

FTA

FEDERAL TRANSIT ADMINISTRATION

Triennial Review Contractors' Guide Enhanced Review Modules Fiscal Year 2017



U.S. Department of Transportation
Federal Transit Administration

TABLE OF CONTENTS

ENHANCED REVIEW MODULES

- 1. FINANCIAL MANAGEMENT**
- 2. FINANCIAL CAPACITY**
- 3. TECHNICAL CAPACITY**
- 4. MAINTENANCE**
- 5. AMERICANS WITH DISABILITIES ACT**
- 6. TITLE VI**
- 7. PROCUREMENT**
- 8. DISADVANTAGED BUSINESS ENTERPRISE**

1. FINANCIAL MANAGEMENT ENHANCED REVIEW MODULE

BASIC REQUIREMENT

The grantee must demonstrate the ability to manage Federal Transit Administration (FTA) grant funds and conduct and respond to applicable audits.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a Financial Management enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office, program office (if applicable) and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Financial Reporting*
2. *Accounting Administration*
3. *General Ledger - Monthly Closings*
4. *Safeguarding of Records/Source Documentation*
5. *Interface with Procurement*
6. *Recognition and Processing of Payables*
7. *Periodic Accounting Controls*
8. *Disbursements and Exception Processing*
9. *Funding*
10. *Farebox Revenue Process*
11. *Grant Records*
12. *Grant Reporting*
13. *Grant Closeout*

REFERENCES

Fiscal year 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents, such as the Fixing America's Surface Transportation (FAST) Act. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc., will only be applied to activities conducted after the effective date of those related requirements.

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

2. FAST Act, Section 3000
3. Single Audit Act Amendment of 1996
4. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
5. 2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"
6. 2 CFR Part 230 (OMB Circular A-122), "Cost Principles for Non-Profit Organizations"
7. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
8. 49 U.S.C. Section 5324 / MAP-21 Section 20017
9. 51 CFR 552, "Federal Agencies Responsible for Cost Negotiations and Audit of State and Local Government"
10. OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations"
11. FTA Master Agreement
12. FTA Circular 5010.1D, "Grant Management Requirements"
13. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
14. FTA Circular 7008.1A, "Financial Capacity Policy"
15. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
16. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
17. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
18. FTA Circular 9070.1G, "Enhanced Mobility of Senior and Individuals with Disabilities Program Guidance and Application Instructions"
19. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
20. May 29, 2013 Federal Register Notice
21. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Guidance for Transit Financial Plans

Flexible Funds: Federal Highway Administration (FHWA) and FTA Programs

Revenue Bonds

Debt Service Reserve Financing

Electronic Clearinghouse Operation (ECHO) Web User Manual for FTA and Federal Aviation Administration

Federal Audit Clearinghouse

FTA ER Fact Sheet

ENHANCED REVIEW TRIGGERS

- there are one or more significant deficiencies or material weaknesses from oversight reviews, assessments, audits, or investigations in the area of financial management since the last Comprehensive Review
- the grantee has repeat deficiencies from oversight reviews, audits, or investigations in the area of financial management
- there are past due or open deficiencies from oversight reviews, audits, or investigations in the area of financial management
- the grantee displays a pattern of poor quality corrective actions from past oversight reviews (e.g., the grantee does not provide corrective actions or corrective actions need to be repeatedly resubmitted until they are acceptable)
- financial issues have been identified in FTA's Oversight Assessment Tool (OAT)
- the grantee has not conducted annual single audits as required or kept FTA appropriately informed of single audit findings
- the grantee has had numerous ECHO rejections or made numerous credits/refunds in the ECHO system
- FTA implemented drawdown restrictions due to non-compliance with requirements
- the grantee does not have or has not updated its written financial policies and procedures for its financial management practices addressing items such as internal controls and audit resolution
- the grantee does not develop and maintain financial management reports comparing actual expenses against budgets with explanations of significant variances
- the grantee officials do not routinely review financial reports
- the grantee does not demonstrate that it has adequate accounting expertise
- Federal Financial Reports (FFRs) have not been completed correctly or submitted in the FTA Electronic Award and Management System (EAMS) (see the Technical Capacity review area for input into this trigger)

Financial Reporting

1. *What are the procedures and controls whereby financial results and key statistics are summarized from the general ledger and associated records, and compiled for internal and external reporting purposes, i.e., Single Audit and National Transit Database (NTD)?*
2. *What types of reclassifications and summaries are made for financial statement purposes?*
3. *What additional financial reporting does the grantee submit to the Federal Transit Administration (FTA)?*
4. *What financial reporting is required by other oversight agencies, and how does this impact presentation of financial information?*

EXPLANATION

Grantees must have adequate controls to ensure that financial reports (internal and external) are accurate, comprehensive, and timely in the information they present. Reports must be verifiable and adequately supported by records from financial systems. Grantees should establish internal control procedures to ensure that accounting

records and information are maintained in a safe, secure environment to mitigate financial irregularities in reports to be submitted to external agencies.

All grantees that receive Sections 5307 and 5311 grant funds are required to file annual reports using the NTD Internet Reporting System. This requirement also applies to recipients of Congestion Mitigation and Air Quality Improvement Program (CMAQ) and Surface Transportation Program (STP) funds that are “flexed” into the Sections 5307 and 5311 programs. Section 5307 grantees also are required to file monthly reports on transit ridership and operations and safety and security incidents. The requirement to report continues as long as the grantee benefits from the grant funds, i.e., for the minimum useful life of the FTA-funded fixed asset, or indefinitely in the case of facilities.

Financial policies should detail the process used to develop, review, reconcile, and report financial records to senior management, the governing bodies, funding agencies and interested parties. The policies should detail the reporting requirements and how they affect the presentation of financial information.

REFERENCES

49 USC 5335 (a)
2 CFR Part 200, Subpart C-D, F
49 CFR 18.20(b)(1) and 18.26
49 CFR Part 630
Single Audit Act Amendment of 1996
FTA C 5010.1D Ch. III, Section 3, Ch. VI, Section 8
Administrator Policy Letter, C-05-04, June 17, 2004
NTD Reporting Manual

SOURCES OF INFORMATION

Review information provided for the baseline Comprehensive Review in the Financial Management and Capacity area. In particular, focus on responses to question 20 of the Financial Management and Capacity area of the baseline Comprehensive Review.

Review the grantee’s general accounting management process and financial closing/reporting cycle/system from initiation to final closeout. Review the detailed procedures, both automated and manual, at each stage of the process. Identify the controls in place to ensure these activities are authorized, and are processed accurately, completely and timely.

Obtain copies from the prior two years of audit reports, management letters, and Schedules of Expenditures of Federal Awards (SEFAs). Compare these documents with the financial records used to prepare them to verify accuracy and completeness.

Review the audit report and reporting package (financial statements, summary schedule of prior audit findings, auditor’s report and corrective action plan). Obtain a copy of the NTD close-out letter for the three most recent years and verify that reports have been submitted and timely. Compare the grantee’s financial statements to the NTD F-40 expenses report to identify differences in operating expenses. Discuss with the grantee.

DETERMINATION

The grantee is deficient if it does not have written policies and procedures for financial reporting, procedures are out of date, or procedures do not address managing FTA grant funds. (**DEFICIENCY CODE 783:** No financial policies and procedures or **DEFICIENCY CODE 792:** Inadequate or incomplete financial policies and procedures)

The grantee is deficient if it does not have a waiver and has not filed reports. (**DEFICIENCY CODE 15:** Annual NTD report not submitted)

The grantee is deficient if it does not report on its complete operations, as determined by a significant unexplained discrepancy between its NTD F-40 report and its published financial statements. (**DEFICIENCY CODE 16:** NTD data incomplete/incorrectly reported).

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office financial policies and procedures that govern grant implementation and that is clearly stated and understood throughout the organization and conform to applicable legislative and administrative requirements. If applicable, direct the grantee to submit documentation of board or final

authority approval. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

Direct the grantee to submit a report for the current fiscal year by the required due date and to notify the FTA regional office when the submission is made. The due date is tied to the grantee's fiscal year. NTD reports are typically due as follows:

Fiscal Year End Date (Between)	Due Date
January 1 and June 30	October 31
July 1 and September 30	January 31
October 1 and December 30	April 30

If applicable, direct the grantee to apply for a waiver annually.

Direct the grantee to contact the NTD program office to begin providing a complete NTD report and, if a Section 5307 grantee, to work out an arrangement to ensure time-series continuity in the data reported to the Monthly Module. Direct the grantee to report to the FTA regional office on the specifics of the arrangement when settled.

Accounting Administration

5. *What are the systems and controls over financial records development?*
6. *Does a complete, descriptive, and current chart of accounts exist? What evidence exists that this is an active, current document?*
7. *Is there an accounting manual that covers accounting for fixed assets, the budget process, accounts payable process, procurement, etc., including job descriptions? What evidence exists that this is an active, current document?*

EXPLANATION

Adequate procedures should be in place to govern, instruct, and set grantee policy for the control systems over financial records development and for grantee accounting personnel in the performance of their responsibilities.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.20(b)(2)

SOURCES OF INFORMATION

Obtain the grantee's chart of accounts. Review the chart of accounts (and responsibility centers) and accounting policy manual/procedures. Determine whether these documents are utilized by accounting personnel as guides to their procedures. Inquire of accounting department personnel as to any recent instances of changes in accounting procedures/policies/regulations. Review the accounting manual to verify that it is kept up to date, and that changes have been reflected in the manual.

DETERMINATION

Input into assessing the reliability of the grantee's controls over accounting administration.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

General Ledger – Monthly Closings

8. *What are the procedures for executing the monthly closing? What closing procedures, monthly entries and adjusting entries are made?*

9. *How does the grantee ensure that functions are appropriately segregated?*

EXPLANATION

A grantee's financial policies and procedures should guide the implementation of controls to ensure that the general ledger records are substantiated and updated on a monthly basis, reconciled in a timely and accurate manner, and appropriately reviewed and approved.

REFERENCES

2 CFR Part 200 Subparts C and D
FTA C. 5010.1D, Ch. VI, Section 2.e.(1)(a) and (e)

SOURCES OF INFORMATION

Obtain any reconciliations, entries, and adjustments that were made as part of the monthly closing process, for the quarter(s) in which the expenditure related to the ECHO sample was incurred. Follow the ECHO selection process detailed in Attachment A of the Comprehensive Review Standard Operating Procedures in response to questions 19-21 in the Financial Management and Capacity area of the baseline Comprehensive Review. Review the documentation supporting these reconciliations and entries to verify that they were properly authorized and approved. Review subsidiary ledgers to ensure they were reconciled with the general ledger.

DETERMINATION

Input into assessing the reliability of the grantee's controls over financial reporting.

The grantee is deficient if it does not have written policies and procedures for financial reporting, procedures are out of date, or procedures do not address managing FTA grant funds. (**DEFICIENCY CODE 783**: No financial policies and procedures or **DEFICIENCY CODE 792**: Inadequate or incomplete financial policies and procedures)

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Direct the grantee to submit to the FTA regional office financial policies and procedures that govern grant implementation and that is clearly stated and understood throughout the organization and conform to applicable legislative and administrative requirements. If applicable, direct the grantee to submit documentation of board or final authority approval. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

Safeguarding of Records/Source Documentation

10. *What physical safeguard procedures are maintained over accounting records, transactions, and supporting documentation?*

11. *What source documents (such as time cards, vendor invoices, and contractor billings) are used to identify related Federal activity or project(s)?*

EXPLANATION

Grantee record retention policies should address maintaining sufficient documentation to support accounting records in accordance with grant, loan, or other funding agreement.

A grantee's financial records are relied upon when making decisions that have a significant impact on current and future operations. Consequently, funders rely upon these records in determining the grantee's ability to meet obligations and enter into commitments. Accounting records should be securely maintained and accessible only to personnel with appropriate recording, reporting, and reconciling responsibilities. Grantee systems should allow for an audit trail to record the source of data input.

Grantees must maintain adequate records to identify the source and application of funds provided for federally assisted activities, including information pertaining to grant awards, obligations, unobligated balances, assets, liabilities, expenditures or outlays, and income.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.20(b)(2)
FTA C. 5010.1D, Ch. III, Section 7
FTA Master Agreement, Section 9

SOURCES OF INFORMATION

Review the physical set-up and procedures governing the maintenance of general accounting records. Observe whether financial records and supporting documentation are kept in an organized, logical, and controlled manner that facilitates ready access by only authorized personnel (files, ledgers, reconciliations, etc.).

Sample a selection of recently closed grants in the EAMS. Verify that the related records are retained for three years from the date the project is completed or a grant is closed out.

DETERMINATION

Input into assessing the reliability of the grantee's controls over accounting records.

The grantee is deficient if it has not and does not retain records for three years from the date of submission of the Final Federal Financial Report (FFR) upon project completion or, if waived, the date it would have been due. (**DEFICIENCY CODE 793:** Grant records not retained as required)

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Direct the grantee to submit to the FTA regional office (updated) financial policies and procedures that address the record retention requirements. If applicable, direct the grantee to submit documentation of board or final authority approval. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

Interface with Procurement

- 12. Who is involved in establishing encumbrances and what role do they play? What documentation is required to establish encumbrances and what is the flow of the documentation?*
- 13. How are encumbrances recorded, and who is involved in the recording process?*
- 14. How does this process differ for goods, services, and internal charges?*
- 15. What controls ensure encumbrances are established against the correct grants?*

EXPLANATION

FTA requires grantees to report on the use of project funds using the Federal Financial Report (FFR). The FFR captures binding commitments that have been entered into and for which expenditures have not yet been recorded because goods and services have not been received as unliquidated obligations (encumbrances). Grantees should have procedures to ensure that FFRs are accurate and reflect the financial commitments made during the reporting period. Grantees' established financial accounting systems should interface properly with its procurement system to accurately record and report complete information.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.41
49 U.S.C. Section 5324 / MAP-21 Section 20017
SF-425, The Federal Financial Report
FFR Instruction Guide for Grantees
FTA C 5010.1D, Ch. III, Section 3

SOURCES OF INFORMATION

Review information provided in response to the questions in the baseline Comprehensive Review. In particular, focus on responses to questions 66, 67, and 68 in the Technical Capacity area.

Review encumbrance (i.e., obligations) recording to determine adequacy and completeness of encumbrance systems. Review a sample of FFRs to determine that amounts reported in the financial systems are reflected and vice versa. Review milestone progress reports (MPR) in the EAMS to determine if the grantee has entered into financial commitments that have not been reflected in its encumbrances.

DETERMINATION

Input into assessing the reliability of the grantee's controls over financial reporting.

The grantee is deficient if it reports unliquidated obligations incorrectly. (**DEFICIENCY CODE 122:** Incorrect FFR reporting or **DEFICIENCY CODE 572:** Incorrect FFR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Direct the grantee to submit MPRs or FFRs in the EAMS with the correct reporting information in the next reporting cycle. Direct the grantee to submit to the FTA regional office procedures for validating and reconciling FFRs and MPRs.

Recognition and Processing of Payables

- 16. Where are vendors instructed to mail invoices? How does the grantee verify receipt of the goods and/or services invoiced?*
- 17. How is vendor compliance with the terms of the purchase order verified? What verification is done of the rates, terms, and extensions on invoices?*
- 18. Who is responsible for the coding of account numbers on invoices? What controls are in place to ensure that costs coded to FTA grants/projects are reasonable, allowable, and allocable? What process ensures that each invoice is charged to the correct expense or capital project account in the system? How are encumbrances relieved?*
- 19. What approvals are required to process invoices for payment? By whom? How does this process differ for capital purchases versus operating expenses?*

EXPLANATION

Grantees may only request funds for expenses that are eligible under the grant. A grantee's financial policies and procedures should detail the accounts payable process from initiation to final closeout. The procedures should include controls to ensure that activities are identified, assigned to the correct general ledger or grant accounts, authorized, and processed accurately, completely, and in a timely manner.

REFERENCES

2 CFR Part 200, Subpart E
2 CFR Part 225 (OMB Circular A-87), "Cost Principles for State, Local, and Indian Tribal Governments"
49 CFR 18.20(b)(5)

SOURCES OF INFORMATION

Review information provided in response to the baseline phase of the Comprehensive Review. In particular, focus on responses to questions 10, 11, 19, and 20 in the Financial Management and Capacity area of the baseline Comprehensive Review.

Using the ECHO sampling procedures detailed in Attachment A of the Comprehensive Review Standard Operating Procedures in response to questions 19-21 in the Financial Management and Capacity area of the baseline Comprehensive Review Guide, review the processed invoices to determine validity of the charge, (i.e., included in grant budget), services or goods were appropriately authorized and received, encumbrances were reduced, and invoices were correctly recorded.

DETERMINATION

The grantee is deficient if funds were drawn down for expenses not eligible under the grant. (**DEFICIENCY CODE 276**: Ineligible expenses charged to grant)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to document and work with the FTA regional office to reimburse FTA for ineligible expenses charged to grants, plus applicable interest.

Periodic Accounting Controls

20. What controls are in place related to accounts payable cut-off at the end of the month?

21. Who is responsible for reconciling accounts payable detail to the general ledger at the end of the month?

22. How are the month-end accruals identified and recorded?

23. How does the grantee search for unrecorded payables (e.g., periodic review - purchase orders)?

EXPLANATION

A grantee's financial policies and procedures should detail the internal controls in place to facilitate monthly closeout of the accounts payable subsidiary ledger. The procedures should delineate the personnel responsible, the steps followed (identifying allowable costs, identifying amounts not recorded), and approvals necessary to complete the closeout process. Discrepancies noted with the general ledger and other financial records should be adequately investigated and reconciled prior to closing the period.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.20(b)(5)

SOURCES OF INFORMATION

Review the grantees financial policies and procedures for internal controls in place to facilitate monthly closeout of the accounts payable, along with the delineation of the personnel responsibilities. Review cut-off, reconciliations, entries, and adjustments that were made as part of the monthly closing process of accounts payable to the general ledger, to ensure that these processes and postings were performed properly

DETERMINATION

The grantee is deficient if it does not have written policies and procedures for financial reporting, procedures are out of date, or procedures do not address managing FTA grant funds. (**DEFICIENCY CODE 783**: No financial policies and procedures or **DEFICIENCY CODE 792**: Inadequate or incomplete financial policies and procedures)

Input into assessing the reliability of the grantee's controls over financial reporting.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office financial policies and procedures that govern grant implementation and that are clearly stated and understood throughout the organization and conform to applicable legislative and administrative requirements. If applicable, direct the grantee to submit documentation of board or final authority approval. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Disbursements and Exception Processing

- 24. How is the decision made regarding what and when to pay certain invoices? Whose approval is needed for the disbursement of funds?*
- 25. Who has access to blank checks? How are blank checks accounted for and retained as evidence?*
- 26. What controls exist over the check disbursement process?*
 - a. Who initiates check runs?*
 - b. By whom are check runs reviewed?*
 - c. Who reviews and signs checks?*
- 27. If the grantee makes disbursements by electronic transfers, what controls exist over the electronic payments process? Who reviews and approves electronic payments?*
- 28. What entries are made to reflect disbursement?*
- 29. When are manual accounts payables and disbursements allowed?*
 - a. Are disbursements under these situations made in the form of a handwritten check or a check from the system?*
 - b. Whose approvals are required?*
 - c. How are these activities posted to the payables records and general ledger?*

EXPLANATION

The grantee's records must support ECHO requests. The information should be traced back to an invoice for goods or services or timesheets, and be supported by information from the grantee'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. It is incumbent upon the grantee to have internal controls over the process to track and record expenditures to its financial records.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.21
FTA C 5010.1D, Ch. III, Section 3
FTA Master Agreement, Section 7.g

SOURCES OF INFORMATION

Review information provided in response to the baseline phase of the Comprehensive Review. In particular, focus on responses to questions 19, 20, and 21 in the Financial Management and Capacity area of the baseline Comprehensive Review.

When on site, review a sample of ECHO draws in accordance with the records sampling procedures.

DETERMINATION

The grantee is deficient if an authorized official does not approve the ECHO draws or the approving official draws the funds. (**DEFICIENCY CODE 80:** Insufficient effective control)

The grantee is deficient if it does not maintain documentation adequate to support the ECHO draws. (**DEFICIENCY CODE 142:** ECHO documentation deficient)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit a process documenting that the approving/authorized official approves each ECHO request.

Direct the grantee to update the authorizing official in ECHO or have the authorizing official delegate authority to the person approving the requests.

Direct the grantee to have someone other than the approving official request ECHO funds.

Direct the grantee to submit procedures for documenting ECHO draws. Discuss with the FTA regional office if it wants to require the grantee to submit ECHO requests for prior approval.

Funding

30. *Describe the grantee's policies related to cash management. Are the policies written?*
31. *Who is responsible for maintaining a listing of bank accounts (active and inactive) and balances?*
32. *How does the grantee ensure that all funds due from funding sources are requisitioned and received timely?*
33. *What procedures are in place to ensure that ECHO requests are made in a way that does not violate Federal policy (i.e., the three-day rule)? What procedures are in place to ensure that no more than the allowable Federal portion is drawn down?*
34. *Who has responsibility for:*
 - a. *Making ECHO requests and approving requests?*
 - b. *Ensuring that cash is received?*
 - c. *Recording the receipt in the general ledger?*
 - d. *Reconciling drawdowns to the bank statement?*
 - e. *Reconciling drawdowns to FTA's Electronic Award and Management System (EAMS)?*
35. *How often are these procedures performed?*
36. *Are ECHO requests logged?*
 - a. *By whom?*
 - b. *Where are the logs stored?*

EXPLANATION

A grantee's financial policies and procedures should ensure that: funding needs are consistent with policies concerning the use of funds; controls are sufficient to ensure state and local funding sources are requisitioned adequately and timely; controls are sufficient to ensure Federal funds requisitions are disbursed timely and appropriately to vendors/contractors; and Federal advances are properly approved.

The grantee may initiate draws only when cash is needed for immediate reimbursement and must disburse the funds within three business days. Disbursement means that the grantee 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, grantees request funds on a reimbursement basis (after expenses have been incurred and paid). In some cases, (e.g., large bus procurements), grantees request funds prior to issuing a check. This procedure is acceptable as long as the funds are disbursed within three business days.

REFERENCES

2 CFR Part 200, Subpart D
31 CFR Part 205
49 CFR 18.20(b)(7), 18.21
FTA Master Agreement, Section 7.g
FTA C 5010.1D, Ch. III, Section 3
FTA C 5010.1D, Ch. VI, Section 9

SOURCES OF INFORMATION

Review information provided in response to the baseline Comprehensive Review. In particular, focus on responses to questions 19, 20, and 21 in the Financial Management and Capacity area of the baseline Comprehensive Review.

Review the grantee's funding cycle/system. Review the entire cycle, from initiation to final closeout. Follow the records selection procedures to select a sample of ECHO records for review and perform the steps detailed in the Cash Management Exhibit.

DETERMINATION

The grantee is deficient if it held FTA funds for four or more business days after FTA funds were received. The grantee is deficient if it drew more funds than were allowed. (**DEFICIENCY CODE 56:** Excess cash problems)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for disbursing FTA funds within three business days and submit documentation to support that funds were disbursed in accordance with FTA requirements until further notice.

Direct the grantee to work with the FTA regional office to determine if interest is owed in accordance with 31 CFR Part 205.

Farebox Revenue Process

37. *How does the grantee ensure that cash is not handled by drivers/operators?*

- a. Under what circumstances would cash be handled by drivers?*
- b. What procedures are in place to control cash handled by drivers/operators?*

38. *How often is cash collected from fareboxes?*

- a. How is cash processed and counted once collected from the fareboxes?*
- b. Is cash counting performed internally or by an external entity?*
- c. If internally, what controls are in place to ensure all cash is accounted for?*

- d. *Are employees who handle cash properly bonded?*
 - e. *If externally, how has the grantee satisfied itself that controls at the external service organization are in place and functioning as they should?*
 - f. *How often does the grantee reevaluate controls at the external service organization?*
- 39.** *Who is responsible for reconciling cash counted to the farebox report? How often is this performed?*
- 40.** *Once counted, what is the process for transporting cash to the bank? Who is responsible for reconciling the deposit amount per the bank to the cash count? How often is this done? Is an independent review of bank reconciliations conducted?*
- 41.** *Who is responsible for recording cash in the general ledger?*

EXPLANATION

A grantee's financial policies and procedures should ensure that controls are adequate to ensure that farebox revenues are collected and processed in an accountable manner that safeguards assets.

REFERENCES

2 CFR Part 200, Subpart D and F

49 CFR 18.20(b)(7)

OMB C A-133, "Audits of States, Local Governments, and Non-Profit Organizations"

SOURCES OF INFORMATION

Review the procedures, both automated and manual, at each stage of the farebox revenue collection system. Focus especially on the controls in place to ensure these assets are properly controlled and accounted for at each step in the process.

Observe the controls in effect during a tour of the farebox revenue collection operation area.

DETERMINATION

Input into assessing the reliability of the grantee's controls over cash management.

The grantee is deficient if it does not have written policies and procedures for financial reporting, procedures are out of date, or procedures do not address managing FTA grant funds. (**DEFICIENCY CODE 783:** No financial policies and procedures or **DEFICIENCY CODE 792:** Inadequate or incomplete financial policies and procedures)

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Direct the grantee to submit to the FTA regional office financial policies and procedures that govern grant implementation and that is clearly stated and understood throughout the organization and conform to applicable legislative and administrative requirements. If applicable, direct the grantee to submit documentation of board or final authority approval. Direct the grantee to implement and submit to the regional office documentation of training conducted of the appropriate staff on new policies and procedures.

Grant Records

- 42.** *What is the process for determining whether grant expenditures are allowable before they are incurred?*

- a. *Once incurred, how does the grantee ensure that only approved and allowable costs have been charged to grants?*
- b. *What is the process for reversing charges incorrectly posted against grants?*

43. What system does the grantee use to track grant activity?

- a. *What information is contained in this system?*
- b. *How is grant information accumulated and reported (e.g., by budget line item)?*
- c. *Is there integration between the grant management and financial management systems?*

44. How are special classifications of grant expenditures tracked?

EXPLANATION

It is incumbent upon the grantee to have internal controls over the grant management systems that monitor grant expenditure by line item to verify that they are allowable under the grant agreement. When a grantee requests funds from FTA, the request is made for planning, capital, or operating funds. The EAMS does not track drawdowns by Activity Line Item (ALI) so the grantee must maintain this information, monitor expenses, and know where FTA approval may be needed.

REFERENCES

2 CFR Part 200, Subpart D
 49 CFR 18.21
 FTA C 5010.1D, Ch. VI, Section 9
 FTA Master Agreement, Section 7.f

SOURCES OF INFORMATION

Review information provided in response to the baseline Comprehensive Review. In particular, focus on responses to question 21 in the Financial Management and Capacity area of the baseline Comprehensive Review.

When on site, review a sample of ECHO draws in accordance with the records sampling procedures to ensure that documentation supports the draws. Review documentation to determine if the grantee records show funds requested by ALI and the grantee has made the appropriate requests for budget amendments or revisions. Discuss with the regional office.

DETERMINATION

The grantee is deficient if its financial systems do not allow it to track grant balances accurately. (**DEFICIENCY CODE 106:** Insufficient tracking of grant balances)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office implemented procedures for tracking drawdowns by ALI.

Grant Reporting

45. What are the procedures for generation of Federal Financial Reports (FFRs)?

46. What are the procedures for reconciliation and review of FFRs?

47. What, if any, adjustments between detailed records and reports are posted and documented?

EXPLANATION

FFRs accompany Milestone Progress Reports (MPRs). The FFR reports on the use of project funds and is submitted on the same schedule as MPRs for each open grant. Reports are submitted electronically using the EAMS. Grantees report the following financial data in FFRs. The FFR report includes:

- **Federal cash on hand at the beginning of period** is the amount of Federal cash on hand at the beginning of the reporting period and is reported on a cash basis.
- **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 grantees that draw funds on a reimbursement basis, Federal funds are reported as disbursed only after they are received.
- **Federal cash on hand at the end of period** is populated by the EAMS. Federal cash on hand should never be a negative number. If there is cash on hand at the end of the reporting period, FTA requires an explanation in the remarks and certifications tab describing why drawdowns were made early or other reasons for the excess cash, if any. The cash on hand amount should reflect immediate cash needs. FTA may assess interest charges for excess cash held for more than three business days. Note that Federal share of expenditures and recipient share of expenditures are reported on an accrual basis—when goods and services have been 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. 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 a grant that has not been expended and is not covered by a binding commitment (unliquidated obligation).
- **Indirect expense** is the amount of indirect costs charged to a grant by the reporting organization. The rate must be based on a previously approved cost allocation plan or indirect cost proposal. The grantee 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 grant, and the Federal share of the indirect expenses charged. For indirect costs of other organizations or subrecipients that are charged to the grant, include notes to the FFR regarding the rates of these organizations.
- The grantee should address any **FTA comments** either in a revised or the next report.

The grantee should have procedures to ensure that FFRs are accurate. Many grantees 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 grantee has awarded a construction contract but the FFR does not report unliquidated obligations.

REFERENCES

49 U.S.C. Section 5324
MAP-21 Section 20017
2 CFR Part 200, Subpart D
49 CFR 18.41
SF-425, The Federal Financial Report
Federal Financial Report Instructions
FTA C 5010.1D, Ch. III, Section 3
FTA C. 5100.1, Ch. V. Section 3
FTA C. 8100.1C, Ch. II, Section 7.d(6)
FTA C. 9070.1G Ch. VI, Section 23

SOURCES OF INFORMATION

Review information provided in response to the baseline Comprehensive Review. In particular, focus on responses to questions 62-68 in the Technical Capacity area of the baseline Comprehensive Review.

Review FFRs in the EAMS to see if they are submitted on time at the required intervals. Check to see if Federal cash receipts and disbursements are reported. If cash on hand is reported, determine if an adequate explanation is provided in the remarks and certification tab. If the grantee charges indirect costs to grants, verify that the rates and amounts have been entered into the FFR.

DETERMINATION

The grantee is deficient if it does not submit FFRs for each open grant or does not submit the reports on time at the required intervals. (**DEFICIENCY CODE 38:** Late MPRs/FFRs or **DEFICIENCY CODE 571:** Late FFRs for Section 5324 grants)

The grantee is deficient if it does not report Federal cash receipts or disbursements, or does not explain Federal cash on hand. The grantee is deficient if it has not responded to FTA comments. The grantee is deficient if it reports unliquidated obligations incorrectly. The grantee is deficient if it does not report indirect expense information or does not report it correctly. (**DEFICIENCY CODE 122:** Incorrect FFR reporting or **DEFICIENCY CODE 572:** Incorrect FFR reporting for Section 5324 grants)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for submitting reports on time.

Direct the grantee to submit to the FTA regional office procedures for including all required information in reports. Direct the grantee to submit FFRs in the EAMS with the correct reporting information in the next reporting cycle.

Direct the grantee to address any outstanding FTA comments regarding FFRs in the next reporting cycle and submit to the FTA regional office procedures for addressing FTA comments in FFRs.

Grant Closeout

48. *What is the policy for closing out grants?*

49. *How does the grantee maintain grant documentation/correspondence with FTA regarding closeout of grants?*

50. *Are any inactive grants with unspent balances carried forward beyond when closeout should occur? Are any inactive grants with excess balances being used for other projects? If so, what is the grantee's process for communicating such changes to FTA?*

51. *For grant closeout, what is the process for submitting required documents?*

EXPLANATION

FTA places a priority on closing out grants for which activity has ceased. FTA identifies grants 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.

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

The grantee should initiate closeout of a grant when all approved activities are completed and applicable Federal funds expended. The grantee has 90 days from the award's end date to close out the grant. Grantees should take care not to close out a grant on the same day or shortly after their last draw-down request as it takes 3-5 days for the last draw-down to be processed in FTA's financial systems and closing a grant at the same time could result in deobligations of funds that are for the final draw-down. The following documentation is to be submitted: final Federal

Financial Report, final budget revision reflecting project cost by scope and activity; final narrative milestone/progress report including a discussion of each activity line item contained in the final budget; a list of equipment purchased under the grant; request to deobligate any unexpended balance of Federal funds; and any other reports required as part of the terms and conditions of the grant.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.20(4) and 18.50
FTA C 5010.1D, Ch. III, Section 5
FTA C 5100.1, Ch. III, Section 3
FTA C 8100.1C, Ch. II, Section 5.e(1)
FTA C 9030.1E, Ch. III, Section 3
FTA C 9070.1G, Ch. III, Section 9, and Ch. IV, Section 6
FTA C 9300.1B, Ch. III, Section 2, Ch. IV, Section 3, Ch. V, Section 2

SOURCES OF INFORMATION

Review information provided in response to the baseline Comprehensive Review. In particular, focus on responses to questions 71-76 in the Technical Capacity area of the baseline Comprehensive Review.

Review policies and procedures for documentation of the grant closeout process. For on-going expenses, such as operating assistance, determine whether the grantee draws from the oldest funds first. Identify grants that are old, have small balances remaining, or have not had disbursement activity within the past 12 months. Review progress reports in the EAMS and other correspondence to identify major delays in projects. Prior to the site visit, discuss the status of grants with FTA regional office staff. Some FTA regional offices notify grantees when grants have been inactive for more than six months (e.g., have not had any disbursements). Obtain a schedule for closing all open grants.

DETERMINATION

The grantee 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, or initiate grant closeout in a timely manner. The grantee is deficient if there are open grants that should be closed. (**DEFICIENCY CODE 79:** Inactive grants/untimely closeouts)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to work with the FTA regional office to revise grant budgets so that funds can be spent and drawn.

Direct the grantee to submit to the FTA regional office more effective procedures for grant administration (spending older funds first, tracking project progress, identifying project balances, reprogramming unused project funds to other projects, reassigning older projects to newer grants, or closing out projects) to enable it to close grants more timely.

Direct the grantee to work with the FTA regional office to deobligate the funds and close grants if small amounts of funds remain in inactive grants or if projects are indefinitely delayed.

PAGE INTENTIONALLY LEFT BLANK

2. FINANCIAL CAPACITY ENHANCED REVIEW MODULE

BASIC REQUIREMENT

The grantee must demonstrate the ability to match Federal Transit Administration (FTA) grant funds, cover cost increases and operating deficits, as well as cover maintenance and operational costs for FTA-funded facilities and equipment.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a Financial Capacity enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office, program office (if applicable) and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Financial Planning Policies and Procedures*
2. *Non-Federal Match (State and Local)*
3. *Non-Federal Match (Debt)*
4. *Deferred Cost*
5. *Budget Requirements*
6. *Budget Development*
7. *Variance Analyses*
8. *Budget Revisions*
9. *Project Planning*

REFERENCES

Fiscal year 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include links to the most recent version of source documents, such as the Fixing America's Surface Transportation (FAST) Act. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

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

4. FTA Master Agreement
5. FTA Circular 5010.1D, "Grant Management Requirements"
6. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
7. FTA Circular 7008.1A, "Financial Capacity Policy"
8. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
9. FTA Circular 9045.1, "New Freedom Program Guidance and Application Instructions"
10. FTA Circular 9050.1, "The Job Access and Reverse Commute Program Guidance and Application Instructions"
11. FTA Circular 9070.1G, "Enhanced Mobility of Senior and Individuals with Disabilities Program Guidance and Application Instructions"
12. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
13. May 29, 2013 Federal Register Notice
14. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

Guidance for Transit Financial Plans

Flexible Funds: Federal Highway Administration (FHWA) and FTA Programs

Revenue Bonds

Debt Service Reserve Financing

Electronic Clearinghouse Operations (ECHO) Web User Manual for FTA and Federal Aviation Administration Grantees

Federal Audit Clearinghouse

Emergency Relief (ER) Program Frequently Asked Questions (FAQs)

FTA ER Fact Sheet

ENHANCED REVIEW TRIGGERS

- There are one or more significant deficiencies or material weaknesses from oversight reviews, assessments, audits, or investigations in the area of financial capacity since the last Comprehensive Review
- The grantee has repeat deficiencies from oversight reviews, audits, or investigations in the area of financial capacity
- There are past due or open deficiencies from oversight reviews, audits, or investigations in the area of financial capacity
- The grantee displays a pattern of poor quality corrective actions from past oversight reviews (e.g., the grantee does not provide corrective actions or corrective actions need to be repeatedly resubmitted until they are acceptable)
- Financial issues have been identified in FTA's Oversight Assessment Tool (OAT)
- The grantee has experienced project deficits, layoffs, service cuts, deferred or late maintenance, or reduction in service
- There are 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

Financial Planning Policies and Procedures

1. *What are the policies and procedures for developing long-term and short-term financial plans?*
2. *What are the policies and procedures for identifying non-Federal portions of project costs?*
3. *What policies and procedures are in place to ensure that the same non-Federal funds are not committed to meet matching requirements of multiple projects?*
4. *What are the policies and procedures for identifying any inherent, foreseen risks that could affect the source and level of funding commitments for the transit program? Describe any such risks identified in developing the current financial plan(s)?*
5. *What are the policies and procedures for identifying any significant financial challenges not reflected in the current financial plan, (e.g., unanticipated cost, economic downturn, etc.)? Describe any such challenges identified for the current financial plan(s).*
6. *What is the process for developing a mitigation plan when non-Federal funds are no longer available to match the Federal portion of project costs?*

EXPLANATION

Annually, the grantee certifies to FTA (as part of the annual certifications and assurances process) that it has the financial capacity to carry out its proposed program of projects. Financial condition is reflected in working capital levels, current assets versus liabilities, capital reserves, and the present status of depreciation accounts. Grantees should develop multi-year financial plans (three to five years) that project operating and capital revenues and expenses and capability to maintain and operate current assets and service, and to operate and maintain new assets and service.

The financial plans should indicate adequate revenues to maintain and operate the existing system and to complete the annual program of projects. Revenue sources must be stable and reliable enough to meet future capital and operating costs. Any sign of major decreases in service levels or operations must be explained. If the grantee is involved in a New Starts project, the financial plan must have a 20-year horizon.

Financial capacity considers the nature of funds matched to support operating deficits and capital programs, along with forecasted changes in fare and non-fare revenues. If a grantee is forecasting new funding sources, policies and procedures should require the grantee to develop strategies for ensuring their availability.

As part of the planning and periodic monitoring process, policies and procedures should reflect the grantee's methodology for allocating matching funds to ensure that the same non-Federal funds are not committed to support multiple projects.

When developing financial plans, grantees should have policies and procedures in place to assess the risk that key revenue and cost assumptions will not be realized and identify appropriate sources of contingency reserves. For example, to support its entire planned capital and operating programs, a grantee assuming sales tax revenue growth must base its assumptions on historical experience, economic trends and the financial and legal constraints within which the agency must operate.

Many financial plans are based upon forecasts made before current economic conditions were known or acknowledged. Operating costs may have escalated, revenue forecasts may not have been realized, anticipated Board actions (such as periodic fare increases) may not have been undertaken, or new considerations may have been introduced that were not anticipated. Grantees should have policies and procedures for identifying and exposing unfavorable conditions when they exist. Grantees may monitor financial performance using various metrics to ensure that they have the fiscal capacity to operate and maintain the existing level of services and to maintain a state of good repair. Policies and procedures should include the development of a recovery or restructuring plan that responds to particular concerns identified that have a negative impact on fiscal capacity.

REFERENCES

49 U.S.C. 5307(d)(1)(a)
FAST Act, Section 3000
FTA Master Agreement, Section 6
FTA C. 5010.1D, Ch. VI, Section 4
FTA C. 7008.1A
Guidance for Transit Financial Plans

SOURCES OF INFORMATION

Review information provided in response to the baseline phase of the Comprehensive Review. In particular, focus on responses to questions 22-30 of the Financial Management and Capacity area of the baseline Comprehensive Review.

Review the grantee's procedures for developing the financial plan. The policies and procedures should detail a well-defined process for developing assumptions, identifying the risks associated with those assumptions and whether those assumptions driving the key variables in the plan are reasonable. Policies and procedures should provide the grantee a methodology for identifying matching funds, analyzing their nature, and the legal, financial and economic constraints of those funds. The grantee's processes should include mitigating factors to prevent the duplication of non-Federal match in the planning process and in periodic monitoring for the maintenance of fiscal capacity. A periodic monitoring process should be included in policies and procedures. This process should include financial metrics that measures the grantee's financial performance.

Discuss the grantee's process for creating a mitigation plan. Based upon review of the grantee's financial condition, determine if the grantee should have prepared a mitigation plan. Review any plans prepared and determine that they are based upon the established processes and procedures. Review the plan to determine sufficiency and that it addresses the challenges facing the grantee. Determine that the assumptions used are based upon economic trends, historical data and the needs of the grantee.

DETERMINATION

Input into determining the grantee's internal controls over identifying and mitigating insufficient financial capacity, addressed below.

SUGGESTED CORRECTIVE ACTION

None

Non-Federal Match (State and Local)

7. *How does the grantee determine the amount of non-Federal funds it will receive annually? Are amounts committed through legislation, budgeted through allocation from general funds, or planned and awaiting legislative/formal action?*
8. *What are the legal restraints or restrictions on amounts available for non-Federal match?*
9. *What are the projected changes in the levels and sources of non-Federal funds available for the transit program?*

EXPLANATION

All local share used to match FTA grant funds must come from non-U.S. Department of Transportation (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 and Improvement Financing (RRIF) count as Federal sources even though they are often repaid with local or state funds.

Depending on the grant 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 grant; 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.

A grantee'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. Similarly, the grantee's eligible and available non-Federal funds may be diverted from serving as match for an FTA grant if there are other Federal grants which are at risk of lapsing.

Grantees should make capital investment plans on the basis of current and projected capability to maintain and operate current assets, and to operate and maintain new assets. Unexplained/projected deficits, layoffs, service cuts or deferred/late maintenance can all be indicators of the grantees financial condition and its ability to maintain the FTA-funded program. Reallocation of funds from capital to operating budgets can be an indicator of changes in the grantee's level and/or sources of local match.

When state and/or local sources of funding decrease, the grantee may be unable to meet the non-Federal match requirements for existing FTA grants. This may also result in service reductions and/or fare increases, redirecting funds to meet critical operating and maintenance needs, and/or staff reductions. Revenue sources should be stable and reliable enough to meet future annual operating and routine capital costs.

REFERENCES

FTA Master Agreement, Section 6
FTA C. 5010.1D, Ch. VI, Section 3
FTA C. 5100.1, Ch. III, Section 8
FTA C. 9030.1E, Ch. III, Sections 7 and 8, Ch. VI, Section 1.a. (2)
FTA C. 9040.1G, Ch. III, Sections 4
FTA C. 9045.1, Ch. III, Section 12
FTA C. 9050.1, Ch. III, Section 12
FTA C. 9070.1G, Ch. III, Sections 16
FTA C. 9300.1B, Ch. II, Sections 7 and 9.b

SOURCES OF INFORMATION

Review information provided in response to the baseline Comprehensive Review. In particular, focus on responses to Questions 31-32 of the Financial Management and Capacity area of the baseline Comprehensive Review.

Review annual audit reports, budgets, local or state legislation, multi-year financial plans, National Transit Database (NTD) reports, and the transportation improvement program (TIP) for information on local funding sources. Review the projected grant activity. Audit reports will indicate restrictions on assets the grantee may have pledged as match for Federal funds.

Review the current year's budget, including capital and operating expenses, and multi-year financial projections for financial condition and capacity. Discuss on site with the grantee pending legislation or "sunset" provisions in current legislation and restrictions on amounts pledged as local match. Review documentation for volunteered services or in-kind match.

Review the grantee's financial plan projecting revenues and expenses for the next three years (or longer). Review the revenue section of the grantee's current fiscal year budget and/or financial statements or comprehensive annual financial report (CAFR), if available, for evidence of unfunded operating or capital liabilities. Review the TIP for levels of transit funding.

DETERMINATION

The grantee is deficient if local sources of revenue are not sufficient. (**DEFICIENCY CODE 7:** Insufficient financial capacity)

The grantee is deficient if it cannot document that the funds used for local match are eligible. The grantee is deficient if the value of non-cash share is not documented, the non-cash share represents a cost that is not eligible under the program or the non-cash share is not included in the net project costs in the project budget. (**DEFICIENCY CODE 296:** Ineligible local match)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan for reducing expenditures, increasing revenues, or a combination of both to compensate for a budget shortfall. Direct the grantee to 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.

Direct the grantee to 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 plan.

Non-Federal Match (Debt)

10. What proportion of matching funds is being obtained through debt?

11. What is the grantee's debt capacity? Has the grantee utilized all of its available credit?

12. Does the grantee have or foresee financial challenges that will affect its ability to satisfy its current obligations?

EXPLANATION

Grantees may pledge debt to meet the matching requirements of Federal funds. Financial plans must detail the debt burden at a level of detail appropriate to the project being matched. While grantees may use debt to fulfill their matching requirements, debt instruments can also carry restrictive covenants that specify how and how much funds are to be used at any one time. Covenants can include debt service ratio requirements, outstanding debt ceilings, and limits on debt expenditures.

REFERENCES

FTA C 5010.1D, Ch. VI, Section 4
FTA C 9030.1E, Ch. II, Section 8.b
FTA C 9045.1, Ch. III, Section 12
FTA C 9050.1, Ch. III, Section 12

FTA C 9070.1G, Ch. III, Sections 1 and 16
FTA C 9300.1B, Ch. II, Sections 7 and 9.b
FTA Master Agreement, Section 6
Guidance for Transit Financial Plans

SOURCES OF INFORMATION

Review financial plans for evidence of matching funds in the form of debt. Obtain and review governing body resolutions authorizing the grantee to obtain and use the funds as match. Obtain documentation of the debt instruments (bonding prospectus, agency debt covenants, etc.). Review the terms of the instruments to obtain an understanding of the requirements of utilizing and repaying the proceeds. Perform simple financial ratios to assess the grantee's debt capacity and credit utilization.

DETERMINATION

The grantee is deficient if it has violated its debt covenants, affecting its ability to meet debt obligation. The grantee is deficient if financial ratios demonstrate that the grantee is unable to meet its obligations. (**DEFICIENCY CODE 7:** Insufficient financial capacity)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a recovery plan for meeting its obligations, maintaining operations and state of good repair and to compensate for any shortfall.

Deferred Cost

13. *Has the grantee performed analyses on the agency's state of good repair? Will the grantee be able to meet its vehicle replacement and maintenance needs in future years? Does the grantee project to defer any related costs?*

EXPLANATION

As part of the financial plan development process, grantees should assess current and project future state of good repair needs. Grantees should make capital investment plans on the basis of current and projected capability to maintain and operate current assets, and to operate and maintain new assets. Grantees with New Start projects should have adequate financial capacity to provide at least the same level of service for at least one replacement cycle of such assets or 20 years, or as required in the grantee's active full funding grant agreement. Financial instability can provide an indication of whether grantees are considering deferring costs.

REFERENCES

FTA C 5010.1D, Ch. VI, Section 4
FTA C 9030.1E, Ch. II, Section 8.b
FTA C 9045.1, Ch. III, Section 12
FTA C 9050.1, Ch. III, Section 12
FTA C 9070.1G, Ch. III, Sections 1 and 16
FTA C 9300.1B, Ch. II, Sections 7 and 9.b
FAST Act, Section 3000
FTA Master Agreement, Section 6
Guidance for Transit Financial Plans

SOURCES OF INFORMATION

Review information provided for the baseline Comprehensive Review. In particular, focus on responses to questions 28-29 of the Financial Management and Capacity area of the baseline Comprehensive Review.

Review financial reports, budgets, and maintenance reports to assess if the grantee has had challenges meeting its maintenance requirements or state of good repair needs. Review the FTA Electronic Award and Management System (EAMS) for any indication that projects involving FTA funds are being deferred or have stalled because the non-Federal match is not available.

DETERMINATION

The grantee is deficient if analysis of the information and deficiencies from the baseline review and ERM indicate that it does not have sufficient local sources of revenue to maintain and operate current assets. (**DEFICIENCY CODE 7:** Insufficient financial capacity)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a plan for reducing expenditures, increasing revenues, or a combination of both to compensate for any shortfall to continue to maintain and operate current assets.

Budget Requirements

- 14. Are annual budgets prepared? What approvals are necessary to enact or finalize a budget?*
- 15. What transit agency and/or state or local requirements affect preparation of transit budgets?*
- 16. What procedures are in place to ensure that budget assumptions are reasonable and appropriate?*

EXPLANATION

Grantees should develop annual budgets that reflect the program of projects to be implemented in the current period. The timing, content, necessary approvals, and assumptions used in developing the budget should be based on policies and/or requirements set by the agency's governing body or final authority. The policies are often guided by state or local statute, grant agreement or other third party requirement, i.e. debt covenant. Most budgets are not final until approved by the head of the agency, indicating that the agency is authorized to enter into commitments, accept funds and meet obligations in order to continue operations.

Assumptions made in developing the budget should be based on historical trends, current economic conditions, and the grantee's policies.

REFERENCES

49 USC 5304
2 CFR Part 200, Subpart D
49 CFR 18.20 (b)(4)

SOURCES OF INFORMATION

Review written financial policies and procedures that govern the budget development process. Determine whether appropriate segregation of responsibilities exists between budget preparation and approval processes, and whether the budget is properly approved. Review evidence of approval of the most recent budget. Review the policies that guide the key assumptions used in developing the budget. Discuss staffing on site.

DETERMINATION

Determination of deficiency should be made in concert with assessing the reliability of the grantee's controls over the budget development process.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the FTA regional office to determine the appropriate corrective action.

Budget Development

- 17. What procedures are in place to ensure that budgets are prepared in sufficient detail to provide a meaningful tool with which to monitor subsequent performance? What departments are involved in this process?*

18. How does the agency work with the regional planning organization to ensure its capital budget conforms to the Transportation Improvement Program (TIP)?

EXPLANATION

Grantees' financial policies and procedures governing the budget process should ensure that budgets are prepared in sufficient detail to provide a meaningful tool with which to monitor subsequent performance. The procedures should facilitate coordination among departments during the development process. Procedures should ensure that planned and approved projects are included in budgets.

Grantees must participate in the transportation planning process in accordance with FTA requirements, MAP-21, FAST Act, and the metropolitan and statewide planning regulations.

REFERENCES

49 USC 5304
2 CFR Part 200, Subpart D
49 CFR 18.20 (b)(4)
FTA C 5010.1D, Ch. IV

SOURCES OF INFORMATION

Review the Grantee's budget development process for both capital and operating budgets. Review the primary, key assumptions used to develop the budget. Determine the appropriateness of the assumptions involved and assess their reasonableness in light of all factors (i.e., economy, ridership, funding levels, other modes of transportation, etc.). Determine that the budget approved is the one utilized in internal financial measurement and reporting.

Discuss the grantee's level of participation in the regional transportation planning process. Review the role of the grantee and its relation to the MPO (Metropolitan Planning Organization) and the state. Gain an understanding of how joint planning projects with the MPO and in-house planning efforts are prioritized and coordinated. Review the TIP development process and the methods used to estimate costs and revenues included in the TIP.

DETERMINATION

The grantee is deficient if budgets are not approved. The grantee is deficient if the approved budget does not provide sufficient basis for financial operations. The grantee is deficient if the budget does not reflect coordination with the metropolitan and statewide planning process. (**DEFICIENCY CODE 556:** Insufficient budget development process)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures to ensure that the budget is approved, is based on the financial operations and was developed in coordination with the metropolitan and statewide planning process.

Variance Analyses

19. How and how often is performance measured against budget (i.e., monthly, quarterly, annually)?

20. What is the process for examining significant variances from expected results?

- a. Who performs the function?
- b. What is the level of authority of the person/office performing this examination?
- c. What type of documentation is maintained as evidence of the examination?

21. How often and in what detail is budget variance information provided to senior management?

EXPLANATION

Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement.

Completing systematic evaluations of projected and actual financial activities provides a basis for assumptions used in short term and long term planning. Grantee policies that require the completion of such reviews and then submission to senior management, demonstrates the agency's ability to adequately plan and adjust projections based upon known facts.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.20 (b)(4)

SOURCES OF INFORMATION

Review variance analyses performed for several months during the year. Determine whether analyses are discovering errors or highlighting situations where the budget requires adjustment.

Review occasions when actual expenses exceeded budgeted expenses or cash outlays exceeded budgeted outlays. Review the effectiveness of procedures designed to report overruns to management and the FTA, as appropriate. Assess the adequacy of the communication and reporting process.

DETERMINATION

Determination of deficiency should be made in concert with assessing the reliability of the grantee's controls over the budget development process.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the FTA regional office to determine the appropriate corrective action.

Budget Revisions

- 22. How are revisions to capital or operating budgets initiated?*
- 23. Who reviews and approves revisions? Are the same departments involved as those included in the budget development process?*
- 24. How are budget revisions reflected in the financial management system? Are they reflected in the Federal Transit Administration (FTA)'s electronic award management system?*
- 25. If budget revisions impact FTA grant budgets, how are those appropriately processed?*

EXPLANATION

Grantees financial policies and procedures should address a process for initiating, reviewing and approving budget revisions. Budget revisions should be properly authorized and justified, with supporting assumptions and real time financial information for the changes made. Budget revisions can be initiated by user departments or prompted by the grantee's financial management policies. Despite the source of the budget revisions, adjustments should be based upon variance in the results of the financial operations and projected amounts, balanced with reasonable assumptions, i.e. changes in the economy, unanticipated funding, etc. Approved revisions must be reflected in the financial management systems and FTA grants, as applicable.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.30
FTA C 5010.1D, Ch. III, Section 4

SOURCES OF INFORMATION

Review the grantee's financial policies and procedures governing the budget process. Determine that segregation of duties is adequate to ensure the integrity of the budgeting process and the validity of the resulting budget and subsequent revisions. Discuss on site with the grantee.

Obtain the most recently approved budget and compare to the current budget to determine what changes have been made. Determine whether supplemental budgets or budget transfers were made. Review the authorization of the supplemental budgets or budget transfers for adequacy.

When budget revisions affect FTA grants, verify that the grantee complied with requirements. Review a sample of grant budgets and determine whether the grantee has notified the FTA and sought FTA approval for revisions.

DETERMINATION

The grantee is deficient if budget revisions are not adequately supported. The grantee is deficient if budget revisions are not appropriately approved. The grantee is deficient if budget revisions are not reflected in financial management systems and/or grant agreements. (**DEFICIENCY CODE 794:** Insufficient budget revision process)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to develop and submit to the FTA regional office procedures for making budget revisions.

Project Planning

26. *What are the procedures for planning capital projects and grant funding? Are they currently being followed? If not, how has the grantee deviated from the procedures?*
27. *Which departments are involved and at what staffing level (i.e., engineering, planning, customer service, etc.)?*
28. *What procedures are in place to ensure the grantee's planned TIP projects are being followed?*
29. *What procedures are in place to provide assurance that approvals and funding commitments are received from the FTA and from appropriate state/local agencies/authorities before entering into spending commitments?*
30. *Describe the grantee's asset management program and how it ties into capital project planning efforts.*
31. *How does the agency work with the FTA to ensure a written Project Management Plan (PMP) is submitted for all major capital projects? Was the PMP submitted during the application review process?*

EXPLANATION

Grantees should have procedures for developing capital plans, estimating costs and projecting revenue sources for its projects. Procedures should ensure that project plans are prepared in sufficient detail to provide a meaningful tool to monitor subsequent performance. A developed process for gathering input on capital needs throughout the organization that is then analyzed and prioritized should help drive the project planning process. The prioritized list of projects to be implemented should be consistent with projects prioritized through the regional planning process and included in the TIP. A clear process should be followed to ensure that this is verified. Procedures should also assure that approvals and funding commitments are received prior to entering into obligations.

Grantees' asset management program should enable it to assess needs, prioritize investments and bring its system into state of good repair. The program should include capital investment inventories and condition assessments allowing the grantee to report on the condition of its systems, set performance measures and monitor progress towards meeting performance goals.

Grantees implementing major capital projects must prepare and carry out a project management plan approved by the FTA. The plan shall provide for:

- (1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications
- (2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify
- (3) a construction schedule for the project
- (4) a document control procedure and recordkeeping system
- (5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders
- (6) organizational structures, management skills, and staffing levels required throughout the construction phase
- (7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components
- (8) material testing policies and procedures
- (9) internal plan implementation and reporting requirements
- (10) criteria and procedures to be used for testing the operational system or its major components
- (11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts
- (12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month
- (13) safety and security management

REFERENCES

49 USC 5304

49 USC 5327

SOURCES OF INFORMATION

Review the grantee's grant/project planning process. Review project plans to determine that project costs are appropriately determined and reasonable, revenue sources are supported by commitment and/or historical trends, and projects or project scopes are included in the TIP. Review reports detailing the condition of the grantee's assets and prioritizing projects to meet and maintain state of good repair. Verify internal priorities are consistent with regional plans.

DETERMINATION

Determination of deficiency for Questions 25-29 should be made in concert with assessing the reliability of the grantee's controls over the project development and completion process addressed in the Technical Capacity ERM question 51.

The grantee is deficient if it has not developed and/or submitted for approval by FTA a PMP for major capital projects. (**DEFICIENCY CODE XXX**: No approved PMP)

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the FTA regional office to determine the appropriate corrective action.

Develop and submit for approval by the FTA regional office a PMP for major capital projects.

3. TECHNICAL CAPACITY ENHANCED REVIEW MODULE

BASIC REQUIREMENT

The grantee must be able to implement Federal Transit Administration (FTA)-funded projects in accordance with the grant application, FTA Master Agreement, and all applicable laws and regulations, using sound management practices.

FTA Emergency Relief Program

A grant awarded under Section 5324 (Emergency Relief Program) or under Section 5307 or 5311 that is made to address an emergency defined under Section 5324(a)(2) is subject to the terms and conditions the Secretary determines are necessary and made only for expenses that are not reimbursed under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

Beyond programmatic waivers and any other waivers addressed in the frequently asked questions such as the Transportation Improvement Plan (TIP), and the State Transportation Improvement Plan (STIP)) or on the docket, FTA expects FTA administrative and statutory requirements to apply. However, recipients have the ability to request waivers of administrative requirements when the requirement(s) will limit a recipient's or subrecipient's ability to respond to an emergency or major disaster.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a Technical Capacity enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office, program office (if applicable), and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Governance, Leadership, and Management*
2. *Grant Administration*
3. *Progress Reports*
4. *Project Management*
5. *Oversight*

REFERENCES

Fiscal year 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents, such as the Fixing America's Surface Transportation (FAST) Act. References included in this document primarily include hyperlinks to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc., will only be applied to activities conducted after the effective date of those related requirements.

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
3. FAST Act Section 3000

4. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
5. 49 CFR Part 18 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
6. 49 CFR Part 19 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations"
7. 49 CFR Part 602, Interim Final Rule
8. 49 CFR Part 639, "Capital Leases"
9. FTA Master Agreement
10. FTA Circular 5010.1D, "Grant Management Requirements"
11. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
12. FTA Circular 8100.1C, "Program Guidance for Metropolitan Planning and State Planning and Research Program Grants"
13. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Application Instructions"
14. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
15. FTA Circular 9045.1 "New Freedom Program Guidance and Application Instructions"
16. FTA Circular 9050.1 "The Job Access and Reverse Commute Program Guidance and Application Instruction"
17. FTA Circular 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"
18. FTA Circular 9300.1B, "Capital Investment Program Guidance and Application Instructions"
19. Emergency Relief Docket (2013 and 2014)
20. March 29, 2013 Federal Register Notice
21. May 29, 2013 Federal Register Notice
22. Conditions of Award for FTA Public Transportation Emergency Relief Programs

USEFUL WEBLINKS

The Federal Financial Report (FFR)

FFR Instruction Guide for Grantees

Emergency Relief (ER) Program Frequently Asked Questions (FAQs)

FTA ER Fact Sheet

Construction Project Management Handbook (2009 Update)

Project and Construction Management Guidelines (2016 Update)

Project Management Oversight Lessons

Quality Management System Guidelines

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

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

Questions and Answers on the Section 5310, JARC and New Freedom Programs

Section 5311 Program Overview

Section 5310 Program Overview

Section 5316 Program Overview

Section 5317 Program Overview

National RTAP

National Transit Resource Center

National Aging and Disability Transportation Center

United We Ride

Small Urban and Rural Transit Center

ENHANCED REVIEW TRIGGERS

- The grantee is a new grantee undergoing a Comprehensive Review for the first time, or a grantee that is in an area whose categorization has changed from small urbanized area (UZA) to large UZA due to the 2010 Census
- The grantee is an experienced grantee, undertaking a new type of project
- An oversight control board has been implemented by the State or another Federal agency
- There is an Office of Inspector General (OIG) Action Memo or Hotline Complaint referred back to the OIG for investigation or requiring FTA disciplinary action (i.e., return of funds, draw down restrictions, loss of grant)
- The grantee has repeat or past due deficiencies or is not noted in Single Audit reports as a “low risk” auditee
- There is a pattern of poor quality corrective actions from past oversight reviews
- Technical capacity issues have been identified in FTA’s Oversight Assessment Tool (OAT)
- The number of open grants, inactive grants, or grants with scheduling problems appears excessive for the size and complexity of the grantee’s program
- Milestone Progress Reports (MPRs) and/or Federal Financial Reports (FFRs) are not submitted, are submitted late or incomplete, or do not correspond to each other
- MPRs do not contain reasonable explanations and/or recovery plans for budget and/or schedule variances
- The grantee has multiple subrecipients or transit contractors
- The manner in which the grantee’s organization is structured and/or the levels of staffing appear inadequate
- There are a number of vacancies or shortages in key positions or major changes in key grant or project management staff
- There are indications of inadequate governance or impropriety by the Board of Directors, governing body, or senior management
- Management has transferred some of its authority, directly or indirectly, to a third party
- The grantee does not have procedures or a program for providing financial oversight of subrecipients

GOVERNANCE, LEADERSHIP, AND MANAGEMENT

1. *How are members of the governing body selected? How are they paid (direct or indirect costs)? Documentation?*
2. *What is the length of each term?*
3. *Describe any organizational changes to the governing body structure since the last Comprehensive Review (i.e., number of board members, voting rules, term limits).*
4. *Provide details on any departures of governing body members prior to the end of their term since the last Comprehensive Review.*
5. *If there are any vacancies in the membership of the governing body, provide information on how and when they will be filled.*

EXPLANATION

Most grantees are led by a governing body. For most independent or quasi-independent organizations, it is a board of directors or board of trustees. For municipalities, it may be the city council or county commission. Governing bodies are made up of a body of elected or appointed members who jointly oversee the activities of the organization. The governing body's activities are determined by the powers, duties, and responsibilities delegated to it or conferred on it by its bylaws (municipal charter, etc.). The bylaws specify the number of members, how they are chosen, and how often they meet. To carry out its responsibilities, the bylaws may specify the number of members that be appointed and must be present to form a quorum at each meeting. Failure to meet and/or maintain quorum can result in limitations on the organization's ability to fulfill its mission and affect an organization's legal capacity

REFERENCE

None

SOURCES OF INFORMATION

Review the articles of incorporation, bylaws, or similar relevant documents to determine how the governing body members are selected, elected or appointed, and if members are allowed to serve consecutive terms. Review the grantee's website, local news media, or other accessible source for information on changes in the grantee's leadership, abrupt departure of key personnel, or any indicators of turmoil in the grantee's management.

DETERMINATION

Input into determining the overall technical capacity of the grantee.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

- 6. What are the primary roles and responsibilities of the governing body?*
- 7. Describe any formal committees to the governing body and how they are determined.*
- 8. How often do the governing body and committees meet?*
- 9. Are records of these meetings kept and available to the public?*

EXPLANATION

The governing body has a fiduciary duty to the agency to exercise control and management of the organization. In exercising these duties, the governing body is responsible for:

- establishing broad policies and objectives
- selecting, appointing, supporting, and reviewing the performance of senior management
- ensuring the availability of adequate financial resources
- approving annual budgets
- accounting to the stakeholders for the organization's performance
- setting the salaries and compensation of senior management

Legal responsibilities vary with the nature of the organization, and the jurisdiction within which it operates.

An organization's governing body is responsible for forming committees when necessary. Committee members must be drawn from the current members of the governing body. The governing body's power to form committees is usually addressed in the organization's bylaws. A typical bylaw provision on this subject allows the governing body to form any type of committee it deems appropriate and the board to delegate certain powers to a committee. Standing committees are generally formed when the organization is founded, usually at the first or second meeting of a newly formed board.

Special committees, on the other hand, usually evolve from a governing body discussion of a pressing matter or issue that needs attention. At this time, the board asks volunteer directors to sit on the committee in order to study an issue and make a recommendation to the full board. The formation of a special committee is noted in the minutes of the governing body meeting, along with the committee's mission, identity of committee members and chairperson, and the committee's time frame to accomplish its mission.

The bylaws specify how often the governing body meets to discuss matters of the organization and how those meetings are to be documented, distributed, and retained.

After a committee is appointed, it usually schedules its own meetings. The first point of order at an initial committee meeting is to decide what the scope of the task is, what form the committee's work product will take (for example, a report, a recommendation, an evaluation, and so on), and who will do what to accomplish the committee's goal. A timetable with milestones is generally set and at the conclusion of the meeting, the committee sets a date to reconvene so that each member can report on the progress of an assigned task. Minutes of committee meetings may be taken, depending on the formality of the meetings, the type of committee, and the tasks assigned. However, where a committee needs to report to the governing body on a periodic or ongoing basis, minutes are usually required.

When a committee concludes its task, the committee chair reports the findings and recommendations to the full governing body. If the committee's conclusion requires action from the governing body, a vote usually follows the committee's report and is made part of the board minutes.

REFERENCE

None

SOURCES OF INFORMATION

Review the articles of incorporation, bylaws, or similar relevant documents to determine how responsibilities of the governing body are defined. Review the policies of the governing body and meeting minutes to substantiate how active committees are/were sanctioned by the board. Review the meeting minutes from the initial meeting of committees to determine how the committee will function and how the results will be communicated to the governing body.

DETERMINATION

Input into determining the overall technical capacity of the grantee.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

- 10. Does the governing body formally review results of oversight reviews, audits, etc., performed on the grantee?*
- 11. How is the governing body involved in meeting the award's reporting and program requirements? Are reports and budget changes reviewed prior to submission? Is management required to report to the governing body on the status of the Federal Transit Administration (FTA) programs? Describe the type of information conveyed and how often information is provided. How are comments or concerns of the governing body documented and addressed?*
- 12. How does the governing body ensure that it fulfills its fiduciary responsibilities (i.e., review financial statements, evaluate financial management, and financial and technical capacity)?*
- 13. What is the conflict of interest policy for the governing body? How are board members vetted?*
- 14. Does the governing body formally evaluate the performance of the chief executive officer? How often?*

- 15. What is the level of involvement of the governing body in the day-to-day management of the agency and/or the FTA program? Does it appear that the governing body exercises too much influence or too little oversight in the management of the grantee?*
- 16. Has the governing body established an internal audit function that reports to it? If yes, how large is the internal audit staff? How does the governing body determine subjects to be investigated by the internal auditor?*
- 17. Does the governing body play a role in addressing improprieties of the grantee staff?*

EXPLANATION

Fiduciary duty requires members of the governing body to stay objective, responsible, honest, trustworthy, and efficient. As stewards of public trust, members of the governing body must always act for the good of the organization, rather than for the benefit of themselves. The governing body must exercise reasonable care in all decision-making, without placing the organization under unnecessary risk. To be effective, the governing body must:

- Establish key indicators to monitor and evaluate performance and enhance its capacity to judge the organization's ability to fulfill its mission
- Delegate responsibilities and approval authority
- Ensure adequate control mechanisms are in place to prevent fraud, i.e., ensure clarity in job descriptions and responsibilities; define financial and accounting policies (check signing, cash handling, expense approval, credit card use); manage potential conflicts of interest with a clear policy; and request regular external audits
- Approve the budget, thus creating a framework for program management and overall administrative decisions
- Examine financial statements regularly, comparing actual figures to the projected ones, questioning any variance
- Oversee the organization's legal obligations, i.e., meeting tax obligations, reporting to funders timely and accurately

REFERENCE

None

SOURCES OF INFORMATION

Review minutes for evidence of the governing body's role in setting organizational policies, periodically reviewing the performance of the organization, facilitating the procurement of goods and services, and evaluating senior management.

DETERMINATION

Input into determining the overall technical capacity of the grantee.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

- 18. Has grantee experienced turnover in executive leadership/key management positions since the last Comprehensive Review? If yes, please explain.*
- 19. What executive leadership/key management positions are vacant? What is the projected timeframe to fill these positions?*
- 20. Since the last Comprehensive Review, has the grantee made changes to its organizational structure? If yes, please explain.*

- 21. If the grantee reduced staff and or eliminated positions associated with its FTA program, explain how the grantee determined what positions would be eliminated and how responsibilities are to be redistributed.*
- 22. Following reductions in staff, describe any changes the grantee made to policies and procedures utilized in implementing its FTA program.*
- 23. If there are multiple FTA awards, how are positions and the associated level of effort documented for key personnel? How is this documentation related to the development of salaries and employee pay?*

EXPLANATION

Though there is no explicit requirement for staffing the grant management function, a grantee's organizational structure, staffing levels, and employee training programs can vary widely depending upon the size of the grantee and the types of transit service being delivered. The manner in which a grantee conducts its day-to-day operations can provide insight into the level of technical competency of senior management. A grantee's organizational charts identify specific functions, reporting relationships, and staffing levels required to adequately facilitate the day-to-day management of the organization.

Changes in the grantee's management, such as reductions in staff, decreases in the frequency of on-site monitoring of subrecipients, and increases in delays in submission of information to FTA, are indications that the grantee may not be applying adequate resources to the FTA program.

REFERENCE

2 CFR 200.308

SOURCES OF INFORMATION

Review board minutes for actions taken to remove/replace senior management and discussions of how roles and responsibilities will be fulfilled. Review organizational charts and training programs/information provided by the grantee.

DETERMINATION

Input into assessing the overall technical capacity of the grantee.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

GRANT ADMINISTRATION

- 24. What are the grantee's procedures for managing its FTA grants? How does the grantee document the procedures? Is there a designated position to manage the award? How does the grantee assess its practices to determine that they are adequate?*
- 25. Has the grantee designated a specific department with responsibility for managing the FTA program? If yes, what staff position leads the department? What are the responsibilities of this position? To whom does this position report? Has the recipient identified key personnel?*
- 26. If no single department is responsible for the FTA program, describe how the grantee manages and complies with grant agreement requirements.*
 - a. How are decisions made relative to the FTA program?*
 - b. What entity within the grantee makes final decisions relative to the FTA program? How are such decisions made?*

27. *What other departments support the FTA programs? Do these departments support other non-FTA programs?*
28. *When resources are needed for key management positions or for managing FTA projects, how are those resources identified and who has hiring or acquisition responsibilities? How are positions related to key personnel staffed? How are assignments made? What is the process for ensuring that staff is not overextended?*
29. *Describe how the grantee determines the amount of administrative support (resources and budget) needed for its FTA program.*
30. *What resources in addition to internal staff (e.g., consultants) and tools (e.g., technology) are utilized to assist in managing the FTA program? What portion of these are contracted services? How is this relayed in the budget?*
31. *What is the source of revenue to support the administrative costs of the FTA program?*
32. *Describe any changes to the current budget that have occurred since the last Comprehensive Review.*
33. *Describe any projected changes to the current budget for the next two years.*

EXPLANATION

The grantee must have the resources necessary to administer the FTA grant programs.

REFERENCES

2 CFR 200.308
FTA C. 9030.1E, Chapter 6,1.(3)

SOURCES OF INFORMATION

Review National Transit Database (NTD) information (or other industry accepted source), identifying agencies with similar characteristics: operating and capital budget, fleet size, service area, ridership, population, reporting requirements, etc. Compare the organization and staffing, technical capacity, operating cost, and other metrics to assess the adequacy of resources devoted to the FTA program.

DETERMINATION

Input into assessing the overall technical capacity of the grantee.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

34. *Describe how the grantee issues management policies and procedures related to its FTA program.*
35. *How does the grantee determine the need to make revisions to the policies or procedures related to its FTA program? Have revisions been made since the last Comprehensive Review?*
36. *How is the grantee staff trained to carry out policies or procedures related to the FTA program? How are they informed of policy or procedural changes?*
37. *How does management monitor and assess staff compliance with policies or procedures related to the FTA program?*

EXPLANATION

The governing body establishes policies to guide management of the day-to-day operation of the agency. To implement these policies, management is responsible for developing, communicating, and implementing procedures utilizing staff responsible for executing the related functions. The grantee should have a process to establish, review, implement, evaluate and revise procedures and train personnel as policies change and to effectively manage the organization.

The type, frequency, and method of training provided to staff about grantee policies and procedures, FTA requirements, and industry best practices are important indicators of how technically competent the grantee is in the management of grant funds, program delivery, and capital project initiatives.

REFERENCES

None

SOURCES OF INFORMATION

Review policies and procedures used in implementing the FTA program. Discuss with the grantee the process used to inform staff of new/revised policies, evaluate the effectiveness of those policies, and provide training on such policies. Discuss required staff qualifications (years of experience, degrees, certifications, etc.). Discuss on-going training programs.

DETERMINATION

Input into assessing the overall technical capacity of the grantee.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

38. *Describe the process for developing the grantee's annual program of projects.*

39. *Is the process documented?*

40. *What staff positions and departments lead and are involved in the process?*

41. *Are existing grants reviewed during the process to determine if there are any available funds before applying for new grants?*

42. *Does the grantee initiate grant closeout within 90 days of completion of all activity in the program of projects? What is the status of all FTA grants? (Complete Exhibit 1 of the related ERM worksheet)*

EXPLANATION

See Part B. Grant Administration of the Technical Capacity area in the baseline review guide, questions 71-76.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.20(4)

49 CFR 18.50

49 CFR 19.20(4)

49 CFR 19.71

FTA C. 5010.1D, Ch. III, Section 5

FTA C. 5100.1, Ch. III, Section 3

FTA C. 8100.1C, Ch. II, Section 5.3(1)

FTA C. 9030.1E, Ch. III, Section 3

FTA C. 9040.1F, Ch. III, Section 1.c, and Ch. IV, Section 5.b

FTA C. 9045.1, Ch. III, Section 7, and Ch. IV, Section 6

FTA C. 9050.1, Ch. III, Section 7, and Ch. IV, Section 6

FTA C. 9070.1G, Ch. III, Section 9

FTA C. 9300.1B, Ch. III, Section 2, Ch. IV, Section 3, and Ch. V, Section 2

SOURCES OF INFORMATION

Complete Exhibit 1 of the related ERM Worksheet to determine the status of each grant, projects being implemented and grant funds. See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 71-76.

DETERMINATION

See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 71-76.

SUGGESTED CORRECTIVE ACTION

See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 71-76.

PROGRESS REPORTS

- 43. What are the grantee's procedures for ensuring that Milestone Progress Reports (MPRs) are completed as required and contain sufficient current information to describe changes in cost, schedule, and scope of work?*
- 44. What are the grantee's procedures for obtaining and validating project information (for the agency and its contractors/subrecipients) for inclusion in MPRs? Is there a designated individual or office responsible for inputting and providing assurances for required reports?*
- 45. Are all applicable MPRs submitted for each open grant at the required intervals and on time?*
- 46. What are the procedures for reconciling the data reported in the MPRs to the Federal Financial Reports (FFRs) and the grantee's records? Did the review of FFRs in the baseline portion of the Comprehensive Review disclose any potential deficiencies that should be addressed in coordination with the MPRs?*

EXPLANATION

See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 57-68.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR Part 19
FTA C. 5010.1D, Ch. II, Section 3 and Ch. III, Section 3
FTA C. 5100.1, Ch. V, Section 3
FTA C. 9030.1E, Ch. V, Section 9
FTA C. 8100.1C, Ch. II, Section 7.d(6)
FTA C. 9040.1G, Ch. V, Section 19
FTA C. 9045.1, Ch. VI, Section 16
FTC C. 9050.1, Ch. VI, Section 16
FTA C. 9070.1G Ch. VI, Section 23
March 29, 2013 Federal Register Notice
Conditions of Award for FTA Public Transportation Emergency Relief Programs

SOURCES OF INFORMATION

See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 57-68.

DETERMINATION

See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 57-68.

SUGGESTED CORRECTIVE ACTION

See Part B: Grant Administration of the Technical Capacity area in the baseline review guide, questions 57-68.

PROJECT MANAGEMENT

- 47. What are the grantee's procedures for providing technical oversight on directly managed projects? What staff position(s) is responsible for the outcome of projects directly managed by the grantee?*
- 48. How does staff responsible for the outcome of projects interact with other staff associated with the FTA program? (e.g., grants management, civil rights, procurement)*
- 49. What are the grantee's procedures for overseeing projects managed by entities such as contractors, subrecipients, or other related departments?*

EXPLANATION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

REFERENCES

49 U.S.C. Section 5327
2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR Part 19
49 CFR Part 633
FTA C. 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4
FTA C. 9040.1G, Ch. VI
FTA C. 9070.1G, Ch VIII

SOURCES OF INFORMATION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

DETERMINATION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

SUGGESTED CORRECTIVE ACTION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

- 50. Provide a brief description of capital projects initiated or completed since the last Comprehensive Review.*
- 51. How does the agency work with the FTA to ensure a written Project Management Plan (PMP) is submitted for all major capital projects? Was the PMP submitted during the application review process?*
- 52. Describe any issues that impacted the timeliness or budget of completed projects. Are ongoing projects on schedule and within budget? If not, for each project, summarize the causes and provide any developed recovery plans for the schedules and budgets.*
- 53. Describe any capital projects planned for the next three-to-five years. For planned projects, has the grantee implemented a similar project in the past three years? If no, how does the grantee plan to maintain or increase its technical capacity to ensure project implementation?*

EXPLANATION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

Grantees implementing major capital projects must prepare and carry out a project management plan approved by the FTA. The plan shall provide for:

- (1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications
- (2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify
- (3) a construction schedule for the project
- (4) a document control procedure and recordkeeping system
- (5) a change order procedure that includes a documented, systematic approach to the handling of construction change orders
- (6) organizational structures, management skills, and staffing levels required throughout the construction phase
- (7) quality control and quality assurance functions, procedures, and responsibilities for construction, system installation, and integration of system components
- (8) material testing policies and procedures
- (9) internal plan implementation and reporting requirements
- (10) criteria and procedures to be used for testing the operational system or its major components
- (11) periodic updates of the plan, especially related to project budget and project schedule, financing, ridership estimates, and the status of local efforts to enhance ridership where ridership estimates partly depend on the success of those efforts
- (12) the recipient's commitment to submit a project budget and project schedule to the Secretary each month
- (13) safety and security management

REFERENCES

49 U.S.C. Section 5327
2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR Part 19
49 CFR Part 633
FTA C. 5010.1D, Ch. II, Section 3 and Ch. IV, Section 4
FTA C. 9040.1G, Ch. VI
FTA C. 9070.1G, Ch VIII

SOURCES OF INFORMATION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

DETERMINATION

See Part C: Project Management of the Technical Capacity area in the baseline review guide, questions 77-78.

The grantee is deficient if it has not developed and/or submitted for approval by FTA a PMP for major capital projects.
(**DEFICIENCY CODE 795:** No approved PMP)

SUGGESTED CORRECTIVE ACTION

See Part C: Project Management of the Technical Capacity area in the baseline review, questions 77-78.

Develop and submit for approval by the FTA regional office a PMP for major capital projects.

OVERSIGHT

- 54. What department(s) is/are responsible for ensuring procedures are developed, approved, followed, and updated as needed?*
- 55. Has the grantee established a way to assess, measure, and remedy identified risks during the award lifecycle? Does this plan incorporate the monitoring of subrecipients for compliance, performance, and financial review? How is monitoring scheduled and performed?*
- 56. If compliance issues are found during monitoring, explain next steps taken by the grantee (e.g., corrective action development, reports/memos, briefings of key management staff, follow-up on corrective actions, etc.)*
- 57. How often are assessments performed?*
- 58. What tools are used to assess compliance?*
- 59. If an assessment finds compliance issues with a third party contractor's performance, how is this information conveyed to grantee staff responsible for administration of the contract?*
- 60. How are items requiring corrective action identified and addressed? If corrective action is required, how does the grantee ensure action was taken by the contractor, subrecipient, and or lessee?*
- 61. If noncompliance continues, explain next steps taken by the grantee.*
- 62. How does the grantee evaluate the effectiveness of its oversight program?*
- 63. Do the grantee's oversight procedures address all of these discussion points?*

EXPLANATION

See question 29 in Part A: Program Management and questions 79-80 in Part C: Project Management in the Technical Capacity area in the baseline review.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
FTA Master Agreement, Section 2.e
FTA C. 5010.1D, Ch. II, Section 3

SOURCES OF INFORMATION

See question 29 in Part A: Program Management and questions 79-80 in Part C: Project Management in the Technical Capacity area in the baseline review guide.

DETERMINATION

See question 29 in Part A: Program Management and questions 79-80 in Part C: Project Management in the Technical Capacity area in the baseline review guide.

SUGGESTED CORRECTIVE ACTION

See question 29 in Part A: Program Management and questions 79-80 in Part C: Project Management in the Technical Capacity area in the baseline review guide.

4. MAINTENANCE ENHANCED REVIEW MODULE

BASIC REQUIREMENT

Grantees and subrecipients must keep federally funded vehicles, equipment, and facilities in good operating condition. Grantees and subrecipients must keep Americans with Disabilities Act (ADA) accessibility features on all equipment and facilities in good operating order.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a Maintenance enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by the Federal Transit Administration (FTA). The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective FTA regional office, program office (if applicable) and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Plans*
2. *Budgets and Resources*
3. *Organization and Training*
4. *Fleet Maintenance*
5. *Preventive Maintenance*
6. *Warranty Procedures and Fleet Defects*

REFERENCES

Fiscal year 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to Federal Transit Administration (FTA) circulars, as well as other requirements and guidance documents, such as the Fixing America's Surface Transportation (FAST) Act. References included in this document primarily include hyperlinks to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc., will only be applied to activities conducted after the effective date of those related requirements.

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FAST Act, Section 3000
3. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements", Cost Principles, and Audit Requirements for Federal Awards"
4. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
5. 49 CFR Part 37, "Transportation Services for Individuals With Disabilities (ADA)"
6. FTA Master Agreement

7. FTA Circular 5010.1D, “Grant Management Requirements”
8. FTA Circular 5100.1, “Bus and Bus Facilities Program: Guidance and Application Instructions”
9. FTA Circular 9030.1E, “Urbanized Area Formula Program: 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

FTA Asset Management Guide

FTA State of Good Repair and Asset Management Website

American Public Transportation Association (APTA) System Achievement Award Criteria

FTA's Best Practices Procurement Manual

APPLICABILITY

The Comprehensive Review examines preventive maintenance of FTA-funded equipment and facilities. The Comprehensive Review also examines maintenance of ADA accessibility features on all equipment and facilities, even those that were not FTA-funded.

ENHANCED REVIEW TRIGGERS

- There have been repeat maintenance deficiencies in Comprehensive Reviews
- Previous Comprehensive Review or Financial Management Oversight Review (FMO) deficiencies related to maintenance are still open
- The grantee demonstrates a pattern of poor quality maintenance corrective actions from past oversight reviews
- Maintenance issues have been identified in the grantee's Oversight Assessment Tool (OAT)
- There are indications that the grantee's preventive maintenance activities are being deferred
- There have been patterns of service interruptions due to inadequate maintenance
- There have been safety incidents related to maintenance
- The grantee does not demonstrate that it has adequate maintenance expertise
- The grantee does not demonstrate that it has adequate maintenance procedures
- There is no maintenance management reporting system in place and/or it lacks evaluative performance criteria
- There have been early retirement and/or mid-life overhauls due to maintenance

Plans

Maintenance Plans

1. *How often are the grantee's maintenance plans (vehicles, equipment, and facilities) updated?*

When was the last update of the grantee's maintenance plans [vehicles, equipment, and facilities]?

2. *Is there a different plan/procedure for each vehicle fleet or is a generic plan/procedure used across all fleets? When new vehicles, equipment, or facilities are acquired, how are these plans revised or appended? How does the grantee initiate and benchmark service plans for its mixed fleet of buses?*

a. At what management level are they developed? Approved?

b. How does the grantee communicate its maintenance plans to its governing body?

c. How does the grantee communicate its maintenance plans to maintenance staff?

3. *Within the maintenance plans, are the goals and objectives numerical, narrative, or both? How does the grantee communicate its maintenance goals and objectives to maintenance staff?*

How is the grantee's performance against these goals and objectives measured?

4. *Do the written maintenance plans and manufacturer's manual contain a section on service timeframes and repair quality expectations?*

EXPLANATION

Maintenance plans should be updated with the purchase of new rolling stock, equipment, or facilities to account for new technology and/or new manufacturer's recommended maintenance intervals and programs. These actions should be designed to ensure proper care and maximize asset longevity.

To be effective, the plans need to be communicated to those who will implement them. Monitoring performance against goals and objectives is an important management tool for ensuring that plans are being implemented.

A true preventive maintenance (PM) program will be model specific and include predictive replacement of life cycle components. A generic maintenance program at small and large bus fleets is fairly easy to recognize. It will be characterized by some or all of the following:

- An inspection check-off form that includes systems and components no longer found on modern buses. These could be: clutch adjustment, changing of carburetor filters, and the words "tune-up."
- The same color or type of anti-freeze/coolant being used in all buses across the fleet, including gas and diesel engine buses.
- Specialized or hard-to-get service parts may be going twice the manufacturer's recommended change-out mileage, or ignored.
- Regular change-out of "life-cycle" components will not be taking place. These components, such as alternators, starter motors, and water pumps, will (in a generic PM program) be changed out only during their failure, such as a road call.

REFERENCES

2 CFR 200.313

49 CFR 18.32(d)(4)

FTA C. 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m

FTA C. 5100.1, Ch. V, Section 1.a(5)

FTA C. 9030.1E, Ch. VI, Section 1.a(5)

SOURCES OF INFORMATION

Review information provided by the grantee for the baseline review. Interview key maintenance personnel. Compare revision dates and processes of maintenance manuals. Review the current asset list provided for the baseline review. During the ERM, a more in-depth review can be done of the assets that the grantee currently has and their incorporation into maintenance plans. Review documentation that demonstrates communication of the plan to grantee personnel and governing bodies.

DETERMINATION

The grantee is deficient if its program omits some requirements (i.e., goals and objectives) or its plan does not include the latest additions of FTA-funded assets (i.e., vehicles and major equipment), or facilities. The grantee is deficient if preventive maintenance checklists are not consistent with the current FTA-funded operating fleet, equipment, or facilities. (**DEFICIENCY CODE 48:** Vehicle maintenance program/plan incomplete or out of date) (**DEFICIENCY CODE 117:** Facility/equipment maintenance program lacking or inadequate)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a new or revised maintenance program/plan and evidence that it has been implemented.

Asset Management Plans

5. *Has the grantee developed an asset management plan in addition to or as part of its maintenance plans?*

a. *If no, why not?*

- b. *If yes, please explain the process for developing the plan. Identify the department or staff position that led the effort, and what key staff positions participated in developing the plan.*
 - c. *Does the plan include an inventory and current condition of each asset?*
 - d. *Has the plan been adopted and implemented?*
 - e. *What other plans (e.g., strategic plan, capital improvement and/or replacement plan, fleet management plans, multi-year financial plans, etc.) does the grantee use in the development of its asset management plan?*
6. *How are life cycle maintenance costs considered in the process used to approve funding for the design, construction, acquisition, implementation, and life cycle maintenance of capital assets? Are key maintenance personnel part of the asset planning effort?*
 7. *Describe the decision-making process used to determine investment prioritization associated with the plan.*
 8. *Does the grantee use specialized software for its asset management and inventory?*

EXPLANATION

As noted in FTA's *Asset Management Guide*, "In its 2010 National State of Good Repair Assessment, FTA found that more than 40 percent of bus assets and 25 percent of rail transit assets were in marginal or poor condition. There is an estimated backlog of \$50 to \$80 billion in deferred maintenance and replacement needs, of which the vast majority is rail-related. The enactment of Moving Ahead for Progress in the 21st Century (MAP-21) places the requirement on transit agencies to prepare a Transit Asset Management Plan. Transit agency customers, policy-makers, and public agencies are holding agency management accountable for performance and increasingly expect more business-like management practices. The magnitude of these capital needs, performance expectations, and increased accountability requires agency managers to become better asset managers."

REFERENCES

FTA Asset Management Guide

SOURCES OF INFORMATION

Review transit asset management plans developed, or in development, by the grantee. Compare these documents to the grantees current asset inventory and maintenance plans. Review documentation of asset acquisition decision-making. Review any software tools used. Interview grantee staff responsible for maintenance and asset decisions.

DETERMINATION

Input into the overall assessment of the grantees ability to keep federally funded assets in good operating order.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Rail Fleet Management Plans

9. *How is the rail fleet management plan developed? By what staff position/department?*
10. *How often and by what staff is the plan reviewed and updated so that it remains consistent with manufacturers' recommendations and regulatory requirements?*
11. *Is the average age of rolling stock defined?*
12. *How is rolling stock that has met the useful life requirements identified?*

13. Does the plan include a replacement schedule?

EXPLANATION

See Part B: Equipment of the Satisfactory Continuing Control area in the baseline review, question 36.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.32

FTA C 5010.1D, Ch. IV, Sections 3.i and k

FTA C. 5100.1, Ch. V, Section 1.a(5)

FTA C 9030.1E, Ch. VI, Section 1.a(5)

SOURCES OF INFORMATION

As part of scoping review activities, examine the grantee's rail fleet management plan. Compare the plan to the current rail fleet inventory, peak requirements, service expansion plans, and rail vehicle maintenance plans.

DETERMINATION

The grantee is deficient if it has not prepared a plan, the plan is incomplete or out of date, or the rail sections of the maintenance plans differ from that in the rail fleet management plan. (**DEFICIENCY CODE 196:** Lacking rail fleet management plan/plan out of date)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office a new or updated rail fleet management plan.

Budgets and Resources

14. *What is the process for developing the grantee's maintenance budget? What factors are considered when developing it? Is performance against goals and objectives an established factor?*

15. *What percentage of the grantee's total budget does maintenance represent?*

16. *What percentage of the maintenance budget is for scheduled preventive maintenance? For unscheduled maintenance? For repair?*

17. *What is the current maintenance budget?*

a. *Have there been any budget reductions since the last Comprehensive Review?*

b. *Are there any projected reductions to the maintenance budget for the next two years? Please explain*

18. *Describe the process used to collect, analyze, and prepare documentation showing the actual versus budgeted cost of maintenance.*

a. *Which staff gathers the information needed? How and how often?*

b. *Which staff reviews this variance analysis and how are these costs considered for future maintenance budgets?*

EXPLANATION

Maintenance budget performance tracking is an indication of the agency's commitment to effective asset management. Large variances in budget versus actual should be explained. Grantees must commit sufficient resources to maintain FTA-funded assets during their useful life.

REFERENCES

None

SOURCES OF INFORMATION

Review documentation (i.e., budget reports, general ledger expense account, work orders, vendor invoices, contractor billing, etc.). Review information provided by the FTA regional office and in OTrak, such as, the OAT. Review information from the past three years (if available) in NTD, including the following specific metrics:

- Miles between major and minor service interruptions
- Total vehicle maintenance expense per mile
- Average fleet age

Maintenance issues can impact service operations, safety, and useful life of rolling stock and equipment. Grantees are required to submit to NTD very specific data on the number, type, and condition of their FTA-funded assets. This information allows for trend analysis by grantee and by asset type. Asset deterioration may occur in small increments each year, but a multi-year analysis can reveal negative trends. This is most often an indication that preventive maintenance is being deferred.

DETERMINATION

Input into the overall assessment of the grantees ability to keep federally funded assets in good operating order.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Organization and Training

19. *How does the grantee structure and manage the maintenance staff resources for FTA-funded assets?*
 - a. *What percentage of work hours per week are allocated for scheduled maintenance?*
 - b. *What percentage of work hours per week are used for unscheduled maintenance?*
 - c. *What percentage of work hours per week are scheduled for mini- and/or mid-life overhaul or major component upgrade/replacement?*
20. *Describe the grantee's training program for staff that directly supports maintenance functions (i.e., technicians, mechanics, shop forepersons, shift supervisors, maintenance planners/schedulers, etc.).*
 - a. *How does the grantee ensure competency of staff performing maintenance tasks?*
 - b. *Describe the type of training that maintenance management and front line supervisors receive.*
 - c. *How does the grantee address the need for training when changes are made (such as new original equipment manufacturer (OEM) requirements) that impact maintenance procedures, process, parts, and/or techniques?*

d. *Have maintenance employees received any training on modern electronic and mechanical bus systems, such as Cummins INSITE, electric engine cooling fan systems, diesel exhaust fluid (DEF), and selective catalytic reduction (SCR) systems, etc.?*

21. *Describe maintenance staff turnover during the past three years. Other than internal resources, what additional resources (i.e., consultants) and tools (i.e., technology) are utilized in managing grant-funded assets?*

22. *What diagnostic tools are used to monitor modern bus electronic systems with a newer fleet?*

23. *How does the grantee's maintenance performance metrics compare to a peer agency(ies)?*

EXPLANATION

The way in which the agency's maintenance function is organized and staffed, along with the experience of maintenance staff should be commensurate with the agency's size and complexity. The type, frequency, and method of training provided to staff regarding FTA requirements and industry best practices are important indicators of the grantee's technical competency in the management of FTA assets.

REFERENCES

FTA C. 5010.1D, Ch. VI, Section 2.e.(1)(h)

SOURCES OF INFORMATION

Review maintenance organization charts, training plans and records. Utilizing the NTD (or any other industry accepted source) information, identify agencies with similar characteristics of the grantee, such as: operating and capital budget, fleet size, service area, ridership, reporting requirements, etc. Evaluate the characteristics of the agency under the Management section of Exhibit 1 of the ERM worksheets.

DETERMINATION

Input into the overall assessment of the grantees ability to keep federally funded assets in good operating order.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

Fleet Maintenance

24. *Provide the following operating information for the past three fiscal years:*

- *total current annual operating miles and hours of vehicles funded by FTA*
- *spare bus ratio for fixed-route and paratransit vehicles*
- *number of vehicles that have been replaced in the last three years*
- *mean distance between mechanical failures (MDBF)*
- *maintenance cost per vehicle mile*
- *revenue hours and miles lost due to mechanical failures*

25. *How does the grantee plan and schedule maintenance work?*

26. *How does the grantee use trend analyses such as MDBF to assist in maintenance planning?*

27. *What methodology is used to determine how and when each type of preventive maintenance activity will be performed?*

28. *Does the agency use predictive maintenance as part of its preventive maintenance plan? What percentage of the preventive maintenance is predictive?*
29. *Does the grantee use more than one shift for maintenance work? If yes, describe the type of work accomplished per shift.*
30. *How does the grantee ensure adequate spare parts are available to support scheduled maintenance activities? Has a lack of spare parts negatively impacted the on-time performance for scheduled maintenance or vehicle availability for service? In review of bus maintenance records, can it be found that life-cycle parts replacement is occurring on a regular and systematic basis? Are parts ordered from major supply houses or local providers?*
31. *Are the same consumables (fluids, oils, coolants) being used across the fleet or are some fleet-specific, when necessary?*
32. *What system indicators/metrics (i.e., preventive maintenance on schedule, reliability of fleet or equipment, availability of fleet or equipment, etc.) has the grantee developed to measure the effectiveness of the maintenance program? Are these indicators used across all modes?*
33. *What tools does the grantee use to generate performance on these system indicators? Are these tools used for all modes?*
34. *How and how often does the agency measure the effectiveness of its preventive maintenance program?*
35. *Is management required to submit reports to senior management and the governing body on the status of the FTA program assets? If yes, please describe the type of information conveyed and how often information is provided. What is the outcome of the governing body's review of these reports?*
36. *How are deferred maintenance and/or maintenance backlogs identified and addressed?*
37. *Have there been early retirements and/or mid-life overhauls to FTA-funded assets due to maintenance? What process is used to determine the appropriateness of maintenance-related early retirement of assets or early mid-life overhauls?*

EXPLANATION

Grantees' senior management should be well informed on matters pertaining to preventive maintenance of all FTA-funded assets. The presence of regularly recurring reports with specific performance measures tied to the grantee's written maintenance plans, including manufacturer's recommendations, and other actionable management data, indicates that senior management is monitoring maintenance activities.

Grantees are responsible for managing the day-to-day operations of grant-supported activities. Grantees must monitor grant-supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function, or activity.

REFERENCES

None

SOURCES OF INFORMATION

Obtain samples of preventive maintenance reports provided to management for all FTA-funded assets. Review recurring preventive maintenance management reports for FTA-funded rolling stock, facilities, and facility-related equipment, including how often they are generated and who receives them.

DETERMINATION

Input into the overall assessment of the grantees ability to keep federally funded assets in good operating order.

SUGGESTED CORRECTIVE ACTION

Work with the FTA Subject Matter Expert and the regional office to determine the appropriate corrective action.

PREVENTIVE MAINTENANCE

- 38. Describe the procedure/process to determine how, when and how often preventive maintenance inspections are scheduled for vehicles. Provide evidence of documentation (i.e., screen shots, forms, reports, etc.)*
- 39. How and how often does the agency measure the effectiveness of its plan? (i.e., frequency, deficiencies, turnaround time for repairs, etc.)*
- 40. Is any vehicle preventive maintenance performed by a department or contractor, outside of transit? If yes, how is that activity monitored and recorded?*
- 41. For an expanded sample of vehicles (beyond the baseline review) provide the on-time maintenance percentage. Provide system-wide on-time performance if such a report can be generated.*
- 42. Is the completed service and repair work reviewed by a supervisor before the bus is released for passenger service? How are service times and quality reflected in the records review? If re-work is required after a procedure, does the grantee have a procedure and schedule that covers this activity?*

EXPLANATION

Actual maintenance practices should be consistent with the written plan. If the grantee performs preventive maintenance inspections as planned, the grantee's entire maintenance program may be effective. If preventive maintenance inspections are not scheduled or performed as planned, it is probable that other aspects of the maintenance program are lacking as well and the grantee is putting FTA's investment and its warranties at risk. Vehicles that are not inspected according to schedule or with poor and incomplete procedures can be candidates for in-service breakdown and reduced service life.

REFERENCES

2 CFR 200.313
49 CFR 18.32(d)(4)
FTA C. 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C. 5100.1, Ch. V, Section 1.a(5)
FTA C. 9030.1E, Ch. VI, Section 1.a(5)
FTA C. 9070.1G, Ch. VI, Section 4

SOURCES OF INFORMATION

Review the maintenance plan(s) for the interval (miles, hours) between preventive maintenance inspections. Check preventive maintenance inspection intervals by reviewing management reports used by the grantee for monitoring preventive maintenance inspections and by reviewing records for a selected sample of FTA-funded assets. For vehicles, determine the maintenance interval for each mode operated. In some cases, intervals also may vary by subfleet. Examine preventive maintenance records (manual or electronic) to determine whether the grantee is performing inspections according to its maintenance plan.

Record the date (and for vehicles, mileage) when each inspection was accomplished. Inspections that are no later than 10 percent beyond schedule are considered on-time. For example, a scheduled 6,000 mile inspection would be considered "on-time" if it was performed any time before 6,600 miles. If the grantee uses a different definition of an "on-time" inspection, use the grantee's definition if deemed appropriate.

For commuter rail locomotives and cars, in lieu of selecting a sample of preventive maintenance records, examine Federal Railroad Administration (FRA) inspection records.

Select a sample of maintenance records of ferry vessels.

DETERMINATION

The grantee is deficient if fewer than 80 percent of the inspections for any mode or operation occurred on-time. Grantees are not penalized for early inspections, only late ones. For commuter rail locomotives and cars, the grantee is deficient if FRA compliance letters indicate that the grantee does not meet the FRA scheduled maintenance intervals. (**DEFICIENCY CODE 88:** Late vehicle preventive maintenance) (**DEFICIENCY CODE 149:** Late facility/equipment preventive maintenance)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office procedures for completing preventive maintenance inspections on-time. For the items examined, direct the grantee to submit to the FTA regional office a monthly report signed by the chief executive officer or other senior management designee on its preventive maintenance results until the data demonstrates it has conducted at least 80 percent of its preventive maintenance on-time for three consecutive months. For the items being reported, direct the grantee to submit 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. Direct the grantee to submit to the FTA regional office back-up documentation for each item (e.g., copy of work order, printout from the maintenance management system) documenting the date of the inspection.

If there is a repeat deficiency from the prior review, direct the grantee to submit to the FTA regional office, the above information monthly until the data demonstrates it has conducted at least 80 percent of its preventive maintenance on-time for 12 consecutive months.

- 43. How does the grantee's maintenance department measure/track MDBF? Does the grantee monitor the relationship between preventive maintenance performed and road failures?*
- 44. Has the maintenance department listed MDBF improvement as a goal under its FTA written maintenance plan?*
- 45. What is the grantee's trend for MDBF for its fleet over the past three years? Have road calls increased with the addition of newer buses with more computerized systems?*

EXPLANATION

Long used as a quantitative measure of vehicle reliability, MDBF is an important measure for a maintenance program. Vehicles which are designed, maintained, and operated at peak efficiency stay in-service longer and have less frequent road calls. Frequent road calls or prolonged periods of vehicles out of service could indicate that the grantee is not maintaining project property in good operating order, and that vehicles may not be in use for their intended purpose.

As a management tool, some fleet managers apply MDBF against a known set of operational elements, such as:

- vehicle design
- operating environment
- skillsets of the shop maintenance workforce
- equipment and tools available
- training level and management/oversight of the vehicle operators
- level of communications by and between operations and maintenance departments

The impact of the winter weather extremes of the northeast or high summer heat of the southwest can be seen in MDBF. Similar comparisons can be made between a shop that is fully equipped with proper repair and testing tools and equipment, against one that is lacking these tools. For example, some large fleets have no laptop computer to

analyze and diagnose the programmable logic control system on the new buses. FTA C 5010.1D defines preventive maintenance as all the activities, supplies, materials, labor, services, and associated costs required to preserve or extend the functionality and serviceability of the asset in a cost effective manner, up to and including the current state of the art for maintaining such an asset.

Maintenance managers can set mileage-based MDBF goals to improve the overall reliability of the preventive maintenance program. The beginning point for this is often a look back at the last year's road call numbers and projection for fewer road calls in next year through good planning, equipment and tool acquisition, staff training, and a commitment to such a program.

REFERENCES

APTA System Achievement Award Criteria
FTA C 5010.1D Ch. I, Section 5.rr and Ch. IV Sections 3.k and m
FTA C. 5100.1, Ch. V, Section 1.a(5)
FTA C 9030.1E, Ch. I, Section 4.00

SOURCES OF INFORMATION

Review the maintenance plan(s) for any focus on MDBF or similar measure. Review MDBF trends, maintenance staff training programs, and diagnostic equipment availability. Focus on the cause of any frequent road calls or instances of vehicles being out of service for prolonged periods. Particular attention should be paid to any instances where scheduled vehicle pull outs could not be made due to insufficient numbers of available vehicles.

DETERMINATION

The grantee is deficient if it is experiencing frequent or prolonged service interruptions that are caused by lack of adequate maintenance of vehicles. This deficiency is made after consultation with the FTA regional office and the FTA Subject Matter Expert for the Maintenance area. (**DEFICIENCY CODE 668:** Inadequate vehicle maintenance)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office revised maintenance procedures and reporting mechanisms to reduce the occurrences of vehicle failures. Direct the grantee to determine its current MDBF, set goals for increasing the MDBF, and report monthly on meeting those goals.

Facility and Equipment Maintenance

- 46. Describe the procedure/process to determine how, when and how often preventive maintenance inspections are scheduled for facilities and equipment. Provide evidence of documentation (i.e., screen shots, forms, reports, etc.)*
- 47. Is any facility or equipment preventive maintenance performed by a department or contractor, outside of transit? If yes, how is that activity monitored and recorded?*
- 48. How and how often does the agency measure the effectiveness of its plan? (i.e., frequency, deficiencies, turnaround time for repairs, etc.)*
- 49. For an expanded sample of facilities (beyond the baseline review) provide the on-time maintenance percentage.*

EXPLANATION

See Part C: Facility and Equipment Maintenance of the Maintenance area in the baseline review guide, questions 24-30.

REFERENCES

2 CFR 200.313
49 CFR 18.32(d)(4)
FTA Master Agreement Section 19.d and e
FTA C. 5010.1D, Ch. II, Section 3.a and Ch. IV Sections 3.k and m

FTA C. 5100.1, Ch. V, Section 1.a(5)
FTA C. 9030.1E, Ch. VI, Section 1.a(5)
FTA C. 9070.1G, Ch. VI, Section 4

SOURCES OF INFORMATION

See Part C: Facility and Equipment Maintenance of the Maintenance area in the baseline review guide, questions 24-30.

DETERMINATION

See Part C: Facility and Equipment Maintenance of the Maintenance area in the baseline review guide, questions 24-30.

SUGGESTED CORRECTIVE ACTION

See Part C: Facility and Equipment Maintenance of the Maintenance area in the baseline review guide, questions 24-30.

Warranty Procedures and Fleet Defects

50. *How does the grantee determine that a warranty claim should be filed?*

51. *What is the process for filing a warranty claim? How are warranty claims tracked?*

52. *What is the percentage of warranty claims pursued successfully?*

53. *How are fleet defects determined? Has the grantee identified any fleet defects since the last Comprehensive Review? If yes, how were these handled with the manufacturer and what impact have they had on the overall maintenance activities of the grantee?*

EXPLANATION

Warranty standards, when part of rolling stock and equipment contracts, should provide for correction of defective or unacceptable materials or workmanship. These should specify coverage and duration and meet currently available industry standards. General warranties incorporating industry standards and extended warranties are eligible capital costs. FTA's *Best Practices Procurement Manual* encourages grantees to evaluate the cost of an extended warranty in an analysis separate from the equipment's acquisition cost, in order to make a good business decision. Grantees are responsible for establishing and maintaining a system for recording warranty claims. This system should provide information needed by the grantee on the extent and provisions of coverage and on claims processing procedures. Grantees are also responsible for identifying and diligently enforcing the warranty system for recording warranty claims.

REFERENCES

FTA C 5010.1D Ch. II, Section 3.a and Ch. IV Section 3.k
FTA's Best Practices Procurement Manual

SOURCES OF INFORMATION

See Part D: Warranty Program of the Maintenance area in the baseline review guide, questions 33-35.

DETERMINATION

See Part D: Warranty Program of the Maintenance area in the baseline review guide, questions 33-35.

SUGGESTED CORRECTIVE ACTION

See Part D: Warranty Program of the Maintenance area in the baseline review guide, questions 33-35.

Monitoring of Contractors and Subrecipients

54. *What are the procedures used to generate reports for monitoring maintenance of FTA-funded vehicles, equipment, and/or facilities performed by service providers under contract or subrecipients?*
55. *How does the grantee ensure that contractual obligations for maintaining grantee assets are met? What are the consequences for non-compliance?*
56. *Does the grantee collect and report the same performance measures for service providers or subrecipients that it does for its directly maintained assets?*
57. *How does the grantee evaluate the effectiveness of its oversight program?*

EXPLANATION

Grantees are responsible for managing the day-to-day operations of grant supported activities. Grantees must monitor grant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function, or activity.

Grantees may elect to hire third-party contractors to perform maintenance functions. Grantees may also have leased assets maintained by a lessee. The grantee is still responsible for the manner in which those FTA-funded assets are maintained and if not properly monitored, those assets may be at higher risk of not being properly maintained. FTA-funded vehicles and facilities must be maintained regardless of who operates and maintains them. Subrecipients, third-party contractors, and lessees “stand in the shoes” of the grantee as far as FTA maintenance requirements are concerned.

The grantee must require contractors, lessees, and subrecipients to follow acceptable maintenance standards. The contract, lease, or subrecipient agreement should address maintenance standards or maintenance performance indicators. The grantee may have its own maintenance plan or require its contractors, lessees, or subrecipients to develop their own maintenance plans.

The grantee must have an effective mechanism to monitor contractors', lessees', and subrecipients', maintenance activities. An acceptable program would consist of periodic written reports on maintenance activities submitted to the grantee, supplemented by review of maintenance records and periodic inspections of the FTA-funded vehicles and facilities.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
FTA Master Agreement Section 19.c
FTA C 5010.1D Ch. II, Section 3.a and Ch. IV Sections 3.k and m
FTA C. 5100.1, Ch. V, Section 1.a (5)
FTA C 9030.1E, Ch. IV, Section 1.a (5)

SOURCES OF INFORMATION

Review sample contracts, leases, and subrecipient agreements for maintenance requirements beyond that sampled in the baseline review. Review an expanded sample of maintenance plans. Often the plan is found either in the request for proposals or in the contractor's proposal. Determine who is responsible for monitoring the maintenance activities of contractors, lessees, and subrecipients. Determine whether the grantee has assigned an employee with a maintenance background to assess the contractor's performance and judge how the contractor deals with maintenance issues.

Determine how the grantee is actively monitoring the activities of contractors, lessees, and subrecipients. Visit a contractor, lessee, and/or subrecipient to visually inspect vehicles and facilities and to sample maintenance records.

DETERMINATION

The grantee is deficient if it does not have or does not require contractors, lessees, or subrecipients to have a maintenance plan or does not oversee contracted maintenance activities through periodic reports and inspections of facilities and vehicles. (**DEFICIENCY CODE 191:** Inadequate oversight of contracted maintenance activities)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit a written maintenance plan to the FTA regional office and an amended contract, lease, or subrecipient agreement incorporating the plan that includes maintenance standards compatible with FTA requirements and/or the performance measures for timely maintenance.

Direct the grantee to submit to the FTA regional office a copy of the letter signed by the chief executive officer or other senior management designee to the contractor, lessee, or subrecipient citing the maintenance requirements, stating that the entity is not meeting the maintenance requirements, and directing the entity to implement steps to meet the requirements.

Direct the grantee to submit to the FTA regional office an oversight program, along with evidence of its implementation.

PAGE INTENTIONALLY LEFT BLANK

5. AMERICANS WITH DISABILITIES ACT (ADA) ENHANCED REVIEW MODULE

BASIC REQUIREMENT

Titles II and III of the Americans with Disabilities Act of 1990 (ADA) 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.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for an ADA enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The Federal Transit Administration (FTA) regional civil rights officer (RCRO) and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office, Office of Civil Rights, and the Office of Transit Safety and Oversight.

AREAS TO BE EXAMINED

1. *Specialty Review Follow-up*
2. *Complaints*
3. *Organization and Management*
4. *Accessible Bus and Rail Vehicle Design*
5. *Accessible Facility Design*
6. *Fixed-route Service*
7. *Training*
8. *Maintenance*
9. *ADA Complementary Paratransit*

REFERENCES

Fiscal year 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents, such as the Fixing America's Surface Transportation (FAST) Act. References included in this document primarily include hyperlinks to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc., will only be applied to activities conducted after the effective date of those related requirements.

1. FAST Act Section 3000
2. 2 CFR Part 200 and 1201, "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. 49 CFR Part 27, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"
5. 49 CFR Part 37, "Transportation Services for Individuals with Disabilities"
6. 49 CFR Part 38, "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
7. 49 CFR Part 39, "Transportation for Individuals with Disabilities: Passenger Vessels"
8. FTA Circular 4710.1, "Americans with Disabilities Act (ADA) Guidance"

USEFUL WEBLINKS

FTA ADA Website

U.S. Department of Transportation (US DOT) Disability Law Guidance

ADA Standards for Transportation Facilities

Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities

Project ACTION

Disability Rights Education & Defense Fund - Topic Guides on ADA Transportation

U.S. Department of Justice ADA Homepage

FTA OFFICE OF CIVIL RIGHTS PROGRAM MANAGER FOR POLICY AND TECHNICAL ASSISTANCE

Mr. John Day
202-366-1671
John.Day@dot.gov

ADA CIRCULAR

FTA Circular 4710.1 is a summary of the U.S. Department of Transportation's (US DOT) ADA regulations and statutes written in an instructive, user-friendly style. It is intended to make the imposing body of regulations in 49 CFR Parts 27, 37, 38, and 39, and the facility standards, more understandable and easy to use. It is intended to be used as a reference guide to assist in the understanding of a specific topic or difficult to understand regulation or policy. The sample materials contained in the Circular may be useful when explaining difficult requirements or in crafting corrective actions, but they do not represent requirements in and of themselves.

When deficiencies are found, they are found with respect to the regulatory requirements explained in the Circular, and not with the Circular itself.

OVERSIGHT

When a public entity enters into a contractual or other arrangement with a private entity to operate fixed-route, demand-response service, including ADA complementary paratransit; rail; or other services, 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, including the requirements for vehicle acquisition and service provision, with certain exceptions for subrecipients receiving only Section 5310 funds.

ENHANCED REVIEW TRIGGERS

- There are repeat ADA deficiencies in Comprehensive Reviews, and/or ADA reviews
- Previous Comprehensive Review ADA deficiencies are still open
- Previous ADA compliance review findings are still open or “unhappy closure” letters issued
- ADA issues have been identified in FTA’s Oversight Assessment Tool (OAT)
- The Office of Civil Rights has identified compliance issues through complaint investigations or other sources
- The grantee does not appear to have adequate staff and/or resources in place to implement ADA requirements
- The grantee has constructed or altered a facility (or is actively planning to do so) and appears to have a poorly defined process and/or insufficient technical resources for preparing specifications for an ADA-compliant facility, or appears to rely solely on state/local building codes, inspections and/or certificates of occupancy
- The grantee does not meet the basic requirements for ADA complementary paratransit in terms of service area, hours/days of service, and response time; fails to distinguish ADA complementary paratransit from other types of service; or lacks policies and procedures for tracking and monitoring on-time performance, trip denials, and missed trips
- The grantee has made major changes in service delivery since the last review

Specialty Review Follow-up

1. *Has the Federal Transit Administration (FTA) conducted an Americans with Disabilities Act (ADA) review in the past two Federal fiscal years? If yes, what is the status of any corrective actions from the final report of that review?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts specialized ADA reviews of selected grantees. If a review has been conducted, confer with the FTA Office of Civil Rights - Headquarters on what follow up activities are appropriate during this ERM. The reviewer may be requested to validate the implementation of corrective actions for closed deficiencies, follow up on deficiencies that remain open, or a combination of both.

REFERENCE

49 CFR 27.123

SOURCES OF INFORMATION

Review OTrak, information from the FTA regional office, and the FTA Office of Civil Rights for issued reports on ADA reviews, correspondence between FTA and the grantee related to corrective actions, and grantee responses to the Comprehensive Review.

DETERMINATION

If there were deficiencies in the ADA review that relate to baseline review questions of the Comprehensive Review, the deficiencies will be made under the appropriate deficiency code of the Comprehensive Review. If there are outstanding or ongoing ADA review deficiencies that are beyond the scope of the baseline Comprehensive Review, confer with the FTA RCRO and the FTA Office of Civil Rights - Headquarters to make the following deficiency. (**DEFICIENCY CODE 413**: Outstanding ADA specialty review deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA RCRO with documentation to address outstanding or ongoing specialty review deficiencies.

Organization and Management

2. *Describe the grantee's organizational structure that is in place to fulfill and monitor its obligations under the ADA, including the departments and staff positions involved in the following areas:*
 - *ADA policy development*
 - *Vehicle design and procurement*
 - *Facility/renovation design and construction*
 - *Requirements for fixed-route service*
 - *Requirements for complementary paratransit service*
 - *Facility maintenance*
 - *Equipment maintenance*
 - *Vehicle maintenance*
3. *Is there an office or staff position responsible for ensuring ADA compliance, and/or a designated office or position for coordinating the grantee's efforts to comply with the U.S. Department of Transportation (US DOT) ADA regulations under 49 CFR Part 27? Alternatively, are compliance responsibilities delegated to various functions or departments? Please explain the reporting relationship.*
4. *How does the grantee ensure that those responsible for ADA compliance have the appropriate knowledge of US DOT ADA requirements?*
5. *Do the job descriptions for these positions include requirements for previous work experience with the US DOT ADA regulations?*
6. *If the grantee hires individuals without such experience, how does the grantee ensure individuals have the appropriate knowledge of US DOT ADA requirements, i.e., are "trained to proficiency" as appropriate to their duties?*
7. *Describe how the grantee's organizational and reporting structure ensures that staff in executive management positions is informed of ADA compliance matters.*

EXPLANATION

Grantees are responsible for monitoring the day-to-day operations of grant supported activities, including those of any subrecipients. Grantees must monitor these activities to assure compliance with applicable Federal requirements and to assure that performance goals are being achieved. Grantee monitoring must cover each program, function, and activity.

For entities receiving Federal financial assistance from the US DOT, compliance with applicable requirements of the US DOT ADA regulations is a condition of compliance with Section 504 of the Rehabilitation Act of 1973 and of receiving financial assistance.

See Part A: Staff Resources in the baseline review for additional information.

REFERENCE

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR Parts 27, 37, 38 & 39

SOURCES OF INFORMATION

Review organizational information provided for the baseline review. Interview management and staff that have responsibilities for implementing the US DOT ADA regulations.

DETERMINATION

Input into assessing the resources devoted to supporting the ADA program.

SUGGESTED CORRECTIVE ACTION

Work with the FTA RCRO and the FTA Office of Civil Rights—Headquarters to determine the appropriate corrective action.

Complaints

8. *What staff position and/or department is responsible for managing the ADA complaint process?*
9. *Is this process documented and does it describe staff roles and responsibilities?*
10. *What is the process for identifying ADA complaints that come through the general complaint process?*
11. *If corrective action is required by the grantee to address an ADA complaint, how does the grantee monitor the corrective action to ensure that (1) the suggested action will adequately address the complaint issue, and (2) corrective action has been implemented correctly?*

EXPLANATION

See Part B: Complaints of the ADA area in the baseline review.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
49 CFR 27.13, 37.17
49 CFR 27.121
FTA C. 4710.1, Ch. 12, Section 12.7

SOURCES OF INFORMATION

See Part B: Complaints of the ADA area in the baseline review.

DETERMINATION

See Part B: Complaints of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part B: Complaints of the ADA area in the baseline review.

Bus and Rail Vehicle Design

12. *Provide an example of how the grantee develops and reviews design specifications for buses and rail cars. Identify departments and/or staff positions associated with this activity.*

13. *If grantee delegates the design requirements to a third party, e.g., contractor or subrecipient, how does the grantee assess compliance with the US DOT ADA design requirements?*
14. *Does the review of vehicle specifications demonstrate that the design complies with 49 CFR Part 38 requirements?*

EXPLANATION

Specific requirements for the acquisition of accessible vehicles by public and private entities are addressed in 49 CFR Part 37 Subparts D and E. Accessibility standards for transportation vehicles are addressed in 49 CFR Part 38. Operators of fixed-route or demand-response systems (whether public or private) must comply with these requirements, as must all affiliated contractors and subrecipients.

FTA expects its grantees to have procedures to ensure that the design, acquisition, and alteration of bus and rail vehicles comply with US DOT ADA requirements. The oversight responsibilities of departments and staff should be clearly defined and the grantee should be able to demonstrate that US DOT ADA design requirements are being assessed.

See Part C: Bus and Rail Vehicles in the baseline review for additional information.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
49 CFR 37.7
49 CFR 37.23
49 CFR 37.31
49 CFR Part 37, Subpart D
49 CFR Part 37, Subpart E
49 CFR Part 37, Appendix C
49 CFR Part 38
FTA C. 4710.1, Ch. 4, Ch. 7, Sections 7.3, 7.4, 7.5 and 7.6, Ch.12, Section 12.8

SOURCES OF INFORMATION

Review the involvement of those responsible for ADA compliance of bus and rail specifications/design. Review and discuss subrecipient and third-party contractor oversight procedures for compliance with US DOT ADA requirements, if applicable. Obtain an understanding of who performs the oversight and at what stages of vehicle design the oversight occurs. Review bus and rail car specifications for compliance with 49 CFR Part 38.

DETERMINATION

See Part B: Bus and Rail Vehicles in the baseline review.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a plan for reviewing and monitoring vehicle specifications/ design for compliance with US DOT ADA regulations.

See Part B: Bus and Rail Vehicles in the baseline review for additional suggested corrective actions.

Facility Design

15. *Describe the process for developing and reviewing facility design specifications. Please identify departments and/or staff positions associated with this activity.*
16. *If the grantee delegates the design requirements to a third party, e.g., contractor or subrecipient, how does the grantee assess compliance with US DOT ADA design requirements?*

- 17. Does the review of facility design specifications demonstrate that they comply with US DOT ADA requirements?**
- 18. Does a tour of new facilities and/or facility alterations (those constructed since the last Comprehensive Review) demonstrate compliance with the accessibility requirements for path of travel, signage, and fare vending machines?**

EXPLANATION

Grantees are expected to have procedures to ensure that the design, construction, and alteration of facilities comply with US DOT ADA requirements. The oversight responsibilities of departments and staff should be clearly defined and the grantee should be able to demonstrate that US DOT ADA design requirements are being assessed.

See Part D: Facilities in the baseline review for additional information.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.37 and 18.40
49 CFR 37.9
49 CFR Part 37, Subpart C
49 CFR Part 37, Appendix A
US DOT's ADA Standards for Transportation Facilities
US DOT Final Rule Adopting New Accessibility Standards – Effective November 29, 2006
49 CFR 39.61
FTA C. 4710.1, Ch. 3 and Ch. 5, Section 5.4, Ch. 10, Section 10.4, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Examine the involvement of those responsible for reviewing the ADA compliance of facility specifications/design. Review a sample of facility plans for compliance with US DOT ADA requirements. Review the grantee's plans for making any new or planned facilities accessible. Review for compliance with US DOT ADA requirements during facility tours.

DETERMINATION

Refer to Part D: Facilities in the baseline review.

SUGGESTED CORRECTIVE ACTION

Refer to Part D: Facilities in the baseline review.

Service Provisions

- 19. How does the grantee determine which stops are announced? How are operators informed of which stops to announce? Are operators provided a list of stops?**
- 20. If the grantee uses an automated system to announce stops and identify routes, what is the policy for announcing stops and identifying routes when the system is inoperative or in buses without the automated system? How does the grantee know whether the policy is followed?**
- 21. If the grantee uses an automated system to announce stops, what standards are used to ensure the accuracy of the announcements?**
- 22. How does the grantee assess and monitor stop announcement compliance?**

EXPLANATION

Entities must have procedures and standards in place to ensure announcement accuracy and to monitor that the stop announcement policies are being followed by the grantee and by subrecipients.

See Part E. Service Provisions of the ADA area in the baseline review for additional information.

REFERENCE

49 CFR 37.161 and 37.167

FTA C. 4710.1, Ch. 2, Section 2.3, Ch. 6, Section 6.6

SOURCES OF INFORMATION

Review material provided to operators on stop announcements for a sample of routes.

See Part E: Service Provisions in the baseline review for additional information.

DETERMINATION

See Part E: Service Provisions of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part E: Service Provisions of the ADA area in the baseline review.

23. *Describe how the grantee's, contractor's, and/or lessee's policies, procedures, and training programs address the following ADA service provisions:*

- a. Service animals in vehicles and facilities*
- b. Drivers providing assistance with the use of accessibility equipment on the vehicle, including lifts, ramps, and securement systems*
- c. Use of wheelchair securements*
- d. Provision of service when a wheelchair cannot be secured*
- e. Use of lifts or ramps by standees*
- f. Use of accessibility-related equipment features by personnel, such as kneeling systems, automatic stop announcement systems, etc.*
- g. Policies regarding mobility aids which must be transported*

24. *How are these policies and procedures developed? What office and/or staff position maintains the policies and procedures? If unwritten, how are they communicated to contractors, subrecipients, vehicle operators, and supervisory staff? How does the grantee assure that the documentation reflects current practice?*

EXPLANATION

- a.** An entity must allow service animals to accompany individuals with disabilities in vehicles and facilities. The US DOT ADA regulations define a service animal as any animal individually trained to work or perform tasks for an individual with a disability, including but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. It is discriminatory to require a person with a disability to certify or register a service animal. Policies or practices that have the effect of limiting service animal use are prohibited. An entity may not require passengers to make prior arrangements when boarding a fixed-route vehicle with a service animal. For questions involving service animals, please contact the Program Manager for Policy and Technical Assistance in the FTA Office of Civil Rights.
- b.** Where necessary and upon request, the entity's personnel will assist individuals with disabilities in the use of securement systems, ramps and lifts. Personnel must leave their seats if it is necessary to provide the assistance.

- c. The US DOT ADA regulations do not require that wheelchairs be secured; however, entities may establish policies requiring passengers to allow their mobility devices to be secured and may deny service if a passenger refuses.
- d. Entities must transport passengers when the rider's wheelchair cannot be secured to the driver's satisfaction. Entities may not establish requirements concerning wheelchair equipment or specifications, such as brakes or wheel locks.
- e. The entity must deploy lifts or ramps for persons who do not use wheelchairs, including standees.
- f. The entity will ensure that vehicle operators and other personnel make use of accessibility-related equipment and features.
- g. In addition to wheelchairs, individuals with mobility impairments use many other types of personal mobility or assistive devices, including canes, crutches and walkers. Entities must accommodate users of these mobility devices on the same basis as wheelchairs. Entities are not required to accommodate devices not primarily designed for use by individuals with mobility impairments. This includes items such as shopping carts and skateboards. In addition, entities do not have to permit other types of assistive devices to be used in ways that depart from or exceed their intended uses. For example, entities do not have to permit riders who use walkers with built-in seats to ride in securement areas while seated on their walkers.

It is important to note that the concept of “other powered mobility devices,” or OPMDs, is not a part of the US DOT ADA regulations. Introduced by the Department of Justice’s (DOJ) regulations in 2010, OPMDs include a wide variety of motorized vehicles that may be used by persons with disabilities as mobility aids in an indoor or outdoor setting. Because US DOT’s regulations define a wheelchair as being suitable for indoor use, US DOT continues to rely on the approach developed to accommodate the use of two-wheeled, gyroscopically stabilized, battery-powered personal transportation device (commonly known by the brand name, Segway). US DOT guidance explains that entities should accommodate individuals with disabilities using such devices, though they may establish policies under which they will be accommodated. US DOT guidance notes that a transportation provider is not required to permit anyone—including a person with a disability—to bring a device onto a vehicle that is too big or that is determined to pose a direct threat to the safety of others.

See Part E: Service Provisions of the ADA area in the baseline review for additional information.

REFERENCES

2 CFR Part 200, Subpart D
 49 CFR 18.40
 49 CFR 37.165-169
 49 CFR 38.23(b)
 FTA C. 4710.1, Ch. 2, Sections 2.4, 2.5, 2.6, 2.7, 2.10, and 2.11

SOURCES OF INFORMATION

Review complaint records for potential problem areas. Assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, subcontractors, and lessees are proficient, and what, if any, consequences result if these standards are not met.

Review the grantee’s policies and procedures to identify the departments and staff responsible for maintaining, updating, and monitoring these ADA policies, procedures, and training programs.

See Part E: Service Provisions of the ADA area in the baseline review for additional information.

DETERMINATION

See Part E: Service Provisions of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part E: Service Provisions of the ADA area in the baseline review.

Training

- 25.** *How do the grantee's, contractor's, and/or subrecipient's operator training program address US DOT ADA requirements appropriate to their duties? Are operators trained in ADA policies before operating revenue service?*
- 26.** *Do operators receive refresher training?*

EXPLANATION

See Part F: Training of the ADA area in the baseline review.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 37.173
FTA C. 4710.1, Ch. 2, Section 2.9, Ch. 12, Section 12.8

SOURCES OF INFORMATION

Review a sample of training files for documentation of new hire and refresher training on ADA policies and procedures.
Review the training files for operators who have received ADA complaints.

See Part F: Training of the ADA area in the baseline review for additional information.

DETERMINATION

See Part F: Training of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part F: Training of the ADA area in the baseline review.

Maintenance

- 27.** *Are lifts/ramps checked during the pre-trip inspections? Describe how the grantee knows whether or not vehicles with an inoperative lift/ramp are placed into service?*
- 28.** *Does the grantee have a standard or policy for prompt repair of inoperative lifts/ramps? If so, what is it? How does the grantee know whether or not its standards are met?*
- 29.** *Does the grantee have a standard or policy for the prompt repair of the public address (PA) system? If so, what is it? If automated stop announcement equipment is used, does the grantee have a standard or policy for its prompt repair? If so, what is it? How does the grantee know whether or not its standards are met?*
- 30.** *Describe the grantee's process for review of maintenance records? Does the review of vehicle maintenance records demonstrate that lifts, ramps, automated announcement systems, PA systems, securement systems are repaired promptly?*

EXPLANATION

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 37.161-163
FTA C. 4710.1, Ch. 2, Section 2.3

SOURCES OF INFORMATION

Review maintenance and operations policies. Review the following elements:

- pre-trip and preventive maintenance checklists for lifts/ramps, automated announcement, and public address (PA) systems
- policies governing placing buses in service with inoperative lifts/ramps
- written maintenance plans/ maintenance scheduling policies for procedures governing turnaround time for buses with inoperative lifts/ ramps, automated announcement, or PA systems
- a sample of maintenance records for repair of ADA accessibility features (wheelchair lifts, ramps, inoperative automated announcement, PA systems, securement systems, etc.)
- a comparison of the date of the repair to the date the defect was noted
- facility maintenance policies and procedures to ensure that they address ADA accessibility features
- policies and procedures for notifying maintenance officials of inoperative accessibility features
- policies and procedures for scheduling the maintenance of inoperative accessibility features

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review for additional information.

DETERMINATION

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review.

31. *Describe the grantee's process for reviewing facility maintenance records? Does the review of maintenance records demonstrate that elevators and other facility accessibility features (power doors, etc.) are repaired promptly?*
32. *Describe how the grantee manages and staffs its elevator maintenance program, including whether service is provided by contractors. Is the process formally documented? What are the procedures for scheduling preventive maintenance of elevators?*
33. *Describe how the grantee addresses unscheduled elevator maintenance/ repair.*
34. *How does the grantee notify the public of elevator outages and how does it accommodate people when the elevator is out of service? How does the grantee evaluate the effectiveness of these measures?*
35. *What are the performance standards and goals for bringing inoperative elevators back into service? How does the grantee know whether or not these are met?*
36. *How does the grantee track elevator down time?*
37. *How does the grantee ensure that people needing an elevator will be accommodated when implementing major elevator repair/maintenance projects? What departments are involved? How are the public made aware of these projects?*

EXPLANATION

The entity should have procedures and a system for monitoring the operation and repair of elevators and other facility accessibility features (power doors, etc.). The entity should have procedures for notifying the public of elevators and other facility accessibility features (power doors, etc.) that are out of service. Elevators and other facility accessibility features (power doors, etc.) must be repaired promptly if they are damaged or out of order. However, entities are allowed to have isolated or temporary interruptions in service or access due to maintenance or repairs. The entity should have policies and procedures in place to meet the requirement for regular elevator and other facility accessibility features (power doors, etc.) maintenance checks.

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review for additional information.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 37.161-163
FTA C. 4710.1, Ch. 2, Section 2.3

SOURCES OF INFORMATION

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review.

DETERMINATION

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part G: Maintenance of Accessible Features of the ADA area in the baseline review.

ADA Complementary Paratransit Service

38. *Is the grantee required to operate ADA complementary paratransit service? If so, is ADA complementary paratransit service provided and is it clearly distinguished from other demand-response services operated by the grantee?*

EXPLANATION

Included in the grantees fixed-route operating policies should be policies and procedures for developing and providing ADA complementary paratransit. The roles and responsibilities of the departments and staff that oversee ADA complementary paratransit service should be clearly defined.

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review for additional information.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR Part 37.25
49 CFR 37.121-131
49 CFR Part 37 Appendix D to Section 37.3
Disability Law Guidance re: Paratransit Requirements for Section 5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005
FTA C. 4710.1, Ch. 2, Section 2.11, Ch. 8

SOURCES OF INFORMATION

Review the involvement of those responsible for ADA in the development of operating and discipline policies.

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review for additional information.

DETERMINATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

- 39.** *How does the grantee structure and design its ADA complementary paratransit system? How does the grantee determine staffing needs to operate the ADA complementary paratransit system in a compliant manner? How does the grantee evaluate potential new employees? What is the typical staff turnover?*
- 40.** *Describe staff levels, roles, and responsibilities. If service is contracted, describe the contractor's staff levels, roles, and responsibilities and the grantee's staffing for oversight of the contractor.*

EXPLANATION

See Part A: Staff Resources of the ADA area in the baseline review.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 27.123

SOURCES OF INFORMATION

Interview management and staff that have responsibilities for implementing ADA complementary paratransit.

See Part A: Staff Resources of the ADA area in the baseline review.

DETERMINATION

Input into assessing the resources devoted to supporting the ADA program.

SUGGESTED CORRECTIVE ACTION

Work with the FTA RCRO and the FTA Office of Civil Rights to determine the appropriate corrective action.

- 41.** *Describe how the grantee develops and documents ADA complementary paratransit policies and procedures.*
- 42.** *What department and/or staff positions are responsible for ensuring policies and procedures meet US DOT ADA requirements?*
- 43.** *How does the grantee communicate ADA complementary paratransit policies and procedures to staff and/or contractors?*
- 44.** *Has the grantee taken disciplinary action against staff or enforced contractual remedies on contractors that do not follow the proper policies and procedures?*

EXPLANATION

Grantees should have clearly defined policies and procedures for ADA complementary paratransit that identifies the departments and staff responsible for implementing those policies and procedures. Applicable staff, operators, and contractors should be made aware of these policies and procedures, as well as disciplinary actions or contractual remedies for non-adherence to these policies and procedures.

REFERENCES

49 CFR 37.121-131
FTA C. 4710.1, Ch. 2, Section 2.11, Ch. 8

SOURCES OF INFORMATION

Review the grantee's policies and procedures pertaining to ADA complementary paratransit. Review how the policies and procedures are implemented and monitored. Review documentation of any disciplinary actions and consult the FTA RCRO to determine if disciplinary actions have been an issue with the grantee.

DETERMINATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit documentation to the FTA RCRO that it has taken immediate steps to modify any operating policies and change services that do not meet the regulatory requirements.

45. How does the grantee track eligibility applications to ensure that decisions are made within 21 days of receipt of a complete application? How does the grantee define and communicate when an application is "complete"?

46. How does a visitor use the paratransit service? What is the lead time before visitors are provided with service? For how many days is a visitor provided service before the grantee requires its own certification?

EXPLANATION

See Part I: ADA Complementary Paratransit Service in the baseline review.

FTA notes that granting visitor eligibility is 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, transit agencies are to quickly enter necessary information into any databases or systems to permit visitors to place trip requests. FTA envisions this as a process that can often be completed the same day or no more than one day later.

REFERENCES

2 CFR Part 200, Subpart D

49 CFR 18.40

49 CFR 37.125

49 CFR Part 37 Appendix D to 37.121-125

FTA C. 4710.1, Ch. 9, Sections 9.1, 9.2, 9.3, 9.4, 9.5, 9.7 and 9.9

SOURCES OF INFORMATION

Review an expanded sample of application files to ensure that the grantee or subrecipient processed them within 21 calendar days. Review an expanded sample of review files for recent appeals to ensure that the process meets the regulatory requirements. Collect and review sample eligibility (including denial and conditionally eligible and temporarily eligible) and appeal decision letters.

See Part I: ADA Complementary Paratransit service of the ADA area in the baseline review for additional information.

DETERMINATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

47. How does the grantee know that pickup times are negotiated with the rider and scheduled within one hour of the requested time? If the reservation and scheduling functions are separate, when is the pickup time negotiated? Does the review of a sample of manifests document that the grantee meets its obligations to schedule and provide service as required under the US DOT ADA regulations?

48. Are there any priorities or restrictions made based on trip purpose?
49. What are the policies and procedures for providing origin-to-destination service and how are these policies communicated to applicants and eligible riders? How and when do eligible riders request assistance beyond the curb when needed, due to disability? Describe the grantee's processes for ensuring that reservationists, schedulers, dispatchers, and drivers are aware that such assistance is needed. Does a review of the grantee's records demonstrate that the policies and procedures are followed?
50. If paratransit service is provided beyond what is required by US DOT ADA complementary paratransit requirements, such as to persons who are not eligible for ADA paratransit or to destinations or times not required by the ADA, is the grantee able to distinguish such passengers and trips from ADA paratransit passengers and trips to ensure that eligible riders are not experiencing capacity constraints?
51. If the grantee co-mingles ADA paratransit eligible individuals with other riders (e.g., with seniors or with general public demand-response customers), how does it ensure all the ADA service criteria are being met for the paratransit eligible individuals?
52. How does the grantee ensure that next-day trips are reserved, scheduled, and provided as required? Does the grantee have a policy or procedures in place to provide less than 100 percent of next-day trips? If so, what is it?
53. What is the standard and goal for comparable trip lengths? What data does the grantee collect to ensure that the standard is met? Does the review of data demonstrate whether or not the standard is met?

EXPLANATION

The grantee should have policies and procedures regarding ADA complementary paratransit that clearly defines scheduling trips and reservations, beyond the curb assistance, trip lengths, no show, and cancellation policies. These policies and procedures must be communicated with applicants and eligible riders.

Grantees are required to provide ADA complementary paratransit trips without restriction, or priority placed on trip purpose. As such, medical trips, shopping trips, or trips for any other purpose must be treated equally per the requirements.

At a minimum, grantees are required to provide next-day service to ADA-eligible passengers. Next-day service means that trips scheduled during the course of regular business hours must be fulfilled on the following day without regard to when the request came in, or when the requested pick-up time was for the following day. For example, a request that is made at 4:30 p.m. for a pick-up time of 6:00 a.m. the following day must be accommodated provided that the pick-up time is consistent with the hours of operation.

Grantees are required to ensure that ADA complementary paratransit trip lengths are comparable to similar trips on the fixed-route system. Since paratransit is a shared ride service, paratransit rides between Point A and Point B will usually take longer, and involve more intermediate stops, than a taxi ride between the same two points. However, grantees must ensure that the number of intermediate stops does not become so high and the total trip time so long for a given passenger as to make use of the system prohibitively inconvenient.

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review additional information.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 37.129-133
FTA C. 4710.1, Ch. 8, Sections 8.3-8.5, 8.7

SOURCES OF INFORMATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

DETERMINATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

- 54.** *How are passengers informed of the no-show policy? Is the policy made available in alternate formats upon request? How is a passenger notified that he or she will be suspended for violating the no-show policy? Is the passenger notified of his or her right to appeal the proposed service suspension? Are both notifications available in alternative accessible formats upon request?*
- 55.** *Does the review of data on no-shows document that no-shows under the riders control are not charged against the rider? That the threshold for a cancellation is met before a cancellation is considered a no-show (i.e., riders are not penalized when cancelling trips more than two hours in advance of the scheduled pickup)? That the procedures for notifying a passenger of a suspension are followed? That the appeals process is followed?*

EXPLANATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

REFERENCES

2 CFR Part 200, Subpart D
49 CFR 18.40
49 CFR 37.125
FTA C. 4710.1, Ch. 9, Section 9.12

SOURCES OF INFORMATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

DETERMINATION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

SUGGESTED CORRECTIVE ACTION

See Part I: ADA Complementary Paratransit Service of the ADA area in the baseline review.

6. TITLE VI ENHANCED REVIEW MODULE

BASIC REQUIREMENT

The grantee must comply with Federal Transit Administration (FTA) Circular 4702.1B to 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 grantee must ensure that federally supported transit services and related benefits are distributed in an equitable manner.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a Title VI enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective FTA regional office, program office (if applicable), and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Specialty Review Follow-up*
2. *Promoting Inclusive Public Participation*
3. *Requirements to Provide Meaningful Access to Limited English Proficiency (LEP) Persons*
4. *Subrecipient Oversight*
5. *Determination of Site or Location of Facilities*
6. *Requirements to Set Systemwide Service Standards and Policies*
7. *Requirement to Collect and Report Demographic Data*
8. *Requirement to Evaluate Service and Fare Changes*

REFERENCES

Fiscal year 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include hyperlinks to the most recent version of source documents, such as the Fixing America's Surface Transportation (FAST) Act. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc. will only be applied to activities conducted after the effective date of those related requirements.

1. 2 CFR Parts 200 and 1200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"
3. 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"

4. FTA Circular 4702.1B "Title VI Requirements and Guidelines for Federal Transit Administration Recipients"
5. FTA Circular 4703.1 "Environmental Justice Policy Guidance For Federal Transit Administration Recipients"
6. 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"
7. Executive Order 13166 August 11, 2000: "Improving Access to Services for Persons with Limited English Proficiency"
8. Federal Register: December 14, 2005 (Vol. 70, Number 239, pp. 74087-74100) "US DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency Persons"
9. Civil Rights Restoration Act of 1987

USEFUL WEBLINKS

[FTA Title VI page](#)

[FTA Civil Rights Training Materials](#)

[FTA Civil Rights Video Training Series](#)

[US DOT Limited English Proficiency Guidance](#)

[Language Access Assessment and Planning Tool for Federally Conducted and Federally Assisted Programs](#)

[Title VI Frequently Asked Questions](#)

[US Census American FactFinder "Percent of Specific Language Speakers in the Region" \(S1601\)](#)

ENHANCED REVIEW TRIGGERS

- the Title VI program in the FTA Electronic Award and Management System (EAMS) shows the grantee does not appear to understand Title VI requirements
- OTrak shows repeat Title VI deficiencies in the last Comprehensive Review or shows Title VI deficiencies in the last two Comprehensive Reviews
- there are comparable or repeat Title VI deficiencies in between Comprehensive Reviews and Title VI reviews
- previous Title VI deficiencies are still open
- Title VI issues have been identified in FTA's Oversight Assessment Tool (OAT)
- The FTA Office of Civil Rights has identified compliance issues through complaints or other sources
- the number of complaints in the FTA Office of Civil Rights or at the grantee level is out of proportion to the size of the grantee's operation
- the grantee does not demonstrate that it has adequate Title VI expertise
- the grantee has not submitted a program and has not been in communication with the FTA regional civil rights officer (RCRO)
- the grantee is planning or constructing a new fixed guideway system or New Starts project
- the grantee 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)

Specialty Review Follow-up

1. *Has the Federal Transit Administration (FTA) conducted a Title VI review in the past two Federal fiscal years? If yes, what is the status of any corrective actions from the final report of that review?*

EXPLANATION

As part of its project oversight functions, FTA periodically conducts Title VI reviews of selected grantees. If a review has been conducted, confer with the FTA regional office and the FTA headquarters Subject Matter Expert (SME) on what follow-up activities are appropriate during this ERM. The reviewer may be requested to validate the implementation of corrective actions for closed deficiencies, follow up on deficiencies that remain open, or a combination of both.

REFERENCE

None

SOURCES OF INFORMATION

Review OTrak and information from the FTA regional office for issued reports on Title VI reviews, correspondence between FTA and the grantee related to corrective actions, and grantee responses to the Comprehensive Review.

DETERMINATION

If there were deficiencies in the Title VI reviews that relate to baseline review questions of the Comprehensive Review, the deficiencies will be made under the appropriate deficiency code of the Comprehensive Review. If there are outstanding or ongoing Title VI review deficiencies that are beyond the scope of the baseline Comprehensive Review, confer with the FTA regional office and the FTA headquarters SME to make the following deficiency. (**DEFICIENCY CODE 375:** Outstanding Title VI specialty review deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with documentation to address outstanding or ongoing specialty review deficiencies.

Promoting Inclusive Public Participation

2. What processes are used to determine how, when, where, and how often specific public participation activities should take place and what specific measures are most appropriate?

EXPLANATION

As discussed in the baseline review, the grantee's public participation strategy should offer early and continuous opportunities for the public to be involved in the identification of social, economic, and environmental impacts of proposed transportation decisions. Effective public involvement requires that the agency seek early engagement of a wide segment of the population. It also entails directed outreach and information efforts to include certain identified populations to meet Federal legislation, executive orders, and planning directives. A proactive process actively encourages broad participation. Effective public involvement characteristics include provision of complete information, timely public notice, full public access to key decisions, and support for early and continuing public involvement in developing planning products and during the agency's operations.

Grantees can determine how, when, where, and how often specific public participation activities should take place, and which specific measures are most appropriate. To be implemented correctly and effectively, the processes used to determine the appropriate public participation strategy should be based upon:

- An understanding of the affected population through demographic analysis to assist in determining where and when public participation activities should be focused.
- The timing, format and frequency of public participation activities based upon the type of plan, program, and/or service under consideration.
- Identification of available resources to be employed in effectively promoting inclusive public participation (i.e., printed notices, newspapers, radio, television, coordination with local community-based organizations).

The grantee's processes for determining public involvement activities, methods for ensuring both minority and LEP participation, and records of outreach activities should be documented as part of the implementation of the public participation plan.

REFERENCES

Executive Order 13166
US DOT LEP Guidance
LEP Handbook for Public Transportation Providers
FTA C 4702.1B, Ch. III, Section 8

SOURCES OF INFORMATION

Review information provided for the baseline Comprehensive Review. In particular, focus on responses to question 11. Review the procedures for implementing the public participation plan requested of the grantee as part of this ERM. Examine the procedures used to determine the targeted populations. Examine the procedures to determine the mediums in which to encourage participation from the targeted population. Examine the implementation of the proactive strategies used to reach the targeted populations. Examine the effectiveness of the grantee's practices to engage the targeted populations. Examine the grantee's process for public review and comment of the public participation plan. Examine the procedures to identify locations, time, and frequency of public outreach. Examine the integration of language services during meetings.

DETERMINATION

Analysis of the information and deficiencies from the baseline review and ERM may indicate that the grantee does not have adequate processes in place to ensure inclusive public participation and early public input into proposed transportation decisions. Insufficient processes and implementation to ensure the participation of minority and LEP populations could lead to a finding of deficiency. (**DEFICIENCY CODE 45:** Title VI public outreach deficiencies)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence of corrective actions taken to develop a public participation policy and implement an inclusive public participation plan in accordance with the Title VI requirements.

Requirements to Provide Meaningful Access to Limited English Proficiency (LEP) Persons

3. *What resources and methodology are used to identify the number and proportion of Limited English Proficient (LEP) persons eligible to be served or likely to be encountered by the program or agency?*
4. *What resources and methodology are used to determine the frequency with which LEP persons come in contact with the grantee's program?*
5. *What policies or procedures are in place for the allocation of activities or services to LEP persons?*
6. *What outside groups, if any, are utilized to communicate with LEP groups and/or leveraged to gain insight on reaching LEP groups?*
7. *How does the agency determine what documents are required to be translated into the language of each frequently encountered LEP group?*
8. *Is the Four Factor Analysis completed by the grantee in accordance with the Title VI requirements?*
9. *Is the language assistance plan (LAP) adequately based on the Four Factor Analysis conducted and other factors?*
10. *Does the overall public participation plan incorporate the LAP?*

EXPLANATION

FTA C 4702.1B states that grantees shall document the steps undertaken to implement the US DOT LEP Guidance necessary to provide "meaningful access" on the basis of four factors. The grantee should have documented procedures for collecting and evaluating data to perform the Four Factor Analysis. The analysis includes:

(1) the number and proportion of LEP persons served or encountered in the eligible service population:

- How LEP persons interact with the grantee;
- Demographic analysis of LEP communities in the service area and an assessment of the proportion of LEP person from each language group to determine the type of language services to be provided;
- Literacy skills of the LEP population in their native languages to determine if document translation will be effective;
- Identification of LEP populations underserved by the grantee due to language barriers.

(2) the frequency with which LEP individuals come into contact with the program:

- An assessment of major points of contact including use of services, the way various fare media are purchased, participation in public meetings, customer service interactions, ridership and operator surveys.

(3) the nature and importance to people's lives of the program, activity, or service provided

- Larger transit systems and service areas with higher proportions of non-native English speakers tend to have more LEP persons who are dependent upon public transit. The grantee should evaluate how transit services are used by the LEP population including seniors and persons with disabilities.
- Suggested assessment methods include coordination with the MPO on the needs of LEP persons across the region and facilitating meetings with organizations representing LEP populations.

(4) the resources available to the recipient for LEP outreach and the associated costs

- The type of resources and costs of language assistance should be identified.
- Best practices to reduce costs include sharing of language assistance materials and translation services between recipients, advocacy groups, LEP populations, and Federal agencies.
- Technology can be used to reduce the cost of language translation services.
- Grantees should not limit language assistance due to resource constraints without sufficient justification.

The results of the Four Factor Analysis must be used as the basis for the development of the language assistance plan (LAP), also known as a LEP Plan. The grantee should have procedures in place for developing a LAP. To determine how and to what extent the grantee effectively developed the plan, evaluation of the procedures should show that the grantee:

- adequately identified of the needs of LEP persons;
- adequately addressed the needs of LEP persons;
- adequately monitors, evaluates, and updates the LAP;
- adequately trains employees to provide timely and reasonable language assistance to LEP populations;
- adequately identifies how the LAP will be integrated with the included public participation plan; and
- translated vital documents into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the grantee's programs and services.

The LAP should identify the steps to be taken to ensure that LEP persons receive meaningful access to transit services and resources. Other factors particular to the service population, service area, or services provided as related to LEP persons should be identified and accounted for in the LAP.

Requirements for ensuring inclusive public participation include LEP populations. A comprehensive public participation plan will include the implementation of the LEP Plan to promote the effective participation of LEP persons in proposed transit decisions.

REFERENCES

Executive Order 13166

Limited English Proficiency (LEP): A Federal Interagency Website

US Census American FactFinder "Percent of Specific Language Speakers in the Region" (S1601)

US DOT LEP Guidance

LEP Handbook for Public Transportation Providers

FTA C 4702.1B, Ch. III, Sections 9

SOURCES OF INFORMATION

Review information provided for the baseline Comprehensive Review. In particular, focus on documentation provided and responses to question 10.

Review the procedures for collecting data to perform the Four Factor Analysis. Evaluate the data gathered by the grantee for the Four Factor Analysis to determine how the grantee:

- identifies how LEP persons interact with the agency;
- determines LEP communities;
- assesses the number or proportion of LEP persons from each language group to determine the appropriate language services for each language group;
- identifies the literacy skills of each LEP population in their native languages, in order to determine whether translation of documents would be an effective measure;
- identifies whether LEP persons are underserved by the recipient due to language barriers;
- determines how often the LEP population uses the bus and rail service;
- determines how often the LEP population purchases passes and tickets through vending machines, outlets, websites, and over the phone;
- determines how often the LEP population participates in public meetings;
- determines how often the LEP population interacts with the customer service personnel;
- determines how often the LEP population participates in ridership surveys;
- determines how often the LEP population participates in operator surveys;
- determines the nature and importance of its programs, activities and services to the LEP population;
- determines the resources, and costs, available to provide outreach to the LEP community; and
- determines third parties that can assist with outreach efforts or provide an effective means to disseminate information to LEP groups.

Review the procedures used to develop the LAP and evaluate the plan to verify that it adequately provides meaningful access to LEP persons. Review the grantee's process for monitoring plan implementation and examples of language assistance measures implemented, including the translation of vital documents.

Obtain a copy of the procedures used to develop the LAP. Evaluate the procedures to determine how and that the grantee:

- adequately identified the needs of the LEP;
- adequately addressed the needs of the LEP;
- adequately monitors, evaluates, and updates the LAP;
- adequately trains employees to provide timely and reasonable language assistance to LEP populations; and
- identifies how the LAP will be integrated with the greater public outreach efforts (plan).

Verify that the grantee translated vital documents into the language of each frequently encountered LEP group eligible to be served and/or likely to be affected by the grantee's programs and services.

Review overall public participation plans of the grantee to see how it has incorporated the LAP into them. Review public participation activities of the grantee since the last Comprehensive Review to determine if the LAP and LEP considerations were implemented.

DETERMINATION

Insufficient processes for data gathering, plan implementation, and/or monitoring to ensure the grantee is not engaging in discrimination based upon national origin could lead to a finding of deficiency. The grantee is deficient if it has not conducted an adequate Four Factor Analysis. (**DEFICIENCY CODE 11:** Lacking assessment or provisions for LEP persons). The grantee is deficient if it has not prepared or implemented an LAP based upon the Four Factor Analysis and not received an exemption from FTA. (**DEFICIENCY CODE 289:** Lacking a LAP)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO the procedures for collecting data for the Four Factor Analysis and a copy of the completed Four Factor Analysis, along with a list of language assistance it has provided or intends to provide, based on the analysis and a timeline for providing this assistance.

For deficiencies related to the LAP, direct the grantee to submit to the FTA RCRO a copy of the procedures used to develop the plan, along with a copy of the LAP that includes the results of the Four Factor Analysis.

Direct the grantee to incorporate implementation and monitoring of the LAP into the inclusive public participation plan.

Subrecipient Oversight

- 11. How does the grantee assist subrecipients to develop their own programs or adopt the primary grantee's program?*
- 12. How does the grantee communicate Title VI responsibilities to its subrecipients?*
- 13. What tools are provided to subrecipients to ensure compliance with US Department of Transportation (US DOT)'s Title VI regulations?*
- 14. How does the grantee obtain updates from its subrecipients regarding the implementation of the Title VI program? How often does it receive these updates?*
- 15. What methodology is applied to determine the subrecipients' schedule for submitting Title VI programs? What method does or will the grantee deploy for collecting, reviewing, and maintaining subrecipient plans?*
- 16. What, if any, Title VI-specific technical assistance is available upon request or routinely scheduled for subrecipients?*

EXPLANATION

If a grantee has subrecipients, 49 CFR 21.9 requires it to ensure that each subrecipient is in compliance with the Title VI regulations. When a subrecipient is also a direct recipient of FTA funds, that is, applies for funds directly from FTA in addition to receiving funds from a primary recipient, the subrecipient/direct recipient reports directly to FTA and the primary recipient/designated 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.*

Assistance should be provided through communication of Title VI responsibilities to the subrecipient and by providing Title VI information, forms, and data. The grantee should develop procedures and a central repository of documents used to provide the necessary assistance to all subrecipients. The procedures and documentation should show how the grantee:

- determines if the subrecipient is also a direct recipient of FTA funds and therefore reports directly to FTA;
- determines, for subrecipients that are also direct recipients of FTA, that the subrecipient submitted its Title VI plan to FTA;
- determines the level of assistance to provide to the subrecipient(s);
- determines the type of assistance, i.e., documents, training, instructions to provide;
- determines who on the grantee's staff is responsible for providing assistance to the subrecipient(s) and overseeing the recipient's compliance with Title VI;
- determines the method and frequency for collecting, reviewing, and maintaining subrecipient Title VI plans; and
- assesses the effectiveness of its assistance program.

*There is a small distinction for State DOTS. If the activity is planning, the State must still account for this information, as the State is required to analyze and report to FTA the disbursement of such funds.

REFERENCES

2 CFR Part 200, Subpart D
 49 CFR 18.37 and 18.40
 49 CFR 21.9(b) (d)
 FTA C 4702.1B, Ch. III, Section 12
 Executive Order 13166
 US DOT LEP Guidance

SOURCES OF INFORMATION

Review and discuss the grantee's process for providing assistance to subrecipients. Review documentation showing that the procedures have been implemented, including the repository of Title VI resources the grantee has available for subrecipients. Interview subrecipient(s) to determine the effectiveness of the assistance and resources provided by the grantee.

DETERMINATION

The grantee is deficient if it does not provide adequate assistance to ensure that subrecipients comply with applicable Title VI requirements. (**DEFICIENCY CODE 62:** Insufficient oversight of Title VI)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA RCRO with a document that describes the grantee's procedures to assist subrecipients in maintaining compliance with applicable Title VI requirements. When appropriate, direct the grantee to also provide evidence of assistance such as providing subrecipients a sample Title VI notice, Title VI complaint procedures, and complaint form; sample procedures for tracking and investigating Title VI complaints filed with a subrecipient, demographic data on the race and English proficiency of residents served by the subrecipient; and any other recipient-generated or obtained data, such as travel patterns, surveys, etc., that will assist subrecipients in complying with Title VI.

17. Describe the subrecipient monitoring procedures/process to track compliance with the Title VI program. Provide evidence of oversight (i.e., notification, complaints, board make-up, public participation, etc.).

EXPLANATION

US DOT requires that grantees be responsible for ensuring that subrecipients comply with Title VI requirements. If the subrecipients are not in compliance with Title VI requirements, then the grantee is not in compliance.

The grantee is required to have documented procedures for monitoring the Title VI compliance for all subrecipients. The procedures and documentation should determine how the grantee:

- ensures compliance with the general reporting requirements and other requirements that apply to the subrecipient based on the type of service provided;
- collects, reviews for compliance, and maintains the Title VI Programs of subrecipients;
- verifies that the subrecipient's level and quality of service is provided on an equitable basis;
- provides corrective action and follows up on the implementation of corrective actions to assist the subrecipient in remaining compliant; and
- assesses the effectiveness of its oversight program.

REFERENCES

2 CFR Part 200, Subpart D
 49 CFR 18.37 and 18.40
 49 CFR 21.9(b) (d)
 FTA C 4702.1B, Ch. III, Section 12
 Executive Order 13166
 US DOT LEP Guidance

SOURCES OF INFORMATION

Review information provided for the baseline phase of the Comprehensive Review. In particular, focus on documentation provided and responses to question 12.

Review the grantee's monitoring tools and the oversight files on any subrecipients to be visited. Interview subrecipient(s) to determine if the grantee is adequately implementing the monitoring procedures.

DETERMINATION

The grantee is deficient if it does not ensure that subrecipients comply with applicable Title VI requirements. (**DEFICIENCY CODE 62:** Insufficient oversight of Title VI)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA RCRO a document that describes the monitoring procedures for subrecipient compliance with applicable Title VI requirements. When appropriate, direct the grantee to also provide evidence of monitoring, including collection of Title VI Plans, a schedule of monitoring activities and procedures outlining when the grantee expects the subrecipient to notify the primary recipient of complaints received by the subrecipient and any assistance with corrective actions.

Determination of Site or Location of Facilities

18. *For any applicable sited or located facility, was a Title VI equity analysis, with related public outreach, performed? If so, by whom and when?*

19. *How were evaluations of locations conducted?*

20. *Was there a disparate impact of the location based on race, color, or national origin? If yes, did the grantee have a substantial, legitimate justification for locating the project there? Were there no other alternatives with a less disparate impact?*

EXPLANATION

As discussed in the baseline review, FTA C 4702.1B describes the steps a grantee must complete in order to comply with the regulations in 49 CFR 21.9(b)(3) ensuring the nondiscriminatory siting of facilities. Applicable facilities include, but are not limited to: storage facilities, maintenance facilities, operations centers, etc. This does not include bus shelters or other transit amenities covered in FTA C 4702.1B Chapter IV, nor does it include transit stations, power substations, etc., as those are evaluated during project development or the NEPA process.

The grantee is required to complete a Title VI equity analysis during the planning stages with regard to where a project is sited to ensure the location is selected without regard to race, color, or national origin. The equity analysis must include outreach and public involvement of persons potentially impacted by the siting or location decision.

The grantee should have a process for determining the site or location of facilities and procedures for determining the necessity of performing an equity analysis. 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. The grantee's equity analysis procedures should:

- be implemented at the planning stages of the potential project;
- require outreach to persons potentially impacted by the siting of facilities;
- allow for analyzing the impact of the facility by census tract or block group;
- describe how the grantee will determine what represents a disparate impact on the basis of race, color or national origin;
- describe how the grantee will obtain and document a justification where there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin; and
- allow for assessing its effectiveness.

The procedures for evaluating potential facility locations should include an analysis of other facilities with similar impacts in the area to determine if any cumulative adverse impacts might result.

If the grantee determines that the location of the project will result in a disparate impact on the basis of race, color, or national origin, the grantee may only locate the project in that location if there is a substantial legitimate justification for locating the project there, and that there are no alternative locations that would have a less disparate impact on the basis of race, color, or national origin. The grantee must show how both elements are met. In order to make this showing, the grantee 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.

REFERENCES

49 CFR 21.9

FTA C 4702.1B, Ch. III, Section 13

SOURCES OF INFORMATION

Review the grantee's Title VI equity analysis procedures to determine that all requirements have been met. Review the equity analysis, public participation, location evaluation, and other documents related to siting decisions. If there is more than one facility to which this requirement applies, review each facility.

DETERMINATION

The grantee is deficient if an equity analysis was not performed or was performed but all the determination requirements have not been met. The grantee is deficient if a disparate impact was determined as a result of the analysis and an inadequate justification was provided for the site location. (**DEFICIENCY CODE 293:** Failure to comply with Title VI determination of site or location of facilities requirements)

SUGGESTED CORRECTIVE ACTION

For facilities still in the process of siting, direct the grantee to meet Title VI requirements before making a siting decision.

For facilities that were sited after October 1, 2012 and the analysis was not completed or is determined to be inadequate based upon the criteria, consult the FTA RCRO to discuss the corrective action.

Requirements to Set Systemwide Service Standards and Policies

21. *Are the systemwide service standards provided for the Title VI plan the same as the overall standards set by the grantee's overall operations department?*
22. *How were the standards developed?*
23. *What public participation occurred in the development of the standards and policies?*
24. *Were the systemwide service standards and policies approved by the board or governing body?*

EXPLANATION

Standards and policies must be set for each mode. These standards and policies must be approved by the grantee's governing body. These system-wide service standards differ from standards set by the American Public Transit Association (APTA) Standards Development Program and other standards development organizations (SDOs), in that they are set by individual transit providers and apply agency-wide rather than industrywide. A grantee's standards must not be different for purposes of the Title VI plan submission from the overall standards typically set by a transit agency's operations staff. Because of this, coordination with a grantee's operations unit is important in standards development.

Public participation permits the agency an opportunity to receive feedback and develop standards that are realistic. If in its approved Title VI plan, the grantee notes public participation as being part of its development of systemwide standards and policies, then it must conduct public participation for these activities. If a grantee's standards are not met or are unrealistic, the lack of public participation will be a factor in assessing the severity of the issue.

REFERENCES

49 CFR 21.9(b); Appendix C
FTA C 4702.1B, Ch. IV, Section 4

SOURCES OF INFORMATION

Review meeting minutes of the governing board's approval of the Title VI standards and policies. Review minutes from public meetings held in the development of the policies and standards. Review information from the grantee's transit operations to verify that standards in the Title VI plan do not differ from the grantee's overall operational standards. Interview operations personnel and review operational performance reports.

DETERMINATION

The grantee is deficient if it cannot document that system-wide service standards and policies in its Title VI program submission are board approved. The development of the grantee's policies and standards should include public participation. The grantee is deficient if its Title VI systemwide standards and policies differ from its operational standards and policies. (**DEFICIENCY CODE 246:** Title VI service standards and/or policies lacking)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO evidence of board or governing body approval and documentation of public participation in the development of the systemwide service standard and policies.

Requirements to Collect and Report Demographic Data

The following address program specific requirements for grantees that meet the threshold of 50 or more fixed-route vehicles in peak service and located in a UZA of 200,000 or more in population.

25. *Describe the process used to collect, analyze, and prepare demographic maps and charts. Is the process documented?*
26. *What data sources are used to prepare the maps and demographic data?*

- 27.** *Do the maps clearly indicate areas where the percentage of the total minority population exceeds the average minority population for the services as a whole?*
- 28.** *Describe the timeframe and process used to prepare and conduct the survey or make the necessary survey updates. Is there a formal written plan? Is the grantee conducting surveys at regular intervals?*

EXPLANATION

FTA C 4702.1B provides guidance on the preparation of maps, data collection, and the incorporation of information from customer surveys. The grantee should have a process in place to guide the regular collection and analysis of data. Demographic maps and charts should be updated at a minimum after each decennial census. American Community Survey (ACS) data can be used between decennial censuses. Demographic maps and charts should be updated prior to proposed service reductions or eliminations. The process should describe the type and frequency of the data collected and the types of charts and maps the grantee will produce. The procedures should include a base map of the transit provider's service area that overlays Census tract, Census block or block group, traffic analysis zone (TAZ), or other locally available geographic data with transit facilities—including transit routes, fixed guideway alignments, transit stops and stations, depots, maintenance and garage facilities, and administrative buildings—as well as major activity centers or transit trip generators, and major streets and highways.

The demographic maps should indicate areas where the percentage of the total minority population residing in these areas exceeds the average percentage of minority populations for the service area as a whole. Demographic maps shall also depict those Census tracts, blocks, block groups, TAZs, or other geographic zones where the percentage of the total low-income population residing in these areas exceeds the average percentage of low-income populations for the service area as a whole.

Grantees are required to have a standard process in place to collect information on the race, color, national origin, English proficiency, language spoken at home, household income and travel patterns of their riders using customer surveys. Surveys should be completed in regular intervals or in accordance with the grantee's processes, such as prior to a service or fare change. Transit providers shall use this information to develop a demographic profile comparing minority riders and non-minority riders, and trips taken by minority riders and non-minority riders. Demographic information shall also be collected on fare usage by fare type amongst minority users and low-income users, in order to assist with fare equity analyses. The demographic information shall be displayed in tabular format.

Note that FTA C 4702.1B requires grantees to have conducted a new survey by December 2013 if the previous survey is more than five years old.

REFERENCES

49 CFR 21.9(b)
FTA C 4702.1B, Ch. IV, Section 5

SOURCES OF INFORMATION

Review the grantee's procedures for the collection and analysis of demographic and survey data. Review the information prepared in the form of charts, maps, tables, and customer survey results. Review information on site to see if maps were updated prior to proposed service reductions or eliminations.

DETERMINATION

The grantee is deficient if it cannot provide maps and overlays, the results of customer surveys, or results of a locally developed method in accordance with the requirements of the applicable circular. The grantee is deficient if it has made major service changes, but has not updated its maps or charts. (**DEFICIENCY CODE 217:** Demographic data lacking)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a process for the collection and analysis of demographic information including documentation of updated maps and overlays, the results of customer surveys, or additional information in accordance with the applicable requirements of the circular.

Requirement to Monitor Transit Service

The following address program specific requirements for grantees that meet the threshold of 50 or more fixed-route vehicles in peak service and located in a UZA of 200,000 or more in population.

29. *Describe the process for implementing the monitoring of the Title VI elements of the transit program. Is the process documented?*

30. *What staff positions and department(s) participate in these functions?*

EXPLANATION

The grantee is required to monitor and measure the performance of the transit system relative to the system-wide service standards and policies. The grantee must document the implementation of the performance monitoring. The current Title VI program should assess whether the grantee is implementing its procedures in regards to:

- selecting the minority transit routes;
- assessing performance of each minority route and non-minority route;
- comparing transit service observed to the established service policies and standards;
- analyzing discrepancies and taking steps to reduce such;
- evaluating transit amenities;
- determining whether disparate impacts exist based on the results and any follow-up steps taken to address them; and
- briefing and obtaining approval from the governing body regarding the results of the monitoring.
- The procedures for monitoring transit service should identify the staff responsible for monitoring, their roles and responsibilities within the agency.

REFERENCES

49 CFR 21.9(b) and Appendix C
FTA C 4702.1B, Ch. IV, Section 6

SOURCES OF INFORMATION

Review the monitoring procedures in the Title VI program submission. Review documentation that service monitoring procedures have been implemented and conducted by responsible staff within the past three years.

DETERMINATION

The grantee is deficient if it has no acceptable procedures for monitoring service, cannot document that it has monitored service within the past three years, or, if applicable, has not met the updated requirements of FTA C 4702.1B. (**DEFICIENCY CODE 111:** No procedure for monitoring level or quality of service)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO the results of an updated monitoring program, consistent with the procedures in FTA C 4702.1B.

Requirement to Evaluate Service and Fare Changes

The following address program specific requirements for grantees that meet the threshold of 50 or more fixed-route vehicles in peak service and located in a UZA of 200,000 or more in population.

31. *Does the agency have internal, board-approved fare and service change procedures? Are Title VI considerations included in these procedures?*
32. *Please describe the process implemented for initiating and completing fare and/or service change equity analysis. (Reviewers are to refer to Exhibit 1 – Fare and Service Worksheet for this section.)*
33. *Is there evidence that the changes were approved by the board or other governing entity?*

EXPLANATION

As discussed in the baseline review, the grantee is required to evaluate major service change(s) and any fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a disparate impact on minority and a disproportionate burden on low-income riders. Procedures for this evaluation should be documented and included in the Title VI plan. The grantee must obtain board approval of these evaluation procedures.

REFERENCES

49 CFR 21.5(b)(2); (b)(7); and Appendix C
US DOT Order 5610.2
FTA C 4702.1B, Ch. IV, Section 7
Fare and Service Equity Guidance

SOURCES OF INFORMATION

Review information provided for the baseline of the Comprehensive Review. In particular, focus on response to questions 15-18. Review the Title VI program to determine what documentation has been submitted on the process for conducting fare and equity analyses. Review board meeting minutes to verify board approval and inclusion of Title VI regulations in the policy for fare and service changes.

Verify that the procedures address the methods to engage the public in developing its policies.

DETERMINATION

The grantee is deficient if it has not developed written procedures for conducting fare and service equity analyses. The grantee is also deficient if the developed definitions and procedures are not board approved. (**DEFICIENCY CODE 304:** Inadequate written procedures)

The grantee is deficient if the process for implementing a fare and/or service change is not adequate to evaluate if there will be any disproportionately high and adverse effects on minority and low-income riders. The grantee is deficient if it has not established a methodology and/or conducted an analysis of any service changes, under the pretense that none of the changes constituted “major service changes” for the purpose of Title VI. (**DEFICIENCY CODE 230:** Impact of fare and/or service changes not adequately examined)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a document that fully describes the process for the analysis of impacts of future fare and major service changes. A copy of the board approval of these procedures should also be provided.

PAGE INTENTIONALLY LEFT BLANK

7. PROCUREMENT ENHANCED REVIEW MODULE

BASIC REQUIREMENT

Grantees 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 49 CFR Part 18, (repealed effective December 26, 2014), 2 CFR Part 1201, incorporating 2 CFR Part 200 (specifically Sections 200.317-200.326), and Federal Transit Administration (FTA) Circular 4220.1F, "Third Party Contracting Guidance."

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a Procurement enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by FTA. The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office, program office (if applicable) and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Procurement Policies and Procedures*
2. *Management of the Procurement Functions*
3. *Third-Party Contracts*
4. *Expanded Procurement File Review*

APPLICABILITY OF REQUIREMENTS

Where 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.

When FTA assistance for preventive maintenance is being applied as a percentage of total maintenance, all preventive maintenance contracts must comply with FTA Circular 4220.1F.

Please note that FTA Circular 4220.1F will be updated in fiscal year (FY) 2017 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 controls.

A grantee that is a state agency may follow its own procurement procedures but, at a minimum, must comply with the following statutory requirements:

- Provide full and open competition
- Include all applicable FTA clauses
- Comply with the Brooks Act if the state does not have a statute governing the procurement of architectural and engineering (A&E) services
- Prohibit geographic preferences

- Comply with the five- and seven- year limitation on purchases of rolling stock or replacement parts
- Award only to responsible contractors
- Comply with Buy America
- Comply with debarment and suspension
- Comply with restrictions on lobbying

Instrumentalities of the state are considered state agencies.

Procurements of real property consisting of land and any existing buildings or structures on that land are generally beyond the scope of FTA Circular 4220.1F. Real property acquisition is addressed in 49 CFR Part 24, "Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs." For further guidance, see also FTA Circular 5010.1D, "Grant Management Requirements."

Note on the *Best Practices Procurement Manual* - The *Best Practices Procurement Manual* is a good resource for grantees to use in conducting FTA-assisted procurements. However, it is only a guidance document and is not the source of any FTA requirements. Grantees may refer to the manual as a guide for the procurement process, but should not rely on it for ensuring that FTA requirements are met. FTA requirements are found in the following sources: U.S. Code and Public Laws, Code of Federal Regulations, FTA Circulars, Dear Colleague Letters, and the FTA Master Agreement.

COMPLIANCE

Failure to comply with FTA procurement requirements, including in other procurement-related areas, such as Buy America and DBE, may result in FTA withdrawing federal funds from the contract and/or project.

When the reviewer identifies a procurement exceeding \$100,000 that was not awarded in compliance with Federal requirements, advise the FTA regional counsel. In all cases, direct the grantee to cease any practice that violates FTA requirements.

REFERENCES

FY 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include hyperlinks to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new statutes, laws, regulations, circulars, etc., will only be applied to activities conducted after the effective date of those related requirements.

Note: The old Common Grant Rule, 49 CFR parts 18 and 19, was superseded by 2 CFR parts 200 and 1201, effective December 26, 2014. The Super Circular consolidates eight existing grant-related circulars into one set of uniform regulations located in Title 2 of the CFR.

2 CFR Part 200 applies to the administration of all Federal grants, cooperative agreements, and amendments as of December 26, 2014. Procurements under grants and cooperative agreements executed prior to December 26, 2014 continue to be subject to 49 CFR Parts 18 and 19 as in effect on the date of such grants or agreements.

2 CFR Part 200 contains certain notable changes to FTA grants management. The Super Circular increases the simplified acquisition threshold to \$150,000 (per 2 CFR 200.88) to bring it in alignment with the Federal Acquisition Regulation (FAR). This new threshold applies to procurements funded by grants issued on or after December 26, 2014. Procurements funded by grants issued on or before December 25, 2014, are subject to the previous simplified acquisition threshold of \$100,000 (per 18 CFR 36(d)). The simplified acquisition threshold is periodically adjusted for inflation. The micro-purchase threshold, which also is adjusted periodically for inflation, increased from \$3,000 to \$3,500 effective October 1, 2015.

Similarly, the Buy America public interest waiver, which exempts "small purchases" from Buy America regulations, increased to \$150,000 per the adoption of 2 CFR Part 200. Effective October 1, 2015, the small purchase waiver was

incorporated into the statute in 49 USC 5323(j)(13), and now applies to purchases of not more than \$150,000 and will not automatically increase when the simplified acquisition threshold increases. Per the statute, the small purchase waiver applies to *purchases* of not more than \$150,000. The waiver is based on the total cost of the contract, including labor and options, and may be used for purchases of not more than \$150,000 even if the total cost of the project is in excess of \$150,000.

On December 4, 2015, the Fixing America's Surface Transportation (FAST) Act was signed, reauthorizing surface transportation programs through Fiscal Year 2020. Section 3019 of the FAST Act included several innovative procurement provisions, including permitting grantees to purchase off of another state's schedule. It also provides for capital leasing of rolling stock and related equipment, including leasing certain zero emission vehicle components. The FAST ACT increased the domestic percentage content requirements for rolling stock through incremental increases. By FY 2020, the Buy America requirement for rolling stock will increase to more than 70 percent.

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. Fixing America's Surface Transportation (FAST) Act, Pub. Law No. 114-94.
3. Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. Law No. 112-141
4. 2 CFR Part 1201, incorporating 2 CFR Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
5. 49 CFR 18.36, "Procurement"
6. FTA Circular 4220.1F, "Third-Party Contracting Guidance"
7. FTA Circular 5010.1D, "Grant Management Requirements"
8. FTA Circular 9030.1E, "Urbanized Area Formula Program: Program Guidance and Grant Application Instructions"
9. FTA Master Agreement

Emergency Relief Program

10. MAP-21 Section 20017
11. 49 CFR Part 602, "Emergency Relief"
12. Emergency Relief Program Frequently Asked Questions (FAQs)

Buy America

13. 49 USC 5323(j), as amended by the FAST Act
14. 49 CFR Part 661, "Buy America Requirements"
15. 49 CFR Part 663, "Pre-Award and Post-Delivery Audits of Rolling Stock Purchases"
16. FTA September 16, 2016, Chief Counsel issued a Dear Colleague Letter regarding the small purchase waiver

Federal Motor Vehicle Safety Standards

17. 49 CFR Part 571, "Federal Motor Vehicle Safety Standards"

Bus Testing

18. 49 CFR Part 665, "Bus Testing"

Suspension/Debarment

19. 2 CFR Part 180, "OMB Guidelines to Agencies on Government-wide Debarment and Suspension"
20. 2 CFR Part 180, "Nonprocurement Suspension and Debarment"

Lobbying

21. 49 CFR Part 20, "New Restrictions on Lobbying"

USEFUL WEBLINKS

FTA's *Best Practice Procurement Manual*

FTA Procurement Frequently Asked Questions

FTA Emergency Relief Fact Sheet

FTA Buy America Website

Bus Testing Website

National RTAP ProcurementPRO

US DOT and FTA Buy America Home Pages

System for Award Management

Enhanced Review Triggers

- The grantee had significant and/or repeat procurement deficiencies in a prior review
- The grantee was slow to implement prior corrective actions related to procurement deficiencies
- There are ongoing concerns that previously implemented corrective actions are not being maintained
- Procurement issues have been identified in FTA's Oversight Assessment Tool (OAT)
- The grantee does not demonstrate it has adequate procurement expertise or organizational structure
- Procurement policies and procedures are out of date or incomplete
- The grantee has undertaken or is undertaking a project or procurement of the type and complexity it has not managed before, or that necessitates additional emphasis
- The grantee has had significant change orders to FTA-funded procurements
- The grantee has had bid protests
- The grantee has submitted Buy America waiver requests, or there have been Buy America concerns

Procurement Policies and Procedures

1. *Do the grantee's procurement policies and procedures include the elements noted in FTA C 4220.1F?*
2. *In addition to an overall procurement policy document, what other additional documents (such as procedures, checklists, etc.) guide the procurement actions of the grantee?*
3. *How are those responsible for or authorized to conduct procurement actions made aware of changes to procurement policies?*

EXPLANATION

Grantees 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 49 CFR Part 18, (repealed effective December 26, 2014), 2 CFR Part 1201, incorporating 2 CFR Part 200 (specifically Sections 200.317-200.326), and FTA C. 4220.1F, "Third Party Contracting Guidance."

In addition to a formal procurement 'policy' document, grantees often have additional or supplemental written guidance and/or procedures that guide their procurement actions. When procurement policies and procedures are revised, it is important for the grantee to ensure that those responsible for and authorized to conduct procurement actions are made aware of changes. It has become more common for grantees to maintain the most current version of their procurement policies in an electronic format so that those with procurement responsibilities maintain access to the most recent documentation.

REFERENCES

2 CFR 200.318(a)
49 CFR 18.36(b)
FTA C 4220.1F, Ch. III, Section 3.a.

SOURCES OF INFORMATION

Review the procurement policies and procedures gathered as a part of the baseline review against the policy checklist provided in the ERM worksheets. Review any additional guidance or procedures documents provided by the grantee.

Review how the policies are updated and how grantee staff responsible for and authorized to undertake procurement actions are kept apprised of any changes to procurement policies.

DETERMINATION

The grantee is deficient if its written procurement policies and/or procedures are not current or complete. (**DEFICIENCY CODE 740:** Procurement policies not current/complete)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office revised procurement procedures and documentation that those responsible for, or authorized to conduct, procurement actions have been made aware of revisions.

Management of the Procurement Functions

4. *How does the grantee determine procurement staffing levels? How often does the grantee experience procurement personnel turnover? Has the grantee had problems filling vacant positions? If so, why?*
5. *Describe the grantees specific job descriptions and requirements for procurement positions.*
6. *What office/department is responsible for developing, controlling, revising, and communicating procurement policies and procedures? What staff level is responsible for reviewing and approving the procedures? Is final approval of these policies and procedures required by the grantee's governing entity?*
7. *How is procurement staff kept informed of procurement policies and procedures? How does the grantee ensure procurement staff awareness of the Common Grant Rule, the Super Circular, FTA C. 4220.1F, and other Federal procurement requirements?*

EXPLANATION

FTA recipients are obligated to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rule and the Super Circular. As such, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently, in compliance with applicable Federal, State, and local requirements. 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.

Many FTA recipients assign contracting duties to technical, financial or management personnel. The way in which the agency's procurement function is organized and staffed, along with the experience of procurement staff, should be commensurate with the agency's size and complexity, as well as the type and complexity of procurements that it conducts.

The way in which the procurement function is organized may result in procurement deficiencies. For example, if procurements are done by a department that primarily conducts non-FTA procurements, it could be a contributing factor to certain deficiencies.

REFERENCES

FTA C 4220.1F, Ch. III, Section 3

SOURCES OF INFORMATION

Review the organizational information provided in response to the baseline review package. During the baseline procurement sampling and the expanded sampling of the ERM, determine if the way that the procurement function is organized contributes to deficiencies.

DETERMINATION

The grantee is deficient if it can be determined through review of expanded procurement files, organizational structure, and interviews with staff that the grantee does not have adequate capacity to comply with applicable Federal, state, and local procurement requirements. (**DEFICIENCY CODE 178:** Insufficient procurement resources)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office an implementation plan for improved management of the procurement function.

8. *How does the grantee develop and execute inter-local or interagency agreements that involve FTA funds? How is this managed/overseen?*
9. *How does the grantee ensure compliance with FTA requirements in cases of joint or subrecipient procurements?*

EXPLANATION

For recipients and subrecipients that are not states, FTA C. 4220.1F applies to each subrecipient that enters into contracts with other parties financed with FTA assistance.

Each State and its governmental subrecipients may use State procurement procedures for their third party contracts. Only those provisions of FTA C. 4220.1F and the sections of the Common Grant Rule for governmental recipients, 49 CFR Part 18 (superseded by the Super Circular), applicable to the State apply to procurements by the State's governmental subrecipients. In contrast, the provisions of FTA C. 4220.1F and the Common Grant Rule for non-governmental recipient, 49 CFR Part 19 (superseded by the Super Circular), apply to a private non-profit subrecipient of a State.

FTA uses the term "joint procurement" to mean a method of contracting in which two or more purchasers agree from the outset to use a single solicitation document and enter into a single contract with a vendor for delivery of property or services in a fixed quantity, even if expressed as a total minimum and total maximum. Unlike a State or local government purchasing schedule, a joint procurement is not drafted for the purpose of accommodating the needs of other parties that may later want to participate in the benefits of that contract.

FTA encourages recipients to procure goods and services jointly with other recipients to obtain better pricing through larger purchases. Joint procurements offer the advantage of being able to obtain goods and services that may match each participating recipient's requirements better than those likely to be available through an assignment of another recipient's contract rights. When obtaining goods or services in this manner, recipients participating in the joint procurement must ensure compliance with all applicable FTA and other Federal requirements, and include all required clauses and certifications in the joint solicitation and contract documents.

REFERENCES

FTA C 4220.1F, Ch. II, Section 2, Ch. III, Section 3, and Ch. V, Section 3

SOURCES OF INFORMATION

Review the subrecipient information provided for the baseline review. Review an expanded sample of subrecipient procurements in accordance with records sampling procedures to ensure that they contain FTA third-party procurement requirements. Review additional evidence of how the grantee monitors adherence to the requirements. Review records of joint procurements.

DETERMINATION

The grantee is deficient if subrecipient agreements or contracts do not include procurement requirements. The grantee is deficient if it is not monitoring the contractor or subrecipient. (**DEFICIENCY CODE 255:** Subrecipient's and/or third-party contractor's procurement process deficient)

The grantee is deficient if it is participating in a joint procurement, but does not ensure compliance with all applicable FTA and other Federal requirements, including required clauses and certifications in the joint solicitation and contract documents. (**DEFICIENCY CODE 669:** Oversight of joint procurement process deficient)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with documentation that it has changed contract language to include procurement requirements when a new subrecipient agreement is executed.

Direct the grantee to provide the FTA regional office with documentation that it has implemented a procurement monitoring program.

- 10. How do procurement personnel disclose potential conflicts of interest? Is the process documented? What conflict of interest issues have been identified and how have they been mitigated?*
- 11. How is the policy regarding the acceptance of gifts, gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements communicated within the organization? How is it distributed to the governing board or council members?*
- 12. Are dollar limits established? If so what are they?*
- 13. What action may be taken if these policies are violated?*
- 14. Have there been violations? If yes, how have they been dealt with?*

EXPLANATION

Grantees 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. To be effective, those to whom these policies apply must be aware of them and understand how they are implemented.

The grantee should have procedures for addressing described violations of the policies. Violations of the policies could have implications for related procurement actions.

REFERENCES

2 CFR 200.318(c)

49 CFR 18.36(b)

FTA C 4220.1F, Ch. III, Section 1

SOURCES OF INFORMATION

Review information on standards of conduct policies provided for the baseline review. Interview identified individuals to whom these policies apply to determine how they are made aware of the policies and how they are reinforced by the grantee. If violations of the policies have occurred, review any documentation on the nature of the violation and any related sanctions and procurement actions.

DETERMINATION

The grantee may be deficient if it is determined that a significant number of applicable procurement-related staff is unaware of the grantee's policies regarding standards of conduct; or if there have been violations of the policies with no enforcement activities. If procurement actions were impacted by any policy violations, consult with the FTA regional office. (**DEFICIENCY CODE 557**: Insufficient implementation of standards of conduct policy)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA regional office documentation of distribution of or implementation of its standards of conduct policies. For any procurements that were impacted, direct the grantee to provide any additional information required by the FTA regional office.

- 15. Describe the grantee's procedures for settling contract issues and disputes.*
- 16. How are contract performance issues and disputes settled?*
- 17. How are contractor violations of Federal law or regulations handled?*

EXPLANATION

Grantees are required to maintain a contract administration system that ensures contractors perform in accordance with the terms, conditions, and specifications contained in their contracts or purchase orders. The Common Grant Rule assigns responsibility to the recipient for resolving all contractual and administrative issues arising out of their third party procurements, including source evaluation and selection, and protests of awards, disputes, and claims using good administrative practices and sound business judgment. Neither FTA nor the Common Grant Rule relieves the recipient of any responsibility under its contracts to resolve disagreements that may arise in the course of contract formation or contract administration.

REFERENCE

2 CFR 200.318(k)
49 CFR 18.36 (b)(2)
FTA C 4220.1F, Ch. III, Section 3 and Ch. VII

SOURCES OF INFORMATION

Review the FTA's Electronic Award and Management System (EAMS) milestone progress reports and information provided by the grantee to determine if there were any contracts that were noted as having contract disputes. Review information on the resolution of disputes. Review information provided for the baseline review on the grantee's contract administration system. Select a sample of contracts to determine if the contract administration procedures are being implemented as described. For any procurements for which enforcement of contract administration remedies was necessary, determine how procedures were applied.

Interview procurement personnel and others responsible for contract administration and dispute resolution to determine if they are aware of the grantee's contract administration policies and their role in implementation.

DETERMINATION

The grantee is deficient if it has not implemented its contract administration procedures. (**DEFICIENCY CODE 558:** Contract administration system not implemented)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with documentation that it has implemented its contract administration system. Direct the grantee to revise its contract administration system.

18. If the grantee indicated that it uses pre-qualification, how are prequalification lists used?

19. Is the list current? How is it updated and how often? How is fair and open competition ensured?

EXPLANATION

If a grantee 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. Grantees must permit potential bidders or offerors to qualify during the solicitation period (from the issuance of the solicitation to its closing date). Used improperly, prequalification can restrict competition.

REFERENCES

2 CFR 200.319(d)
49 CFR 18.36(c)
FTA C 4220.1F, Ch. VI, Section 1.c.

SOURCES OF INFORMATION

Review information provided in response to the baseline review. During the ERM, examine prequalification lists in-depth and procurements for which prequalification has been used to determine the process utilized.

DETERMINATION

The grantee is deficient if its list of prequalified firms is out of date, to the extent that full and open competition is impeded. (**DEFICIENCY CODE 181:** No adequate prequalification criteria)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide the FTA regional office with documentation that it has revised its procurement procedures to include a process for updating its prequalification lists to allow for full and open competition.

Expanded Procurement File Review

As part of the ERM, the reviewer will review an expanded list of procurement files (in addition to those typically reviewed in the baseline). The reviewer will select those files based on information from responses to the baseline review and input from the FTA regional office. If a PSR has been conducted, care should be taken to select procurements after the dates that corrective actions were implemented.

In addition to the checklists for the baseline review, the reviewer will use supplemental checklists to record information on procurements as noted below:

A&E Procurements – Exhibit 2

Sealed Bid – Exhibit 3

Competitive Proposals (RFP) – Exhibit 4

Non-Competitive Procurements (Sole Source) – Exhibit 5

Supplement: Pre-Award and Post-Delivery Review Requirements and Checklist (Rail) – Exhibit 6

Pre-Award and Post-Delivery Review Requirements and Checklist (Bus) – Exhibit 7

Piggyback – Exhibit 8

PAGE INTENTIONALLY LEFT BLANK

8. DISADVANTAGED BUSINESS ENTERPRISE (DBE) ENHANCED REVIEW MODULE

BASIC REQUIREMENT

The grantee must comply with 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U. S. Department of Transportation (US DOT)-assisted contracts. Grantees also must create a level playing field on which DBEs can compete fairly for US DOT-assisted contracts.

USE OF THIS MODULE

This enhanced review module (ERM) questionnaire presents recommended questions for a DBE enhanced review. Based on the scope of the approved ERM, all or a selection of the sections of this module will be conducted. The actual questions asked and the items sampled and observations made will be determined during the scoping meeting. The regional office and/or headquarters may ask the reviewer to develop a unique scope of work for the ERM. Additional questions may be asked and additional sampling and observations may be performed as directed by the Federal Transit Administration (FTA). The scope, questionnaire, sampling, and observations will be subject to final review and approval by the respective regional FTA office, program office (if applicable), and the Office of Transit Safety and Oversight (TSO).

AREAS TO BE EXAMINED

1. *Specialty Review Follow-up*
2. *Management of the DBE Program*
3. *Project-Specific Goals*
4. *Certification*
5. *Overconcentration*
6. *Goal Setting and Reporting*
7. *Race-Neutral Measures*
8. *Good Faith Efforts*
9. *Required Contract Provisions*
10. *Record Keeping, Monitoring, and Enforcement*

REFERENCES

Fiscal year (FY) 2017 Comprehensive Reviews are being conducted during a period when there have been recent revisions to FTA circulars, as well as other requirements and guidance documents. References included in this document primarily include hyperlinks to the most recent version of source documents. However, as the review period spans multiple years, compliance with any new or revised laws, regulations, circulars, etc., will only be applied to activities conducted after the effective date of those related requirements.

1. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
2. 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments"

3. 49 CFR Part 26, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs"

USEFUL WEBLINKS

FTA DBE Website

Official Questions and Answers for DBE Program Regulation (49 CFR 26)

Enhanced Review Triggers

- The prior Comprehensive Review had deficiencies in the DBE area
- A DBE Compliance Review, Unified Certification Program (UCP) Review, or Procurement System Review (PSR) identified weaknesses or has open deficiencies related to DBE
- The grantee has entered into a DBE conciliation agreement with FTA
- There are recent or active DBE fraud investigations, lawsuits, or settlement activities with the grantee's FTA-funded projects
- DBE issues have been identified in FTA's grantee Oversight Assessment Tool (OAT)
- There are complaints or protests in this area against the grantee
- The grantee does not have a DBE program on file with FTA and the amount of FTA funding indicates that the grantee meets the threshold for a DBE program
- The grantee's submission of its three-year goal was late or incomplete
- The grantee's semi-annual reports have been late or the FTA regional civil rights officer (RCRO) has identified issues with submissions
- The grantee is a certifying entity in its state's UCP and certification issues have been identified
- The grantee does not demonstrate it has adequate expertise or resources to implement the program
- The grantee's goal achievement for the past three completed fiscal years did not meet the applicable overall annual goal.
- The grantee did not achieve its overall goal for FY 2015 (and/or FY 2016 if completed) and did not complete a shortfall analysis
- The grantee is one of the top 50 grantees, did not achieve its overall goal for FY 2015 (and/or FY 2016 if completed) and the shortfall analysis was not submitted, was submitted late, or was incomplete
- The grantee is one of the top 50 grantees, and has received an FTA Shortfall Corrective Action letter for the most recently completed fiscal year

Management of the DBE Program

1. *Based on responses to the baseline review, how does the grantee demonstrate that the personnel and departments identified as being integral to the implementation of its DBE plan actually perform those roles?*
2. *If grantee is a city, county, or state, how does the DBE Liaison Officer (DBELO) interface with staff from applicable offices regarding the DBE program, DBE complaints, and/or DBE bid protests?*
3. *If grantee is a state DOT, how does the DBELO interface with its subrecipients?*

EXPLANATION

As discussed in the baseline review, US DOT, in its Notice of Proposed Rulemaking of May 2010, called attention to the last section of 49 CFR 26.25, which requires that the recipient have adequate staff to administer the DBE program.

It also noted that, "In times of budget stringency, it may be tempting to cut back on staff and other resources needed for certification, program oversight, and other key DBE program functions. This sentence emphasizes that it is a requirement of Federal law that the DBE program be adequately staffed to ensure compliance with Part 26."

To be implemented correctly and effectively, the DBE program requires integration of several grantee functions, such as procurement, financial, legal, contract administration, public relations, and project management. Many of the strategies included in the DBE program plan are to be implemented by functions in the agency other than the DBE, or similar, office. In addition, elements of the DBE program should be reflected in other agency policies. For instance, the small business element should be reflected in procurement policies, and prompt payment and return of retention policies described in the DBE program plan should be reflected in procurement, project management, and payment policies. Additionally, enforcement actions described in the DBE program plan should be understood by contract administration and legal offices that may have to carry them out.

Special emphasis in this area may be necessary when the grantee is part of a city, county, or state government, especially when those entities are also operating a local minority- or woman-owned (M/W) business program in addition to a DBE program.

REFERENCES

49 CFR 26.25

SOURCES OF INFORMATION

Review information provided for baseline Comprehensive Review. In particular, focus on responses to Question 19 from the DBE area of the baseline Comprehensive Review.

Interview each of the grantee representatives that are noted as having implementation roles in the DBE program.

DETERMINATION

Analysis of the information and deficiencies from the baseline review and ERM may indicate that the grantee does not have adequate resources to implement the DBE program. A staffing problem or coordination problems among responsible offices could lead to a finding of deficiency. Consult with the FTA RCRO prior to making this deficiency. (**DEFICIENCY CODE 303**: Inadequate staff to administer DBE program)

SUGGESTED CORRECTIVE ACTION

For deficiencies, direct the grantee to submit to the FTA RCRO evidence of corrective actions taken to apply adequate resources to implement the DBE program.

Project-Specific Goals

4. *Has the grantee established a DBE project-specific goal for any FTA-funded project? If so, when did FTA review and concur with the project-specific goal?*
5. *How does the grantee submit its semi-annual Uniform Reports on these projects?*

EXPLANATION

In appropriate cases, FTA may permit or require a grantee to establish a project-specific goal for a particular grant or project. This differs from, and should not be confused with, a DBE contract goal. A project-specific goal covers the entire length of the project to which it applies, and must meet all the substantive and procedural requirements pertaining to the calculation of overall goals.

The project-specific goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project-specific goal. The funds for the project to which the project-specific goal pertains are separated from the base from which the grantee's regular overall goal, applicable to contracts not part of the project covered by a project-specific goal, is calculated. A project-specific goal must be submitted for review at a time determined by FTA.

Separate Uniform Reports are required for any project-specific goal. Achievements for a project-specific goal should not be combined with a grantee's reporting for its overall general goal.

REFERENCES

49 CFR 26.45(e)
49 CFR Appendix B

SOURCES OF INFORMATION

Review information from the FTA regional office and goal submissions and reports on the FTA Electronic Award and Management System (EAMS).

DETERMINATION

The grantee is deficient if it has established a project-specific goal, but did not receive FTA's prior concurrence (**DEFICIENCY CODE 784**: DBE project-specific goal not approved)

The grantee is deficient if it has not submitted Uniform Reports semi-annually for a project-specific goal, has not submitted them timely, or is not using the electronic module in FTA EAMS (**DEFICIENCY CODE 786**: DBE uniform reports for project-specific goals not submitted semi-annually)

The grantee is deficient if its Uniform Reports for a project-specific goal do not include the applicable FTA-funded contracting activity undertaken or if achievements on project covered by a project-specific goal have been included in the grantee's overall reports. (**DEFICIENCY CODE 787**: DBE project level uniform reports do not include required information)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit the project-specific goal to the FTA RCRO for approval.

Direct the grantee to submit the project-level Uniform Report of DBE Awards or Commitments and Payments semi-annually (due June 1 and December 1) in the FTA EAMS, along with an implemented procedure to ensure future reports are submitted on time.

Direct the grantee to submit to the FTA RCRO procedures for including all applicable FTA-funded contracting activity in its project-level reports. This may include submission of supporting documentation demonstrating how procurement records reconcile with DBE reports.

Certification

6. *What certifying authorities make up the grantee's state's UCP? How is certification responsibility divided among the UCP certifying members?*
7. *How often does the UCP convene as a group to discuss certification processes, changes to procedures, or issues?*

EXPLANATION

The regulation requires that all US DOT grantees participate in a UCP within their state. Even if a grantee does not certify DBEs, it is required to be signatory to its state's UCP agreement. Any grantee that meets the minimum threshold requirements for a DBE program must ensure that only firms certified as eligible DBEs, consistent with the standards of Subpart D, participate as DBEs in their program.

REFERENCES

49 CFR 26.81

SOURCES OF INFORMATION

Review information on the grantee's website and the state's UCP about DBE certification in the state. Review the UCP's memorandum of understanding (or similar document) describing how the UCP operates. Review available records of UCP meetings or correspondence to certifying and non-certifying members.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

8. *What is the UCP's process to remove a firm from the UCP directory? Are non-certifying authorities contacted?*

EXPLANATION

It is important that there is a mechanism for all grantees within a UCP to be made aware of a firm's eligibility removal. When a grantee removes a firm's eligibility, the following counting rules apply:

- (1) When a prime contractor has made a commitment to use the ineligible firm, or a grantee has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before the decertification notice is issued, the ineligible firm does not count toward the contract goal or overall goal. The prime contractor must then meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
- (2) If a prime contractor has executed a subcontract with the firm before the firm has been notified of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where a grantee has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the grantee issued the notice of its ineligibility shall not count toward the grantee's overall goal, but may count toward the contract goal.
- (3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the grantee may continue to count its participation on that contract toward overall and contract goals.

REFERENCES

49 CFR 26.61-26.91

SOURCES OF INFORMATION

Review information (e.g., files, correspondence, records of hearings, UCP directory changes) on DBEs that were decertified (i.e. found to be no longer eligible).

DETERMINATION

The grantee is deficient if it has decertified DBEs but has not followed the appropriate procedures as defined in 49 CFR 26.87. (**DEFICIENCY CODE 345:** DBE certifications not adequate)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for correct decertification processes.

9. *Does the grantee ensure that it or another representative of the UCP reviews the US DOT Departmental Office of Civil Rights (DOCR) DBE Appeals and Denials website to determine whether any firm that is applying for certification or that has already been certified by their UCP has been denied?*

EXPLANATION

UCPs are required to check the US DOT Departmental Office of Civil Rights (DOCR) Denials website at least once every month to determine whether any applying firm or one that was already certified by the UCP is on the list.

REFERENCES

49 CFR 26.31 and 26.81

49 CFR 26.31 and 26.85(f)(2) US DOT Departmental Office of Civil Rights Appeals and Denials

SOURCES OF INFORMATION

Review any documentation that the DOCR database is being checked each month.

DETERMINATION

The grantee is deficient if it does not check the DOCR website monthly. (**DEFICIENCY CODE 785:** DOCR website not checked for denials)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to provide procedures for ensuring that the UCP is checking the DOCR website monthly for certification denials.

Overconcentration

10. How and how often does the grantee perform analyses to determine if overconcentration exists?

11. What steps are implemented to mitigate overconcentration?

EXPLANATION

If grantees determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, they must devise appropriate measures to address this overconcentration.

These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which it has been determined that non-DBEs are unduly burdened. Grantees may also consider varying their use of contract goals, to the extent consistent with 49 CFR 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

Grantees must obtain the approval of the concerned US DOT operating administration for determinations of overconcentration and the measures devised to address it. Once approved, the measures become part of a grantee's DBE program.

REFERENCES

49 CFR 26.33

SOURCES OF INFORMATION

Review information provided for the baseline Comprehensive Review. In particular, focus on how overconcentration is addressed in the grantee's DBE program plan.

In order to determine if overconcentration exists, grantees should have procedures in place to analyze awards to DBEs and the overall impact on non-DBEs that perform in those work areas.

DETERMINATION

The grantee is deficient if it has identified overconcentration, but has not taken steps to mitigate it. The grantee is deficient if it has not taken any steps to analyze DBE achievements in order to conduct an overconcentration analysis. (**DEFICIENCY CODE 562:** Overconcentration analysis incomplete)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO steps implemented to mitigate overconcentration, if identified. Direct the grantee to submit to the FTA RCRO steps to analyze DBE achievements in order to conduct an overconcentration analysis.

Goal Setting and Reporting

12. If the grantee did not meet its overall goal in fiscal years 2013, 2014, or 2015, how were corrective steps detailed in its shortfall analysis implemented?

EXPLANATION

As discussed in the baseline review, beginning with reports for FY 2011, if the awards and commitments shown on a grantee'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 grantee 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 and to enable the grantee to fully meet the goal for the new fiscal year

It is important that the corrective steps of the shortfall analysis are specific, address the shortfall that was experienced, and are being implemented.

REFERENCES

49 CFR 26.47

SOURCES OF INFORMATION

Review each corrective action and milestone to determine if the grantee is implementing corrective actions as detailed in its shortfall analysis.

DETERMINATION

The grantee is deficient if it completed a shortfall analysis, but the corrective steps have not been implemented. (**DEFICIENCY CODE 563:** Shortfall analysis or corrective steps inadequate)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO a revised analysis, corrective steps, and/or evidence of implementation of corrective steps. The actions taken to implement the process are to be included in the submission.

13. What is the source of the information included on the Uniform Report of DBE Awards or Commitments? Does the report contain the appropriate information?

EXPLANATION

As discussed in the baseline review, a grantee is required to complete and submit to FTA the Uniform Report of DBE Awards or Commitments and Payments semi-annually in the FTA EAMS.

Beginning with the Uniform Report due June 1, 2015, the reporting format was revised. The report now captures contract and subcontract award information in sections A and B, payments made during the reporting period in a new section C, and payments made on completed contracts in section D. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

In Section A, 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.

In Section B, for the amounts in items 11(A) – 16(F), the grantee is to further break down the DBE data from Section A by total dollar amount and number of contracts going to each ethnic and gender group. This includes all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C) – (D) and 9(C) – (D) of the Uniform Report. The TOTALS value on line 17 should equal the values in 10(C) and (D).

In Section C, the grantee is to include information on contracts that are currently in progress. This information may come from a different source (contract administration) than the information for the previous lines (which often is provided by procurement).

In Section D, for lines 19-21, the grantee is to include information for actual payments on contracts completed during the applicable reporting period. This information may come from a different source (contract administration) than the information for information in Sections A and B (which often is provided by procurement).

REFERENCES

49 CFR 26.11
49 CFR 26 Appendix B

SOURCES OF INFORMATION

Request and examine source documents (i.e. spreadsheets) from the grantee to verify information contained in the last four submitted Uniform Reports. Review the reports in conjunction with the correct reporting form. For example, reports submitted prior to June 1, 2015 will not include the new Section C. Review information provided by the grantee for Questions 16 and 55 from the DBE area of the baseline Comprehensive Review and its most recent Uniform Report submission in the FTA EAMS. Reconcile the spreadsheets or other source information with the Uniform Report submitted in the FTA EAMS to ensure only the Federal share was reported and payments were reported on contracts actually completed during the reporting period.

DETERMINATION

The grantee is deficient if the Uniform report does not include the required information in accordance with Appendix B to 49 CFR Part 26 – Uniform Report of DBE Awards or Commitments and Payments Form (**DEFICIENCY CODE 329:** DBE uniform reports do not include required information)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for completing the Uniform Report in accordance with Appendix B of the DBE regulation. This may include submission of supporting documentation demonstrating how FTA funding portions in awards are taken into account and/or what constitutes a completed contract for reporting purposes.

Race-neutral Measures

14. *What are the specific race-neutral measures used to help meet the overall goal?*

15. *How often does the grantee assess the effectiveness of its race-neutral measures?*

16. *What efforts has the grantee taken to improve its race-neutral measures?*

EXPLANATION

Grantees 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, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

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 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, through print and electronic means, 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

Grantees include information on their race-neutral measures in the DBE program plan. Additionally, in their overall goal submission, grantees 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 grantee 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.

REFERENCES

49 CFR 26.51

SOURCES OF INFORMATION

Examine information provided from the baseline review. Review information in DBE reports to see if there has been any noticeable increase in DBE participation. Review efforts by the grantee, including involvement of procurement personnel, to assess the implementation and impact of race-neutral measures.

DETERMINATION

The grantee is deficient if it is not meeting the race-neutral portion of its overall goal and cannot provide documentation of implementing or assessing the measures it described in its goal submission or DBE program plan. (**DEFICIENCY CODE 656:** Inadequate implementation of race-neutral measures)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO an implementation plan for race-neutral measures and evidence that these measures have been implemented and their effectiveness assessed.

Good Faith Efforts

17. *Does the grantee issue its final good faith efforts determination before the contract is awarded?*
18. Is the administrative reconsideration official involved in the process of initially determining whether contract goals are met? How is the administrative reconsideration process implemented?
19. Since the last Comprehensive Review, has the grantee had to implement its administrative reconsideration process?

EXPLANATION

As discussed in the baseline review, not every FTA-funded contract is required to have a DBE goal. However, when a grantee has established a DBE contract goal, the grantee must award the contract only to a firm who makes good faith

efforts to meet the goal. The grantee must determine that a firm has made good faith efforts if the firm does either of the following:

- Documents that it has obtained enough DBE participation to meet the goal; or
- Documents that it made adequate good faith efforts to meet the goal

Good faith efforts include documented steps the bidding/offering firm made **prior to the bid due date** to find DBEs in order to meet the contract goal. This means that the bidder must, in order to be responsible and/or responsive, show that it took all necessary and reasonable steps to achieve a DBE goal. It is up to the grantee to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts.

In solicitations for FTA-assisted contracts for which a contract goal has been established, a grantee must require the award of the contract be conditioned on meeting good faith effort requirements. All bidders are required to submit the following information to the grantee as a matter of responsiveness or responsibility:

- 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/offeree's commitment to use a 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; and
- If the contract goal is not met, evidence of good faith efforts (see Appendix A of 49 CFR Part 26)

The grantee must ensure all information is complete and accurate and adequately documents the bidder's good faith efforts before committing to the performance of a contract with the bidder. If the grantee determines that the apparent successful bidder failed to meet the good faith effort requirement, the grantee must, before awarding the contract, provide the bidder an opportunity for administrative reconsideration. As part of this reconsideration, the bidder must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

In a "design-build" or "turnkey" contracting situation, in which the grantee lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Grantees must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part. Consult with the FTA RCRO on the timing of good faith efforts determinations for design-build contracts.

The decision on reconsideration must be made by an official who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so. This official should be identified in the grantee's DBE program plan. The bidder must have an opportunity to meet in person with the reconsideration official. The grantee is to send a written decision on their reconsideration explaining the basis for finding that the bidder did or did not make adequate good faith efforts to meet the contract DBE goal.

REFERENCES

49 CFR 26.53

Appendix A to 49 CFR Part 26

SOURCES OF INFORMATION

Review solicitation documents with and without DBE contract goals to review good faith efforts language. It should be noted that solicitations without a DBE contract goal should not include good faith efforts requirements. During review of the procurement area, examine up to six awards made to firms that did not meet the DBE contract goal and document the good faith efforts reviews completed by the grantee. Special emphasis should be given when a firm requests reconsideration. Verify that the grantee documented its determination and provided a written explanation to the

requesting firm.

DETERMINATION

The grantee is deficient if it awarded or did not award a contract which had a DBE goal without considering good faith efforts. The grantee is deficient if it awarded a contract before determining the sufficiency of a bidder's good faith efforts. The grantee is deficient if it did not offer an opportunity for reconsideration in its solicitation or for a requesting firm bidding on a contract with a DBE goal. (**DEFICIENCY CODE 565:** Inadequate good faith effort consideration)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for good faith effort determination to include the reconsideration process.

Required Contract Provisions

20. *How are DBE nondiscrimination requirements included in prime contracts and in the subcontracts each prime contractor signs? A sample of contracts and subcontracts will be reviewed to determine if they include DBE requirements.*

EXPLANATION

Each contract the grantee signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following nondiscrimination assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Note that with the updated DBE regulation, which became effective November 3, 2014, this clause was revised to the following:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

REFERENCES

49 CFR 26.13

SOURCES OF INFORMATION

Review a sample of procurement files to determine if required provisions are included.

Review the grantee's DBE program plan for the nondiscrimination assurance clause. The assurance must be verbatim in the program plan, prime contracts and subcontracts. During the site visit, examine procurement files for the inclusion of the appropriate nondiscrimination clause. Request a sample of subcontract files for inclusion of flow down DBE requirements. Review grantee's responses to Questions 41-44 from the DBE area of the baseline Comprehensive Review to examine how contracting records are reviewed for compliance with DBE requirements.

DETERMINATION

The grantee is deficient if it has not included the nondiscrimination assurance clause (verbatim) in its program plan, prime contracts and/or has not required the prime to include the clause in their subcontracts. (**DEFICIENCY CODE 566:** Inadequate incorporation of DBE nondiscrimination assurance clause)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for including the correct nondiscrimination clause in contracts and provide evidence of implementation in the next procurement.

Record Keeping, Monitoring, and Enforcement

- 21. If the DBE department outsources monitoring activities, how and when is the DBE department notified of irregularities on ongoing projects?*
- 22. How does the grantee ensure the timely payment of DBEs on projects?*
- 23. How and how often do prime contractors submit DBE participation reports? Who is responsible for reviewing and approving the participation reports?*
- 24. How does the grantee assess successful completion of work for release of retentions, if retention is withheld?*

EXPLANATION

The position of DBELO is frequently a function carried out as a collateral duty to other positions within a transit organization. It may be necessary for the DBE department to outsource contract monitoring activities to other department personnel such as project management, engineering, or contract administration. The individuals in these departments should have knowledge of pertinent regulations regarding the DBE program and coordinate information with the DBE department.

If DBE payment report processing is the direct responsibility of the project manager or someone other than the DBELO or DBE compliance staff, the grantee must demonstrate the procedures in place to coordinate that routine oversight role with the person responsible for implementing the DBE program

A grantee's DBE program must provide appropriate means to enforce prompt payment. The grantee should be able to document implemented processes for monitoring and enforcement to ensure contractor compliance with prompt payment and prompt return of retainage requirements.

The DBE rule requires recipients to mandate and enforce prompt payment of subcontractors, including the payment of retainage from the prime contractor to the subcontractor, as soon as subcontractor's work has been satisfactorily completed (i.e., all the tasks called for in the subcontract have been accomplished and documented as required by the recipient). The prompt payment provision is intended to apply to subcontractors at all tiers.

For purposes of the retainage requirement, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the grantee. When a grantee has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Relying only on complaints or notifications from subcontractors about a prime contractor's failure to comply with prompt payment and retainage requirements is not a sufficient mechanism to enforce the requirements of this section.

Subcontractors are often reluctant to complain about prime contractors for fear that doing so will make it more difficult to get work in the future. This means that grantees may not receive complaints that would alert them to noncompliance by prime contractors. While section 26.29 does not mandate that a grantee employ a specific type of mechanism, grantees are expected to take affirmative steps to monitor and enforce prompt payment and retainage requirements.

REFERENCES

49 CFR 26.29 and 26.37

SOURCES OF INFORMATION

Review the grantee's DBE program and interview DBE department and program support personnel to determine how prompt payment is evaluated and documented. Review grantee responses to Questions 41-50 from the DBE area of the baseline Comprehensive Review to gauge how and who monitors projects for prompt payment to subcontractors. During the site visit, focus on the contracting records submitted by prime contractors that the grantee uses to monitor payments to subcontractors on projects.

Request the grantee to demonstrate how they verify that DBE participation reports are true and accurate. If the grantee conducts audits or confirms payment with subcontractors, request documentation to support implementation of this process.

DETERMINATION

The grantee is deficient if it has no process to verify that projects are being monitored or that subcontractors are promptly paid for performance and/or completion of work. The grantee is deficient if it has no proactive monitoring mechanism for prompt payment and solely relies on the subcontractor to notify them of problems with the promptness of payment from prime contractors. (**DEFICIENCY CODE 162:** Grantee does not monitor DBE compliance) (**DEFICIENCY CODE 268:** Grantee not ensuring prompt payment)

SUGGESTED CORRECTIVE ACTION

Direct the grantee to submit to the FTA RCRO implemented procedures for monitoring DBE program elements. .

