# FTA

## FEDERAL TRANSIT ADMINISTRATION

# FTA State Programs Meeting and State Public Transit Partnerships Conference

# State Safety Oversight (SSO) Program Certification

**Patrick D. Nemons**
**Office of Transit Safety and Oversight**
**Federal Transit Administration**

**August 2017**

# Agenda

- FTA's Goals
- SSO Certification
  - Which States are affected
  - Deadlines
  - Financial Penalty
  - Certification Status Table
  - What FTA is doing for SSOAs
  - What you can do
- Outreach
- Questions

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# FTA's Goals

Continue to Improve and Strengthen SSO Programs for Oversight of Rail Transit Operations

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# SSO Certification

# States with Rail Transit Required to Meet State Safety Oversight Program Certification Deadline



Required to have State Safety Oversight Program Certification for Rail Transit by April 15, 2019

Not Required to have State Safety Oversight Program Certification for Rail Transit by April 15, 2019

U.S. Department of Transportation

Federal Transit Administration

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# Deadlines

- Compliance deadline-States must have an approved and certified SSO Program no later than April 15, 2019

- In order to meet the compliance deadline, States should submit their certification applications by April 15, 2018 (preferred submission date), but no later than September 30, 2018, to ensure that FTA has sufficient time to review certification applications

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# Financial Penalty

If a State fails to meet the April 15, 2019 deadline, FTA will be prohibited from obligating Federal financial assistance apportioned under Chapter 53 (49 U.S.C. 5338) to any entity in the State that is otherwise eligible to receive that Federal financial assistance.

# Certification Status Table

- A States progress can be tracked on FTA's website

  - Status table will be updated quarterly

  - https://www.transit.dot.gov/regulations-and-guidance/safety/state-safety-oversight-program-certification-status

- Inquiries

  - Those interested in specifics on a State's progress are encouraged to contact the State

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# What FTA is doing for SSOAs

- $90 million in grant funds

- Technical assistance workshops

- Monthly one-on-one calls

- Quarterly conference calls

- Certification toolkit

- Site visits

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# What You Can Do

Be aware of the statutory deadline and support your State in its certification efforts

# Outreach

- All certification status updates will be featured on the monthly FTA's Transit Safety and Oversight Spotlight Newsletter

  - https://www.transit.dot.gov/regulations-and-guidance/safety/tso-spotlight-newsletter

- Subscribe through email updates under "Safety & Oversight/Safety & Oversight Newsletter"

  - https://public.govdelivery.com/accounts/USDOTFTA/subscriber/new

# Questions?

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# Agenda

- Program Overview
- Common audit findings
- Compliance and Monitoring efforts at State/Sub-recipient level
- Horizon Issues
- FMCSA CDL Clearinghouse

# The FTA Regulated Landscape

- 612 Grantees

- 3318 Entities

- 303,081 Safety-Sensitive Employees

- 100,491 Random Drug Tests

- 54,152 Random Alcohol Tests

- 13,886 Post-Accident Drug Tests

- 12,602 Post-Accident Alcohol Tests

# Audits

- Since January, 2014:

  - 21 States Reviewed

  - 152 Sub-recipients/contractors Reviewed

    - 7-9 Sub-recipients per audit

    - Pass-through Sub-recipients remain responsible for contractor compliance

**§5311 State Audits by Region**
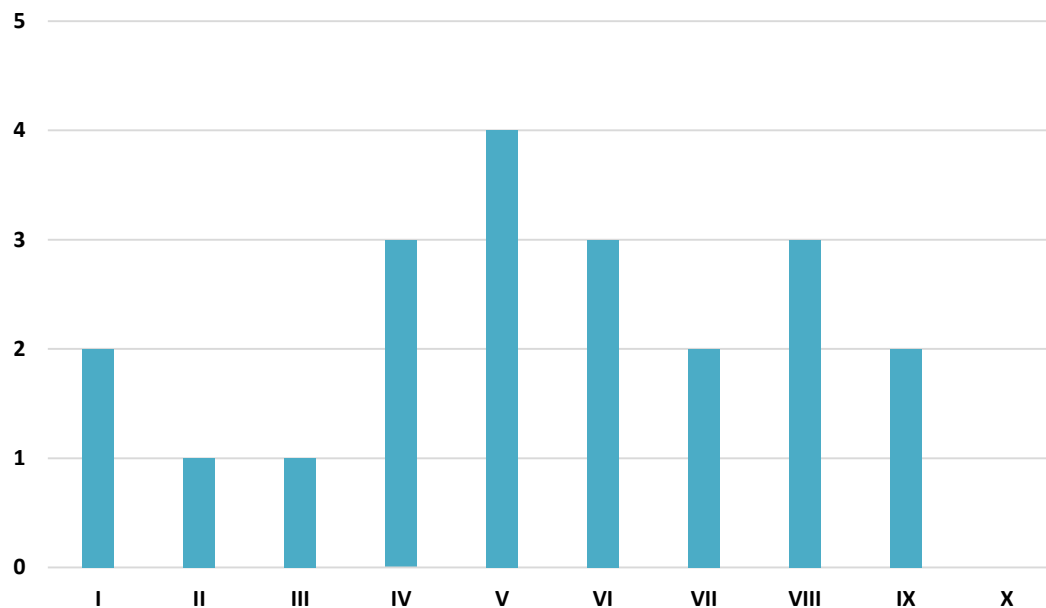
# Common Findings

- Policy out dated or not appropriate to Part 655

- Double-reporting of shared contractors

- See article Do Not Double Report MIS Testing Results in Issue 51 of the Drug & Alcohol Updates Newsletter (https://transit-safety.fta.dot.gov/drugandalcohol/Newsletters/issue51/pdf/Issue51.pdf)

- Predictable distribution of random tests

- Failure to refer applicants to SAP after pre-employment positive/refusal

- Lack of access to SAP

- Lack of access to EBT

- Each Grantee/Sub-recipient must have reasonable access to a conforming EBT

# Compliance and Monitoring at State Level

- FTA provides Grants to State DOT's and transit providers:

    – State DOT is Grantee

    – Sub-recipients (transit providers) are responsible for individual compliance

    – State has obligation to establish oversight approach

    – Approach may be less-involved or highly involved

# Types of Oversight

- Oversight Models

- Minimal:

  - State collects and files MIS

  - May review semi-annual stats from labs

  - Receives annual tallies of testing minimums

  - May have Third Party Administrator (TPA) or may act as the TPA

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# Types of Oversight

- Oversight Models

- Medium:

    – State may require annual or quarterly reporting

    – Monitors training requirements

    – Assists with collection site monitoring when needed

    – Can arrange for TPA or vendor assistance

# Types of Oversight

- Oversight Models

- Heavily Involved:

  - State visits subs regularly

  - Provides or hosts regular trainings

  - Works closely with sub-recipients to resolve all issues with vendors

  - Communicates regularly with FTA regarding compliance methods and changes

# Compliance and Monitoring at State level

- States have access to all drug testing records of sub-recipients, contractors, and relevant forms from vendors

- Monitor your vendors closely

- Talk to each other!

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# On the Horizon

- Proposed Part 40 Changes

  - Addition of Four Synthetic Opioids: hydrocodone, hydromorphone, oxymorphone, and oxycodone

  - Removal of Blind Specimen testing requirement

  - ~Ten other miscellaneous changes

- Oral Fluid Testing

  - SAMHSA approved DTAB recommendation

  - May – or may not – become DOT collection method

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# On the Horizon

- Electronic Custody & Control Form (eCCF)

    - Fully approved for use (provided system meets HHS requirements)

    - Increasingly common in urban (high-volume) collection sites

    - Not yet common at rural clinics, but will become common

    - Allows for efficient "closed-loop" collection process

# FMCSA CDL Clearinghouse

- Rule <u>does not apply</u> to CDL-holding Transit Bus Operators and their Employers

- Mixed-coverage employers should consult Final Rule

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# Resources



DOT Office of Drug & Alcohol Policy & Compliance (ODAPC)

202.366.3784

[www.dot.gov/ost/dapc](http://www.dot.gov/ost/dapc)

# Questions?

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# FTA

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## FTA's Public Transportation Safety Certification Training Program

**Dakisha Spratling**
**Office of Transit Safety and Oversight**
**Federal Transit Administration**

**August 2017**

# Public Transportation Safety Certification Training Program

## Required

- Federal and state personnel who conduct safety audits and examinations

- Rail transit personnel who are directly responsible for safety oversight

## Voluntary

- Safety oversight personnel at <u>non-rail transit</u> systems

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# Training Program:
# Voluntary participants

- Safety oversight personnel employed by:
  - Non-rail transit system
    - Passenger ferry
    - Bus
    - Bus rapid transit
    - Community transportation providers
  - State DOTs or other State entities
- Employer must receive Federal transit funds

# Interim Provisions

- Provides for the immediate certification and training of designated safety oversight personnel

- Published: February 27, 2015

- Effective: May 27, 2015

- Required participants have <u>three years</u> to complete the curriculum

  - (a) employment start date (if new to role)
  - (b) effective date (if already employed in role)

# Interim Provisions:
# Covered & Designated Personnel

- A <u>required</u> training curriculum:
  - Courses on Safety Management Systems (SMS)
  - Courses that meet TSI's Transit Safety and Security Program (TSSP) Certificate

- A <u>required</u> technical training program component
  - Only for Feds, State Safety Oversight Agencies (SSOA), and their contractors

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# Who is "directly responsible" for safety oversight?

At a minimum:

- Chief Safety Officer

- Primary safety staff
  - Those who help develop, implement, or maintain the safety program standard

# Interim Provisions: Required Curriculum

- e-Learning
  - SMS Awareness
- Virtual Classroom
  - SMS Safety Assurance

- Traditional Classroom
  - SMS Principles for Transit
  - SMS Principles for SSO Programs
  - Transit Rail Incident Investigation
  - Effectively Managing Transit Emergencies
  - Transit Rail System Safety
  - Transit System Security

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# How to Register for Interim Provisions Courses

- Register on the TSI Learning Management System (LMS) located at
  - https://www.transportation.gov/transportation-safety-institute


- Contact TSI for assistance:
  - (405) 954-3682
  - Transit@dot.gov

# How to Request an Interim Provisions Course Equivalency

- Email the below information to Dakisha Spratling at Dakisha.Spratling@dot.gov:
    - The <u>course</u> you want to waive.
    - The <u>name of the course you previously took</u> that is equivalent to the interim provisions course.
    - The <u>date</u> you took the equivalent course.
    - The <u>name of the entity</u> that facilitated or delivered the course.

# What Do Covered Personnel Need to Do?

Request an Individual Training Plan (ITP)

Register for courses

Request equivalencies

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# How to Request an ITP

- Contact Dakisha Spratling
  - [Dakisha.Spratling@dot.gov](mailto:Dakisha.Spratling@dot.gov)


- Include the following information in your ITP request:
  - The agency you work for
  - Your role within that agency
  - Your phone number

# Technical Training Plan (TTP)

- An SSOA develops and submits its TTP to FTA

- *Agencies* (**not** individuals) must account for and demonstrate the competencies

- FTA will work with SSOAs to review the TTP and any updates

# Expected Outcomes

- Increase ability to identify and control hazards before an accident happens

-  Increase effectiveness of oversight

- Continue to build a strong safety culture

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# Meeting the Technical Competencies – the "who"

- SSOAs can use a variety of options to meet technical competencies
  - Internal staff
  - Qualified staff from other agency departments (e.g., FRA State Participation Program)
  - Contractors

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# Meeting the Technical Competencies – the "what"

- SSOAs can address each competency area through:
  - Rail system training
  - Equivalencies
    - Experience/existing qualifications
    - Certifications
      - E.g., the FRA Certified Track Inspector
    - Contractors
- Each SSOA develops **a single** TTP

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# Access to FTA/TSO Training Website

- The FTA [safety training website](#) is currently unavailable

- Access and register for the Interim Provisions courses on TSI's [Learning Management System](#)

- Contact TSI at [transit@dot.gov](mailto:transit@dot.gov) or (405) 954-3682 for course registration and information



[https://www.transit.dot.gov/regulations-and-guidance/safety/safety-training](https://www.transit.dot.gov/regulations-and-guidance/safety/safety-training)
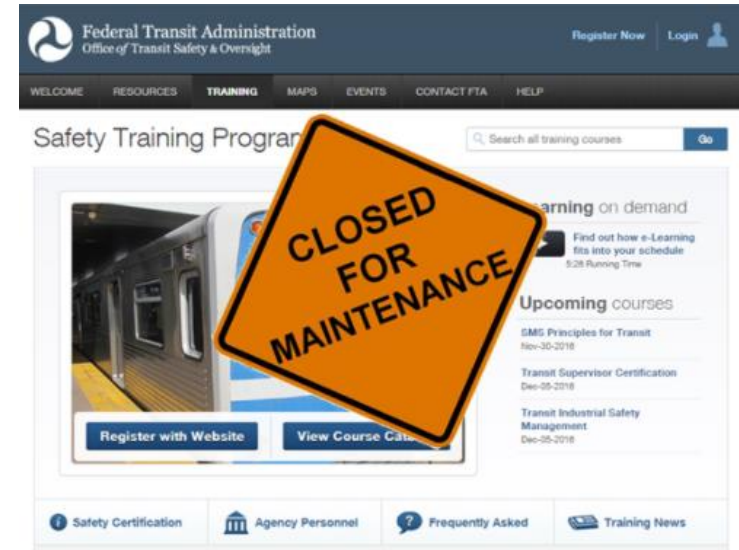
# Questions and Follow Up

- Program questions:
  - Dakisha.Spratling@dot.gov / 202.366.2530
  - Ruth.Lyons@dot.gov / 202.366.2233
- Legal questions:
  - Bruce.Walker@dot.gov / 202.366.9109
- Link to Federal Register Notice: http://www.fta.dot.gov/12531.html

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## The Role of Employee Safety Reporting

**Mike Coplen**
**Office of Transit Safety and Oversight**
**Federal Transit Administration**

**August 2017**

# Agenda

- Importance of employee safety reporting

- Incident-based vs. risk-based safety reporting

- Core principles of effective employee safety reporting program

- Safety culture & safety reporting – how are they linked?

# The Importance of Employee Safety Reporting

- Unique and authentic information

- Timely reporting

- Diverse perspectives and comprehensive reporting reveal patterns and trends

# Limitations of Traditional Incident-based Systems

Incident-based systems:
- Necessary and critical to maintain minimum safety standards
- But…

Often perceived as:
- Blame-based
- Punitive
- Reactionary
- Unfair

Limitations:
- Trust is lacking
- Limited safety data/information sharing
- Corrective actions often compliance-based
- Limited understanding why accidents occur
- System design limits effectiveness

# Incident-based vs. Risk-based Reporting



Reactive

Proactive

Accident/Injury line

Incident Reporting

Risk-based,
**employee** reporting:

At-risk errors & behaviors,
Working conditions,
Organizational factors

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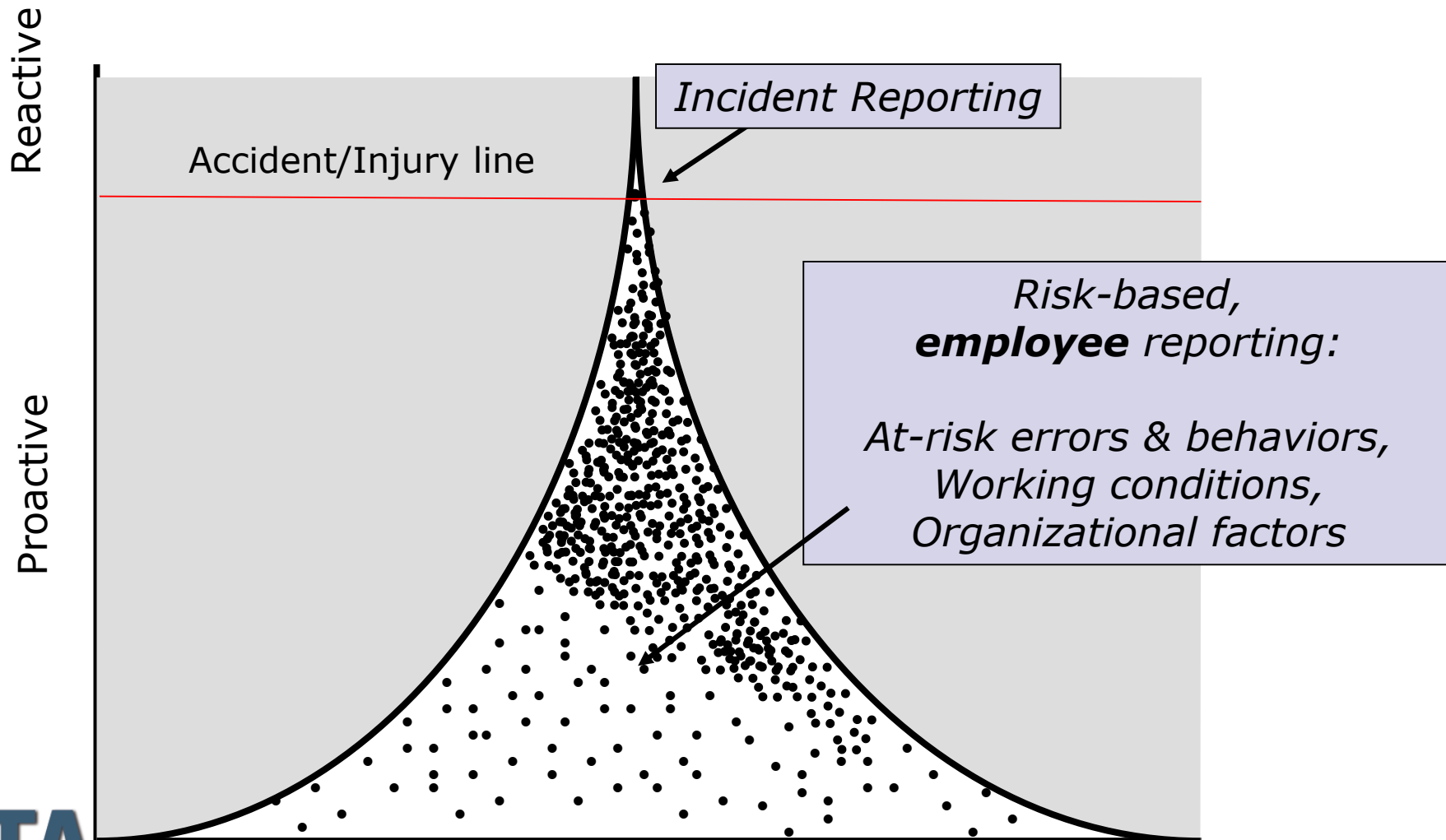
# Core Principles of Effective Employee Reporting Systems

| Ensure all stakeholders are committed | Establish voluntary, confidential, non-punitive participation | Identify, analyze & report leading safety indicators, risks, exposures |
|---|---|---|
| Identify barriers, problem solve, develop action plans | Remove barriers, mitigate risks, eliminate exposures | Evaluate for continuous improvement and sustainability |

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# How Implementing a Safety Reporting Program Builds a Strong Safety Culture



Identify, analyze, & report on safety concern

Identify barriers, develop action plans

Remove barriers, mitigate risks

Evaluate for improvement, sustainability

Communicate how team addressed safety concern
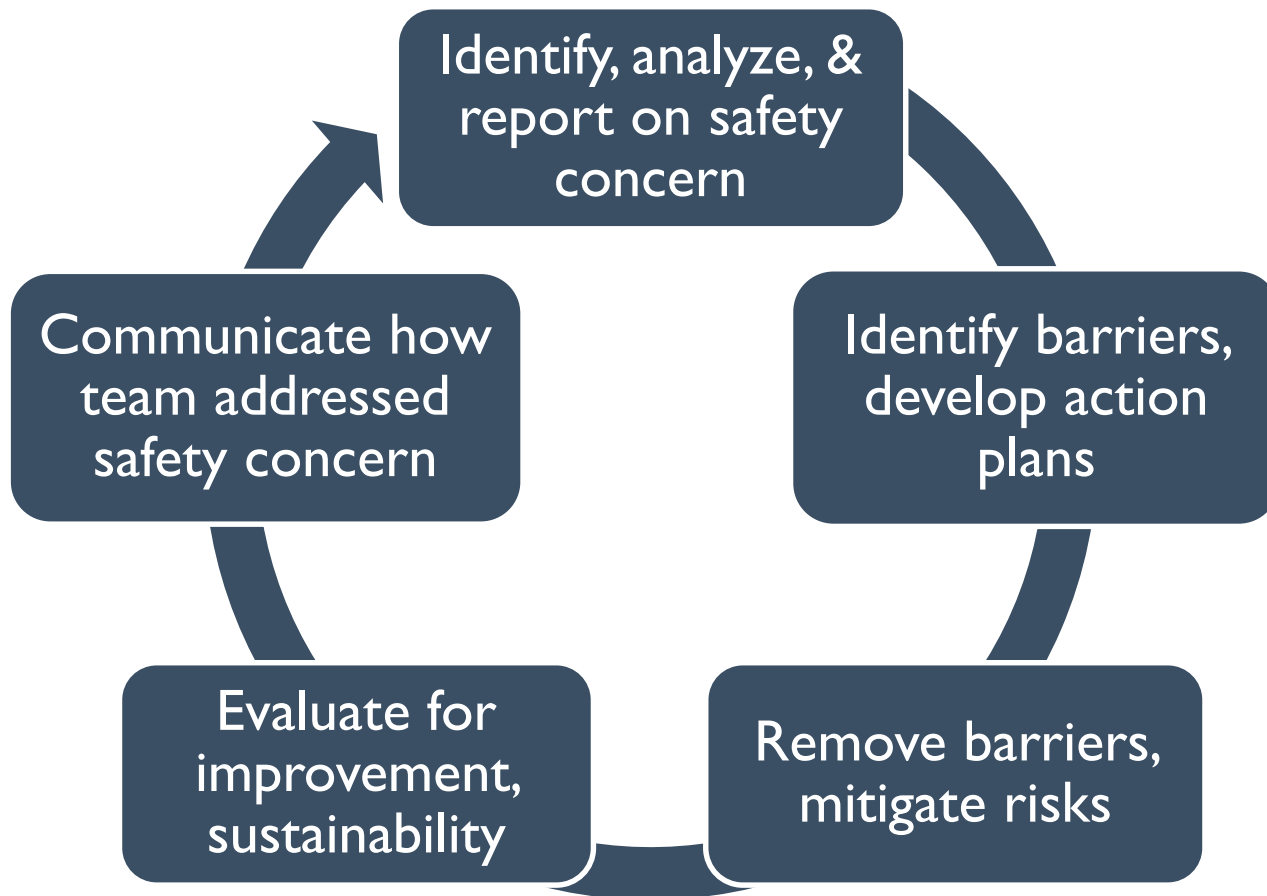
# Elements of a Strong Safety Culture

1. Leadership displays clear commitment to safety

2. Open and effective communication

3. Personal responsibility for safety

4. Continuous learning

5. Safety-conscious work environment

6. Non-punitive, clearly defined reporting systems

7. Safety is demonstrably prioritized

8. Mutual trust

9. Fair and consistent response to safety concerns

10. Safety training and resources

# Questions?

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# Program Oversight Update

**Scott Giering**
**Office of Transit Safety and Oversight**
**Federal Transit Administration**

**August 2017**

# What is Program Oversight?

- Program Oversight reviews confirm and promote compliance with Federal grant requirements.
  - Helps fulfill FTA's fiduciary responsibility to prevent and identify improper payments and ensure that federal funds are used for intended purposes.
  - Strengthens the capacity of FTA funding recipients to improve public transit for America's communities
  - Helps address Congressional and public questions about the use of federal funds
- Comprehensive Reviews (Triennial & State Management)
  - Occur every three years. Triennial Review is required by statute
  - Assess Management Practices and Program Implementation
- Specialized Reviews (Financial, Procurement, & Civil Rights)
  - Occur at FTA's discretion
  - Focus on specific areas of Federal compliance

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# FTA Oversight in Context

FTA's regulatory environment is constantly changing

- Federal laws, Congressional mandates for new regulations, Presidential Executive Orders, and findings and recommendations from agencies that review and audit FTA can affect program oversight and present challenges to maintaining review consistency

- FTA must follow, and help grantees adhere to, these changes through program material updates and circulars

# Major Initiatives in Program Oversight

- Review Planning and Coordination
- Data Reporting and Analysis
- New Comprehensive Oversight Review and Technical Assistance Program (CORTAP)
- Streamlined Review Guide and Information Request
- Enhanced Training and Technical Assistance
  - Proactive technical assistance
  - Enhanced workshops
  - Online training

# Review Planning and Coordination

The Program Oversight Lifecycle is a framework and schedule for program oversight reviews that helps:

- Provide grantees with better consistency in timing/scheduling
- Allow FTA to better coordinate reviews to avoid overlap, conflicts, and overburdening grantees
- Guide FTA workflow and provide holistic view of dependent processes
- Promote efficient use of contractor and FTA staff time and help balance work throughout the year

# Review Planning and Coordination

| Review Material Update w/ FTA Subject Matter Experts | Information Requests Sent to Grantees | Review of Grantees' Information Request Responses | Schedule De Confliction | On Site Reviews | Report Development & Issuance |

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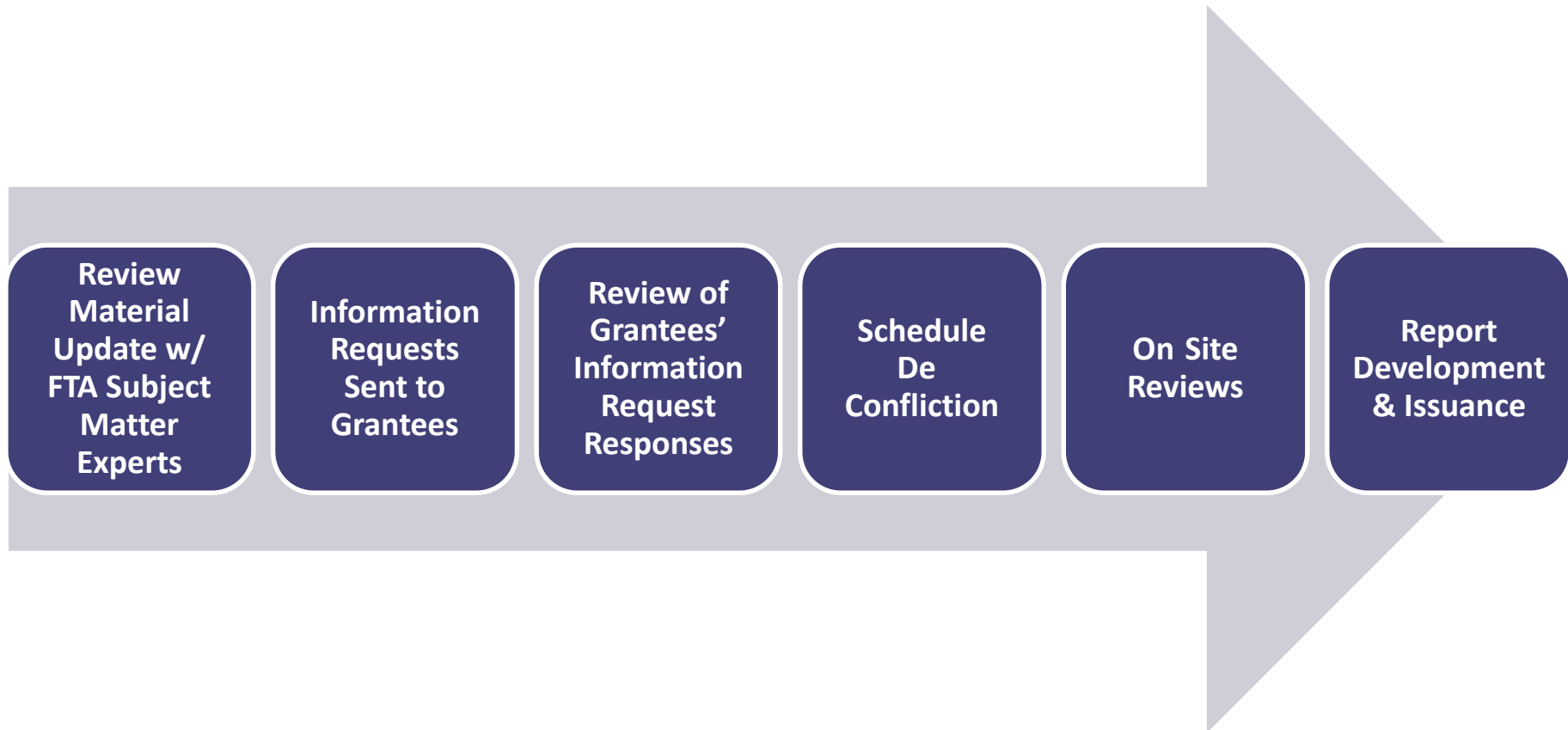
# Review Planning and Coordination

## FTA Grantees with Multiple Reviews in one Fiscal Year, FY12-17



Bar chart values:
- FY12: 48
- FY13: 25
- FY14: 15
- FY15: 8
- FY16: 9
- FY17: 7
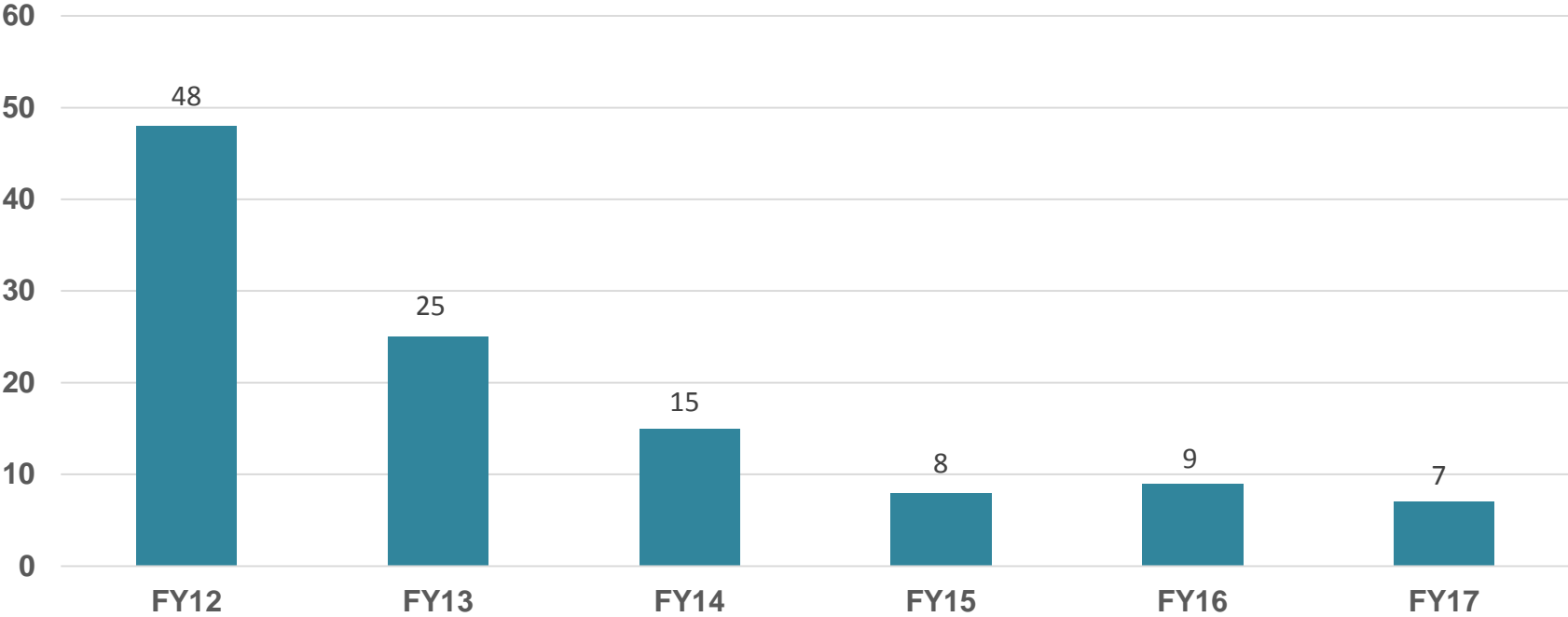
State Receiving Multiple Reviews:
FY12: 3
FY15: 2
FY17: 3
FY13, FY14, FY16: 0

*Drug and Alcohol and State Safety
Oversight reviews were added
to the Deconfliction process in FY16*

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# Data Reporting and Analysis

## Average number of Findings per SMR
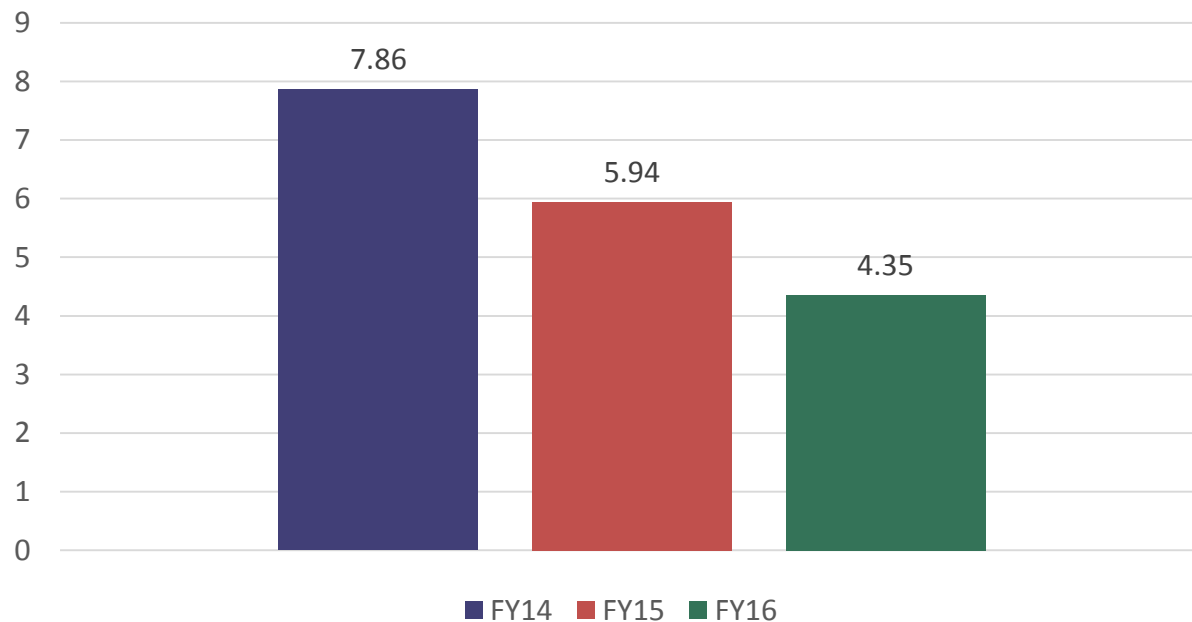


| | FY14 | FY15 | FY16 | FY17 |
|---|---|---|---|---|
| Number of Reviews | 22 | 18 | 17 | 23 |
| Average Number of Findings | 7.86 | 5.94 | 4.35 | |

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# Most Common SMR Findings

| Review Area | Finding | FY14 | FY15 | FY16 | 3 yr Total |
|---|---|---|---|---|---|
| Asset Management | Inadequate oversight of contracted or subrecipient maintenance activities | 9 | 7 | 4 | 20 |
| Disadvantaged Business Enterprise | DBE uniform reports not submitted semi-annually | 5 | 8 | 4 | 17 |
| Grant Administration | Incorrect FFR reporting | 8 | 2 | 5 | 15 |
| Program Management | SMP out of date/incomplete | 11 | 2 | 2 | 15 |
| Disadvantaged Business Enterprise | DBE goal achievement analysis not completed or not submitted | 4 | 5 | 1 | 10 |
| Grant Administration | FFATA reporting deficiencies | 6 | 4 | | 10 |
| Procurement | No verification that excluded parties are not participating | 5 | 4 | | 9 |
| Title VI | Insufficient oversight of Title VI | 5 | 3 | 1 | 9 |
| Procurement | Pre-award and/or post-delivery audits not performed | 2 | 4 | 2 | 8 |
| Procurement | Insufficient oversight of procurement | 3 | 2 | 3 | 8 |

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# New Oversight Review Program

- Merger the Triennial and State Management Reviews in a single program.

- Increase FTA's flexibility in providing the appropriate level of oversight by:

  – Filling the gaps in existing oversight

  – Adapt to the increasingly complex funding, designation, and operating arrangement between grantees;

- Reduce the review burden for many grantees

- Shift to a more proactive oversight process

- Improve consistency across FTA oversight programs

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# Program Material Updates

- "Back to basics" exercise to identify basic requirements for grantees and the optimal methods of assessing compliance
- Will ensure that all questions are directly related to specific, citable requirements
- Direct response to concerns express by internal and external stakeholders:
  - Basis and justifications for questions and findings
  - Burden on grantees to prepare and submit information requests
  - Quality of information request submissions
  - Requesting information to which FTA already has access
  - Dictating preferred practices vs compliant practices

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# New Review Guide

Each question in the review guide will have four basic parts

1. Basic Requirement: high-level, clear statement of what a recipient must do
   – Example: Non-Federal entities that expend $750,000 or more in Federal awards in a year are required to conduct an independent single audit.

2. Applicability: Recipients to whom the requirement applies
   – Examples: All funding recipients OR 5307 recipients only OR ferry operators

3. Indicators of compliance: How reviewers will assess compliance with the basic requirement
   – Example: Did the grantee have a single audit conducted for every year required?
     • Determining Compliance: Review information available in the Federal Audit Clearinghouse (FAC) https://harvester.census.gov/facweb/ to determine if the required single audits were conducted. If the information is not available from FAC, follow-up with the grantee for copies of missing Single Audits

4. Determination: Based on result of indicators
   – Example: If the grantee did not conduct the required single audits:
     • Deficiency: Annual audit not conducted
     • Explanation: The recipient meet the threshold for a single audit but did not have one conducted
     • Governing directive: : § 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…."

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# New Information Request Package

- Old Information Request: 200-page document of questions requiring narrative responses from the grantee
  - Example (State Management Plan requirement)
    - When did the grantee submit to FTA a state management plan?
    - How do the plans address the required areas?
    - What are the grantee's procedures for ensuring that subrecipients have adequate local match and operating funds and only use eligible sources as local match
    - Has the grantee entered into a written agreement with each subrecipient stating the terms and conditions of assistance?
    - Do the agreements address Federal requirements? If not, how does the grantee make subrecipients aware of FTA requirements?
- New Information Request: List of documents and basic information needed from the grantee.
  - Example (State Management Plan requirement)
    - Provide a copy of your last State Management Plan submitted to FTA
    - Provide copies of written agreements with each sub-recipient
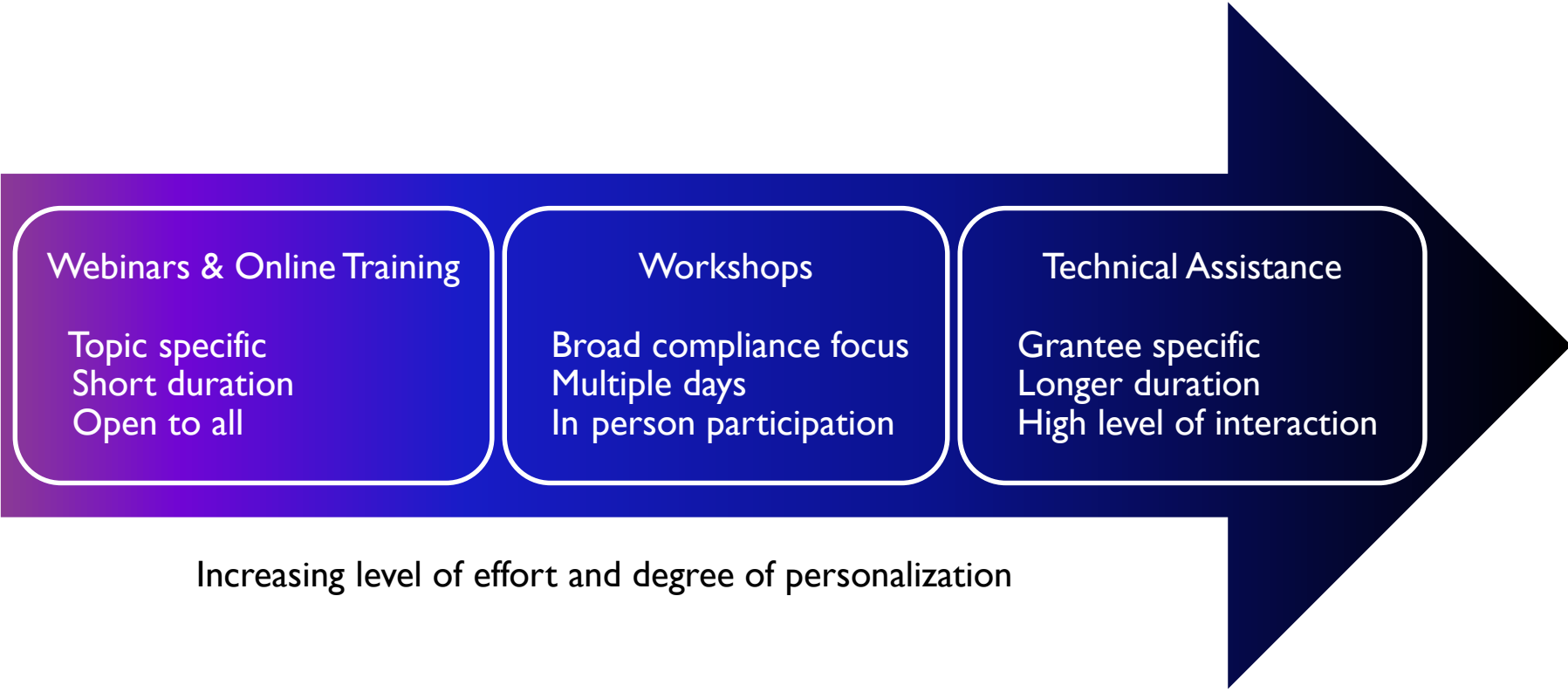
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# Anticipated Benefits for Grantees

- Provides a much more detailed explanation of what is expected of the grantee and exactly how FTA will go about determining a grantee's compliance
- Grantees will have a better understanding of exactly why a finding of deficiency was made with explicit reference to requirement
- Help fulfill FTA's commitment to better transparency in its review processes
- Shifts "burden" from grantee to FTA and its contractors
- Contractor's notes for the indicators of compliance will
  - Streamline the site visit process to focus on areas needing clarification
  - Provide critical information to help FTA determine the validity of findings
  - Identify gray areas of compliance that need to be clarified

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# Training and Technical Assistance

- Agency desire to take a more proactive approach to program oversight focused on:
  - Improving grantee compliance
  - Capacity building for grantees

- Feedback from grantees and FTA regional staff

- Commitments to the industry to enhance education, training opportunities, and assistance for grantees

- Continued high rate of findings in key compliance areas

# Spectrum of Offerings to Match Need

**Webinars & Online Training**

Topic specific
Short duration
Open to all

**Workshops**

Broad compliance focus
Multiple days
In person participation

**Technical Assistance**

Grantee specific
Longer duration
High level of interaction

**Outcome: Fewer Findings**

Increasing level of effort and degree of personalization

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# Questions?

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