

19. SECTION 5310 PROGRAM REQUIREMENTS

PURPOSE OF THIS REVIEW AREA

Recipients must expend funds on eligible projects that meet the specific needs of seniors and individuals with disabilities. Projects selected for funding under the Section 5310 program must be included in a locally developed, coordinated public transit-human services transportation plan. Recipients must approve all leases of Section 5310-funded vehicles and ensure that leases include required terms and conditions. Either the recipient or subrecipient must hold title to the leased vehicles.

QUESTIONS TO BE EXAMINED

1. Are subrecipients eligible under the Section 5310 program?
2. Does the distribution of funds meet Section 5310 program requirements?
3. Are at least 55 percent of Section 5310 apportionments applied to “traditional” projects?
4. Are all Section 5310 projects included in a locally developed, coordinated public transit-human service transportation plan per Section 5310 program requirements?
5. Are all Section 5310 funds used for services that meet the specific needs of seniors and individuals with disabilities?
6. Does the recipient agree in writing to all subrecipient lease agreements, ensure that lease agreements contain required provisions, and ensure leases to private operators are awarded through a competitive process?

INFORMATION NEEDED FROM RECIPIENT

Recipient Information Request

- State correspondence approving a public body to coordinate services for seniors and persons with disabilities, if applicable
- Certification documentation that no nonprofits are readily available, if applicable
- Governor’s certification for transfer of 5310 funds, if applicable
- Program reports monitoring incidental service

Recipient Follow-up

- Coordinated plans, if not available on recipient website

5310:1. Are subrecipients eligible under the Section 5310 program?

BASIC REQUIREMENT

The Section 5310 program sets specific eligibility requirements for subrecipients for “traditional” and “other” program funds. Eligible subrecipients for “traditional funds” are private nonprofit organizations and governmental entities that are approved by the state to coordinate service or certify that no nonprofits are readily available to provide the service. Eligible subrecipients for “other” funds include state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 award indirectly through a recipient.

APPLICABILITY

Designated 5310 recipients

EXPLANATION

Section 5310 provides formula funding to states and designated recipients of large urbanized areas (UZAs) with populations of 200,000 or more) to improve mobility for seniors and individuals with disabilities. Statute defines a “senior” as an individual who is 65 years of age or older. This program provides funds for:

- Public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and people with disabilities when public transportation is insufficient, unavailable, or inappropriate
- Public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA) of 1990
- Public transportation projects that improve access to fixed-route service and decrease reliance by people with disabilities on complementary paratransit
- Alternatives to public transportation that assist seniors and individuals with disabilities with transportation

Traditional projects are those planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable. Three categories of subrecipients are eligible for these (Section 5310(b)) funds:

- Private nonprofit organizations if public transportation service provided by state and local governmental authorities is unavailable, insufficient, or inappropriate for elderly individuals and individuals with disabilities
- Governmental authorities 1) approved by the state to coordinate services for seniors and individuals with disabilities or 2) that certify to the governor that there are no nonprofit corporations readily available in the area to provide the service

“Other” eligible Section 5310 activities include a state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 award indirectly through a recipient. Private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) on a regular basis are operators of public transportation, and therefore eligible subrecipients. The state/program management plan must document program eligibility requirements.

INDICATORS OF COMPLIANCE

- Are subrecipients eligible?*
- If governmental authorities receive “traditional” Section 5310 funds, have they been approved by the state to coordinate services for seniors and persons with disabilities or have they certified that no nonprofits are readily available?*

DETERMINING COMPLIANCE

Review the state/program management plan and subrecipient applications and agreements to verify that subrecipient eligibility requirements match or are more restrictive than the Federal Transit Administration (FTA)’s 5310 program requirements. Retrieve from Transit Award Management System (TrAMS) the programs of projects for awards executed since the last review. Use the Records Selection Procedures in the Comprehensive Review Standard Operating Procedures Attachment to select a sample of subrecipients. On site, review the recipient’s records to confirm that they are eligible. For governmental entities that receive “traditional” funds, review subrecipients’ certifications or state correspondence approving the public body to coordinate services.

Award	Subrecipient	“Traditional” or “Other”	Comment

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POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it awarded Section 5310 funds to subrecipients that are not eligible under the program or it does not have the appropriate documentation for governmental authorities receiving “traditional” Section 5310 assistance.

DEFICIENCY CODE 5310:1-1: Ineligible Section 5310 subrecipients

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a revised state/program management plan and other pertinent documents, such as the award application, with subrecipient eligibility requirements that are consistent with, or more restrictive than, FTA's requirements, along with evidence that the revised eligibility requirements were used in its next application cycle.

The recipient is deficient if it does not have the appropriate documentation for governmental authorities receiving “traditional” Section 5310 assistance.

DEFICIENCY CODE 5310:1-2: No documentation for governmental authorities

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that governmental authorities that receive “traditional” Section 5310 assistance are eligible.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Chapter III General Program Information

“5. ELIGIBLE SUBRECIPIENTS FOR TRADITIONAL SECTION 5310 PROJECTS. Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Further, the law provides that, for these projects, a recipient may allocate the funds apportioned to it to:

- a. A private nonprofit organization; or
- b. A state or local governmental authority that:
 - (1) is approved by a state to coordinate services for seniors and individuals with disabilities; or
 - (2) certifies that there are no nonprofit organizations readily available in the area to provide the service.

These provisions, found at 49 U.S.C. 5310(b)(1) and (b)(2), essentially maintain the status quo for traditional Section 5310 projects.

Governmental authorities eligible to apply for Section 5310 funds as “coordinators of services for seniors and individuals with disabilities” are those designated by the state to coordinate human service activities in a particular area. Examples of such eligible governmental authorities are a county agency on aging or a public transit provider which the state has identified as the lead agency to coordinate transportation services funded by multiple federal or state human service programs.

ELIGIBLE SUBRECIPIENTS FOR OTHER SECTION 5310 PROJECTS. Eligible subrecipients for other eligible Section 5310 activities include a state or local governmental authority, a private nonprofit organization, or an operator of public transportation that receives a Section 5310 grant indirectly through a recipient.

PRIVATE TAXI OPERATORS AS SUBRECIPIENTS. Private operators of public transportation are eligible subrecipients. The definition of “public transportation” includes “... shared-ride surface transportation services ...” Private taxi companies that provide shared-ride taxi service to the general public on a regular basis are operators of public transportation, and therefore eligible subrecipients. “Shared-ride” means two or more passengers in the same vehicle who are otherwise not traveling together. Similar to general public and ADA demand response service, every trip does not have to be shared-ride in order for a taxi company to be considered a shared-ride operator, but the general nature of the service must include shared rides...

Taxi companies that provide only exclusive-ride service are not eligible subrecipients; however, they may participate in the Section 5310 program as contractors. Exclusive-ride taxi companies may receive Section 5310 funds to purchase accessible taxis under contract with a state, designated recipient, or eligible subrecipient such as a local government or nonprofit organization. The taxi company may hold title to the accessible vehicle(s) as long as the agreement between the state, designated recipient, or subrecipient and the taxi company is sufficient to establish satisfactory continuing control. Acceptable means of establishing satisfactory continuing control could include a state, designated recipient, or subrecipient’s lien on the vehicle, or contract provisions that require the accessible taxi to be used to provide transportation for seniors and people with disabilities, and that the vehicle may not be removed from service or disposed of prior to the end of its useful life without the express written consent of the FTA recipient or subrecipient.”

5310:2. Does the distribution of funds meet Section 5310 program requirements?

BASIC REQUIREMENT

Section 5310 funds must be used in large urbanized, small urbanized, and rural areas, as apportioned, unless certified by the Governor after consultation with stakeholders.

APPLICABILITY

All state recipients of Section 5310 funds, except insular areas

EXPLANATION

A state may use funds apportioned for small urbanized and rural areas for projects serving another area of the state if the Governor of the state certifies that all of the objectives of the Section 5310 program are being met in the specified areas. For example, if all objectives of the Section 5310 program are being met in rural areas, funds designated for rural areas may be transferred to an urbanized area. A state may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large UZAs may not be transferred to other areas.

INDICATORS OF COMPLIANCE

- a. *How are funds apportioned to large urbanized, small urbanized, and rural areas tracked so that they are awarded to projects in the appropriate areas?*
- b. *In the area(s) from which funds were transferred, were responsible local officials, publicly owned operators of public transportation, and nonprofit providers consulted?*

DETERMINING COMPLIANCE

Review the state/program management plan and subrecipient applications to verify project eligibility for Section 5310 funding.

Note: The requirement applies to the apportionment, not the award. An award may have multiple years of funding. The account classification code will indicate the year of the funds and whether the funds are for rural, small urban, or large urbanized areas.

For states, if funds were transferred, obtain and review evidence of consultation with responsible local officials, publicly owned operators of public transportation, and nonprofit providers. Obtain the governor's certification for transferred funds.

POTENTIAL DEFICIENCY DETERMINATIONS

The state is deficient if it does not track Section 5310 funds by apportionment area.

DEFICIENCY CODE 5310:2-1: Section 5310 projects not tracked by apportionment

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office procedures for tracking Section 5310 funds by rural, small urban, and large urbanized areas.

The state is deficient if it did not consult with responsible local officials, publicly owned operators of public transportation, and nonprofit providers before transferring funds.

DEFICIENCY CODE 5310:2-2: Section 5310 funds inappropriately transferred

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office procedures for consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers before transferring funds between rural and small urbanized areas or to large urbanized areas.

The state is deficient if the governor did not certify that all of the objectives of the Section 5310 program are being met in the area(s) from which funds are transferred.

DEFICIENCY CODE 5310:2-3: Section 5310 funds inappropriately transferred

SUGGESTED CORRECTIVE ACTION: The state must submit a governor's certification for transferred funds and procedures for obtaining the governor's certification when funds are transferred.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Chapter III General Program Information

10. b. Transfer to Other Areas within the Program. A State may use funds apportioned for small urbanized and rural areas for projects serving another area of the State if the Governor of the State certifies that all of the objectives of the Section 5310 program are being met in the specified areas. For example, if all objectives of the Section 5310 program are being met in rural areas, funds designated for rural areas may be transferred to urbanized areas of less than 200,000 in population. Funds apportioned to small urbanized and rural areas may also be transferred for use anywhere in

the State, including large urbanized areas, if the State has established a statewide program for meeting the objectives of the Section 5310 program. A recipient may transfer apportioned funds only after consulting with responsible local officials, publicly owned operators of public transportation, and nonprofit providers in the area from which the funds to be transferred were originally apportioned. Funds apportioned to large UZAs may not be transferred to other areas.

5310:3. Are at least 55 percent of Section 5310 apportionments applied to “traditional” projects?

BASIC REQUIREMENT

At least 55 percent of Section 5310 funds must be used for traditional projects.

APPLICABILITY

All recipients of Section 5310 funds, except insular areas

EXPLANATION

Not less than 55 percent of the funds available for this program must be used for projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, typically carried out by eligible subrecipients. The 55 percent is a floor. A recipient may use more of its Section 5310 funds for these capital projects, but may not use less. Three categories of subrecipients are eligible for these (Section 5310(b)) funds:

- Private nonprofit organizations if public transportation service provided by state and local governmental authorities is unavailable, insufficient, or inappropriate for elderly individuals and individuals with disabilities
- Governmental authorities 1) approved by the state to coordinate services for seniors and individuals with disabilities or 2) that certify to the governor that there are no nonprofit corporations readily available in the area to provide the service

INDICATORS OF COMPLIANCE

- a. Is at least 55 percent of the Section 5310 apportionments in each area applied to “traditional” Section 5310 capital projects?*
- b. If traditional projects are carried out by governmental authorities are they approved by the state to coordinate services for seniors and individuals with disabilities OR have they certified to the governor that there are no nonprofit corporations readily available in the area to provide the service?*

DETERMINING COMPLIANCE

Review the state/program management plan and subrecipient applications to verify project eligibility for Section 5310 funding.

Review programs of projects in TrAMS to determine which projects are classified as traditional and the amount of funds programmed for traditional projects. Onsite, discuss the recipient's procedures for classifying projects as “traditional” and tracking to ensure that the 55 percent is met for the rural apportionment, small urban apportionment, and each urbanized area apportionment for each apportionment year. Review with the recipient documentation (reports from the accounting system or spreadsheets) showing that the 55 percent requirement is met.

Note: The requirement applies to the apportionment, not the award. An award may have multiple years of funding. The account classification code will indicate the year of the funds and whether the funds are for rural, small urban, or large urbanized areas.

Also, note that states may share designation status with a recipient in a large urbanized area. For example, a state may be the designated recipient for the “traditional” funds while the large urbanized area recipient may be the designated recipient for “other” funds. In these instances, determine which funds the state applies for and which funds the large urbanized area recipient applies for.

The requirement to spend at least 55 percent on “traditional” projects does not apply to funds flexed (transferred) into the program.

POTENTIAL DEFICIENCY DETERMINATION

The recipient is deficient if less than 55 percent of funds are used by eligible recipients for traditional capital projects.

DEFICIENCY CODE 5310:3-1: 5310 traditional project requirements not met

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that at least 55 percent of Section 5310 funds are expended on “traditional” Section 5310 capital projects undertaken by eligible subrecipients.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Chapter III General Program Information

“5. ELIGIBLE SUBRECIPIENTS FOR TRADITIONAL SECTION 5310 PROJECTS. Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate.

10. c. Transfer of FHWA Flexible Funds. Flexible funds from the Federal Highway Administration (FHWA) may be transferred to the Section 5310 program for use by the recipient. The funds will be treated under the Section 5310 program requirements, with the exception of the local match and the minimum requirement for 55 percent to be spent on traditional Section 5310 projects. The FHWA funds will maintain the FHWA eligible match, including the application of the sliding scale for a higher federal share. The funds are available for obligation by the state for two additional years after the year in which they are transferred.

13. ELIGIBLE ACTIVITIES. Section 5310 funds are available for capital and operating expenses to support the provision of transportation services to meet the specific needs of seniors and individuals with disabilities.

Section 5310(b) provides that of the amounts apportioned to states and designated recipients, not less than 55 percent shall be available for traditional Section 5310 projects—those public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate. Notably, this 55 percent is a floor, not a ceiling—recipients may use more than 55 percent of their apportionment for this type of project.

This means that at least 55 percent of any rural, small urbanized area, or large urbanized area’s annual apportionment must be utilized for public transportation capital projects that are planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities. It is not sufficient that seniors and individuals with disabilities are merely included (or assumed to be included) among the people who will benefit from the project.

Eligible projects for the required 55 percent of capital projects include the capital cost of contracting for the provision of transit services for seniors and individuals with disabilities and other specialized shared-ride transportation services. The purchase of rolling stock for or the acquisition of ADA-complementary paratransit service are eligible capital expenses that may also qualify as public transportation capital projects planned, designed, and carried out to meet the specific needs of seniors and individuals with disabilities when public transportation is insufficient, unavailable, or inappropriate, provided the projects are carried out by eligible subrecipients (see section 5, above) and these projects are included in the area's coordinated plan."

5310:4. Are all Section 5310 projects included in a locally developed, coordinated public transit-human service transportation plan per Section 5310 program requirements?

BASIC REQUIREMENT

Projects selected for funding under the Section 5310 program must be included in a locally developed, coordinated public transit-human services transportation plan.

APPLICABILITY

All recipients of 5310 funds

EXPLANATION

Recipients must certify that: (1) projects selected for funding under the Section 5310 program are included in a locally developed, coordinated public transit-human services transportation plan; and, (2) that the plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public.

Public transit-human services transportation plans must contain:

- An assessment of available services that identifies current transportation providers (public, private and nonprofit)
- An assessment of transportation needs of individuals with disabilities and seniors, older adults and people with low incomes
- Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to improve efficiencies in service delivery
- Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified

The plans must be developed and approved with representation from seniors; individuals with disabilities; representatives of public, private, nonprofit transportation and human services providers; and other members of the public. Recipients are not required to submit the coordinated plans to FTA. Recipients must certify that projects were selected from this process and must make reference to the plan in the program of projects.

INDICATORS OF COMPLIANCE

- a. *Are all Section 5310 projects included in a public transit-human services transportation plan?*
- b. *Do coordinated plans for the Section 5310 program address the required elements?*
- c. *Were plans developed and approved with representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public?*

DETERMINING COMPLIANCE

Review the state/program management plan for a discussion of the public transit-human services transportation plans. Review any technical assistance documents provided by the recipient providing guidance on development of the plans. Many recipients post the plans on their websites. Obtain the program of projects for active Section 5310 awards in TrAMS and confirm that the projects are included in the coordinated plan(s). Using the following table, review a sample of coordinated plans to ensure that the plans include required elements.

Coordinated Plan Required Elements	
Required Element	Reviewer Comments
An assessment of available services that identifies current transportation providers (public, private, and nonprofit)	
An assessment of transportation needs for individuals with disabilities and seniors. This assessment can be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service	
Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery	
Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified	

Review the plans for a discussion of what entities participated in the development of the plans to ensure that the plans were developed with representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public. If necessary, follow up with the recipient during the site visit.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if any Section 5310 projects are not included in a coordinated plan.

DEFICIENCY CODE 5310:4-1: Section 5310 projects not included in coordinated plans

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an amended coordinated plan(s) that include all Section 5310 projects, along with procedures for ensuring that updates to the plan(s) include all projects.

The recipient is deficient if its coordinated plans do not address the required elements.

DEFICIENCY CODE 5310:4-2: Coordinated plans missing required elements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an amended coordinated plan(s) that addresses the required elements, along with procedures for ensuring that updates to the plan(s) address the required elements.

The recipient is deficient if its coordinated plans were developed and approved without representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public.

DEFICIENCY CODE 5310:4-3: Inadequate public involvement efforts for coordinated plans

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for developing and approving coordinated plans with representation from seniors and individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Chapter V Coordinated Planning

“2.b. Required Elements. Projects selected for funding shall be included in a coordinated plan that minimally includes the following elements at a level consistent with available resources and the complexity of the local institutional environment:

- (1) An assessment of available services that identifies current transportation providers (public, private, and nonprofit);
- (2) An assessment of transportation needs for individuals with disabilities and seniors. This assessment can be based on the experiences and perceptions of the planning partners or on more sophisticated data collection efforts, and gaps in service;
- (3) Strategies, activities, and/or projects to address the identified gaps between current services and needs, as well as opportunities to achieve efficiencies in service delivery; and
- (4) Priorities for implementation based on resources (from multiple program sources), time, and feasibility for implementing specific strategies and/or activities identified.

3. PARTICIPATION IN THE COORDINATED PUBLIC TRANSIT-HUMAN SERVICES TRANSPORTATION PLANNING PROCESS. Recipients shall certify that the coordinated plan was developed and approved through a process that included participation by seniors; individuals with disabilities; representatives of public, private, and nonprofit transportation and human services providers; and other members of the public. Note that the required participants include not only transportation providers but also providers of human services, and members of the public who can provide insights into local transportation needs. It is important that stakeholders be included in the development, approval, and implementation of the local coordinated public transit-human service transportation plan. A planning process in which stakeholders provide their opinions but have no assurance that those opinions will be considered in the outcome does not meet the requirement of “participation.” Explicit consideration and response should be provided to public input received during the development of the coordinated plan. Stakeholders should have reasonable opportunities to be actively involved in the decision-making process at key decision points, including, but not limited to, development and approval of the proposed coordinated plan document.”

5310:5. Are all Section 5310 funds used for services that meet the specific needs of seniors and individuals with disabilities?

BASIC REQUIREMENT

Section 5310 funds must be used for capital and operating expenses to support the provision of transportation services to meet the specific needs of seniors and individuals with disabilities. Incidental services must not conflict with the provision of public transit service.

APPLICABILITY

Designated recipients of Section 5310 funds

EXPLANATION

Section 5310 funds are available to meet the transportation needs of seniors and individuals with disabilities. The recipient must ensure that Section 5310-funded services are being used to support eligible transportation services for seniors and individuals with disabilities.

Generally, the recipient's subrecipient application package requests a description of the proposed project, including service area, eligible customers, and days and hours of operation. The recipient may require subrecipients to report information on the services provided and populations served (e.g., general public, elderly, disabled) on a periodic basis. The recipient may also observe a subrecipient's service during site visits.

FTA encourages maximum use of Section 5310-funded vehicles. Vehicles are to be used for the project stated in the award application and subrecipient agreement. Beyond those needs, vehicles should be used to meet other transportation needs of seniors and individuals with disabilities; to meet other Federal program or project needs; and finally, to meet other local transportation needs. Subrecipients may coordinate and assist in meal delivery service for homebound persons on a regular basis if this service does not conflict with the provision of mass transit service or result in a reduction of service to transit passengers. Section 5310 capital assistance may not be used to purchase special vehicles used solely for meal delivery or to purchase specialized equipment related to meal delivery. The number and size of vehicles applied for must be determined by the number of passengers to be transported, not meal delivery capacity. Section 5310 funds may not be used to purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.

Similarly, incidental use of a vehicle for non-passenger transportation on an occasional or regular basis is also permitted, as long as it does not result in a reduction of service quality or availability of public transportation service.

The recipient must ensure that incidental service does not interfere with the provision of transit service. The recipient may request information on incidental service in the subrecipient application process. Along with the number of passengers, miles and other statistics, some recipients require subrecipients to report periodically on meal delivery and other incidental service. Some recipients observe subrecipients' service during site visits.

INDICATORS OF COMPLIANCE

a. For recipients with Section 5310 subrecipients:

- i. How are Section 5310 program services monitored to ensure that they are eligible?*
- ii. How are meal delivery and other incidental services monitored to ensure that they do not conflict with the provision of transit service or result in a reduction of service to transit passengers?*

b. For recipients that provide Section 5310 service directly:

- i. Are services eligible?*
- ii. Do meal delivery and other incidental services conflict with the provision of transit service or result in a reduction of service to transit passengers?*

DETERMINING COMPLIANCE

Review the state/program management plan, subrecipient application, and subrecipient agreement for a discussion of the direction given to subrecipients on incidental service.

Obtain and review monitoring materials, such as program measure reports and site visit checklists for evidence that the recipient ensures that services are provided to seniors and individuals with disabilities and that incidental services do not detract from transportation services. On site, review the oversight file(s) for the subrecipient(s) to be visited to determine if the recipient has implemented its oversight program.

During subrecipient site visits, determine if the subrecipient is providing eligible service and if any incidental service detracts from the provision of public transportation.

For recipients that provide Section 5310 service directly, obtain review program report, public information on the services provided and compare to the award application to verify that projects described in the award are being carried out. On site, discuss with the recipient how it monitors to ensure that incidental services do not conflict with the provision of transit service.

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if it operates ineligible service or if incidental services detract from the provision of transit service.

DEFICIENCY CODE 5310:5-1: Ineligible Section 5310 services

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it has ceased using Section 5310 funds for ineligible service and work with the FTA regional office to determine the appropriate remedy for recovering funds already expended.

The recipient is deficient if it does not monitor subrecipients to ensure that eligible service continues to be provided.

DEFICIENCY CODE 5310:5-2: Insufficient monitoring of Section 5310 subrecipient eligible services

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that Section 5310-funded services continue to be eligible for assistance.

The recipient is deficient if it does not monitor its own service or that of its subrecipients to ensure that incidental services do not interfere with the provision of transportation service to seniors and individuals with disabilities.

DEFICIENCY CODE 5310:5-3: Insufficient monitoring of Section 5310 incidental service

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that incidental service provided by itself or its Section 5310 subrecipients does not detract from transportation service for seniors and individuals with disabilities.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Ch. VI, Section 5 Vehicle Use

“FTA encourages maximum use of vehicles funded under the Section 5310 program. Consistent with the requirements of 49 CFR parts 18 and 19, vehicles are to be used first for program-related needs for which a Section 5310 grant is made and then to meet other federal programs or project needs, providing these uses do not interfere with the project activities originally funded. If the vehicle is no

longer needed for the original program or project, the vehicle may be used in other activities currently or previously supported by a federal agency. Vehicles may be used:

d. For Meal Delivery. Transit service providers receiving assistance under this section may coordinate and assist in providing meal delivery services for homebound people on a regular basis if the meal delivery services do not conflict with the provision of transit services or result in a reduction of service to transit passengers. The number and size of vehicles applied for under Section 5310 must be determined only by the number of passengers to be transported, not meal delivery capacity. Section 5310 funds may not be used to purchase special vehicles to be used solely for meal delivery or to purchase specialized equipment such as racks or heating or refrigeration units related to meal delivery.”

5310:6. Does the recipient agree in writing to all subrecipient lease agreements, ensure that lease agreements contain required provisions, and ensure leases to private operators are awarded through a competitive process?

BASIC REQUIREMENT

Recipients must agree in writing to all subrecipient lease agreements, ensure that lease agreements contain required provisions, and ensure leases to private operators were awarded through a competitive process.

APPLICABILITY

Designated recipients of Section 5310 funds

EXPLANATION

Vehicles acquired under the Section 5310 program may be leased to other entities such as local governmental authorities or agencies, other private nonprofit agencies, or private for-profit operators. Since the state or designated recipient is responsible for ensuring that the terms and conditions of the original award with FTA are met, the recipient must agree, in writing, to each lease between the subrecipient and the lessee.

Lease agreements must:

- Contain the terms and conditions that must be met in providing transportation service to seniors and people with disabilities
- Specify that the leased vehicle shall be used to provide transportation service to seniors and people with disabilities, that the vehicle may be used for incidental purposes only after the needs of these individuals have been met
- Ensure the subrecipient, state, or designated recipient retains title to the vehicle

Recipients may lease any of their assets to others on an incidental basis so long as the lease agreement holds the lessee responsible for compliance with all of the requirements the recipient itself is responsible for including applicable and relevant terms and conditions of FTA's master agreement in the maintenance and use of the asset.

A recipient may lease its assets to a private entity to operate in public transit service so long as the entity has been selected through a competitive process and so long as the lease agreement obliges the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement.

INDICATORS OF COMPLIANCE

- a. Does the recipient agree to the leases in writing?*
- b. How does the recipient ensure that the required provisions are included in the lease agreements?*

- c. *Does the lease agreement obligate the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement?*
- d. *Does the recipient or subrecipient hold title to leased vehicles?*
- e. *If leased to a private entity to operate in public transit service, was the entity selected through a competitive process?*

DETERMINING COMPLIANCE

Review the state/program management plan to determine if the recipient allows leases of Section 5310-funded vehicles.

Review the listing of leased Section 5310-funded vehicles to select sample lease agreements to confirm that a written agreement was executed between the subrecipient and the lessee and to determine if the leases contain terms and conditions that must be met in providing transportation service to seniors and individuals with disabilities, including compliance with all of the requirements the recipient itself is responsible for. Complete the table below. Ensure that the leases state that the vehicle must be used for transportation service for seniors and individuals with disabilities. The recipient can allow the lessee to use the vehicle for other purposes only after the needs of seniors and individuals with disabilities have been met.

Review the state/program management plan to determine if the recipient agrees to leases in writing and if the recipient or the subrecipient holds title to leased vehicles.

If vehicles are leased to private entities to operate in public transportation service, determine if the entities were selected through a competitive process by obtaining and reviewing procurement files. Review a lease to ensure that it obliges the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement.

Section 5310 Vehicle Lease Contents	
Terms and conditions that must be met in providing transportation service to seniors and individuals with disabilities	
Compliance with requirements the recipient itself is responsible for	
Requirement that the vehicle must be used for transportation service for seniors and individuals with disabilities	
If other uses are allowed, requirement that the needs of seniors and individuals must be met before using the vehicle for other uses	

POTENTIAL DEFICIENCY DETERMINATIONS

The recipient is deficient if its Section 5310-funded vehicle lease agreements do not contain the required provisions.

DEFICIENCY CODE: 5310:6-1: Section 5310 lease agreements missing required provisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that leases of Section 5310-funded vehicles contain the required terms

and conditions that must be met in providing transportation service to seniors and individuals with disabilities.

The recipient is deficient if it does not agree to the leases of Section 5310-funded vehicles in writing.

DEFICIENCY CODE 5310:6-2: Section 5310 lease agreements not in writing

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office regional office written approvals of leases of Section 5310-funded vehicles and procedures for approving leases of Section 5310-funded vehicles in writing.

The recipient is deficient if it or its subrecipient does not hold title to leased vehicles.

DEFICIENCY CODE 5310:6-3: Title not held in Section 5310 leases

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office evidence that it or the subrecipient holds title to leased Section 5310-funded vehicles.

The recipient is deficient if it does not select private operators through a competitive process.

DEFICIENCY CODE 5310:6-4: Leases to private operators not awarded through a competitive process

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for selecting private operators through a competitive process.

The recipient is deficient if the lease with the private operator does not contain the relevant requirements contained in the FTA master agreement.

DEFICIENCY CODE 5310:6-5: Private operator leases missing FTA requirements

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for ensuring that leases with the private operators contain the relevant requirements contained in the FTA master agreement.

GOVERNING DIRECTIVE

FTA Circular 9070.1G, Ch. VI, Section 6 Leasing vehicles acquired with Section 5310 Funds

“Vehicles acquired under the Section 5310 program may be leased to other entities such as local governmental authorities or agencies, other private nonprofit agencies, or private for-profit operators. Under such a lease, the lessee operates the vehicles on behalf of the Section 5310 subrecipient and provides transportation to the subrecipient’s clientele as described in the grant application.

The lease between the Section 5310 subrecipient and the lessee contains the terms and conditions that must be met in providing transportation service to seniors and people with disabilities. Because the purpose of the Section 5310 grant is to provide transportation service to seniors and people with disabilities, other uses of the vehicle are permitted only as long as such uses do not interfere with service to seniors and people with disabilities.

The state or designated recipient, being responsible for ensuring that the terms and conditions of the original grant with FTA are met, must agree, in writing, to each lease between the subrecipient and the lessee. Such an agreement should specify that the leased vehicle shall be used to provide transportation service to seniors and people with disabilities, that the vehicle may be used for incidental purposes only after the needs of these individuals have been met, and that the subrecipient, state, or designated recipient must retain title to the vehicle.

Recipients may lease any of their assets to others on an incidental basis so long as the lease agreement holds the lessee responsible for compliance with all of the requirements the recipient itself is responsible for. Thus, the lessee must adhere to applicable and relevant terms and conditions of FTA's master agreement in the maintenance and use of the asset. For example, a recipient may not lease its revenue vehicles to a private company to conduct charter operations except to the extent the recipient itself would be able to conduct charter operations."

A recipient may lease its assets to a private entity to operate in public transit service so long as the entity has been selected through a competitive process and so long as the lease agreement obliges the lessee to adhere to all of the applicable and relevant requirements of the FTA master agreement. A finite lease term should be established as well as a clear price and scope of work."

ISSUES/AREAS OF CONCERN FOR FTA AWARENESS

1. Are there any concerns about the recipient's Management Plan for the Section 5310 program?
2. Are there concerns about the process used to allocate funds and/or the fair and equitable distribution of funds?
3. Was the development of the coordinated plans prepared in coordination and consistent with the applicable metropolitan and statewide planning process?
4. Are there other concerns about the management or implementation of the Section 5310 program?
5. Did background research or site visit observations reveal any potential issues or concerns about the management or implementation of the Section 5310 program not covered previously in this section?

REFERENCES

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. FTA Circular 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"

USEFUL WEBLINKS

1. State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs
2. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools
3. Questions and Answers on the Section 5310, JARC and New Freedom Programs