FTA regional office documentation that the required process was implemented.

The recipient must provide to the FTA regional office a written assurance that it will not exercise the options unless FTA approval is granted for instances where options that may violate the requirements have not been exercised. The recipient may not assign the options to any other FTA recipients.

GOVERNING DIRECTIVES

2 CFR 200.318(d)

"The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach."

FTA Circular 4220.1F Chapter IV. 1.b. Necessity

"…. requires the recipient to establish procedures to avoid the purchase of unnecessary property and services (including duplicative items and quantities or options it does not intend to use or whose use is unlikely)."

FTA Circular 4220.1F Chapter VI 7. b. (1). Evaluation Required
"In general, FTA expects the recipient to evaluate bids or offers for any option quantities or periods contained in a solicitation if it intends to exercise those options after the contract is awarded."

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
Options for the procurement of buses or replacement parts must not extend for more than 5 years after the date of the original contract or 7 years for rail rolling stock.

APPLICABILITY
All recipients

EXPLANATION
Recipients must not enter into contracts for revenue rolling stock and replacement parts with a period of performance 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 exercise the option to acquire buses or replacement parts later than five years (bus) or seven years (rail) after the date of its original contract. However, the maximum quantity specified in such multi-year contracts must represent the recipient's reasonably foreseeable need.

INDICATOR OF COMPLIANCE
a. *If the recipient procured bus or rail rolling stock or replacement parts did it ensure that the contracts met the five- and seven-year contract term restriction?*

DETERMINING COMPLIANCE
Prior to the site visit, examine the recipient's policies and procedures to determine if the recipient describes management of options for rolling stock purchases. During the site visit, examine selected rolling stock and replacement part contracts to ensure that these met the five- and seven-year contract term restriction. 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 exercise 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: The recipient must provide the FTA regional office revised procurement procedures that include the five- and seven-year restriction on the period of performance for rolling stock and replacement part contracts supported with FTA funds. The recipient must provide the FTA regional office with an assurance that unexecuted options will not be executed on an existing contract that exceeds the five- or seven-year restriction. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

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 4220.1F Chapter IV 2. e. (10) Time Limits for Options on Rolling Stock Contracts

"MAP-21 amended 49 U.S.C. Section 5325(e)(1) by adding subsections (A) and (B), retaining the five (5) year option for the procurement of buses, while extending the option for rail procurements to seven (7) years. Consequently: (a) Buses. A recipient: 1 May enter into a multi-year contract to acquire buses or replacement parts, with an option not exceeding five (5) years to buy additional buses or replacement parts, 49 U.S.C. Section 5325(e)(1)(A), but 2 May not exercise the option to acquire buses or replacement parts later than five (5) years after the date of its original contract. (b) Rail. A recipient: May enter into a multi-year contract to acquire railcars or replacement parts, with an option not exceeding five (5) years to buy additional railcars or replacement parts, 49 U.S.C. Section 5325(e)(1)(B), but 2 May not exercise the option to acquire railcars or replacement parts later than seven (7) years after the date of its original contract.

FTA interprets these five and seven-year periods as covering the recipient's "material requirements" for rolling stock and replacement needs from the first day when the contract becomes effective to its "material requirements" at the end of the fifth or seventh year, as applicable. In the case of rolling stock, which frequently cannot be delivered expeditiously, FTA recognizes that 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. This means that the contract may not have options for more rolling stock and replacement parts than a recipient's material requirements for the applicable five or seven-year period. This does not mean the recipient must obtain delivery, acceptance, or even fabrication in five or seven years. Instead it means only that FTA limits a contract to purchasing no more than the recipient's material requirements for rolling stock or replacement parts for five or seven years based on the effective date of the contract."

P17. If the recipient purchased FTA-funded assets through a "piggyback" procurement method, did it comply with applicable requirements regarding inclusion of Federal requirements, assignability, price, and no cardinal changes?

BASIC REQUIREMENT
Recipients may use another recipient's contract rights if the original contract contained required Federal provisions, included an assignability provision, does not contain excessive options, the optioned vehicles do not include cardinal changes to the original vehicles, and the contract price is fair and reasonable.

APPLICABILITY
All recipients

EXPLANATION
For reasons of economy, FTA permits the assignment of unneeded contract rights, 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 the Super Circular. Furthermore, to the extent that an improper assignment of contract rights enables an assignee to avoid otherwise required procurement procedures, it also undermines the Super Circular's general purpose of full and open competition in federally assisted procurements.

While it has become increasingly popular for recipients to acquire vehicles through this method of procurement, piggybacking can also occur for purchases of services and property. A recipient that obtains contractual rights through assignment may use them after first determining that the contract price remains fair and reasonable, and the contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights.

FTA expects the recipient seeking the assignment to review the original contract to be sure that the quantities the assigning recipient acquired, coupled with the quantities the acquiring recipient seeks, do not exceed the amounts available under the assigning recipient's contract. Otherwise, the purchase is a "tag-on" and is considered an improper sole source procurement.

Any changes in the vehicle when assigned must be within the original scope (i.e., no major changes in configuration or design). FTA has not developed a finite list of acceptable contract changes. In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change includes a change from a high-floor to a low- floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, colors, exterior paint schemes, signage, floor covering, and other similar items to be permissible changes.

A manufacturer may not agree to amend the contract to provide for a higher domestic content in order to permit a recipient to piggyback on an existing contract. Such an amendment is considered a cardinal change to the original contract.

Vehicles added to the base or option amounts originally specified are called "tag-ons." Tag-ons are not permitted. A tag-on is defined as the adding on to the contracted quantities (base and option) as originally advertised, competed, and awarded, whether for the use of the buyer or for others, and then treating the add-on portion as though it met the requirements of competition.

If a recipient is using another recipient's procurement contract for purchasing revenue vehicles (i.e., "piggybacking"), the purchaser may rely on the pre-award audit completed prior to the original contract. However, the recipient must review the audit and prepare its own signed certifications.

Piggybacking is different from joint procurements. A joint procurement is a method of contracting in which two or more recipients agree from the outset to use a single solicitation document and enter into a single contract with a vendor. FTA encourages the use of joint procurements when combining requirements into a larger order can result in a more advantageous contract for the participating recipients.

Joint procurements

A joint procurement is a method of contracting in which two or more recipients agree from the outset to use a single solicitation document and enter into a single contract with a vendor. The parties to a joint procurement may be from more than one state. FTA encourages the use of joint procurements when combining requirements into a larger order can result in a more advantageous contract for the participating recipients. FTA's current guidance does not require the needs of each joint procurement

participant to be separately written into the contract. And, as with regular procurements, a joint procurement may take the form of an indefinite delivery/indefinite quantity contract (ID/IQ) if it contains "total minimum and total maximum" terms.

Participation in a joint procurement does not relieve any recipient of the responsibilities it would have if it were procuring goods or services by itself. Recipients that participate in a joint procurement must adhere to all applicable Federal requirements, including the prohibition against using Federal money to procure unneeded items.

A joint procurement may not be used as an opportunity to improperly expand the scope of a federally assisted contract. A contract has been improperly expanded when excess capacity has been added primarily to permit assignment of those contract rights to another entity.

State-led procurements

States are accorded substantial deference under 49 CFR 18.36(a) and 2 CFR 200.317 in the policies and procedures used in state procurements. By this authority, a state may follow the same policies and procedures it uses for procurements from its non-Federal funds, so long as it ensures that every purchase order or similar contract includes any clauses required by Federal law. Many states use this authority to create purchasing schedules by which the state and its subsidiaries may acquire goods.

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 original contract contained an assignability clause and that the quantities it used were available?*

c. *For "piggyback" procurements, did the recipient document that the price of assignments acquired was fair and reasonable?*

d. *For "piggyback" procurements, did the recipient make cardinal changes to the vehicle ordered under the option (e.g., ordered a different size vehicle, fuel option, etc.)?*

e. *Did the recipient exercise an assigned option for delivery of vehicles on a contract that was entered into before December 4, 2015? If yes:*

    1. *If the assigned option is exercised for delivery of vehicles in FY2018 or FY2019, did the original contract include a provision for domestic content of more than 65 percent?*

    2. *If the assigned option is exercised for delivery of vehicles in FY2020 and beyond, did the original contract include a provision for domestic content of more than 70 percent?*

DETERMINING COMPLIANCE

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient describes compliance with "piggybacking" purchases. Examine the recipient's listing of procurements to identify any piggybacking 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.

Identify any piggybacking procurements entered into subsequent to December 4, 2015. Onsite, review the date of the underlying contract on which the recipient is piggybacking. Determine if that contract was awarded subsequent to December 4, 2015. If the contract was entered into prior to December 4, 2015, assigned options for delivery during FY2018 and FY2019 must include provisions for domestic content of 65 percent in the original contract. Also, assigned options for delivery during FY2020 and FY2021 must include provisions for domestic content of 70 percent in the original contract.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it cannot document that:

- the original award met Federal requirements,
- the contract contained an assignability clause, and that assigned quantities did not exceed contract allowable amounts,
- the price was determined to be fair and reasonable, and
- the option vehicle did not contain a cardinal change to the original vehicle.

DEFICIENCY CODE P17-1: Improper piggyback purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office piggybacking procedures that comply with FTA requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient may be required by FTA to terminate the agreement for convenience if an improper piggyback procurement is in process.

The recipient is deficient if, subsequent to December 4, 2015, it acquired options through piggybacking on a contract that was awarded prior to October 1, 2015 and the base contract did not have the correct FY2018, FY2019 or FY2020 domestic content requirement.

DEFICIENCY CODE P17-2: Domestic content requirements not met in piggyback purchase

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office piggybacking procedures that comply with FTA requirements. For the next procurement, submit to the FTA regional office documentation that the required process was implemented.

The recipient may be required by FTA to terminate the agreement for convenience if an improper piggyback procurement is in process.

GOVERNING DIRECTIVES

FTA Circular 4220.1F Chapter V (7)(2) Assignment of Contract Rights

"…The recipient may assign those contract rights to other recipients if the original contract contains an assignability provision that permits the assignment of all or a portion of the specified deliverables under the terms originally advertised, competed, evaluated, and awarded, or contains other appropriate assignment provisions. Some refer to this process as "piggybacking…" "…A recipient that obtains contractual rights through assignment may use them after first determining that the original contract price remains fair and reasonable, and the original contract provisions are adequate for compliance with all Federal requirements. The recipient need not perform a second price analysis if a price analysis was performed for the original contract. However, FTA expects the recipient to determine whether the contract price or prices originally established are still fair and reasonable before using those rights."

FTA Circular 4220.1F Chapter V 7. a. (1) (b). Exercise of Options

"A recipient may use contract options held by another recipient with the following limitations: … The recipient may not exercise an option unless it has determined that the option price is better than prices available in the market, or that when it intends to exercise the option, the option is more advantageous."

FTA Circular 4220.1F Chapter V, Section 7. b. (2) (d)

"In the case of rolling stock, a major change in quantity or a substitution of major end items not contemplated when competition for the original award took place would generally be a cardinal change. Another cardinal change would, at this time, include a change from a high-floor to a low-floor vehicle. Changing an engine might result in a cardinal change depending on the circumstances surrounding the project and whether a compatible replacement could be obtained through competition. FTA, however, considers changes to seating, fabrics, and colors, exterior paint schemes, signage, and floor covering, and other similar changes to be permissible changes."

Notice of Policy on the Implementation of the Phased Increase in Domestic Content Under the Buy America Waiver for Rolling Stock and Notice of Public Interest Waiver of Buy America Domestic Content Requirements for Rolling Stock Procurement in Limited Circumstances IV, 81 Federal Register 60278 (September 1, 2016)

"The right to exercise an option does not create a contractual obligation until that contract is actually signed. Thus, assigning contract options to a third party will result in a new contract between that third party and the transit vehicle manufacturer, negating commenters' concerns that an increase in domestic content might be viewed as a "cardinal change." Third parties seeking the assignment of procurement options (a/k/a "piggybacking") have no contractual or statutory right to that option, and FTA considers that procurement to be a "new" contract and therefore subject to the applicable FAST Act standard based upon the scheduled delivery date of the first production vehicle under the new contract."

P18. Did the recipient ensure that appropriate FTA approval was acquired for advance payments and that adequate protection was exercised for progress payments?

BASIC REQUIREMENT
The recipient must receive FTA approval for advance payments and protect FTA's interest on progress payments.

APPLICABILITY
All recipients

EXPLANATION
FTA does not authorize and will not participate in funding advance payments to a contractor without prior, written approval from the FTA regional office administering the project. A recipient may use its local funds for advance payments. However, advance payments made with local funds before an award has been awarded or before the issuance of a letter of no prejudice or other pre-award authority are ineligible for reimbursement.

FTA will allow progress payments if the payments are made to the contractor only for costs incurred in the performance of the contract. The recipient may use FTA assistance to support progress payments, provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment.

INDICATORS OF COMPLIANCE

a. *If the recipient used FTA funds for advance payments to contractors, is prior FTA approval documented in procurement files?*

b. *If the recipient used FTA funds for progress payments to contractors, did it adequately protect FTA's interest and substantiate the work for which payment was made?*

DETERMINING COMPLIANCE

Prior to the site visit, examine the recipient's policies and procedures to determine how the recipient describes management of payments to contractors and administration and management of progress payments.

During the site visit, examine selected contract files, in accordance with records sampling procedures, for payments that may be categorized as payment to a contractor before the contractor incurred contract costs. Progress payments that do not reflect contractor incurred costs could be determined to be advance payments. If such payments are evident, determine if the recipient documented that it received prior FTA approval in advance of the payments.

Examine selected contract files for description of how and when progress payments will be made. Determine if the recipient documented appropriate measures it took to protect FTA's interest before making any progress payments and that it has written documentation to substantiate the work for which payment was made.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has used advance payments without prior FTA approval.

DEFICIENCY CODE P18-1: No FTA approval for advance payments

SUGGESTED CORRECTIVE ACTION: The recipient must report immediately to the FTA regional office any improper advance payments with an explanation of the circumstances surrounding the payments. The recipient must submit to the FTA regional office procedures for obtaining prior FTA approval for advance payments. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it has made progress payments but has not obtained adequate security for those payments and does not have written documentation to substantiate the work for which payment was made.

DEFICIENCY CODE P18-2*:* Federal interest not protected in advance/progress payments

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for obtaining adequate security and or sufficient written documentation to substantiate the work for progress payments. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

GOVERNING DIRECTIVES

2 CFR 200.305

2 CFR Part 205

FTA C. 5010.1E, page IV-15

"Provisions in 2 CFR §200.305 and 31 CFR Part 205 govern payments to recipients for financing operations under federal assistance and other programs. These regulations require that advance payment to a recipient be limited to the minimum amounts needed and timed to be in accord with only the actual, immediate cash requirements of the recipient in carrying out the purpose of the Award. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the recipient for direct program or costs of the Award and the proportionate share of any allowable indirect costs. The recipient must make timely payment to third-party contractors in accordance with the third-party contract provisions."

FTA C. 4220.1F, Ch. IV, Sections 2. b. (5)(b) Advance Payments

"Advance payments are payments made to a contractor before the contractor incurs contract costs. The recipient may use its local share funds for advance payments. However, if there is no automatic preaward authority for its project, then advance payments made with local share funds before FTA assistance has been awarded, or before a letter of no prejudice has been issued or other preaward authority has been provided, or before FTA approval for the specific advance payment has been obtained, are ineligible for reimbursement. The following principles and restrictions apply: 1 Use of FTA Assistance Prohibited. The recipient may not use FTA assistance to make payments to a third party contractor before the contractor has incurred the costs for which the payments would be attributable. 2 Exceptions for Sound Business Reasons. Apart from advance payments that are customary, as discussed further, FTA does occasionally make exceptions to its advance payment prohibitions, if the recipient can provide sound business reasons for doing so and has obtained FTA's advance written concurrence. A recipient that seeks to use FTA assistance to support advance payments should contact the regional office administering its project to obtain FTA concurrence. a Adequate Security for Advance Payments. FTA recognizes that advance payments may be needed for certain costs supported by sound business judgment. Adequate security for the advance payment is an essential pre-condition to FTA's concurrence in the use of FTA or local share funds. b Customary Advance Payments. FTA recognizes that advance payments are typically required for, but are not limited to, public utility connections and services, rent, tuition, insurance premiums, subscriptions to publications, software licenses, construction mobilization costs, transportation, hotel reservations, and conference and convention registrations. Accordingly, the recipient may use FTA assistance to support or reimburse the costs of such acquisitions. FTA concurrence is required only when such advance payment or payments customarily required in the marketplace exceed $100,000."

FTA C. 4220.1F, Ch. IV, Sections 2. b. (5)(c) Progress Payments

"Progress payments are payments for contract work that has not been completed. The recipient may use FTA assistance to support progress payments provided the recipient obtains adequate security for those payments and has sufficient written documentation to substantiate the work for which payment is requested. 1. Adequate Security for Progress Payments. Adequate security for progress payments may include taking title or obtaining a letter of credit or taking equivalent measures to protect the recipient's financial interest in the progress payment. Adequate security should reflect the practical realities of different procurement scenarios and factual circumstances. FTA acknowledges the practical reality that taking title to work in progress may not be desirable in some circumstances. The recipient should always consider the costs associated with providing security (for example, the recipient may need to acquire bonds or letters of credit in the commercial marketplace) and the impact of those costs on the contract price, as well as the consequences of incomplete performance. 2. Adequate Documentation. Sufficient documentation is required to demonstrate completion of the amount of work for which progress payments are made."

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

EXPLANATION
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 part 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?*

DETERMINING COMPLIANCE
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: If any vehicles have not been tested and the recipient has accepted the vehicles, the recipient must notify the FTA regional office

immediately. The recipient must provide procedures for only accepting vehicles that were tested and received a passing score for future bus purchases to the FTA regional office. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

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: The recipient must obtain the Altoona Bus Test Report for the specific make/model purchased and provide a copy of it and procedures for obtaining the report for future bus purchases to the FTA regional office.

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 pre-award and post-delivery audit requirements?

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, and Federal Motor Vehicle Safety Standards (FMVSS).

APPLICABILITY
All recipients

EXPLANATION
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, 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.

A procurement of small buses and vans which totals not more than $150,000 is not subject to the general Buy America requirements of 49 CFR part 661. This waiver does not exempt rolling stock from the pre-award and post- delivery purchaser's requirements and FMVSS audits required by 49 CFR part 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 signed certification.

Compliance with purchaser's specifications: The recipient must complete a pre-award purchaser's requirements certification verifying that the manufacturer's 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 sign 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 exceeds the simplified acquisition threshold, 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 before October 1, 2015, the domestic content must exceed 60 percent. For rolling stock contracts entered into on or after October 1, 2015, the applicable domestic content percentage under section 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 on or after October 1, 2015, then the new FAST Act provisions applicable for the date of delivery of the first production vehicle shall apply. Accordingly, if the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent.

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 part 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 sign 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 any number of 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 summarizing 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 certification that the vehicles comply with the FMVSS issued by the National Highway Traffic Safety Administration (49 CFR part 571). The requirement to conduct an audit for compliance with FMVSS and sign 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?*

DETERMINING COMPLIANCE

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 included.

- For contracts entered into before October 1, 2015, all vehicles delivered under the original contract base order and any properly exercised options by recipients who are direct parties to the contract must contain a domestic content of 60 percent or more.
- The FAST Act amendments below regarding increasing domestic content do not apply to contracts entered into after October 1, 2015, even if the contract provides for the delivery of the first production vehicle after FY2017.
- For rolling stock contracts entered into on or after October 1, 2015, the applicable domestic content percentage is 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.
- If the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent.

- If the delivery date of the first production vehicle is delayed such that it will be delivered in a year with a higher domestic content, FTA will address those situations on a case-by-case basis.

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 made an included in their files the following certifications:

- Pre-award Buy America
- Pre-award Purchaser's Requirements
- Post-delivery Buy America
- Post-delivery Purchaser's Requirements
- Post-delivery FMVSS

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: The recipient must confer with the FTA regional office for the appropriate remedy based on the stage of the procurement process.

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: The recipient must confer with the FTA regional office for the appropriate corrective action. The recipient must submit to the FTA regional office procedures for pre-award and post-delivery review and inspection. For the next procurement, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient must submit to the FTA regional office 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, the recipient must submit to the FTA regional office documentation that the required process was implemented.

The recipient is deficient if it did not make pre-award and/or post-delivery certifications for applicable rolling stock procurements.

DEFICIENCY CODE P20-3: Pre-award and/or post-delivery certifications lacking

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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, the recipient must submit to the FTA regional office documentation that the required process was implemented.

For the next revenue rolling stock procurement, the recipient must submit to the FTA regional office pre-award audit information and certifications before awarding the contract and the post-delivery audit information and certifications before drawing FTA funds.

GOVERNING DIRECTIVES
49 U.S.C. §5323(j)

49 CFR 663 Pre-award and Post-delivery Audits of Rolling Stock Purchases "Subpart B—Pre-Award Audits

§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."

§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 certification information as described in §663.41 or §663.43 of this part."

§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."

§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. Subpart C—Post-Delivery Audits"

§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."

§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."

§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."

§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."

§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. Subpart D—Certification of Compliance With or Inapplicability of Federal Motor Vehicle Safety Standards"

§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."

§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."

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)

"For rolling stock contracts entered into on or after October 1, 2015, i.e., the effective date of the FAST Act, the applicable domestic content percentage under section 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 on or after October 1, 2015, then the new FAST Act provisions applicable for the date of delivery of the first production vehicle shall apply. Accordingly, if the first production vehicle is delivered in FY2018 or FY2019, the domestic content must be more than 65 percent, and if the first production vehicle is delivered in FY2020 or beyond, the domestic content must be more than 70 percent. These delivery provisions apply to contracts entered into on or after October 1, 2015, unless a waiver is granted. If the delivery date of the first production vehicle is delayed such that it will be delivered in a year with a higher domestic content, FTA will address those situations on a case-by-case basis. The FAST Act amendments do not apply to contracts entered into before October 1, 2015, even if the contract provides for the delivery of the first production vehicle after FY2017. For contracts entered into before October 1, 2015, 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."

FTA is issuing two general public interest waivers to address two categories of recipients and manufacturers: (1) Recipients who entered into contracts or placed purchase orders against State schedules between October 1, 2015 and December 4, 2015; and (2) recipients who have entered into contracts after December 4, 2015, as a result of solicitations for bids or requests for proposals that were advertised before December 4, 2015. In addition, FTA is issuing a third public interest waiver for recipients who solicited contracts on or after December 4, 2015, provided they enter into a contract within 60 days of publication of this Notice.

P21. Does the recipient perform oversight of its subrecipients' FTA-funded procurement activities?

BASIC REQUIREMENT
The recipient is responsible for ensuring that subrecipients administer FTA-funded procurements in accordance with the requirements in 2 CFR part 200 and FTA Circular 4220.1F.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
When a recipient contracts out a portion of its federally funded operation or passes through funding to a subrecipient, competitive procurement requirements may apply to the contractor and/or subrecipient. Typically, this requirement would apply to any third party or subrecipient agreement in which the contractor or subrecipient performs primary project activities normally performed by the recipient directly. In such circumstances, the procurement process of the contractor/subrecipient should meet Federal requirements contained in the FTA Master Agreement, including Buy America, debarment and suspension, and lobbying requirements. Furthermore, a recipient needs to have a mechanism to ensure contractor/subrecipient compliance.

Some recipients provide written guidelines or standard terms and conditions to subrecipients and contractors for direct procurements. Some recipients review subrecipients' and contractors' direct procurements, particularly for vehicles, equipment, and construction. Such reviews, which generally focus on bid 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. 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?*

DETERMINING COMPLIANCE

Request and review a listing of subrecipients. 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.

Onsite, during subrecipient visits, select sample procurements for compliance with 2 CFR part 200 and FTA Circular 4220.1F. Governmental subrecipients may use State procurement procedures and only procurement provisions that apply to the State apply to them. Private, non-profit subrecipients must follow 4220.1F.

Subrecipients of states that are public entities and contractors must comply with FTA requirements that apply to states. Subrecipients of states that are private nonprofit or for profit entities must comply with all the FTA requirements of FTA C. 4220.1F. FTA considers all metropolitan planning organizations (MPOs), even those incorporated as a nonprofit organization under state law, to be "local governments." Consequently, MPOs must comply with the FTA requirements that apply to states.

The following procurement requirements apply to states and their public entity subrecipients and contractors:

- Comply with its own procurement regulations
- Conduct all procurements in a manner providing full and open competition
- Exclude the use of statutorily or administratively imposed in-state or local geographical preferences in the evaluation of bids or proposals except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference
- Use competitive proposal procedures based on the Brooks Act when contracting for architectural and engineering services, if the State has not adopted a statute governing the procurement of such services before August 10, 2005
- Award to only responsible contractors possessing the ability, willingness and integrity to perform successfully under the terms and conditions of the contract
- Ensure that every purchase order and contract executed using Federal funds includes all clauses required by Federal statutes and executive orders and their implementing regulations
- Do not enter into any contract for rolling stock with a period of performance for ordering exceeding five years (seven years for rail) inclusive of options without prior FTA approval
- Comply with Buy America requirements, including pre-award and post-delivery requirements
- Comply with debarment and suspension requirements
- Comply with lobbying requirements
- Comply with piggybacking requirements in addition to the requirements that apply to states

FTA C. 4220.1F requirements that apply to private nonprofit or for-profit entities include, but are not limited to, the following:

- Maintain a written code of standards of conduct governing the performance of employees engaged in the award and administration of contracts
- Have written procurement policies and procedures
- Have written protest procedures to handle and resolve disputes relating to the award of contracts
- Have procedures for settlement of contract issues/disputes
- Analyze each planned acquisition in order to identify and evaluate potential organizational conflicts of interest
- Review procurement requests to avoid duplicative or unnecessary purchases
- Incorporate a clear and accurate description of the material, product, or services being procured; identify all requirements that offerors must fulfill; and identify evaluation factors in solicitations
- Develop an ICE before receiving bids or proposals
- Conduct a contract cost or price analysis for every procurement
- Evaluate options at the time of bid award, exercise the options at the agreed upon terms, and determine that the option price is better than current market prices before exercising the options
- Maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders
- Maintain a written record of procurement history

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 or contractors 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: The recipient must submit to the FTA regional office with documentation that it has implemented a procurement monitoring program.

GOVERNING DIRECTIVE

2 CFR §200.331 "Requirement for pass-through entities:

All pass-through entities must: (d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include: (1) Reviewing financial and performance reports required by the pass-through entity. (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means. (3) Issuing 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 Management decision."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. 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 or Buy America?

2. Are any oversight reviews audits, or investigations scheduled during this Federal fiscal year?

3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?

4. Are any oversight review, investigation, or audit findings currently open?

5. If a PSR has been requested for the upcoming year, what triggered the review request (e.g., new recipient, known procurement)?

6. Are any issues related to procurement indicated in the Oversight Assessment Tool (OAT)?

7. 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?

8. 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.)?

9. How does the recipient manage FTA-related procurement functions: centralized with one department establishing, monitoring, and overseeing policies and procedures, or decentralized, allowing other internal departments/staff to purchase goods and or services using FTA funds?

10. If the procurement function is decentralized, how does the recipient ensure that FTA-funded procurements are in compliance with FTA requirements?

11. How do procurement personnel collaborate with users in the development of specifications and choosing the method for procurement?

12. Did background research or site visit observations reveal 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 Part 1201, incorporating 2 CFR Part 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

3. 49 CFR Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments”

4. FTA Circular 4220.1F, “Third Party Contracting Guidance”

5. FTA Circular 5010.1E, “Award Management Requirements”

6. FTA Circular 9030.1E, “Urbanized Area Formula Program: Program Guidance and Grant Application Instructions”

7. FTA Master Agreement

Buy America

8. 49 U.S.C 5323(j)

9. 49 CFR Part 661, “Buy America Requirements”

10. 49 CFR Part 663, “Pre-Award and Post-Delivery Audits of Rolling Stock Purchases”

11. FTA September 16, 2016, Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver

Federal Motor Vehicle Safety Standards
12. 49 CFR Part 571, “Federal Motor Vehicle Safety Standards”

Bus Testing
13. 49 CFR Part 665, “Bus Testing”

Suspension/Debarment
14. 2 CFR Part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension”

15. 2 CFR Part 180, “Non-procurement Suspension and Debarment”

Lobbying
16. 49 CFR Part 20, “New Restrictions on Lobbying”

USEFUL WEBLINKS
1. FTA Procurement Frequently Asked Questions

2. FTA Buy America Website

3. Bus Testing Website

4. National RTAP ProcurementPRO

5. System for Award Management

Exhibit 6
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	***TYPE OF PROCUREMENT***				
	Professional Services/A&E	***Operations/ Management/ Subrecipients***	***Rolling Stock Purchase***	***Construction***	***Materials & Supplies***
No Federal government obligations to third parties by use of a disclaimer	*All*	*All*	*All*	*All*	*All*
Program fraud and false or fraudulent statements and related acts	*All*	*All*	*All*	*All*	*All*
Access to Records	*All*	*All*	*All*	*All*	*All*
Federal changes	*All*	*All*	*All*	*All*	*All*
Civil Rights (EEO, Title VI & ADA)	*All*	*All*	*All*	*All*	*All*
Incorporation of FTA Terms	*All*	*All*	*All*	*All*	*All*
Energy Conservation	*All*	*All*	*All*	*All*	*All*
Termination Provisions (not required of states)	*>$10,000*	*>$10,000*	*>$10,000*	*>$10,000*	*>$10,000*
Debarment and Suspension	*>$25,000*	*>$25,000*	*>$25,000*	*>$25,000*	*>$25,000*
Buy America			*>$150,000*	*>$150,000*	*>$150,000 (for steel, iron, manufactured products)*
Provisions for resolution of disputes, breaches, or other litigation	*>$150,000 (see Note)*	*>$150,000 (see Note)*	*>$150,000 (see Note)*	*>$150,000 (see Note)*	*>$150,000 (see Note)*
Lobbying	*>$100,000*	*>$100,000*	*>$100,000*	*>$100,000*	*>$100,000*
Clean Air	*>$100,000*	*>$100,000*	*>$100,000*	*>$100,000*	*>$100,000*
Clean Water	*>$100,000*	*>$100,000*	*>$100,000*	*>$100,000*	*>$100,000*
Cargo Preference			*Involving property that may be transported by ocean vessel*	*Involving property that may be transported by ocean vessel*	*Involving property that may be transported by ocean vessel*
Fly America	*Involving foreign transport or travel by air*	*Involving foreign transport or travel by air*	*Involving foreign transport or travel by air*	*Involving foreign transport or travel by air*	*Involving foreign transport or travel by air*

Exhibit 6
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	***TYPE OF PROCUREMENT***				
	Professional Services/A&E	***Operations/ Management/ Subrecipients***	***Rolling Stock Purchase***	***Construction***	***Materials & Supplies***
Davis Bacon Act				*>$2,000 (including ferry vessels)*	
Copeland Anti-Kickback Act *Section 1* *Section 2*				*All* *>$2,000 (including ferry vessels)*	
Contract Work Hours & Safety Standards Act		*>$100,000*	*>$100,000*	*>$100,000 (including ferry vessels)*	
Bonding (not required of states)				*>$100,000 (including ferry vessels)*	
Seismic Safety	*A&E for new buildings &additions*			*New buildings &additions*	
Transit Employee Protective Arrangements		*Transit operations funded with Section 5307, 5309, 5311 or 5316 funds*			
Charter Service Operations		*All*			
School Bus Operations		*All*			
Drug and Alcohol Testing		*Transit operations funded with Section 5307, 5309 or 5311 funds*			
Patent Rights	*Research &development*				
Rights in Data and Copyrights requirements	*Research & development*				

Exhibit 6
APPLICABILITY OF THIRD-PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

CLAUSE	***TYPE OF PROCUREMENT***				
	Professional Services/A&E	***Operations/ Management/ Subrecipients***	***Rolling Stock Purchase***	***Construction***	***Materials & Supplies***
Special DOL EEO clause for construction projects				>$10,000	
Disadvantaged Business Enterprises (DBEs)	*All*	*All*	*All*	*All*	*All*
Prompt Payment	*All if threshold for DBE program met*	*All if threshold for DBE program met*	*All if threshold for DBE program met*	*All if threshold for DBE program met*	*All if threshold for DBE program met*
Recycled Products		*Contracts for items designated by EPA, when procuring $10,000 or more per year*		*Contracts for items designated by EPA, when procuring $10,000 or more per year*	*Contracts for items designated by EPA, when procuring $10,000 or more per year*
ADA Access	*A&E*	*All*	*All*	*All*	
Special Notification Requirements for States	*Limited to states*	*Limited to states*	*Limited to states*	*Limited to states*	*Limited to states*

Exhibit 6.1
REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	***COMMENTS***	***MASTER AGREEMENT REFERENCE******
All FTA-Assisted Third Party Contracts and Subcontracts		
No Federal government obligations to third parties by use of a disclaimer		*§ 3.l*
Program fraud and false or fraudulent statements and related acts		*§ 4.3.f*
Access to Records		§ 9.c
Federal changes		§ 3.i
Civil Rights (EEO, Title VI & ADA)		§ 12.c, e, and h.
Incorporation of FTA Terms	*Per FTA C. 4220.1F*	
Energy Conservation		§ 26.j
Awards Exceeding $10,000		
Termination provisions	*49 CFR Part 18 Not required of states*	*§ 16.d(2)12*
Awards Exceeding $25,000		
Debarment and Suspension	*2 CFR Parts 180 and 1200*	*§ 4.b*
Awards Exceeding the Simplified Acquisition Threshold ($150,000)		
Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.		
Buy America	*When tangible property or construction will be acquired*	*§ 15.a*
Provisions for resolution of disputes, breaches, or other litigation		*§ 39*
Awards Exceeding $100,000 by Statute		
Lobbying		*§ 3.d*
Clean Air		*§ 16.d(7)7.n*
Clean Water		*§ 16.d(7)*
Transport of Property or Persons		
Cargo Preference	*When acquiring property suitable for shipment by ocean vessel*	*§ 15.b*
Fly America	*When property or persons transported by air between U.S. and foreign destinations, or between foreign locations*	*§15.c*

Exhibit 6.1
REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	***COMMENTS***	***MASTER AGREEMENT REFERENCE******
Construction Activities		
Davis Bacon Act	*Except for contracts <$2,000 or third party contracts for supplies, materials, or articles ordinarily available on the open market*	*§ 16.d(4)*
Copeland Anti-Kickback Act *Section 1* *Section 2*	 *All* *Contracts >$2,000*	*§ 24.a(3)*
Contract Work Hours & Safety Standards Act	*Contracts >$100,000*	*§ 16.d(5)*
Bonding for construction activities exceeding $100,000	*5% bid guarantee;* *100% performance bond; and* *Payment bond equal to:* • *50% for contracts < $1 M* • *40% for contracts > $1 M, but < $5 M* • *$2.5 M for contracts > $5 M* *Not required of states*	*§ 16.n(1)*
Seismic Safety	*Contracts for construction of new buildings or additions to existing buildings*	*§ 23.b*
Special DOL EEO Clause	*Contracts >$10,000*	*§ 12.d(3)*
Nonconstruction Activities		
Nonconstruction Employee Protection (Contract Work Hours and Safety Standards Act)	*Applicable to all turnkey, rolling stock and operational contracts (excluding contracts for transportation services) > $100,000*	*§ 28.b*
Transit Operations		
Transit Employee Protective Arrangements	*Applies to Section 5307, 5309, 5311 and 5316 projects*	*§ 24.d28.d*
Charter Service Operations		*§ 2832*
School Bus Operations		*§ 29*
Drug and Alcohol Testing	*Safety sensitive functions.* *Applies to Section 5307, 5309 and 5311 projects*	*§40.b*
Planning, Research, Development, and Documentation Projects		
Patent Rights		*§ 17*
Rights in Data and Copyrights		*§ 1820*
Miscellaneous Special Requirements		
Disadvantaged Business Enterprises (DBEs)	*Contracts awarded on the basis of a bid or proposal offering to use DBEs*	*§ 12.e3.d*

Exhibit 6.1
REQUIRED THIRD PARTY CONTRACT CLAUSES
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	***COMMENTS***	***MASTER AGREEMENT REFERENCE******
Prompt Payment and Return of Retainage	*Per 49 CFR Part 26, if recipient meets the threshold for a DBE program*	*§ 12.e*
Recycled Products	*Contracts for items designated by EPA, when procuring $10,000 or more per year*	*§ 16.d(10)*
ADA Access	*Contracts for rolling stock or facilities construction/ renovation*	*§ 12.h3.g*
Assignability Clause	*Piggyback procurements*	*§ 16.a(3)*
State Requirements		
Special Notification Requirements for States		*§ 37*

Exhibit 6.2
REQUIRED CERTIFICATIONS, REPORTS, AND FORMS
(excluding micro-purchases, except for construction contracts over $2,000)

REQUIREMENT	***COMMENTS***	***MASTER AGREEMENT REFERENCE******
Bus Testing Certification and Report	*Procurements of buses and modified mass produced vans*	*§ 16.m*
Transit Vehicle Manufacturer Certification	*Procurements of railcars or buses and modified mass produced vans*	*§ 12.d(4)*
Buy America Certification	*Projects >$150,000 that contain steel, iron or manufactured products*	*§ 15.a*
Pre-Award Audit	*Rolling stock procurements*	*§ 16 m*
Pre-Award Buy America Certification	*Rolling stock procurements>$150,000*	*§ 16 m*
Pre-Award Purchaser's Requirement Certification	*Rolling stock procurements*	*§ 16 m*
Post-Delivery Audit	*Rolling stock procurements*	*§ 16 m*
Post-Delivery Buy America Certification	*Rolling stock procurements >$150,000*	*§ 16 m*
Post-Delivery Purchaser's Requirement Certification	*Rolling stock procurements*	*§ 16.m7.p(3)*
On-Site Inspector's Report	*Rolling stock procurements for more than 10 vehicles for areas >200,000 in population and 20 for areas <200,000 in population*	*§ 16.m*
Federal Motor Vehicles Safety Standards Pre-Award and Post-Delivery Certification	*Non-rail rolling stock procurements*	*§ 16.m*
Excluded Parties Listing System search	*Procurements > $25,000*	*§ 4.b*
Lobbying Certification	*Procurements > $100,000*	*§ 4.d*
Standard Form LLL and Quarterly Updates (when required)	*Procurements > $100,000 where contractor engages in lobbying activities*	*§ 4.d*

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9. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

PURPOSE OF THIS REVIEW AREA
Recipients must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of US Department of Transportation (US DOT)-assisted contracts. Recipients also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

QUESTIONS TO BE EXAMINED
1. Did the recipient submit a DBE program for approval?

2. Has the DBE Liaison Officer (DBELO) been appropriately designated?

3. Did the recipient submit its latest goal in FTA's Transit Award Management System (TrAMS) by August 1 prior to the beginning of the applicable Federal fiscal year?

4. Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually by the required due dates?

5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?

6. For each of the past three completed Federal fiscal years, if the recipient's DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?

7. If the recipient exceeded its overall goal using contract goals in fiscal years 2016 and 2017, did it make appropriate procurement adjustments?

8. Has the recipient implemented steps to meet the maximum feasible portion of its overall goal race-neutrally?

9. When including a DBE goal in a solicitation, is the recipient ensuring that the contract is only awarded to a bidder that meets the goal or makes good faith efforts to meet the goal?

10. If the recipient or a subrecipient set a project-specific DBE goal on a transit vehicle procurement did it receive prior Federal Transit Administration (FTA) approval?

11. Did the recipient notify FTA's Office of Civil Rights of any FTA-funded transit vehicle awards?

12. Does the recipient monitor and enforce contractual requirements consistent with its approved DBE Program?

13. Does the recipient implement DBE certification standards and procedures in accordance with the DBE regulation?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Most recent DBE program, if not uploaded to TrAMS
- Current organizational chart which includes the DBELO
- DBELO job description
- Shortfall analysis and corrective action plan, if not required to be submitted to FTA
- List of any DBEs terminated/substituted on a project

Recipient Follow-up

- Information demonstrating that the recipient does not meet the threshold for DBE program submission
- Information that demonstrates when and on what subjects the DBELO and Chief Executive Officer (CEO) have direct and independent communications about the DBE program
- Documentation of notification to FTA of transit vehicle award(s)
- Documentation supporting the recipient's assessment that no DBE goal submission was necessary.
- Written procedures for compiling/preparing the Uniform Report on DBE Awards, Commitments, and Payments
- Missing reports that may not have been uploaded to TrAMS
- Evidence of reduced use of contract goals if DBE contract goals are used and overall agency DBE attainment exceeds overall agency goals
- Documented implementation of race-neutral and small business element measures
- Written certifications of monitoring for sample contract files
- Documentation of prompt payment and return of retainage monitoring

DBE1. Did the recipient submit a DBE program for approval?

BASIC REQUIREMENT
Approved DBE programs are required for FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) with those funds exceeding $250,000 in a Federal fiscal year.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
Written DBE programs are required for FTA recipients of planning, capital, and/or operating assistance that will have contracting opportunities (excluding transit vehicle purchases) exceeding $250,000 with those funds in a Federal fiscal year. Contracting opportunities are counted in the aggregate, and include FTA-funded purchase orders, capital projects, professional services, Transportation Infrastructure Finance and Innovation Act (TIFIA) loan-funded projects, and contracting activities of subrecipients. Small and micro-purchases are also counted toward this threshold.

The DBE program plan is not an annual submission and recipients do not submit regular updates of their DBE programs. However, significant changes to the programs must be submitted to FTA for approval. Recipients (particularly new recipients) that do not meet the threshold are not required to develop a written DBE program.

A recipient that is required to have a written program and is part of a local government may be allowed to submit a single plan to the Federal Highway Administration (FHWA) if it receives more funding from FHWA than from FTA. The recipient still must submit transit-specific overall three-year agency goals to FTA, if applicable.

INDICATORS OF COMPLIANCE

a. *If the recipient did not submit a DBE program for approval, does it appear that the recipient meets the threshold requiring one?*

b. *If the recipient submitted a DBE program and FTA has issued correspondence indicating required revisions, has the recipient made those revisions?*

DETERMINING COMPLIANCE
Review the Civil Rights Status screen in TrAMS to determine if the recipient has submitted a DBE program. From the listing of FTA-funded procurements requested in the Procurement area and a review in TrAMS of

the recipient's FTA awards and projects, determine if the recipient has met the threshold requiring a DBE program submission.

Transit vehicle purchases do not count towards the threshold. *Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Request and review any correspondence from FTA to the recipient on its submission. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that noted revisions or additions were made.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it had $250,000 of FTA funds in contracting opportunities in a given Federal fiscal year and a DBE program was not submitted by the time of the site visit.

> DEFICIENCY CODE DBE1-1: No approved DBE program
>
> SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit its DBE program to TrAMS and notify the FTA regional civil rights officer (RCRO) once completed.

The recipient is deficient if it received comments from FTA on its DBE program submission but has not made revisions. If the recipient made revisions to its program, but it does not appear that those revisions met the intent of FTA's comments, do not make a deficiency, but make the RCRO aware of this for their follow up.

> DEFICIENCY CODE DBE1-2: Revisions to DBE program not made
>
> SUGGESTED CORRECTIVE ACTION: The recipient must revise and submit its DBE program to TrAMS and notify the FTA RCRO once completed.

GOVERNING DIRECTIVE
49 CFR 26.21(a)

"If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part: (2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds $250,000 in FTA funds in a Federal fiscal year;

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts)."

DBE2. Has the DBELO been appropriately designated?

BASIC REQUIREMENT
For recipients that meet the threshold requiring that they have a DBE program, the recipient's chief executive officer (CEO) must designate a DBE Liaison Officer (DBELO), with direct and independent access to the CEO concerning DBE matters, and adequate staff to administer the DBE program.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
For recipients that meet the threshold requiring that they have a DBE program, the recipient's chief executive officer (CEO) must designate a DBE liaison officer (DBELO) and adequate staff to administer the DBE program. The DBELO must have direct and independent access to the CEO concerning DBE matters.

Direct and independent access to the CEO does not mean that there has to be a direct reporting relationship. It means that the DBELO must not be required to get anyone's consent or sign-off or "go through channels'' to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, this direct and independent access should be verified through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

INDICATORS OF COMPLIANCE

a. *Is there currently a DBELO implementing the DBE program?*

b. *Does the DBELO have direct and independent access to the CEO?*

DETERMINING COMPLIANCE
Examine the recipient's DBE program in TrAMS for identification of the DBELO and its position within the agency. Request and review the current organizational chart of the agency for the name and reporting relationship of the DBELO. Request and review the job description for the DBELO for responsibilities and reporting relationships. The current DBELO should also be listed in the agency's contact information in TrAMS.

During the site visit, confirm current staff assignments and reporting relationships in interviews with the DBELO and the CEO. Confirm that the DBELO has direct and independent access and is not required to get anyone's consent or sign-off or "go through channels'' to talk and write personally to the CEO about DBE program matters. If the DBELO has a "dotted line" reporting relationship (in lieu of a direct reporting relationship) to the CEO for DBE matters, verify direct and independent access through job descriptions, organizational charts, and evidence of direct and independent communication between the two individuals.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not currently have a DBELO who is responsible for implementing the DBE program or if the DBELO does not have direct and independent access to the CEO.

> DEFICIENCY CODE DBE2-1: Inadequate designation of DBE Officer
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence of corrective actions implemented to designate DBE responsibilities properly.

If the current DBELO is not in the same organizational position as noted in the recipient's latest approved DBE program, notify the RCRO for their future follow-up.

GOVERNING DIRECTIVE
49 CFR 26.25

"You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program."

DBE3. Did the recipient submit its latest goal in TrAMS by August 1 prior to the beginning of the applicable Federal fiscal year?

BASIC REQUIREMENT
For recipients that reasonably anticipate awarding (excluding transit vehicle purchases) more than $250,000 in FTA funds in prime contracts in a Federal fiscal year, overall three-year goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
For recipients that reasonably anticipate awarding (excluding transit vehicle purchases) more than $250,000 in FTA funds in prime contracts within a Federal fiscal year, overall three-year goals must be submitted to FTA for review by August 1 preceding the Federal fiscal year in which the goal submission is due. The submittal must include a description of the methodology used to establish the goal and other items detailed in 49 CFR 26.45. DBE goals must be partially based on an assessment of the availability of DBEs or potential DBEs. Recipients are not allowed to simply rely on past participation or past goal methodologies when they establish their goal.

On rare occasions, a recipient may submit a zero percent DBE goal. It is important for recipients to consider all contracting opportunities funded with its FTA capital, operating, and planning awards during its goal-setting process. The regulation defines a contract as any legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of 49 CFR Part 26, a lease is considered to be a contract.

INDICATORS OF COMPLIANCE

a. *Did the recipient submit its goal on time?*

b. *If the recipient did not submit its goal, is there evidence to support that no submission was necessary?*

DETERMINING COMPLIANCE
Review the Three Year Goal Setting Submissions Schedule on FTA's' website to determine the appropriate fiscal year for the recipient's submission. Review the Civil Rights Status screen in TrAMS to determine if the recipient's latest overall goal was submitted by August 1 preceding the fiscal year in which its goal was due, or by any other due date provided to them by FTA.

Review the recipient's awards in TrAMS to assess past or projected contracting activity. Review the list of awarded FTA-funded procurements submitted as a part of the Procurement section of the review to determine if the recipient awarded or projects to award contracts with FTA funds that exceed $250,000. The FTA-funded procurements of the recipient and its subrecipients should be aggregated to determine if this threshold is met. Transit vehicle purchases do not count towards the threshold.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it did not submit its DBE goal by August 1 preceding the applicable fiscal year (or by some other date designated by FTA).

DEFICIENCY CODE DBE3-1: DBE goal submitted late

SUGGESTED CORRECTIVE ACTION: The recipient must implement a procedure and revise its DBE program to ensure that future goals will be submitted by August 1 of the applicable year (or by some other date designated by FTA). If the currently due goal has not been submitted, the recipient must also upload the goal to TrAMS and notify the FTA RCRO when this is completed.

The recipient is deficient if it should have submitted a DBE goal but did not.

DEFICIENCY CODE DBE3-2: DBE goal not submitted

SUGGESTED CORRECTIVE ACTION: The recipient must develop a goal, upload it to TrAMS, and notify the FTA RCRO once completed.

GOVERNING DIRECTIVES
49 CFR 26.45 (f)(1)(i)

"If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable."

49 CFR 26.45 (a)(1)

"Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts. (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year."

DBE4. Has the recipient submitted the Uniform Report of DBE Awards or Commitments and Payments semi-annually by the required due dates?

BASIC REQUIREMENT
Each recipient that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TrAMS.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
Each recipient that meets the threshold requiring it to have a DBE program and overall goal is required to submit a Uniform Report of DBE Awards or Commitments and Payments semi-annually in TrAMS. The report addresses the contracting opportunities of the recipient and its subrecipients. Reports are due by June 1 (for the period covering October 1–March 31) and by December 1 (for the period covering April 1–September 30). A revised reporting form was provided in the DBE Final Rule, which became effective November 3, 2014. This form is to be used for all reports due June 1, 2015 and after.

DBE reports must be entered in TrAMS DBE reporting module and comments from FTA on those reports must be addressed. Recipients that no longer meet the threshold requiring a goal, but are completing projects under a previous goal continue to submit DBE reports until those contracts are completed. TrAMS will not issue a DBE report to recipients with N/A for the DBE goal, so FTA has been retaining a "concur" or "in review" status (with a clarifying comment) for recipients that no longer meet the threshold but still have open FTA-funded contracts applicable under a prior goal.

INDICATORS OF COMPLIANCE

a. *Did the recipient submit semi-annual reports on time?*

b. *If the recipient did not submit one or more semi-annual report for the past three fiscal years, is there evidence to support that no submission(s) was/were necessary?*

DETERMINING COMPLIANCE
Verify that semi-annual reports are submitted in TrAMS by accessing Civil Rights Documents from the Recipients Documents. Verify that reports were submitted by June 1 (for the period covering October 1 –

March 31) and December 1 (for the period covering April 1 – September 30). Discuss with the RCRO any issues that have been identified with timely submissions of reports.

Verify that semi-annual reports are submitted in TrAMS by accessing Civil Rights Documents from the Recipients Documents. Discuss any issues the RCRO has identified with non-submissions of reports. Review listing of FTA-funded procurements provided for the Procurement section of the review and projects identified in awards in TrAMS to determine if reports were warranted (based on award or completion of procurements) but not submitted.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it did not submit one or more reports by the due dates of June 1 (for the period covering October 1 – March 31) and December 1 (for the period covering April 1 – September 30).

DEFICIENCY CODE DBE4-1: Semi-annual DBE reports not submitted or not submitted timely

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO any late reports and an implemented procedure to ensure that future reports are submitted on time.

GOVERNING DIRECTIVES
49 CFR 26.11(a)

"You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form."

49 CFR Appendix B 5.

"For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30."

49 CFR 26.21(c)

"You must continue to carry out your program until all funds from DOT financial assistance have been expended."

DBE5. Are the Uniform Reports of DBE Awards or Commitments and Payments completed accurately?

BASIC REQUIREMENT
Uniform Reports of DBE Awards or Commitments and Payments must include all required information.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
Recipients of FTA funds are expected to keep accurate data regarding contracts awarded and paid with FTA dollars and report on such per the instructions for completing the Uniform Report of DBE Awards or Commitments and Payments. See Appendix B to 49 CFR Part 26**.**

INDICATOR OF COMPLIANCE
a. *Does a review of FTA information and selected FTA-funded procurements indicate that the recipient is completing the reports accurately?*

DETERMINING COMPLIANCE
Review the Civil Rights Status screen in TrAMS for completed reports. Discuss any issues the RCRO has identified with accuracy of reports.

During the site visit, obtain information on how all recipient and subrecipient FTA-funded contracting activities are included in the recipient's reports. Verify that the process includes FTA-funded purchase orders, micro-purchases, capital projects, professional services, TIFIA loan-funded projects, and contracting activities of subrecipients, as applicable by cross-referencing procurement and subrecipient lists provided for other areas of the review. Select two FTA-funded (non-transit vehicle manufacturer (TVM)) procurements from the procurement listing provided for the Procurement area of the review. Examine report back-up documentation and procedures for the appropriate report submission to demonstrate that DBE reporting information on these awards (lines 8 and 9) reconciles to recipient procurement award records. Transit vehicle purchases should not be included in these reports.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if its reports do not include applicable FTA-funded contracting activity undertaken by itself and any subrecipients and it cannot demonstrate how these reports reconcile to procurement records.

> DEFICIENCY CODE DBE5-1: DBE uniform reports contain inaccuracies and/or are missing required information
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit corrected reports to the FTA RCRO, along with implemented procedures for correctly completing Uniform Reports of DBE Awards or Commitments and Payments. The recipient must submit a revised DBE Program to correctly describe how it will implement accurate reporting.

GOVERNING DIRECTIVES

49 CFR 26.37

"(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments."

49 CFR Part 26 Appendix B "INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

"Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted."

"1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten vendors attach a separate sheet. 3. Specify the Federal fiscal year (i.e., October 1-September 30) in which the covered reporting period falls. 4. State the date of submission of this report. 5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30. If the report is due to the FAA, data should cover the entire year. 6. Provide the name and address of the recipient. 7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific race-conscious and race-neutral projections (both of which include gender-conscious/neutral projections). The race-conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race-conscious measure. The race-neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms."

“Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.”

“Line 8: Prime contracts awarded during this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.
8(B). Provide the total number of all prime contracts assisted with DOT funds and awarded during this reporting period.
8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.
8(D). From the total number of prime contracts awarded in item 8(B), specify the number of prime contracts awarded to certified DBE firms during this reporting period.
8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR Part 26, all prime contracts awarded to DBES are regarded as race-neutral.
8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of race-neutral methods. See the definition of race-neutral in item 7 and the explanation in item 8 of project types to include.
8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through race-neutral methods.
8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.
9(B). Provide the total number of all subcontracts assisted with DOT funds that were awarded or committed during this reporting period.
9(C). From the total dollar amount of subcontracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in subcontracts to DBEs.
9(D). From the total number of subcontracts awarded or committed in item 9(B), specify the number of subcontracts awarded or committed to DBEs.
9(E). From the total dollar amount of subcontracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using race-conscious measures.
9(F). From the total number of subcontracts awarded or committed to DBEs this period, provide the number of subcontracts awarded or committed to DBEs using race-conscious measures.
9(G). From the total dollar amount of subcontracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using race-neutral measures.
9(H). From the total number of subcontracts awarded/committed to DBEs this period, provide the number of subcontracts awarded to DBEs using race-neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth."

DBE6. For each of the past three completed Federal fiscal years, if the recipient's DBE achievements (based on contract awards) were below the overall goal for the applicable year, did the recipient complete the required shortfall analysis and corrective action plan?

BASIC REQUIREMENT

Each recipient that does not achieve its overall DBE goal must conduct a shortfall analysis and develop and implement a corrective action plan.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

If the awards and commitments shown on a recipient's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that three-year period, the recipient must do the following:

- Analyze in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year
- Establish specific steps and milestones to correct the problems identified in the analysis to enable the recipient to meet the goal for the new fiscal year

The 50 largest transit agencies as determined by the FTA must submit, within 90 days of the end of the fiscal year (December 29th), the analysis and corrective actions described above for review. All other recipients must retain the analysis and corrective actions in their records for three years and make it available to FTA upon request for review.

If the shortfall analysis submitted by a recipient is not sufficient, FTA may issue a Shortfall Corrective Action letter or a reasonable cause notification. If the latter, the recipient can enter into a conciliation agreement.

INDICATORS OF COMPLIANCE

a. *Was the recipient required to conduct shortfall analyses and develop a corrective action plan?*

b. *If applicable, did the recipient submit shortfall analyses and corrective action plans to FTA on time?*

c. *If the recipient is not considered to be a Top 50 Recipient by FTA, but was required to conduct a shortfall analysis and develop a corrective action plan, do the analysis and plan contain required elements?*

DETERMINING COMPLIANCE

Using DBE reports found in TrAMS, complete Exhibit 9.1 at the end of this section. To compare the annual DBE achievement of a recipient to its overall applicable goal, review the combined results of both semi-

annual reports for each fiscal year (the report due June 1 and the report due Dec 1). The overall goal is stated at the top of the report. The annual percentage awarded to DBEs is calculated by dividing the total dollars awarded to DBEs (by adding cell 10C for both reports) by the total prime contract dollars awarded (by adding cell 8A for both reports).

Verify that, if the awards and commitments at the end of any fiscal year were less than the overall goal applicable to that three-year period, a shortfall analysis and corrective plan was developed.

If there was no shortfall identified, move to the next question.

For recipients needing to conduct a shortfall analysis and develop a corrective action plan, review FTA's Listing of Top 50 Recipients to determine if the recipient is designated as one of the Top 50 Recipients. If one of the Top 50, review recipient documents in TrAMS to ascertain if the shortfall analysis was uploaded and the date of upload. If the recipient is not in the top 50, move to the next paragraph.

Request and review the recipient's most recent shortfall analysis and corrective action plan. Determine if the shortfall analysis analyzed in detail the reasons for the difference between the overall goal and the DBE awards and commitments in that fiscal year and included:

- Shortfall percentage
- Shortfall explanation
  - DBE Participation on fiscal year FTA-assisted projects
  - Race-conscious/race-neutral breakdown
  - Race-neutral measures
  - Specific reasons for shortfall

Review the corrective action plans to verify if they included:

- Description of all corrective action measures
- Explanation of how proposed corrective actions will increase DBE participation in the current year
- Timeline for implementation

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its DBE achievements were less than its overall goal and it did not conduct a shortfall analysis and develop a corrective action plan.

> DEFICIENCY CODE DBE6-1: DBE goal achievement analysis and corrective action plan not completed
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO the required analyses and corrective action plans for the missing year(s), along with a written process to ensure future shortfall analyses are completed.

The recipient is deficient if it was required to submit its shortfall analysis and corrective plan to FTA by December 29th after the end of the applicable fiscal year(s), but did not or did not submit it on time.

> DEFICIENCY CODE DBE6-2: DBE goal achievement analysis and corrective action plan not submitted timely
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO the required analyses and corrective action plan(s) for the missing year(s), along with a written process to ensure future shortfall analyses are completed on time.

The recipient is deficient if it did not include all required elements in its shortfall analysis or corrective action plan.

> DEFICIENCY CODE DBE6-3: DBE goal achievement analysis and corrective action plan do not include all required elements

SUGGESTED CORRECTIVE ACTION: The recipient must submit a revised analysis and/or corrective action plan to the FTA RCRO.

GOVERNING DIRECTIVES
49 CFR 26.47(c)

"If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith: (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year; (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;"

49 CFR 47(c) (3)(i)

"If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval."

49 CFR 26.47(c) (3)(ii)

"As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review."

DBE7. If the recipient exceeded its overall goal using contract goals in fiscal years 2016 and 2017 did it make appropriate procurement adjustments?

BASIC REQUIREMENT
Recipients that continuously exceed their goal using race conscious measures must make adjustments in its use of contract goals.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
In order to ensure that its DBE program continues to be narrowly tailored to overcome the effects of discrimination, a recipient must adjust the use of contract goals if it obtains DBE participation that exceeds its overall goal in two consecutive years through the use of contract goals (i.e. not through the use of race-neutral means alone). In this case the recipient must reduce the use of contract goals proportionately in the following year.

INDICATOR OF COMPLIANCE

a. *If the recipient uses race-conscious contract goals and it is exceeding its overall goals, is it making adjustments to reduce the race-conscious portion of its overall DBE attainment?*

DETERMINING COMPLIANCE
Review DBE reports in TrAMS and Exhibit 9.1 at the end of this section to determine if the recipient is exceeding its overall goal at the end of the last two completed fiscal years. To compare the annual DBE achievement of a recipient to its overall applicable goal, review both semi-annual reports for each fiscal year (the report due June 1 and the report due Dec 1). The overall goal is stated at the top of the report. The annual percentage awarded to DBEs is calculated by dividing the total dollars awarded to DBEs (by adding cell 10C for both reports) by the total prime contract dollars awarded (by adding cell 8A for both reports). To determine the portion of the attainment achieved through race-conscious measures, divide the total amount

awarded to DBEs race-consciously (by adding cell 10E for both reports) by the total prime contract dollars awarded (by adding cell 8A for both reports).

If the recipient is exceeding its overall goal and it is using race-conscious contract goals, during onsite interviews and documentation, verify if the recipient can demonstrate how it is adjusting its procurement processes to reduce its use of contract goals.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it has obtained DBE participation that exceeds its overall goal for two consecutive years through the use of contract goals but has not taken action to reduce its use of contract goals.

DEFICIENCY CODE DBE7-1: No proportionate reduction of race-conscious goals

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO procedures to reduce the use of race-conscious goals if it is exceeding its goals using race-conscious means.

GOVERNING DIRECTIVE
49 CFR 26.51(f)

"To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows: (4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year."

DBE8. Has the recipient implemented steps to meet the maximum feasible portion of its overall goal race-neutrally?

BASIC REQUIREMENT
Recipients are to meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
Recipients are to meet the maximum feasible portion of their overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

Race-neutral means include, but are not limited to, the following:

- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing)
- Providing technical assistance and other support services
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate)

- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low
- Ensuring distribution of the UCP directory to the widest feasible universe of potential prime contractors
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media

Recipients include information on their race-neutral measures in the DBE program plan. Additionally, in their overall goal submission, recipients must include the projection of the portions of the overall goal they expect to meet through race-neutral means and the basis for that projection. If a recipient projects meeting part of their goal through race-neutral means and the remainder through contract goals, they must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

By February 28, 2012, recipients were to submit an element to their DBE program for fostering small business participation. This element, required by a February 2011 change to the DBE regulation, must include provisions to structure contracting requirements to facilitate competition by small business (not based on race or gender). Recipients must take all reasonable steps to eliminate obstacles to DBE participation, including unnecessary and unjustified bundling of contract requirements, that may preclude small business participation in procurements as prime contractors or subcontractors.

As part of this program element, recipients may include, but are not limited to, the following strategies:
- Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g. $1 million)
- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”), requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform
- On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts

To meet the race-neutral portion of overall agency goal, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform

INDICATORS OF COMPLIANCE

a. *Has the recipient implemented the race-neutral measures noted in its DBE program, its overall goal methodology, and any shortfall analyses/corrective action plans?*

b. *Has the recipient implemented the element in its DBE program for fostering small business participation?*

DETERMINING COMPLIANCE

Determine the portion of overall goal attainment that the recipient achieved race-neutrally in the past two completed fiscal years. To determine this, using Exhibit 9.1, divide the total amount awarded to DBEs race-neutrally (add cell 10G from the two years in which the goal was exceeded) by the total prime contract dollars awarded (add cell 8A from the two years in which the goal was exceeded). If the information from the recipient’s semi-annual reports indicates that it has attained all of its overall goal race-neutrally and there are no deficiencies in the questions of this review relating to reporting, move to the section below on fostering small business participation.

Review the recipient's currently-approved DBE program submission in TrAMS for race-neutral measures that were to be implemented. Review the recipient's currently-approved three-year goal methodology in TrAMS, for the portion of its goal that it projected meeting race-neutrally and for race-neutral measures that were to be implemented. If the recipient was required to submit a shortfall analysis and corrective action plan in the past two completed fiscal years, review those documents to determine if the recipient stated race-neutral measures that it would implement. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, or is awarded a subcontract on a prime contract that does not carry a DBE goal.

During onsite interviews and review of documentation, determine if measures described by the recipient have been implemented.

Fostering small business participation: Review the recipient's currently-approved DBE program in TrAMS, for the small business element that was to be implemented. The recipient detailed specific measures that it would take in its approved program. During onsite interviews and review of documentation, determine if the recipient's small business element measures described in the DBE program have been implemented.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it is not meeting the portion of its overall goal that it projected race-neutrally and cannot provide documentation of implementing race-neutral measures described in its DBE program, goal submission, or shortfall analysis/corrective action plan.

> DEFICIENCY CODE DBE8-1: Inadequate implementation of race-neutral measures
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an implementation plan for applying race-neutral measures and evidence that these measures have been implemented.

If the recipient is not implementing the small business element.

> DEFICIENCY CODE DBE8-2: Small business element not implemented
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence of implementing its small business participation strategies.

GOVERNING DIRECTIVES
49 CFR 26.51 (a)

"You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation."

49 CFR 26.39 (c)

"You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program."

DBE9. When including a DBE goal in a solicitation, is the recipient ensuring that the contract is only awarded to a bidder that meets the goal or makes good faith efforts to meet the goal?

BASIC REQUIREMENT
Recipients must establish contract goals to meet any portion of their overall goal they do not project being able to meet using race-neutral means.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
Not every FTA-funded contract is required to have a DBE goal. The recipient has the discretion to determine if the bidder must present information on DBEs proposed to meet the goal as part of bid responsiveness (provided at the time of bid) or no later than seven days after bid opening as a matter of responsibility. The seven days was reduced to five days beginning January 1, 2017. The DBE Final Rule, which became effective November 3, 2014, included the limitations on the number of days for responsibility.

Note: In 49 CFR part 26, days is defined as calendar days. In computing any period of time, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday.

Prior to awarding a contract to a firm that did not meet a specific DBE contract goal, the recipient must determine whether the efforts the firm made to obtain DBE participation were "good faith efforts" to meet the goal. Examples of efforts the recipient may consider, include whether the contractor attended any pre-bid meetings held by the recipient to inform DBEs of contracting opportunities, or whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited in sufficient time to allow participation. A more extensive list of examples is provided in Appendix A to 49 CFR part 26.

It is important to note that DBEs are certified to perform certain types of work. To receive credit for good faith efforts and to count towards goal attainment, named DBEs must be certified to do the scopes of work that they are contacted/contracted to perform.

INDICATORS OF COMPLIANCE

a. *For solicitations with DBE goals, is the recipient requiring information on DBE participation from bidders/proposers within the correct timeframe? If the recipient does not use DBE contract or project-specific goals (i.e. it is operating a race-neutral program), skip to Question 10.*

b. *For solicitations with DBE contract goals, did the recipient document its determination of "good faith efforts" prior to awarding a contract where the bidder did not meet the goal?*

DETERMINING COMPLIANCE
Review the DBE program and procurement policies and procedures to determine if the recipient notes that information provided in response to a DBE goal is a condition of responsiveness or responsibility. Review the recipient's list of procurements to identify procurements that included a DBE contract goal. Document if the submission of DBE information by bidders/proposers is stated as a matter of responsiveness or responsibility in a sample of these procurements. If it is a matter of responsibility, verify if the correct number of days (five or seven depending on solicitation date) was required by the recipient for receipt of the information. Onsite review a sample of procurements which included DBE goals to verify that the recipient received information from the bidder(s) as required in the solicitation.

Request and review the list of contracts that were awarded since the last Comprehensive Review at less than the solicitation DBE goal. Determine if the recipient documented that the awardee made good faith efforts towards meeting that goal prior to award. For a procurement where the awarded DBE amount is less than the goal stated in the solicitation, examine the recipient's documented good faith efforts review. Part of determining good faith efforts is verifying that DBEs are certified for the type of work they are being named for prior to award. For a procurement with a DBE goal, verify that the DBEs included in the award were certified for the work for which they were named. Determine this by reviewing the DBEs' description in the state's UCP directory and comparing the work they are certified to perform with the work they are named as performing in the contract.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it is not requiring and collecting information from bidders/proposers on proposed DBEs within the timeframes described in the regulations.

DEFICIENCY CODE DBE9-1: Inadequate timeframe for DBE responsibility determination

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO revised procurement procedures to limit the amount of time that the bidder is allowed to demonstrate DBE responsibility to five days.

The recipient is deficient if it is not documenting its good faith efforts review or does not verify that DBEs are certified to perform the type of work they are being named for prior to awarding a contract which contained a DBE goal.

DEFICIENCY CODE DBE9-2: Inadequate good faith efforts determination

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO a method for determining "good faith efforts" in compliance with the regulation and/or evidence that it has included documentation in applicable procurement files.

GOVERNING DIRECTIVES
49 CFR 26.53 (b) (3)(i)

"At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017."

49 CFR 26.53 (a)

"When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things: (1) Documents that it has obtained enough DBE participation to meet the goal; or (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

(b) (2) (ii) To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror."

DBE10. If the recipient or a subrecipient set a project-specific DBE goal on a transit vehicle procurement did it receive prior FTA approval?

BASIC REQUIREMENT
Recipients may only set goals on transit vehicles if approved to do so by FTA.

APPLICABILITY
All recipients of FTA funds that meet the DBE threshold

EXPLANATION
Recipients may, with FTA prior approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of having TVMs certify their compliance.

INDICATOR OF COMPLIANCE

a. Is FTA approval on file for any transit vehicle DBE goal set by the recipient?

DETERMINING COMPLIANCE

During the site visit, review FTA-funded transit vehicle procurement files. Note if the solicitation contained a DBE goal. If the solicitation contained a DBE goal, request a copy of FTA's approval of the project-specific goal that pre-dates the solicitation date.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it included a DBE goal in a transit vehicle procurement without prior approval from FTA.

DEFICIENCY CODE DBE10-1: Unapproved DBE goals on transit vehicle purchases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an implemented process to ensure that future FTA-funded transit vehicle purchases do not include DBE goals unless approval has been obtained from FTA.

GOVERNING DIRECTIVE

49 CFR 26.49 (f)

"As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section."

DBE11. Did the recipient notify FTA's Office of Civil Rights of any FTA-funded transit vehicle awards?

BASIC REQUIREMENT

Recipients must notify FTA's Office of Civil Rights of any FTA-funded transit vehicle procurement.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

For transit vehicle awards made November 3, 2014 and after, FTA recipients are required to submit, within 30 days of making an award, the name of the successful bidder for transit vehicles and the total dollar value of the contract. This notification should be submitted by using the online Transit Vehicle Award Reporting Form located on FTA's Civil Rights DBE Webpage. The online reporting form was initiated in June 2016. Prior to that, recipients were to communicate awards made November 3, 2014 and after to their RCRO.

If the recipient issues a contract for transit vehicles that includes a base order and subsequent options, the recipient is to submit the information for the base number of vehicles and subsequently for each order of vehicle options awarded. The recipient should be submitting this information for itself and for subrecipients that are procuring transit vehicles with funds that it passes through to them.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

INDICATOR OF COMPLIANCE

a. *For FTA-funded transit vehicle purchases or award(s) of options, did the recipient make appropriate, timely notification of the award to FTA's Office of Civil Rights?*

DETERMINING COMPLIANCE

During the review of the procurement area, document any FTA-funded transit vehicle awards. Review the listing of vehicle award notifications from FTA's Office of Civil Rights to verify if applicable notifications were made. On-site, ask the recipient for documentation of submission, if not available from FTA's Office of Civil Rights. Verify notifications were submitted a maximum of 30 days after the award.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it did not notify FTA within 30 days of making a transit vehicle award that occurred after November 3, 2014.

DEFICIENCY CODE DBE11-1: Unreported transit vehicle purchases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an implemented process to ensure that future awards of FTA-funded transit vehicle purchases are reported timely to the FTA Office of Civil Rights.

GOVERNING DIRECTIVE

49 CFR 26.49 (a) (4)

"FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement."

DBE12. Does the recipient monitor and enforce contractual requirements consistent with its approved DBE Program?

BASIC REQUIREMENT

Recipients must implement appropriate mechanisms to ensure compliance with the DBE regulation by all program participants.

APPLICABILITY

All recipients of FTA funds that meet the DBE threshold

EXPLANATION

Recent investigations by the Office of Inspector General have raised concerns about the administration of DBE programs. Recipients must have a process to monitor contractors and subrecipients for compliance with applicable DBE requirements. Recipients must implement appropriate mechanisms to ensure compliance with the DBE program by all program participants (i.e., applying legal and contract remedies available under Federal, state, and local laws). These mechanisms must be set forth in the recipient's DBE program.

For all contracts, recipients must have mechanisms in place to monitor compliance with prompt payment and inclusion of required clauses. They must also be able to verify the commercially useful function of DBEs on all projects so that accurate reporting can be accomplished, including reporting for race-neutral achievements.

For contracts with a DBE goal, a recipient must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. Monitoring is important for both race-conscious and race-neutral contracts to ensure accurate counting for required semi-annual reports.

Prior to awarding a contract with a DBE goal to a contractor, the recipient is required to collect from the awardee:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount of the participation of each DBE firm participating
- Written documentation of the bidder/offeror's commitment to use the DBE subcontractor whose participation it submits to meet a contract goal
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment

This information forms the DBE commitment (not goal) of the awarded contract. The recipient should document efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the types and dollar amounts of work detailed.

In February 2011, the regulation added the requirements that recipients:

- Include a written certification that it has reviewed contracting records and monitored work sites for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

- Require that a prime contractor not terminate or substitute a DBE subcontractor listed on a contract with a DBE goal without good cause and prior written consent from the recipient.

Details on what constitutes good cause is contained in 49 CFR 26.53(f). A recipient's written consent can only be given after the contractor notifies the DBE (with a copy of the notice to the recipient) in writing of its intent to request substitution or termination and allows the DBE five days to respond. Recipients must also require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. The contractor must submit documentation requested by the recipient for these efforts within seven days, which may be extended for an additional seven days if necessary at the request of the contractor. The recipient provides a written determination to the contractor stating whether or not good faith efforts have been demonstrated. Unless the recipient's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The recipient should demonstrate that it provides oversight of subrecipients to ensure inclusion of required contract clauses and monitoring of contractors for adherence to commitments.

INDICATORS OF COMPLIANCE

a. *Does the recipient monitor contractors and subrecipients in accordance with its DBE program to ensure that DBE obligations are fulfilled and apply appropriate remedies when necessary?*

b. *Does the recipient monitor projects to ensure that DBEs are actually performing the work committed to at the time of contract award?*

c. *Does the recipient complete a written certification of monitoring activities?*

d. *Does the recipient implement the prompt payment monitoring and enforcement mechanisms described in its approved DBE program?*

e. *For contracts with a DBE commitment, does the recipient implement correct procedures for providing written consent to contractors requesting termination or substitution of a DBE after contract award?*

DETERMINING COMPLIANCE

Review the recipient's approved DBE program in TrAMS for described methods of monitoring and enforcing DBE commitments, and of applying remedies. On-site, conduct interviews, and request and review evidence of the recipient actively monitoring projects with DBE goals as described in its DBE program. If necessitated, verify that the recipient implemented remedies stated in its DBE program on contracts.

Verify that prior to awarding a contract with a DBE goal to a contractor, the recipient collects from the awardee:

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount of the participation for each DBE firm participating
- Written documentation of the bidder/offeror's commitment to use the DBE subcontractor whose participation was submitted to meet a contract goal
- Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment

Verify if recipient documented efforts to monitor that primes are maintaining their commitments to use the DBEs noted in contract award documents for the dollar amount and types of work detailed.

Review the recipient's DBE program to identify the methods that the recipient states it will use to monitor that DBEs are actually performing the stated work on contracts. During the site visit, interview the recipient and review documentation to verify monitoring activities/reports for selected procurements. Monitoring is important for both race-conscious and race-neutral contracts to ensure accurate counting for required semi-annual reports.

Review the recipient's DBE program for any monitoring certification template that may be noted. During the site visit, review contract files or DBE files to verify that the recipient is completing written certifications for recent contracts with DBE contract goals.

Review the recipient's approved DBE program in TrAMS for methods of prompt payment monitoring and enforcement. During the review of the procurement section, note what prompt payment and return of retainage clauses are included in FTA-funded procurements. On-site, request and review evidence of the recipient actively monitoring implementation of prompt payment from prime contractors to subcontractors for progress and retainage payments, as well as appropriate enforcement actions when applicable.

During the site visit, ask the recipient if any DBEs have been terminated or substituted on contracts with DBE goals. Review documentation related to removals of DBEs on contracts with DBE contract goals to determine if the following process was followed:

- The prime contractor notified the DBE (with a copy of the notice to the recipient) in writing of its intent to request substitution or termination and allowed the DBE five days to respond

- The recipient granted the request for substitution or termination

- The recipient required the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE

- The contractor submitted documentation requested by the recipient for these efforts within seven days, which may be extended for an additional seven days consistently, if necessary, at the request of the contractor.

- The recipient provided a written determination to the contractor stating whether or not good faith efforts had been demonstrated.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have documentation of monitoring contractors and subrecipients and enforcing contract requirements to ensure that DBE commitments are met.

> DEFICIENCY CODE DBE12-1: Insufficient documentation of monitoring DBE compliance of contractors and/or subrecipients

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation that it has updated the DBE program to reflect current monitoring procedures for contractors and subrecipients along with evidence of implementation.

The recipient is deficient if it does not have documentation of monitoring that DBEs are actually performing work as detailed in contract documents.

DEFICIENCY CODE DBE12-2: Insufficient documentation of monitoring DBE work

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation that it has updated its DBE program to include a monitoring process and/or evidence of how it has implemented the monitoring process to ensure that DBEs are actually performing the stated work.

The recipient is deficient if it does not have documentation of written certifications of monitoring.

DEFICIENCY CODE DBE12-3: Insufficient documentation of written certifications of DBE monitoring

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it has implemented a process for making written certifications of monitoring.

The recipient is deficient if it does not have and/or has not implemented an active monitoring and enforcement process for compliance with prompt payment.

DEFICIENCY CODE DBE12-4: Recipient not ensuring prompt payment

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation of a monitoring and enforcement process to ensure prompt payment and/or evidence of its next three efforts to ensure compliance with prompt payment and return of retainage requirements.

The recipient is deficient if it does not have documentation that, for contracts with a DBE goal, it is correctly implementing the required procedures for providing written consent to contractors requesting termination/substitution of a DBE after contract award.

DEFICIENCY CODE DBE12-5: Recipient does not implement DBE termination/substitution provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO procedures for ensuring good cause and due process provisions for termination or substitution of DBEs.

GOVERNING DIRECTIVES
49 CFR 26.37 (b)

"Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (*e.g.,* as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (*e.g.,* close-out reviews for a contract)."

49 CFR 26.29 (d)

"Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval."

49 CFR 26.53 (f)(1)(i)

"You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

(5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.,* safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements."

DBE13. Does the recipient implement DBE certification standards and procedures in accordance with the DBE regulation?

BASIC REQUIREMENT
If recipients certify DBEs as a part of its state's UCP, is it using the correct forms, evaluating personal net worth of the owner(s), conducting site visits, and entering complete information into the UCP directory?

APPLICABILITY
All recipients of FTA funds that certify DBEs

EXPLANATION
The correct instructions, form, and document checklist to be used for DBE certification are located at US DOT's website. A revised certification application form and a new personal net worth (PNW) form was provided in the DBE Final Rule, which became effective November 3, 2014. Certifying recipients are to use these documents unmodified unless such modifications were approved by US DOT. Recipients are not to request PNW forms from owners that are not claiming social and economic disadvantage, nor should they request PNW forms from persons who are not listed as comprising 51 percent or more of the ownership percentage of the applicant firm.

An on-site visit to the firm's principal place of business must be conducted. On-site visits to job sites must be conducted if there are such sites on which the firm is working at the time of the eligibility investigation in the recipient's local area. If the DBE is located out of state, the recipient must obtain evidence that a certification site visit was conducted prior to the initial certification.

The UCP DBE directory must list each type of work for which a firm is eligible to be certified by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work.

INDICATORS OF COMPLIANCE

a. *Does the recipient use the Uniform Certification Application Form issued by the US DOT in October 2014, including the instructions and document checklist?*

b. *Does the recipient use the required personal net worth (PNW) form issued by the US DOT in October 2014? If supplemental forms are used, were they approved by the concerned operating administration?*

c. *Prior to making an initial (not interstate) certification, does the recipient conduct site visits to the applicant firm's principal place of business and to a jobsite (if jobsite is in local area)?*

d. *If the recipient enters information directly into the UCP directory, does it include the North American Industry Classification System (NAICS) codes of DBEs in the UCP directory?*

DETERMINING COMPLIANCE
Review the recipient's and/or its state's UCP website to:

- Verify that the application form in Appendix F of 49 CFR part 26 is being used for initial (not interstate) certifications. During the site visit, review two certification files submitted and reviewed within the past year to verify that the correct application form was used.

- Verify that the PNW form in Appendix G of 49 CFR part 26 is being used for initial (not interstate) certifications. During the site visit, review two certification files submitted and reviewed within the past year to verify that the correct PNW form was used.

During the site visit, review two recently completed certification files to verify that onsite visits were conducted.

Review the UCP directory to determine if NAICS codes are included in the directory. Each state's UCP directory is available online. If the recipient enters information into the directory, during the site visit, review two recently completed certification files to verify that the recipient entered the correct NAICS codes into the UCP directory. This is done by locating the firms' information in the directory and verifying that NAICS codes have been included in the firms' descriptions.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not require the use of the correct DBE application form.

DEFICIENCY CODE DBE13-1: Recipient does not use correct DBE certification form

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it is using the correct certification forms.

The recipient is deficient if it does not require the use of the correct PNW form.

DEFICIENCY CODE DBE13-2: Recipient does not use correct DBE PNW form

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it is using the correct PNW forms.

The recipient is deficient if it does not conduct on-site visits prior to determining DBE eligibility and certification of applicants.

DEFICIENCY CODE DBE13-3: Recipient does not conduct on-site visits

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it documents the conduct of on-site visits to applicants prior to making a determination of DBE eligibility.

The recipient is deficient if it enters information directly into the UCP directory and does not include correct NAICS codes into the UCP directory.

DEFICIENCY CODE DBE13-4: DBE directory does not include correct NAICS codes

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that it is correctly entering NAICS code information into the UCP directory.

GOVERNING DIRECTIVES
49 CFR 26.83 (c) (2)

"You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part."

49 CFR 26.67(a) (2) (ii)

"You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm."

49 CFR 26.83(c) (1) (i)

"Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area."

49 CFR 26.31 (b)

"You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including Disadvantaged Business Enterprise reviews, UCP reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of DBE?

2. Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?

3. If conducted, has a recent (since the last Comprehensive Review) Procurement System Review identified any issues related to DBE in the "Other Matters" section?

4. If the recipient has entered into a DBE conciliation agreement with the FTA, what progress has been made towards satisfying the terms of that agreement?

5. Did the recipient experience difficulty resolving or closing any DBE oversight review, investigation, or audit deficiencies or findings (e.g., late or insufficient submissions)? Are any deficiencies or findings currently open?

6. Are any issues related to DBE indicated in the recipient Oversight Assessment Tool (OAT)?

7. Have DBE complaints been filed with FTA against the recipient? If yes, have all such complaints been resolved?

8. Has the recipient or FTA received any bid protests related to DBE issues?

9. Does the recipient have a zero percent DBE goal?

10. Does the recipient appear to have adequate resources and provide sufficient training to manage the DBE program?

11. Does the DBELO appear to have sufficient coordination with the recipient's procurement department on issues such as contract goal-setting, race-neutral measures, inclusion of required contract clauses, and contract administration?

12. Does the recipient include, monitor, and enforce prompt payment clauses in FTA-funded procurements? Have DBE subcontractors notified the recipient about issues with prompt payment or return of retainage?

13. Has the recipient been notified by a DBE subcontractor that it was not receiving work committed to it?

14. Does the recipient appear to have sufficient monitoring and enforcement mechanisms in place for DBE requirements?

15. Did background research or site visit observations reveal any potential issues or concerns about the recipient's DBE program or its implementation not covered previously in this section?

REFERENCES

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

2. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"

USEFUL WEBLINKS

1. FTA DBE Website

2. Official Questions and Answers for DBE Program Regulation (49 CFR Part 26)

EXHIBIT 9.1 DBE THREE-YEAR GOAL ATTAINMENT *Note: This table is to be completed by the reviewer.*				
Fiscal Year 20XX Goal: **Fiscal Year 20XX RC Goal:**		**1**	**2**	**3 (1+2)**
	DBE Uniform Report	**June 1**	**Dec. 1**	**Totals**
A.	Total dollars awarded to DBE Prime Contractors (*Line 8C*)			
B.	Total dollars awarded to DBE Subcontractors (*Line 9C*)			
C.	Total dollars awarded to DBEs (**A3+B3**)			
D.	Total prime contract dollars awarded (*Line 8A*)			
E.	Total Race Conscious contracting dollars awarded to DBEs (*Line 9E*)			
F	Annual Percentage of awards using Race Conscious goals (**E3/D3**)			
G.	Annual Percentage Awarded (**C3/D3**)			
Fiscal Year 20XX Goal: **Fiscal Year 20XX RC Goal:**		**1**	**2**	**3 (1+2)**
	DBE Uniform Report	**June 1**	**Dec. 1**	**Totals**
A.	Total dollars awarded to DBE Prime Contractors (*Line 8C*)			
B.	Total dollars awarded to DBE Subcontractors (*Line 9C*)			
C.	Total dollars awarded to DBEs (**A3+B3**)			
D.	Total prime contract dollars awarded (*Line 8A*)			
E.	Total Race Conscious contracting dollars awarded to DBEs (*Line 9E*)			

EXHIBIT 9.1 DBE THREE-YEAR GOAL ATTAINMENT *Note: This table is to be completed by the reviewer.*				
F.	Annual Percentage Awarded (**C3/D3**)			
G.	Annual Percentage Awarded (**C3/D3**)			
Fiscal Year 20XX Goal: **Fiscal Year 20XX RC Goal:**		**1**	**2**	**3** **(1+2)**
	DBE Uniform Report	**June 1**	**Dec. 1**	**Totals**
A.	Total dollars awarded to DBE Prime Contractors (*Line 8C*)			
B.	Total dollars awarded to DBE Subcontractors (*Line 9C*)			
C.	Total dollars awarded to DBEs (**A3+B3**)			
D.	Total prime contract dollars awarded (*Line 8A*)			
E.	Total Race Conscious contracting dollars awarded to DBEs (*Line 9E*)			
F.	Annual Percentage Awarded (**C3/D3**)			
G.	Annual Percentage Awarded (**C3/D3**)			

10. TITLE VI

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 develop 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. Did the recipient conduct an equity analysis for any transit facilities it constructed (or plans to construct in the current Federal fiscal year) since the last Title VI program submission?

8. Has the recipient evaluated fare and major service changes and monitored transit service?

9. Does the recipient include the needs of minorities 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?

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 complaints/lawsuits that have occurred since the latest Title VI program submission
- Any service equity and/or fare equity analyses conducted since submission of last Title VI program for fare or major service changes
- Any service equity and/or fare equity analyses conducted since submission of last Title VI program for new fixed guideway service, or New Starts or Small Starts projects
- 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 or low-income communities
  3. amount of funds allocated

Recipient Follow-up

- Documentation of Language Assistance Program (LAP) implementation
- Title VI equity analysis for transit facilities constructed or planned since last Comprehensive Review
- 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
- Efforts within the review period to receive applications to agencies serving predominantly minority and low-income populations
- Record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income communities for the current review period
- Documentation of how the state identified the needs of minority communities in the Statewide Transportation Planning process
- Documentation of how the state has included minority communities in the planning process that has occurred since the last Title VI Program submission
- Process for monitoring subrecipients and reviewing subrecipients' Title VI plans, if not included in the Title VI Program
- Documentation of how the metropolitan planning organization (MPO) identified the needs of minority communities in the transportation planning process
- Documentation of how 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 of FTA funds. 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).

EXPLANATION
Every three years, all direct recipients must submit a Title VI program that documents their compliance of Title VI requirements. Under FTA C. 4702.1B, certain requirements apply to all fixed-route transit providers. However, 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 have additional requirements, including preparation of service and/or fare equity analysis as outlined in the chart below. Recipients that only operate demand response service are exempt from program specific requirements.

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
Set system- wide standards and policies	Required	Required
Collect and report data	Not required	Required: • Demographic and service profile maps and charts • Survey data regarding customer demographic and travel patterns
Evaluate service and fare equity changes	Not required	Required
Monitor transit service	Not required	Required

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 submission and recipients must make any revisions required by the FTA's Office of Civil Rights.

A list of the program due dates for FTA recipients is posted on FTA's Civil Rights website.

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?*

DETERMINING COMPLIANCE

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 sixty days prior to the previous program's expiration, request documentation from the recipient and/or the FTA regional civil rights officer (RCRO) on requested and/or approved extensions.

Request and review any correspondence from FTA to the recipient on its submission. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that noted revisions or additions were made.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not submitted a Title VI program or failed to submit an updated program 60 days prior to the previous program's expiration date. The recipient is deficient if the current Title VI program has expired and it has not submitted a program update or requested and received an extension for its program submission. (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 provide the FTA RCRO with this information so they can follow up with the recipient.)

DEFICIENCY CODE TVI1-1: Title VI program not submitted

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit a Title VI Program in TrAMS and notify the FTA RCRO once completed.

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 the FTA RCRO aware of this for FTA's follow-up).

DEFICIENCY CODE TVI1-2: Revisions to Title VI program not made

SUGGESTED CORRECTIVE ACTION: The recipient must revise and submit its Title VI program in TrAMS and notify the FTA RCRO once completed.

GOVERNING DIRECTIVES

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 this [rule].' FTA requires that all direct and primary recipients document their compliance with DOT's Title VI regulations by submitting a Title VI Program to their FTA regional civil rights officer once every three years or as otherwise directed by FTA. 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

"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 LEP persons?

BASIC REQUIREMENT
A recipient must implement a LAP to address the needs of the population it serves.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
Recipients are required to ensure meaningful access to LEP persons. FTA recipients ensure meaningful access by developing and carrying out a LAP. FTA recipients must develop a LAP to ensure compliance with the requirement. Recipients have considerable flexibility in developing a plan, but at a minimum it must:

- Include the results of the Four Factor Analysis, with a description of the LEP population(s) served
- Describe how it provides language assistance services by language
- Describe how LEP persons are notified about the availability of language assistance
- Describe how it monitors, evaluates, and updates the LAP, and
- Describe how it trains employees to provide timely and reasonable language assistance.

The plan needs to be based on the results of the Four Factor Analysis. FTA will determine, at the time the recipient submits its Title VI program or subsequent to a complaint investigation or compliance review, whether a recipient's plan is sufficient to ensure meaningful access and thus ensure that the recipient is not engaging in discrimination on the basis of national origin.

INDICATOR OF COMPLIANCE

a. Has the recipient implemented its LAP?

DETERMINING COMPLIANCE
Prior to the site visit, review the recipient's LAP, including the Four Factor Analysis, included in its Title VI Program in TrAMS. Request and review examples of language assistance measures that have been implemented, such as translation of vital documents, oral interpretation services, information on how translated materials can be obtained by the public, documentation of language assistance training for staff, and information on how the language assistance plan is monitored and updated periodically. Onsite, discuss with the recipient how it implements its LAP. Determine if the LAP is being implemented as detailed in the recipient's Title VI Program.

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: Language Assistance Plan deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO documentation of implementing its LAP.

GOVERNING DIRECTIVE
FTA C. 4702.1B Chapter III.9.b Developing a Language Assistance Plan

"After completing the Four Factor Analysis, the recipient shall use the results of the analyses to determine which language assistance services are appropriate. Additionally, the recipient shall develop an assistance plan to address the identified needs of the LEP population(s) it serves. The DOT LEP Guidance recognizes that certain recipients, such as those serving very few LEP persons or those with very limited resources, may choose not to develop a written plan. However, FTA has determined it is necessary to require its recipients to develop an assistance plan in order to ensure compliance."

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 apprise members of the public of the protections against discrimination afforded to them by Title VI.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
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 C. 4702.1B, Ch.III, Section 5b(1) also includes additional effective practices for notice dissemination for recipients to consider.

The notice shall include:

- 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
- A description of the procedures that members of the public shall follow in order to file a Title VI discrimination complaint against the recipient

Notices detailing a recipient's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed, and be consistent with the Department of Transportation (DOT) LEP Guidance and the recipient's LAP.

INDICATORS OF COMPLIANCE

a. *Does the recipient disseminate the required Title VI Notice to the public as described in its Title VI Program?*

b. *Is the Title VI Notice translated into languages identified in the recipient's LAP?*

DETERMINING COMPLIANCE
Prior to the site visit, review the recipient's Title VI Program in TrAMS to identify how the recipient describes providing the required notification to the public. Review the recipient's website to verify that the Title VI Notice has been posted. On-site, confirm the Title VI Notice is posted in public areas as described in the recipient's Title VI Program.

Prior to the site visit, review the recipient's LAP. Onsite, verify that the recipient has translated the Title VI notice as described in its LAP.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it has not disseminated a Title VI Notice as described in its Title VI Program.

> DEFICIENCY CODE TVI3-1: Title VI public notification not disseminated
>
> SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO 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: The recipient must prepare and submit to the FTA RCRO translated Title VI notification(s) along with verification that the translated document has been disseminated.

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. (2) Document translation. "Notices detailing a recipient's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed and consistent with the DOT LEP Guidance and the recipient's language assistance plan."

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 of FTA funds

EXPLANATION
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 procedure for filing a complaint shall be available on the recipient's website. The complaint form and procedures shall be translated into languages other than English as identified in the recipient's LAP. 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.

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. *Are the complaint form and instructions translated into languages identified in the recipient's LAP?*

d. *Is the recipient processing complaints as described in its Title VI Program and its complaint instruction forms?*

DETERMINING COMPLIANCE

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. On site, 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 LAP. Onsite, verify that the recipient has translated the complaint form and instructions as described in its LAP.

Review the recipient's Title VI Program for a description of its complaint processing, along with the instructions to the public for filing complaints. Review Title VI complaints received since the last Comprehensive Review to determine if procedures described 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: The recipient must prepare and submit to the FTA RCRO evidence that it is using a complaint form that has been approved by FTA, 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 DIRECTIVES

FTA C. 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 procedure 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."

FTA Circular 4702.1B Chapter III.5. b. (2) Document translation

"Notices detailing a recipient's Title VI obligations and complaint procedures shall be translated into languages other than English, as needed and consistent with the DOT LEP Guidance and the recipient's language assistance plan."

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 and LEP populations, to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
Recipients are required to incorporate Title VI and LEP 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 and LEP populations in effective participation in the recipient's decision-making process shall be included in the plan. 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 minority and LEP communities
- 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 specifically to members of affected minority and/or LEP communities
- Considering radio, television, or newspaper ads on stations and in publications that serve LEP populations. Outreach to LEP populations could also include audio programming available on podcasts
- 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 been identified in the plan and integrated into the recipient's public participation or outreach activities?*

DETERMINING COMPLIANCE
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, low-income, and LEP populations in the course of conducting these public outreach and involvement activities. Review any public participation documents provided in response to the Section 5307 Program Requirements and Technical Capacity-Program Management 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.

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: The recipient must document the implementation of inclusive public participation for any upcoming activities in accordance with the Public Participation Plan in its Title VI program.

GOVERNING DIRECTIVE
FTA C. 4702.1B Chapter III. 8. Promoting Inclusive Public Participation

"The content and considerations of Title VI, the Executive Order on LEP, and the DOT LEP Guidance 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
All recipients of FTA funds

EXPLANATION
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?*

DETERMINING COMPLIANCE

Determine if a recipient has subrecipients by reviewing past Comprehensive Review reports (Description of the Recipient section) and inquiring of the FTA regional office. Request and review a list of subrecipients. Review the recipient's Title VI Program in TrAMS for subrecipient monitoring procedures and tools. On site, review a sample of subrecipient records to determine if the recipient collects and reviews Title VI programs from subrecipients that are not also direct recipients of FTA funds.

Prior to the site visit, review the recipient's Title VI Program for subrecipient monitoring processes. 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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not review the Title VI plans of subrecipients that are not also direct recipients of FTA funds.

DEFICIENCY CODE TVI6-1: Subrecipient Title VI plans not reviewed

SUGGESTED CORRECTIVE ACTION: The recipient must prepare and submit to the FTA RCRO 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: The recipient must prepare and submit to the FTA RCRO a schedule for, and description of, oversight monitoring for subrecipients' implementation of Title VI requirements along with evidence of its implementation.

GOVERNING DIRECTIVES

FTA C. 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. Did the recipient conduct an equity analysis for any transit facilities it constructed (or plans to construct in the current Federal fiscal year) since the last Title VI program submission?

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 of FTA funds

EXPLANATION
FTA C. 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." The requirement for an equity analysis applies to projects requiring land acquisition and the displacement of persons from their residences and businesses.

For purposes of this requirement, "facilities" do not include bus shelters, as these are transit amenities and are covered in FTA C. 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, then said facility will require a Title VI equity analysis.

When evaluating locations of facilities:

- Recipients should give attention to other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result
- 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 constructed any transit facilities since the last Comprehensive Review or have plans to construct any during the current Federal fiscal year? If no, move to the next question.*

b. *Was a site determination or location of facilities Title VI equity analysis completed prior to selection of the preferred site? If not, when is it anticipated to be completed?*

c. *If an equity analysis was completed, did the recipient include required elements?*

DETERMINING COMPLIANCE

Review projects in TrAMS to determine if the recipient constructed transit facilities since the recipient's last Title VI Program submission or are planning any currently. 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 any completed analysis took place prior to the preferred site selection.

Request and review any Title VI analysis completed for facility siting completed since the last Title VI Program submission to determine if:

- the recipient considered whether the location of a project would result in a disparate impact on the basis of race, color, or national origin;
- the recipient conducted outreach to persons potentially impacted by the siting of facilities; and
- upon determination of a disparate impact, the Title VI equity analysis compared the equity impacts of various siting alternatives, implementing the least discriminatory alternative.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it was required to conduct an equity analysis during the planning stages for the siting or location of facilities but did not.

DEFICIENCY CODE TVI7-1: Title VI equity analysis not conducted for facility site or location

SUGGESTED CORRECTIVE ACTION: For facilities still in the process of siting, the recipient must prepare and submit to the FTA RCRO documentation of an equity analysis before proceeding to making a siting decision. For facilities that were sited after October 1, 2012, for which the analysis was not completed, consult with the FTA RCRO to discuss the corrective action.

The recipient is deficient if it did not conduct the analysis in accordance with FTA C. 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

SUGGESTED CORRECTIVE ACTION: For facilities still in the process of siting, the recipient must prepare and submit to the FTA RCRO documentation of an equity analysis completed in accordance with FTA C. 4702.1B Chapter III.13 before proceeding to making a siting decision. For facilities that were sited after October 1, 2012, for which the analysis was not completed in accordance with FTA C. 4702.1B Chapter III.13, consult with the FTA RCRO to discuss the corrective action.

GOVERNING DIRECTIVE
FTA C. 4702.1B Chapter III 13 Determination of Site or Location of Facilities

"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
All recipients of FTA funds that operate fixed-route public transportation meeting the vehicles in peak service and UZA threshold

EXPLANATION
Fare and Major service changes: Under FTA C. 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 (including transfers) changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on minority and low-income riders. 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. The updated FTA C. 4702.1B requires written procedures for the conduct of service and fare equity analyses, a disparate impact policy, and a disproportionate burden 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.

Fare change equity analyses are required for all fare or fare medium changes. A fare and service change equity analysis must be adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The circular provides extensive guidance on how to conduct fare and service equity analyses. FTA C. 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.

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?*

DETERMINING COMPLIANCE

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. Ask the FTA regional office if there have been any fare or major service changes since the last 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 each fare or major service change not included in the latest Title VI submission, determine if the following 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, disparate impact, and/or disproportionate burden policy as appropriate for the type of equity analysis required.			
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 analyses.			

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 the FTA RCRO 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 following requirements have been 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 "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 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 recipient:

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			

Monitoring Element	*Addressed*	*Not Addressed*	*Reviewer Comments*
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 analyses for an applicable fare change or major service change unless it can be demonstrated that 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. If the recipient's threshold triggering an equity analysis differs from that which triggers public comment under Section 5307 Program Requirements for major service reduction, do not make a deficiency, but provide this information to the FTA RCRO for further follow-up with the recipient.

DEFICIENCY CODE TVI8-1: Impact of fare and/or service changes not adequately examined

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an equity analysis for any fare or major service change that occurred since submission of the last Title VI Program. The recipient must also submit to the FTA RCRO revised procedures implemented to ensure that future equity analyses will be conducted as required.

The recipient is deficient if there is no documentation of briefing 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 reviewed by governing body

SUGGESTED CORRECTIVE ACTION: For completed equity analysis, the recipient must submit to the FTA RCRO 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. The recipient must also submit to the FTA RCRO 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 the FTA RCRO 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: For projects completed without complete analyses, consult

the FTA RCRO 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: The recipient must prepare and submit to the FTA RCRO an updated monitoring program, consistent with the procedures in FTA C. 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: The recipient must prepare and submit to the FTA RCRO 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 DIRECTIVES

FTA C. 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 is 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."

c "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 C. 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 include the needs of minorities in planning activities; document that it passes 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 required to distribute funding and conduct planning activities in a non-discriminatory manner.

APPLICABILITY
States and MPOs

EXPLANATION
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, 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?*

DETERMINING COMPLIANCE

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

(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 and low-income populations, along with the record of accepted and rejected applications identifying applicants that are minority organizations or that provide assistance to minority or low-income 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: The recipient must prepare and submit to the FTA RCRO evidence that the needs of minority communities are being included in statewide or metropolitan transportation planning process in accordance with FTA C. 4702.1B and its Title VI Program.

The recipient is deficient if it is not implementing procedures for inclusion of 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: The recipient must prepare and submit to the FTA RCRO evidence that it has implemented procedures for inclusion of minority communities in planning

processes in accordance with FTA C. 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: The recipient must prepare and submit to the FTA RCRO 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 C. 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: The recipient must prepare and submit to the FTA RCRO documentation that it is providing assistance to potential subrecipients, consistent with the procedures in FTA C. 4702.1B and its Title VI Program.

GOVERNING DIRECTIVES

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."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. 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?

2. Are any oversight reviews, audits, or investigations scheduled during this Federal fiscal year?

3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies related to Title VI?

4. Are any Title VI deficiencies currently open?

5. If a Title VI compliance review is scheduled for the current Federal fiscal year, what information prompted the review?

6. Are any issues related to Title VI indicated in the Oversight Assessment Tool (OAT)?

7. Have Title VI complaints been filed with FTA against the recipient?

8. Has the recipient received Title VI complaints since last Title VI submission?

9. Does the recipient sufficiently identify, investigate, and track complaints?

10. Has the recipient recently reached a threshold triggering additional requirements in Chapter IV of FTA C. 4702.1B (50 or more fixed-route vehicles in peak service/located in a UZA of 200,000 or more in population)?

11. 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?

12. Is the current Title VI Plan that the recipient is implementing the one that was approved by FTA?

13. Does the recipient appear to have sufficient resources for effective implementation of its Title VI plan?

14. Do the recipient's complaint procedures appear to afford the public due process for resolving complaints?

15. For facility siting, if the recipient identified disparate impacts in the selected location, did the analysis include a substantial legitimate justification for selecting that site over other sites considered, and why the alternative locations were not sufficient?

16. Does the recipient take sufficient steps to ensure meaningful access to the benefits, services, information, and other important portions of its programs and activities for LEP persons?

17. Does the recipient train employees to provide timely and reasonable language assistance?

18. Does the recipient appear to ensure inclusive public participation of minority and LEP populations into its public participation procedures?

19. 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?

20. Did background research or site visit observations reveal any potential issues or concerns about the recipient's Title VI program or its implementation not covered previously in this section?

REFERENCES

1. 2 CFR Parts 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. FTA Circular 4703.1 "Environmental Justice Policy Guidance For Federal Transit Administration Recipients"

5. Federal Register: April 15, 1997 (Vol. 62, Number 72, pp. 18377-18381) "U.S. Department of Transportation (US DOT) Order to Address Environmental Justice in Minority Populations and Low-Income Populations"

6. Executive Order 13166 August 11, 2000: "Improving Access to Services for Persons with Limited English Proficiency"

7. Federal Register: December 14, 2005 (Vol. 70, Number 239, pp. 74087-74100) "US DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons"

8. 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. US DOT Limited English Proficiency (LEP) Guidance

5. Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs

6. Title VI Frequently Asked Questions

7. US Census American FactFinder "Percent of Specific Language Speakers in the Region" (S1601)

Exhibit 10.1

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	
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

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
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 10.2

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 that includes an outreach plan to engage minority and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI Program submission • A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance • 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
Fixed Route Transit	• All elements listed above for Fixed Route Transit Providers and

Type of Transit Provider	Title VI Program Contents
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	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," disparate impact policy, and disproportionate burden 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 and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI Program submission • A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance • 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 non-discriminatory 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 and limited English proficient populations, as well as a summary of outreach efforts made since the last Title VI Program submission • A copy of the recipient's plan for providing language assistance to persons with limited English proficiency, based on the DOT LEP Guidance • 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

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11. 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.

QUESTIONS TO BE EXAMINED

1. Does the recipient track, resolve, and respond to ADA-related complaints?

2. Do all bus and rail vehicles acquired for use in fixed-route service by public entities since the last Comprehensive Review meet the requirements of 49 CFR part 37?

3. Are vehicles used in contracted fixed-route service, including commuter bus service, accessible?

4. Since the last Comprehensive Review, if vehicles were purchased for demand-response service, other than for ADA complementary paratransit service, were the requirements of 49 CFR part 37 met?

5. Are facilities for providing public transportation that were constructed since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?

6. Are facilities for providing public transportation that were altered since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?

7. Does the recipient follow provision of service requirements?

8. Does the recipient accommodate individuals who rely on accessible equipment when that equipment is inoperative?

9. Is general route-deviation service open to the general public?

10. Is rail service accessible to and usable by persons with disabilities?

11. Is ferry service accessible to and usable by persons with disabilities?

12. Does the recipient monitor contracted service 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?

13. Does the recipient monitor service provided by subrecipients for compliance with the US DOT ADA regulations?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- ADA complaint procedures, if written
- ADA complaint form
- ADA complaint record retention procedures, if written
- Sample driver handbooks
- Sample driver operating and training manuals

- Sample vehicle specifications/information on annunciators
- Sample internal service monitoring materials, such as surveys, checklists, interview forms, etc.
- Sample operating and training manuals

Recipient Follow-up

- Documentation of structural impracticality
- 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
- Internal bulletins
- Lift/ramp specifications for the fleet
- Sample requests for reasonable modification

ADA1. Does the recipient track, resolve, and respond to ADA-related complaints?

BASIC REQUIREMENT
Recipients must track, resolve, and respond to ADA-related complaints.

APPLICABILITY
All recipients

EXPLANATION
Recipients are required to have procedures for addressing ADA complaints that incorporate appropriate due process standards and provide for prompt and equitable resolution. The US DOT ADA Final Rule, effective July 13, 2015, revised the local complaint process requirements in 49 CFR Parts 27 and 37 to require that recipients sufficiently advertise the process for filing an ADA-related complaint 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. If the recipient does not operate service directly or is a pass-through entity, it must ensure that those entities operating service directly have a procedure for addressing ADA complaints.

Recipients must advertise their ADA-related complaint process through means such as websites and include the contact information (name, address, telephone number, and email address) for the employee designated to coordinate compliance. In lieu of providing the name of an individual, the Federal Transit Administration (FTA) has found it acceptable to provide a title (e.g., "ADA Coordinator" or "Customer Complaint Representative") so long as any communications to the job title are directed to the designated employee who can then promptly respond. This can be accomplished by forwarding telephone calls, retrieving recorded messages, forwarding emails, or other means.

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 the Title VI and ADA bases and clearly distinguishes the two statutes.

INDICATORS OF COMPLIANCE

a. *Is the process for filing a complaint advertised to the public, such as on the recipient's website?*

b. *Does public information about the complaint process include the appropriate contact information?*

c. *Are the complaint procedures accessible to and usable by individuals with disabilities?*

d. Do the procedures provide for the prompt and equitable resolution of complaints, including a procedure for responding to complaints and tracking the responses?

e. 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?

DETERMINING COMPLIANCE

Prior to the site visit, review the recipient's website to determine if the complaint process is posted. Request and review the ADA complaint policy and procedures and copies of public information that provide information on filing ADA complaints, such as notices to the public, rider guides, and ADA or other complaint procedures. Determine whether or not the contract information for the employee designated to coordinate compliance is provided.

Evaluate whether an individual, after viewing the publicly available materials, would know how to file a complaint. Determine if the website itself is usable by persons with vision disabilities. Review the ADA complaint procedures and determine if the procedures are available in accessible formats upon request.

Determine if the complaint procedures provide for due process, that is, provides an individual who is denied service the opportunity to contest that decision, correct the situation, and resume service, and if the procedures specify time requirements for research and response and provide for promptly responding to any individual filing a complaint and documentation of the response.

Onsite, review a sample of complaint records to determine if research and response were timely, the response was documented, and if the reason for the response was provided to the individual filing a complaint. Review the ADA complaint procedures and record retention procedures for ADA complaints. Onsite, review ADA complaint files and logs to ensure that the recipient retains copies of ADA-related complaints for at least one year and a summary of all ADA-related complaints for at least five years.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if 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, or its procedures do not provide due process, prompt response, documentation of the response, and the reason therefore to any individual filing a complaint.

DEFICIENCY CODE ADA1-1: Insufficient ADA complaint process

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the Regional Civil Rights Officer (RCRO) information for the public on filing an ADA complaint and documentation that the information has been made available to the public.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO the accessible formats provided to the public in making the ADA complaint procedures accessible to and usable by individuals with disabilities.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO ADA complaint procedures that provide for due process.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO ADA complaint procedures that require a prompt response to the individual filing the complaint.

SUGGESTED CORRECTIVE ACTION 5: The recipient must submit to the RCRO ADA complaint procedures that ensure that the reason for the response is provided to the individual filing the complaint.

SUGGESTED CORRECTIVE ACTION 6: The recipient must submit to the RCRO 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 for at least five years.

DEFICIENCY CODE ADA1-2: Insufficient ADA complaint record retention

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for retaining copies of ADA complaints for at least one year and summaries of ADA complaints for at least five years.

GOVERNING DIRECTIVES
49 CFR 27.121(b) Compliance information

"(b) Compliance reports. Each recipient shall keep on file for one year all complaints of noncompliance received. A record of all such complaints, which may be in summary form, shall be kept for five years."

49 CFR 37.17 Designation of responsible employee and adoption of complaint procedures

"(b) Adoption of complaint procedures. An entity shall adopt procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part and 49 CFR parts 27, 38 and 39. The procedures shall meet the following requirements:

(1) The process for filing a complaint…must be sufficiently advertised to the public, such as on the entity's Web site."

(2) The procedures must be accessible to and usable by individuals with disabilities."

(3) The entity must promptly communicate its response to the complaint allegations, including its reasons for the response, to the complainant and must ensure that it has documented its response."

ADA2. 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 37?

BASIC REQUIREMENT
All new bus or rail vehicles purchased or leased for use in fixed-route service by public entities must be accessible. 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
All recipients who purchase bus or rail vehicles for use in fixed-route service by public entities

EXPLANATION
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.

INDICATORS OF COMPLIANCE

a. *Did all new bus and rail vehicles purchased or leased by public entities operating fixed-route service comply with the standards found in 49 CFR part 38 of the US DOT ADA regulations?*

b. *For used vehicles acquired or leased that do not meet accessibility standards under 49 CFR Part 38, did the recipient's good faith efforts meet the requirements of 49 CFR 37.73(c), 37.81(c), or 37.87(c)?*

c. *Since the last Comprehensive Review, has the recipient remanufactured any existing buses or rail vehicles for use in fixed-route service, or purchased or leased any remanufactured any buses or rail vehicles for use in fixed-route service?*

DETERMINING COMPLIANCE

Review the list of procurements obtained under the Procurement area of the review to determine whether new vehicles were acquired 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.

Review awards 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 to obtain an accessible vehicle. During the tour of the facility, check for inaccessible vehicles. Onsite, review the specifications for the remanufactured vehicles, engineering analysis, and visually inspect remanufactured 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 ADA2-1: New vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation showing that the newly acquired new inaccessible vehicles were taken out of fixed-route service. Before placing them back in fixed-route service, the recipient must submit to the RCRO documentation demonstrating that the vehicles have been made accessible.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO 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 were made to obtain accessible vehicles.

DEFICIENCY CODE ADA2-2: Used vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 to the RCRO 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, and did not document an engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle.

DEFICIENCY CODE ADA2-3: Remanufactured vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO 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, the recipient must submit to the RCRO documentation that it has made the vehicles accessible.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO evidence that it has canceled the lease for inaccessible vehicles.

GOVERNING DIRECTIVES

49 CFR 37.71 Purchase or lease of new non-rail vehicles by public entities operating fixed route systems

"(a) Each public entity operating a fixed route system making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs."

49 CFR 37.79 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."

ADA3. Are vehicles used in contracted fixed-route service, including commuter bus service, accessible?

BASIC REQUIREMENT
Vehicles used in contracted fixed-route service, including commuter bus service, must be accessible.

APPLICABILITY
All public entities who contract for fixed-route service

EXPLANATION
When an entity contracts for fixed-route service, including commuter bus service, all of the buses 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.

INDICATOR OF COMPLIANCE
a. Does the contract specify that the vehicles must be accessible?

DETERMINING COMPLIANCE
Onsite, review contracts for fixed-route service to identify vehicle accessibility requirements. Discuss the service(s) during the site visit. During the visit to the contractor, discuss the fleet and visually inspect vehicles. If non-accessible used vehicles were placed into service, determine if the recipient has evidence that the contractor made good faith efforts consistent with 49 CFR 37.73(c), 49 CFR 37.81(c), or 49 CFR 37.87(c) to purchase or lease an accessible vehicle. If non-accessible remanufactured vehicles are used, determine if the recipient has evidence that the contractor performed an engineering analysis documenting the structural infeasibility of making the vehicle accessible.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if the vehicles used by a fixed-route contractor are not accessible, and the recipient does not have evidence that the contractor either made good faith efforts to acquire accessible vehicles for the service, or conducted an engineering analysis that demonstrated a significant adverse impact on the structural integrity of a remanufactured vehicle.

DEFICIENCY CODE ADA3-1: Contracted service vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO evidence that it has required its contractors to use accessible equipment for fixed-route service and provided a timeframe for the contractor to be in compliance.

SUGGESTED CORRECTIVE ACTION 2: For used vehicles, the recipient must submit to the RCRO documentation of good faith efforts to obtain accessible vehicles for the service.

SUGGESTED CORRECTIVE ACTION 3: For remanufactured vehicles, the recipient must submit to the RCRO an engineering analysis that demonstrates a significant adverse impact on the structural integrity of the vehicle.

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."

ADA4. Since the last Comprehensive Review, if vehicles were purchased for demand-response service, other than for ADA complementary paratransit service, were the requirements of 49 CFR part 37 met?

BASIC REQUIREMENT
Vehicles used in demand-response service must be accessible unless equivalent service is provided.

APPLICABILITY
Entities who provide demand-response service

EXPLANATION
Public entities operating demand-response service for the general public must purchase or lease accessible vehicles unless they can demonstrate that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. Demand-response service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements. The service for the general public for people with and without disabilities must be provided in the most integrated setting feasible and must be equivalent with respect to response time, fares, geographic service area, hours and days of service, any restrictions or priorities based on trip purpose, availability of information and reservation capability, and any constraints on capacity or service availability. Recipients must ensure that contractors using non-accessible vehicles in contracted demand-response service provide equivalent service.

Vanpool systems operated by public entities or in which public entities own, purchase, or lease the vehicles are subject to equivalent service requirements. A vehicle that an individual with disabilities can use must be made available to and used by a vanpool in which such an individual chooses to participate.

Before procuring any inaccessible vehicle for demand-response service, the entity must file a certification of equivalent service with FTA. Recipients must file a certification of equivalent service for each procurement of inaccessible vehicles. Appendix C to 49 CFR part 37 of the US DOT ADA regulations includes a copy of the certification of equivalent service. The recipient must monitor its service to ensure

that equivalent service exists; that is, there is an equal opportunity for each individual with a disability to use the transportation service and that the service provided to individuals with disabilities and those without disabilities meet the equivalent service characteristics described above. The recipient must document its analysis.

INDICATORS OF COMPLIANCE

a. *If the recipient purchased non-accessible equipment for demand-response service other than ADA complementary paratransit service, is equivalent service provided?*

b. *If non-accessible vehicles were purchased for demand-response service since the last Comprehensive Review, was the certification of equivalent service filed with FTA?*

DETERMINING COMPLIANCE

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. Access the Transit Award Management System (TrAMS) to determine if the recipient submitted the certification of equivalent service. Note: The annual certs and assurances do not meet this requirement. Look in TrAMS to see if the certification was uploaded to the award application. Follow up with the RCRO. Obtain documentation showing that the recipient monitors its service to ensure that equivalent service is provided.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it purchased or leased new inaccessible vehicles for use in demand-response service and equivalent service is not provided. The recipient is deficient if it purchased or leased new inaccessible vehicles for use in demand-response service and did not file a certification of equivalent service with FTA.

DEFICIENCY CODE ADA4-1: Demand-response vehicle accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO a plan to bring the service into compliance with equivalent service requirements or submit procedures for monitoring the demand-response service to ensure that equivalent service is provided.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO procedures for filing the certification of equivalent service in each year it plans to purchase or lease non-accessible vehicles for general public demand-response service.

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."

(d) …. Public entities operating demand responsive service receiving funds under any other section of the FT Act shall file the certificate with the appropriate FTA regional office…All certificates under this paragraph may be made and filed in connection with a particular procurement or in advance of a procurement; however, no certificate shall be valid for more than one year. A copy of the required certificate is found in appendix C to this part."

ADA5. Are facilities for providing public transportation that were constructed since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?

BASIC REQUIREMENT
Newly constructed facilities must meet US DOT accessibility requirements.

APPLICABILITY
All recipients

EXPLANATION
Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR 37.9, as required by 49 CFR 37.41. Under 49 CFR 37.41(b), full compliance with these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. "Structurally impracticable" is defined in 49 CFR 37.41(b)(1) as "those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features."

If there are parties other than the recipient responsible for portions of the facility, the recipient must ensure that they also comply with the US DOT ADA requirements.

Note that there are differences between the standards required under US DOT ADA regulations and those issued by other Federal agencies; and state, county, and municipal building codes cannot be relied upon to ensure compliance with US DOT ADA requirements.

INDICATOR OF COMPLIANCE

a. *Can the recipient demonstrate that the newly constructed facilities meet accessibility requirements? Otherwise, can the recipient demonstrate that meeting the accessibility requirements was structurally impracticable?*

DETERMINING COMPLIANCE
Review awards to determine whether new facilities were constructed since the last Comprehensive Review. Obtain a list of facilities that were constructed since the last Comprehensive Review. 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) to tour during the site visit. Onsite, review procurement files to determine if procurements refer to US DOT ADA requirements. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation of structural impracticality, that is the unique characteristics of terrain prevent the incorporation of accessibility features. Tour newly constructed facility(ies) to determine if the building is generally accessible, that is, includes basic accessibility elements such as accessible parking, accessible routes, ramps, and elevators.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it constructed a new facility for providing public transportation that did not meet US DOT accessibility requirements and cannot document structural impracticality.

DEFICIENCY CODE ADA5-1: New facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO documentation of structural impracticality.

GOVERNING DIRECTIVES
49 CFR 37.9 Standards for accessible transportation facilities

"(a) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in Appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by Appendix A to this part."

49 CFR 37.41 Construction of transportation facilities by public entities

"(a) A public entity shall construct any new facility to be used in providing designated public transportation services so that the facility is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. This requirement also applies to the construction of a new station for use in intercity or commuter rail transportation. For purposes of this section, a facility or station is "new" if its construction begins (*i.e.*, issuance of notice to proceed) after January 25, 1992, or, in the case of intercity or commuter rail stations, after October 7, 1991.

(1) Full compliance with the requirements of this section is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

(3) If providing accessibility in conformance with this section to individuals with certain disabilities (e.g., those who use wheelchairs) would be structurally impracticable, accessibility shall nonetheless be ensured to persons with other types of disabilities (e.g., those who use crutches or who have sight, hearing, or mental impairments) in accordance with this section."

ADA6. Are facilities for providing public transportation that were altered since the last Comprehensive Review readily accessible to and usable by individuals with disabilities?

BASIC REQUIREMENT
Altered facilities must meet US DOT accessibility requirements.

APPLICABILITY
All recipients

EXPLANATION
If the entity alters an existing facility used to provide public transportation, 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.

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?*

DETERMINING COMPLIANCE
Review awards in TrAMs to determine whether facilities were altered since the last Comprehensive Review. Discuss with the regional office. If FTA is aware of accessibility issues and has signed off on the project, look no further. Obtain a list of newly altered facilities. Review procurement files to determine if architecture & engineering (A&E) services refer to US DOT ADA requirements. Discuss with the recipient how it ensures that plans, drawings, and construction comply with US DOT ADA requirements. Review documentation 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.

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 ADA6-1: Facility accessibility standards deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO a schedule for making the necessary modifications to bring the facility into compliance.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO documentation that the facility was made accessible to the maximum extent feasible.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO a schedule for making the necessary modifications to make the path of travel accessible.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO documentation supporting cost disproportionality with regard to the path of travel.

GOVERNING DIRECTIVES
49 CFR 37.9 Standards for accessible transportation facilities

"(a) For purposes of this part, a transportation facility shall be considered to be readily accessible to and usable by individuals with disabilities if it meets the requirements of this part and the requirements set forth in Appendices B and D to 36 CFR part 1191, which apply to buildings and facilities covered by the Americans with Disabilities Act, as modified by Appendix A to this part."

49 CFR 37.43 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.

(a)(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)."

ADA7. 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

EXPLANATION
The US DOT ADA regulations (49 CFR 37.161-169) detail specific requirements for bus and rail service. (For ferry service requirements see question 11.) The regulations do not require written policies detailing how an entity will comply with these service provisions, but the entity should be able to demonstrate that it has policies and procedures in place to enable it to meet these requirements. The entity should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and explains how the entity enforces their implementation.

a) Stop announcements are required for fixed-route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, and any stop upon request. The US DOT ADA regulations supersede any union agreement that prevents the entity from requiring operators to call stops. Where automated stop annunciators are used, the public or private entity must ensure that drivers announce stops.

b) When more than one route serves a stop, the public or private entity must provide an effective means by which an individual with a visual impairment or other disability waiting at a stop can identify the route on which he or she wants to travel. Where automated stop annunciators are used, the entity must ensure an alternative mechanism for an effective means of route identification at stops served by multiple vehicles and multiple routes when annunciators are out of service.

c) 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 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.

d) US DOT's Final Rule amending 49 CFR part 37, which went into effect October 19, 2011, prohibits public and private entities 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 Final Rule deletes the sentence containing "common wheelchair" from part 37, recognizing that some vehicles used in public transit can accommodate wheelchairs that do not meet the definition of "common wheelchair." Wheelchairs that exceed the weight or dimensional requirements of a "common wheelchair" can be transported on and be used on such vehicles. In such cases, the recipient must change its operating policies so as not to limit service accessibility by the term "common wheelchair."

   It may be helpful for a recipient to publicize the capacities of its vehicles, so that passengers using wheelchairs can determine whether their mobility devices will fit aboard the recipient's vehicles. As long as this information does not understate the actual dimensions and design load of the vehicles in the recipient's fleet, and as long as these vehicles meet the requirements of 49 CFR part 38, a recipient that does so is not deficient. Because the minimum standards for vehicle lifts and ramps have not changed, such a recipient may accurately report that its vehicles can accommodate wheelchairs measuring 30" x 48" and weighing up to 600 lbs. when occupied, if that represents its actual capacities. In those cases, a recipient may restrict service to wheelchairs within those dimensional and weight limitations.

e) 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.

f) Public and private entities may not deny service to individuals using respirators, concentrators, or portable oxygen.

g) Public and private entities must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

h) Public information and communications must be made available in accessible formats, upon request. The alternate accessible format must be provided in a format that the requesting individual can actually use. Public and private entities must make available to individuals with disabilities adequate and accessible information concerning transportation services.

i) Effective July 13, 2015, 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. 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 make priority seating available to individuals with disabilities?*

d. *Does the recipient transport all wheelchairs that do not exceed the capacities of the vehicle and its equipment (lifts/ramps)?*

e. *Does the recipient deploy the lift or ramp at any stop upon request?*

f. *Does the recipient provide service to persons using respirators, concentrators, and portable oxygen?*

g. *Does the recipient provide adequate time for individuals with disabilities to board/disembark a vehicle?*

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?*

DETERMINING COMPLIANCE

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 vehicle specifications and information on annunciators for how stops are announced and connecting routes identified. Review information on lift/ramp specifications for the fleet. Review ADA complaints addressing service provisions.

During the 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. Check if inoperative announcement systems are addressed during pre-trip inspections.

2. Look for priority seating signs on vehicles during the facility tour. Note: The regulation requires a recipient to ask but does not require the recipient to force an individual to move. A recipient may have a mandatory-move policy in place, but this is not required.

3. Ask trainers and managers how potentially "oversize" mobility devices are handled.

4. Ask the recipient if there are any stops at which it does not deploy lifts or ramps and the reasons why.

5. If not addressed in written material, ask whether or not the recipient provides service to persons using respirators, concentrators, and portable oxygen.

6. Review the ADA complaints for any relevant report on the time allowed for individuals with disabilities to board/disembark a vehicle. Discuss how the recipient provides adequate time for individuals with disabilities to board/disembark a vehicle.

7. Discuss any request for information in accessible formats and how the recipient honored the request. Note: The requirement is to provide material in a format the customer can use; which format (Braille, audio, large-type, etc.) is not specified. Also, be aware that provision of non-English information is separate from provision of accessible-format materials.

8. Review information on requests for reasonable modifications. During the site visit, request the policy for and discuss implementation of the reasonable modification process.

9. Discuss the recipient's training programs for assistance to riders with disabilities and disability sensitivity.

10. 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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not ensure that stops are announced on fixed-route service, or that a means of route identification on fixed-route stops served by more than one route is provided.

DEFICIENCY CODE ADA7-1: Stop announcement/vehicle ID mechanisms deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO 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: The recipient must submit to the RCRO 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.

The recipient is deficient if it does not make priority seating available to individuals with disabilities.

DEFICIENCY CODE ADA7-2: Priority seating deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to make priority seating available to individuals with disabilities and evidence that it monitors implementation of these procedures.

The recipient is deficient if it sets weight or size limitations on wheelchairs that understate fleet capacity.

DEFICIENCY CODE ADA7-3: Weight/size limitations on wheelchairs

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to transport wheelchairs that do not exceed the vehicle or equipment capacity.

The recipient is deficient if it does not deploy lifts and ramps for riders who request this, at any stop on any route.

DEFICIENCY CODE ADA7-4: Lift/ramp deployment deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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.

The recipient is deficient if it does not provide service to persons using respirators, concentrators, and portable oxygen.

DEFICIENCY CODE ADA7-5: Portable oxygen and respirators deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 complaints or operating policies indicate that the recipient does not provide adequate time for individuals with disabilities to board/disembark a vehicle.

DEFICIENCY CODE ADA7-6: Dwell time deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to provide adequate time for individuals with disabilities to board/disembark a vehicle and evidence that it monitors the implementation of these procedures.

The recipient is deficient if it does not provide information in alternative formats upon request.

DEFICIENCY CODE ADA7-7: Alternative accessible formats not provided

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for processing requests for public information in alternative formats.

The recipient is deficient if it does not make information about how to make requests for reasonable modifications readily available to the public through the same means it uses to inform the public about its policies and practices or if the information is not accessible to and usable by individuals with disabilities.

DEFICIENCY CODE ADA7-8: Reasonable modification deficiency

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation that it makes information about how to make requests for reasonable modifications readily available to the public.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO 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 ADA7-9: ADA training not adequate

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a training program to ensure that personnel are trained to proficiency, as appropriate for their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities and evidence of its implementation.

The recipient is deficient if it does not monitor its operations for compliance with the service provisions.

DEFICIENCY CODE ADA7-10: Insufficient monitoring of operations for ADA service provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that its operations comply with ADA service provisions.

GOVERNING DIRECTIVES

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….

(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).

(i) The entity shall ensure that adequate time is provided to allow individuals with disabilities to complete boarding or disembarking from the vehicle.

(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."

2 CFR 200.303 Internal controls

"The non-Federal entity must:

(a) Establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

(b) Comply with Federal statutes, regulations, and the terms and conditions of the Federal awards.

(c) Evaluate and monitor the non-Federal entity's compliance with statutes, regulations and the terms and conditions of Federal awards.

(d) Take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings."

ADA8. Does the recipient accommodate individuals who rely on accessible equipment when that equipment is inoperative?

APPLICABILITY
All recipients

BASIC REQUIREMENT
Service must be accessible to and usable by persons with disabilities.

EXPLANATION
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. The requirement for maintenance of accessible features applies to passenger facilities for ferry systems. 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 an accessibility feature is out of order, the entity must take reasonable steps to accommodate individuals with disabilities who would otherwise use the feature.

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.

Public entities and private entities operating service under contract to a public entity 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.

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. *When an elevator is out of service, does the recipient accommodate individuals who rely on the elevator?*

b. *Does the recipient ensure that vehicles with inoperative lifts or ramps are not placed into service when alternative accessible vehicles are available?*

c. *Does the recipient require vehicle operators to report lift and ramp failures immediately?*

d. *Is alternative accessible service provided to persons with disabilities?*

DETERMINING COMPLIANCE

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 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 ADA8-1: Elevator service deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation that it has implemented procedures to accommodate passengers when an elevator is out of service.

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 ADA8-2: Vehicles with inoperative lift/ramp placed in service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA8-3: Lift/ramp failures not reported immediately

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA8-4: Vehicles with inoperative lift/ramp not removed from service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA8-5: Alternative accessible service not provided

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for providing alternative accessible service within 30 minutes on routes with headway 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.

GOVERNING DIRECTIVES
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.

(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."

ADA9. Is general route-deviation service open to the general public?

BASIC REQUIREMENT
Route-deviation service must be open to the general public and accessible to and usable by persons with disabilities.

APPLICABILITY
All recipients providing route-deviation service to the general public

EXPLANATION
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.

To be considered demand response, the service must deviate for the general public, not just persons with disabilities. If deviations are restricted to a particular group, the service ceases to be a form of demand-response service for the general public. Systems must provide information to the public on how to request a deviation. The service for persons with disabilities must be equivalent to the service for people without disabilities as specified in 49 CFR 37.77.

In limited circumstances, a recipient may be able to provide both ADA complementary paratransit service and fixed-route service using the same vehicle. In these situations, the fixed-route bus would go off route (or "deviate") only for people with disabilities who have been determined to be ADA paratransit eligible. In this scenario, service to such persons must be provided according to the same requirements in Subpart F of 49 CFR part 37 for complementary paratransit (e.g., service area, response time, fares, hours and days of service, absence of capacity constraints and absence of trip purpose restrictions).

INDICATORS OF COMPLIANCE

a. *Is the service promoted as open to the general public? Is the public provided information on how to request a deviation?*

b. If non-accessible vehicles are used to provide the service, is equivalent service provided to individuals who require an accessible vehicle?

DETERMINING COMPLIANCE
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 is instructed to deviate for the general public.

Review the accessibility of the fleet used to provide route-deviation service. If the fleet includes vehicles that are not accessible, when onsite obtain information, such as denial policies and records or dispatch procedures, showing that equivalent service is provided.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not provide or promote deviation service to the general public.

DEFICIENCY CODE ADA9-1: Deviation service not provided/promoted to the general public

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation, such as public information and dispatching procedures, documenting that the service deviates for the general public or must submit to the RCRO 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 ADA9-2: Equivalent route-deviation service not provided

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation that equivalent service is provided.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO procedures for providing equivalent service and evidence that the procedures have been implemented.

GOVERNING DIRECTIVES
49 CFR 37.121 Requirement for comparable complementary paratransit service

"(a) Except as provided in paragraph (c) of this section, each public entity operating a fixed route system shall provide paratransit or other special service to individuals with disabilities that is comparable to the level of service provided to individuals without disabilities who use the fixed route system.

(b) To be deemed comparable to fixed route service, a complementary paratransit system shall meet the requirements of §§37.123-37.133 of this subpart."

49 CFR 37.77 Purchase or lease of new non-rail vehicles by public entities operating a demand responsive system for the general public

"(a) Except as provided in this section, a public entity operating a demand responsive system for the general public making a solicitation after August 25, 1990, to purchase or lease a new bus or other new vehicle for use on the system, shall ensure that the vehicle is readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs.

(b) If the system, when viewed in its entirety, provides a level of service to individuals with disabilities, including individuals who use wheelchairs, equivalent to the level of service it provides to individuals without disabilities, it may purchase new vehicles that are not readily accessible to and usable by individuals with disabilities.

(c) For purposes of this section, a demand responsive system, when viewed in its entirety, shall be deemed to provide equivalent service if the service available to individuals with disabilities, including individuals who use wheelchairs, is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the following service characteristics:

(1) Response time;

(2) Fares;

(3) Geographic area of service;

(4) Hours and days of service;

(5) Restrictions or priorities based on trip purpose;

(6) Availability of information and reservations capability; and

(7) Any constraints on capacity or service availability."

ADA10. 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
Rail operations, including light, rapid, and commuter rail

EXPLANATION
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. 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.

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. 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 (other than key station requirements), those alterations must also be accessible per the US DOT ADA standards.

New and altered commuter and intercity rail stations are required to comply with a new performance standard that requires either level boarding or an effective means of providing accessible boarding to each accessible car in each train.

The performance standard of section 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. *Do trains consisting of more than one car provide between-car barriers?*

d. *For any commuter rail station altered or constructed after February 1, 2012, is accessible boarding provided to each accessible car of the train?*

DETERMINING COMPLIANCE

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. During the facility tour, verify that trains consisting of more than one car provide between-car barriers. For commuter rail, note that the requirement does not apply where between-car bellows are provided.

Review rail operations training materials regarding accessible boarding/alighting procedures, including use of bridgeplates. 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 to determine if it 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 bridgeplates. 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 ADA10-1: One-car-per-train rule deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for complying with the one-car-per-train rule.

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 and the recipient does not reposition the train to permit accessible boarding of other accessible cars.

DEFICIENCY CODE ADA10-2: Accessible boarding not provided

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for complying with the one-car-per-train rule.

The recipient is deficient if between-car barriers are not provided.

DEFICIENCY CODE ADA10-3: Lacking between-car barriers

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA10-4: Commuter rail level boarding deficiency

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO documentation supporting platform-related exceptions. The FTA regional office and headquarters will determine corrective actions for noncompliant new construction or alterations and operational deficiencies.

GOVERNING DIRECTIVES
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, and where between-car bellows are not provided, 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 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."

ADA11. 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
Ferry operations

EXPLANATION
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.

49 CFR 39.21(b)(2) requires public operators of passenger vessels 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?*

DETERMINING COMPLIANCE

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 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 ADA11-1: CRO missing or lacking authority

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO evidence, such as an organization chart, job description, or Board or management directive, that it has designated a CRO. Submit to the RCRO 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 ADA11-2: Reasonable modification not provided for ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA11-3: Limits on passengers with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO revised policies and procedures that prohibits 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 of if it requires a passenger with a disability to travel with another person.

DEFICIENCY CODE ADA11-4: Excessive requirements placed on passenger with disabilities on ferry service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO evidence that it has ceased requiring medical documentation or 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 ADA11-5: Non-accessible transportation to/from vessel

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA11-6: Assistance not provided to passengers with disabilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 and 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 ADA11-7: Ferry service safety information provision deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 ADA11-8: Restrictions on passengers with wheelchairs or mobility aids

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO evidence that it has ceased restricting 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.

GOVERNING DIRECTIVES

49 CFR 39.21 What is the general nondiscrimination requirement of the part?

"(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 a avoid [sic] such a conflict."

49 CFR 39.35 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 39.35 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 39.45 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 passenger vessel owner or operator (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."

ADA12. Does the recipient monitor contracted service, service provided by lessees, or service provided by another public entity on the recipient's behalf for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT
Contracted service must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY
Recipients who contract out, lease vehicles, or rely on another public entity to provide service

EXPLANATION
Recipients are required to ensure that contracted service adheres to the same ADA requirements that apply to the recipient. See preceding questions for a more detailed explanation of each requirement.

INDICATOR OF COMPLIANCE

a. *How does the recipient monitor contracted service/service provided by lessees/service provided by another public entity on the recipient's behalf for?*

    1. *Complaint procedures?*

    2. *Vehicle acquisition?*

    3. *Facility construction and alterations?*

    4. *Service provision, including training?*

    5. *Maintenance of accessible features?*

    6. *Route-deviation service?*

    7. *Rail service?*

    8. *Ferry service?*

DETERMINING COMPLIANCE
Review transportation service contracts, agreements to provide supplemental transportation, and leases for ADA requirements, including training requirements. Review contract management procedures, including tracking and monitoring service quality. Review reports, questionnaires, and checklists used for ensuring compliance with ADA requirements. 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. Onsite, discuss ADA policies and procedures with the contractors/lessees visited.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that contractors and lessees comply with ADA provision of service requirements.

DEFICIENCY CODE 646: Insufficient oversight of contracted service for ADA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that contractors and lessees comply with the ADA service provisions, along with evidence of implementation.

GOVERNING DIRECTIVES
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."

ADA13. 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

EXPLANATION
Recipients are required to ensure that subrecipients adhere to all relevant ADA requirements. See preceding questions for a more detailed explanation of each requirement.

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?*
    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?*

DETERMINING COMPLIANCE
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. Discuss ADA policies and procedures with the subrecipient(s) visited.

Prior to the site visit, review the state management plan to determine whether the state allows subrecipients to purchase non-accessible equipment for demand-response service. Determine how the state obtains certifications of equivalent service 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 nonaccesible vehicles for demand-response service, Section 5339 funds take on the requirements of the Section 5307 or 5311program, depending on the program the funds support. Therefore, a certification of equivalent service is required from Section 5339 subrecipients. Discuss with staff.

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 ADA13-1: Insufficient oversight of subrecipients for ADA requirements
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that subrecipients comply with the relevant US DOT ADA requirements and evidence of implementation.

The state is deficient if it does not obtain a certification of equivalent service from Section 5307 or 5311 subrecipients that acquire non-accessible vehicles for general public demand-response service.

> DEFICIENCY ADA13-2: Insufficient oversight of ADA vehicle accessibility requirements
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 DIRECTIVES
49 CFR 200.331 Requirements for pass-through entities

"All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision."

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

1. 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?

2. Are any oversight reviews, audits, or investigations reviews scheduled during this Federal fiscal year?

3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?

4. Are any oversight review, investigation, or audit findings currently open?

5. Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?

6. What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?

7. Have any ADA complaints been filed with FTA?

8. Does the recipient appear have the capacity to ensure compliance with the ADA? Are employees trained to proficiency in ADA requirements?

9. Do the recipient, contractors, and lessees appear to have sufficient accessible spare vehicles to meet the ADA service requirements?

10. 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?

REFERENCES

1. 2 CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"

3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"

4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"

5. 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. Project ACTION
6. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
7. U.S. Department of Justice ADA Homepage

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12. AMERICANS WITH DISABILITIES ACT (ADA) COMPLEMENTARY PARATRANSIT

PURPOSE OF THIS REVIEW AREA

Titles II and III of the ADA of 1990 provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

QUESTIONS TO BE EXAMINED

1. Does the recipient's eligibility determination process meet ADA complementary paratransit service requirements?

2. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?

3. If the recipient has a no-show/late cancellation policy for ADA complementary paratransit service, does it meet the ADA complementary paratransit service requirements?

4. Does the recipient limit the availability of service to ADA paratransit eligible individuals?

5. Does the recipient monitor contracted service 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?

6. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with the US DOT ADA regulations?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Operations, dispatch, scheduling or reservation procedures
- Sample notification letter templates for eligibility, temporary eligibility, and denials
- Definitions for denials, missed trips, on-time performance, and excessively long trips
- ADA reasonable modification policy, if written
- ADA complementary paratransit service contracts
- Oversight tools including required reports, questionnaires, and checklists for ADA complementary paratransit service

Recipient Follow-up

- Service denials for the past three years by year
- No-show policy

CPT1. Does the recipient's eligibility determination process meet ADA complementary paratransit service requirements?

BASIC REQUIREMENT

ADA complementary paratransit service must be provided to ADA eligible individuals.

APPLICABILITY

All ADA complementary paratransit service providers

EXPLANATION
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 is not required to submit a written justification prior to the hearing, 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 a hearing 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.

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?*

DETERMINING COMPLIANCE
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 a written notification of an appeal determination, with the specific reasons for it, are provided to any applicant. 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.

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 CPT1-1: Presumptive eligibility deficiencies
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 CPT1-2: Eligibility letter deficiencies
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 CPT1-3: Eligibility appeals process not properly implemented
>
> SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO an eligibility appeals process.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO an eligibility appeals process that provides for at least 60 days to file an appeal.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO an eligibility appeals process that does not require the applicant to submit a written justification prior to the appeal hearing.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO 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: The recipient must submit to the RCRO 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.

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."

CPT2. Does the recipient provide ADA complementary paratransit service to out-of-town visitors?

BASIC REQUIREMENT
ADA complementary paratransit service must be provided to out-of-town visitors.

APPLICABILITY
All ADA complementary paratransit service providers

EXPLANATION
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 from 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 and is satisfactory, 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 service should be provided to a visitor should be a fairly simple and quick process enabling individuals to contact the host agency to learn what is required 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 not required to provide more than 21 days of service within a 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'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?

DETERMINING COMPLIANCE
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 the recipient:

- Accepts documentation of eligibility 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

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.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it does not accept documentation of eligibility from the visitor's home jurisdiction.

DEFICIENCY CODE CPT2-1: Home jurisdiction eligibility documentation not accepted

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for accepting documentation of eligibility from the visitor's home jurisdiction.

The recipient is deficient if it does not grant service to visitors based on apparent disabilities or documentation of disability.

DEFICIENCY CODE CPT2-2: Service not provided to visitors with apparent or documented disabilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 CPT2-3: Service to visitors not provided for at least 21 days

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a procedure for providing eligible visitors 21 days of service within a 365-day period.

GOVERNING DIRECTIVE
49 CFR 37.127 Complementary paratransit service for visitors

"(a) Each public entity required to provide complementary paratransit service under §37.121 of this part shall make the service available to visitors as provided in this section.

(b) For purposes of this section, a visitor is an individual with disabilities who does not reside in the jurisdiction(s) served by the public entity or other entities with which the public entity provides coordinated complementary paratransit service within a region.

(c) Each public entity shall treat as eligible for its complementary paratransit service all visitors who present documentation that they are ADA paratransit eligible, under the criteria of §37.125 of this part, in the jurisdiction in which they reside.

(d) With respect to visitors with disabilities who do not present such documentation [documentation of home jurisdiction eligibility], the public entity may require the documentation of the individual's place of residence and, if the individual's disability is not apparent, of his or her disability. The entity shall provide paratransit service to individuals with disabilities who qualify as visitors under paragraph (b) of this section. The entity shall accept a certification by such individuals that they are unable to use fixed route transit.

(e) A public entity shall make the service to a visitor required by this section available for any combination of 21 days during any 365-day period beginning with the visitor's first use of the service during such 365-day period. In no case shall the public entity require a visitor to apply for or receive eligibility certification from the public entity before receiving the service required by this section."

CPT3. 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 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
All ADA complementary paratransit service providers

EXPLANATION
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.

§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 §37.125(g). This means including instructions on the appeal process, and how to request an appeal. Under §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.

INDICATORS OF COMPLIANCE
a. *Does the recipient suspend riders for a reasonable period of time only after a pattern or practice of missing scheduled trips is established?*

b. *Does the recipient impose a mandatory financial penalty as part of its no-show policy, including charging for the fare of the no-show trip?*

c. *Are only no-shows under the rider's control counted towards the suspension?*

d. *Before suspending service for no-show violations, does the recipient notify the rider and provide an opportunity to respond? Does the recipient allow individuals to appeal no-show policy violations and stay suspensions pending the outcome of the appeal?*

DETERMINING COMPLIANCE

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 and for how long
- 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 "for a reasonable period of time."
- 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).

DEFICIENCY CODE CTP3-1: Unreasonable no-show suspension

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO a procedure for suspending riders for a reasonable amount of time.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO a procedure for suspending a rider only after establishing that the rider has a pattern or practice of missing scheduled trips.

The recipient is deficient if it imposes an involuntary financial penalty for no-shows.

DEFICIENCY CODE CTP3-2: Financial penalty imposed for no-shows

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation that it has ceased the assessment of financial penalties for no-shows.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO 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 CTP3-3: Suspension based on no-shows not under rider control

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 CTP3-4: Insufficient no-show suspension procedures

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO 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: The recipient must submit to the RCRO an appeals process that offers the opportunity for the rider to appeal.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the RCRO an appeals process that provides the rider an opportunity to be heard.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the RCRO an appeals process that stays the suspension pending the outcome of the appeal.

GOVERNING DIRECTIVE
49 CFR 37.125 ADA paratransit eligibility: Process

"(h) 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.

(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."

CPT4. Does the recipient limit 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
All ADA complementary paratransit service providers

EXPLANATION
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 restrict the number of trips an eligible individual will be provided?*

c. *Does the recipient limit the availability of service by using waiting lists?*

d. *Does any operational pattern or practice significantly limit the availability of service to eligible individuals?*

DETERMINING COMPLIANCE

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, review reports from the reservation and scheduling software or sample driver manifests. Evaluate data on trip denials, on-time performance, missed trips, and excessively long trips for the previous two years and the current year for any operational pattern or practice that has the effect of limiting availability such as trip denials, late pick-ups, 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 CPT4-1: ADA complementary paratransit scheduling deficiencies
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 CPT4-2: ADA complementary paratransit service denial tracking deficiencies

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the RCRO documentation, such as updated public information and scheduling procedures, that rides scheduled outside the hour before-or-after scheduling window are tracked as denials.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the RCRO documentation, such as updated public information and 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 CPT4-3: ADA complementary paratransit service restricted for eligible individuals

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 waiting lists.

DEFICIENCY CODE CPT4-4: ADA complementary paratransit service waiting lists

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO 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 CPT4-5: Limits or capacity constraints on ADA complementary paratransit service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO a plan to eliminate an operational pattern or practice that creates ADA complementary paratransit capacity constraints.

GOVERNING DIRECTIVE
49 CFR 37.131 Service criteria for complementary paratransit

"(b) (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."

"(f) *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

(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."

CPT5. Does the recipient monitor contracted service or service provided by another public entity on the recipient's behalf for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT
Contracted ADA complementary paratransit service must meet the US DOT ADA requirements that apply to the recipient.

APPLICABILITY
Recipients who contract out or rely on another public entity to provide service

EXPLANATION
When a public entity enters into a contractual or other arrangement with a private entity to operate any aspect of its ADA complementary paratransit service, the public entity is responsible for ensuring that the contractor 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 public 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.

INDICATOR OF COMPLIANCE

a. *If a recipient contracts 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 contractor(s) or provider(s) meets the ADA complementary paratransit requirements?*

DETERMINING COMPLIANCE
Review contracts and interagency 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.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that its contractors and providers comply with ADA complementary paratransit service requirements.

> DEFICIENCY CODE CPT5-1: Insufficient oversight of contracted ADA complementary paratransit
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO procedures for ensuring that contractors or providers comply with the ADA service provisions and evidence of implementation.

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."

CPT6. Does the recipient monitor ADA complementary paratransit service provided by subrecipients for compliance with the US DOT ADA regulations?

BASIC REQUIREMENT
ADA complementary paratransit service provided by subrecipients must be comparable to fixed-route service.

APPLICABILITY
Recipients with subrecipients

EXPLANATION
Recipients are required to ensure that subrecipients adhere to all relevant ADA requirements. See preceding questions for a more detailed explanation of each requirement.

INDICATOR OF COMPLIANCE
a. Does the recipient monitor subrecipients for ADA complementary paratransit service?

DETERMINING COMPLIANCE
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 during the site visit to assess when last the recipient performed oversight of the subrecipient and when ADA was addressed. Discuss ADA complementary paratransit policies and procedures with the subrecipient(s) visited to determine if the program is implemented in accordance with the agreement.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not ensure that its subrecipients comply with ADA provision of service requirements.

> DEFICIENCY CODE CPT6-1: Insufficient oversight of subrecipients for ADA complementary paratransit
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the RCRO specific procedures for ensuring that subrecipients comply with the ADA complementary paratransit requirements and evidence of implementation.

GOVERNING DIRECTIVE
49 CFR 200.331 Requirements for pass-through entities

"All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS
1. 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?

2. Are any oversight reviews, audits, or investigations reviews scheduled during this Federal fiscal year?

3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?

4. Are any oversight review, investigation, or audit findings currently open?

5. Are any issues related to ADA indicated in the Oversight Assessment Tool (OAT)?

6. What deficiencies or potential deficiencies have been identified by the FTA Office of Civil Rights through complaint investigations, compliance reviews, and other sources?

7. Have any ADA complaints been filed with FTA?

8. 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?

9. Does the recipient monitor its service for a pattern or practice of capacity constraints?

10. Did background research or site visit observations reveal any potential issues or concerns about:

    a. Service provision to all origins and destinations within the minimum ADA complementary paratransit service area and during all days and hours as fixed-route service

    b. 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

    c. 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

    d. Accuracy of operation data

    e. Training provided to staff

    f. Provision of complementary paratransit service not covered previously in this section?

REFERENCES

1. 2 CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

2. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"

3. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"

4. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"

5. 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. Https://www.yleadprojectaction.com/
6. Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation
7. U.S. Department of Justice ADA Homepage

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13. EQUAL EMPLOYMENT OPPORTUNITY (EEO)

PURPOSE OF THIS REVIEW AREA

The recipient must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving Federal financial assistance under the Federal transit laws. (Note: Equal Employment Opportunity Commission's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

QUESTIONS TO BE EXAMINED

1. Has the recipient developed the appropriate EEO program?

2. Does the recipient's abbreviated EEO Program contain the required elements?

3. Does the recipient ensure proper personnel assignments are made to ensure EEO Program implementation?

4. Does the recipient ensure the required elements of its EEO Program are properly implemented?

5. Does the recipient provide oversight of subrecipients and/or contractors who meet the EEO Program threshold?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- Number of employees working on/in the Federal Transit Administration (FTA)-funded program
- Most recent EEO program, if not uploaded to FTA's Transit Award Management System (TrAMS)
- Sample documents used for internal dissemination of EEO program
- Organizational chart identifying EEO officer
- Designated employee and EEO officer job descriptions
- Standard performance evaluation for managers/supervisors
- "Employment Practices Chart" (or alternate documentation containing the same information) See FTA Circular 4704.1A Attachment 4 for the listed information
- Number of persons hired in areas of underutilization
- EEO complaint logs
- List of subrecipients that meet the threshold to develop an EEO program

Recipient Follow-up

- Agendas, sign-in sheets for meetings conducted when the EEO policy and its implementation are explained
- Sample of recruitment entities and ads for job positions
- Agendas and sign-in sheets for EEO training or meetings with management
- Log of recruitment locations and recruitment dates for the review period
- Documentation of review and oversight of EEO plans of sample subrecipient(s)

EEO1. Has the recipient developed the appropriate EEO program?

BASIC REQUIREMENT

A recipient is required to submit a full or abbreviated EEO Program based on the number of its transit-related employees and whether it reaches a monetary threshold.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
A full EEO program is required of any recipient that both employs 100 or more transit-related employees (including temporary, full-time, or part-time employees) and 1) requests or receives in excess of $1 million in capital and/or operating assistance in the previous Federal fiscal year or 2) requests or receives in excess of $250,000 in planning assistance in the previous Federal fiscal year. The program requirements detail what must be included, such as designation of personnel responsibilities, a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices, proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every four years. Formal communication mechanisms should be established to publicize and disseminate appropriate elements of the program, such as the EEO policy statement. The policy statement should be posted, for example, on bulletin boards, near time clocks, or in the employee's cafeteria. All civil rights programs must be uploaded to TrAMS.

Recipients that employ between 50-99 transit-related employees and 1) request or receive capital or operating assistance in excess of $1 million in the previous Federal fiscal year, or 2) request or receive planning assistance in excess of $250,000 in the previous Federal fiscal year must prepare and maintain an abbreviated EEO Program. Recipients that must prepare an abbreviated program are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program to FTA every four years. Instead, these programs are reviewed during FTA's oversight reviews.

INDICATORS OF COMPLIANCE

a. *If the recipient meets the following threshold requirements, did it develop and submit a full EEO Program?*

    - *Employs 100 or more transit-related employees, and*
    - *Requests or receives capital or operating assistance in excess of $1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of $250,000 in the previous Federal fiscal year.*

b. *If the recipient meets the following threshold requirements, did it prepare and maintain an abbreviated EEO Program?*

    - *Employs between 50-99 transit-related employees, and*
    - *Requests or receives capital or operating assistance in excess of $1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of $250,000 in the previous Federal fiscal year.*

c. *If the recipient submitted an EEO program and FTA has issued correspondence indicating required revisions, has the recipient made those revisions?*

DETERMINING COMPLIANCE
Request and review the recipient's listing of transit-related employees to confirm the appropriate threshold based on number of employees. A transit-related employee refers to an employee of an FTA applicant, recipient, subrecipient, or contractor who is involved in any aspect of an agency's public transit operation funded by FTA. For example, a city planner involved in planning bus routes would be counted as part of the recipient's workforce, but a city planner involved only in land use would not be counted.

Review the recipient's applications and awards in TrAMS to verify if the recipient requested or received capital or operating assistance in excess of $1 million in the previous Federal fiscal year, or requested or received planning assistance in excess of $250,000 in the previous Federal fiscal year.

For required full EEO Programs:
Review in TrAMS the recipient documents section to confirm that the recipient's EEO Program was uploaded. Review in TrAMS the related action tab to ensure the EEO Program was submitted every four years.

For abbreviated EEO Programs:
In accordance with the Circular, unless requested by FTA, recipients within this threshold are not required to routinely submit their program to FTA unless requested. Request and review the most recent version of the recipient's EEO program.

For programs submitted to FTA:
Review the Civil Rights Status screen in TrAMS to determine if the recipient has submitted an EEO program. Request and review any correspondence from FTA to the recipient on its submission. If FTA provided the recipient with comments on the submission, review the recipient's current program to verify that noted revisions or additions were made.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it meets the threshold to submit a full EEO Program and has not developed and/or submitted a program and/or if the current EEO program has expired and it has not submitted a program update or requested and received an extension for submitting a program update.

> DEFICIENCY CODE EEO1-1: Full EEO program not prepared, maintained, and/or submitted
>
> SUGGESTED CORRECTIVE ACTION: The recipient must develop and/or upload the required EEO program or program update to TrAMS and notify the FTA regional civil rights officer (RCRO) that the program has been uploaded.

The recipient is deficient if it meets the threshold to prepare and maintain an abbreviated EEO Program and has not prepared or maintained a program.

> DEFICIENCY CODE EEO1-2: Abbreviated EEO program not prepared, and/or maintained
>
> SUGGESTED CORRECTIVE ACTION: The recipient must develop the appropriate EEO Program, upload it to TrAMS, and notify the FTA RCRO once completed.

The recipient is deficient if it received comments from FTA on its EEO 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, however, but make the RCRO aware of this for their follow-up.

> DEFICIENCY CODE EEO1-3: Revisions to EEO program not made
>
> SUGGESTED CORRECTIVE ACTION: The recipient must revise and submit its EEO program to TrAMS and notify the FTA RCRO once completed.

GOVERNING DIRECTIVE
FTA Circular 4704.1A Ch. 1.4 Applicability

"…Any FTA applicant, recipient, subrecipient, and contractor who meet both of the following threshold requirements must implement all of the EEO Program elements:

- Employs 100 or more transit-related employees, and

- Requests or receives capital or operating assistance in excess of $1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of $250,000 in the previous Federal fiscal year…

Any FTA applicant, recipient, subrecipient, and contractor who meets both of the following threshold requirements must prepare and maintain an abbreviated EEO Program:

- Employs between 50-99 transit-related employees, and

- Requests or receives capital or operating assistance in excess of $1 million in the previous Federal fiscal year, or requests or receives planning assistance in excess of $250,000 in the previous Federal fiscal year…

...These smaller agencies are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program to FTA every four years. Instead, these agencies will be required to provide the EEO Program to FTA if requested by the Office of Civil Rights or for any State Management Review or Triennial Review.

…Only direct recipients and State DOTs who cross the EEO Program threshold above are required to submit an EEO Program to FTA every four years…"

EEO2. Does the recipient's abbreviated EEO Program contain the required elements?

BASIC REQUIREMENT
A recipient's abbreviated EEO Program must include the Statement of Policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system.

APPLICABILITY
All recipients that meet the abbreviated EEO program threshold

EXPLANATION
Recipients must prepare and maintain an abbreviated EEO Program if they employ between 50-99 transit-related employees and, in the previous fiscal year, either:
1) requested or received capital or operating assistance in excess of $1 million, or
2) requested or received planning assistance in excess of $250,000.

An abbreviated EEO Program includes the Statement of Policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system. (See FTA Circular 4704.1A Attachment 5 for an EEO Program Format Checklist.) Agencies that meet the thresholds for an abbreviated program are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program to FTA every four years.

INDICATOR OF COMPLIANCE
a. Does the abbreviated EEO Program include the required attributes?

DETERMINING COMPLIANCE
Request and review the recipient's EEO Program to ensure the five attributes listed below are included in the current abbreviated EEO Program. For any items that appear to be incomplete, discuss with the RCRO prior to making a deficiency.

Statement Elements	*Addressed*	*Not Addressed*	*Incomplete*	*Reviewer Comments*
1. Statement of Policy that:				
• Expresses a commitment that all employment actions will be administered without regard to race, color, religion, national origin, sex (including gender identity, sexual orientation, and pregnancy), age, genetic information, disability, veteran status, or other protected class				
• Commits to developing a written nondiscrimination program to which the agency is committed and which is available for inspection upon request				
• Explains that the responsibility for implementing the EEO Program is assigned to an agency executive who reports directly to the Chief Executive Officer (CEO)/General Manager (GM)				
• States that applicants and employees have the right to file complaints alleging discrimination				
• States that retaliation is strictly prohibited and will not be tolerated				
• States the commitment to provide reasonable accommodations to applicants and employees				
• States that all management and supervisory personnel share in this responsibility and are assigned specific tasks to ensure and achieve compliance				
• States that the agency evaluates the performance of managers, supervisors, and others based on the success of the EEO Program in the same manner that the agency evaluates their performance in other agency programs				
2. Policy Dissemination Plan				
3. Designation of Personnel Responsibility				
4. Assessment of Employees Practices				
5. Monitoring and Reporting Plan				

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if its abbreviated EEO Program does not include all the required attributes.

DEFICIENCY CODE EEO2-1: Abbreviated EEO Program elements missing or incomplete

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO an EEO Program that includes all the required elements.

GOVERNING DIRECTIVES
FTA Circular 4704.1A Ch. 1.4 Applicability

"…An abbreviated EEO Program includes the Statement of Policy, dissemination plan, designation of personnel, assessment of employment practices, and a monitoring and reporting system. (See Attachment 5 for an EEO Program Format Checklist.) These smaller agencies are not required to conduct a utilization analysis with goals and timetables or to submit the EEO Program to FTA every four years. Instead, these agencies will be required to provide the EEO Program to FTA if requested by the Office of Civil Rights or for any State Management Review or Triennial Review."

FTA Circular 4704.1A Ch. 2.2.1 Statement of Policy

"FTA requires an agency's EEO Program to include a signed and dated EEO policy statement issued by the agency's CEO/GM covering all employment and personnel practices, including recruitment, hiring, promotions, terminations, transfers, layoffs, classification, compensation, training, benefits, and other terms and conditions of employment. (See Attachment 1 for a Sample EEO Policy Statement.)

EEO3. Does the recipient ensure proper personnel assignments are made to ensure EEO Program implementation?

BASIC REQUIREMENT
A recipient must ensure that appropriate personnel designations are made and responsibilities assigned for EEO Program implementation.

APPLICABILITY
All recipients that meet the threshold for developing a full or abbreviated EEO Program

EXPLANATION
The importance of an EEO program is indicated by the individual named to manage the program and the authority he or she possesses. The EEO Officer should be identified in the recipient's policy statement. The EEO Officer should be an executive and must report directly to the CEO or have dotted line access, meaning they can bypass managers and go directly to the CEO. The EEO Officer should be identified by name in all internal and external communications regarding the recipient's EEO program.

Care should be taken to avoid conflicts of interest when assigning responsibility for administering the EEO program as a collateral duty assignment. Collateral duty means the person has other responsibilities rather than being a full time EEO Officer. The EEO Officer should serve as a check and balance on employment practices. Since one of the EEO Officer's minimum responsibilities includes reporting periodically to the CEO on the progress of each unit in relation to the agency's EEO goals, conflicts of interest could arise if the EEO Officer is in the human resources or administrative office. For example, many of the employment practices may be, in large part, the responsibility of the human resource department.

Additionally, the EEO Officer is responsible for processing employment discrimination complaints.

Since managing the EEO Program requires a commitment of time and resources, FTA requires agencies and their senior managers to give the EEO Officer support and assign sufficient staff to successfully carry out the EEO Program, as appropriate.

INDICATORS OF COMPLIANCE
a. *Has the recipient appropriately designated an EEO Officer with direct reporting relationship to the CEO and publicized its contact information?*

b. Are designated personnel implementing the EEO Program?

DETERMINING COMPLIANCE
Request and review the recipient's organizational chart and job description of the EEO Officer. Request and review the recipient's EEO Program to ensure the EEO Officer is named and the EEO Officer's responsibilities are included in the EEO Program and included in the EEO Officer's job description. Review the agency's organization chart to verify the EEO Officer has a direct reporting relationship to the CEO. Review internal and external communications regarding the recipient's EEO Program to verify that the EEO Officer's contact information is included.

Review information on responsibilities of personnel implementing the EEO program. Request and review manager/supervisor's annual performance assessment tools to verify that EEO responsibilities are included as part of the performance evaluation. Review that the attributes listed below are implemented:

Designation of Personnel	***Implemented***	***Not Implemented***	***Reviewer Comments***
EEO Officer responsibilities:			
Assist management in collecting and analyzing employment data, identifying problem areas, setting goals and time tables, and developing programs to achieve goals			
Design, implement, and monitor internal audit and reporting systems to measure program effectiveness progress and required action			
Review the agency's nondiscrimination plan with managers and supervisors			
Concur in the hiring and promotion process			
Periodically review employment and EEO policies, procedures, performance evaluations, and union agreements			
Report at least semiannually to the CEO/GM on each department's progress in relation to the agency's goals			
Serve as liaison between the agency, government, regulatory agencies, minority, women, disability organizations, and other community groups			
Maintain awareness of current EEO laws, and ensure dissemination to responsible officials			
Investigate complaints of EEO discrimination			
Provide EEO training for employees and managers			
Advise employees and applicants of training programs and professional development opportunities			
Audit postings of the EEO policy statement to ensure compliance information is posted and up to date			
Agency officials, supervisors and managers' responsibilities:			

Designation of Personnel	*Implemented*	*Not Implemented*	*Reviewer Comments*
Participate actively in periodic audits to identify and to remove employment barriers obstructing the achievement of specified goals and objectives			
Have regular discussions with managers, supervisors, employees, and affinity groups to ensure agency policies and procedures are being followed			
Maintain and update the personnel database for generating reports required for the nondiscrimination program			
Cooperate with the EEO Officer in review of information and investigation of complaints			
Encourage employee participation to support the advancement of the EEO Program			

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if its EEO officer does not have a direct reporting relationship to the CEO or the contact information of the EEO officer has not been publicized.

DEFICIENCY CODE EEO3-1: Inadequate designation of EEO Officer

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence that the EEO Officer reports and is directly responsible to the CEO, and/or that contact information for the EEO Officer is included in internal and external information on the agency's EEO Program.

The recipient is deficient if it has not designated appropriate personnel responsible for assisting the EEO Officer in carrying out the requirements of the EEO Program or if personnel are not performing responsibilities as described in the EEO Program.

DEFICIENCY CODE EEO3-2: Inadequate designation of EEO officials, supervisors and managers

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence of corrective actions taken to implement the EEO Program with appropriately designated personnel.

GOVERNING DIRECTIVE
FTA Circular 4704.1A Ch. 2.2.3 Designation of Personnel Responsibility

"The designation of an agency's EEO Officer responsible for EEO Program management and oversight reflects the agency's EEO commitment. As such, FTA requires agencies to designate an executive as EEO Officer who will report to and is directly responsible to the agency's CEO/GM… FTA requires agencies to name the EEO Officer and publicize the individual's contact information in all internal and external communications regarding the agency's EEO Program. This will include publishing the EEO Officer's contact information prominently in both print and electronic communications, such as the agency's website.

Since managing the EEO Program requires a commitment of time and resources, FTA requires agencies and their senior managers to give the EEO Officer support and assign sufficient staff to successfully carry out the EEO Program, as appropriate… FTA requires the EEO Officer's Program responsibilities to include, at a minimum: Developing the EEO policy statement and a written EEO Program; Assisting management in collecting and analyzing employment data, identifying problem areas, setting goals and

timetables, and developing programs to achieve goals; Designing, implementing, and monitoring internal audit and reporting systems to measure program effectiveness and to determine where progress has been made and where proactive action is needed; Reviewing the agency's nondiscrimination plan with all managers and supervisors to ensure that the policy is understood; Concurring in the hiring and promotion process; In conjunction with human resources, periodically reviewing employment practices policies (e.g., hiring, promotions, training), complaint policies, reasonable accommodation policies, performance evaluations, grievance procedures, and union agreements; Reporting at least semiannually to the CEO/GM on each department's progress in relation to the agency's goals and on contractor and vendor compliance; Serving as liaison between the agency, Federal, state, county, and local governments, regulatory agencies, and community groups representing minorities, women, and persons with disabilities, and others; Maintaining awareness of current EEO laws and regulations, and ensuring the laws and regulations affecting nondiscrimination are disseminated to responsible officials; Investigating complaints of EEO discrimination; Providing EEO training for employees and managers; In conjunction with human resources, advising employees and applicants of available training programs and professional development opportunities and the entrance requirements; Auditing postings of the EEO policy statement to ensure compliance information is posted and up to date… Although the EEO Officer is primarily responsible for implementing an agency's EEO Program, all officials, managers, and supervisors are responsible for ensuring EEO and must not discriminate based on a protected class. All managers—from the supervisor of the smallest unit to the Board Chair or CEO/GM—bear responsibility for ensuring that agency EEO Program policies and programs are carried out. EEO responsibilities for agency officials, supervisors and managers include: Participating actively in periodic audits of all aspects of employment to identify and remove barriers obstructing the achievement of specified goals and objectives; Holding regular discussions with other managers, supervisors, employees, and affinity groups to ensure agency policies and procedures are being followed; In conjunction with the EEO Officer, maintaining and updating the personnel database for generating reports required for the nondiscrimination program; Cooperating with the EEO Officer in review of information and investigation of complaints; Encouraging employee participation to support the advancement of the EEO Program (e.g., professional development and career growth opportunities, posting promotional opportunities, shadowing, mentoring)…"

EEO4. Does the recipient ensure the required elements of its EEO Program are properly implemented?

BASIC REQUIREMENT
A recipient must be able to demonstrate implementation of its EEO Program which includes the EEO Policy dissemination plan; assessment of employment practices; a monitoring and reporting system; and as applicable, utilization analysis, goals, and timetables.

APPLICABILITY
All recipients that meets the threshold for developing an EEO Program

EXPLANATION
A recipient must be able to demonstrate implementation of its EEO Program which includes the EEO Policy dissemination plan; assessment of employment practices; a monitoring and reporting system; and as applicable, utilization analysis, and goals and timetables for those recipients required to submit a full EEO Program.

Internal and External Dissemination: FTA requires each agency to state they will communicate the existence of its EEO policy and program internally and externally to employees, applicants, and potential applicants.

Assessment of Employment Practices: Recipients must conduct a detailed narrative and statistical assessment of present employment practices to identify those practices that operate as employment

barriers and unjustifiably contribute to underutilization. For example, the narrative assessment of the employment practices may include the agency's current practices in recruitment, testing, selection, promotion, termination, transfers, layoffs, disciplinary actions, compensation, benefits, and training.

The analyses must contain statistical data to document the impact of employment practices. All problem areas must be identified and a proposed program of remedial, affirmative actions enumerated in the recipient's EEO plan.

Monitoring and Reporting: The recipient's EEO Program must contain an effective and workable internal monitoring and reporting system. FTA requires recipients to conduct such evaluations semiannually, at a minimum; produce documentation that supports actions to implement the plan for minority and female job applicants or employees; and informs management of the program's effectiveness.

Utilization Analysis: The purpose of the utilization analysis is to identify those job categories where underutilization and/or concentration of women or minorities exist in relation to their availability in the relevant labor market. It is also to establish the framework for goals and timetables and other affirmative actions to correct employment practices that contributed to any underutilization or concentration. Specific percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis.

Goals and Timelines: Recipients are required to set both short-term and long-range goals. Usually long-range goals, to be obtained in four to five years, are stated as percentages. Short-term goals should be set and pursued in order to ensure accomplishment of long-range goals. Short-term goals represent the net increase in minority and/or women's employment in a particular job category within the next 12 months. Short-term goals should be stated as both actual numbers and percentages and should be based on anticipated job openings, job group availability, and the long-range goals. If the goals that were set in the previous submission were not met, there is an obligation to explain what efforts were taken to meet the goal and fully explain and justify why the goal was not met.

INDICATORS OF COMPLIANCE

a. *Does the recipient disseminate its EEO policy internally and externally as required and as detailed in its EEO Program?*

b. *Does the recipient have a detailed narrative and statistical assessment of employment practices to identify employment barriers that contain the following elements listed below?*

c. *Does the recipient's monitoring and reporting system contain the elements listed below?*

d. *How does the recipient monitor its utilization analysis? If the recipient is only required to develop an abbreviated EEO Program, move to the next question.*

e. *Is the agency implementing strategies to achieve short and long-term goals established to address any underutilization identified?*

DETERMINING COMPLIANCE

Dissemination: Request and review the recipient's EEO Program for information on how dissemination of its EEO policy would be accomplished. Request and review documentation (i.e. agendas, sign-in sheets for meetings/trainings conducted when the EEO policy and its implementation are explained) to verify that the EEO policy and program have been brought to the attention of employees and managers. Request and review a listing of recruitment entities (i.e. employment agencies, minority and women's organizations, etc.) used by the agency; select a sample and verify the recipient's EEO policy was provided. Request and review a listing of recruitment ads published during the review period; select a sample and verify the recipient included the phrase "is an equal employment opportunity employer" or "is

an EEO employer." On-site verify that the EEO policy is posted in the recipient's office and has been publicized. Document if the following attributes have been implemented:

Dissemination	*Implemented*	*Not Implemented*	*Reviewer Comments*
Internal Dissemination			
Providing written communications from the CEO/GM (i.e., policy statement)			
Posting official EEO materials and policy statement on bulletin boards, near time clocks, in employees' break rooms, and in the employment/personnel office			
Including the EEO policy statement in the agency's personnel and operations manual, employee handbooks, reports, and manuals			
Meeting with top management officials at a minimum semiannually to discuss the EEO Program and its implementation			
Meeting with all employees and affinity groups to seek input on the program implementation			
Conducting periodic EEO training for all employees and for managers			
Conducting EEO training for all new supervisors or managers within 90 days of their appointment			
External Dissemination			
When there is outreach or advertising to recruitment entities (e.g., employment agencies, educational institutions, minority, and women organizations), disseminating the policy to recruitment entities			
Including in all recruitment ads a statement that the agency "is an equal employment opportunity employer"			

Assessment of Employment Practices: Request and review the recipient's EEO Program to obtain an understanding of how the below requirements are implemented. Review the plan for the recipient's identified problem areas and program of corrective actions. Obtain documentation to verify corrective actions are being performed. Request and review the recipient's Employment Practices Chart (or alternate documentation containing the same information), see FTA Circular 4704.1A Attachment 4 for the listed information. Ensure the "Employment Practices Chart" provides current and relevant data with a narrative explaining the source of the data and the results of the analysis.

Note: FTA expects all agencies to do this each year and attach the sheets for the separate years. FTA has identified that rolling the numbers up into one four-year analysis is incorrect and the numbers are inaccurate.

Employment Practices	*Addressed*	*Not Addressed*	*Reviewer Comments*
Detailed narrative assessment of present employment practices			
Statistical data to document the impact of the employment practices by sex and race			

Employment Practices	*Addressed*	*Not Addressed*	*Reviewer Comments*
Does the statistical analysis contain:			
Number of applicants for employment in each job category and the number hired, cross-referenced by sex and race			
Number of employees in each job category who applied for promotion or transfer and the number promoted or transferred, cross-referenced by sex and race			
Number and types of disciplinary actions			
Number of voluntary/involuntary terminations, cross-referenced by sex and race			
Job category training that fosters promotion potential, cross-referenced by sex and race			
Individuals with Disabilities and Veterans, the number of applicants for employment and promotions in each job category, and the number hired and promoted, cross-referenced by sex and race			

Monitoring and Reporting: Request and review the recipient's EEO Program to evaluate how the requirements above will be implemented. Request a sampling of the following items to verify the monitoring and reporting attributes listed above are implemented: employment practices analysis, agendas and sign-in sheets for EEO training or meetings with management, job postings published, advertisements placed, a log of recruitment locations and dates, the recipient's complaint logs with status of complaints. If the recipient indicates in its program that there are subrecipients and/or contractors, review the materials obtained above to determine if there is any discussion of monitoring these third-party programs. If the recipient indicates in its program that there are union agreements, obtain documentation that contracts have been reviewed to ensure there are no disparate impact.

Determine if the recipient is evaluating their EEO Program implementation throughout the year, at least semi-annually, and produces documentation that supports actions to implement the plan for minority and female job applicants or employees and informs management of the program's effectiveness.

Evaluate the recipient's monitoring system to determine how it implements the following attributes:

Monitoring and Reporting	*Implemented*	*Not Implemented*	*Reviewer Comments*
Monitoring			
Monitoring the implementation of dissemination, utilization analysis, statistical employment practices, goal timeframes, and all identified barriers and the progress			
Determining EEO compliance of subrecipients and contractors			
Reviewing union contracts to ensure there is not a disparate impact			
Monitoring complaints			
Reporting			

Monitoring and Reporting	*Implemented*	*Not Implemented*	*Reviewer Comments*
Meetings between the CEO/GM and the EEO Officer to discuss EEO Program progress and results of monitoring			
EEO-related meetings held between the EEO Officer and management			
Meetings between the EEO Officer, human resources, and hiring officials to review current EEO goals, statistics, policies			

Utilization Analysis: Request and review the recipient's utilization chart in its EEO Program. Compare the recipient's recent EEO utilization chart with the number of persons hired in the areas of underutilization. On-site, discuss how new hires have impacted the agency's areas of underutilization. Request and review employment materials (i.e. sample job postings, recruitment activities, etc.) to identify if opportunities are available for the positions underutilized.

Utilization Analysis	*Addressed*	*Not Addressed*	*Reviewer Comments*
Work force analysis includes a statistical breakdown of the recipients' workforce by each department job category			
Work force analysis is cross-referenced by sex and race			
Current percent of employees for each category is cross-referenced by group			
Availability percentage is identified for each category is cross-referenced by group			
Percentage of underutilization for each category is cross-referenced by group			

Goals and Timetables: Request and review the recipient's EEO Program and compare the utilization chart in the EEO Program to the recipient's most recent EEO utilization chart, along with examining the number of persons hired in the areas of underutilization. Compare the most recent workforce utilization analysis and other employment materials to show progress toward meeting EEO goals within timetables set. Request and review employment materials (i.e. sample job postings, recruitment activities, etc.) to identify if opportunities are available for the positions that are underutilized.

On site discuss the how new hires affected the underutilization.

Designation of Personnel	*Addressed*	*Not Addressed*	*Inadequate*	*Reviewer Comments*
Specific and detailed percentage and numerical goals with timetables to correct underutilization of persons identified in the utilization analysis				
Discussion of previous goals not met and a justification for not meeting those goals				

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not publicize and disseminate its EEO policy internally and externally, as required under FTA Circular 4704.1A, Ch. 2.2.2 and/or in accordance with its EEO Program.

DEFICIENCY CODE EEO4-1: Deficiencies in publicizing and disseminating the EEO Policy Statement

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO evidence of corrective actions taken to publicize and/or disseminate [whatever is missing] as required under FTA Circular 4704.1A, Ch. 2.2.2 and/or in accordance with its EEO Program.

Note to Reviewers: Ensure "*[whatever is missing]*"is properly listed in the Summary of Preliminary Deficiencies (SOPF) and draft/final report.

The recipient is deficient if it did not document their employment practices in both narrative and statistical formats with sufficient detail to identify trends and any practices that may operate as employment barriers.

DEFICIENCY CODE EEO4-2: Employment practices analyses deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO a detailed narrative and/or statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. The recipient must submit to the FTA RCRO a plan to routinely conduct this assessment in conjunction with evaluating short-term and long-range goals. The recipient must submit to the FTA RCRO an employment practices chart that provides all the statistical data in FTA Circular 4704.1A Attachment 4.

The recipient is deficient if it does not have a monitoring and reporting system in place.

DEFICIENCY CODE EEO4-3: EEO reporting and/or monitoring system deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must develop and submit to the FTA RCRO a detailed monitoring and reporting system to include [whatever part is missing].

Note to Reviewers: Ensure "*[whatever is missing]*"is properly defined in the SOPF and draft/final report.

The recipient is deficient if it has not completed a utilization analysis that identifies job categories that have an underutilization or concentration of minorities and women in relation to their availability in the relevant labor market or has not updated the analysis based on current hiring trends.

DEFICIENCY CODE EEO4-4: Utilization incomplete or not completed

SUGGESTED CORRECTIVE ACTION: The recipient must complete and submit to the FTA RCRO the required or updated utilization analysis.

The recipient is deficient if it has/is not implementing strategies to achieve its utilization goals consistent with its timetables.

DEFICIENCY CODE EEO4-5: EEO goals deficiencies

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO implemented strategies for achieving goals within the timetables established.

GOVERNING DIRECTIVES
FTA Circular 4704.1A Ch. 2.2.2 Dissemination

Internal Dissemination. "FTA requires each agency to state they will communicate the existence of its EEO policy and program to employees, applicants, and potential applicants by: Providing written communications from the CEO/GM; Posting official EEO materials (e.g., Federal and state labor laws poster(s)) and the agency's policy statement on bulletin boards, near time clocks, in employees' break rooms, and in the employment/personnel office; Including the EEO policy statement in the agency's personnel and operations manual, employee handbooks, reports, and manuals; Meeting with top

management officials (e.g., bus operations, human resources, planning, marketing, etc.) at a minimum semiannually to discuss the EEO Program and its implementation; Meeting with all employees and affinity groups to seek input on the program implementation; Conducting periodic EEO training for employees and for managers; Conducting EEO training for all new supervisors or managers within 90 days of their appointment"

External Dissemination. "When there is outreach or advertising to recruitment entities (e.g., employment agencies, educational institutions, and minority and women's organizations), FTA requires agencies to disseminate their EEO policy to those entities. All recruitment ads (e.g., newspapers, magazines, websites, and social media) must state that the agency "is an equal employment opportunity employer."

FTA Circular 4704.1A Ch. 2.2.6 Assessment of Employment Practices

"…Agencies can use self-analysis to ascertain whether their employment practices are contributing to underutilization or concentration. FTA requires agencies to document their employment practices in both narrative and statistical formats with sufficient detail to identify trends and any practices that may operate as employment barriers. FTA requires agencies to identify all problem areas and propose a program of corrective actions as part of their EEO Program. A proper assessment and identification of problem areas evaluates the impact of an agency's evaluation of external factors (e.g., applicants not knowing where to apply for jobs or the unavailability of bilingual materials and information) and internal factors (e.g., recruitment, testing, hiring, promotions, transfers, seniority, training, compensation, benefits, disciplinary procedures, and terminations). These required assessment elements, along with requirements for individuals with disabilities and veterans, are discussed below. Proper analyses evaluate the impact of an agency's practices on any identified underutilization or concentration…

…FTA requires agencies to provide statistical data that show any potential impact of employment practices on minorities and women since the last EEO Program submission. This includes: The number of applicants for employment in each job category and the number hired, cross-referenced by sex and race; The number of employees in each job category who applied for promotion or transfer and the number in each job category promoted or transferred, cross-referenced by sex and race; The number and types of disciplinary actions (e.g., indefinite suspension, loss of pay, demotion), tailored to the language used in union contracts and agency policies and procedures; he number of voluntary/involuntary terminations, cross-referenced by sex and race; Job category training that fosters promotion potential, cross-referenced by sex and race. FTA requires agencies to establish privacy protocols that protect self-identifying information, including self-identification for veterans and persons with disabilities, to keep this information separate from application materials, and to clearly explain such protocols to applicants and employees invited to self-identify. This includes having procedures that strictly limit access, such as using a separate sheet for self-identifying information. For online applications, this includes ensuring that the self-identifying section remains separate from the application. FTA has developed a sample four-fifths rule (or 80 percent) disparate impact analysis in a Microsoft Excel workbook available for download from FTA's website. (See Attachment 4 for a Sample Employment Practices Chart.) FTA requires agencies to complete the spreadsheets (or alternate documentation containing the same information) by providing current, accurate, and relevant data accompanied by a narrative explaining the source of the data and the results of the analysis. Raw data is not acceptable. FTA notes that determining disparate impact is not a pure arithmetic exercise since other factors contribute to a proper analysis of employment practices. In addition, FTA does not require analysis for any groups constituting less than 2 percent of the applicable workforce."

FTA Circular 4704.1A Ch. 2.2.7 Monitoring and Reporting

"An important part of any successful EEO Program is establishing an effective and workable internal monitoring and reporting system to: assess the results of action plans taken since the last program submission; enable agencies to evaluate their EEO Program during the year and to take any necessary corrective action regarding the development and execution of programs, goals, and timetables. FTA requires agencies to conduct such evaluations semiannually, at a minimum; produce documentation that

supports actions to implement the plan for minority and female job applicants or employees and informs management of the program's effectiveness...

…FTA requires EEO Programs to describe: Methods to monitor the EEO components identified in this chapter (e.g., dissemination, utilization analysis, statistical employment practices, timeframe to reach goals, all identified barriers and the progress of the action plan); Procedures used to determine EEO compliance of subrecipients and contractors such as collection and review of their EEO Programs, visits to facilities to ensure proper posting of the EEO Policy Statement, etc.; Procedures for reviewing union contracts, in conjunction with human resources, to ensure there is not a disparate impact; Process for monitoring complaints (e.g., describe the tracking system, monitoring of trends, timeliness of investigations, resolutions, reporting to management)."

FTA Circular 4704.1A Ch. 2.2.4 Utilization Analysis

"FTA requires agencies who meet the EEO Program threshold requirements (See Attachment 4 for a Sample Utilization Analysis Excel Chart.) to complete a utilization analysis as part of their EEO Program submission. A completed utilization analysis identifies job categories that have an underutilization or concentration of minorities and women in relation to their availability in the relevant labor market. The analysis also establishes the framework for goals and timetables to correct employment practices that contributed to any identified underutilization or concentration."

FTA Circular 4704.1A Ch. 2.2.5 Goals and timetables

"The completed utilization analysis will show where problems may exist in the agency. Based on this analysis, the agency will be able to set numerical goals within an established time frame. FTA requires agencies to provide percentage and numerical goals (using the whole-person rule), along with timetables for the next four-year period, for any categories of underutilization identified in the utilization table. (See Attachment 4 for a Sample Utilization Analysis Chart.)"

EEO5. Does the recipient provide oversight of subrecipients and/or contractors who meet the EEO Program threshold described in Question 1?

BASIC REQUIREMENT
Subrecipient and contractors are required to submit an abbreviated EEO program based on its number of transit-related employees and whether it reaches a monetary threshold.

APPLICABILITY
All recipients of FTA funds

EXPLANATION
For subrecipients or transit management/operations contractors that meet the threshold described in question 1, the recipient must ensure the development of an EEO program and review the adequacy of their EEO plans. That review should be documented through correspondence with the subrecipient or transit management contractor sufficient to demonstrate that the recipient determined compliance of their plan(s) with FTA C. 4704.1.

INDICATOR OF COMPLIANCE

a. *Does the recipient receive and review EEO plans of subrecipients and/or contractors who meet EEO thresholds?*

DETERMINING COMPLIANCE
Review in TrAMS the recipient documents section to obtain the recipient's EEO Program. If not in TrAMS request and review the recipient's EEO Program. Review documentation of oversight to verify that the

recipient maintains a list of subrecipients or contractors that meet an EEO Program threshold, and has documentation of review of subrecipients' or contractors' EEO Program (e.g., letter or memo to the subrecipient).

Contractor refers to any entity or organization that has entered into a contract to perform work or provide services *relating to transit service delivery* with an applicant, recipient, or subrecipient.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it 1) does not have on file an EEO plan for subrecipients and contractors that meet the EEO Program requirements 2) has not documented its review of such plans.

> DEFICIENCY CODE EEO5-1: Insufficient oversight of subrecipient/contractor EEO Program
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA RCRO documentation that it has received and reviewed EEO plans from subrecipients and contractors that meet threshold requirements, and provide copies of the plans, if requested by the FTA RCRO.

GOVERNING DIRECTIVE
FTA Circular 4704.1A Ch. 2.2.7 Monitoring and Reporting

"FTA requires that EEO Programs include the following attachments: List of subrecipients or contractors the recipient is monitoring and the services they provide; proof of review of subrecipients or contractors' EEO Program (e.g., letter or memo to the subrecipient) …"

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including EEO Reviews and the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in EEO?

2. Are any such reviews scheduled during this Federal fiscal year?

3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit findings?

4. Are any oversight review, investigation, or audit findings currently open?

5. If an EEO compliance review is scheduled for the current fiscal year, what information prompted the review?

6. Have any EEO complaints been filed with the FTA against the recipient?

7. Have any EEO-related complaints been filed with the recipient or external agencies?

8. Is FTA aware of any EEO-related lawsuits filed against the recipient?

9. Are there any apparent or potential unresolved conflicts of interest with the role of the EEO Officer?

10. Does the recipient appear to lack sufficient staff to carry out the EEO program?

11. Did background research or site visit observations reveal any potential issues or concerns about the recipient's EEO program or its implementation not covered previously in this section?"

REFERENCES

1. 2 CFR Part 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"

2. FTA Circular 4704.1, “Equal Employment Opportunity Program Guidelines for Grant Recipients”

USEFUL WEBLINKS

1. FTA Equal Employment Opportunity web page

2. EEO Compliance Reviews

14. 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 statutory exemptions, have FTA approval, and use only locally-funded assets?

2. If the recipient operates tripper service, does it meet FTA's requirements?

3. Does the recipient ensure that subrecipients, contractors and lessees that operate school bus service, do so in accordance with the FTA regulations?

4. Does the recipient ensure that subrecipients, contractors and lessees operate tripper service in accordance with the 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

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 statutory 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 three exemptions, has received FTA approval, and uses only locally-funded equipment and facilities.

APPLICABILITY
All recipients that provide bus service

EXPLANATION
There are three statutory exemptions under which an FTA recipient may operate exclusive school bus service:

SCHOOL BUS EXEMPTIONS
1. The recipient operates a school system in its urban area and also operates a separate and exclusive school bus program for that school system.
2. Existing private school bus operators in the urban area are unable to provide adequate transportation at a reasonable rate and in conformance with applicable safety standards.
3. The recipient, a public entity, has operated exclusive school bus service: o In the case of an award involving the purchase of buses—anytime during the 12-month period immediately prior to August 13, 1973. o In the case of an award for construction or operating of facilities and equipment made pursuant to the FT Act as amended (49 U.S.C. 1601 et seq.), anytime during the 12-month period immediately prior to November 26, 1974.

A recipient wishing to engage in school bus operations under one of these exemptions must provide an opportunity for public comment, including providing written notice to all private school bus operators and publishing notice in the local newspaper.

The FTA Administrator makes the determination of whether to permit a recipient to operate exclusive school bus service under one of the statutory 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. If yes, is the service eligible for any of the three exemptions included in the chart above?

c. 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 of the above exemptions?*

d. Are buses, facilities or equipment used in school bus operations locally funded?

DETERMINING COMPLIANCE
Obtain and review prior review 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 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: The recipient must submit to the FTA regional office 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: The recipient must 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: The recipient must submit to the FTA regional office 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 DIRECTIVES
49 CFR part 605, Subpart B: School Bus Agreements §605.11 Exemptions

“A recipient or applicant may not engage in school bus operations in competition with private school bus operators unless it demonstrates to the satisfaction of the Administrator as follows:

(a) That it operates a school system in its urban area and also operates a separate and exclusive school bus program for that school system; or

(b) That private school bus operators in the urban area are unable to provide adequate transportation, at a reasonable rate, and in conformance with applicable safety standards; or

(c) That it is a state or local public body or agency thereof (or a direct predecessor in interest which has acquired the function of so transporting school children and personnel along with facilities to be used therefor) who was so engaged in school bus operations:

(1) In the case of a grant involving the purchase of buses—anytime during the 12-month period immediately prior to August 13, 1973.

(2) In the case of a grant for construction or operating of facilities and equipment made pursuant to the FT Act as amended (49 U.S.C. 1601 et seq.), anytime during the 12-month period immediately prior to November 26, 1974.”

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 the Acts. 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 Federal Mass Transit Regulations."

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 a written agreement 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."

49 CFR Part 605, Subpart B: School Bus Agreements §605.15 Content of Agreement

"(a) Every recipient who is not authorized by the Administrator under §605.11 of this part to engage in school bus operations shall, as a condition of assistance, enter into a written agreement required by §605.14 which shall contain the following provisions:

(1) The recipient and any operator of project equipment agrees that it will not engage in school bus operations in competition with private school bus operators.

(2) The recipient agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Mass Transit Regulations, or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).

(b) Every recipient who obtains authorization from the Administrator to engage in school bus operations under §605.11 of this part shall, as a condition of assistance, enter into a written agreement required by §605.14 of this part which contains the following provisions:

(1) The recipient agrees that neither it nor any operator of project equipment will engage in school bus operations in competition with private school bus operators except as provided herein.

(2) The recipient, or any operator of project equipment, agrees to promptly notify the Administrator of any changes in its operations which might jeopardize the continuation of an exemption under §605.11.

(3) The recipient agrees that it will not engage in any practice which constitutes a means of avoiding the requirements of this agreement, part 605 of the Federal Transit Administration regulations or section 164(b) of the Federal-Aid Highway Act of 1973 (49 U.S.C. 1602a(b)).

(4) The recipient agrees that the project facilities and equipment shall be used for the provision of mass transportation services within its urban area and that any other use of project facilities and equipment will be incidental to and shall not interfere with the use of such facilities and equipment in mass transportation service to the public."

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 minimus route alterations, operate with regular route service, and not carry designations such as "school bus" or "school special."

APPLICABILITY
All recipients that provide bus service

EXPLANATION
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 minimus 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?*
    - *Do the buses used in tripper service carry designations such as "school bus" or "school special"?*
    - *Does the tripper service stop at regular bus stops with only de minimus route alterations from route paths in the immediate vicinity of schools to stops located at or in close proximity to the schools?*

DETERMINING COMPLIANCE
Obtain and review prior review 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 minimus route alterations, or carries designations such as "school bus" or "school special."

DEFICIENCY CODE SB2-1: Tripper violations

SUGGESTED CORRECTIVE ACTION: The recipient must submit evidence to the FTA regional office 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 DIRECTIVES
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 recipient or operator's regular service stop. All routes traveled by tripper buses must be within a recipient'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 against the use of buses, facilities and equipment funded under the Acts 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 the FTA regulations?

BASIC REQUIREMENT:
The recipient is responsible for ensuring that contractors, lessees and subrecipients comply with school bus regulations.

APPLICABILITY
All recipients

EXPLANATION
The recipient must ensure that exclusive school bus service operated by subrecipients is provided under one of the statutory 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?*

DETERMINING COMPLIANCE
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.

Onsite, review the oversight files for the contractor(s), lessee(s) and/or 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: The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office procedures for ensuring that subrecipients comply with the school bus service requirements and evidence that the procedures have been implemented.
>
> SUGGESTED CORRECTIVE ACTION 2: The recipient must work with the subrecipient to obtain through the FTA regional office FTA approval for providing school bus service.

GOVERNING DIRECTIVES
2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.331 Requirement for pass-through entities

"All pass-through entities must: …(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

> (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means."

SB4. Does the recipient ensure that subrecipients, contractors and lessees operate tripper service in accordance with the 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
All recipients

EXPLANATION
The recipient is responsible for overseeing contractors, lessees and subrecipients that operate FTA-funded tripper service to ensure that service is open to the public, stops only at regular service stops with only de minimus 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?*

DETERMINING COMPLIANCE
Obtain and review prior year Recipient Information Request (formerly known as the review package in OTrak to ascertain if any contractors/lessees or 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. Review the contractors', lessees' and subrecipients' to be visited websites, route maps, and schedules to determine if tripper service is provided in compliance with the regulations. If the information is not available from the contractors', lessees' or subrecipients' website, follow up with the recipient for copies of such in preparation for the site visit.

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 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." If time permits, look at buses used in school tripper service during pullout.

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: The recipient must submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with the tripper service requirements and evidence that the procedures have been implemented.

GOVERNING DIRECTIVES
2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.331 Requirement for pass-through entities

"All pass-through entities must: …(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

> (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Has FTA received any complaints against the recipient or any of its subrecipients, contractors, or lessees alleging noncompliance with school bus regulations?

2. Does it appear that any subrecipients, contactors, or leases are providing non-compliant school bus or tripper service?

3. Did background research or site visit observations reveal any other potential school bus/tripper service issues or concerns not covered above?

REFERENCES

1. 2 CFR Parts 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. FTA School Bus Operations Home Page

2. Https://www.transit.dot.gov/faq?combine=&shs_term_node_tid_depth=2186

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15. CHARTER BUS

PURPOSE OF THIS REVIEW AREA
Recipients are prohibited from using federally funded equipment and facilities to provide charter service if a registered private charter operator expresses interest in providing the service. Recipients are allowed to operate community based charter services excepted under the regulations.

QUESTIONS TO BE EXAMINED
1. Does the recipient operate or maintain charter bus service outside of a statutory 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 assets used in charter bus operations for:
  1. recipients
  2. subrecipients
  3. contractors
- Listing of subrecipients, contractors, and lessees that operate charter service

CB1. Does the recipient operate or maintain charter bus service outside of a statutory exemption or exception?

BASIC REQUIREMENT
Except under limited exceptions, recipients may not use FTA assistance to operate or maintain charter bus service.

APPLICABILITY
All recipients that provide bus service

EXPLANATION
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.

Examples of services that do not meet the definition of charter service and, therefore, are not considered charter service by FTA are:

- Service requested by a third party that is irregular or on a limited basis for an exclusive group of individuals and the recipient does not charge a premium fare for the service and there is no third party paying for the service in whole or in part.
- Shuttle service for a one-time event if the service is open to the public, the itinerary is determined by the recipient, the recipient charges its customary fixed-route fare and there is no third-party involvement.
- When a university pays the recipient a fixed charge to allow all faculty, staff, and students to ride the transit system for free so long as the recipient provides the service on a regular basis along a fixed route and the service is open to the public.
- When the recipient sees a need, and wants to provide service for a limited duration at the customary fixed-route fare.

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.

CHARTER SERVICE EXEMPTIONS
6. Recipients in Non-Urbanized Areas: Recipients in non-urbanized areas may transport employees, other transit systems' employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area.

Exceptions are considered charter service and have administrative, record-keeping, and reporting requirements. The charter regulation treats as exceptions the following community-based charter services included in the below table. The recipient must retain records of each charter service provided for at least three years. Charter service hours include time spent transporting passengers, time spent waiting for passengers, and "deadhead" hours (time spent getting from the garage to the origin of the trip and then the time spent from trip's ending destination back to the garage).

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
1. Government officials on official government business	Yes (if the recipient petitions the Administrator for additional charter service hours)	Yes	Yes	If additional charter service hours are needed (beyond the 80 annual service hours allowed), the recipient must petition the Administrator. The petition must include: 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 Appendix A of the charter regulation or was registered at least 60 days before the date of the first request

CHARTER SERVICE EXCEPTIONS				
Exception	**Notification to Registered Charter Providers**	**Trip Record Keeping**	**Quarterly Reporting**	**Other Requirements**
3. Leasing FTA funded equipment and drivers	No	Yes	Yes	Evidence that registered charter provider has exhausted all of the available vehicles of all registered charter providers in the recipient's geographic service area
4. When no registered charter provider responds to notice from a recipient	Yes	Yes	Yes	None
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 fully funded with local funds, is stored in a locally funded facility, and is maintained only with local funds. A complete segregation is necessary to avoid the application of these requirements to charter services operated with locally owned vehicles.

INDICATORS OF COMPLIANCE

a. *Has the recipient provided transportation that would qualify as charter bus service included in the list below?*

1. *Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price, where any of the following apply:*

i. *A third party pays the transit provider a negotiated price for the group*

ii. *Any fares charged to individual members of the group are collected by a third party*

iii. The service is not part of the transit provider's regularly scheduled service, or is offered for a limited period of time; or

iv. A third party determines the origin and destination of the trip as well as scheduling.

2. Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:

i. A premium fare is charged that is greater than the usual or customary fixed route fare; or

ii. The service is paid for in whole or in part by a third party.

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?

DETERMINING COMPLIANCE

Review FTA's Transit Award Management System (TrAMS) for the recipient's signed annual Certifications and Assurances and ascertain if the recipient certified to providing charter service. Review the recipient's website, printed public information, and local telephone listing to determine if charter service is advertised. 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.

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: The recipient must cease operating charter service that does meet an exemption or exception. If the recipient wishes to continue to provide charter service, the recipient must submit to the FTA regional office 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: No documentation of complete segregation of charter service operated with local equipment

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 DIRECTIVES

49 CFR Part 604.2 Applicability

"(b)The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(d) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, for emergency preparedness planning and operations.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area."

49 CFR Part 604.12 Reporting requirements for all exceptions

"(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration Web site 30 days after the end of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.

(d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information."

49 CFR Part 604-Appendix C (f) Miscellaneous (65). Frequently Asked Questions

"Q: If a recipient operates assets that are locally funded, are such assets subject to the charter regulations?

A: It depends. If a recipient receives FTA funds for operating assistance or stores its vehicles in a FTA-funded facility or receives indirect FTA assistance, then the charter regulations apply. The fact that the vehicle was locally funded does not make the recipient exempt from the charter regulations. If both operating and capital funds are locally supplied, then the vehicle is not subject to the charter service regulations."

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 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
All recipients that provide bus service

EXPLANATION
Recipients providing charter service under the following four exceptions must report to FTA on charter activity:

- Government officials (604.6)
- Qualified human service organizations (604.7)
- Leasing (604.8)
- No response from a registered charter provider (604.9)

Recipients must post the required records on the FTA charter website within 30 days of the end of each calendar quarter as follows:

- October 1 to December 31: January 30
- January 1 to March 31: April 30
- April 1 to June 30: July 30
- July 1 to September 30: October 30

The recipient reports for itself and its subrecipients, contractors, and lessees except subrecipients that are also direct FTA recipients for Section 5307 formula funds. Reports are only required for quarters during which charter service was provided. An FTA Charter Service Quarterly Exceptions Reporting Form and the instructions are available for downloading from the FTA website.

When charter service is provided under one or more of the exceptions under this regulation, the recipient, subrecipient, contractor, or lessee is required to maintain notices and records in an electronic format for a period of at least three years from the date of service or lease. The recipient may maintain the required records in other formats in addition to the electronic format.

The records shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service. A single document or charter log may include all charter service trips provided during the quarter. The recipient may exclude specific origin-to-destination information for safety and security reasons. If such information is excluded, the record of the service shall describe the reason why such information was excluded and provide generalized information.

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? Refer to the exceptions table under Question 1.*

DETERMINING COMPLIANCE

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 subrecipient reported service provided. Obtain and review the recipient's electronic charter service records, along with a clear statement identifying which exception the recipient relied upon when it provided the charter service and compare to the information entered on the FTA charter registration website for consistency. Review the FTA charter registration website to verify that the recipient reported timely, 30 days after the end of each calendar quarter (i.e., January 30, April 30, July 30, and October 30).

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: The recipient must submit to the FTA regional office 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: The recipient must submit the missing quarterly reports in the FTA charter reporting website. The recipient must submit to the FTA regional office procedures for submitting the required information for all applicable exceptions on time.

GOVERNING DIRECTIVES

FTA Charter Service Quarterly Exceptions Reporting Form and Instructions
49 CFR Part 604.2 Applicability

"(b) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government officials and their contractors and official guests, to or from transit facilities or projects within its geographic service area or proposed geographic service area for the purpose of conducting oversight functions such as inspection, evaluation, or review.

(c) The requirements of this part shall not apply to private charter operators that receive, directly or indirectly, Federal financial assistance under section 3038 of the Transportation Equity Act for the 21st Century, as amended, or to the non-FTA funded activities of private charter operators that receive, directly or indirectly, FTA financial assistance under any of the following programs: 49 U.S.C. 5307, 49 U.S.C. 5309, 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(d) The requirements of this part shall not apply to a recipient transporting its employees, other transit system employees, transit management officials, transit contractors and bidders, government

officials and their contractors and official guests, for emergency preparedness planning and operations.

(e) The requirements of this part shall not apply to a recipient that uses Federal financial assistance from FTA, for program purposes only, under 49 U.S.C. 5310, 49 U.S.C. 5311, 49 U.S.C. 5316, or 49 U.S.C. 5317.

(f) The requirements of this part shall not apply to a recipient, for actions directly responding to an emergency declared by the President, governor, or mayor or in an emergency requiring immediate action prior to a formal declaration. If the emergency lasts more than 45 days, the recipient shall follow the procedures set out in subpart D of 49 CFR 601.

(g) The requirements of this part shall not apply to a recipient in a non-urbanized area transporting its employees, other transit system employees, transit management officials, and transit contractors and bidders to or from transit training outside its geographic service area."

49 CFR Part 604.12 Reporting requirements for all exceptions

"(a) A recipient that provides charter service in accordance with one or more of the exceptions contained in this subpart shall maintain the required notice and records in an electronic format for a period of at least three years from the date of the service or lease. A recipient may maintain the required records in other formats in addition to the electronic format.

(b) In addition to the requirements identified in paragraph (a) of this section, the records required under this subpart shall include a clear statement identifying which exception the recipient relied upon when it provided the charter service.

(c) Beginning on July 30, 2008, a recipient providing charter service under these exceptions shall post the records required under this subpart on the FTA charter registration Web site 30 days after the end of each calendar quarter (i.e., January 30th, April 30th, July 30th, and October 30th). A single document or charter log may include all charter service trips provided during the quarter.

(d) A recipient may exclude specific origin and destination information for safety and security reasons. If a recipient excludes such information, the record of the service shall describe the reason why such information was excluded and provide generalized information instead of providing specific origin and destination information."

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

EXPLANATION
The recipient must ensure that all subrecipients, contractors, and lessees comply with charter bus service, notice, and reporting requirements. See above for detailed explanation of charter bus requirements.

INDICATORS OF COMPLIANCE

a. *How does the recipient perform oversight of contractors and lessees that provide charter service?*

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 perform oversight of subrecipients that provide charter service?*

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?*

DETERMINING COMPLIANCE

Select a sample of subrecipients, contractors, and lessees that operate charter service in accordance with the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment. Select sample agreements, contracts, and lease agreements and review for the required charter bus clause and to verify that the recipient fully communicated its policy and the charter rules related to FTA-funded assets.

Review the recipient's oversight procedures and select sample oversight materials (i.e., reports, questionnaires, and checklists) to ascertain how the recipient verifies compliance with charter regulations.

For subrecipient(s), contractor(s) and/or lessee(s) to be visited, review their websites and public information materials to determine if charter service is provided in compliance with the regulations. If the information is not available from the subrecipient's, contractor's and lessee's website, follow-up with the recipient for copies of public information materials. At the subrecipient(s), contractor(s) and/or lessee(s) site visit, discuss observations of the website, route maps, and schedules. Tour facilities to 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 contractors or lessee charter service
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 contractors and/or lessees who operate charter service
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office 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 subrecipients who operate charter service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 DIRECTIVES
2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.331 Requirement for pass-through entities

"All pass-through entities must: …(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision.

(e) 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 on-site reviews of the subrecipient's program operations; and

(3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. 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:

    a. What was the outcome? Was the advisory opinion followed?

2. Did any registered charter provider request a cease and desist order against the recipient, subrecipient, contractor, or lessee? If yes:

    a. What was the outcome? Was the cease and desist order followed?

3. 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?

4. Does it appear that any subrecipients, contactors, or leases are providing charter bus service outside of an authorize exemption or exception?

5. Did background research or site visit observations reveal any other potential charter bus issues or concerns not covered above?

REFERENCES

1. 2 CFR Parts 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

1. Charter Home Page (includes dockets, reporting forms and instructions, and other resources)

2. Charter Registration Website

3. Questions and Answers

4. Regulations.gov

5. FTA Charter Reports

16. 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 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 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 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 direct recipients of FTA funds, but not subrecipients, contractors, or lessees

EXPLANATION
The recipient is required to have and distribute to award-related employees a written policy that states:
1. The workplace is drug-free
2. The unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited
3. Employees must abide by the terms of the policy statement as a condition of employment
4. 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 in the FTA drug and alcohol testing policy as long as it is clearly differentiated and it is extended to all applicable employees, not just safety-sensitive employees. These requirements should not be confused with FTA drug and alcohol testing requirements, which apply only to "safety sensitive" employees as well as contractors and subcontractors with safety sensitive employees.

INDICATORS OF COMPLIANCE

a. *Does the recipient have a written DFWA policy?*

b. *Does the recipient's drug-free workplace policy include all of the required elements?*

c. *Does the recipient have a process to ensure that the recipient's drug-free workplace policy has been distributed to all employees?*

DETERMINING COMPLIANCE

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 work place policy or its FTA drug and alcohol testing policy. Determine if the following required elements are included:

- states that the workplace is drug-free,
- states that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the workplace is prohibited,
- states that employees must abide by the terms of the policy statement as a condition of employment,
- requires that if convicted of a drug statute violation that occurred in the workplace, employees are to report it to the employer in writing no later than five calendar days after such a conviction.

Determine if the recipient has a process for distributing a copy to each employee. On site, discuss with the recipient how it implements its policy for distributing a copy to each employee and what actions its takes if employees fail to abide by the policy. On-site, review sample employee files to ascertain if acknowledgment of receipt of the policy is documented.

POTENTIAL 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: The recipient must submit to the FTA regional office 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: Drug-free workplace policy lacking required elements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 does not distribute the Drug-free Workplace Act policy to award-related employees.

DEFICIENCY CODE DFWA1-3: Drug-free workplace Act policy not distributed/enforced

SUGGESTED CORRECTIVE ACTION: Direct the recipient to submit to the FTA regional office a process for distributing/enforcing the Drug-free Workplace Act policy to award-related employees, along with documentation that the policy has been distributed.

GOVERNING DIRECTIVES

41 U.S.C. 702. Drug-free workplace requirements for Federal grant recipients

"(a) Drug-free workplace requirement

(1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug-free workplace by:

(A) publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the recipient's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(B) establishing a drug-free awareness program to inform employees about:

(i) the dangers of drug abuse in the workplace;

(ii) the recipient's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) the penalties that may be imposed upon employees for drug abuse violations;

(C) making it a requirement that each employee to be engaged in the performance of such grant be given a copy of the statement required by subparagraph (A);

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will:

(i) abide by the terms of the statement; and

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title; and

(G) making a good faith effort to continue to maintain a drug-free workplace through implementation of subparagraphs (A), (B), (C), (D), (E), and (F)."

49 CFR 32.205 What must I include in my drug-free workplace statement?

You must publish a statement that—

(a) Tells your employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in your workplace;

(b) Specifies the actions that you will take against employees for violating that prohibition; and

(c) 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.

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 direct recipients of FTA funds, but not subrecipients, contractors, or lessees

EXPLANATION
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. Are award-related employees periodically informed about the dangers of drug abuse and any available counseling and employee assistance programs?

DETERMINING COMPLIANCE
Obtain and review documentation, such as brochures, employee handbooks, and posters on how the recipient communicates to its employees that it has a drug-free awareness program, including the availability of the employee assistance program. Follow up onsite by reviewing information on bulletin boards, discussing with the recipient its drug-free awareness program, and that information is provided on a consistent basis.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it does not periodically 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: The recipient must submit to the FTA regional office 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. 702. Drug-free workplace requirements for Federal grant recipients

"(a) Drug-free workplace requirement

(1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug-free workplace by:

(B) establishing a drug-free awareness program to inform employees about:

(i) the dangers of drug abuse in the workplace;

(ii) the recipient's policy of maintaining a drug-free workplace;

(iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon employees for drug abuse violations.

DFWA3. Did the recipient report to FTA all criminal convictions of award-related employees for 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 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 direct recipients of FTA funds, but not subrecipients, contractors, or lessees

EXPLANATION
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 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?*

DETERMINING COMPLIANCE
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 involving 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: The recipient must report to the FTA regional office 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 DIRECTIVES
41 U.S.C. 702. Drug-free workplace requirements for Federal grant recipients

"(a) Drug-free workplace requirement

(1) Persons other than individuals

No person, other than an individual, shall receive a grant from any Federal agency unless such person agrees to provide a drug-free workplace by:

(D) notifying the employee in the statement required by subparagraph (A), that as a condition of employment in such grant, the employee will:

(ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than 5 days after such conviction;

(E) notifying the granting agency within 10 days after receiving notice of a conviction under subparagraph (D)(ii) from an employee or otherwise receiving actual notice of such conviction;

(F) imposing a sanction on, or requiring the satisfactory participation in a drug abuse assistance or rehabilitation program by, any employee who is so convicted, as required by section 703 of this title…

49 CFR 32.225

"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

1. Did background research or site visit observations reveal any other potential Drug-Free Workplace Act issues or concerns not covered above?

REFERENCES

1. 41 U.S.C. Sections 701 et seq., Drug-Free Workplace Act of 1988

2. 49 CFR 32, Subpart B—Requirements for Recipients Other Than Individuals

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17. 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' prior 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 the drug and alcohol testing programs of 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 drug and alcohol policy with date of board adoption
- Management Information Systems (MIS) report for the past year
- Consortium testing rate for the past year, if applicable
- Training programs for covered employees and supervisors
- Certificates of service agents
- List of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees
- Drug and alcohol oversight tools/checklists/procedures

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 anti-drug and alcohol misuse policy.

APPLICABILITY
All 5307, 5309, 5311 or 5339 recipients with safety-sensitive employees

EXPLANATION
The recipient and its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees as defined by 49 CFR part 655 must have a drug and alcohol testing policy detailing the provisions of their drug and alcohol programs. The policy should cover all the provisions noted below and should reflect all updates and regulation amendments. Note that if the recipient's drug and alcohol testing policy incorporates the Drug-Free Workplace Act (DFWA) requirements, the policy should also include the required provisions.

The following checklist identifies the minimum requirements of a drug and alcohol testing policy as defined by 49 CFR 655.15.

*** Items will be examined during a baseline Comprehensive Review**

(1) *****Proof of policy adoption by the appropriate governing body or other "final authority" with effective date indicated

(2) *****Identity of the person, office, or position designated by the employer to answer questions about the anti-drug and alcohol misuse program

(3) *****Categories of employees who are subject to testing

(4) *****Prohibited behavior, including when the regulations prohibit the use of alcohol and drugs

(5) *****Testing circumstances for drugs and alcohol (i.e., pre-employment, random, post-accident, reasonable suspicion, return-to-duty (only for employers with a second-chance policy), and follow-up testing (only for employers with a second-chance policy))

(6) Drug and alcohol testing procedures consistent with 49 CFR part 40, as amended

(7) Requirement that covered employees submit to drug and alcohol testing administered in accordance with FTA regulations

(8) Description of the behavior and circumstances that constitute a refusal to take a drug and/or alcohol test and a statement that a refusal constitutes a verified positive test result. The following describes refusals under the US Department of Transportation (US DOT) program:

a. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer after being directed to do so by the employer

b. Fail to remain at the testing site until the testing process is complete (an employee who leaves the testing site before the testing process commences for a pre-employment test is not deemed to have refused to test)

c. Fail to provide a urine specimen for any drug test or an adequate amount of saliva or breath for any alcohol test required by this part or US DOT agency regulations

d. Fail to provide a sufficient amount of urine or breath specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure

e. Fail or decline to take an additional drug test the employer or collector has directed to be taken

f. Fail to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) or employer as part of the drug test verification process, or employer as part of the insufficient breath procedures. In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test.

g. Fail to sign the certification at Step 2 of the alcohol testing form

h. Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector)

i. In the case of a directly observed or monitored collection in a drug test, fail to permit the observation or monitoring of the provision of a specimen

j. For an observed collection, fail to follow the observer's instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if there is any type of prosthetic or other device that could be used to interfere with the collection process

k. Possess or wear a prosthetic or other device that could be used to interfere with the collection process

l. Admit to the collector or MRO that the specimen was adulterated or substituted

m. Instead of listing all the refusals, the policy may state that refusals to test are listed in 49 CFR part 40, as amended, or 49 CFR 40.191, as amended, for drug tests and 49 CFR 40.261, as amended, for breath tests. The policy should then state that a copy of 49 CFR part 40 is available upon request. However, if the policy lists any refusals to test, the policy must list all of them

(9) *****Description of the consequences for a covered employee who has a verified positive drug test result, a confirmed alcohol test with an alcohol concentration of 0.04 or greater, or refuses to submit to a test, including the mandatory requirements that the covered employee

be removed immediately from his or her safety-sensitive function and be referred to a substance abuse professional

(10) *****Description of the consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04

(11) Policy toward retesting of negative dilute urine collections as required by 49 CFR 40.197 that states that if the MRO informs the agency that a negative drug test was dilute, the agency may, but is not required to, direct the employee to take another test immediately. All employees must be treated the same for this purpose. For example, the recipient must not retest some employees and not others. The recipient may retest for some types of tests (e.g., pre-employment tests) and not others. The policy should state whether or not immediate retesting for negative dilutes is required and, if required, that the second test will be the test of record

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?

c. Does the policy include all the required elements listed in the chart below?

Drug and Alcohol Policy Required Element	**Page No.**	**Reviewer Comments**
1. Proof of policy adoption by governing body or other "final authority"		
2. Identity of contact person, office, or position		
3. Employee categories subject to testing		
4. Prohibited behavior		
5. Testing circumstances		
6. Consequences for an employee who has refused testing or is found to have a verified positive drug test result or an alcohol concentration of 0.04 or greater		
7. Consequences for an employee found to have an alcohol concentration of 0.02 or greater, but less than 0.04		

d. How does the recipient distribute the policy to all employees?

DETERMINING COMPLIANCE
Review the recipient's drug and alcohol policy and verify all the required elements in the chart above are included and that it has a process for ensuring that the policy statement is made available to each covered employee. Onsite, discuss with the recipient how it distributes a copy to each employee. Review sample employee files to ascertain if acknowledgment of receipt of the policy is documented.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if 1) it does not have a board or other "final authority" approved drug and alcohol policy, 2) it does not have a policy that addresses the required elements or 3) 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: The recipient must submit to the Federal Transit Administration (FTA) regional office an amended policy that includes the required elements and evidence that it has been adopted by the governing board or other "final authority" and been made available to all affected employees.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office a process for ensuring that the current policy is made available to all covered employees and evidence that it has been made available to all current employees.

GOVERNING DIRECTIVE
49 CFR 655.15 Policy statement contents

"The local governing board of the employer or operator shall adopt an anti-drug and alcohol misuse policy statement. The statement must be made available to each covered employee, and shall include the following:

(a) The identity of the person, office, branch and/or position designated by the employer to answer employee questions about the employer's anti-drug use and alcohol misuse programs.

(b) The categories of employees who are subject to the provisions of this part.

(c) Specific information concerning the behavior and conduct prohibited by this part.

(d) The specific circumstances under which a covered employee will be tested for prohibited drugs or alcohol misuse under this part.

(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."

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 and alcohol training for covered employees and at least 120 minutes of training for supervisors and other officers authorized by the employer to make reasonable suspicion determinations.

APPLICABILITY
All 5307, 5309, 5311 or 5339 recipients with safety-sensitive employees

EXPLANATION
Employers of covered employees must establish an employee education and training program for both covered employees and supervisors.

Covered employees: Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

Supervisors: 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. Supervisors or other company officials who are trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations. 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

INDICATORS OF COMPLIANCE

a. *How does the recipient ensure that all covered employees receive the required 60 minutes of training?*

b. *Does 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 that all supervisors or other officials responsible for making reasonable suspicion determinations receive the required 60 minutes of training on drug use and 60 minutes of training on alcohol misuse?*

d. *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?*

DETERMINING COMPLIANCE
Obtain and review training protocols. Obtain a listing of covered employees and supervisors who make reasonable suspicion determinations. Select a sample of covered employees and supervisors for record review. Onsite, sample training records to determine if covered employees and supervisors have received the required training. Review training materials for covered employees and supervisors to ensure the required topics are addressed.

	Number of records reviewed	**Number of records that indicated required training was received**
Employees		
Supervisors/other officials		

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: The recipient must submit to the FTA regional office its covered employee training protocols and documentation that covered employees 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 that 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: The recipient must submit to the FTA regional office its reasonable suspicion training protocols and documentation that supervisors and other officials who make reasonable suspicion determinations have received the required training, along with procedures for ensuring training is provided before individuals are allowed to 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:

(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' prior employers and are all records stored in a secure location with controlled access?

BASIC REQUIREMENT
Recipients must obtain previous drug and alcohol testing program records from prior employers for employees performing safety-sensitive functions and must retain drug and alcohol testing program records for all covered employees in a secure location with controlled access.

APPLICABILITY
All 5307, 5309, 5311 or 5339 recipients with safety-sensitive employees

EXPLANATION
Recipients, after obtaining an employee's written consent, must request information on the US DOT drug and alcohol testing history 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 obtain and review the information as soon as possible. After 30 days, the recipient must not permit the employee to perform safety-sensitive functions unless it has obtained or made and documented a good faith effort to obtain this information.

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 also ask the employee whether he or she has tested positive or refused to test on any pre- employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by US DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, the recipient must not use the employee to perform safety-sensitive functions until and unless the employee documents successful completion of the return-to-duty process. The employee records must be maintained for three years.

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 and a locked file room, 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 consortium is used to administer the testing program, the consortium can maintain some or all of the records.

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?*

DETERMINING COMPLIANCE

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 and offices.

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: The recipient must submit to the FTA regional office documentation that it has removed employees from safety-sensitive duties for which it has not obtained or documented a good-faith effort to obtain drug and alcohol information from prior employers or for which the prior employer indicated the employee had violated a US DOT agency drug and alcohol regulation and did not subsequently comply with the return-to-duty requirements of Subpart O of the regulations; along with a process for ensuring that the previous drug and alcohol testing records for employees are reviewed 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: The recipient must submit to the FTA regional office documentation that is has moved program records to a secure location with controlled access.

GOVERNING DIRECTIVES

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) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraph (b) 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 transfers 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
All 5307, 5309, 5311 or 5339 recipients with safety-sensitive employees

EXPLANATION
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.

INDICATOR OF COMPLIANCE

a. *Does the recipient have on file the qualifications of medical review officers, substance abuse professionals, breath alcohol technicians, and collectors?*

DETERMINING COMPLIANCE
Obtain the certificates of the service agents who support the recipient's drug and alcohol testing program. Compare the certificates to the service agents (medical review officer, substance abuse professionals) listed in the drug and alcohol testing policy. Onsite, confirm that all the certificates of the service agents were provided.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if it cannot provide certificates of agents supporting its drug and alcohol testing program.

DEFICIENCY CODE DA4-1: Missing qualifications of serve agents

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office any missing credential documentation.

GOVERNING DIRECTIVES
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 collector must meet training requirements of §40.33."

§ 40.33 What training requirements must a collector meet?

(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:

> (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."

§ 40.213 What training requirements must STTs and BATs meet?

(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:

> (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."

DA5. Does the recipient ensure that the drug and alcohol testing programs of 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 administer their drug and alcohol programs in accordance the requirement in 49 CFR parts 40 and 655.

APPLICABILITY
All 5307, 5309, 5311 or 5339 recipients with subrecipients, contractors, subcontractors, and lessees that perform safety-sensitive functions

EXPLANATION
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 are in compliance with 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
- Marijuana, cocaine, opiates, phencyclidine, amphetamines, and alcohol are tested for
- 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. *Have contractors, lessees, and subcontractors with safety-sensitive employees filed annual MIS reports with the recipient?*

b. *Have subrecipients with safety-sensitive employees filed annual MIS reports with the recipient?*

c. *Does the recipient or its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees have on file the qualifications of medical review officer(s), substance abuse professionals, breath alcohol technicians, and collectors?*

DETERMINING COMPLIANCE

Request and review a list of subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees. Compare the list to the list provided by FTA of entities that filed MIS reports in the past year.

Obtain the certificates of the service agents that support the drug and alcohol programs of the recipient's subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees to be visited during the site visit. During the site visit to the subrecipient, contractor, subcontractor, or lessee, confirm that the certificates for all service agents were provided and that the certificates are current.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if it does not file annual MIS reports for its subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees or ensure that subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees have service agent qualifications on file.

> DEFICIENCY CODE DA5-1: Insufficient oversight over drug & alcohol programs of subrecipients, contractors, subcontractors, and/or lessees
>
> SUGGESTED CORRECTIVE ACTION 1: The recipient must submit missing MIS reports 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. The recipient must submit missing MIS reports to the FTA regional office, along with procedures for obtaining the MIS reports from subrecipients, contractors, subcontractors, and lessees with safety-sensitive employees.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office 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 either maintaining the qualifications on file or ensuring that subrecipients, contractors, subcontractors, and lessees maintain the qualifications on file.

GOVERNING DIRECTIVES:
49 CFR 655.72 Reporting of results in a management information system

"(a) Each recipient shall annually prepare and maintain a summary of the results of its anti-drug and alcohol misuse testing programs performed under this part during the previous calendar year.

(b) When requested by FTA, each recipient shall submit to FTA's Office of Safety and Security, or its designated agent, by March 15, a report covering the previous calendar year (January 1 through December 31) summarizing the results of its anti-drug and alcohol misuse programs.

(c) Each recipient shall be responsible for ensuring the accuracy and timeliness of each report submitted by an employer, contractor, consortium or joint enterprise or by a third party service provider acting on the recipient's or employer's behalf."

49 CFR 655.81 Grantee oversight responsibility

"A recipient shall ensure that a subrecipient or contractor who receives 49 U.S.C. 5307, 5309, or 5311 funds directly from the recipient complies with this part."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. 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?

2. Is an audit scheduled for the current Federal fiscal year?

3. Is the recipient's Drug & Alcohol policy missing some of the elements not covered in the baseline review?

4. Is the recipient testing for the required substances?

5. Is there evidence that not all safety-sensitive employees, as defined by FTA, are included in a drug and alcohol testing program?

6. Are safety-sensitive employees involved in ferry operations tested randomly for alcohol under FTA authority?

7. Does it appear MIS reports for the recipient, subrecipient, contractor, subcontractor, or lessee were not submitted or were incorrect?

8. Did the recipient achieve the minimum random testing rates of 25 percent for drugs and 10 percent for alcohol?

9. Does the recipient conduct post-accident testing?

10. Are there concerns regarding the recipient's oversight of the drug and alcohol programs of its subrecipients, contractors, subcontractors, or lessees?

11. Did background research or site visit observations reveal 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. Drug and Alcohol Program Compliance Audit Questionnaires

9. Office of Drug and Alcohol Policy and Compliance

10. Release of Information Form 49 CFR Part 40 – Drug and Alcohol Testing

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18. SECTION 5307 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA
For fixed-route service supported with Section 5307 assistance, fares charged 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.

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.

Recipients shall develop, publish, afford an opportunity for a public hearing on, and submit for approval, a program of projects (POP).

Recipients must annually certify that they are spending at least one percent of such funds for transit security projects or that such expenditures for security systems are not necessary.

Recipients must ensure that least one percent of such funds are expended on associated transit enhancement projects.

QUESTIONS TO BE EXAMINED
1. Does the recipient have a written agreement with the Metropolitan Planning Organization (MPO) that determines their mutual responsibilities in carrying out the metropolitan transportation planning process?

2. Does the recipient provide information about its available funding under Section 5307 to the public and provide for public involvement in the in 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 Medicare cardholders during off-peak hours?

5. Does the recipient or the recipient's UZA utilize one percent of its Section 5307 expenditures for transit security?

6. For Section 5307 funds awarded before October 1, 2015, has the recipient or the recipient's UZA met the associated transit improvement requirements?

7. 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
- Half-fare application, if applicable
- Special identification card, if applicable
- Copy of written policy for soliciting public comment prior to implementing a fare increase or major service reduction
- List of fare increases and major service reductions implemented since last review with date of implementation
- Annual POP public notices for the past three years

- Consultative process, including how coordination is performed with interested parties
- List of complaints received from interested parties in relation to the POP consultative process, if applicable
- Annual proposed POPs and final proposed POPs, if amended
- Signed recipient and MPO agreement
- Split letter(s) since the last review identifying how Section 5307 funds will be expended on security and associated transit improvements to meet the one percent requirement for the UZA
- Section 5307 annual security expenditures for the review period (by award year), along with documentation that supports the expenditures
- Documentation that current security measures meet the agency needs, if applicable
- Section 5307 annual associated transit improvements for the review period (by award year), along with documentation that supports the expenditures

Recipient Follow-up

- Samples of notices to solicit public comment (e.g., newspaper classifieds, website, etc.)
- Description of procedures for how public comment will be considered regarding decisions on implementing fare increases and major service reductions
- Internal documentation of how public comment was considered prior to implementing any fare increases or major service reductions
- Sample documentation of public hearings (board minutes, public meeting minutes, news articles, etc.)
- Staff summaries, internal memoranda documenting public participation and comments
- Internal working documents showing original plans and actual plans that were implemented for major services reductions
- Documentation for monitoring fare increases and major service reductions implemented by subrecipients
- Most recent MPO adopted public participation plan, if applicable
- MPO TIP public notice(s) for the past three years, if applicable

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5307:1. Does the recipient have a written agreement with the MPO that determines their mutual responsibilities in carrying out the metropolitan transportation planning process?

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.

APPLICABILITY

All 5307 recipients

EXPLANATION

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 MPOs' public involvement process to meet Section 5307 public involvement requirements, FTA encourages it to state so in the agreement.

INDICATORS OF COMPLIANCE

a. *Is the recipient a party to a written agreement with the state, MPO, and providers of public transportation? If yes, does the agreement address:*

   1) *The recipient's responsibilities in carrying out the metropolitan transportation planning process?*

   2) *The development and sharing of information for financial plans?*

   3) *The development of the annual listing of obligated projects?*

DETERMINING COMPLIANCE

Obtain and review the signed agreement to ensure the required elements are included. Ensure that the recipient has signed the agreement. If the MPO is an operating entity, consult with the regional office 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.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it does not have an agreement with the MPO, or if the agreement does not address the recipient's responsibilities, the development and sharing of information for financial plans, or the development of the annual listing of obligated projects.

DEFICIENCY CODE 5307:1-1: No current agreement or deficiencies in agreement with MPO

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a fully executed agreement that specifies the cooperative procedures for carrying out transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects.

The recipient is deficient if it is an MPO and the providers of public transportation and the state(s) are not parties to the agreement.

DEFICIENCY CODE 5307:1-2: All parties not signatory to the MPO agreement

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a fully executed agreement that specifies the cooperative procedures for carrying out transportation planning and programming and addresses the recipient's responsibilities, the development and sharing of information for financial plans, and the development of the annual listing of obligated projects and includes all applicable parties as signatories.

GOVERNING DIRECTIVE

23 CFR 450.314 Metropolitan Planning Agreement

"(a) The MPO(s), 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(s), the State(s), and the providers of public transportation serving the MPA. To the extent possible, a single agreement among 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)."

5307:2. Does the recipient provide information about its available funding under Section 5307 to the public and provide for public involvement in the in the Program of Projects (POP) it proposes to undertake?

BASIC REQUIREMENT
Recipients must provide for public involvement in the development of the Section 5307 Program of Projects (POP).

APPLICABILITY
All 5307 recipients

EXPLANATION
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 Transportation Improvement Plan (TIP). (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 Program of Projects (POP). POP public participation requirements do not apply to funds flexed into a Section 5307 award.

FTA allows a recipient to rely on the locally adopted public participation requirements for the TIP in lieu of the 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. To comply with the latter requirement:

- The MPO must have an adopted public participation plan.
- The TIP document (public participation plan, notice, or TIP) must have an explicit statement that public notice of public participation activities and time established for public review of and comments on the TIP will satisfy the POP requirements. The recipient may rely on the MPO public participation process for the TIP even when notices are published less than annually.

FTA encourages recipients to state in the agreement with the MPO 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.
- 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. If the service area includes a significant number of persons with limited English proficiency, the recipient should distribute the notice to these populations. (see the Title VI section of this guide).
- 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.
- 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 that describes the minimum required elements of its public 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 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?*

   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?*

DETERMINING COMPLIANCE

For recipients that rely on the MPO's Public Participation Process (PPP): Obtain and review the MPO's adopted public participation plan to ensure it describes explicit procedures, strategies, and desired outcomes for:

Element	Addressed in Plan (page #)
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	
Providing timely notice and reasonable access to information about transportation issues and processes	
Employing visualization techniques to describe metropolitan transportation plans and TIPs	
Making public information (technical information and meeting notices) available in electronically accessible formats and means, such as the World Wide Web	
Holding any public meetings at convenient and accessible locations and times	
Demonstrating explicit consideration and response to public input received during the development of the metropolitan transportation plan and the TIP	
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	
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	
Coordinating with the statewide transportation planning public involvement and consultation processes under subpart B of this part	
Periodically reviewing the effectiveness of the procedures and strategies contained in the participation plan to ensure a full and open participation process	

NOTE: Follow-up with the recipient if unable to locate the above items in the PPP.

Review the MPOs 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.

For recipients that use their own Public Participation Process:

Review the public notices for the past three years to ensure that they address the items in the following table:

POP Elements	Comments
A brief description of the projects	
Sub-allocation among public transportation providers, if applicable	
Total project costs	
Federal share for each project	

Obtain and review documentation that describes the consultative process and obtain documentation (i.e., meeting agendas, internal communications, information regarding the MPO planning process, 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. Obtain and review documentation, such as a public notice, to ensure that the recipient provided an opportunity for a public hearing. Obtain and review documentation of the consultative process and comments received to ensure that the proposed POP provides for the coordination of Section 5307 service with transportation services assisted with other Federal sources. 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 decisionmakers considered any comments received.

Obtain and review the Section 5307 public notices for the past three years to determine if the final POP was made available to the public.

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: No MPO public participation plan that describes the minimum elements
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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) explicitly state they satisfy the Section 5307 POP requirements.

> DEFICIENCY CODE 5307:2-2: TIP documents missing explicit POP statement

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office its own process for involving the public in the development of the POP.

NOTE: If the recipient chooses to continue using the MPO's public participation process, it must submit documentation that the process meets the requirements.

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, (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 5307:2-3: Elements missing in POP public participation procedures

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office a procedure for making available to the public the amount of Section 5307 funds and evidence of its implementation.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office 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.

SUGGESTED CORRECTIVE ACTION 3: The recipient must submit to the FTA regional office a procedure for providing an opportunity for a public hearing on the proposed POP and evidence of its implementation.

SUGGESTED CORRECTIVE ACTION 4: The recipient must submit to the FTA regional office a procedure for providing for the coordination of Section 5307 services with transportation assisted from other Federal sources and evidence of its implementation.

SUGGESTED CORRECTIVE ACTION 5: The recipient must submit to the FTA regional office a procedure for considering comments received in preparing the final POP and evidence of its implementation.

SUGGESTED CORRECTIVE ACTION 6: The recipient must submit to the FTA regional office a procedure for publishing the proposed and final POP, along with copies of the final published POPs.

GOVERNING DIRECTIVES

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."

FTA Circular 9030.1E, Chapter V, Section 6 Program of Projects and Public Involvement Requirements

"d. Satisfying the Requirement for Public Participation in Development of the POP using the Transportation Improvement Program Process. Federal transit law and joint FHWA/FTA planning regulations governing the metropolitan planning process require a locality to include the public and solicit comment when the locality develops its metropolitan long-range (twenty-year) transportation plan and its (four-year) metropolitan TIP. Accordingly, FTA has determined that when a recipient follows the procedures of the public involvement process outlined in the FHWA/FTA planning regulations, the recipient satisfies the public participation requirements associated with development of the POP that recipients of Section 5307 funds must meet. See 23 CFR part 450 and 49 CFR part 613 (specifically Subpart B, "Statewide Transportation Planning," and Subpart C, "Metropolitan Transportation Planning and Programming"). 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 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."

"A POP is a list of projects proposed by the designated recipient to be funded from the UZA's Section 5307 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, including any suballocation among public transportation providers, total project costs, local share, and federal share for each project. 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 Section 5307, a recipient must meet certain requirements concerning public participation in development of a POP and must certify to

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 metropolitan TIP and the local coordinated public transit–human service 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 Program and the POP that the recipient proposes to undertake with such funds;
(2) Develop a proposed POP for activities the designated recipient 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;
(3) Publish the proposed POP 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;
(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 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, 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."

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
All 5307 recipients

EXPLANATION
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. This 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.

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?*

DETERMINING COMPLIANCE

Review the written policy to determine if it defines a major service reduction. Review the written policy to determine if it provides an opportunity for a public hearing or public meeting and describes how the recipient will conduct it. Review the written policy for a description of how the recipient will consider the results of the public hearing or public meeting in the process of changing fares and service.

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 described on the website with that discussed in prior review documentation. Review the Title VI section of this guide 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 public 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.

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: The recipient must submit to the FTA regional office 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 public meeting, 3) describe how it will conduct a public hearing or public meeting and/or describe how the recipient will conduct such 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: The recipient must submit to the FTA regional office an amended public comment policy addressing all required elements 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 public meetings in the implementation of the final plan.

DEFICIENCY CODE 5307:3-3: Public comment process not followed

SUGGESTED CORRECTIVE ACTION: For the next fare increase or major service reduction, the recipient must submit to the FTA regional office 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.

GOVERNING DIRECTIVE
FTA Circular 9030.1E, Chapter VI Program Management and Administrative Requirements

"1.a.(12)…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, an opportunity for a public meeting in order to solicit comment must be provided."

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 Medicare cardholders during off-peak hours?

BASIC REQUIREMENT
For fixed-route service, fares charged seniors, persons with disabilities, and Medicare cardholders during off peak hours must not be more than one half the peak hour fares.

APPLICABILITY
All 5307 recipients with 5307-funded fixed-route service

EXPLANATION
Fares charged 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 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 9030.1E)

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." 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). (49 CFR 609.3)

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
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) eligibility card.

In order to ensure that the person presenting a Medicare card is the authorized individual, the recipient may request proof of identity (a form of identification with a photograph). There is no specific prohibition against this, provided the recipient is not asking for further proof of eligibility from the Medicare cardholder but is only checking the identity of the Medicare cardholder.

A recipient is not required to accept a Medicare card at time of boarding for the passenger to receive the half fare if the recipient requires passengers to obtain a special identification card as the sole basis for paying the half fare. A valid Medicare card must be considered sufficient proof of eligibility. 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. *Does the recipient charge a fare for seniors, persons with disabilities, and Medicare cardholders during off-peak hours? If no, move to the next question.*

b. *How does the recipient make available to the public information on the half-fare program?*

c. *What is the full peak-hour fare? What is the fare charged to seniors, persons with disabilities, and Medicare cardholders during off-peak hours?*

d. *How does the recipient define peak and off-peak hours? During what hours are reduced fares available?*

e. *Are any Section 5307-funded fixed-route services that operate during off-peak hours not included in the half fare program?*

f. *What proof of eligibility is required for seniors, persons with disabilities and Medicare cardholders at time of boarding?*

g. Where can a rider obtain the agency-issued identification? Is the location(s) accessible by transit?

DETERMINING COMPLIANCE

Review the recipient's website, fare information, system maps and half-fare 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 application to determine if information on how to obtain the special identification card and eligibility for the card is made available to the public.

- Review the application procedures and requirements to verify a Medicare card is considered sufficient proof of eligibility. The recipient may require proof of identify 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: The recipient must submit to the FTA regional office 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.

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: The recipient must submit to the FTA regional office 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: The recipient must submit to the FTA regional office a plan to accept the Medicare card as proof of eligibility for the half-fare program, along with evidence of its implementation.

GOVERNING DIRECTIVES
49 U.S.C 5307(d) Grant Recipient Requirements (1)(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."

FTA Circular 9030.1E, Chapter VI Program Management and Administrative Requirements, Section 1 Certifications Required by 49 U.S.C. 5307

"a. (6) Fares Charged to Seniors and Persons with Disabilities During Nonpeak Hours. According to 49 U.S.C. 5307(c)(1)(D), a recipient must certify that the fares charged to seniors, individuals with disabilities, or individuals presenting a Medicare card during nonpeak hours, for transportation using or involving a facility or equipment of a project financed under this section, 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. 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, and to facilitate the half-fare application process, a transit agency may request that the applicant validate the status of the card at the time the half-fare application is presented."

49 CFR 609.23 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 or the recipient's urbanized area (UZA) utilize one percent of its Section 5307 expenditures for transit security?

BASIC REQUIREMENT
Recipients of Section 5307 program funds must certify that at least one percent of the amount apportioned to its UZA in a fiscal year, will be expended on "public transportation security projects," or that such expenditures are unnecessary.

APPLICABILITY
All 5307 recipients

EXPLANATION
Each designated recipient of Section 5307 program funds must certify that of the amount apportioned to its UZA in a fiscal year, the recipients within the UZA will collectively expend at least one percent on

"public transportation security projects," or the designated recipient(s) must certify that such expenditures for security projects are unnecessary. This certification may also be provided by the MPO in coordination with eligible recipients in the UZA.

For recipients that spend the one percent, examples of appropriate security expenditures include:

- Facility perimeter security and access control systems (e.g., fencing, lighting, gates, card reader systems, etc.)
- Closed circuit television camera systems (at stations, platforms, bus stops, and on-board vehicles)
- Any other project intended to increase the security and safety of an existing or planned transit system

There are three reasons that recipients may have for considering the one percent security expenditure to be unnecessary:

- A recent threat and vulnerability assessment identified no deficiencies
- Transportation Security Administration (TSA)/(FTA) Security and Emergency Management Action Items met or exceeded
- Other. For the "other" category, the typical reason is that a recipient spends sufficient local, other FTA, or Department of Homeland Security funds on security projects and, therefore, does not need to spend formula funds on security projects.

Regardless of the reasons for deciding not to spend Section 5307 funds on transit-related security, recipients should have information and documentation that supports their decision.

INDICATORS OF COMPLIANCE

a. *Did the recipient certify that it or its UZA will utilize one percent of its Section 5307 funds on transit security expenditures?*

    i. *If the recipient is the sole designated recipient in the UZA, how were the Section 5307 funds utilized over the last three years to meet the requirement for transit security expenditures?*

    ii. *If there are multiple recipients in the UZA, how were security projects allocated among other recipients? Did the recipient fulfill its agreed-upon portion of the one percent requirement?*

b. *Did the recipient certify that it or recipients in its UZA will not utilize one percent of its Section 5307 funds on public transportation security expenditures? If yes, do the recipient's existing security measures meet the agency needs if it has elected not to utilize one percent of its Section 5307 funds on transit security expenditures?*

DETERMINING COMPLIANCE

Review the recipient's Section 5307 award agreements in FTA's TrAMS to verify that the recipient certified that it or the recipients in the UZA will collectively expend at least one percent of the amount apportioned to the UZA for a fiscal year on "public transportation security projects" or that existing security measures meet the agency's needs. Consult with the regional office to obtain the split letters for the review cycle to review how Section 5307 funds will be expended for the UZA. Obtain from the recipient information on how it agreed to help the UZA meet the one percent requirement. The recipient in a UZA with multiple recipients does not need to show that the UZA spent one percent, it only needs to have documentation of how the funds will be spent and demonstrate it spent its share.

If the recipient certifies that the one percent will be spent on security projects, review the information on security expenditures for the past three years. Onsite, discuss with the recipient the process used in the UZA to ensure the transit security expenditure requirement is achieved annually.

If the recipient certifies that existing security measures meet the agency's needs, obtain evidence to ensure that the recipient has documented why the expenditures are not necessary.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it certifies that expenditures for transit security are necessary for the fiscal year, but falls short of utilizing one percent of Section 5307 funds on security projects or cannot show how it and other agencies in the UZA are meeting the one percent requirement.

DEFICIENCY CODE 5307:5-1: One percent security requirement not met

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a plan for meeting the one-percent expenditure requirement and report on implementation of this plan.

The recipient or its UZA is deficient if it certifies that expenditures for transit security are necessary but cannot provide adequate documentation to support utilizing one percent of its Section 5307 funds on transit security expenditures. If the recipient is only one of the recipients of Section 5307 funds in the UZA, work with the FTA regional office to determine if a deficiency is appropriate, based on the aggregate amount of security expenditures in the UZA.

DEFICIENCY CODE 5307:5-2: Lacking documentation of security expenditures

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for documenting the amount of Section 5307 formula funds spent on transit security.

The recipient is deficient if it cannot explain or provide adequate documentation to support the decision that transit security projects for it or its UZA are unnecessary and did not utilize one percent of its Section 5307 expenditures for public transportation security projects for a fiscal year.

DEFICIENCY CODE 5307:5-3: Documentation lacking for decision not to expend security funds

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an explanation and adequate documentation on why the expenditure is unnecessary.

GOVERNING DIRECTIVE
FTA Circular 9030.1E, Chapter VI Program Management and Administrative Requirements

"1a (13) Expenditure on Public Transportation Security Projects: According to 5307(d)(1)(J), each designated recipient of Section 5307 program funds must certify that of the amount apportioned to its UZA in a fiscal year, the recipients within the UZA will collectively expend at least 1 percent on "public transportation security projects," or the designated recipient(s) must certify that such expenditures for security projects are unnecessary. This certification may also be provided by the MPO in coordination with eligible recipients in the UZA."

5307:6. For Section 5307 funds awarded before October 1, 2015, has the recipient or the recipient's UZA met the associated transit improvement requirements?

BASIC REQUIREMENT
At least one percent of Section 5307 funds apportioned to large urbanized areas must be expended on associated transit improvements.

APPLICABILITY
All 5307 recipients in large urbanized areas with awards prior to October 1, 2015

EXPLANATION

For Section 5307 funds obligated before October 1, 2015, the designated recipient(s) in UZAs with a population of at least 200,000 is required to expend no less than one percent of the fiscal year's Section 5307 apportionment on associated transit improvements. To ensure program funds are expended as proposed, the designated recipient, all recipients, or the MPO must submit an annual Associated Transit Improvement Report listing projects carried out in the preceding fiscal year. This report should include:

- Recipient name
- UZA name and number
- FTA Award Identification Numbers: TEAM grants Project Numbers or Federal Award Identification Numbers (FAIN) for TrAMS grants
- Project category or categories
- Brief description of improvements and progress towards project implementation
- ALI codes from the approved budget(s)
- Amount awarded by FTA for the project

When several recipients are in a UZA with at least 200,000 in population, each individual recipient is not required to spend one percent of its Section 5307 program funds on associated transit improvements; rather, the recipients together must spend one percent of the UZA's apportionment on projects and project elements that qualify as improvements. To certify that this requirement will be met, either the designated recipient(s) or the MPO must have submitted an annual "split" letter identifying the amounts planned to be spent by each direct recipient on associated transit improvements and a list of qualifying associated transit improvement projects to be undertaken with funding from the relevant fiscal year for all recipients in a UZA.

INDICATORS OF COMPLIANCE

a. *Has the recipient or the recipient's UZA demonstrated it is meeting its associated transit improvement expenditure commitments?*

    i. *If the recipient is the sole designated recipient in the UZA, how were the Section 5307 funds awarded prior to October 1, 2015, utilized to meet the requirement for associated transit improvement?*

    ii. *If there are multiple recipients in the UZA, how were associated transit improvement projects allocated among other recipients? Did the recipient fulfill its agreed-upon portion of the one percent requirement?*

b. *Are Associated Transit Improvement Reports submitted annually with all the required elements?*

DETERMINING COMPLIANCE

For Section 5307 awards obligated before October 1, 2015, review TrAMS to determine if awards include associated transit improvement projects. Obtain information on associated transit improvement expenditures from the recipient and compare to split letters and lists of qualifying projects obtained from the regional office to ensure that the recipient is meeting its associated transit improvement commitments. Review the Associated Transit Improvement Reports to determine if the recipient submits them annually and includes all the required information. Onsite, discuss with the recipient the process used in the UZA to ensure that the minimum expenditure of Section 5307 funds on associated transit improvement is achieved. The recipient in a UZA with multiple recipients does not need to show that the UZA spent one percent, it only needs to have documentation of how the funds will be spent and demonstrate it spent its share.

Required Associated Transit Improvement Report Contents	
Item	**Comment**
Recipient name	
UZA name and number	
FTA project number	
Project category	
Brief description of improvement and progress towards project implementation;	
Activity line code from approved budget	
Amount awarded by FTA for the project	

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it will not meet its associated transit improvement commitments.

DEFICIENCY CODE 5307:6-1: Associated transit improvement commitments not met

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a plan for meeting the associated transit improvement commitments and report on implementation of the plan in the annual Associated Transit Improvement Reports.

The recipient is deficient if it has not submitted its Associated Transit Improvement Reports annually or they do not contain the required elements.

DEFICIENCY CODE 5307:6-2: Associated Transit Improvement Report issues

SUGGESTED CORRECTIVE ACTION: The recipient must submit the Associated Transit Improvement Reports for the past year in TrAMS and submit to the FTA regional office procedures for submitting the reports with the required information annually.

GOVERNING DIRECTIVES
FTA Circular 9030.1E, Chapter V, Section 9 Associated Transit Improvements

"9. ASSOCIATED TRANSIT IMPROVEMENTS. In UZAs with populations of at least 200,000, the designated recipient or designated recipients are responsible for certifying that no less than 1 percent of a fiscal year's apportionment is expended for projects that qualify as associated transit improvements. Where there are multiple designated recipients, the designated recipients must jointly coordinate the use of the 1 percent requirement for associated transit improvement projects and must include a list of the qualifying projects in the letter to FTA's regional office identifying the split of the UZA apportionment. If a list of qualifying projects is not available at this time, the letter should at a minimum indicate how this requirement will be met by indicating the amount each recipient will expend for qualifying projects.

A UZA may choose to spend more than 1 percent on associated transit improvement projects; however, expenditures for items that are not otherwise eligible projects—in particular, operating costs for historic public transportation facilities—may not exceed 1 percent of the UZA's fiscal year apportionment. In addition, projects that are eligible for an increased federal share, such as bicycle

projects included as associated transit improvements, may only receive the increased local share for expenses necessary to meet the one percent minimum.

a. Associated Transit Improvement Report
   Recipients must submit a report to the appropriate FTA regional office listing the projects or elements of projects carried out with associated transit improvement (ATI) funds during the previous fiscal year and the amount spent. The recipient must attach the report in TEAM in the federal fiscal year's final quarterly report.
b. The report should include:
   (1) recipient name;
   (2) UZA name and number;
   (3) FTA project number;
   (4) project category;
   (5) brief description of improvement and progress towards project implementation;
   (6) activity line code from approved budget; and
   (7) amount awarded by FTA for the project.
c. Alternatively, the designated recipient or MPO may submit this report on behalf of all recipients in a UZA; however, the report must include all of the information listed in the paragraph above."

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

"h. Associated Transit Improvement Reports. Associated Transit Improvement Reports (also, Transit Enhancement Reports for Awards made before MAP-21 was signed into law) must be submitted by recipients with populations of 200,000 or more that receive federal assistance under the Urbanized Area Formula Program (Section 5307). Recipients of this federal assistance are required by Section 5307(c)(1)(K) to submit a report listing the associated transit improvement projects carried out during the previous FY with that federal assistance including the amounts expended. Refer to the most recent edition of FTA Circular 9030.1, "Urbanized Area Formula Program: Program Guidance and Application Instructions," for reporting requirements. Certification that the Associated Transit Improvement Report or Transit Enhancement Report has been submitted is required as part of the Annual List of Certifications and Assurances."

5307:7. 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
All 5307 recipients with subrecipients, contractors, and lessees

EXPLANATION
The recipient must ensure that Section 5307 subrecipients, contractors, and lessees 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 subrecipients, contractors, and lessees that operate services 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, and internal and public fare information show the half fare and eligibility, including Medicare cardholder 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?*

DETERMINING COMPLIANCE

Review sample subrecipient agreements, contracts, and lease agreements for a discussion of the direction given to subrecipients, contractors or lessees regarding compliance with the 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.

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). 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 5307:7-1: Insufficient oversight of fare increases and major service reductions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 5307:7-2: Insufficient oversight of half fare

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that subrecipients, contractors, and lessees comply with half-fare requirements and evidence of their implementation.

GOVERNING DIRECTIVES

2 CFR 200.318(b)

"Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders."

2 CFR 200.331 Requirements for pass-through entities

"All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary 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. Pass-through entity monitoring of the subrecipient must include:

(1) Reviewing financial and performance reports required by the pass-through entity.

(2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.

(3) Issuing 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 Management decision."

FTA Circular 5010.1E, 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…

a. Recipient Role. In addition to FTA's responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars…

The recipient's responsibilities include, but are not limited to, actions that:

(2) Provide administrative and management support of project implementation;

(3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;

(4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards; …

(7) 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

1. If the recipient is located in a designated Transportation Management Area (TMA) (population 200,000 or more), when was the last Planning Certification Review (PCR) completed by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA)?

   a. Did the recipient participate in the review?

   b. Are there any outstanding corrective actions from the PCR that pertain to the recipient?

2. 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?

3. 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?

4. Does the recipient appear to make it difficult to receive a half fare special identification card?

5. Did background research or site visit observations reveal any other potential issues or concerns about not covered above about the recipient's public involvement/comment processes, half fare, security expenditures, associated transit improvement expenditures, 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 CFR Parts 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 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"

USEFUL WEB LINKS

1. Major Policy and Planning Issues

2. Planning Index: A to Z

3. Planning Certification Reviews

4. Transportation Planning Newsletter

5. Transportation Planning Capacity Building

6. National Transit Institute (NTI) Courses

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19. SECTION 5310 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA
Recipients must expend funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding under the Section 5310 program must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all leases of Section 5310-funded vehicles and ensure that leases include required terms and conditions. Either the recipient or subrecipient must hold title to the leased vehicles.

QUESTIONS TO BE EXAMINED
1. Are subrecipients eligible under the Section 5310 program?

2. Does the distribution of funds meet Section 5310 program requirements?

3. Are at least 55 percent of Section 5310 apportionments applied to "traditional" projects?

4. Are all Section 5310 projects included in a locally developed, coordinated public transit-human service transportation plan per Section 5310 program requirements?

5. Are all Section 5310 funds used for services that meet the specific needs of seniors and individuals with disabilities?

6. Does the recipient agree in writing to all subrecipient lease agreements, ensure that lease agreements contain required provisions, and ensure leases to private operators are awarded through a competitive process?

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
- Governor's certification for transfer of 5310 funds, if applicable
- Program reports monitoring incidental service

Recipient Follow-up
- Coordinated plans, if not available on recipient website

5310:1. Are subrecipients eligible under the Section 5310 program?

BASIC REQUIREMENT
The Section 5310 program sets specific eligibility requirements for subrecipients for "traditional" and "other" program funds. Eligible subrecipients for "traditional funds" are private nonprofit organizations and governmental entities that are approved by the state to coordinate service or certify that no nonprofits are readily available to provide the service. Eligible subrecipients for "other" funds include state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 award indirectly through a recipient.

APPLICABILITY
Designated 5310 recipients

EXPLANATION

Section 5310 provides formula funding to states and designated recipients of large urbanized areas (UZAs) with populations of 200,000 or more) to improve mobility for seniors and individuals with disabilities. Statute defines a "senior" as an individual who is 65 years of age or older. This program provides funds for:

- Public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable, or inappropriate
- Public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990
- Public transportation projects that improve access to fixed-route service and decrease reliance by people with disabilities on complementary paratransit
- Alternatives to public transportation that assist seniors and individuals with disabilities with transportation

Traditional projects are those planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable. Three categories of subrecipients are eligible for these (Section 5310(b)) funds:

- Private nonprofit organizations if public transportation service provided by state and local governmental authorities is unavailable, insufficient, or inappropriate for elderly individuals and individuals with disabilities
- Governmental authorities 1) approved by the state to coordinate services for seniors and individuals with disabilities or 2) that certify to the governor that there are no nonprofit corporations readily available in the area to provide the service

"Other" eligible Section 5310 activities include a state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 award indirectly through a recipient. Private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) on a regular basis are operators of public transportation, and therefore eligible subrecipients. The state/program management plan must document program eligibility requirements.

INDICATORS OF COMPLIANCE

a. *Are subrecipients eligible?*

b. *If governmental authorities receive "traditional" Section 5310 funds, have they been approved by the state to coordinate services for seniors and persons with disabilities or have they certified that no nonprofits are readily available?*

DETERMINING COMPLIANCE

Review the state/program management plan and subrecipient applications and agreements to verify that subrecipient eligibility requirements match or are more restrictive than the Federal Transit Administration (FTA)'s 5310 program requirements. Retrieve from Transit Award Management System (TrAMS) the programs of projects for awards executed since the last review. Use the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment to select a sample of subrecipients. On site, review the recipient's records to confirm that they are eligible. For governmental entities that receive "traditional" funds, review subrecipients' certifications or state correspondence approving the public body to coordinate services.

Award	Subrecipient	"Traditional" or "Other"	Comment

Award	Subrecipient	"Traditional" or "Other"	Comment

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it awarded Section 5310 funds to subrecipients that are not eligible under the program or it does not have the appropriate documentation for governmental authorities receiving "traditional" Section 5310 assistance.

DEFICIENCY CODE 5310:1-1: Ineligible Section 5310 subrecipients

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a revised state/program management plan and other pertinent documents, such as the award application, with subrecipient eligibility requirements that are consistent with, or more restrictive than, FTA's requirements, along with evidence that the revised eligibility requirements were used in its next application cycle.

The recipient is deficient if it does not have the appropriate documentation for governmental authorities receiving "traditional" Section 5310 assistance.

DEFICIENCY CODE 5310:1-2: No documentation for governmental authorities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that governmental authorities that receive "traditional" Section 5310 assistance are eligible.

GOVERNING DIRECTIVE
FTA Circular 9070.1G, 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.

ELIGIBLE SUBRECIPIENTS FOR OTHER SECTION 5310 PROJECTS. Eligible subrecipients for other eligible Section 5310 activities include a state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.

PRIVATE TAXI OPERATORS AS SUBRECIPIENTS. Private operators of public transportation are eligible subrecipients. The definition of "public transportation" includes "… shared-ride surface transportation services …" Private taxi companies that provide shared-ride taxi 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 and ADA demand response service, every trip does not have to be shared-ride in order for a taxi company to be considered a shared-ride operator, but the general nature of the service must include shared rides…

Taxi companies that provide only exclusive-ride service are not eligible subrecipients; however, they may participate in the Section 5310 program as contractors. Exclusive-ride taxi companies may receive Section 5310 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 seniors and people with disabilities, and that 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."

5310:2. Does the distribution of funds meet Section 5310 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
All state recipients of Section 5310 funds, except insular areas

EXPLANATION
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 UZAs 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?*

DETERMINING COMPLIANCE

Review the state/program management plan and subrecipient applications to verify project eligibility for Section 5310 funding.

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.

For states, if funds were transferred, obtain and review evidence of consultation with responsible local officials, publicly owned operators of public transportation, and nonprofit providers. Obtain the governor's certification for transferred funds.

POTENTIAL DEFICIENCY DETERMINATIONS

The state is deficient if it does not track Section 5310 funds by apportionment area.

DEFICIENCY CODE 5310:2-1: Section 5310 projects not tracked by apportionment

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office procedures for tracking Section 5310 funds by rural, small urban, and large urbanized areas.

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 5310:2-2: Section 5310 funds inappropriately transferred

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office 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.

The state is deficient if the governor did not certify that all of the objectives of the Section 5310 program are being met in the area(s) from which funds are transferred.

DEFICIENCY CODE 5310:2-3: Section 5310 funds inappropriately transferred

SUGGESTED CORRECTIVE ACTION: The state must submit a governor's certification for transferred funds and procedures for obtaining the governor's certification when funds are transferred.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Chapter III General Program Information

10. 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.

5310:3. Are at least 55 percent of Section 5310 apportionments applied to "traditional" projects?

BASIC REQUIREMENT
At least 55 percent of Section 5310 funds must be used for traditional projects.

APPLICABILITY
All recipients of Section 5310 funds, except insular areas

EXPLANATION
Not less than 55 percent of the funds available for this program must be used for projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, typically carried out by eligible subrecipients. 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. Three categories of subrecipients are eligible for these (Section 5310(b)) funds:

- Private nonprofit organizations if public transportation service provided by state and local governmental authorities is unavailable, insufficient, or inappropriate for elderly individuals and individuals with disabilities

- Governmental authorities 1) approved by the state to coordinate services for seniors and individuals with disabilities or 2) that certify to the governor that there are no nonprofit corporations readily available in the area to provide the service

INDICATORS OF COMPLIANCE

a. *Is at least 55 percent of the Section 5310 apportionments in each area applied to "traditional" Section 5310 capital projects?*

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 they certified to the governor that there are no nonprofit corporations readily available in the area to provide the service?*

DETERMINING COMPLIANCE
Review the state/program management plan and subrecipient applications to verify project eligibility for Section 5310 funding.

Review programs of projects in TrAMS to determine which projects are classified as traditional and the amount of funds programmed for traditional projects. Onsite, discuss the recipient's procedures for classifying projects as "traditional" and tracking to ensure that the 55 percent is met for the rural apportionment, small urban apportionment, and each urbanized area apportionment for each apportionment year. Review with the recipient documentation (reports from the accounting system or spreadsheets) showing that the 55 percent requirement is met.

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.

Also, note that states may share designation status with a recipient in a large urbanized area. For example, a state may be the designated recipient for the "traditional" funds while the large urbanized area recipient may be the designated recipient for "other" funds. In these instances, determine which funds the state applies for and which funds the large urbanized area recipient applies for.

The requirement to spend at least 55 percent on "traditional" projects does not apply to funds flexed (transferred) into the program.

POTENTIAL DEFICIENCY DETERMINATION
The recipient is deficient if less than 55 percent of funds are used by eligible recipients for traditional capital projects.

> DEFICIENCY CODE 5310:3-1: 5310 traditional project requirements not met
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that at least 55 percent of Section 5310 funds are expended on "traditional" Section 5310 capital projects undertaken by eligible subrecipients.

GOVERNING DIRECTIVE
FTA Circular 9070.1G, 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.

10. c. Transfer of FHWA Flexible Funds. Flexible funds from the Federal Highway Administration (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 for 55 percent to 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 funds are available for obligation by the state for two additional years after the year in which they are transferred.

13. 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 for 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 section 5, above) and these projects are included in the area's coordinated plan."

5310:4. Are all Section 5310 projects included in a locally developed, coordinated public transit-human service transportation plan per Section 5310 program requirements?

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
All recipients of 5310 funds

EXPLANATION
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; individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public. Recipients are not required to submit the coordinated plans to FTA. Recipients must certify that projects were selected from this process and must make reference to the plan in the program of projects.

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?*

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?*

DETERMINING COMPLIANCE
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. Many recipients post the plans on their websites. Obtain the program of projects for active Section 5310 awards in TrAMS and confirm that the projects are included in the coordinated plan(s). Using the following table, review a sample of coordinated plans to ensure that the plans include 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. 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	
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	

Review the plans 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 any Section 5310 projects are not included in a coordinated plan.

DEFICIENCY CODE 5310:4-1: Section 5310 projects not included in coordinated plans

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an amended coordinated plan(s) that include 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 5310:4-2: Coordinated plans missing required elements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 5310:4-3: Inadequate public involvement efforts for coordinated plans

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 9070.1G, Chapter V Coordinated Planning

"2.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.

3. 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; 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 service 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."

5310:5. 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.

APPLICABILITY
Designated recipients of Section 5310 funds

EXPLANATION
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.

Generally, the recipient's subrecipient application package requests 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, elderly, disabled) on a periodic basis. The recipient may also observe a subrecipient's service during site visits.

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. 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. 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.

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 to report periodically on meal delivery and other incidental service. Some recipients observe subrecipients' service during site visits.

INDICATORS OF COMPLIANCE

a. *For recipients with Section 5310 subrecipients:*

    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?*

DETERMINING COMPLIANCE
Review the state/program management plan, subrecipient application, and subrecipient agreement for a discussion of the direction given to subrecipients on incidental service.

Obtain and review monitoring materials, such as program measure 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. On site, review the oversight file(s) for the subrecipient(s) to be visited to determine if the recipient has implemented its oversight program.

During subrecipient site visits, determine if the subrecipient is providing eligible service and if any incidental service detracts from the provision of public transportation.

For recipients that provide Section 5310 service directly, obtain review program report, public information on the services provided and compare to the award application to verify that projects described in the award are being carried out. On site, discuss with the recipient how it monitors to ensure that incidental services do not conflict with the provision of transit service.

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if it operates ineligible service or if incidental services detract from the provision of transit service.

> DEFICIENCY CODE 5310:5-1: Ineligible Section 5310 services
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has ceased using Section 5310 funds for ineligible service and work with the FTA regional office to determine the appropriate remedy for recovering funds already expended.

The recipient is deficient if it does not monitor subrecipients to ensure that eligible service continues to be provided.

> DEFICIENCY CODE 5310:5-2: Insufficient monitoring of Section 5310 subrecipient eligible services
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 to ensure that incidental services do not interfere with the provision of transportation service to seniors and individuals with disabilities.

> DEFICIENCY CODE 5310:5-3: Insufficient monitoring of Section 5310 incidental service
>
> SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office 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 9070.1G, Ch. VI, Section 5 Vehicle Use

"FTA encourages maximum use of vehicles funded under the Section 5310 program. Consistent with the requirements of 49 CFR parts 18 and 19, vehicles are to be used first for program-related needs for which a Section 5310 grant 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:

d. For Meal Delivery. 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."

5310:6. Does the recipient agree in writing to all subrecipient lease agreements, ensure that lease agreements contain required provisions, and ensure leases to private operators are awarded through a competitive process?

BASIC REQUIREMENT
Recipients must agree in writing to all subrecipient lease agreements, ensure that lease agreements contain required provisions, and ensure leases to private operators were awarded through a competitive process.

APPLICABILITY
Designated recipients of Section 5310 funds

EXPLANATION
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 state or designated 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
- Specify that the leased vehicle shall be used to provide transportation service to seniors and people with disabilities, that the vehicle may be used for incidental purposes only after the needs of these individuals have been met
- Ensure the subrecipient, state, or designated recipient retains title to the vehicle

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 including applicable and relevant terms and conditions of FTA's master agreement in the maintenance and use of the asset.

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.

INDICATORS OF COMPLIANCE

a. Does the recipient agree to the leases in writing?

b. How does the recipient ensure that the required provisions are included in the lease agreements?

c. *Does the lease agreement oblige the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement?*

d. *Does the recipient or subrecipient hold title to leased vehicles?*

e. *If leased to a private entity to operate in public transit service, was the entity selected through a competitive process?*

DETERMINING COMPLIANCE
Review the state/program management plan to determine if the recipient allows leases of Section 5310-funded vehicles.

Review the listing of leased Section 5310-funded vehicles to select sample lease agreements to confirm that a written agreement was executed between the subrecipient and 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. Complete the table below. Ensure that the leases state that the vehicle must be used for transportation service for seniors and individuals with disabilities. The recipient can allow the lessee to use the vehicle for other purposes only after the needs of seniors and individuals with disabilities have been met.

Review the state/program management plan to determine if the recipient agrees to leases in writing and if the recipient or the subrecipient holds title to leased vehicles.

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. Review a lease to ensure that it obliges the lessee to adhere to all of the applicable and 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 requirements the recipient itself is responsible for	
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	

POTENTIAL DEFICIENCY DETERMINATIONS
The recipient is deficient if its Section 5310-funded vehicle lease agreements do not contain the required provisions.

DEFICIENCY CODE: 5310:6-1: Section 5310 lease agreements missing required provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that 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 does not agree to the leases of Section 5310-funded vehicles in writing.

DEFICIENCY CODE 5310:6-2: Section 5310 lease agreements not in writing

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office regional office written approvals of leases of Section 5310-funded vehicles and procedures for approving leases of Section 5310-funded vehicles in writing.

The recipient is deficient if it or its subrecipient does not hold title to leased vehicles.

DEFICIENCY CODE 5310:6-3: Title not held in Section 5310 leases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it or the subrecipient holds title to leased Section 5310-funded vehicles.

The recipient is deficient if it does not select private operators through a competitive process.

DEFICIENCY CODE 5310:6-4: Leases to private operators not awarded through a competitive process

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for selecting private operators through a competitive process.

The recipient is deficient if the lease with the private operator does not contain the relevant requirements contained in the FTA master agreement.

DEFICIENCY CODE 5310:6-5: Private operator leases missing FTA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that leases with the private operators contain the relevant requirements contained in the FTA master agreement.

GOVERNING DIRECTIVE
FTA Circular 9070.1G, Ch. VI, Section 6 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 state or designated recipient, being responsible for ensuring that the terms and conditions of the original grant 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, that the vehicle may be used for incidental purposes only after the needs of these individuals have been met, and that the subrecipient, state, or designated recipient must retain title to the vehicle.

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

1. Are there any concerns about the recipient's Management Plan for the Section 5310 program?

2. Are there concerns about the process used to allocate funds and/or the fair and equitable distribution of funds?

3. Was the development of the coordinated plans prepared in coordination and consistent with the applicable metropolitan and statewide planning process?

4. Are there other concerns about the management or implementation of the Section 5310 program?

5. Did background research or site visit observations reveal 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 9070.1G "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

20. SECTION 5311 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA
Recipients must expend 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?

INFORMATION NEEDED FROM RECIPIENT
Recipient Information Request
- Governor's certification for intercity bus for the review period, if applicable
- Intercity bus studies
- Documentation of consultation for intercity bus
- List of intercity bus projects awarded since the last review with amount and description of the project
- List of the amounts and description of in-kind match used for intercity bus

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

EXPLANATION
Section 5311 funds are available for expenditure for public transportation projects (including Job Access Reverse Commute) and intercity bus projects for people living in any area outside urbanized 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 and persons with disabilities. Coordinated human service transportation that primarily serves seniors and persons 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, persons 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.

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 process. 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?*

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?

DETERMINING COMPLIANCE

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 the subrecipients regarding the provision of general public service and incidental services in subrecipient agreements. Review monitoring materials, such as program reports and site visit checklists, for data and how the recipient monitors compliance relating to general public service and incidental services.

Review the website for the Section 5311 subrecipient(s) to be visited to determine if the service is promoted to the general public. On site, review the oversight file(s) for the subrecipient(s) to be visited. During subrecipient site visits, discuss the subrecipient's marketing program, allocation of cost to rural and urban service, if incidental service is supported by Section 5311, and if incidental service detracts from the provision of public transportation service.

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. Onsite, discuss with the recipient. If time permits, visit a location where rural service is provided.

POTENTIAL DEFICIENCY DETERMINATIONS
The state is deficient if service does not operate within or to/from a rural area.

DEFICIENCY CODE 5311:1-1: Ineligible Section 5311 services

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office evidence that it has ceased using Section 5311 funds for ineligible service and work with the FTA regional office to determine the appropriate remedy for recovering funds already expended.

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: The state must submit to the FTA regional office 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 there is a reasonable basis for allocation of costs between rural and urban services for its subrecipient's and its service.

DEFICIENCY CODE 5311:1-3: Insufficient monitoring of rural vs urban service

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office a reasonable basis for allocating costs 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: The state must submit to the FTA regional office 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: The state must submit to the FTA regional office procedures for ensuring that nutrition programs pay the cost of meal delivery.

GOVERNING DIRECTIVE
FTA Circular 9040.1G, Chapter. III, Section 2 Eligibility

"a. Eligible Recipients and Subrecipients. …The purpose of the Section 5311 program is to support public transportation for people living in any area outside of a UZA as designated by the Bureau of the Census. A UZA consists of a core area and the surrounding densely populated area with a total population of fifty thousand or more, with boundaries fixed by the Bureau of the Census. Areas not

within a UZA as of the 2010 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 twenty years and/or the air quality nonattainment boundary.

Since the goal of Section 5311 is to enhance the overall mobility of people living in rural areas, Section 5311 projects may include 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…

c. Eligible Service and Service Areas. States can use Section 5311 funds for public transportation projects, including job access and reverse commute projects, and intercity bus transportation projects in rural area.

d. Incidental Use. The purpose of Section 5311 assistance is the provision of public transportation services and FTA encourages maximum feasible coordination with other rural transportation services. FTA policy and the Federal Interagency Coordinating Council on Access and Mobility (CCAM) policy on vehicle resource sharing allow vehicles 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 vehicle for nonpassenger transportation on an occasional or regular basis, such as package delivery, 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 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 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 the nutrition program will pay the operating costs attributable to meal delivery. Section 5311 capital assistance 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.

e. Joint Urbanized and Rural Projects. 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. Similarly, a subrecipient that purchases vehicles under either the Section 5307 or 5311 program for use in any part of a combined urbanized and rural service area should ensure that it has capital replacement policies in place to ensure that it is using program funds according to federal eligibility requirements. When there is a question as to the reasonableness of the subrecipient's cost allocation methodology, FTA looks to the state to make a determination."

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
Recipients must allow Indian tribes, even those that participate in the Tribal Transit Program, to participate in a state's Section 5311 program.

APPLICABILITY
States, excluding insular areas

EXPLANATION
The annual 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?*

DETERMINING COMPLIANCE
Review the Section 5311 state management plan for the process for selecting projects and subrecipient applications for project eligibility to determine if 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 the TrAMS to determine if any Indian tribes are subrecipients. Compare the list of tribal subrecipients with the 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. 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. Note: The state's program of projects will not include tribal projects awarded directly to tribes by FTA.

List of Indian Tribes in the State	List of Tribal Section 5311 Subrecipients	Comments

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: The state must submit to the FTA regional office 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. The state must submit evidence that it obtained public comment on the plan revisions.

GOVERNING DIRECTIVE
FTA Circular 9040.1G, Chapter IV Program Development

"1. FAIR AND EQUITABLE DISTRIBUTION. The program of projects the state submits to FTA for approval must provide for fair and equitable distribution of the 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 applicants consistent with the state management plan as outlined in Chapter VI. The Tribal Transit Program 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 MAP-21 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.

APPLICABILITY
States, excluding insular areas

EXPLANATION
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 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 in relation to other rural transportation needs. The governor can certify that intercity bus needs are partially met and, therefore, program an amount less than the specified percentage for an intercity bus program in that year. 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. 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 annually
- 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.

INDICATORS OF COMPLIANCE

a. *Are the intercity bus activities that the state is pursuing eligible?*

b. *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?*

c. Did the state consult with intercity bus providers before seeking the governor's certification?

DETERMINING COMPLIANCE
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 program for the three 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.

On site, discuss the nature of the projects.

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.

Intercity Bus Projects			
Federal fiscal year:	**201X**	**201X**	**201X**
Apportionment:			
Award number			
Award number			
Total projects			
Percentage of apportionment			

If the state did not spend at least 15 percent of its funds on intercity bus projects:

i. Review any statewide assessment of intercity bus needs to determine if assessments support that intercity bus needs are being met.

ii. Review the Section 5311 state management plan for documentation of how the state implements its consultative process with intercity bus operators. On site, review documentation of the consultative process. Ensure that the consultative process met minimum requirements and that the state can identify a direct correlation between the results of the process and a determination that the state's intercity bus needs are adequately met. Complete the below table.

Consultative Process Minimum Requirements	Comment
Identification of intercity bus providers in the state	
Activities the state will perform 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	

iii. Confer with the FTA regional office regarding the governor's certification and review certifications and supporting documentation on site. Ensure that certifications occurred within the period of availability of funds.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient 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: The state must cease counting ineligible service towards the 15 percent requirement in future awards.

SUGGESTED CORRECTIVE ACTION 2: The state must submit to the FTA regional office 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 it has not spent 15 percent of its Section 5311 funding on eligible intercity bus projects and has not certified that intercity bus needs are adequately met.

DEFICIENCY CODE 5311:3-1: Lacking intercity bus projects

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office certification from the Governor that the state's intercity bus needs are adequately met and evidence of consultation with affected intercity bus service providers.

SUGGESTED CORRECTIVE ACTION 2: The state must submit to the FTA regional office a revised program of projects demonstrating how the state will spend at least 15 percent of Section 5311 funds on intercity bus projects.

The recipient is deficient if the governor did not certify within the period of availability of funds.

DEFICIENCY CODE 5311:3-1: 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: 5311:3-1: No intercity bus consultative process

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office 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 9040.1G, Chapter VIII 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. The state must document in the state management plan (SMP) 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 either 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 IV of this circular and consultation with intercity bus providers before certification.

The governor of the state or his or her duly authorized designee must sign a certification letter addressed to the federal transit administrator, with a copy to the FTA regional office. The letter should include sufficient information regarding the consultation process and needs assessments for FTA to make an initial determination that 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) does not substitute for a certification by the governor that the needs are met adequately. Appendix F provides a sample certification letter.

4. 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."

"7. 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. 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.

8. 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 stops and depots, 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." 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 for use in intercity service. 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 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(3)(G) for joint development projects. FTA published final guidance for joint development projects in the *Federal Register* on February 7, 2007 (72 FR 5788).

9. 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 which 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."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Are there concerns about the State Management Plan for the Section 5311 program?

2. Are there concerns about the eligibility of any subrecipients?

3. Are there concerns about the project selection process and/or fair and equitable distribution of funds?

4. Did background research or site visit observations reveal 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 9040.1G, "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