

## 4. TECHNICAL CAPACITY – PROGRAM MANAGEMENT AND SUBRECIPIENT OVERSIGHT

### PURPOSE OF THIS REVIEW AREA

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

### QUESTIONS TO BE EXAMINED

1. Does the state involve transit providers and nonmetropolitan local officials in the development of the long-range transportation plan and the State Transportation Improvement Program (STIP)?
2. Does the recipient have an FTA-approved state or program management plan(s) that documents the recipient's policies and procedures for administering the Sections 5310, 5311, and/or 5339 programs?
3. Has the recipient entered into agreements with each subrecipient that includes all the information required by FTA and 2 CFR part 200?
4. Did the recipient obtain lobbying certifications from subrecipients before entering into agreements exceeding \$100,000?
5. Did the recipient confirm that its subrecipients were not suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements before entering into agreements exceeding \$25,000?
6. Has the recipient reported subaward information to FSRS for all subawards over \$25,000 timely?
7. Does the recipient's oversight program ensure subrecipient compliance with Federal requirements and performance goals, and provide for evaluation of subrecipient risk of noncompliance with those requirements?

### INFORMATION NEEDED FROM RECIPIENT

#### Recipient Information Request

- Public involvement process for development of the long-range transportation plan and STIP
- Documentation of public involvement activities (sample meeting minutes, publications of activities)
- State/program management plan(s), if different from document uploaded to TrAMS
- Standard subrecipient application and agreement for each type of program funding, if different
- List of all new subrecipients within the past three years
- Subrecipient oversight schedule for the past three and the next three years
- Oversight procedures including sample oversight checklists/monitoring materials, training materials/manuals for subrecipients

#### Recipient Follow-up

- FSRS reporting procedures, if written
- Performance and progress reports submitted by subrecipients
- Sample documentation of oversight conducted of subrecipients to be visited

**TC-PgM1. Does the state involve transit providers and nonmetropolitan local officials in the development of the long-range transportation plan and the STIP?**

**BASIC REQUIREMENT**

The state, as a recipient of Federal funds, must document and follow a public involvement process that provides opportunities for public review and comment during the development of the long-range statewide transportation plan and the STIP. The state must also have a separate and discrete process for cooperating with nonmetropolitan local governments and officials in the development of these plans.

**APPLICABILITY**

States

**DETAILED EXPLANATION FOR REVIEWER**

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

**INDICATORS OF COMPLIANCE**

- a. *Does the state have a documented process for involving the public, including transit providers, in development of the long-range statewide transportation plan and the STIP?*
- b. *Does the state have a separate and discrete process for cooperating with nonmetropolitan local officials representing units of general-purpose local government and/or local officials with responsibility for transportation in the development of the long-range statewide transportation plan and the STIP?*
- c. *How does the process provide an opportunity for the participation of nonmetropolitan local governments and/or local officials in the development of these plans?*

**INSTRUCTIONS FOR REVIEWER**

Review the state's documented public involvement process for developing the long-range transportation plan and the STIP to ascertain how it involves transit providers to obtain their review and comments at key decision points. Review the state's website for and/or obtain a sample of documentation of public involvement activities, including meeting minutes, for the development of the long-range transportation plan and the STIP.

Review the state's process to determine how it ensures that it cooperates with and obtains review and comment from nonmetropolitan local officials representing units of general-purpose local government and/or local officials with responsibility for transportation in the development of the long-range statewide transportation plan and the STIP. Review the state's website for documentation and/or a sample of documentation of cooperative efforts with local officials, including meeting minutes, for the development of the long-range transportation plan and the STIP.

**POTENTIAL DEFICIENCY DETERMINATION**

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

DEFICIENCY CODE TC-PgM1-1: State transportation planning process lacking involvement by transit providers and/or local officials

SUGGESTED CORRECTIVE ACTION: The state must submit to the FTA regional office a process for involving public transit providers and/or nonmetropolitan local officials in the development of the long-range statewide transportation program and the STIP.

## **GOVERNING DIRECTIVE**

### 23 CFR 450.208 Coordination of planning process activities

- (a) In carrying out the statewide transportation planning process, each State shall, at a minimum:
- (1) Coordinate planning carried out under this subpart with the metropolitan transportation planning activities carried out under subpart C of this part for metropolitan areas of the State. When carrying out transportation planning activities under this part, the State and MPOs shall coordinate on information, studies, or analyses for portions of the transportation system located in MPAs [metropolitan planning areas]. The State(s), the MPO(s), and the operators of public transportation must have a current metropolitan planning agreement, which will identify coordination strategies that support cooperative decision making and the resolution of disagreements;
  - (4) Cooperate with affected local elected and appointed officials with responsibilities for transportation, or, if applicable, through RTPOs [regional transportation planning organizations] described in section 450.210(d) in nonmetropolitan areas;
  - (7) Coordinate data collection and analyses with MPOs and public transportation operators to support statewide transportation planning and programming priorities and decisions.

### 23 CFR 450.210 Interested parties, participation, and consultation

- (a) In carrying out the statewide transportation planning process, including development of the long-range statewide transportation plan and the STIP, the State shall develop and use a documented public involvement process that provides opportunities for public review and comment at key decision points.
- (b) The State shall provide for nonmetropolitan local official participation in the development of the long-range statewide transportation plan and the STIP. The State shall have a documented process(es) for cooperating with nonmetropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that is separate and discrete from the public involvement process and provides an opportunity for their participation in the development of the long-range statewide transportation plan and the STIP...

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## **TC-PgM2. Does the recipient have an FTA-approved state or program management plan(s) that documents the recipient's policies and procedures for administering the Sections 5310, 5311, and/or 5339 programs?**

### **BASIC REQUIREMENT**

Recipients must develop and submit to FTA for approval a state/program management plan(s) that documents their policies and procedures for administering the Sections 5310 and 5311 programs and, under certain circumstances, the Section 5339 program. Recipients must update plans regularly to incorporate any changes in program management or new requirements.

### **APPLICABILITY**

Designated recipients of Section 5311 funds

Designated recipients of Sections 5310 or 5339 funds with subrecipients

### **DETAILED EXPLANATION FOR REVIEWER**

Each state that administers the Sections 5310, 5311, and 5339 programs and each designated recipient of Section 5310 or Section 5339 funds that passes funds to subrecipients, is required to have and submit a state/program management plan(s) for the program(s) to the FTA regional office and to update it

regularly to incorporate any changes in program management or new requirements. The requirement for a state management plan does not apply to insular areas that do not have subrecipients.

State/program management plans document the recipient's policies and procedures for the program(s). FTA gives the recipient the maximum discretion permitted by law in designing and managing the programs to meet the passengers' needs under those programs. The recipient develops program standards, criteria, procedures and policies for the programs. States that provide service directly and have no subrecipients under Sections 5310 or 5311 should develop a state management plan that states that it provides the service directly and addresses how the program is managed and funding decisions are made.

The state/program management plan is intended to facilitate program management and FTA oversight. The plan provides public information on the recipient's administration of the programs and may be used as a program guide for local applicants. The plan should contain sufficient detail to meet these objectives. While FTA does not prescribe a format for the plan, it does require that specific areas be covered for each program.

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

FTA strongly encourages recipients to issue timely revisions to state/program management plans, particularly when information helpful to minority applicants, subrecipients, and third party contractors is involved. The recipient should seek public comment in making significant revisions to a plan. A significant revision is a change in recipient policy, such as a change in how projects and subrecipients are selected for funding. Updates to state/program management plans to reflect changes in FTA policy that do not trigger a change in recipient policy do not require public comment. Opportunity for comment should be given, at a minimum, to potential subrecipients, potential service providers, representatives of other funding sources, and any relevant state association or professional organization.

**INDICATORS OF COMPLIANCE**

- a. *Does the recipient have an approved plan on file with the FTA regional office?*
- b. *If the recipient has an approved plan, what changes has the recipient adopted to the program(s) since FTA approval that would require revisions to the plan(s)? If revisions were made, was the revised plan submitted to FTA? Does the approved plan reflect current policy/process?*
- c. *If the recipient does not have an approved plan(s), has the recipient submitted the plan(s) to the FTA regional office for review and approval?*
- d. *If the plan(s) has been submitted to the FTA regional office since the last Comprehensive Review, did the recipient seek public comment for significant changes to the plan(s)?*
- e. *For the plan(s) submitted to the FTA regional office that has not yet received FTA approval, does the state or program management plan(s) address the required topics? Does the submitted plan reflect current policy/process?*

Topics	Page Number			Comments
	5311	5310	5339	
Program Goals and Objectives				
Roles and Responsibilities				

Topics	Page Number			Comments
	5311	5310	5339	
Coordination				
Eligible Subrecipients				
Eligible Services and Service Areas				
Eligible Assistance Categories				
Local Share and Local Funding Requirements				
Project Selection Criteria and Method of Distributing Funds				
Intercity Bus Transportation				
Annual Program of Projects Development and Approval Process				
State Administration, Planning, and Technical Assistance				
Transfer of Funds				
State Rural Transportation Assistance Program (RTAP)				
Private Sector Participation				
Civil Rights				
Maintenance (listed in "other provisions" for Sections 5310 and 5339)				
Charter Rule				
Section 504 and ADA Reporting				
National Transit Database (NTD) reporting				
Program Measures				
Program Management				

Topics	Page Number			Comments
	5311	5310	5339	
Other Provisions				

**INSTRUCTIONS FOR REVIEWER**

Obtain the current state/program management plans from the recipient. Verify with the FTA regional office that the current plans match the plans submitted to and/or approved by FTA. If the plan submitted by the recipient matches the plan approved by FTA and no changes have occurred in the program implementation, do not complete the table above.

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

During the site visit, determine if the plans reflect current policy and procedures as the related area is addressed. Discuss with the recipient if any significant changes were made to the plan(s) since the last Comprehensive Review and, if so, whether the recipient obtained public comment. Review the recipient's website, agendas and/or minutes of board meetings, training sessions, and award application sessions for indication that the significant changes were discussed and provided for discussion to the public. Posting the revised plan(s) on the recipient's website seeking comments on revisions meets the requirement.

**POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it has not submitted the state/program management plan(s) to the FTA regional office or has not updated the plan to reflect current policy.

DEFICIENCY CODE TC-PgM2-1: SMP/PMP missing or out of date

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office an updated state/program management plan(s) that reflects current practice. The recipient must seek public comment on the revised state/program management plan(s) if significant revisions are required and submit documentation that public comment was sought with the updated plan.

The recipient is deficient if its state/program management plan(s) does not address all required topics.

DEFICIENCY CODE TC-PgM2-2: SMP/PMP incomplete

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office a revised state/program management plan(s) that addresses all required topics.

The recipient is deficient if it did not seek public comment for significant revisions to the plan.

DEFICIENCY CODE TC-PgM2-3: No evidence of solicitation of public comment for significant SMP/PMP revisions

SUGGESTED CORRECTIVE ACTION: The recipient must submit to the FTA regional office procedures for seeking public comment when significant revisions are made to a state/program management plan. The recipient must seek public comment on the state/program management plan(s) and submit documentation that public comment was sought with the updated plan(s).

## **GOVERNING DIRECTIVE**

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

GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering FTA's Section 5310 and 5311 programs. The program management plan (PMP) is a document that describes the designated recipient's policies and procedures for administering FTA's Section 5310 program in a large urbanized area. The requirements for the PMP are the same as those for the SMP with exception that the PMP is developed by designated recipients in large urbanized areas whereas the SMP is developed by the state.

Each recipient, whether a state or a designated recipient in a large urbanized area, is required to have an approved SMP/PMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The recipient shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan.

### FTA Circular 9040.1G, Chapter VI, State Management Plans

GENERAL. The state management plan (SMP) is a document that describes the state's policies and procedures for administering the state-managed portions of FTA's Section 5311, 5310, 5316, 5317, and 5339 programs. Each state is required to have an approved SMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The state shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan.

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

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

- a. Each recipient, whether a state or a designated recipient in a large UZA, is required to have an approved SMP/PMP on file with the appropriate FTA regional office and to update it regularly to incorporate any changes in program management or new requirements. The recipient shall provide an opportunity for review by stakeholders when it develops a new plan or significantly revises an existing plan.

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

### **APPLICABILITY**

Recipients with subrecipients

### **BASIC REQUIREMENT**

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

## DETAILED EXPLANATION FOR REVIEWER

The recipient must enter into a written agreement with each subrecipient. The written agreement must include applicable Federal requirements and require the subrecipient to undertake responsibilities for the project usually performed by the recipient. The federally required clauses that the recipient is required to incorporate in agreements (see Procurement section) reference some, but not all, of the basic Federal requirements. Many recipients pass through FTA requirements to subrecipients by incorporating the FTA Master Agreement by reference.

Recipients must ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the recipient must provide the best information available to describe the Federal award and subaward. See 2 CFR 200.331 *Requirements for pass-through entities* for required information.

## INDICATORS OF COMPLIANCE

- a. *Has the recipient entered into a written agreement with each subrecipient?*
- b. *Do the subrecipient agreements include the information required by 2 CFR part 200?*

Required Agreement Information	
Information	Comment
<b>Federal award identification</b>	
Subrecipient name (which must match the name associated with its unique entity identifier)	
Subrecipient's unique entity identifier (DUNS)	
Federal award identification number (FAIN)	
Federal award date of award to the recipient by the Federal agency	
Subaward period of performance start and end date	
Amount of Federal funds obligated by this action by the pass-through entity to the subrecipient	
Total amount of Federal funds obligated to the subrecipient by the pass-through entity including the current obligation	
Total amount of the Federal award committed to the subrecipient by the pass-through entity	
Federal award description as required to be responsive to the Federal Funding Accountability and Transparency Act	

<b>Required Agreement Information</b>	
<b>Information</b>	<b>Comment</b>
Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the pass-through entity	
Catalog of Federal Domestic Assistance (CFDA) number and name; the pass-through entity must identify the dollar amount made available under each Federal award	
Identification of whether the award is research and development (R&D)	
Indirect cost rate for the Federal award (including if the application of the de minimis rate per §200.414 Indirect (F&A) costs)	
<b>Pass-through Requirements:</b>	
All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award, i.e. federally required clauses	
Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports	
Indirect Costs: If a federally approved indirect cost rate is negotiated between the subrecipient and the Federal government, this rate must be used. If no such rate exists, the subrecipient may either negotiate a rate with the pass-through entity and the subrecipient (in compliance with this part), or elect the de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f), if eligible.	
A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part	
Appropriate terms and conditions concerning closeout of the subaward	

## **INSTRUCTIONS FOR REVIEWER**

Using the table and the clause checklist in the Procurement review area, review the standard subrecipient agreement template for each FTA program and the executed subrecipient agreement for each subrecipient selected for a site visit to determine if the agreements contain the information required by 2 CFR part 200. Note that when some of the information required by 2 CFR part 200 is not available, the pass-through entity must provide the best information available to describe the federal award and subaward. Incorporating the FTA Master Agreement by reference meets the requirement to include all federally required clauses.

## **POTENTIAL DEFICIENCY DETERMINATIONS**

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

DEFICIENCY CODE TC-PgM3-1: Missing written agreements

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

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

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

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

## **GOVERNING DIRECTIVE**

2 CFR 200.331 Requirements for pass-through entities.

All pass-through entities must:

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

- (1) Federal Award Identification.
  - (i) Subrecipient name (which must match the name associated with its unique entity identifier);
  - (ii) Subrecipient's unique entity identifier;
  - (iii) Federal Award Identification Number (FAIN);
  - (iv) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;
  - (v) Subaward Period of Performance Start and End Date;
  - (vi) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;

- (vii) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;
  - (viii) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;
  - (ix) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
  - (x) Name of Federal awarding agency, pass-through entity, and contact information for awarding official of the Pass-through entity;
  - (xi) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
  - (xii) Identification of whether the award is R&D; and
  - (xiii) Indirect cost rate for the Federal award (including if the de minimis rate is charged per §200.414 Indirect (F&A) costs).
- (2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award;
- (3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
- (4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in §200.414 Indirect (F&A) costs, paragraph (f);
- (5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
- (6) Appropriate terms and conditions concerning closeout of the subaward.

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

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

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

- (B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- (C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- (D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- (E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- (F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the

recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

- (G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (H) Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- (I) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- (J) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

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**TC-PgM4. Did the recipient obtain lobbying certifications from subrecipients before entering into agreements exceeding \$100,000?**

**BASIC REQUIREMENT**

Recipients must obtain signed lobbying certifications from subrecipients before entering into agreements exceeding \$100,000.

**APPLICABILITY**

Recipients with subrecipients

**DETAILED EXPLANATION FOR REVIEWER**

Any subrecipient in receipt of an award or contract exceeding \$100,000 is subject to the same disclosure and updating requirements as the recipient (See Legal review area for explanation of lobbying certification requirements). The recipient must obtain an OMB Standard Form LLL or a quarterly report update from a subrecipient for an event that should be reported. Obtaining the certification with annual certifications and assurances from subrecipients with one signature for all the certifications and assurances meets the requirement.

**INDICATOR OF COMPLIANCE**

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

Subaward	Comments

**INSTRUCTIONS FOR REVIEWER**

Using the table above, review the recipient’s standard subrecipient application(s) and agreement(s) templates to see if either contains the lobbying certification. For each subrecipient selected for a site visit, review executed subrecipient agreement to determine if the recipient obtained signed lobbying certifications from subrecipients before entering into agreements exceeding \$100,000.

**POTENTIAL DEFICIENCY DETERMINATION**

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

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

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

**GOVERNING DIRECTIVE**

49 CFR 20.110 Certifications and Disclosures

(a) Each person shall file a certification...if required, with each submission that initiates agency consideration of such person for: (1) Award of a Federal contract, grant, or cooperative agreement exceeding \$100,000...Shall file a certification...to the next tier above.

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**TC-PgM5. Did the recipient confirm that its subrecipients were not suspended, debarred, ineligible or voluntarily excluded from participation in federally assisted transactions or procurements before entering into agreements exceeding \$25,000?**

**BASIC REQUIREMENT**

Recipients must ensure that potential subrecipients are not debarred or suspended when entering into agreements exceeding \$25,000.

**APPLICABILITY**

Recipients with subrecipients

**DETAILED EXPLANATION FOR REVIEWER**

Each recipient is required to ensure, to the best of its knowledge and belief, that none of its subrecipients are suspended, debarred, ineligible, or voluntarily excluded from participation in federally assisted transactions or procurements. For each third party contract expected to equal or exceed \$25,000, recipients must verify that the subrecipient is not excluded or disqualified by:

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

Obtaining the certification with annual certifications and assurance from subrecipients meets the requirement.

FTA notes that affirmative actions, such as checking SAM.gov or including a requirement for a signed certification, are preferred. A best practice is for the recipient to print the screen with the results of the search to include in the award or procurement file, or to have a checklist noting when the SAM was reviewed.

In the event that a recipient becomes aware, after the subrecipient award, that an excluded party is participating in a covered transaction, it must promptly inform the FTA regional office in writing of this information. The recipient may continue any covered transaction in existence at the time a party was debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded. The recipient is not required to continue the transaction and may consider termination. However, the recipient may not renew or extend the covered transaction (other than through a fully documented no-cost time extension) with the excluded party.

**INDICATORS OF COMPLIANCE**

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

Subaward	Comments

- b. *Did the recipient extend or renew an award if it determined the subrecipient became suspended or debarred after the initial award? If yes, did FTA grant an exception?*

**INSTRUCTIONS FOR REVIEWER**

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

For each subrecipient selected for a site visit, review the subrecipient’s application, and/or other files to verify the recipient is making this determination before entering into any subrecipient agreements by:

- Checking System for Award Management (SAM) Exclusions (at SAM.gov);

- Collecting a certification; or
- Adding a clause or condition to the covered transaction.

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

Review SAM.gov to determine if any subrecipients selected for site visits are suspended or debarred.

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

### **POTENTIAL DEFICIENCY DETERMINATIONS**

The recipient is deficient if it does not verify that subrecipients are not suspended or debarred.

DEFICIENCY CODE TC-PgM5-1: No verification that excluded parties are not participating

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

The recipient is deficient if it extended or renewed an award to a subrecipient after learning the subrecipient was suspended or debarred.

DEFICIENCY CODE TC-PgM5-2: Excluded parties participating in covered transactions

SUGGESTED CORRECTIVE ACTION: Work with the FTA regional office and FTA Regional Counsel to determine the appropriate corrective action.

### **GOVERNING DIRECTIVE**

#### 2 CFR 180.300

What must I do before I enter into a covered transaction with another person at the next lower tier? When you enter into a covered transaction with another person at the next lower tier, you must verify that the person with whom you intend to do business is not excluded or disqualified. You do this by:

- (a) Checking SAM Exclusions; or
- (b) Collecting a certification from that person; or
- (c) Adding a clause or condition to the covered transaction with that person.

#### 2 CFR 180.310

What must I do if a Federal agency excludes a person with whom I am already doing business in a covered transaction?

- (a) You as a participant may continue covered transactions with an excluded person if the transactions were in existence when the agency excluded the person. However, you are not required to continue the transactions, and you may consider termination. You should make a decision about whether to terminate and the type of termination action, if any, only after a thorough review to ensure that the action is proper and appropriate.
- (b) You may not renew or extend covered transactions (other than no-cost time extensions) with any excluded person, unless the Federal agency responsible for the transaction grants an exception under §180.135.

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

**BASIC REQUIREMENT**

Federal Funding Accountability and Transparency Act (FFATA) requires recipients to report subaward information to FSRS by the end of the month following the month in which the subaward was made.

**APPLICABILITY**

Recipients with subrecipients

**DETAILED EXPLANATION FOR REVIEWER**

All direct recipients of FTA awards, award amendments and cooperative agreements over \$25,000 are subject to the requirement of FFATA, which requires recipients to report subaward information to FSRS at [www.FSRS.gov](http://www.FSRS.gov) by the end of the month after the month in which they make any subaward under the award. The reporting requirement does not include third party contract data at this time.

Recipients must report the information about each first tier subaward over \$25,000 (funds passed through to other public agencies, private nonprofit organizations or, where eligible as subrecipients, private providers of transportation) by the end of the month following the month the direct recipient makes any subaward or obligation (not the month after FTA awarded funds to the recipient). For example, if FTA awarded the fund to the recipient in November and the recipient signed subrecipient agreements in February, the recipient has until March 31 to report the subaward into FSRS. Once the recipient submits an initial report, it can revise it later to add additional subawards as they are made, or to change data previously submitted to reflect adjustments in subawards.

Information and training materials about FFATA subaward reporting and FSRS are posted on [www.USASpending.gov/news](http://www.USASpending.gov/news).

**INDICATORS OF COMPLIANCE**

- a. *Has the recipient reported subaward information to FSRS for all subawards greater than or equal to \$25,000, including subaward amendments making the total award greater than or equal to \$25,000?*
- b. *Were the reports submitted by the end of the month after the month in which the subaward was made?*

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

**INSTRUCTIONS FOR REVIEWER**

In TrAMS, access the program of projects for an award in each FTA program for which the subrecipients

selected for site visits receive funding and complete columns (1), (2), and (3) in the following table. During the site visit, ask the recipient to provide the information needed to complete columns (4) and (5).

### **POTENTIAL DEFICIENCY DETERMINATION**

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

DEFICIENCY CODE TC-PgM6-1: FFATA reporting deficiencies

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

### **GOVERNING DIRECTIVE**

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

Recipients awarded new federal assistance greater than or equal to \$25,000 as of October 1, 2010, are subject to FFATA subaward and executive compensation reporting requirements as outlined in the Office of Management and Budget's guidance issued August 27, 2010. These recipients must file an FFATA subaward report by the end of the month following the month in which the recipient awards any subaward greater than or equal to \$25,000. Additionally, all recipients must report the names and compensation of their five most highly compensated officers, and first-tier subrecipients must report the names and compensation of their five most highly compensated officers, if in the preceding fiscal year they received 80 percent or more of their annual gross revenues in federal Awards; and \$25,000 or more in annual gross revenues from federal Awards; and the public does not have access to this information about the compensation of the senior executives of those recipients or subrecipients through periodic reports filed under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, 15 U.S.C. § 78m(a), § 78o(d), or section 6104 of the Internal Revenue Code of 1986.

Instructions and the FFATA Subaward Reporting System (FSRS) can be found at: [www.fsr.gov](http://www.fsr.gov).

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### **TC-PgM7. Does the recipient's oversight program ensure subrecipient compliance with Federal requirements and performance goals, and provide for evaluation of subrecipient risk of noncompliance with those requirements?**

#### **BASIC REQUIREMENT**

Recipients must 1) evaluate each subrecipient's risk of noncompliance with Federal statutes, regulations, and the terms and conditions of the subaward, and 2) develop a subrecipient monitoring program to ensure that the subaward is used for authorized purposes in compliance with Federal statutes, regulations, and the terms and conditions of the subaward, and that subaward performance goals are achieved.

#### **APPLICABILITY**

Recipients with subrecipients

#### **DETAILED EXPLANATION FOR REVIEWER**

Many FTA requirements flow through the recipient to subrecipients. The recipient is responsible for ensuring that these entities are aware of and comply with the requirements. Before expending any FTA funds on projects, the recipient certifies to FTA that it and others operating on its behalf have met all statutory and program requirements. The recipient must have sufficient documentation to support the certifications to FTA.

The recipient must have an ongoing oversight system to ensure that subrecipients adhere to Federal requirements. While FTA does not prescribe specific monitoring activities for ensuring compliance, it does expect the recipient to look behind certifications and assurances, contracts, and agreements. FTA relies on each recipient to develop and implement effective systems for monitoring and ensuring compliance with requirements. A recipient's oversight of its subrecipient should reflect the size and complexity of its program. FTA expects recipients with a significant number of subrecipients to have formal oversight mechanisms.

The issue of monitoring compliance with Federal requirements is a continuing, critical theme throughout the Comprehensive Review. In each review area, the recipient is asked to provide information on the specific mechanisms in place for monitoring compliance with the Federal requirements in that area. The examination under Technical Capacity takes an overall look at the systems in place for monitoring compliance with a range of Federal requirements. Appropriate systems may include:

- Applications
- Monthly, quarterly or annual reports
- Meetings
- Site visits, assessments, and performance evaluations
- Vehicle/facility inspections

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

FTA provides Rural Transportation Assistance Program (RTAP) funds to assist states in providing technical assistance to transit operators in rural areas. In addition, state/program administrative expenses for the Sections 5310 and 5311 programs can be used for technical assistance. Technical assistance may be provided through orientations, informal conversations, formal correspondence, on-site performance reviews, conferences, etc. Recipients sometimes provide detailed guidance for specific activities, such as vehicle procurement or maintenance. Many recipients sponsor annual conferences, frequently in conjunction with the state transit association, at which training in Federal requirements is provided.

#### **INDICATORS OF COMPLIANCE**

- a. *What is the recipient's process for monitoring subrecipients?*
- b. *How does the recipient evaluate subaward and/or subrecipient risk?*
- c. *Has the recipient conducted risk assessments of its subrecipients?*
- d. *How does the recipient evaluate subaward performance?*
- e. *How are the outcomes of risk assessments incorporated into the oversight process?*
- f. *What actions has the recipient taken to address identified compliance issues or risk with subrecipients?*

#### **INSTRUCTIONS FOR REVIEWER**

Review the state/program management plan(s) for a description of the subrecipient monitoring program, including how the recipient evaluates risk, addresses identified compliance issues, ensures performance goals are met, and addresses issues of subrecipient non-compliance.

Review subrecipient application(s) and monitoring materials, such as performance and progress reports and site visit checklists, to determine how the recipient communicates performance measures, addresses mitigating risks identified, and the review areas overseen. Review the schedule of oversight activities conducted since the last review to determine if the recipient is implementing its procedures. For example, if the oversight program calls for triennial site visits, review the schedule to ensure that the site visits were conducted. If not, discuss the reasons why with the recipient.

Review the recipient website or if not available, obtain documentation of technical assistance, training, or actions offered and conducted for subrecipients in program requirements to address areas of noncompliance.

On site, discuss the oversight program with the recipient to ensure that oversight of the FTA program is clearly understood and addresses the required elements. Discuss any initiatives taken to mitigate risk and reduce the number of potential deficiencies, such as training and technical assistance initiatives. Review the oversight file(s) for the subrecipient(s) to be visited to ensure that the recipient has implemented its oversight program and followed up on identified compliance or risk issues.

Note: The recipient could be found deficient in its monitoring of a specific area but not deficient under Technical Capacity—Program Management. Similarly, it could be found deficient under Technical Capacity—Program Management, but not deficient in a specific area where it is effectively monitoring compliance with Federal requirements or if it does not monitor at all.

#### **POTENTIAL DEFICIENCY DETERMINATION**

The recipient is deficient if it has not evaluated subrecipient's risk of noncompliance, developed a comprehensive oversight program, implemented its oversight program, or does not take actions to address identified compliance issues.

DEFICIENCY CODE TC-PgM7-1: Inadequate oversight of subrecipients

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

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

#### **GOVERNING DIRECTIVE**

2 CFR 200.331 Requirement for pass-through entities.

All pass-through entities must:

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

- (1) The subrecipient's prior experience with the same or similar subawards;
- (2) The results of previous audits including whether or not the subrecipient receives a Single Audit in accordance with Subpart F—Audit Requirements of this part, and the extent to which the same or similar subaward has been audited as a major program;
- (3) Whether the subrecipient has new personnel or new or substantially changed systems;  
and

- (4) The extent and results of Federal awarding agency monitoring (e.g., if the subrecipient also receives Federal awards directly from a Federal awarding agency).
- (c) Consider imposing specific subaward conditions upon a subrecipient if appropriate as described in § 200.207 Specific conditions.
- (d) Monitor the activities of the subrecipient as necessary to ensure that the subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
  - (1) Reviewing financial and performance reports required by the pass-through entity.
  - (2) Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
  - (3) Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by §200.521 Management decision.
- (e) Depending upon the pass-through entity's assessment of risk posed by the subrecipient (as described in paragraph (b) of this section), the following monitoring tools may be useful for the pass-through entity to ensure proper accountability and compliance with program requirements and achievement of performance goals:
  - (1) Providing subrecipients with training and technical assistance on program-related matters;
  - (2) Performing on-site reviews of the subrecipient's program operations; and
  - (3) Arranging for agreed-upon-procedures engagements as described in §200.425 Audit services.

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**ISSUES/AREAS OF CONCERN FOR FTA AWARENESS**

1. Is this the first Comprehensive Review for the recipient?
2. Have any oversight reviews, audits, or investigations of the recipient conducted since the last Comprehensive Review (including the most recent Comprehensive Review) identified significant deficiencies, material weaknesses, and/or repeat deficiencies in the area of technical capacity, program management, or subrecipient oversight?
3. Did the recipient experience difficulty resolving or closing any oversight review, investigation, or audit deficiencies or findings? Are any deficiencies or findings currently open?
4. Are any issues related to technical capacity, program management, or subrecipient oversight indicated in the FTA's Oversight Assessment Tool (OAT)?
5. Has the recipient taken on new subrecipients since the last Comprehensive Review? If yes, how many?
6. Does the recipient provide technical assistance to subrecipients in meeting Federal requirements?

7. Did background research or site visit observations reveal any other potential issues or concerns about the recipient's technical capacity to manage FTA programs not covered previously in this section?

#### **REFERENCES**

1. 49 U.S.C. Chapter 53, Federal Transit Laws
2. P.L. 109-282 Federal Funding Accountability and Transparency Act of 2006
3. Office of Management and Budget (OMB) Open Government Directive - Federal Spending Transparency
4. 2 CFR 180.300, What Must I Do Before I Enter Into A Covered Transaction With Another Person At The Next Lower Tier?
5. 2 CFR Parts 200 and 1201, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"
6. 23 CFR 450.210 Interested parties, participation, and consultation
7. 49 CFR Part 20, "New Restrictions on Lobbying"
8. FTA Circular 5010.1E, "Award Management Requirements"
9. FTA Circular 5100.1, "Bus and Bus Facilities Formula Program: Guidance and Application Instructions"
10. FTA Circular 9040.1G, "Formula Grants for Rural Areas: Program Guidance and Application Instructions"
11. FTA Circular 9070.1G "Enhanced Mobility of Seniors and Individuals with Disabilities Program Guidance and Application Instructions"

#### **USEFUL WEBLINKS**

1. Federal Funding Accountability and Transparency Act Subaward Reporting System
2. [www.USASpending.gov/news](http://www.USASpending.gov/news)
3. Office of Management and Budget Open Government Directive - Federal Spending Transparency
4. State Transit Program Manager's Guide on Administration and Oversight of FTA Grant Programs
5. National Cooperative Highway Research Program (NCHRP) Research Results Digest 341: Compliance Monitoring Tools