

## 6. SATISFACTORY CONTINUING CONTROL

### PURPOSE OF THIS REVIEW AREA

The recipient must ensure that Federal Transit Administration (FTA)-funded property will remain available to be used for its originally authorized purpose throughout its useful life until disposition.

### QUESTIONS TO BE EXAMINED

1. Does the recipient maintain adequate records on the status of real property and submit required reports and notifications to FTA?
2. Did the recipient follow FTA requirements for incidental use of real property?
3. Has the recipient made appropriate efforts to use, lease, or dispose of idle facilities?
4. Is FTA-funded real property (land and improvements thereon) used solely for its originally authorized purpose?
5. If the recipient disposed of FTA-funded real property since the last Comprehensive Review, were FTA requirements followed?
6. Does the recipient have flood insurance for any FTA-funded buildings located in areas that has been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?
7. Does the state maintain control over FTA-funded equipment?
8. Was equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and FTA requirements?
9. Are bus fleets managed in accordance with FTA requirements for spare ratios and contingency fleets?
10. Does the rail fleet management plan meet FTA requirements?
11. If the recipient or a subrecipient used FTA capital assistance to finance the lease of any transit facilities or equipment, was a certification provided to FTA that a cost-effectiveness determination was conducted prior to entering into the lease or receiving the award?
12. Does the recipient maintain control over FTA-funded property and ensure that subrecipients, contractors, and lessees use FTA-funded property for project purposes?

### INFORMATION NEEDED FROM RECIPIENT

#### Recipient Information Request

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

- List of FTA-funded facilities constructed or renovated since the last review or planned to be constructed or renovated. For each facility, include:
  1. Projected and actual start date
  2. Projected and actual completion date
  3. FTA portion and total project cost
- Last physical inventory conducted with the reconciliation
- List of vehicles identified as active or inactive
- Contingency fleet plan
- Rail fleet management plan

#### **Recipient Follow-up**

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

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

#### **BASIC REQUIREMENT**

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

#### **APPLICABILITY**

All recipients

#### **EXPLANATION**

For Awards and Cooperative Agreements (and funding increments to existing Awards and Cooperative Agreements) awarded on or after December 26, 2014, FTA requires that recipients maintain a real property inventory and submit reports at least annually on the status of real property in which the Federal government retains an interest. A real property inventory must include: property location/physical address; use and condition; summary of conditions on the title; brief description of improvements, expansions, and retrofits; corresponding useful life for the assets; date placed in service; original acquisition cost; sources of funding; federal and non-Federal participation ratios; federal award identification number; appraised value and date; anticipated disposition or action proposed; date of disposal; and sale price of the property. If the property is excess, the recipient must identify the reasons for having excess property, such as purchase to a logical boundary. This inventory is necessary in order to accurately account for assets, and determine an equitable valuation of federal interest retained in the property.

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

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

#### INDICATORS OF COMPLIANCE

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

Real Property Report Required Elements	Comment
Property location/physical address	
Use and condition of the property	
Summary of conditions on the title	
Brief description of improvements, expansions, and retrofits	
Corresponding useful life for the assets	
Date placed in service	
Original acquisition cost	
Sources of funding	
Federal and non-Federal participation ratios	
Federal award identification number	
Appraised value and date	
Anticipated disposition or action proposed	
Date of disposal; and sale price of the property	
Use and condition of the property	

- b. *If property is excess, identify the reasons for having excess property, such as purchase to a logical boundary.*
- c. *For FTA-funded excess real property purchased under an award made before December 26, 2014, was an excess property inventory and utilization plan prepared or updated?*

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

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

### **DETERMINING COMPLIANCE**

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

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

### **POTENTIAL DEFICIENCY DETERMINATIONS**

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

DEFICIENCY CODE SSC1-1: Property reports not submitted timely

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

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

DEFICIENCY CODE SSC1-2: Property reports missing information

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

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

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

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

## **GOVERNING DIRECTIVES**

### **2 CFR 200.311 Real property**

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

### **2 CFR 200.329 Reporting on real property**

“The Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. In those instances where the Federal interest attached is for a period of 15 years or more, the Federal awarding agency or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or a Federal awarding agency or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).”

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

“(2) Use. Real property must be used for the originally authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities without prior FTA written approval. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or federally assisted property thereunder if, during the useful life, the recipient has unreasonably delayed or failed to use the federally assisted property for its originally intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

(3) Maintenance. Real property must be appropriately maintained. A description of the improvements, expansions, retrofits, and maintenance of real property must be properly documented in the facility inventory along with parcel address or location, useful life, date placed in service, original acquisition cost and federal percentage of cost in order to accurately determine an equitable valuation of federal interest at the time of early disposition of the asset.

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

“(1) Excess Real Property Inventory and Utilization Plan. The grantee shall prepare and keep up to date an excess property inventory and utilization plan for all property that is no longer needed to carry out any transit purpose. The inventory list should include such things as property location; summary of any conditions on the title, original acquisition cost, and the Federal participation ratio; FTA grant number, appraised value and date; a brief description of improvements; current use of the property; and the anticipated disposition or action proposed.”

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## **SCC2. Did the recipient follow FTA requirements for incidental use of real property?**

### **BASIC REQUIREMENT**

Incidental uses of FTA-funded real property must be compatible with the approved purposes of the Award and not interfere with either the intended uses of the property or the recipient's ability to maintain satisfactory continuing control. Income generated from incidental use may only be used for eligible capital or operating expenses or as part of the non-Federal share of an eligible award. The recipient should consult with FTA before continuing with incidental use.

### **APPLICABILITY**

All recipients

### **EXPLANATION**

Incidental use is defined as the authorized use of real property (and equipment) acquired or improved with FTA funds for purposes of transit, but which also has limited non-transit purposes due to transit operating circumstances. Real property includes land, affixed land improvements, structures, and appurtenances. Examples of incidental use include the leasing of space in a station for a newspaper stand or coffee shop and the lease of air rights over transit facilities. (Note that licenses and leases of air rights are treated as incidental uses, not disposition of excess property.) Such use must be compatible with the approved purposes of the project, must not interfere with intended public transportation uses of project assets, must not in any way interfere with the recipient's continuing control over the use of the property, and must not compromise safety. FTA encourages recipients to make incidental use of FTA-funded real property when it can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenue, non-profit uses are permitted, under certain circumstances.

Proceeds should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental or joint development uses may be retained by the recipient (without returning the Federal share) if the income is used for eligible transit capital and operating expenses. This income cannot be used as part of the local share of the award from which it was derived. However, it may be used as part of the local share of another FTA award.

Recipients should consult with FTA prior to continuing incidental use of real property.

### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient have incidental uses of any FTA-funded real property? If no, move to the next question.*
- b. *Was FTA consulted about the incidental use?*
- c. *Is the incidental use compatible with the original purpose of the award?*
- d. *Does the recipient maintain continuing control over the property?*

- e. *Are proceeds used for eligible transit capital or operating expenses or as the non-Federal share of an eligible award?*

### **DETERMINING COMPLIANCE**

Obtain incidental use consultations since the last Comprehensive Review from the regional office. If in TrAMS, review the original award application to determine the proposed uses. Review the listing of real property used for incidental uses obtained from the recipient to determine that they align with the information provided by the regional office.

Obtain any property management procedures used by the recipient to understand how it maintains control over project property. If no such procedures are available, discuss with the recipient during the site visit.

Review financial records obtained in the Financial Management and Capacity area to determine if the recipient recorded income from project property. During the review of Electronic Clearinghouse Operations (ECHO) draws in the Financial Management and Capacity area, select a sample revenue transaction of income obtained from project property and verify that the income was used to offset cost associated with the FTA-funded service.

During the site visit, tour the FTA-funded facility(ies) to confirm current uses of FTA-funded real property to ensure that they are used for authorized purposes and not unauthorized incidental uses.

### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it uses FTA-funded real property incidentally and did not consult with FTA.

DEFICIENCY CODE SCC2-1: Failure to consult with FTA on incidental use

SUGGESTED CORRECTIVE ACTION: The recipient must consult FTA, or cease unauthorized use, for any incidental uses of real property of which FTA is unaware and submit to the FTA regional office procedures for consulting FTA for future incidental uses.

The recipient is deficient if the incidental use affects a property's transit capacity or use.

DEFICIENCY CODE SCC2-2: Incidental use affects transit capacity or use

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the FTA regional office that it has ceased incidental uses of real property that interfere with transit purposes.

The recipient is deficient if the incidental use interferes with its continuing control over project property.

DEFICIENCY CODE SCC2-3: Incidental use interferes with property control

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for maintaining satisfactory continuing control over real property used for incidental purposes.

The recipient is deficient if the incidental use income is not used for eligible transit capital or operating expenses.

DEFICIENCY CODE SCC2-4: Incidental use income not used for eligible expenses

SUGGESTED CORRECTIVE ACTION: The recipient must submit documentation to the FTA regional office that it has applied incidental use income to transit purposes.

## GOVERNING DIRECTIVES

### 2 CFR 200.311 Real property

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

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

“(6) Non-Transit Uses of FTA Assisted Real Property. FTA’s policy is to permit recipients maximum flexibility in determining the best and most cost-effective use of federally-assisted property. To this end, FTA encourages non-transit uses of real property that can raise additional revenues for the transit system or, at a reasonable cost, enhance system ridership. These non-transit uses are by one of three means: incidental use, joint development, or shared use.

(a) Incidental Use. Incidental uses must be compatible with the approved purposes of the Award and may not interfere with either the intended uses of the property or the recipient’s ability to maintain satisfactory continuing control. The recipient should consult with FTA before continuing with incidental use. An incidental use may not affect a property’s transit capacity or use. Alterations to accommodate an incidental use should have no negative impact on the transit service or activity. FTA continues to monitor the incidental use after the Award is closed and the recipient is required to keep an inventory of the use. FTA reviews the inventory during the triennial review process.

1 Examples of incidental use include:

- a. Temporary use of transit property as a staging area for nearby construction;
- b. Allowing nearby theaters and restaurants to use transit parking spaces during the transit system’s off-hours;
- c. Leasing of space in a station for a newspaper stand or coffee shop when the additional use does not interfere with the original purpose authorized in the Award; and
- d. The lease of air rights over transit facilities or utilities associated with transit facilities (such as spare capacity in general utilities and fiber optics communications utilities) that do not impact the structural configuration of the transit facility.

2 Revocation. An incidental use agreement should permit revocation by the recipient.

3 Limits. The recipient agrees that any incidental use of federally assisted property will not exceed that permitted under applicable federal requirements and federal guidance. The recipient may permit non-transit public entities and private entities to have incidental use of its federally assisted facilities and equipment, including alternative fueling facilities and associated equipment, subject to the following considerations:

- a. Needed Property. This policy applies only to property that continues to be needed and used for an FTA Award. It is FTA’s intention to assist only in the purchase of property that is needed for an FTA Award.
- b. Purpose & Activity. The use must not compromise the safe conduct of the intended purpose and activity of the initial public transit activity under the Award.
- c. Continuing Control. The use must not in any way interfere with the recipient’s continuing control over the use of the property or the recipient’s continued ability to carry out the Award.
- d. No-Income Use. While FTA is particularly interested in encouraging incidental use as a means of supplementing transit revenues, no-income uses are also permitted under certain circumstances:

For example, a no-income use could include a private, for-profit transit operator offered queue space, or loading space, at an intermodal facility for the purpose of generating rides, providing a consolidated transit option for the public, and a seamless transit transfer opportunity at no cost. The no-income use shows that the value of having the



- private operator: 1) benefits transit, as a whole; 2) expands upon the local transportation alternatives; and 3) allows the public to transfer seamlessly.
- e. Income. Proceeds from incidental use including licensing and leasing of air rights or leasing of other real property interest should be based on competitive market rents and rates of return based on the appraised fair market value. Income received from the authorized incidental uses including the use of air rights may be retained by the recipients (without returning the federal share) if the income is used for eligible transit capital, or operating expenses. This income cannot be used as part of the non-federal share of the Award from which it was derived. However, it may be used as part of the non-federal share of another FTA Award."

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### **SCC3. Has the recipient made appropriate efforts to use, lease, or dispose of idle facilities?**

#### **BASIC REQUIREMENT**

Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property.

#### **APPLICABILITY**

All recipients

#### **EXPLANATION**

All FTA-funded real property is expected to be used for the originally authorized purpose throughout the useful life of the property as long as needed for that purpose. Idle facilities are those facilities that are completely unused and excess to the recipient's current needs. This is different from idle capacity which is the unused capacity of partially used facilities. Cost of idle facilities such as maintenance, repair, housing, rent, and other related costs including insurance and depreciation are unallowable, except to the extent that:

(1) they are necessary to meet workload requirements which may fluctuate and they are allocated appropriately to all programs or

(2) it can be shown that the costs were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination or other causes which could not have been reasonably foreseen. Under the exception previously stated, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of the facilities and the justification provided by the recipient for FTA review and approval.

#### **INDICATORS OF COMPLIANCE**

- a. *Does the recipient have any FTA-funded facilities that have been idle for more than one year?*
- b. *What efforts have been made to use, lease, or dispose of idle facilities?*
- c. *Has the recipient charged costs incurred for idle facilities for more than one year to an FTA award?*

#### **DETERMINING COMPLIANCE**

Confer with the regional office on whether it is aware of any idle facilities. Onsite discuss with the recipient why facilities are idle.

Reasons for Idle Facilities	Comments
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Reasons for Idle Facilities	Comments
The idle facility is necessary to meet workload requirements which may fluctuate	
Costs were necessary when acquired and the facility is now idle because of changes in program requirements	
Efforts to achieve more economical operations, reorganization, termination were implemented	
There are other causes which could not have been reasonably foreseen	

For facilities that have been idle for more than a year, discuss steps planned or taken to use, lease or dispose of the facilities. Obtain and review costs charged for the idle facility during the review period to determine that charges were not assessed against an FTA award for more than one year.

#### POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has idle facilities and does not have plans or has not taken steps to use, lease, or dispose of the facilities.

DEFICIENCY CODE SCC3-1: Lacking plans for idle facilities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a plan for using, leasing, or disposing of idle facilities.

The recipient is deficient if it has idle facilities and charged costs incurred for more than one year while the facility was idle to an FTA award.

DEFICIENCY CODE SCC3-2: Idle facility cost charged to an award

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for periodically reviewing property records, identifying idle facility cost, and limiting reimbursement of such cost from an FTA award to no more than one year.

#### GOVERNING DIRECTIVES

FTA Circular 5010.1E Chapter IV, Section 2. Real Property, (i) Property Management

“(2) Use. Real property must be used for the originally authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities without prior FTA written approval. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or federally assisted property thereunder if, during the useful life, the recipient has unreasonably delayed or failed to use the federally assisted property for its originally intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

#### (4) Idle Facilities and Idle Capacity

(a) Idle facility means completely unused facilities that are excess to the recipient's current needs. Idle capacity means the unused capacity of partially used facilities. Idle capacity is the difference

between that which a facility could achieve under 100 percent operating time, on a one-shift basis, less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and the extent to which the facility was actually used to meet demands during the accounting period.

(b) Costs of Idle Facilities or Idle Capacity. Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs including insurance and depreciation. The costs of idle facilities are unallowable except to the extent that they are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all programs or it can be shown that the costs were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination or other causes which could not have been reasonably foreseen. Under the exception previously stated, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of the facilities and the justification provided by the recipient for FTA review and approval.

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#### **SCC4. Is FTA-funded real property (land and improvements thereon) used solely for its originally authorized purpose?**

##### **BASIC REQUIREMENT**

Recipients must use real property for project purposes.

##### **APPLICABILITY**

All recipients

##### **EXPLANATION**

All FTA-funded real property is expected to be used for the originally authorized purpose as long as needed for that purpose. During that time, the recipient must not dispose of or encumber its title or other interests in the real property. Recipients are required to notify FTA when property is removed from the service originally intended at award approval or if property is put to additional or substitute uses.

##### **INDICATORS OF COMPLIANCE**

- a. *Has any real property been removed from the service originally intended at the time of award approval or put to additional or substitute uses since the last Comprehensive Review?*
- b. *If yes, was FTA notified?*

##### **DETERMINING COMPLIANCE**

Obtain notification of property put to additional or substitute uses since the last Comprehensive Review from the regional office. Obtain and review the recipient's real property inventory to ascertain if any property is identified as being used for a purpose other than originally approved, removed from service or put to additional or substitute use and determine if FTA was appropriately notified. Obtain any property management procedures used by the recipient to understand how it maintains control over project property. If no such procedures are available, discuss with the recipient during the site visit. During the site visit, tour the FTA-funded facility(ies) to confirm current uses of FTA-funded real property to ensure that they are used for authorized purposes and not unauthorized incidental uses.

##### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it did not notify FTA when property was removed from the service originally intended at the time of award approval or put to additional or substitute use.

DEFICIENCY CODE SCC4-1: Real property not used for authorized purposes

**SUGGESTED CORRECTIVE ACTION:** The recipient must inform the FTA regional office of real property that has been removed from service or put to additional or substitute uses without FTA approval and must submit to the FTA regional office procedures for notifying FTA when FTA-funded real property has been removed from service or put to additional or substitute uses.

## **GOVERNING DIRECTIVES**

### **2 CFR 200.311 Real property**

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

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

“(2) *Use.* Real property must be used for the originally authorized purpose as long as needed for that purpose. Recipients must not dispose of, modify the use of, or encumber its title or other interests in the federally assisted site and facilities without prior FTA written approval. Recipients are required to use federally assisted property continuously and appropriately throughout the useful life of the property. Recipients may be required to return the entire amount of federal assistance spent on the Award or federally assisted property thereunder if, during the useful life, the recipient has unreasonably delayed or failed to use the federally assisted property for its originally intended purpose. Recipients are also required to notify FTA before property is removed from the service originally intended at the time of approval of the Award and if property is put to additional or substitute uses.

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## **SCC5. If the recipient disposed of FTA-funded real property since the last Comprehensive Review, were FTA requirements followed?**

### **BASIC REQUIREMENT**

Recipients must follow FTA requirements for disposition of real property.

### **APPLICABILITY**

All recipients

### **EXPLANATION**

When real property is no longer needed for any transit purpose, the recipient must request and follow disposition instructions from FTA. The instructions must provide for one of the following alternatives:

1. Retain title after compensating the FTA
2. Sell the property and compensate the FTA
3. Transfer title to the Federal awarding agency or to a third party designated/approved by the FTA

### **INDICATORS OF COMPLIANCE**

- a. *Was prior approval obtained from the FTA with the method of disposition for real property?*
- b. *If required, was FTA reimbursed for its share of disposition proceeds?*

## **DETERMINING COMPLIANCE**

Review the recipient's real property disposal request for FTA's approval of the disposition method. Review FTA's approval to verify the approved disposition method, along with FTA's instructions on disposition proceeds. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. Review records documenting how fair market value was arrived at for any real property not sold competitively. Obtain documentation of proceeds received and verify that it was used as approved by FTA. Confirm with FTA, receipt of funds, as applicable.

## **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it did not obtain prior FTA approval for the method of disposition of FTA-funded real property.

DEFICIENCY CODE SCC5-1: Failure to obtain FTA approval for real property disposal

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the FTA regional office information on the method of disposition of real property for which it did not obtain prior FTA approval along with procedures for obtaining FTA approval on the method of any future disposition of FTA-funded real property.

The recipient is deficient if it did not reimburse FTA for its share of disposition proceeds.

DEFICIENCY CODE SCC5-2: Failure to reimburse FTA after disposal of real property

**SUGGESTED CORRECTIVE ACTION:** The recipient must work with the FTA regional office to determine if proceeds are owed FTA from the disposition of FTA-funded real property.

## **GOVERNING DIRECTIVES**

### 2 CFR 200.311 Real property

"(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Federal awarding agency or pass-through entity. The instructions must provide for one of the following alternatives:

(1) Retain title after compensating the Federal awarding agency. The amount paid to the Federal awarding agency will be computed by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, in those situations where the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) Sell the property and compensate the Federal awarding agency. The amount due to the Federal awarding agency will be calculated by applying the Federal awarding agency's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, sales procedures must be followed that provide for competition to the extent practicable and result in the highest possible return.

(3) Transfer title to the Federal awarding agency or to a third party designated/approved by the Federal awarding agency. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property."

FTA Circular 5010.1E Chapter IV, Section 2. Real Property, (j) Real Estate Disposition, (2) Disposition

“(b) Disposition Methods. “When real property is no longer needed for any transit purpose, the recipient will request disposition instructions from FTA. The allowable disposition methods are as follows:

1 Sell and Reimburse FTA. Competitively market and sell the property and pay FTA the greater of its share of the fair market value of the property or the straight line depreciated value of the improvements plus land value. FTA's share of the fair market value is the percentage of FTA participation in the original Award multiplied by the best obtainable price, minus reasonable sales costs. If the property has never been used for the appropriate purposes of the Award, the recipient shall sell the property and pay FTA the greater of FTA's share of the fair market value or the entire amount of federal assistance spent on that property.

2 Offset. Sell the property and apply the net proceeds from the sale to the cost of replacement property under the same program. Return any excess proceeds to FTA in accordance with 2 CFR § 200.311.

3 Sell and Use Proceeds for Other Capital Projects Under an Award. Sell the property and use the proceeds to reduce the gross cost of another FTA eligible capital transit project under an Award. See 49 U.S.C. § 5334(h)(4). The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a subsequent capital project, and reduce the amount of those restricted funds as those proceeds are applied to one or more FTA approved capital projects under Awards. FTA must approve the application of the proceeds to a subsequent capital Award, which should clearly show that the gross cost of the Award has been reduced with proceeds from the earlier transaction. Examples of future FTA eligible capital transit projects include: the acquisition of buses, facilities and equipment.

4 Sell and Keep Proceeds in an Open Award. If the Award is still open, the recipient may sell the excess property and apply the proceeds to the original cost of the total real property purchased for that Award. This may reduce the federal share of the Award.

5 Transfer to Public Agency for Non-Transit Use. Follow procedures for publication in the Federal Register to transfer property (land or equipment) to a public agency with no repayment to FTA. This is a competitive process, and there is no guarantee that a particular public agency will be awarded the excess property. See 49 U.S.C. § 5334(h)(1)– (h)(3).

6 Transfer to Another Award. Transfer the property to another FTA eligible Award. The federal interest continues.

7 Retain Title with Buyout. Compensate FTA by computing the percentage of FTA participation in the original cost. Multiply the current fair market value of the property by this percentage. The recipient must document the basis for value determination; typically, this documentation is an appraisal or market survey. Alternatively, the recipient may pay FTA the straight line depreciated value of improvements plus land value, if this is greater than FTA's share of the fair market value.

8 Sales Procedure. Sales procedures shall be followed that provide for competition to the extent practicable and result in the highest possible return or at least payment of appraised fair market value.”

**SCC6. Does the recipient have flood insurance for any FTA-funded buildings located in areas that have been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?**

**BASIC REQUIREMENT**

Recipients must have flood insurance under the National Flood Insurance Act of 1968 for federally funded buildings located in areas that have been identified as having special flood hazards.

**APPLICABILITY**

All recipients

**EXPLANATION**

Section 102 of the Flood Disaster Protection Act of 1973 (FDPA) prohibits the Federal government from providing funds for acquisition or construction of buildings located in a special flood hazard area (100-year flood zone) unless the owner of the property first has obtained flood insurance. Specifically, Federal agencies may not provide any financial assistance for the acquisition, construction, reconstruction, repair, or improvement of a building unless the recipient has first acquired flood insurance under FDPA to cover the buildings constructed or repaired with Federal funds. The Federal Emergency Management Agency (FEMA) has defined "building" in its regulations implementing the National Flood Insurance Program (NFIP) as "a building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site." In addition, where structures are both above and below ground, the flood insurance requirement applies where at least 51 percent of the cash value of the structure, less land value, is above ground.

**INDICATORS OF COMPLIANCE**

- a. *Does the recipient have any plans to or did it use Federal funds to construct buildings located in an area that has been identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968?*
- b. *Has the recipient complied with the flood insurance purchase provisions of section 102(a) of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C §4012a (a), with respect to any project involving construction, or an acquisition having an insurable cost of \$10,000 or more?*

**DETERMINING COMPLIANCE**

Confer with the regional office to obtain input of any property that may be in flood zone for the recipient. Obtain and review evidence of flood insurance to verify that the recipient purchased the required insurance for any property it or the region identified as needing such. Obtain information on the value of the property to determine that the coverage is in an amount at least equal to the Federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. If the property is covered under a group plan or a statewide insurance pool, review to verify what property of the recipient is specifically covered.

**POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not have, or has inadequate, flood insurance for any FTA-funded facility in a special floods hazard area.

DEFICIENCY CODE SCC6-1: Insufficient flood insurance

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office documentation of adequate flood insurance protection.

## GOVERNING DIRECTIVES

### FTA Circular 5010.1E, Ch IV, Section 4.p. Insurance

“(1) Flood Insurance. The Recipient agrees to have flood insurance as required by the Flood Disaster Protection Act of 1973, 42 U.S.C. §4012a (a), for any building located in a special flood hazard area (100-year flood zone), before receiving federal assistance to acquire, construct, reconstruct, repair, or improve that building. Additionally, the building and its contents must be covered by flood insurance in an amount at least equal to the federal investment (less estimated land cost) or equal to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968. Current limits are \$500,000 per building and \$500,000 for the contents of each building.

FTA has defined building and contents coverage in its Emergency Relief rule, 49 CFR part 602, as follows:

- (a) Building. For insurance purposes, a structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site. This includes manufactured or modular office trailers that are built on a permanent chassis, transported to a site in one or more sections, and affixed to a permanent foundation.
- (b) Contents coverage. For insurance purposes, contents are personal property within a building, including fixtures, machinery, equipment and supplies. In addition to the costs to repair or replace, contents insurance coverage shall include the cost of debris removal and the reasonable cost of removal of contents to minimize damage.”

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## SCC7. Does the recipient maintain control over FTA-funded equipment?

### BASIC REQUIREMENT

Recipients must maintain control over FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

### APPLICABILITY

All recipients of FTA funds

### EXPLANATION

**State recipients** may use, manage, and dispose of equipment acquired under an FTA award according to state law and procedures. States are free to adopt the procedures established in 2 CFR Part 200 or use them as a guide in developing state procedures for equipment use, management, and disposition, but they are not required to do so. However, FTA requires that the procedures must be sufficient to maintain continuing control over FTA-funded equipment.

**Non-state recipients** are required to follow the equipment management requirements of 2 CFR 200.313 Equipment including maintaining property records, conducting and reconciling a physical inventory, and developing an adequate property control system.

### INDICATORS OF COMPLIANCE

For State recipients, answer only indicator (a). For all other recipients, answer only indicators (b)-(d).

- a. *How does the State maintain control over FTA-funded equipment for services it provides?*
- b. *Do non-state recipient equipment records provide the required information?*



Equipment Inventory Required Data Elements	Comment
Description	
Identification number or serial number	
Title holder	
Federal Award Information Number (FAIN)	
Acquisition date	
Acquisition cost	
Federal participation percentage	
Location	
Useful life ( <i>per FTA C. 5010.1E</i> )	
Use and condition	
Disposition data, including date of disposal and sale price, or method used to determine fair market value	

- c. *When did the non-state recipient conduct physical inventories?*
  - i. *Were the inventories performed at least every two years?*
  - ii. *Was there a reconciliation of the results?*
- d. *What procedures and systems does the non-state recipient have in place to prevent loss, damage, or theft of FTA-funded equipment?*

#### **DETERMINING COMPLIANCE**

**For states:** Review the state's procedures for maintaining control over FTA-funded equipment to understand how it manages, uses and disposes of FTA-funded equipment. Potential procedures include: equipment inventories, physical inventories, insurance, disposition procedures, and security measures. Note data elements tracked in an equipment inventory, if maintained. Note frequency of physical inventories, if conducted. Review insurance or self-insurance on FTA-funded equipment to confirm that the Federal interest is protected. Review security procedures to ascertain how the state stores, tracks, and secures the FTA-funded assets to deter against the loss and/or damage of such assets. Review procedures for equipment disposition to ensure that equipment is not disposed of before the end of useful life, the Federal interest is protected, and the maximum return is sought. Obtain and review equipment records to determine that the state is following its procedures in using, managing, and disposing of the FTA-funded assets.

**For non-states:** Obtain from the recipient equipment records that provide the data elements required. Review the records to verify that the required data elements listed in the table above are identified for each FTA-funded asset. It is acceptable if no single report shows all the required data as long as the recipient can demonstrate that the records are complete.

Obtain and review the recipient's inventory control procedures, if written, to determine how the recipient tracks inventory and reconciles to its equipment records. Onsite obtain and review the recipient's annual or biennial inventory to ensure the inventory was completed and the results were reconciled to the equipment records. In a tour of facilities, sample an item purchased prior to when the physical inventory was conducted to confirm that it is listed in the equipment records. Using each fiscal year's single audit obtained from the Federal Audit Clearinghouse (FAC) in the Financial Management and Capacity area, ascertain if there are any findings related to the recipient's compliance with the inventory control and if they were resolved.

Review the recipient's equipment management and security procedures to ascertain how the recipient stores, tracks, and secures the FTA-funded assets to deter against the loss and/or damage of such assets. Review insurance coverage to confirm that the Federal interest is protected. During the site visit, discuss any losses to FTA-funded equipment and how the losses were investigated or documented. Tour facilities to ascertain how the recipient has implemented its control procedures to secure the FTA-funded asset to prevent loss, damage, or theft.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

The **state recipient** is deficient if it does not have procedures for using, managing, and disposing of FTA-funded equipment.

DEFICIENCY CODE SCC7-1: No state procedures for FTA-funded equipment

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office evidence that the state procedures for maintaining control over FTA-funded equipment have been implemented.

The **state recipient** is deficient if it does not follow its procedures for using, managing, and disposing of FTA-funded equipment.

DEFICIENCY CODE SCC7-2: State equipment procedures not followed

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office evidence that it is implementing its procedures for maintaining control over FTA-funded equipment.

The **non-state recipient** is deficient if its FTA-funded equipment records are missing required data elements.

DEFICIENCY CODE SCC7-3: Inadequate equipment records

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office updated equipment records which include all of the required information.

The **non-state recipient** is deficient if it does not perform a biennial inventory or reconcile the results.

DEFICIENCY CODE SCC7-4: No evidence of physical inventory or reconciliation

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has performed the physical inventory of FTA-funded equipment and has reconciled them to records, along with procedures for doing so.

The **non-state recipient** is deficient if it has not investigated and documented any loss, damage, or theft of FTA-funded equipment.

DEFICIENCY CODE SCC7-5: Inadequate property control system

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an adequate control system to prevent future loss, damage, or theft of FTA-funded equipment.

## **GOVERNING DIRECTIVES**

### **2 CFR 200.313 Equipment**

“(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(d) *Management requirements.* Procedures for managing equipment (including replacement equipment), whether acquired in whole or in part under a Federal award, until disposition takes place will, as a minimum, meet the following requirements:

(1) Property records must be maintained that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.

(2) A physical inventory of the property must be taken and the results reconciled with the property records at least once every two years.

(3) A control system must be developed to ensure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft must be investigated.”

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## **SCC8. Was equipment withdrawn from use and disposed of in accordance with 2 CFR 200 and FTA requirements?**

### **BASIC REQUIREMENT**

Recipients must use and dispose of FTA-funded equipment in accordance with 2 CFR 200 and FTA requirements.

### **APPLICABILITY**

All non-state recipients

### **EXPLANATION**

The recipient must notify FTA immediately when any project property is withdrawn from project use prior to the end of its useful life or when any project property is used in a manner substantially different from the representations the recipient made in the award agreement or cooperative agreement for the project.

Disposition of equipment before the end of useful life requires prior FTA approval. A rolling stock status report, an example of which is provided in FTA C. 5010.1E Appendix E, must accompany the request. Service life for rolling stock and facilities is defined at the end of this section. The useful life in years refers to total time in service, not time spent otherwise unavailable for regular transit use. The recipient should have a mechanism to adjust the service life of any FTA-funded vehicle for significant time (i.e., six months) not spent in regular transit use.

Even after the equipment's useful life is expended, FTA is entitled to its share of the remaining Federal interest (subject to the next paragraph). The Federal interest is the greater of the FTA share of the straight line depreciated value (based on years or miles for rolling stock) or the sale price. The recipient may elect to use the trade-in value or the sales proceeds from a bus or rail vehicle to acquire a replacement vehicle of like kind, subject to FTA approval.

Equipment with a unit market value of \$5,000 or less that has reached the end of its service life requires no FTA reimbursement. Equipment that has reached the end of its service life and for which the unit market value exceeds \$5,000 requires reimbursement to FTA of the proportionate share of the fair market value or the net proceeds of the sale. Net proceeds are the amount realized from the sale of property no longer needed for transit purposes less the expense of any actual and reasonable selling and any necessary expenses associated with repairs to make saleable.

With prior FTA approval, the recipient can use sale proceeds to reduce the gross project cost of future FTA eligible capital transit awards. The recipient is expected to record the receipt of the proceeds in its accounting system, showing that the funds are restricted for use in a subsequent capital award, and reduce the liability as the proceeds are applied to one or more FTA-approved capital awards. The subsequent capital award application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction.

For the disposition of supplies for which there is no transit use with a total aggregate fair market value that exceeds \$5,000, the recipient must compensate FTA for its share or transfer the sales proceeds to reduce the gross project cost of another capital project.

If the recipient or a subrecipient receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the recipient must:

- Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service, or
- Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property

The Federal interest is not dependent on the extent of insurance coverage or on the insurance adjustment received.

#### **INDICATORS OF COMPLIANCE**

- a. *Was FTA notified when equipment with remaining useful life was withdrawn from project use or applied to a different use?*
- b. *Did FTA concur with the method of disposition for equipment removed from service before the end of service life?*
- c. *Was FTA reimbursed for its share of proceeds, if required?*
- d. *Were retained proceeds applied to reduce the project's eligible cost?*
- e. *Were insurance proceeds applied to the cost of replacing any damaged or destroyed project equipment or rolling stock?*

#### **DETERMINING COMPLIANCE**

Confer with the regional office regarding requests for disposition of equipment, returned proceeds, and like-kind exchanges since the last Comprehensive Review. Obtain notifications to FTA regarding equipment withdrawn from project use or applied to a different use. Obtain requests to FTA for disposition instructions for equipment removed from service before the end of useful life. Obtain and review the recipient's disposition records to confirm that the approved disposition method was used. Obtain verification of proceeds transferred back to FTA (i.e., sale records and financial reports). Review

records documenting how fair market value was arrived at for any equipment not sold competitively. Review the recipient's accounting system to verify the sale proceeds are restricted for use in subsequent capital awards. Review TrAMS to ensure that in any subsequent capital award the application/awards contain information showing FTA that the gross project cost has been reduced by the amount of the proceeds.

The following table defines the useful life of several typical FTA-funded items based on FTA Circular 5010 1.E. For items not listed by FTA, useful life definitions may be obtained from other reasonable sources, including the Department of Defense (DOD) and Internal Revenue Service (IRS), based on acceptable accounting principles. It should be noted that the Altoona bus test reports for individual bus models do not define the useful life of rolling stock.

Vehicle	FTA-Defined Useful Life
35'-40' heavy duty bus and articulated transit buses	12 years or 500,000 miles
30' heavy duty transit bus	10 years or 350,000 miles
30' medium-duty transit bus	7 years or 200,000 miles
25'-35' light duty transit bus (body on chassis vehicles)	5 years or 150,000 miles
Other vehicles (small buses, vans, sedans)	4 years or 100,000 miles
Rail vehicles	25 years
Fixed guideway steel-wheeled trolley	25 years
Fixed guideway electric trolleybus	15 years
Passenger ferry	25 years
Other ferries without refurbishment	30 years
Other ferries with refurbishment	60 years
Note: A heavy duty transit bus is built as a bus whereas a medium duty bus is built on a truck chassis.	

#### POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not notify FTA of equipment prematurely removed from service.

DEFICIENCY CODE SCC8-1: Failure to notify FTA of equipment removed from service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a list of equipment prematurely removed from service and procedures for notifying FTA of any premature removal of equipment from service.

The recipient is deficient if it did not reimburse FTA for disposition proceeds or obtain FTA permission to apply the proceeds to another capital project.

DEFICIENCY CODE SCC8-2: Non-permitted use of equipment disposal proceeds

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office reimbursement of FTA's share of proceeds from disposed property or obtain approval for retaining the proceeds to apply to another capital project. The recipient must submit to the FTA regional office procedures for reimbursing FTA for disposition proceeds or applying the proceeds to another capital project.

The recipient is deficient if it did not obtain FTA approval for applying insurance proceeds to replacement property, or did not return to FTA an amount equivalent to the remaining Federal interest in lost, damaged, or destroyed project property.

DEFICIENCY CODE SCC8-3: Non-permitted use of insurance proceeds

**SUGGESTED CORRECTIVE ACTION:** The recipient must work with the FTA regional office to obtain approval for applying insurance proceeds to the replacement of lost, damaged, or destroyed property or to return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property. The recipient must submit to the FTA regional office procedures for addressing insurance proceeds.

**GOVERNING DIRECTIVES**

**2 CFR 200.313 Equipment**

“(b) A state must use, manage and dispose of equipment acquired under a Federal award by the state in accordance with state laws and procedures. Other non-Federal entities must follow paragraphs (c) through (e) of this section.

(c) *Use.* (1) Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal award, and the non-Federal entity must not encumber the property without prior approval of the Federal awarding agency. When no longer needed for the original program or project, the equipment may be used in other activities supported by the Federal awarding agency, in the following order of priority:

(i) Activities under a Federal award from the Federal awarding agency which funded the original program or project, then

(ii) Activities under Federal awards from other Federal awarding agencies. This includes consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the non-Federal entity must also make equipment available for use on other projects or programs currently or previously supported by the Federal Government, provided that such use will not interfere with the work on the projects or program for which it was originally acquired. First preference for other use must be given to other programs or projects supported by Federal awarding agency that financed the equipment and second preference must be given to programs or projects under Federal awards from other Federal awarding agencies. Use for non-federally-funded programs or projects is also permissible. User fees should be considered if appropriate.

(3) Notwithstanding the encouragement in §200.307 Program income to earn program income, the non-Federal entity must not use equipment acquired with the Federal award to provide services for a fee that is less than private companies charge for equivalent services unless specifically authorized by Federal statute for as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the non-Federal entity may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property....

(e) *Disposition.* When original or replacement equipment acquired under a Federal award is no longer needed for the original project or program or for other activities currently or previously supported by a Federal awarding agency, except as otherwise provided in Federal statutes, regulations, or Federal awarding agency disposition instructions, the non-Federal entity must request disposition instructions from the Federal awarding agency if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal awarding agency disposition instructions:

(1) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of with no further obligation to the Federal awarding agency.

(2) Except as provided in §200.312 Federally-owned and exempt property, paragraph (b), or if the Federal awarding agency fails to provide requested disposition instructions within 120 days, items of equipment with a current per-unit fair-market value in excess of \$5,000 may be retained by the non-Federal entity or sold. The Federal awarding agency is entitled to an amount calculated by multiplying the current market value or proceeds from sale by the Federal awarding agency's percentage of participation in the cost of the original purchase. If the equipment is sold, the Federal awarding agency may permit the non-Federal entity to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(3) The non-Federal entity may transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the non-Federal entity must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a non-Federal entity fails to take appropriate disposition actions, the Federal awarding agency may direct the non-Federal entity to take disposition actions.”

FTA Circular 5010.1E, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock)

“o. Disposition of Equipment and Supplies. Disposition requirements apply to equipment that has met its useful life, as well as equipment that is prematurely withdrawn from service before its useful life has been ended. FTA retains financial interest in equipment with a unit value exceeding \$5000, and supplies with an aggregate value exceeding \$5000, even if useful life has been met. State recipients must dispose of federally assisted property acquired under an Award by the state in accordance with state laws and procedures. Subrecipients of states will follow such policies and procedures allowed by the state with respect to disposition of equipment acquired under an FTA Award.

(3) Disposition or Inappropriate Use Before the End of the Asset's Useful Life: Any disposition of project property before the end of its useful life requires prior FTA approval. FTA is entitled to its share of the remaining Federal interest.

(c) Insurance Proceeds. If the grantee receives insurance proceeds when project property has been lost or damaged by fire, casualty, or natural disaster, the grantee agrees to:

1 Apply those proceeds to the cost of replacing the damaged or destroyed project property taken out of service (Listed below are two examples of the application of insurance proceeds.), or

2 Return to FTA an amount equal to the remaining Federal interest in the lost, damaged, or destroyed project property.

The federal interest does not depend on the extent of insurance coverage or on the insurance adjustment received.

(4) Disposition or Use of Assets for Other Than Purposes of the Award after the End of Their Useful Life.

(a) Retain and Use Elsewhere. After the minimum useful life of federally assisted property is reached or the property is no longer needed for the original Award, it may be used by the recipient for other transit projects or programs. FTA prior approval of this alternative is not required. FTA retains its interest in the federally assisted property if its fair market value exceeds \$5,000.

(b) Disposition of Property with a Fair Market Value of More Than \$5,000. After the useful life of federally assisted property is reached, or the property is no longer needed for the original Award, rolling stock and equipment with a current market value exceeding \$5,000 per unit, or unused supplies with a total aggregate fair market value of more than \$5,000, may be retained or sold. FTA is entitled to an amount calculated by multiplying the current market value, or proceeds from sale, by FTA's percentage of participation in the cost of the original purchase. Rolling stock and equipment that is sold may have the

amount due FTA reduced by an amount of \$500 or ten percent of the proceeds, whichever is less, for its selling and handling expenses.

(c) Sell and Use the Proceeds for Other Capital Awards, 49 U.S.C. § 5334(h)(4). After the useful life is met, or the property is no longer needed, and with prior FTA approval, the recipient may sell its federally assisted property for which there is no longer any public transportation purposes and use the proceeds to reduce the gross project cost of other future FTA eligible capital transit Awards. The recipient is expected to record the receipt of the proceeds in the recipient's accounting system, showing that the funds are restricted for use in a future capital Award, and reduce the liability as the proceeds are applied to one or more FTA approved capital Awards. If new applications are not immediately anticipated, the recipient must inform the appropriate FTA contact of the disposition within a reasonable amount of time. Otherwise, the subsequent capital application should contain information showing FTA that the gross project cost has been reduced with proceeds from the earlier transaction. The proceeds cannot retroactively be applied to an existing Award or project unless the Award is still open.

(d) Disposition of Property with a Fair Market Value of \$5,000 or Less Value. After the useful life of its federally assisted property is reached, rolling stock and equipment with a unit market value of \$5,000 or less, or supplies with a total aggregate market value of \$5,000 or less, may be retained, sold, or otherwise disposed of with no obligation to reimburse FTA. Records of this action must be retained. FTA approval of this action is not required."

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## **SCC9. Are bus fleets managed in accordance with FTA requirements for spare ratios and contingency fleets?**

### **BASIC REQUIREMENT**

Recipients must manage bus fleets in accordance with FTA requirements.

### **APPLICABILITY**

All recipients with urban bus service

### **EXPLANATION**

For recipients with 50 or more fixed-route buses in urban service, a reasonable spare ratio should not exceed 20 percent of the vehicles operated in maximum fixed-route service. For fleets of fewer than 50 fixed-route vehicles, judgment must be applied based on the age of the fleet and operating conditions to determine the reasonable number of spare vehicles.

### **INDICATORS OF COMPLIANCE**

- a. *How many revenue buses does the recipient operate in urban service?*
- b. *For fixed-route bus fleets of 50 or more revenue vehicles operated in urban service, does the spare ratio exceed FTA's 20-percent guideline?*
- c. *For fixed-route bus fleets of 50 or fewer buses operated in urban service, does the spare ratio appear reasonable?*



Spare Ratio Calculation	
a. Total number of revenue vehicles	
b. Number of vehicles required for maximum service	
c. Number of spare vehicles (a minus b)	
d. Spare ratio (c divided by b)	

- d. *Is there a bus contingency fleet? If yes, is the contingency plan up-to-date and does it include the required elements?*

Contingency Fleet Required Elements	Comment
Need for contingency fleet activation	
Justification for activation and period of time of activation	
List of buses showing year placed into service, year and mileage removed from service, and useful life in years and mileage	
Where buses are stored and how protected	
Maintenance activity	

### DETERMINING COMPLIANCE

Check TrAMS to see if fleet status is available to calculate the spare ratio submitted with the most recent award application. Determine if the recipient's spare ratio exceeds the guideline or appears excessive. Discuss the results of the analysis with the FTA regional office to determine if there is special dispensation for the recipient, i.e., operates in rough terrain, etc.

Obtain a rolling stock roster from the recipient to compare with what is reported in TrAMS and make updates to the spare ratio calculation. Obtain documentation from the recipient of peak requirements, such as documentation from the scheduling software or other dispatch records documenting the peak of the peak. Onsite obtain and check pull-out logs or fueling logs to verify peak hour requirements and buses in service at the time of the site visit. Determine when the maximum number of vehicles is required and how often. If the spare ratio is more than 20 percent, ask the recipient to explain the reasons why, such as overall age of the fleet, different types of technologies, unique weather operating conditions, etc. Determine if the spare ratio is over the useful life benchmark. Determine whether and how often the recipient is able to meet pullout. Consult with the FTA regional office if there are any extenuating circumstances that would justify not making a deficiency finding.

Review the contingency fleet plan to determine if the plan addresses the required elements. Review the recipient's equipment records to confirm the vehicles listed in the contingency fleet have met their useful lives. Note that FTA permits agencies to include vehicles that have not met their minimum useful life in their contingency fleet if the recipient is introducing zero emission vehicles into its fleet. Ensure that the plan addresses the current contingency fleet.

## POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its spare ratio for fleets of 50 or more buses is higher than 20 percent or for fleets of fewer than 50 buses appears unreasonable.

DEFICIENCY CODE SCC9-1: Excessive fixed-route bus spare ratio

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the FTA regional office a plan for reducing the spare ratio to 20 percent for fleets of 50 or more buses or to what is reasonable for fleets under 50 buses. The plan should include a spreadsheet listing for each bus type, the number of buses, and, for each year until the spare ratio reaches 20 percent, the number of buses to be disposed of, the number of buses to be added, the projected peak requirement, and the projected spare ratio. The plan should include detailed justifications for years in which spare ratios exceed 20 percent. If the plan cannot be completed within 90 days, the recipient must report progress in quarterly/annual reports.

The recipient is deficient if it does not have a contingency fleet plan for vehicles designated as contingency or if the contingency plan does not address all required topics.

DEFICIENCY CODE SCC9-2: Lacking contingency plan/plan out of date

**SUGGESTED CORRECTIVE ACTION 1:** The recipient must submit to the FTA regional office a contingency fleet plan for its contingency fleet.

**SUGGESTED CORRECTIVE ACTION 2:** The recipient must submit to the FTA regional office a revised contingency fleet plan that addresses all the required topics.

## GOVERNING DIRECTIVES

*FTA Circular 5010.1E, Chapter. IV, Section 4. Equipment and Supplies (Including Rolling Stock)*

"k. Rolling Stock Spare Ratio Policies. Spare ratios will be taken into account in the review of Award proposed to replace, rebuild, or acquire additional vehicles. Spare ratio is defined as the total number of spare vehicles available for fixed-route service (regardless of type) divided by the total number of fixed-route vehicles required for annual maximum service (regardless of type). Spare ratio is usually expressed as a percentage, e.g., 100 vehicles required for maximum fixed-route service and 20 spare vehicles is a 20 percent spare ratio. Spare ratios are calculated for the transit system as a whole, not by vehicle type.

For purposes of the spare ratio calculation, "vehicles operated in maximum fixed-route service" is defined as the total number of revenue vehicles operated to meet the annual maximum service requirement. This is the revenue vehicle count during the peak week, day and hours maximum service is provided. It excludes atypical days and special events.

- (1) Bus Fleet. The basis for determining a reasonable spare bus ratio takes local circumstances into account. The number of spare buses in the active fleet for recipients operating 50 or more fixed-route revenue vehicles should not exceed 20 percent of the number of vehicles operated in maximum fixed-route service. FTA does not set a specific spare ratio for smaller operators, but expects the number of spare buses to be reasonable, taking into account the number of vehicles and variety of vehicle types and sizes.

Buses delivered for future expansion and buses that have been replaced, but are in the process of being disposed of, are not included in the calculation of spare ratio.

For each application identified to acquire vehicles, the applicant should address the subjects of current spare ratio, the spare ratio anticipated at the time the new vehicles are introduced into service, disposition of vehicles to be replaced including information on age and mileage, and the applicant's conformance with FTA's spare ratio guideline. An applicant is required to notify

FTA if the spare ratio computation on which the application is based is significantly altered before the Award is made...

- (3) Spare Ratio Deviation. Recipients of buses recently procured may temporarily exceed their spare ratio thresholds. In those cases, recipients may seek a short-term deviation from the spare ratio requirements for small deviations. Recipients should prepare a brief justification explaining the reason for the deviation, a date by which the fleet spare ratio will come into compliance with the general requirements, and the recipient's plans to come into compliance. The deviation will generally be granted for no more than two (2) years and must be approved by the regional administrator either in writing or by approval of the Award.

Recipients must promptly inform the Regional Office of any significant changes related to spare ratios, including plans for disposition or acquisition of vehicles and changes in vehicle needs."

FTA Circular 5010.1E, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock), k. Rolling Stock Spare Ratio Policies

"(4) Contingency Fleet. FTA recognizes two types of vehicles—active and contingency. Revenue rolling stock stockpiled in a contingency fleet in preparation for emergencies must have met their minimum useful life requirements and must be properly stored, maintained, and documented in a contingency plan. FTA will also permit agencies to include vehicles that have met their minimum useful life in their contingency fleet if an agency is introducing zero emission vehicles into its fleet. These vehicles are not included in the calculation of spare ratio. Contingency plans are subject to review during triennial reviews and other FTA oversight reviews. Any rolling stock not supported by a contingency plan will be considered part of the active fleet.

Contingency fleet means inactive rolling stock reserved or retained for emergencies or other unforeseen and justified activities. These activities could include the evacuation of people during an emergency, use as crowd control or traffic barriers, loaners to other transit agencies during a justified need, temporary replacements for buses in the active fleet during major active fleet overhauls or bus maintenance activities and other activities that take a portion of the active fleet temporarily out of service.

The recipient should keep a record of information that demonstrates the need for the contingency fleet activation, the justification for activation and the period of time of activation. The contingency fleet plan should demonstrate that the bus has met its useful life by identifying the year the bus was placed in service, the year and mileage when removed from service and the useful life of the bus in years and miles. The plan should identify where the buses will be stored, how they will be protected and list the maintenance activities performed on the bus to ensure they maintain their contingency bus fleet status.

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## **SCC10. Does the rail fleet management plan meet FTA requirements?**

### **BASIC REQUIREMENT**

Recipients must manage rail fleets in accordance with FTA requirements.

### **APPLICABILITY**

All recipients with rail service

### **EXPLANATION**

Because rail transit operations tend to be distinct from recipient to recipient, FTA requires rail operators to develop rail fleet management plans. The plans must discuss:

- Operating policies
- Peak requirements
- Maintenance/overhaul program

- System and service expansions
- Railcar procurements/schedules
- Spare ratio justification

The spare ratio justification should consider the average number of cars out of service for scheduled maintenance, unscheduled maintenance, and overhaul programs. It should take into account historical variations in ridership and ridership changes that affect car needs due to system or service expansions. The justification should account for contingency needs due to destroyed cars and procurement schedules for fleet replacement and expansion. Cars delivered for future expansion and cars that have been replaced but are in the process of being disposed of should be identified and separated from other spares so as not to inflate the spare ratio. FTA has defined peak vehicle requirement to include “standby” trains that are scheduled, ready for service, and have a designated crew.

#### INDICATORS OF COMPLIANCE

a. *Does the rail fleet management plan include the required elements?*

Rail Fleet Management Plan Required Elements	Comment
Operating policies	
Peak requirements	
Maintenance/overhaul program	
System and service expansions	
Railcar procurements/vehicles	
Spare ratio justification	

b. *Does the rail fleet management plan reflect the current operating environment?*

#### DETERMINING COMPLIANCE

Review the recipient documents in TrAMS for the rail fleet management plan. If not in TrAMS, confer with the FTA regional office to determine if the rail fleet management plan was requested and is on file. If it is, follow up with the recipient to ensure that it is current and reflects the current operating environment, i.e., addresses the current fleet, operating policies, etc. If it is not on file, request the plan from the recipient. Review the plan to ensure that it contains the required elements detailed in the table above.

#### POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it has not prepared a rail fleet management plan, or the plan is missing required elements or is out-of-date, or the plan does not reflect current operations.

DEFICIENCY CODE SCC10-1: Lacking rail fleet management plan/plan out of date

SUGGESTED CORRECTIVE ACTION 1: The recipient must submit to the FTA regional office a rail fleet management plan.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office an updated rail fleet management plan that includes all required elements or reflects current operations.

## GOVERNING DIRECTIVES

FTA Circular 5010.1E, Ch. IV, Section 4. Equipment and Supplies (Including Rolling Stock), k. Rolling Stock Spare Ratio Policies

“(2) Rail Fleet. “Because rail transit operations tend to be highly individualized, FTA has not established a specific number to serve as an acceptable spare ratio for rail transit operations. Nevertheless, rail operators should be aware that the recipient’s rail vehicle spare ratio and the rationale underlying that spare ratio will be examined during the triennial review whenever FTA assistance is used to purchase or rebuild rail vehicles.

The following guidance should be used to support an operator’s proposed rail vehicle spare ratio when the spare ratio is under review by FTA:

(a) An operator of a rail system should have in its file available upon request by FTA a rail fleet management plan that addresses operating policies (level of service requirements; train failure definitions, and actions); peak vehicle requirements (service period and make-up, e.g., standby trains); maintenance and overhaul programs (scheduled, unscheduled, and overhaul); system and service expansions; railcar procurements and related schedules; and spare ratio justifications.

(b) The spare ratio justification should consider the average number of railcars out of service for scheduled maintenance, the unscheduled maintenance and overhaul program, the allowance for ridership variation (historical data), ridership changes that affect railcar needs caused by expansion of the system or services, the contingency for destroyed railcars, and railcar procurements for replacements and system expansions.

(c) Railcars delivered for future expansion and railcars that have been replaced, but are in the process of being disposed of, should not be included in the calculation of spare ratio.

(d) Peak Vehicle Requirements include “standby” trains that are scheduled, ready for service, and have a designated crew.

(e) Factors that may influence spare ratios are the type of equipment (locomotive hauled trains; married pair units or single railcars, equipment design, reliability, and age), environmental conditions (weather, above ground or underground operation, loading and track layout), operational policies (standby trains, load factors, headways), maintenance policies (conditions for removing railcars from service, maintenance during nights and weekends, and labor agreement conditions), and maintenance facilities and staff capabilities.”

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**SCC11. If the recipient or a subrecipient used FTA capital assistance to finance the lease of any transit facilities or equipment, was a certification provided to FTA that a cost-effectiveness determination was conducted prior to entering into the lease or receiving the award?**

### BASIC REQUIREMENT

For leases entered into before October 1, 2015, and financed with FTA capital assistance, recipients must certify to FTA that a cost-effectiveness determination was conducted prior to receiving the award or entering into the lease.

### APPLICABILITY

All recipients

## EXPLANATION

A lease may qualify for capital assistance if it meets the following criteria:

- The capital asset to be acquired by lease is eligible for capital assistance
- There is or will be no existing Federal interest in the capital asset as of the date the lease will take effect
- Leasing the capital asset is more cost-effective than purchase or construction of the asset

Many recipients enter into capital leases for tires.

## INDICATOR OF COMPLIANCE

- Did the recipient certify to FTA that a cost-effectiveness determination was conducted prior to receiving the award or entering into the lease?*

## DETERMINING COMPLIANCE

Review projects in TrAMS to determine if the recipient uses FTA funds to finance the lease of capital items and if it entered into the lease before October 1, 2015, and since the last Comprehensive Review. If yes, determine if the recipient certified to FTA that it conducted a cost-effectiveness determination prior to receiving the award or entering into the lease. If necessary, follow up with the regional office. During the site visit, discuss the capital lease(s) with the recipient.

## POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it did not certify to FTA that it conducted a cost-effectiveness determination prior to receiving the award or entering into the lease.

DEFICIENCY CODE SCC11-1: No certification of cost effectiveness to FTA for capital lease

SUGGESTED CORRECTIVE ACTION: Consult the FTA regional office for corrective action related to capital leasing deficiencies. The recipient may be required to certify to FTA that it conducted a cost-effectiveness determination if certification is not on file, but FTA will determine if corrective action is possible or if Federal participation in the project must be withdrawn.

## GOVERNING DIRECTIVES

FTA C. 5010.1D, *Ch. IV, Section 3.i(3)*

“Cost Effectiveness. Grantees shall obtain FTA review of the cost-effectiveness determination prior to entering into any capital lease. Grantees should reference Circular A-94 for cost-effectiveness calculations and to obtain the most recent discount rate for the purpose of calculating the net present value of a future benefit.”

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## SCC12. Does the recipient maintain control over FTA-funded property and ensure that subrecipients, contractors, and lessees use FTA-funded property for project purposes?

### BASIC REQUIREMENT

The recipient is responsible for ensuring that subrecipients, contractors, and lessees use FTA-funded property for project purposes.

### APPLICABILITY

All recipients with subrecipients, contractors, or lessees

## EXPLANATION

Assets acquired with FTA funds may be leased to other entities such as local public bodies or agencies, private nonprofit organizations, or private for-profit operators. Under a lease acquired with FTA

assistance, the lessee operates the assets on behalf of the recipient or subrecipient and provides transportation as described in the award application.

FTA requires recipients to exercise control over FTA-funded property provided or leased to subrecipients, contractors, or lessees and to ensure that it is used for project purposes.

**Non-state recipient:** For any equipment provided or leased to subrecipients, contractors, or lessees, the recipient must:

- Include the FTA-funded equipment in its records
- Conduct (or cause to be conducted) a biennial physical inventory of FTA-funded equipment
- Reconcile (or ensure reconciliation of) the results of the physical inventory of FTA-funded equipment to the equipment records
- Ensure that a system is in place to prevent loss, damage, or theft of FTA-funded equipment
- Ensure that FTA-funded equipment is used for project purposes
- Follow FTA requirements for return or use of disposition proceeds.

Other potential control measures include vehicle use certifications, vehicle use reports, retention of or liens on titles, insurance requirements, disposition requirements, and site visits.

Recipients may lease FTA-funded assets to private operators. Prior FTA concurrence is required for equipment leased on or after November 1, 2008. If the lease is described in the award application, FTA approval of the award constitutes approval of the lease. When FTA-funded equipment and rolling stock is leased to a private operator, the lease should contain certain provisions (see Indicators of Compliance).

#### INDICATORS OF COMPLIANCE

- a. *How does the recipient monitor its subrecipients to ensure that FTA-funded real property is used for project purposes?*
- b. *How does the recipient monitor its contractors and lessees to ensure that FTA-funded real property is used for project purposes?*
- c. *How does the recipient maintain control over and monitor use of FTA-funded equipment awarded to subrecipients or used by contractors, or leased to third parties?*
- d. *Has the recipient received written approval from FTA for leases of FTA-funded assets to private operators? Do the leases contain the required provisions?*

Required Lease Provisions	Comments
The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement	
The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted	

Required Lease Provisions	Comments
property	
The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa	

#### **DETERMINING COMPLIANCE**

Review a listing of subrecipients, contractors, and lessees that have FTA-funded real property (land and improvements thereon). Review the recipient's real property report to ensure that FTA-funded real property operated by contractors, lessees, or subrecipients is included. Select sample agreements, contracts and lease agreements in accordance with the sampling procedures in the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment for the requirements imposed on the use of FTA-funded real property.

**For states:** Review the state management plan and the state's oversight procedures and related oversight materials.

**For non-states:** Review the program management plan(s) and the recipient's oversight procedures and related sample oversight materials.

**For all recipients:** Confer with the FTA regional office on whether it has approved any leases between the recipient and private operators. Obtain FTA approvals for the leases. Obtain a listing of private operators that lease federally funded equipment. Compare the list of private operators who lease federally funded equipment with the approvals obtained from the regional office. For any discrepancies between the FTA record of approval and the recipient's records, follow up with the recipient for documentation of approval. For any lease not approved by FTA, review to ensure that it includes the required provisions.

During site visits to subrecipients, contractors, and lessees, discuss and confirm whether the subrecipients, contractors, and lessees comply with the FTA-funded real property requirements. If the oversight files for the subrecipients, contractors, or lessees to be visited identified non-compliance issues, follow up with the recipient and/or subrecipient, contractor, or lessee to determine how the issues were resolved.

#### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not ensure that subrecipients, contractors, or lessees use FTA-funded real property for project purposes.

DEFICIENCY CODE SCC12-1: Inadequate control of real property

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the FTA regional office procedures for monitoring the use of FTA-funded real property by subrecipients, contractors, or lessees.

The recipient is deficient if it is unable to demonstrate procedures to manage and maintain continuing control over FTA-funded equipment, along with ensuring the equipment is used for project purposes.

DEFICIENCY CODE SCC12-2: Inadequate control of equipment

**SUGGESTED CORRECTIVE ACTION:** The recipient must submit to the FTA regional office revised procedures for control of equipment operated by subrecipients, contractors, or lessees.



The recipient is deficient if it does not have FTA concurrence for leasing FTA-funded assets to private operators or if the lease does not include the required provisions.

DEFICIENCY CODE SCC12-3: Lease issues

SUGGESTED CORRECTIVE ACTION 1: The recipient must obtain approval for leases of FTA-funded assets to private operators and must submit to the FTA regional office procedures for obtaining prior FTA approval before leasing FTA-funded assets to private operators.

SUGGESTED CORRECTIVE ACTION 2: The recipient must submit to the FTA regional office amended leases of FTA-funded assets to private operators that include the required terms and conditions, along with procedures for including the terms and conditions in future leases.

## **GOVERNING DIRECTIVES**

### **2 CFR 200.311 Real property**

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

### **2 CFR 200.318(b)**

“Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.”

### **2 CFR 200.331 Requirement for pass-through entities**

“All pass-through entities must:

(d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:

- (1) Reviewing financial and performance reports required by the pass-through entity.
- (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
- (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.

(e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:

- (1) Providing subrecipients with training and technical assistance on program-related matters;
- (2) Performing on-site reviews of the subrecipient's program operations; and
- (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.”

FTA Circular 5010.1E, Chapter II, Section 3.a.(2)-(4), (7) Roles and Responsibilities of the Management of Awards

“Recipients are responsible for the day-to-day management of their Awards that provide assistance for eligible activities or projects. FTA monitors Awards and the federally assisted projects thereunder to confirm that recipients establish and follow procedures that comply with federal requirements and the terms and conditions outlined. Chapter III of this circular describes the mechanics and requirements for administration of FTA Awards, Chapter IV describes the requirements for managing FTA Awards and Projects, and Chapter VI describes the requirements for the financial management of FTA Awards and Projects.

a. Recipient Role. In addition to FTA’s responsibility to monitor FTA Awards and the federally assisted projects thereunder, recipients must monitor federally assisted activities to ensure compliance with applicable federal requirements. This includes the administration and management of the Award in compliance with federal regulations, the Grant or Cooperative Agreement, and applicable FTA circulars. A recipient is also responsible for federal assistance that “passes through” to a subrecipient. In general, submission of the annual Certifications and Assurances stands in lieu of detailed FTA oversight before approval of an Award; however, the results of ongoing or routine FTA oversight activities also will be considered as applicable. Annual, independent, organization-wide audits, 2 CFR part 200, subpart F, “Audits”, audits of recipients, and other recurring and specialized reviews provide FTA an opportunity to verify the recipient’s Certifications and Assurances (See Chapter V, “Oversight,” of this circular).

The recipient’s responsibilities include, but are not limited to, actions that:

- (1) Demonstrate the legal, financial, and technical capacity to carry out the program, including safety and security aspects of the program;
- (2) Provide administrative and management support of project implementation;
- (3) Provide, directly or by contract, adequate technical inspection and supervision by qualified professionals of all work in progress;
- (4) Ensure conformity to Grant Agreements and Cooperative Agreements, applicable statutes, codes, ordinances, and safety standards;
- (5) Maintain project work schedules agreed to by FTA and the recipient and monitor activities under the Award to assure schedules are met and other performance goals are achieved;
- (6) Keep expenditures within the latest approved Award Budget;
- (7) Ensure compliance with FTA and federal requirements by agencies, consultants, contractors, and subcontractors working under approved third-party contracts or inter-agency agreements; ...”

FTA Circular 5010.1E, Chapter IV, Section 4I(4) –(5). Leases

“(4) The Recipient as Lessor. In all instances in which the recipient is a lessor (the party leasing an asset to another), the recipient must obtain FTA’s written concurrence before leasing federally assisted assets to others. In addition, for equipment leasing, recipients must comply with FTA’s Charter Service regulations, School Bus Operations regulations, and with requirements below:

(5) Leasing FTA Assisted Assets to Others for Transit Service. The recipient may enter into a contract for leasing its federally assisted property to a private operator (the lessee). The lease must be subject to and incorporate by reference the terms and conditions of the Grant or Cooperative Agreement. Under this arrangement, the recipient (the lessor) should include the following provisions in the proposed lease agreement:

- 1 The federally assisted property shall be operated by the lessee to serve the best interests and welfare of the recipient, lessor, and the public; the terms and conditions for operation of service imposed by the recipient shall be evidenced in a service agreement;
  - 2 The lessee shall maintain the federally assisted property at a high level of cleanliness, safety, and mechanical soundness under maintenance procedures outlined by the recipient; the recipient, lessor, and/or FTA shall have the right to conduct periodic maintenance inspections for the purpose of confirming the existence, condition, and the proper maintenance of the federally assisted property; and
  - 3 The lease needs to cross reference a service agreement. A default under the lease is a default under the service agreement and vice versa.”
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#### **ISSUES/AREAS OF CONCERN FOR FTA AWARENESS**

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

#### **REFERENCES**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
3. FTA Circular 5010.1E, "Award Management Requirements"

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